DELIBERATIVE CONSTITUTION-MAKING

OPPORTUNITIES AND CHALLENGES

Edited by
Min Reuchamps and Yanina Welp

COST
EUROPEAN COOPERATION
IN SCIENCE & TECHNOLOGY

Routledge

Deliberative Constitution-making

This book explains deliberative constitution-making with a special focus on the connections between participation, representation and legitimacy and provides a general overview of what the challenges and prospects of deliberative constitution-making are today.

It seeks to provide a more complete picture of what is at stake as a political trend in various places in the world, both theoretically and empirically grounded. Distinctively, the book studies not only established democracies and well-known cases of deliberative constitution-making but also such practices in authoritarian and less consolidated democratic settings and departs from a traditional institutional perspective to have a special focus on actors, and in particular underrepresented groups.

This book is of key interest to scholars and students of deliberative democracy, constitutional politics, democratization and autocratization studies, citizen participation and more broadly to comparative politics, public administration, social policy and law.

Min Reuchamps is a Professor of Political Science at the Université catholique de Louvain (Belgium) and Chair of the COST Action 'Constitution-making and deliberative democracy' (2018–2022).

Yanina Welp is a Research fellow at the Albert Hirschman Centre on Democracy, Geneva Graduate Institute (Switzerland), and Chair of the COST Action 'Constitution-making and deliberative democracy' (2022–2023).

Routledge Studies in Democratic Innovations

Series editors: Sergiu Gherghina, University of Glasgow, UK and Camille Bedock, SciencesPo Bordeaux, France

Representative democracy faces several major challenges in contemporary times. Two of the most prominent challenges are the problematic functioning of its institutions and the decreasing popular legitimacy of its decision-making process. The gap between citizens and institutions widens and has major impact on politics and society. This book series aims to bridge the gap between various perspectives on democratic innovations and examines the determinants, functioning and consequences of democratic innovations from both a theoretical and empirical perspective.

The Future of Self-Governing, Thriving Democracies
Democratic Innovations By, With and For the People
Brigitte Geissel

Reclaiming Participatory Governance
Social Movements and the Reinvention of Democratic Innovation
Edited by Adrian Bua and Sonia Bussu

Deliberative Constitution-making
Opportunities and Challenges
Edited by Min Reuchamps and Yanina Welp

For more information about this series, please visit: https://www.routledge.com/Routledge-Studies-in-Democratic-Innovations/book-series/RSDI

Deliberative Constitution-making

Opportunities and Challenges

Edited by
Min Reuchamps and Yanina Welp

Contents

Contributors

Shulamit Almog is Full Professor of Law at the University of Haifa. She is the Presidential Adviser and Commissioner on Gender Equity and Co-Director of the Center of Law, Gender and Policy at the University of Haifa. Prof. Almog founded the field of Law and Literature in Israel, and her research focuses on it, and on children's rights and feminist legal studies. She has published numerous books and articles in U.S., Canadian, European, and Israeli law reviews. Alongside her academic work, she is publicly active on human rights issues, appearing before the Israeli Knesset, drafting sections of Israel's report submitted to the U.N. Committee on the Rights of the Child, and participating on the committee reforming Israel's Adoption Law. Her recent book is *Homer and the Origins of the Law* (2022).

Eirikur Bergmann is Professor of Politics at Bifrost University in Iceland. Author of twelve academic books and numerous journal articles, he writes mainly on Democratic Innovations, Nationalism, Populism, Conspiracy Theories, European Integration, as well as on Icelandic Politics. In 2011, he was elected onto the Icelandic Constitutional Assembly and subsequently appointed by Parliament to the country's Constitutional Council. He is, thus, one of the 25 authors of the draft Icelandic constitution, which as of yet has not been ratified. Eirikur Bergmann is also author of three novels published in Icelandic.

Paul Blokker holds a PhD from the European University Institute, Florence. He is Full Professor in Political Sociology, Department of Sociology and Business Law, University of Bologna. Until recently, he was research coordinator at the Institute of Sociological Studies, Charles University, Prague. His research focuses on the sociology of constitutions, the sociology of human rights, constitutional politics, democratic participation, populism, and social and constitutional imaginaries. Among recent publications are: 'Conservative Populism in Defiance of Anti-Totalitarian Constitutional Democracy', in A. Czarnota, M. Krygier, and W. Sadurski (eds), *Anti-Constitutional Populism* (2022); with M. Anselmi, O. Mazzoleni, 'Populism and Law', in R. Heinisch, C. Holtz-Bacha, O. Mazzoleni (eds.), *Political Populism. Handbook of Concepts, Questions and Strategies of Research*, (2021). In 2021, he edited *Imagining Europe. Transnational contestation and civic populism* (series European Political Sociology).

Elena García-Guitián is Full Professor of Political Science at the Universidad Autónoma de Madrid, specialized in political theory. She is coordinator of the Jean Monnet Network "OpenEUdebate: Matching Politics with Policy" (2019–2022, 600465-EPP-1–2018-1-ESEPPJMO-Network) and editor of the *Spanish Review of Political Science*. Her last publications are: 'Citizens "permissive consensus" in European integration scholarship: Theoretical reflections on the EU politicisation and the democratic deficit discourse', in T. Haapla and A. Oleart (eds.), *Tracing the Politicisation of the EU. The Future of Europe Debates Before and After the 2019 Election* (2022) and 'The Concept of "Good Enough" Citizen Revisited: An Exploration of Current Discourses on Political Participation', in C. Wiesner, A. Björk, H. Kivistö, K. Mäkinen (eds.), *Shaping Citizenship. A Political Concept in Theory, Debate and Practice* (Routledge, 2018).

Sergiu Gherghina is Associate Professor in Comparative Politics at the Department of Politics and International Relations, University of Glasgow. His research interests lie in party politics, legislative and voting behavior, democratization, and the use of direct democracy. He is currently the PI of a project on political parties, poverty, and vote buying in new democracies. His work was published in international peer-reviewed journals such as *American Journal of Political Science*, *Contemporary Politics*, *Democratization*, *East European Politics*, *Electoral Studies*, *European Political Science*, *European Political Science Review*, *European Union Politics*, *Party Politics*, *Political Quarterly*, or *Political Studies*.

Volkan Gül is an Assistant Professor at Kütahya Dumlupınar University, Turkey. He obtained his PhD in Political Theory from University College London (UCL). His main research is on democratic innovations, deliberative democratic theory, and its practices. He has worked on representation and accountability in the context of minipublics and published in *Representation* and *The Journal of Deliberative Democracy*. In addition, recently, he has authored a book chapter on populism and utopianism.

Jasmin Hasić is an Associate Professor of International Relations at Sarajevo School of Science and Technology. He holds a PhD in political and social sciences from the Université libre de Bruxelles (ULB) and LUISS Guido Carli of Rome. His recent publications include Bosnia and Herzegovina's Foreign Policy since Independence (2019, co-edited with Dženeta Karabegović). His research interests also include peacebuilding, diaspora studies, and demographic changes associated with post-conflict migration. He has done consulting work with several international organizations, including International Organization for Migration (IOM), United Nations Development Programme (UNDP), United Nations Population Fund (UNFPA), and the World Bank. He is an alumnus of the United Nations Alliance of Civilizations (UNAOC) Fellowship in New York, the British-Bosnian Fellowship in London, and the Humanity in Action Diplomacy and Diversity Fellowship in Washington and Paris.

Claudia Heiss is Assistant Professor at the Institute of Public Affairs, University of Chile, where she directs the undergraduate program in political science. She holds a PhD in political science from the New School for Social Research, an MA from Columbia University, and a journalist degree from the University of Chile. She is adjunct researcher at the Center for Social Conflict and Cohesion Studies (ANID/FONDAP COES 15130009) and at the Millennium Nucleus for the Study of Media, Public Opinion, and Politics (ANID/Millennium MEPOP NCS2021_063). Former president of the Chilean Political Science Association (2012–2014) and member of its board (2021–2023), as well as member of Red de Politólogas, she has published the book *Why we need a new Constitution* (in Spanish, 2020), book chapters and articles on constitutionalism and Chilean politics in the *Journal of Democracy, Constellations, Revista de Ciencia Politica*, and *Latin American Politics and Society*, among others.

Agnieszka Kampka is an Assistant Professor at Warsaw University of Life Sciences. She is a sociologist (PhD, Habil.), a philologist (MA), and an art historian (MA). Her research interests include public discourse and political and visual rhetoric. She is the author of books on persuasion in the language of politics (in Polish: *Perswazja w języku polityki*, 2009) and changes in social norms of public debate (in Polish: *Debata publiczna. Zmiany społecznych norm komunikacji,* 2014). In addition, she is the author of articles on political action through images and media. She is also on the board of the Polish Rhetoric Society and the chief editor of the international open-access journal *Res Rhetorica.*

Norbert Kersting holds the chair for *Comparative Politics. Local and Regional Governance* at the Department of Political Science at the University of Muenster, Germany. From 2006 to 2011, he held the "Willy Brandt Chair on transformation and regional integration" at the Department of Political Science, University of Stellenbosch. He was a fellow at the Institute of Political Science at the University of Marburg. He was visiting professor at the University of Koblenz-Landau and the University of Kassel. He organizes the Direct Democracy Integrity Index. Norbert Kersting was the founding chair of International Political Science Association's (IPSA) Research Committee 10 on 'Electronic democracy'. His research focuses on comparative democratic innovations and on online and offline participation, referendums, and e-democracy.

Raphaël Kies is Senior Researcher at the University of Luxembourg. He holds a PhD from the European University Institute. He is interested in deliberative democracy, electoral studies, democratic innovations, and media studies. He is the founder of the Luxembourgish Platform of Participatory Democracy (pldp.lu) and has implemented and reviewed several democratic innovations in Luxembourg and abroad – the most recent ones are the participatory budget with the city Dudelange, the *Biergerkommittee Lëtzebuerg 2050*, the *Klima-Biergerrot*, the voting advice applications *Smartwielen.lu*. In the field of the media, he is in charge of the national Media Pluralism Monitor (MPM), the project MEDIALUX, and he is a member of the board of directors of Luxembourg public radio (radio 100.7).

Sergiu Mișcoiu is Professor of Political Science at the Faculty of European Studies, Babes-Bolyai University in Cluj-Napoca (Romania) where he serves as Director of the Centre for International Cooperation and as Director of the Centre for African Studies (Cestaf). He holds a PhD in Political Science from Paris-Est University (France), a PhD in History from Babes-Bolyai University, and a habilitation in Political Science from Paris-Est University. He is permanent member and PhD tutor of the LIPHA Laboratory at the University Paris-Est, associate professor of the universities of Créteil (France), Szeged (Hungary), and Cheikh Anta Diop Dakar (Senegal), and has been leading five major international research projects. He wrote four books, edited and co-edited 20 volumes, and wrote 120 scientific articles and book chapters in English, French, and Romanian. His main research interests are populism, discourse theory, deliberation, political conflicts, French politics, and transition in Central-Eastern Europe and Francophone Africa.

Monika Mokre is a political scientist and Senior Researcher at the Institute for Culture Studies and Theatre History of the Austrian Academy of Sciences. She teaches at various Austrian universities and is one of the Austrian Representatives in the COST Action 'Constitution-making and Deliberative Democracy'. Her research fields include theories of democracy, asylum and migration politics, gender studies, and cultural politics. Her recent publications are: *Die Stadt als Stätte der Solidarität*, edited jointly with Niki Kubaczek (Transversal, 2021); 'Deliberative Democracy, Under-Represented Groups and Inclusiveness in Europe', written jointly with Sergiu Gherghina and Sergiu Mișcoiu (*Innovation: The European Journal of Social Science Research*, 2021); 'If no vote, at least voice? The potential and limits of deliberative procedures for the creation of a more inclusive democracy', co-authored with Tamara Ehs (*Innovation: The European Journal of Social Science Research*, 2021).

Jón Ólafsson is Professor of Cultural Studies at the University of Iceland. His research interests combine cultural theory and political philosophy, and his most recent papers deal with political culture, including dissent and protest action; epistemic democracy, democratic engagement, political agency and democratic constitutional design. He now leads a research project on Democratic Constitutional Design (2019–2023). From 2010 to 2013, Jón Ólafsson chaired a committee on ethical codes for government ministers, public servants, and state employees, and in 2018, he led a working group on trust in government and public service which submitted a report and proposals to the Prime Minister in September 2018. He is a founding member of Gagnsæi, the Icelandic chapter of Transparency International. Among his recent publications are: 'Crowdsourcing the 2011 Proposal for a New Constitution: When experts and the crowd disagree' and 'The Case Against Leaders: A Moral Reading of Geir Haarde's Conviction for Negligence of Ministerial Duties'.

Daniel Oross is political scientist and he received his PhD in political sciences from the Corvinus University of Budapest in 2015. Since 2011 he is Research Fellow at the Institute for Political Science in Centre for Social Sciences, excellent institute of Hungarian Academy of Sciences (HAS). Currently he is Vice-Chair of COST Action 'Constitution-making and deliberative democracy'. His research interests are political participation, youth policy, political socialization, and democratic innovations.

Alina Östling is co-chair of the NGO 'Open Knowledge Sweden'. She has a PhD in Political Science from the European University Institute and vast experience as researcher, evaluator, and consultant providing support to international and non-governmental organizations (OSCE/ODIHR, UNICEF, UNDP, Council of Europe, Open Government Partnership, Transparency International) in the areas of open government, technology, and digital social innovation. She has also authored academic publications on public participation, electoral rights, transparency, migration, and media pluralism.

Min Reuchamps is Professor of Political Science at the Université catholique de Louvain, in Belgium. He graduated from the Université de Liège and from Boston University. His teaching and research interests include federalism and multi-level governance, democracy and its transformations, and innovations, participatory and deliberative methods, as well as relations between language(s) and politics and, in particular, the role of metaphors in political discourse. He has published over 20 books and edited volumes on these topics. In the wake of these works, he contributed to the COST Action 'Constitution-making and deliberative democracy'. He is regularly invited to observe and assess democratic processes as well as to appear in the media and in the public debate. In Belgium, he actively contributed to the design of the Permanent Citizens' Dialogue of the Parliament of the German-speaking community and of the mixed parliamentary committees for the Parliament of the Region of Brussels, the French-speaking Parliament in Brussels and the Walloon Parliament, as well as the federal online platform for the future of the country.

Peter Stone is an Associate Professor in Political Science at Trinity College Dublin, where he currently serves as Head of Department. He has previously taught at Stanford University and held a Faculty Fellowship at Tulane University's Center for Ethics and Public Affairs. He works in contemporary political theory, with particular interest in theories of justice, democratic theory, rational choice theory, and the philosophy of social science. He is the author of *The Luck of the Draw: The Role of Lotteries in Decision Making* (2011) and the editor of *Lotteries in Public Life: A Reader* (2011). His work has appeared in such journals as *Critical Review of International Social and Political Philosophy* (*CRISPP*), the *Journal of Political Philosophy*, the *Journal of Theoretical Politics*, *Political Theory*, *Social Theory and Practice*, and *Theory and Decision*. He currently serves as Vice President of the Political Studies Association of Ireland (PSAI).

Sébastien Théron is a French student finishing his Master in European Governance at the University of Luxembourg, with an internship at the CCMI (*Commission Consultations des Mutations Industrielles*) of the European Economic and Social Committee and has written a master thesis on the revival of industrial policy in the EU through the prism of the theory of liberal intergovernmentalism. He has participated in various CEPS civil society consultation exercises in the framework of the new EU industrial strategy and will join the College of Europe (Natolin) for a master's degree in Interdisciplinary European Studies to deepen his knowledge of European economic policy and public affairs. In parallel, he is passionate about and has written on collective intelligence and citizen (constitutional) reform processes.

Visvaldis Valtenbergs is an Associate Professor at the University of Latvia. He investigates the impact of information and communication technologies on democracy, political communication, and sustainable development. As an author and co-author of several research and policy reports, he has been dedicated to working on the intersection of applied science, politics, and civic society. Between 2017 and 2021, he delivered scientific expertise to the members of Latvian Parliament while working with the Analytical Service of the Parliament.

Yanina Welp is a Research Fellow at the Albert Hirschman Centre on Democracy, Graduate Institute in Geneva (Switzerland), and co-founder of the Red de Politólogas. She is currently the Chair of COST Action 'Constitution-making and deliberative democracy'. Between 2008 and 2018, she was a principal researcher at the Centre for Democracy Studies and co-director of the Zurich Latin American Centre (2016–2019), both at the University of Zurich. She finished her Habilitation in 2015 at the University of St. Gallen. She holds a PhD in Political and Social Sciences from the Pompeu Fabra University (Spain) and two bachelor's degrees in Social Communication and Political Science from the University of Buenos Aires (Argentina). Recent representative publications include *The will of the people: Populism and citizens participation in Latin America* (Berlin: De Gruyter, 2022) and *The Handbook of citizens assemblies* (Berlin: De Gruyter, 2023, coedited with Min Reuchamps and Julien Vrydagh).

Stéphanie Wojcik has a PhD in Political Sciences with a thesis on the role of online forums in discussing public affairs in local governments in France. She is Senior Lecturer at the University of Paris-Est Créteil (France) and member of the CEDITEC, a research center on discourse, images, texts, and communication. She has studied several experiences on public participation based on digital technologies and is currently working on the various forms of online political participation during electoral campaigns. She has authored academic publications on web-based devices for public participation, politicization, web-campaign, and more generally, the effects of digital technologies on democracy.

Daniella Zlotnik Raz is a PhD candidate at the Faculty of Law, University of Haifa, Israel. Her research concerns children's political rights, political participation, and participation in public decision-making from a children's rights perspective. She holds a bachelor's degree in law and comparative literature from the Hebrew University of Jerusalem (LLB, *cum laude*), and a master's degree from the Advanced Studies in International Children's Rights program at Leiden University, the Netherlands (LLM, *cum laude*). Daniella Zlotnik Raz is a member of the 'Leiden Children's Rights Observatory' editorial team. Currently, she works as the Deputy Legal Adviser and Head of Legal Research and Policy in the Israeli National Council for the Child (CSO).

Foreword

Since the dawn of the twenty-first century, the literature on deliberative democracy is booming and is even becoming among the most popular topics in international scientific conferences. In this so-called deliberative wave, books are being published every year on an increasing variety of topics and cases. This book contributes to this mushrooming, with a special and original focus on deliberative constitution-making, but it is also unique as it is a by-product from the COST Action 'Constitution-making and deliberative democracy' (CA17135).

The COST Action ConstDelib, as it is known by its members, is funded by the COST Association that is also funded by European research framework programmes. For four years, it has been one of the largest COST Actions, that is a network of members from over 40 countries all across Europe and beyond. In fact, the purpose of such an Action is not to undertake one single research project but rather to form a network of many people with different and possibly diverging approaches. Despite their different and diverging views, together, these researchers, practitioners, public servants, and civil society actors have reflected upon and have written reports and papers on constitution-making and deliberative democracy that are available on the Action's online portal: www.constdelib.com.

This edited volume is the tip of the bulk of works produced by the Action and its diversity of members. It builds on these works and intends to offer a more comprehensive and comparative approach. In doing so, it aims at a broad public. It first targets an audience of researchers as it fills a gap in the literature by including but also going beyond the 'usual suspects'. Thanks to the comparative approach developed in each chapter, the book will also speak to a large audience, including practitioners who implement such deliberative processes. They are often in demand of theoretical, empirical, and methodological insights on their work but fail to obtain it due to the academic knowledge's impermeability. The community of practitioners dealing with citizen participation is growing fast across the globe. The book will also be of use for undergraduate and graduate students, as universities and law schools are increasingly integrating courses or even full programmes on citizen participation and deliberation.

In sum, the book that you hold in your hands or that you read on your screen (as the budget of the COST Action covers the costs of Open Access) constitutes a collective endeavor based on the work of its dedicated contributors. Several people have indeed directly contributed to this volume but many more have indirectly contributed to it through their engagement in the Action, in particular, and in deliberative democracy, in general, and they should be thanked for this. This book is also theirs.

Introduction

Does it matter if constitution-making is deliberative?

Yanina Welp and Min Reuchamps

Constitutions are the cornerstone of polities. They are fundamental in at least two senses. On the one hand, constitutions represent or are expected to represent the common agreements and values within a society. On the other hand, they organize the political, social, cultural, and economic relations in a given community. In this light, it has been argued that ideally constitutions should be elaborated in the context of a *tabula rasa* in which the various actors engaged have no idea about the positions they will occupy in the future, resulting in informed deliberation advancing the common good (Buchanan & Tullock, 1962; Rawls, 1971). Far from this idealized scenario, most constitutions have evolved out of exceptional, disruptive contexts such as decolonization processes, military coups, or transitions to democracy in which power struggles and closed revindications are the cornerstone (Eisenstadt, LeVan, & Maboudi, 2017).

Paradoxically, constitutional replacements in democratic contexts, where to some extent the ideal conditions could be fulfilled, are the exceptions (Elster, 1995). Negretto (2020b) identified only 25 cases between 1900 and 2015 (and not surprisingly, several cases happened as a result of political turmoil and power struggles). One of the reasons explaining this low frequency is that normally the constitutions in force either do not regulate their replacement or they create high obstacles that make change very difficult. These difficulties in times of legitimacy crisis add incentives to the clash between the popular will and the status quo, but at the same time could open space for the emergence of majoritarian projects that are non-respectful of the rule of law (Welp, 2022).

I.1 Constitution-making

Modern constitution-making started in the late eighteenth century. Elster (1995) describes seven waves of constitution-making across Europe and North America as well as in their former colonies throughout the world. The first wave came by the end of the eighteenth century with new and novel constitutions following the American and French revolutions. The second wave swept through Europe following the revolutions in 1848 with around 50 new constitutions being introduced, including those in the many small German and Italian states. After World War I, many of the newly created states wrote their constitutions in the third wave: for

example, Poland and Czechoslovakia. Under pressure from the victorious allied forces, the defeated states of World War II, Germany, Italy, and Japan, wrote new constitutions introducing democracy in the fourth wave. The fifth wave came with the breakup of the European colonial empires, starting in India and Pakistan in the 1940s, gradually gaining momentum and then running through Africa in the 1960s. The sixth wave struck through southern Europe in the mid-1970s with the fallen dictatorships in Greece, Portugal, and Spain and expanded to some Latin American countries as Brazil in 1988. The seventh wave broke out in Eastern Europe in the 1990s with the introduction of many new and progressive constitutions after the end of the cold war. After the publication of Elster's book, there were new prominent cases, including the ones of the political revolutions in Latin America (Venezuela in 1999, Ecuador in 2007 and Bolivia in 2009). As controversial as the previous one were some of the process resulting from the 'Arab Spring', such as Tunisia and Morocco. In addition, we should mention the failed ones related to social upheavals (Iceland and Chile, cases that engaged in constitution-making but did not succeed, hitherto, in getting approval or implementation). The picture is clear, constitutional replacements are a constant issue in political systems around the world and at the core of it is the discussion of who is entitled to write it.

Previous rounds of constitution-making have involved the deliberation of elites, principally constitutional lawyers, senior politicians, and so on, who populated the deliberative component of such assemblies – from the framers of the U.S. Constitution to the Assembly in post-revolutionary France (Ackerman, 1998; Carey, 2009; Ginsburg, Elkins, & Blount, 2009). In most cases, decisions were reached by a simple majority of the delegates, although a few aimed at something close to consensus, for example, the making of the 1949 German Constitution and the 1978 Spanish Constitution (Elster, 1995). In recent instances, however, constitution-making included roles not only for elites, but also for citizens (Fishkin, 2011; Weathley & Mendez, 2013), not without controversy on the forms and outcomes (see Saati, 2015; Welp & Soto, 2020). What can be identified as an eight wave of constitution-making (della Porta, 2020) distinguishes from all previous waves of constitution-making for the role given to ordinary citizens. However, the debate has many axes. Citizen participation may take different, non-exclusive shapes, such as electing the constituents (which opens space to discuss the contents of the future text), deliberating on specific topics and/or a draft, and voting on total or partial contents in a referendum, among others (Welp & Soto, 2019). Within all these forms, deliberative assemblies are of growing relevance (Reuchamps, Vrydagh, & Welp, 2023).

Constitutions, as the supreme norm that shapes legitimate law-making, must also normatively be legitimate themselves (Dworkin, 1995). In this perspective, deliberative democracy is primarily expected to produce legitimate political outcomes (Cohen, 1998; Manin, 1987). In addition, as Elster (1995) notes, creating a constitution involves making collective choices under constraints, that is, they are the work of a Constituent Assembly rather than individuals. Thus, we would expect deliberation to be appropriate for constitution-making in that it will lend greater

legitimacy, and be based on collective discussions. However, these are normative arguments – not shared by every actor – and above all, they should be empirically tested and discussed by all relevant actors themselves. They call for a combined research endeavour, bridging together theoretical claims and empirical validations. Far from consensus, the contemporary conversation is increasingly characterized by controversies over what 'deliberative democracy' means, which conditions should be achieved to be 'deliberative' and 'democratic', and what kind of outcomes can be expected, as the many chapters in this volume exemplify.

I.2   Deliberative constitution-making on the move

The claim for participatory and deliberative constitution-making is increasing in Europe and around the world. Several books have dealt with the topic in a theoretical way (Elster, 1995; Fishkin, 2011; Habermas, 1975); others have focused on the relation between constitutions and political regimes (Weathley & Mendez, 2013), while a new body of literature is dealing with forms of participatory (Contiades & Fotiadou, 2017; Eisenstadt et al., 2017) or deliberative (Reuchamps & Suiter, 2016; Soto & Welp, 2019) constitution-making as well as constitutional replacements in democratic (Negretto, 2020a) or authoritarian settings (Saati, 2016). These works build on a growing number of deliberative constitution-making instances with narrow definitions (for example, of what a replacement is or who fits into the category of democracy) or focus (for example, on citizens' assemblies). This edited volume seeks to cover the dimensions of the debate on a broader sense and articulating two key dimensions: constitution-making and deliberation. Both will be analysed, considering how actors (elites, parties, social movements, and civil society, among others) and institutions (political systems, electoral rules, for instance) struggle over ideas and power. In so doing, we must stress that our conception of what constitution-making means is not narrow but broad (and this, arguably, makes the book original). In fact, by constitution-making, we refer to discussions on who and how the social pact of a given polity should be defined, even if such discussion does not lead to a change of the constitution per se. This is the reason why, for example, this book includes a chapter on youth deliberation.

Iceland and Ireland, that have been widely investigated in the literature will be discussed in an original fashion in this volume, are the flagship cases of such deliberative constitution-making. For a quick reminder, Iceland engaged, in the wake of a crisis, in a multi-staged deliberative constitution-making in 2009 that led to the drafting of a new constitution that finally has never been implemented hitherto (e.g. Bergmann, 2016; Landemore, 2015), which raises the output legitimacy question: does it matter if constitution-making is deliberative if it does not lead to a constitutional change? Whereas Iceland is often considered as the pioneered case in deliberative constitution-making, Ireland is arguably the country that has gone furthest, at this stage, with the establishment of a Constitutional Convention made of both – two-thirds of – randomly selected citizens and – one-third of – parliamentarians that proposed several constitutional amendments of which some have been adopted by referendums (Suiter, Harris, Farrell, & O'Malley, 2016). The Convention of the

Constitution (2012–2014) was followed by the Irish Citizens' Assembly (2016–2018) that played a significant role in the path to the constitutional referendum on abortion in 2018, demonstrating a systemization of constitutional deliberation in Ireland (Farrell, Suiter, & Harris, 2019) that continues to regularly see the organization of citizens' assemblies.

Another European country is also experiencing an institutionalization of deliberative practices: Belgium. In 2022, a large online consultation platform was opened during six weeks to collect citizens' but also public and private organizations' views on the future of the country. This first ever consultation of this scale in this country is intended to feed the negotiations around a possible – seventh – State reform that could also be discussed in citizens' assemblies either made of citizens only or mixed with parliamentarians and citizens. Such initiative directly relates to constitution-making (or in this case constitution-reforming) per se, but Belgian parliaments have also institutionalized deliberative practices in a permanent perspective that comes in the aftermath of the G1000, the largest citizen deliberation held in Belgium to date (Caluwaerts & Reuchamps, 2018). The Parliament of the German-speaking Community has established in 2019 a permanent citizen dialogue (Niessen & Reuchamps, 2020). Three other parliaments (the Brussels regional parliament, the Francophone Brussels parliament, and the Walloon parliament) organize mixed deliberative committees bringing together – three-quarters of – randomly selected citizens and – one-quarter of – parliamentarians (Reuchamps, 2020).

Before this wave of institutionalization of deliberative practices in Ireland and in Belgium, other European countries had experienced deliberative constitution-making in ad hoc experiments. In 2013, the Romanian Parliament established a constitutional forum as an autonomous and consultative structure whose task was to organize local debates in the perspective of revising the Constitution. In total, over 50 debates took place, gathering more than 1,200 participants drawn from the civil society, journalists, experts as well as ordinary citizens. A qualitative assessment showed a two-sided picture: on the one hand, input and throughput legitimacy criteria had been largely met with citizens actively and effectively involved in the problem-identification and -solving process, on the other hand, the output legitimacy was rather low because of political interference (Gherghina & Miscoiu, 2016). Luxembourg also involved citizens in constitution-making process in 2015 but in a much smaller number. In the context of a referendum campaign over the revision of the Luxembourgish Constitution, 27 citizens, reflecting the diversity of the population, were invited to reflect upon four questions to be put in a referendum: right to vote at age 16, voting rights for foreigners residing in Luxembourg, a 10-year limitation on a ministerial mandate, and finally the funding of ministries of cults (Eerola & Reuchamps, 2016). The analysis showed that limited time – only one day – and language issue – discussions mainly held in French – were an impediment to citizen deliberation (Kies et al., 2015). Finally, the result of the referendum was a majority of No to each question. Both cases reveal that there is a tension between input legitimacy, that can be fairly high, and output legitimacy, that is rather low.

Outside of Europe, there are also instances of deliberative constitution-making in different formats and regime types (Breen, 2016; Redissi & Boukhayatia, 2015; Saati, 2015; Welp, 2021). Three cases illustrate well the diversity among existing experiences: Tunisia and its expected transition to democracy; Cuba and the relegitimation of the authoritarian regime; Chile and the failed attempt of renovating the constitution to overpass the authoritarian legacy and the crisis of legitimacy. Let us briefly review them.

Tunisia's constitutional process of 2014 arose because of the so-called Arab Spring. A series of social protests resulting from the limitation of rights, poverty, and corruption generated episodes of violence that culminated in the fall of the government and the removal of President Ben Ali after 23 years in power. The social pressure to convene a National Constituent Assembly (NCA) emerged from it. In October 2011, elections were called for the NCA, which in turn had legislative powers. 217 members were elected, of which 89 seats belonged to the Center-Left Nationalist Moderate Islamic Party (Ennahda) (with 29 seats) and the Social Democrat Ettakatol (with 20 seats), both secular parties. The Assembly began to function in February 2012, having to deal with strong tensions between Islamists and secularists. In 2012, the newly created Popular Front criticized the dominant coalition in the NCA. They wanted to dismiss the government, dissolve the NCA, and form a coalition government that would charge a 'Council of Wise Men' with drafting a new Constitution. In turn, civil society organizations had a great influence on the continuity of the process. During the process, there were strong tensions between the Islamic party (Ennahda) and other secular actors. Four drafts of the new Constitution were drawn up between August 2012 and June 2013.

The first draft was submitted for citizen consideration and a two-month dissemination campaign was launched. This campaign included public meetings with the different communities in the country, meetings with special interest groups, and dissemination of the NCA debates. The main instance of participation comprised the deliberative dialogues held in the 24 governorates. Citizens, members of civil society, and academics participated directly in them. Participation was local, through the governorates. However, instances of dissemination at the national level and meetings with specific groups were also contemplated. This stage had the support of the United Nations Development Programme. Different documents mention approximately 7,000 participants, including 300 members of civil society and 320 representatives of the academic world. The meetings were held by the members of the Assembly, as well as by the members of the Constitutional Committees, which took place every Sunday for approximately 6 weeks. There were between 50 and 500 participants, with free attendance but a mandatory registration. Some were representatives of political parties, others of civil society organizations, and some people who came for their personal interests. Thus, for example, a meeting lasted 7 hours, in which more than 300 participants and 6 Assembly members attended (Pickard, 2013). According to the information collected up to February 2013, more than 10,000 amendments to the text had been compiled by the Assembly members. These proposals were incorporated into the text, which was then reviewed by the Constitutional Committee. Even so, there was no clear process of systematization.

The Assembly directly through working groups obtained much of the information. However, at the end of each session, the members of the Assembly who attended requested the amendments of the hearing, which could be incorporated later (Pickard, 2013). Likewise, plenary debates of the Assembly were then generated, which were open to the citizenry (Gluck & Brandt, 2015). The tension between the parties reached its peak in February 2013 with the assassination of secular opposition leader Shoukri Belaid. The second critical moment occurred in July of the same year due to the political assassination of Mohamed Brahmi, also from the Popular Front, and the attack against State security forces. The opponents gathered in a National Salvation Front once again demanded the resignation of the Government and the dissolution of the Assembly, which was abandoned by a third of its members. This interrupted the process for some months, which was about to fail, until a roadmap that established the adoption of a new Constitution was finalized. A dialogue table was formed made up of 4 civil society organizations that contributed to continue and finish it. It was passed on 10 February 2014.

The case of Cuba shows to what extent a participatory process could be also conducted in an authoritarian setting and how this is shaped to control its outcomes. According to official data, in 2018, more than 7 million Cubans (64% of the population) discussed a constitutional proposal prepared by a commission appointed by the National Assembly. The discussion was held over 12 weeks in neighbourhoods and towns. While this suggests mass participation, in fact the opposition was prohibited and persecuted. From the 133,681 meetings, about 10,000 proposals were generated. The National Processing Team analysed the interventions as they were received, without predefined criteria. The documentation generated was then passed to the Analysis Group, which was composed of eight members of the Editorial Committee and 22 experts from various branches of law (handpicked). They drafted the text that was approved by the National Assembly and it was ratified in a referendum on 24 February 2019. Unlike the 1975 process, all of this documentation has been made available. For these reasons, the process had some influence, although it was controlled and, accordingly, none of the main requests made by the citizenry was taken into account (for a detailed study, see Welp, 2021).

The case of Chile is exceptional for its characteristics and surprising in its outcomes. On 13 October 2015, President Michelle Bachelet (2006–2010 and 2014–2018) announced by national broadcasting an organized schedule to change the existing Constitution. The current Constitution dates back from 1980 (enacted by Dictator Augusto Pinochet) and has been changed several times despite there being a general agreement on its lack of legitimacy (Heiss, 2017). This announcement was part of a long process of discussion led by the political parties that supported Bachelet's presidential campaign, aimed at connecting with the demand for constitutional change propelled by social movements. Indeed, since 2006, there has been an increase of social movements, demanding against sexual violence, asking for an educational reform of a system bestowed from the time of the dictatorship (1973–1990), the recognition of indigenous rights and an improvement of the social security system, between other issues. The process initiated with the participatory experience of the "Citizenry Dialogues" did not end with a constitutional

replacement as expected but was on the back of the new claims emerging in 2019. In October 2019, the rise in the price of transport was followed by protests and by a succession of unfortunate government decisions, including the declaration of a state of emergency in much of the country and serious violations of human rights. Despite the repression, the mobilization did not end, forcing the government to open a dialogue with the opposition parties that set the scenario for the constitutional replacement. The agreement included as a first step a referendum to decide on whether to change the constitution and on the body to conduct such change. On 25 October 2020, more than 78% Chilean electors approved the proposal by the Constitutional Committee of the Chilean parliament to rewrite the national constitution and – in a second referendum question – opted for a directly elected Constitutional Convention equally composed of women and men (unique in the world) and guaranteeing an appropriate representation of indigenous councillors in the Convention. In mid-May 2021, Chileans selected 155 representatives out of more than 1,300 candidates from parties, social movements, and independent candidacies. Despite the low turnout (41,5%), the election reaffirmed Chileans commitment to overcome the status quo: political party candidates both on the right and left got so few votes that neither traditional right- nor left-wing forces will be able to veto forthcoming proposals of a Convention dominated by independent citizens candidates on their own. On 4 September 2022, the proposed new constitution was defeated (61.9% against and 38.1% in favour, with a participation of 85% in a first mandatory vote).

Does it matter, then, if a constitution-making is deliberative? Of course it does, but there is a need to go beyond a superficial concept of deliberation to understand how it is shaped, how it connects to the decision-making process, and how legitimacy is built in the whole political system. Next section will expand on this idea by taking Easton's systemic approach to legitimacy and its types – input, throughput, and output.

I.3   Analysing deliberative constitution-making

In order to analyse deliberative constitution-making, scholars have fallen back on Easton's systemic approach of legitimacy distinguishing between three types of legitimacy: input, throughput, and output (Bekkers & Edwards, 2007; Caluwaerts & Reuchamps, 2016; Geissel & Gherghina, 2016; Gherghina & Miscoiu, 2016; Suiter & Reuchamps, 2016). This approach also sheds light on the possible functions of deliberation in representative democracy that has received much attention in the past decades (for an overview, see e.g. Bächtiger, Dryzek, Mansbridge, & Warren, 2018).

Input legitimacy refers to the nature of representation and participation that deliberative democracy allows for. Input legitimacy deals with citizens' and any other actors' opportunities to influence the process and the outcomes of deliberation. The question of who participates in the deliberation is crucial in this respect (Young, 2000). The second dimension that is paramount to input legitimacy is the agenda-setting dimension: which questions will be deliberated upon? The whole

process is different when participants are faced with a closed agenda (i.e. participants can only debate questions that were predetermined) or open agenda (i.e. participants can determine themselves what topics will be discussed). A third dimension that input legitimacy is interested in is the question of epistemic completeness, which refers to the level of information that participants possess. It also refers to the tools made available to the participants that enable them to acquire information on the topics and issues at stake.

Throughput legitimacy focuses on the deliberative process itself, the shape and form that deliberation takes (Ryfe, 2005): to what extent were participants able to take part? Did every participant have an equal voice and an equal amount of talking time? Was every one able to bring out his or her experience and perspective? And what does the group composition look like? Moreover, throughput legitimacy also looks at the quality of decision-making, and how the deliberative process translates into a decision: the idea is to examine how the participants make a decision and what method is chosen to arrive at a decision (e.g. voting, consensus, or other techniques). The context in which the deliberation takes place also matters. The contextual dependence or independence has to be looked at, especially in deliberative constitution-making instances because such a process does not occur in a vacuum.

Finally, output legitimacy tapes on three main criteria: public endorsement, political uptake, and policy implementation. Output legitimacy aims to explain how decisions made by a few individuals can be generalised and explained to the entirety of the population in general, what is sometimes referred as the maxi-public. Indeed, decisions made by a small group of individuals (the mini-public) still have to be justified to the maxi-public that did not take part in the discussions and debates (Goodin & Dryzek, 2006). What's more, public endorsement does not mean that the process will be politically impactful, that is whether there is political uptake or lack thereof – not necessarily limited to political parties or public institutions but to all political actors. The corollary of this examination is to assess policy implementation, and in the case of constitution-making and -reforming, whether it comes true or not. This of course depends on what authority was given to the deliberative constitution-making process, which relates input to output.

Because of the idiosyncrasy of each instance of deliberative constitution-making, their analysis has mostly been done on a case-by-case basis. In recent years, databases of constitutions and constitutional reforms have been constructed. The Comparative Constitutions Project dataset (Elkins, Ginsburg, & Melton, 2009) focuses on the content of the constitutions and compares them on their scope (topics covered), length, executive power, legislative power, judicial independence, and number of rights. The Constitutionalism and Democracy Dataset created by Eisenstadt, LeVan, and Maboudi (2017) seeks to quantify the process of constitution-making between 1974 and 2014, and in particular, the role of elites and citizens in three stages of the constitutional reform: convening ('selecting those actively and directly involved in crafting the constitution's content'), debating ('how decisions were made about content and retentions and omissions from the text'), and ratifying ('procedures for approving the constitution and making it binding for all citizens'). They measure the role of citizens and determine the impact on democracy.

A more recent dataset takes the investigation further in order to check the influence of constitutional origins on liberal democracy: the Comparative Constitution-Making (CCM) Database (Negretto & Sánchez-Talanquer, 2021). This database includes all new constitutions adopted in the world for the period from 1900 to 2015 and has coded their origins along three dimensions: the number of political forces for the approval, non-electoral participation (i.e., citizen consultation), and referendum, distinguishing the popular participation (be it electoral or not) at different stages of the constitution-making process, and looking for their influence on liberal democracy based on the Varieties of Democracy (V-Dem) project (Coppedge et al., 2018).

I.4   Going beyond datasets and usual suspects

These developments were intended to provide data and feed comparative research on specific thematic aspects and contexts for constitution-making, but do not cover a more general overview of what the challenges and prospects of deliberative constitution-making in the twenty-first century are. Hitherto, we have gained a broad knowledge of typical cases. Indeed, the Icelandic and Irish flagship cases have received considerable scholarly attention. As we witness today the increasing use, at least at the discourse level, of deliberative constitution-making, there is a need to go beyond datasets and typical cases.

New – and increasingly old – parties and social movements are also calling for more direct participation and giving a prominent role to deliberation in constitution-making. However, such a call does not produce linear results; even more, new evidence shows that there are some fallacies behind the promotion of such initiatives that need to be carefully considered to feed a debate and improve constitution-making.

This edited volume builds on these works and intends to fill a gap by including but also going beyond the 'usual suspects' and making evident that there is no final answer nor magic recipe, but conflictual views that for the sake of democracy should be considered, analysed, discussed, and used to make better decisions and build better institutions. In fact, the aim of this book is to offer both a theoretical discussion and a collection of empirical analysis aiming to explain deliberative constitution-making, with a special focus on the connections between participation and representation. This volume seeks to provide a more complete picture of what is at stake in this political trend in various places in the world (European countries, Turkey, Chile, Israel). As a distinctive element, the book studies not only established democracies and well-known cases of deliberative constitution-making (Iceland, Ireland, Austria, among others) but also such practices in authoritarian and less-consolidated democratic settings (Hungary, Romania, Poland, among others). Such a broad approach allows a comprehensive appraisal of the challenges and opportunities for deliberative constitution-making, including an assessment of the uses of new technologies for deliberative constitution-making. It also departs from a traditional institutional perspective in order to place a special focus on actors, and particularly under-represented groups. In order to do so, this book brings together researchers who offer comparative analyses but who also care about theoretical approaches.

I.5   Book structure

Based on the spirit of the COST Action 'Constitution-making and deliberative democracy' of which this book is a result, each chapter is built on its own methodology in order to bring to the fore a diversity of perspectives on this complex and multifaceted topic, as well as to make sense of each case under study, often in a comparative fashion. Altogether, they seek to answer the following questions.

First, the contributions of this book seek to understand what deliberative constitution-making means and how it connects with legitimacy. This question is not only asked for consolidated democratic regimes; we also explore how and why some non-democratic regimes engage in certain forms of participatory constitution-making. Second, the chapters of this book also aim to provide answers to questions tapping into meso and micro levels. In particular, the authors observe the challenges faced in ensuring that the under-represented are present: how and why constitution-making includes specific groups (women, ethnic minorities, the youth). Finally, they also take a novel approach to consider to what extent constitution-making connects to the definition of the nation in specific contexts, such as postcolonial contexts. In these analyses, they assess the extent and the conditions under which referendums can channel deliberation and/or produce legitimate constitutions. In fact, deliberation becomes part of the criteria for positive evaluation of constitutional referendums (see Kersting & Grömping, 2021). Above all, the chapters identify what kinds of opportunities and challenges are relevant for democratic innovations such as mini-publics and digital media use for constitution-making, putting the study in a general framework that is not so common in the literature. What specific challenges does this posit? To what extent and under what conditions do these new approaches resolve previous deficits?

The first chapter by Elena García-Guitián sets the scene. In her chapter entitled 'The meanings of deliberation and citizen participation: Representing the citizens in constitution-making processes', she questions how to – best – represent the *people* in constitution-making processes and seeks to apprehend this question by presenting the underlying political problems such processes have tried to address.

Paul Blokker and Volkan Gül continue the reflections in 'Citizen deliberation and constitutional change', where they discuss the participatory and deliberative turns in constitution-making in recent decades. Deliberation is considered an instrument of public reason, enhancing the quality of constitutional change, as well as an instrument of legitimization. But, according to the authors, while deliberation as an ideal offers significant promise for citizen participation, much depends on its practical implementation and insertion into constitution-making and policy-making processes. The chapter hence comparatively analyses a range of constitution-making processes – among others, those of Iceland, Ireland, Romania, Estonia, Chile, as well as transnational processes in relation to the European Union – discussing different processes and trajectories of constitutional change and the role and modes of deliberation.

In 'From deliberative systems to democracy', Peter Stone moves the reflection from deliberative mini-publics to deliberative systems, considering that the

aims of deliberative democracy must be accomplished at the level of political decision-making systems as a whole, not at the level of the individual components of those systems. Or in other words, that high-quality deliberation in isolated components of a system – deliberative mini-publics, for example – may contribute little to overall system performance, whereas multiple components working together may enhance deliberation overall even where those components fall short individually. Assessing the performance of a deliberative system, however, requires specification of the functions such systems must perform. Jane Mansbridge et al. (2012) argue that deliberative systems must perform three essential functions – an epistemic, ethical, and democratic function. Stone stresses that, surprisingly, deliberative systems theorists have devoted little attention to the specification of the democratic function, which has been almost exclusively associated with the demand for inclusiveness and confronts it with the value of popular sovereignty, that have gone under-specified.

The fourth chapter, 'Gender and deliberative constitution-making', focuses on gender-specific issues (substantive representation) and the representation of all genders in deliberation (descriptive representation). Claudia Heiss and Monika Mokre base their argument on theories approached from an intersectional gender perspective. They elaborate the nexus between the participation of women's organizations and individual women in constitution- and law-making and the outcome of these procedures. The two case studies are the development of gender-related legislation in the European Union and Chile. These cases have in common that gender issues and the participation of women have played a paramount role in constitution-making.

We move then to under-represented minorities in 'Ethnic groups and constitutional deliberation: Understanding participation in Bosnia-Herzegovina and Romania', by Sergiu Gherghina, Jasmin Hasic, and Sergiu Miscoiu. Multi-ethnic states face special challenges in promoting broader deliberation processes. In weak or flawed democratic systems, these challenges are reinforced by structural democratic deficits. By analysing Bosnia-Herzegovina and Romania, this chapter seeks to better understand such settings. Earlier research shows that democratic deliberation is generally weak in Bosnia-Herzegovina (BiH) and Romania and, despite some developments analysed, both countries have limited involvement of ethnic groups in the deliberative processes. The study compares the cases of an electoral system reform in BiH and the constitutional forum in Romania. The analysis focuses on the Serbs and Croats in BiH and on the Hungarians and Roma in Romania.

In the sixth chapter ('"Deliberating the Rights of the Child": The inclusion of children in deliberative democracy and some insights from Israel'), Daniella Zlotnik Raz and Shulamit Almog bring in the rights of children. They posit that the emphasis of deliberative democracy on inclusion and hearing the voices of marginalized and under-represented groups augments the discussion on the role of children in deliberative processes and decision-making in the public sphere. These go beyond constitutionalism to focus on the same conception of citizenship and the definition of roles of members of the political community. Exploring children's

engagement in deliberative processes relating to policy and constitution-making – its justifications and challenges – the chapter incorporates two distinct theoretical perspectives: the deliberative democratic model and its values, and international children's rights, as anchored in the UN Convention on the Rights of the Child ('CRC') and in the interpretive work of the UN Committee on the Rights of the Child ('CRC Committee'). It examines and compares different processes in relation to their mechanisms, adaptability to children, and impact, concluding with key recommendations and insights from the Israeli context.

In 'Inclusiveness and effectiveness of digital participatory experiments in constitutional reforms', Raphaël Kies, Alina Ostling, Visvaldis Valtenberg, Sébastien Théron, Stéphanie Wojcik, and Norbert Kersting develop original criteria – inclusiveness, discursiveness, and effectiveness – in order to map the uses of information and communication technologies in consultative processes. Then, reviewing five cases of constitutional consultation (Iceland, Estonia, Latvia, Luxembourg, and the German region North-Rhine-Westphalia), they explore to what extent the opinions emerging online contribute to enriching the debate around constitutional reforms and to what extent they were included in the consultative and law-drafting process. Their findings show that inclusion is low and self-selection shows a strong bias. Organized interest groups, younger age groups, and already engaged citizens dominate the online participatory process, which in some cases was compensated by the introduction of mini-publics. In most cases, online deliberation had an impact on the drafting of the process, even if it is more-or-less straightforward, depending on several factors such as the media coverage of the debates and participatory instruments, the role of political parties, politicians, or powerful civil society organizations and media supporting these instruments, or the level of preparedness and quality of online proposals.

Eiríkur Bergmann, in 'Lessons from two island nations', re-reads the as-yet unfinished Icelandic deliberative constitutional process in light of the success of the Irish Constitutional Assembly. In the wake of the international financial crisis of 2008, both Iceland and Ireland, two island nations in northern Europe severely strained by the calamity, embarked on novel voyages of re-examining their constitutional foundation via direct citizen participation in deliberative forums. The Icelandic deliberative constitutional process was initiated earlier than the Irish, and it was far more ambitious, but the emerging draft constitution has not yet been implemented. Thus, it must be considered a failed attempt at constitutional change by deliberative means – at least for now. The Irish Constitutional Assembly, set up with more modest tasks, has on the other hand proved to be far more successful. This chapter attempts to turn that around by re-examining the Icelandic deliberative constitutional process in light of the success of the Irish Constitutional Assembly.

Chapter 9, 'Deliberative constitution-making and local participatory processes in Poland and Hungary', by Agnieszka Kampka and Dániel Oross, analyses the deliberative component of selecting formal and informal, local and national, experiences of political participation in Hungary and Poland between 2010 and 2022. The main purpose here is to reveal the rules that provide spaces for deliberation and

describe the attitudes of the main actors who initiate deliberation. Their findings bring to light how different social actors treat deliberation within two polarized societies, as the Hungarian and Polish cases illustrate conditions for deliberative practices in relatively young democracies and political systems affected by populism.

In a novel and provocative chapter, Jón Ólafsson asks, 'Can the decolonial be deliberative? Constitution-making and colonial contexts: Iceland, Greenland, and the Faroe Islands'. The chapter addresses how in these three cases, on sharing experiences of Danish domination, constitution-making is inevitably linked with independence. It is argued that although in these small West-Nordic countries the demand for a new constitution has appeared as an act of democratic renewal and has been presented internationally (in Iceland, in particular) as an example of democratic innovation likely to produce unprecedented public engagement, the struggle for independence from a dominant/colonial power permeates the discourse surrounding this demand.

In Chapter 11, Norbert Kersting argues that constitutional referendums are important instruments at the end of numerous constitutional review processes. In recent years, these referendums have been combined with deliberative instruments such as open forums, stakeholder conferences, and citizen assemblies. Constitutional referendums are also used in modern authoritarian regimes to strengthen the base of legitimacy of incumbent presidents. With the new Direct Democracy Integrity Index, experts evaluate integrity in the different phases of the referendum cycle. The expert survey showed that referendums in the authoritarian regimes in Turkey and Russia have deficits of integrity in the pre-referendum phase. Authoritarian referendums often include symbolic outreach programmes and constitutional deliberation. But these crowd-sourced constitutional processes are characterized by integrity insufficiencies. Nevertheless, the Italian referendum also lacks broad participatory instruments.

Finally, in the concluding chapter, Yanina Welp focuses on the key dimensions emerging from the works included in the volume. It does not operate as a definitive conclusion but as a map of debates, because the included works offer different approaches, sometimes even in conflict, to participatory and deliberative constitution-making. This concluding chapter centres the conversation on the role and understanding of deliberation, inclusiveness, and drivers of institutional change, participation, public opinion formation, institutional designs, ICTs, the connections between participation and democracy and the assessment of success, alerting on the need of better participatory institutions, not simply more, because just 'more' can serve to weaken, distract, or diffuse social demands.

This edited volume constitutes a collective endeavour stemming from the COST Action 'Constitution-making and deliberative democracy' and the purpose of such an Action is not to pursue one single research project but rather to form a network of many researchers with different and possibly diverging approaches. This book is a perfect illustration of the outcome of this network: it offers a comprehensive approach to deliberative constitution-making, its challenges, and opportunities.

References

Ackerman, B. (1998). *We the People, Volume 2, Transformations*. Cambridge: Harvard University Press.

Bächtiger, A., Dryzek, J. S., Mansbridge, J., & Warren, M. E. (2018). *The Oxford Handbook of Deliberative Democracy*. Oxford: Oxford University Press.

Bekkers, V., & Edwards, A. (2007). Legitimacy and Democracy: A Conceptual Framework for Assessing Governance Practices. In V. Bekkers, G. Dijkstra, A. Edwards, & M. Fenger (Eds.), *Governance and the Democratic Deficit. Assessing the Legitimacy of Governance Practices* (pp. 35–60). Aldershot: Ashgate.

Bergmann, E. (2016). Participatory Constitutional Deliberation in Wake of Crisis: The Case of Iceland. In M. Reuchamps & J. Suiter (Eds.), *Constitutional Deliberative Democracy in Europe* (pp. 15–32). Colchester: ECPR Press.

Breen, M. (2016). *Nepal, Federalism and Participatory Constitution-Making*. Paper presented at the Conference on deliberative democracy in Asia, Nanyang Technological University, Singapore.

Buchanan, J. M., & Tullock, G. (1962). *The Calculus of Consent: Logical Foundations of Constitutional Democracy*. Ann Arbor: The University of Michigan Press.

Caluwaerts, D., & Reuchamps, M. (2016). Generating Democratic Legitimacy through Deliberative Innovations: The Role of Embeddedness and Disruptiveness. *Representation, 52*(1), 13–27.

Caluwaerts, D., & Reuchamps, M. (2018). *The Legitimacy of Citizen-led Deliberative Democracy: The G1000 in Belgium*. Abingdon: Routledge.

Carey, J. M. (2009). Does It Matter How a Constitution Is Created? In R. G. Moser & Z. Barany (Eds.), *Is Democracy Exportable?* (pp. 155–177). Cambridge: Cambridge University Press.

Cohen, J. (1998). Deliberation and Democratic Legitimacy. In J. Bohman & W. Regh (Eds.), *Deliberative Democracy: Essays on Reason and Politics* (pp. 87–106). Oxford: Blackwell.

Contiades, X., & Fotiadou, A. (Eds.). (2017). *Participatory Constitutional Change: The People as Amenders of the Constitution*. Abingdon: Routledge.

Coppedge, M., Gerring, J., Knutsen, C. H., Lindberg, S. I., Skaaning, S.-E., Teorell, J., … Project. (2018). *"V-Dem Codebook v8" Varieties of Democracy (V-Dem) Project*. Retrieved from: https://doi.org/10.23696/vdemcy18

della Porta, D. (2020). *How Social Movements Can Save Democracy*. Cambridge: Polity Press.

Dworkin, R. (1995). Constitutionalism and Democracy. *European Journal of Philosophy, 3*(1), 2–11.

Eerola, A., & Reuchamps, M. (2016). Constitutional Modernisation and Deliberative Democracy: A Political Science Assessment of Four Cases. *Revue interdisciplinaire d'études juridiques, 77*(2), 319–336.

Eisenstadt, T. A., LeVan, A. C., & Maboudi, T. (2017). *Constitutionalism and Democracy Dataset (CDD)*. Retrieved from: http://doi.org/10.17606/M63W25

Elkins, Z., Ginsburg, T., & Melton, J. (2009). *The Endurance of National Constitutions*. New York: Cambridge University Press.

Elster, J. (1995). Forces and Mechanisms in the Constitution-Making Process. *Duke Law Journal, 45*(2), 364–396.

Farrell, D. M., Suiter, J., & Harris, C. (2019). 'Systematizing' Constitutional Deliberation: The 2016–18 Citizens' Assembly in Ireland. *Irish Political Studies, 34*(1), 113–123. doi: 10.1080/07907184.2018.1534832

Fishkin, J. S. (2011). Deliberative Democracy and Constitutions. *Social Philosophy and Policy, 28*(1), 242–260. doi:doi:10.1017/S0265052510000129

Geissel, B., & Gherghina, S. (2016). Constitutional Deliberative Democracy and Democratic Innovations. In M. Reuchamps & J. Suiter (Eds.), *Constitutional Deliberative Democracy in Europe* (pp. 75–91). Colchester: ECPR Press.

Gherghina, S., & Miscoiu, S. (2016). Crowd-Sourced Legislation and Politics. *Problems of Post-Communism, 63*(1), 27–36. doi:10.1080/10758216.2015.1057092

Ginsburg, T., Elkins, Z., & Blount, J. (2009). Does the Process of Constitution-Making Matter? *Annual Review of Law and Social Science, 5*(1), 201–223. doi:10.1146/annurev.lawsocsci.4.110707.172247

Gluck, J., & Brandt, M. (2015). *Participatory and Inclusive Constitutional Making. Giving Voice to the Demands of Citizens in the Wake of the Arab Spring*. Washington, DC: United States Institute of Peace.

Goodin, R. E., & Dryzek, J. S. (2006). Deliberative Impacts: The Macro-Political Uptake of Mini-Publics. *Politics & Society, 34*(2), 219–244. doi:10.1177/0032329206288152

Habermas, J. (1975). *Legitimation Crisis*. Boston: Beacon Press.

Heiss, C. (2017). Legitimacy Crisis and the Constitutional Problem in Chile: A Legacy of Authoritarianism. *Constellations, 24*(3), 470–479. doi:https://doi.org/10.1111/1467-8675.12309

Kersting, N., & Grömping, M. (2021). Direct Democracy Integrity and the 2017 Constitutional Referendum in Turkey: A New Research Instrument. *European Political Science,* 20(1), 216–236. https://doi.org/10.1057/s41304-020-00309-3

Kies, R., Dumont, P., & Poirier, P. (2015). *Les consultations citoyennes et les réformes constitutionnelles*. Note de rechercher CIVILEX. Luxembourg: Chaire de recherche en études parlementaires.

Landemore, H. (2015). Inclusive Constitution-Making: The Icelandic Experiment. *Journal of Political Philosophy, 23*(2), 166–191. doi:10.1111/jopp.12032

Manin, B. (1987). On Legitimacy and Political Deliberation. *Political Theory, 15*(3), 338–368.

Mansbridge, J., Bohman, J., Chambers, S., Christiano, T., Fung, A., Parkinson, J., … Warren, M. E. (2012). A Systemic Approach to Deliberative Democracy. In J. Parkinson & J. Mansbridge (Eds.), *Deliberative Systems: Deliberative Democracy at the Large Scale* (pp. 1–26). Cambridge: Cambridge University Press.

Negretto, G. L. (2020a). Constitution-making and Liberal Democracy: The Role of Citizens and Representative Elites. *International Journal of Constitutional Law, 18*(1), 206–232. doi:10.1093/icon/moaa003

Negretto, G. L. (2020b). *Redrafting Constitutions in Democratic Regimes: Theoretical and Comparative Perspectives*. Cambridge: Cambridge University Press.

Negretto, G. L., & Sánchez-Talanquer, M. (2021). Constitutional Origins and Liberal Democracy: A Global Analysis, 1900–2015. *American Political Science Review, 115*(2), 522–536. doi:10.1017/S0003055420001069

Niessen, C., & Reuchamps, M. (2020). Institutionalising Citizen Deliberation in Parliament: The Permanent Citizens' Dialogue in the German-speaking Community of Belgium. *Parliamentary Affairs*. doi:10.1093/pa/gsaa056

Pickard, D. (2013). At Last, Public Participation in Constitution-Making in Tunisia. Retrieved from http://www.atlanticcouncil.org/blogs/menasource/at-last-public-participation-in-constitutionmaking-in-tunisia

Rawls, J. (1971). *A Theory of Justice*. Cambridge: Harvard University Press.

Redissi, H., & Boukhayatia, R. (2015). *The National Constituent Assembly of Tunisia and Civil Society Dynamics*, EUSpring Working Paper No. 2.

Reuchamps, M. (2020). Belgium's Experiment in Permanent Forms of Deliberative Democracy. *ConstitutionNet*, 1–9. Retrieved from http://constitutionnet.org/news/belgiums-experiment-permanent-forms-deliberative-democracy

Reuchamps, M., & Suiter, J. (Eds.). (2016). *Constitutional Deliberative Democracy in Europe*. Colchester: ECPR Press.

Reuchamps, M., Vrydagh, J., & Welp, Y. (Eds.). (2023). *De Gruyter Handbook on Citizens' Assemblies*. Berlin: De Gruyter.

Ryfe, D. M. (2005). Does Deliberative Democracy Work? *Annual Review of Political Science, 8*(1), 49–71. doi:doi:10.1146/annurev.polisci.8.032904.154633

Saati, A. (2015). *The Participation Myth: Outcomes of Participatory Constitution Building Processes on Democracy.* (Doctoral thesis, monograph). Statsvetenskapliga institutionen, Umeå universitet, Umeå. Retrieved from http://urn.kb.se/resolve?urn=urn:nbn:se:umu:diva-102719 DiVA database.

Saati, A. (2016). Different Types of Participation in Constitution Making Processes: Towards a Conceptualisation. *Southern African Journal of Policy and Development, 2*(2). Retrieved from https://scholarship.law.cornell.edu/sajpd/vol2/iss2/6

Soto, F., & Welp, Y. (2019). Más allá de modas y cortinas de humo: la deliberación ciudadana en cambios constitucionales. *Revista Espanola de Ciencia Politica*(50), 13–41.

Suiter, J., Harris, C., Farrell, D. M., & O'Malley, E. (2016). The Irish Constitutional Convention: A Case of 'high legitimacy'? In M. Reuchamps & J. Suiter (Eds.), *Constitutional Deliberative Democracy in Europe* (pp. 33–51). Colchester: ECPR Press.

Suiter, J., & Reuchamps, M. (2016). A Constitutional Turn for Deliberative Democracy in Europe? In M. Reuchamps & J. Suiter (Eds.), *Constitutional Deliberative Democracy in Europe* (pp. 1–13). Colchester: ECPR Press.

Weathley, J., & Mendez, F. (Eds.). (2013). *Patterns of Constitutional Design: The Role of Citizens and Elites in Constitution-Making*. Farnham: Ashgate.

Welp, Y. (2021). Deliberation in the Constitutional Reform Process Cuba in Comparative Context. In B. Hoffmann (Ed.), *Social Policies and Institutional Reform in Post-COVID Cuba* (1 ed., pp. 281–299): Verlag Barbara Budrich.

Welp, Y. (2022). *The Will of the People: Populism and Citizen Participation in Latin America*. Berlin: De Gruyter.

Welp, Y., & Soto, F. (2020). Beyond Fashion and Smokescreens: Citizens' Deliberation of Constitutional Amendments. *ConstDelib Working Paper Series*(7), 1–27.

Young, I. M. (2000). *Inclusion and Democracy*. Oxford: Oxford University Press.

1 The meanings of deliberation and citizen participation

Representing the citizens in constitution-making processes

Elena García-Guitián

When political concepts such as deliberation are widely used and involve normative exigencies intended to legitimate institutional reforms, clarification becomes unavoidable. But clarifying is not the same as trying to find and adjudicate an unequivocal (uncontested) meaning. On the contrary, this exercise shows the implications of selecting its core components, something that always takes place within an academic and political context that determines where the emphasis is placed. So much has been written about deliberation, from so many theoretical perspectives, that it is difficult now to map these meanings and to define the criteria by which it can be assessed, whether normatively or empirically. Therefore, instead of explaining differences in the approaches organized in what has become assumed as the various "turns" of deliberative theory, highlighting the changes on the variegated interest of academics adopting a deliberative standpoint (Elstub et al., 2016; Owen and Smith, 2015; Parkinson, 2012 ; Dryzek and Niemeyer, 2010), it may be more fruitful to focus on the common questions they have tried to address. And their main concern is how to decide a fair common good in our pluralistic societies.

In this note, we reflect on the normative content of deliberation, focusing on the way authors stressing its "democratic legitimating properties" have understood the main function of constitutions. Constitutions are the instruments that articulate the sovereign will of the People, but they are also the guarantee of its communicative power. This has been reflected in the tension between those defending a non-subjected sovereign will and those insisting on the limitations imposed by some preconditions (recognition of some basic rights and procedures). Therefore, to understand many current debates, it is important, firstly, to highlight how the family of meanings of deliberation has evolved. This genealogy shows us its deep connections with key (contested) issues related to the legitimacy of our democracies: the role and meaning of constitutions that embody them, as well as the construction of "the People" and the institutional expression of the "popular will" that is at their base. In this evolution, secondly, we can see how these meanings involve different images of citizens' role in democratic systems, as well as the right way they can be represented in decision-making processes. This allows us to understand differences in the approaches to deliberation nested on these first articulations of the deliberative stance from those that privilege the participatory narrative. To stress these differences, thirdly, help us identify the normative criteria

that are being used in discussions on deliberation and constitution-making to assess present-day experiences. As a result, in the context of perceived crisis of democracy and rise of populist vindications, the emphasis on the need to involve ordinary citizens in constitution-making is dependent on the vision toward the various forms and mechanisms to represent citizens.

This wide approach to deliberation without trying to fix an unequivocal meaning lets us understand the rationale of this book, as well as the connections between its chapters. They incorporate different meanings of deliberation or its components through the analysis of diverse topics, experiences, and mechanisms related to the involvement of citizens in the articulation of the common good: participating in the elaboration of constitutional drafts; generating claims for inclusion; reflecting on a collective identity; or adopting basic political decisions.

1.1   Political concerns in the evolution of deliberative theory

As many authors have pointed out (Floridia, 2018), the theoretical field focused on deliberation includes many independent approaches that have been technically developed from a general meaning already present in the debates about democratic legitimacy. Their shared concern is the key issue of democracies' institutionalization of the common good (who is legitimate to define it and how this can be done). That is why they refer to the question of deliberation as continuing a historical conversation, while they try to give it a precise meaning that differentiates their normative positions within contemporary debates. This explains the obvious differences existing between the "deliberative" authors' position – with all its discrepancies – and the diverse concerns, topics, and answers from scholars who approach deliberation from other perspectives, or separate models of democracy, such as the participatory, associative, or pluralist forms (Parkinson, 2012).[1]

The authors who in the 1980s and 1990s placed deliberation at the center of their theories shared the concern for how the common good could be defined in pluralistic societies. They were reacting to narrow views of democracy, justified by mainstream developments in social sciences at that time, such as rational choice theories, economic views of democracy, or pluralist models. Assuming a selfish and individualistic notion of citizens, they denied the possibility of articulation of the common good – except as the result of aggregated private preferences. Schumpeter's minimalist conception of democracy ([1942], 1975) became the expression of those views. For Schumpeter, citizens had limited political competence and formed preferences in an individualistic manner. Political participation was primarily in the form of voting, which was to provide instrumental value to guarantee competition in the selection of political elites.

The reactions toward these minimalist, so-called elitist, conceptions of democracy came from different contexts and schools. All stressed that, on the contrary, the institutions of modern democracy were designed to generate deliberation about the public good, giving a different understanding to parliamentary debates. Contrary to more elitists views that reduced deliberation to parliament, many of these critical views involved a broader vision of citizen representation, connecting it to other

sites of citizen participation. The common assumption is that citizens (depicted as a nation, state, People, or citizenry) have not a predefined will that has to be expressed by the representatives, but what can be conceived as the common good should be articulated through public deliberation in institutional (judiciary, executive) and non-institutional (public sphere) settings. And this involves a clarification of basic concepts such as the nature of power, sovereignty, representation, or the law, as well as a prioritization of some forms and arenas of citizen participation.

The work of authors such as Dewey and Arendt had a deep influence on the way these topics were approached in the postwar decades. The idea of democracy as a way of life, with its requirement of widening citizen participation, as well as the key Arendtian idea of communicative power,[2] opposed strategic and minimalist views of democracy and inspired later currents of thought.

The emphasis on the deliberative dimension of our democracies was also present in some more radical theories of the participatory wave (as in Barber, 1984). Nevertheless, these approaches were different, as they insisted on developing forms of direct participation for ordinary citizens, accentuating the idea of democracy as self-determination (Floridia, 2014). The sites for citizen participation proposed varied from the town-meetings so popular in the American tradition, to the work councils promoted by contemporary socialist regimes, but the goal was the direct involvement in all spheres of life (family, work, local politics).

But in the 80s, the focus was put on the potentiality of the deliberative characteristics of democracies, with a focus on the conception of communicative power. The common critique of elitist and minimalist assumptions focused on the democratic basic framework institutionalized by constitutions, as Besset or Sunstein's reflections on the American Constitution. Acknowledging its "elitist" character regarding its authors and process of elaboration, they considered it embedded on key Madisonian republican elements adapted to modern circumstances through federalism and representation that injected deliberation on the democratic system.

These concerns were included in comprehensive theories in an academic context where authors like Rawls and Habermas developed their ambitious essays to review contemporary democratic theories of legitimation. They approached the key questions of how to keep a renovated understanding of non-substantive rationality on political decisions through a process intended to reach a common agreement, situating pluralism at the center of their theories. The basic norms should be based on political values that guarantee that decisions are the product of a public reflection that involves inclusion of perspectives, offering a justification for them, with an intention to reach common agreements. The defining element of democracies is public discourse. This is Rawls, and Habermas revisited the debate on the alleged tensions between liberal and democratic elements, emphasizing their mutual interdependence as the main characteristic of democracies is to respect public conversation.[3]

Locating discourse at the center of democratic theory has had an impact on constitutional theory. The question addressed was the legitimacy of contemporary democracies that incorporates what for some is an unavoidable tension between the "liberal" and "democratic" elements, reflected in the debate on the conception

of sovereignty and its legal limits. On one hand, there is the view that constitutions impose illegitimate constraints on the will of the sovereign.[4] In a very simplified description, this refers to the predominance of the idea of self-determination of "the People", suspicious of limitations imposed by the institutionalization of representation and the rule of law. On the other hand, the justification of the constraints (principles, procedures) both on constitution-making and its reform, focused on the importance of assuring deliberation on the political frame it creates – not just to maintain an elitist dominance. From this view, popular sovereignty was defined as procedural (Chambers, 2004), not as the singular exercise of a concrete collectivity.

Deliberation in that period was approached as a quality as well as a normative goal of modern democracies in very abstract terms. But Habermas's ideal description as a procedure based on his conception of communicative action was later transformed through a wide debate on each of its different requirements: inclusiveness, reason-giving, and orientation to common agreement (consensus). It opened a whole field of theoretical analysis comprising scholars self-defined as deliberative theorists.[5] They conceived deliberative democracy as a specific (critical) model, alternative to others. Although sharing with the tradition a basic understanding of deliberation (implicit in the legitimation of modern democracy), they transformed it in a more concrete normative stand to assess institutional performance as well as to propose its transformation. In this task, they have followed several phases or "turns" (Elstub et al., 2016) that can be summarized as follows. First, the concern about the deliberative properties of our democratic system; second, an attempt at specifying the procedural elements of deliberation, applying them to the assessment of the internal deliberative quality of specific institutions (judiciary, executive, parliament) but also to citizens' participatory mechanisms. In a third turn, interest in deliberation was based on a systemic perspective that took into account the deliberative quality of the democratic system. And what these turns show is a different concern about the connection of institutional deliberation (sites of power) with the informal public sphere, the role of (different) forms of citizens' participation, and the nature and quality of decisions achieved through deliberative procedures in the articulation of the common good.

That explains the difficulties of assessing deliberation, as there are different understandings of its specific normative requirements that change when we are dealing with its different sites: specific procedures, participatory mechanisms, the systemic understanding of the functioning of a political system, or even the transnational dimension. What should be required, then, in any analysis is a previous definition of how the meaning of deliberation is used as well as the normative goals of the process or dimension analyzed.

1.2   The changing patterns of the social and political representation of citizens

One of the questions that is relevant for current debates on constitution-making has to do with citizens' role in deliberative democracy. There are multiple connections between these evolving views of deliberation and citizen participation

that follow different patterns. The deliberative perspective incorporated a view of citizen's involvement possibilities other than voting, especially relying on civil society (through associations) acting on the public sphere and plural media, as non-institutional representatives of social claims injecting legitimacy on the system (Habermas, 1996; Warren, 2005). They broke with the corporatist and pluralist models, based on the (first) "special representative role" of social organizations or the (second) "equal weight of interest groups", assigning a key democratic role in public debate to civil society organizations within the public sphere and conceiving them as a privileged medium for citizen participation.

Afterward, deliberation was also invoked by those assuming participatory views focused on the direct involvement of ordinary citizens. They considered citizens' individual self-determination the real essence of democracy, going back to ideas coming from the participatory conceptions of the 1960s and 1970s. Widely used since the beginning of this century at the local level, they grew exponentially after the 2009 crisis, with an emphasis on the promotion of "innovative mechanisms" (Smith, 2009; Elstub and Escobar, 2019). Designed to empower ordinary citizens through their (direct) involvement in decision-making processes (as in participatory budgets or citizen assemblies). This change of discourse left aside the comprehensive view of deliberation and concentrated specifically on problem-solving (Fung and Warren, 2011). Some more radical views appealing to citizen participation to transform democracy (Pateman, 2012), therefore, coexisted with those assuming the discourse of "good governance" and expecting that these participatory mechanisms would help to recover public trust in damaged democracies.

Many have celebrated the *momentum* of a "participatory turn" within deliberative democracy.[6] It merges views coming from the insistence on ordinary citizen participation within participatory theory with deliberation, in forms that have been considered "hybrids" (Elstub and Escobar, 2019; Hendricks, 2006). It also reflected a change in the discourse from democratic politics to governance. From the governance perspective, which is focused on problem-solving, the emphasis is put on the convenience of introducing (formal) mechanisms to include lay citizens in specific decision-making processes. There are many different normative goals: increasing direct citizen participation as a way of self-determination; political education; facilitating self-expression; achieving legitimacy for public decisions; or contributing to the public debate in fairer terms. This view had a wide impact at the local level, and has extended to propose new experiments at the regional, national, and transnational levels. The common objective is to involve more citizens in some decision-making processes with an unbalanced outcome – some experiences successful, other less, and some problems to assess them (Geissel and Joas, 2013; Spada and Ryan, 2017).

Having a critical and transformative character, the idea that ordinary citizens should play a more participatory role in governance has also been incorporated into more technocratic narratives evaluating "stakeholder" participation in terms of efficiency and de-politicization of conflicts to achieve positive solutions and improve institutional legitimacy (Ruzza, 2014; Papadopoulus and Warin, 2007). What they have in common is acknowledging the demands of common/ordinary

citizens aimed at institutional processes. These demands reflect a growing distrust in institutions and political parties (of standard institutional representation). At the same time, deliberation offers a strategy to renovate and re-legitimate contemporary democracies – or to transform them. Nevertheless, this inclusion of deliberative and participatory mechanisms also fits well within the good governance discourse in authoritarian countries (see Chapters 7 and 9in this volume).[7]

The merging of deliberative and participatory requirements has also given place to different understandings of deliberation as well as its corresponding institutional arenas in our democratic systems. Nevertheless, these views merging deliberative and participatory elements have concentrated on the specific mechanisms of participation–deliberation involving ordinary citizens and leave aside the Habermasian systemic view, on which this author situates democracies' political assessment of deliberation. Appropriate reflection cannot be done just by proposing specific mechanisms that have been used at the local level as the proper deliberative site to reflect on the democratic quality of the system, implicit on the questions addressed in present constitution-making processes.

At the systemic level, some basic issues are involved in the deliberative approach. First, a reflection on the best ways to represent "the People". This is the question of who should participate; whether it should be descriptive samples of ordinary citizens, institutional representatives, or associations and interest groups, and the proper stage for their different inputs. Second, deliberation should have the purpose to improve the quality of political decisions through processes that provide knowledge about the topics covered and guarantee a fair exchange of arguments as the basis for a common decision. This means that outputs are not mere aggregations of pre-formed preferences, pure negotiation, or decisions disconnected from solvent sources of information and knowledge. Finally, necessary constraints are required to guarantee the deliberative quality of the system so generated.

1.3   The participatory mechanisms in constitution-making in the context of a crisis of representation

In the context of crisis, portrayed in some of the chapters in this book,[8] many countries' citizens are suspicious of their constitutions. Many consider constitutions as the product of exclusive agreements between elites and seek to reform or replace them by appealing to the participation of ordinary citizens. Therefore, these new perspectives involve a review of the historical narratives of their legitimacy (democratic transitions, postwar contexts – see Chapter 5 on Bosnia-Hercegovina; postcolonial narratives – see Chapter 10; or inclusion deficits of some identities and groups – see Chapter 4 on gender, and Chapter 6 on children's rights). Going back to previous political challenges but in a new context, constitutions are seen as "elite agreements" or exclusionary of some identities (Chambers, 2004). Moreover, the proposed path to redress this democratic flaw is through ordinary citizen participation, stressing what is considered a "bottom up" perspective (see Chapter 2).

In some cases, direct involvement is conceived both as the way to achieve real self-government without the intermediation of the "elite", understood in a way that

includes all intermediaries: political parties, experts, interest groups, but also civic organizations. The direct implication seems to be a key question for recovering legitimacy, and the emphasis is focused on the way the constitutional content of the text is provided. This has given rise to an interest in using mini-publics for its elaboration (Fishkin, 2019), but has had limited use unless legitimated by elections or through parliamentary cooperation (see Chapter 8).

Prioritizing participatory claims (insisting on the participation of the ordinary citizen) comes from a tradition of thinking about the role of the constitution or constitution-making separately from deliberation. Some of these claims are in the debates on popular constitutionalism (Colón-Ríos, 2010; Hutchinson and Colón-Ríos, 2011) and incorporate some populist views on the recognition of the unlimited will of the constituent People (give precedence to the political over any legal constraint). They ignore the systemic perspective provided by deliberative theory – emphasizing the way deliberation is provided by the institutional setting of liberal democracies. Instead, they look for more radical institutional changes (see the case of Venezuela, Poland, and Hungary in this volume).

Appeals to participation in constitution-making, therefore, come from different narratives, which condition approaches to constitutional changes (see Chapter 2). They also explain the difficulties of comparing and assessing these experiences when applying simple criteria to measure the levels of deliberation and participation. Although there is an increasing interest on experiments widely quoted as examples of successful mechanisms and procedures to facilitate the involvement of ordinary citizens, they are very different and respond to diverse normative goals. This varied processes of constitutional amendment and constitution-making, or issues of quasi-constitutional standing, have included forms of citizens' participation that stress internal deliberation, which is understood as fairer/better quality public debate (i.e., British-Columbia citizens' assembly or Ireland constitutional reforms). Yet, to be able to identify some normative criteria to assess the impact and capacity to become a model for future developments, it is important to clarify the different goals that these participatory mechanisms fulfill in constitution-making processes, as well as its varied nature, showing the crucial distinction on favored forms of representing the citizens.[9]

When comparing constitution-making processes, we cannot simply use the standards of successful experiments at other levels (i.e., local) or standards that are developed in very different political contexts. We need complex interpretations[10] of different cases, adopting a systemic approach that distinguishes different moments, levels, actors, and informal or institutionalized locations. Moreover, we need to consider their interconenctions as well as their impact on an unstructured public sphere (see Chapter 7 on the difficulties to achieve deliberation using digital platforms to involve the wider public). Only after we understand the challenges and nuances of different cases will we be able to compare, identifying the normative criteria to assess present constitution-making processes and to inspire new ones.

Therefore, if we intend to analyze the potential impact of these experiences to improve our democratic systems, we need to go back to the initial Habermasian systemic view. This has been done by authors approaching it from a systemic

deliberative standpoint, stressing the need to assess the deliberative character of our democracies arising from processes and practices that may or may not have specific deliberative characteristics but are still able to contribute to public debate and decision-making (Mansbridge et al., 2012; also see Chapter 3 in this volume). As they remind us, contemporary democracies continue to be based on different forms of representation, at different levels and institutions, establishing complex relations with citizens and their mediators that have an impact on public deliberation. But at the same time, in each of these sites, there are opportunities to involve citizen participation in different roles that may or may not take place through deliberative procedures (Warren, 2020).

The question, then, is to explore the different possibilities to introduce participatory mechanisms that contribute to public debate and decision-making while prioritizing deliberative dynamics to achieve well-informed, inclusive, and reflexive proposals. Direct participatory processes of deliberative character can help solve the problems each political system must address,[11] but we should not conceive the output of these processes as the authentic voice of the People.

Previous experiences show that participatory claims have been used to introduce reforms of an authoritarian or factional character (Welp, 2021; Partlett, 2012). Compared with the discourse on popular constitution-making, which insists on the need to recreate a constituent assembly to express the authentic popular will or populist essays that use referenda to legitimize decisions made as a form of "direct representation", deliberation requires a complex combination of different representative sites. In pluralist societies, there is not a popular will other than the one originating from the conceived accurate process that confers legitimacy. That is why many authors call for a reinterpretation of sovereignty and its substitution for complex procedures on which deliberation and the accurate representations of the People are compounded (Arato, 2009).

We should not assess the legitimacy and deliberative character of our democracies solely in terms of the absence of some forms of citizen participation through these now considered "democratic innovations" (some not so new such as referenda, which are often used in constitution-making processes). Rather, we need to evaluate the deliberative character of the whole process and its degree of representativeness (social as well as political inclusiveness), as well as its ability to provide a new deliberative space for a democratic society. That explains why a previous pact between political parties and actors representatives of the population to establish some rules of the game and can be the best way to ensure that the system created has a deliberative democratic quality (Arato, 2009; Negretto, 2020, O'Flynn and Curato, 2015). This is the perspective stressed by deliberative theories focused on systemic deliberation (Parkinson and Mansbridge, 2012; Parkinson, 2018; Hendricks, 2006). What is important is to design a wide process in different stages to guarantee the quality of public debate, but at the same time to give space for different citizen's involvement mechanisms – involving different forms of representing the People.

However, we should analytically differentiate the specific forms of citizen participation included in the process of constitution-making from the forms and content

of deliberation. Scholars tend to elaborate typologies of forms of constitution-making that stress one or the other aspect without reflecting on the implications of their different normative standards. For example, Saati's (2016) use of Arnstein's ladder that measures the intensity of forms of participation; or Fishkin's (2019) controversial typology of different models of constitution-making (see Chapter 2).

To adopt a deliberative stance to analyze and assess our democracies, as well as its functioning and transformations requires a previous reflection on the position adopted in these debates. It is not a question of stretching the concept, but of selecting the specific approach and the role assigned in a wider conception of democracy. The chapters of this book are different examples of the unstructured and ongoing conversation on these topics, but to assess the specific cases requires a more comprehensive view on the different ways to approach deliberation and participation in our democracies.

Notes

1 Some authors articulate their claims as defenders of a so-called "model of democracy" with varied labels, but the majority present them as views that highlight some of the core components of modern democracy. This is especially the case concerning the prioritized forms of citizen participation, assuming the basic framework of modern democracy or liberal democracy.

2 Arendt's influence can be seen in Habermas (1977). As Arendt describes, the concept of communicative power arises from the human ability to act together through communication directed to reach an agreement. The common will so conceived can be equated to opinions produced by public agreements achieved in non-coercively intersubjective relations.

3 For Habermas, this perspective helps us envision the democratic generation and legitimated use of power in the political system. Theorists' task, then, is to evaluate the quality of deliberation of the political system, having as a normative standard the systemic well-functioning of the relation between deliberations oriented to decision, regulated by the democratic process, and the informal processes of opinion formation on the public sphere (Habermas, 1996: 307; 2005: 388). He believed that the strongest menace for democracy at that time was the colonization of the political by administrative power, economy logic, and interest groups. That is why he advocated for a strong civil society, understood as a network of associations and movements, and independent of mass media required to be sensitive to social problems and bring them to the public sphere.

4 This is a permanent topic developed in theoretical and political debate, expressed on the differences between the "constituent power" and "the constituted one". It is important to show how the concerns about the role of the constitution and constitution-making in modern democracies are at the center of the development of deliberative theory, as the core of Habermas's (1996) *Between Facts and Norms*.

5 A first genealogy can be found in Bohman and Regh (1997). See also Floridia (2018) or the authors included in Parkinson and Mandbridge (2012).

6 Decades of populism have had a deep influence on democratic politics, contributing to an erosion of trust in institutions. The common core of such different and variegated movements and ideologies has been a challenge for political representation, appealing to an insurmountable bridge between elites and citizens (Mudde, 2004). This has produced important changes in politics that have adopted the discourse of involving "ordinary citizens" through every strategy, often trying to re-legitimate present democracies through better governance policies, but also justifying clear authoritarian appeals to the "direct representation" of citizens (Urbinati, 2019).

7 This is the case with China. See He and Warren (2014) for the definition of "authoritarian deliberation". To consider "democratic innovations" as an element of good governance regardless of their embeddedness in a democratic system (as many international indexes do) can be used to legitimate non-liberal or clearly authoritarian "alternative" forms of democracy.

8 These questions arise in a context of crisis that have different timings and reasons, but that is understood as a crisis of representation. Justified by the conflict between those described as "elite" and "the People", it involves a reconfiguration of the country's identity (expressed on the discussion of how to represent it), as was the case of some Latin American countries in the past decades (see Welp, 2021).

9 For example, see Fishkin's experiment in Mongolia with a deliberative poll (randomly selected citizens) to reform the constitution and its differences with the elected representatives (list of candidates not belonging to political parties) of the Constitutional Assembly in Chile (Verdugo and Prieto, 2021), or the citizen panels on the Conference on the Future of Europe.

10 See the different approaches to assess the case of Iceland in Bergmann and Olaffson's chapters in this volume.

11 It is interesting to note how many current conflicts are produced by identity claims (Chambers, 2004) but also by the predominance of the described "symbolic politics" disconnected from available "objective" knowledge and linked to post-truth politics (Niemeyer,2011; Fishkin, 2019).

References

Arato, A. (2009) "Redeeming the Still Redeemable: Post Sovereign Constitution Making", *International Journal of Politics, Culture and Society*, 22(4), pp. 427–443.

Barber, B. (1984) *Strong Democracy: Participatory Politics for a New Age*. Berkeley: University of California Press.

Bohman, J. and Regh, W. (1997) "Introduction", in Bohman, J. and Rehg, W. (eds) *Deliberative Democracy Essays on Reason and Politics* (pp. ix–xxx). Cambridge: MIT Press.

Chambers, S. (2004) "Democracy, Popular Sovereignty, and Constitutional Legitimacy", *Constellations*, 11(2), pp. 153–173.

Colón-Ríos, J. (2010) "The Legitimacy of the Juridical: Constituent Power, Democracy, and the Limits of Constitutional Reform", *Osgoode Hall Law Journal*, 48(2), pp. 199–245.

Dryzek, J. S. and Niemeyer, S. (2010) *Foundations and Frontiers of Deliberative Governance*. Oxford*:* Oxford University Press.

Elstub, S., Ercan, S. and Mendonça, R. F. (2016) "Editorial Introduction: The Fourth Generation of Deliberative Democracy", *Critical Policy Studies*, 10(2), pp. 139–151.

Elstub, S. and Escobar, O. (2019) "Chapter 1: Defining and Typologising Democratic Innovations", in Elstub, S. and Escobar, O. (eds) *Handbook of Democratic Innovation and Governance*. Cheltenham: Edward Elgar Publishing. Retrieved May 27, 2022, from https://www.elgaronline.com/view/edcoll/9781786433855/9781786433855.00009.xml

Fishkin, J. (2019) "Democracy When the People Are Thinking: Deliberation and Democratic Renewal", *Proceedings of the American Philosophical Society*, 163(2), pp. 108–121.

Floridia, A. (2014) "Beyond Participatory Democracy, Towards Deliberative Democracy: Elements of a Possible Theoretical Genealogy", *Rivista italiana di Sciencia Politica*, 44(3), pp. 299–326.

Floridia, A. (2018**)** "The Origins of the Deliberative Turn", in Bächtiger, J. S., Dryzek, A., Mansbridge, J. and Warren, M. (eds) *The Oxford Handbook of Deliberative Democracy*. Oxford: Oxford University Press**.**

Fung, A. and Warren, M. (2011) "The *Participedia* Project: An Introduction", *International Public Management Journal*, 14(3), pp. 341–362.

Geissel, B., and Joas, M. (eds) (2013) *Participatory Democratic Innovations in Europe: Improving the Quality of Democracy?* Berlin: Verlag Barbara Budrich.

Habermas, J. (1977) "Hannah Arendt's Communications Concept of Power", *Social Research*, 44(1), pp. 3–24.

Habermas, J. (1996) *Between Facts and Norms. Contributions to a Discourse Theory of Law and Democracy*. Cambridge: Cambridge University Press.

Habermas, J. (2005) "Concluding Comments on Empirical Approaches to Deliberative Politics", *Acta Politica*, 40(2), pp. 384–92.

He, B. and Warren, M. E. (2014) "Authoritarian Deliberation: The Deliberative Turn in Chinese Political Development", *Perspectives on Politics*, 9(2), pp. 269–289.

Hendricks, C M. (2006) "Integrated deliberation: Reconciling Civil Society´s Dual Role in Deliberative Democracy", *Political Studies*, 54, pp. 486–508.

Hutchinson, A. C. and Colón-Ríos, J. (2011) "Democracy and Constitutional Change", *Theoria*, 58(127), pp. 43–62.

Mansbridge, J., Bohman, J., Chambers, S., Christiano, T., Fung, A., Parkinson, J. and Warren, M. (2012) "A Systemic Approach to Deliberative Democracy", in Parkinson, J. and Mansbridge, J. (eds) *Deliberative Systems: Deliberative Democracy at the Large Scale (Theories of Institutional Design)* (pp. 1–26). Cambridge: Cambridge University Press.

Mudde, C. (2004) "The Populist Zeitgeist", *Government and Opposition*, 39(4), pp. 541–563.

Negretto, G. (2020) "Constitution-Making and Liberal Democracy: The Role of Citizens and Representative Elites", *International Journal of Constitutional Law*, 18(1), pp. 206–232.

Niemeyer, (2011) "The Emancipatory Effect of Deliberation: Empirical Lessons from Minipublics", *Politics and Society*, 39(1), pp.103–140.

O'Flynn, I. and Curato, N. (2015) "Deliberative Demcoratization: A Framework for Systemic Analysis", *Policy Studies*, 36(3), pp. 298–313.

Owen, D. and Smith, G. (2015) "Survey Article: Deliberation, Democracy, and the Systemic Turn", *The Journal of Political Philosophy*, 23(2), pp. 213–234.

Papadopoulus, Y. and Warin, Ph. (2007) "Are Innovative, Participatory and Deliberative Procedures in Policy Making Democratic and Effective?", *European Journal of Political Research*, 46(4), pp. 445–472.

Parkinson, J. (2012) "Democratizing Deliberative Systems", in Parkinson, J. and Mansbridge, J. (eds) *Deliberative Systems: Deliberative Democracy at the Large Scale (Theories of Institutional Design)* (pp. 151–172). Cambridge: Cambridge University Press.

Parkinson, J. (2018) "Ideas of Constitutions and Deliberative Democracy and How They Interact", in Levy, R., Kong, H., Orr, G. and King, J. (eds) The *Cambridge Handbook of Deliberative Constitutionalism* (pp. i–ii). Cambridge: Cambridge University Press.

Parkinson, J. and Mansbridge, J. (eds) (2012) *Deliberative Systems: Deliberative Democracy at the Large Scale (Theories of Institutional Design)*. Cambridge: Cambridge University Press.

Partlett, W. (2012) "The Dangers of Constitution-Making", *Journal of International Law*. Retrieved from https://brooklynworks.brooklaw.edu/bjil/vol38/iss1/5

Pateman, C. (2012) "Participatory Democracy Revisited", *Perspectives on Politics*, 10(01), pp. 7–19.

Ruzza, C. (2014) "The Ideology of New Public Management, Associational Representation and the Global Financial Crisis", *Partecipazione e Conflicto, Open Journal of Sociopolitical Studies*, 7(3), pp. 490–508.

Saati, A. (2016) "Different Types of Participation in Constitution Making Process: Towards a Conceptualization", *Southern African Journal of Policy and Development*, 2(2), pp. 18–28.

Schumpeter, J. (1975) *Capitalism, Socialism, and Democracy.* New York: Harper & Row.

Smith, G. (2009) *Democratic Innovations: Designing Institutions for Citizen Participation*. Cambridge: Cambridge University Press.

Spada, P. and Ryan, M. (2017) "The Failure to Examine Failures in Democratic Innovation", *Political Science and Politics*, 50(3), pp. 772–778.

Urbinati, N. (2019) *Me the People: How Populism Transforms Democracy*. Cambridge: Harvard University Press

Verdugo, S. and Prieto Rudolphy, M. (2021) "The Dual Aversion of Chile's Constitution-Making Process: Bolivarian Constitutionalism and the Pinochet Constitution", *International Journal of Constitutional Law*, 19(1), pp. 149–168.

Warren, M. E. (2005) *Democracy and Association*. Princeton: Princeton University Press.

Warren, M. E. (2020) "Participatory Deliberative Democracy in Complex Mass Societies", *Journal of Deliberative Democracy*, 16(2), pp. 81–88.

Welp, Y. (2021) "From the 'Status Quo' Problem to the Factional Problem: Constitution Making in Venezuela, Ecuador y Bolivia", *Topos*, 1, pp. 73–86.

2 Citizen deliberation and constitutional change

Paul Blokker and Volkan Gül

2.1 Introduction

Since the 1980s, liberal, representative democracy has been increasingly understood to be lacking in forms of citizen participation, leading to a 'participatory revolution' in the 1980s that encompassed a considerable extension of the forms of citizen participation (Helbig and Schaal 2018: 11). In more recent years, the significance of citizen participation is also increasingly being acknowledged in the context of the fundamental rules of democracy, that is, the constitutional framework of democratic societies (Contiades and Fotadiou 2016; Eisenstadt et al. 2017; Houlihan and Bisary 2021; Wheatley and Mendez 2007; Palermo 2017; Reuchamps and Suiter 2016; Suteu and Tierney 2018). Very broadly speaking, citizen participation in the constitution-making and constitutional change processes tends to take two forms, themselves interrelated: direct citizen participation via referendums (potentially including the whole of society, a clear trend since the 1950s, see Abat i Ninet 2021) and citizen participation in deliberative forums and assemblies.

This chapter will focus on this latter, deliberative, dimension and discuss deliberation in relation to participatory citizenship in the context of fundamental constitutional-change-related reforms. Various processes of constitutional amendment and constitution-making – or more broadly relating to issues of quasi-constitutional standing, in particular, electoral rules – have included forms of citizen deliberation, such as those in British Columbia, Ontario, the Netherlands, Iceland, Ireland, Chile, and the EU's Conference on the Future of Europe (CoFE). In addition, a relatively fashionable deliberative democratic instrument for use in constitution-making processes is citizens' assemblies, which combine relatively large numbers of ordinary citizens for longer periods of intense deliberation and collective learning for final recommendation formulation purposes (Suteu and Tierney 2018: 285). It may be argued that citizen deliberation consists in a 'thicker form of participation' (Suteu and Tierney 2018: 291) compared with direct citizen participation.

The chapter is structured as follows. The first section will discuss citizen participation in constitutional reform, starting with the current 'participatory turn' in constitution-making. Citizen involvement in constitution-making is not exclusively a matter of deliberative democratic methods and, in fact, calls for citizen involvement in constitutional reform processes predate the introduction of deliberative democratic methods

in constitution-making. In addition, the chapter will situate deliberative democratic practices within the bigger picture of citizen participation in constitutional reforms. The chapter's second section will first introduce the basics of deliberation as understood by deliberative democrats. This will show that while deliberation can be understood as a multifaceted (and contested) term, this does not mean that no core elements of deliberation can be identified. Subsequently, several selected cases of citizen deliberation in processes of constitutional change will be compared and their exponents, forms of participant selection, site of deliberation, types of deliberation, outcomes, and manifestations of participation in the process examined.

Admittedly, the chapter's case comparison has a European bias. The aim is, however, not to be comprehensive but rather to show the variety of forms that citizen deliberation can take in constitutional change processes. Its brief discussion and analysis of various cases will show the variety in design and practice of citizen deliberation in constitutional reform. The chapter's case discussion will further provide a basis for the subsequent elaboration – in the final section – of some critical issues related to citizen deliberation, with specific reference to citizens' assemblies. These problem areas include, but are not limited to: the *ad hoc* nature of deliberative processes, the issue of how to connect micro-level to macro-level deliberation, and issues regarding representation, legitimacy, and empowerment.

2.2   Forms of citizen participation in constitutional reform

A relatively recent tendency in democratic systems is a 'participatory turn', meaning that citizens are becoming increasingly involved in politics beyond the electoral dimension of representative democracy. A highly distinctive – and less studied – dimension of participation is the involvement of citizens in constitutional change (Blount 2011; Suteu and Tierney 2018). This can include the formulation of recommendations resulting from citizen deliberation, which can, in turn, lead to constitutional amendment. It can also involve the crowdsourcing of ideas culminating in the drafting of a new document. More generally, in recent times, constitutional politics and reform have featured an increased emphasis on popular participation in constitutional reform by means of a range of innovative instruments, such as digital platforms, deliberative forums, citizens' assemblies, and crowdsourcing (Abat i Ninet 2021). There are now many examples all over the world in which constitutional revision and amendment has been orchestrated in such a way as to include active citizen participation. A transversal set of arguments in these constitutional revision projects is that they constitute an explicit response to civic discontent and structural democratic deficiencies. There is a growing awareness that reforms may only be successful if citizens and/or civil society are able to participate in them. In recent years, examples of European reform projects encompassing significant citizen involvement have included Iceland, Ireland, the Netherlands, Romania, Estonia, and, on the transnational level, the CoFE. Furthermore, in the post-Brexit United Kingdom, proposals have been made to set up a Constitutional Convention that is to include citizens, and two decades of constitutional reform in the country have included references to democratizing the constitutional order. Outside Europe,

Colombia, Chile, Egypt, and Tunisia are some of the most important examples (Abat i Ninet 2021; Couso 2021; Eisenstadt et al. 2017; Maboudi 2020; Maboudi and Nadi 2016; Verdugo and Prieto 2021).

While attention to constitution-making and constitutional reform in scholarly debates is persistent and growing, few studies have engaged in a thorough, comparative assessment of constitutional amendment and reform methods in relation to citizen participation (Lutz 1995; Eisenstadt et al. 2017; Welp and Soto 2020). This would seem to be particularly true for recent innovations and participatory forms. In particular, the latter processes are often set up outside, or in parallel to, existing formal amendment rules (such as in Iceland and Ireland), and in some cases, consist of complex, multi-stage processes.

A range of constitution-making and constitutional change processes notwithstanding, more sustained interest in the modes and practices of constitutional reform and civic engagement in reform has only recently emerged in political science and comparative constitutionalism literature (Abat i Ninet 2021; Bustamante and Fernandes 2016; Contiades and Fotiadou 2016; Eisenstadt et al. 2017; Reuchamps and Suiter 2016; Suteu and Tierney 2018). A few recent contributions have made important steps towards a more comprehensive analysis of citizen participation in constitutional reform processes. Eisenstadt et al. (2017) make a useful distinction between the various phases of potential citizen involvement in reform processes, distinguishing between the convening, debating, and ratification of reform phases. The convening phase consists of 'activities in the constitution-making process related to selecting those actively and directly involved in the crafting of the constitution's content'. The debating stage 'explores how decisions were made about content and retentions and omissions from the text'. The ratification stage entails 'procedures for approving the constitution and making it binding for all citizens, including those who did not participate in its creation' (Eisenstadt et al. 2017: 28). In his excellent book *Constitutional Crowdsourcing*, Antoni Abat i Ninet similarly distinguishes between diverse intensities of citizen engagement in constitutional reform, ranging from elite control and limited citizen involvement to extensive citizen participation (Abat i Ninet 2021: 94).

Deliberative practices in constitutional reform and change processes demonstrate a mixed picture (cf. Landemore 2015; Suteu and Tierney 2018). Formal constitutional reform is predominantly initiated by specific political actors, namely parliaments and presidents (e.g., Chile[1]), and there are very few cases in which it can be formally initiated by citizens working together (e.g., Romania). As comparative research and case studies show, however, a number of different constitutional revision and citizen inclusion methods exist. For comparative purposes, James Fishkin proposed a useful diversification, approaching constitutional reform from a multiple democratic model perspective. These models analyse formal constitutional reform while shedding light on the place and form of citizen engagement in reform processes. Fishkin – not unlike Abat i Ninet's suggestion of a kind of continuum between non-participation, at one extreme, and extensive participation, at the other – elaborated four relevant models: competitive democracy, elite deliberation, deliberative democracy, and participatory democracy (Fishkin 2009, 2011) (see Table 2.1).

Table 2.1 Citizen involvement in constitution-making

Form of citizen involvement	Democratic models	
Indirect, representation	**Elite deliberation** Governmental committees Conventions (delegates) Expert committees Parliamentary committees	**Competitive democracy** Constituent assemblies
Direct participation	**Participatory democracy** Confirmatory referendums Constitutional initiatives	**Deliberative democracy** Citizen assemblies Citizen conventions

Source: Fishkin (2009, 2011); elaboration Blokker (2017).

Fishkin's first two models – competitive democracy and elite deliberation – emphasized representation and elite-driven constitutional processes, thus allowing for an indirect role of citizens in constitutional reform. Competitive democracy emphasizes the role of elected representatives and the competitive struggle between parties. From the perspective of competitive democracy, constitutional reform may take the form of a constituent assembly, with elected members from a range of political forces.[2] Elite deliberation prioritizes public reasoning of a high cognitive standard and favours small elite bodies deliberating on matters of justice and the common good on behalf of the people. A clear-cut example is the Philadelphia Convention of 1787, the members of which were appointed by state legislatures (Fishkin 2011). Further examples of elite-driven reform are expert commissions and negotiations between political leaders (Renwick 2014). A hybrid example of constitutional reform following both the ideals of competitive democracy and elite deliberation is that of parliamentary committees. Fishkin's participatory and deliberative models include innovative and experimental forms of constitution-making that foresee a more direct involvement of citizens in constitutional revisions (Abat i Ninet 2021; Suteu and Tierney 2018; Reuchamps and Suiter 2016; Zurn 2016). Participatory democracy is frequently understood in terms of the referendum instrument, which aggregates individual votes into a majority. Where constitutional revision is concerned, referendums often take the form of *ex-post*, confirmatory referendums on finalized constitutional reform proposals.

However, there are more engaging ways that allow selected citizens to participate in debates over constitutional change. In fact, experimentation in recent constitutional reform has often involved deliberative democracy, in the form of citizens' assemblies. Citizens' assemblies on constitutional reforms are a relatively new phenomenon. The first three citizens' assemblies – 2004 in British Columbia, 2006 in Ontario, and 2006 in the Netherlands – involved matters of a constitutional character (i.e., electoral reform). However, the recent interest in citizens' assemblies as part of constitutional reform processes has been stimulated more specifically by the Irish Constitutional Convention and subsequent Citizens' Assembly.

As discussed below, there is organizational variety in citizens' assemblies. For instance, they can be organized by a range of actors such as politicians and civil society groups. In addition, the composition of the assembly itself may vary. Some assemblies include both political representatives and citizens (as in the case of the Irish Constitutional Convention, 2012–2013), while others involve citizens and experts or scholars (as in the Romanian Forum Constitutional in 2013), and others are only citizens (as in the case of Iceland in 2011, the French Climate Convention, and the European Citizens' Panels in the CoFE). The level of empowerment involved is also very different. In some cases, like British Columbia and Ireland, assemblies seem to have greater power, but citizens' assemblies tend generally to perform a merely consultative function.

Before discussing citizens' assembly experiences, we will first clarify some of the basics of deliberation and its relationship to constitutions and constitutional change.

2.3   Citizen deliberation in constitution-making processes

Deliberation is a distinctive type of communication and social interaction. For deliberative democrats, in this form of communicative interaction participants are free to express their views. The only force in deliberation ought to be the 'unforced force of the better argument' (Habermas 1996: 306). Habermas's communicative action and ethics are the bedrock of deliberative democratic theory's understanding of deliberation. In addition, deliberation has been a very popular concept not only for academics but also for policy-makers. Such popularity comes at a price, however. Like other popular concepts, frequent use of the term 'deliberation' risks stretching the concept too far (Steiner 2008). Scholars hold different views on what deliberation is and what it entails. We should, however, be careful not to stretch the concept to include any form of dialogue or discussion (Steiner 2008). Some fundamental dimensions may be singled out to identify deliberation in practice. As Goodin (2005: 183) put it, 'there seems to be an impressively broad scholarly consensus' as to what constitutes deliberation. In other words, certain core elements are shared by many scholars. Bächtiger and Parkinson (2019: 22) put it as '… various standards taken together comprise what has been called the "classic core" of deliberation, comprising rational argument, orientations towards the common good, listening and interactivity, respect, equal participation, and authenticity'. Of course, these elements can be contested, and different ones proposed, but some core elements may be put forward. Deliberation should involve mutual reason-giving (Bächtiger and Parkinson 2019; Bohman 1996; Thompson 2008). This process consists of listening with respect or *audi alteram partem* (Bächtiger et al. 2018; Bächtiger and Parkinson 2019; Tully 1995), which is called a deliberative stance by Owen and Smith (2015). Last, but not least, participants should explain their reasons in a way that is intelligible to others and everyone should be open minded, and not too immovable on a distinct point of view.

It is equally important that we do not analyse deliberation in practice in an overly rigid way. A wider systemic understanding of deliberative democracy is needed if we are to understand and amplify the impact of deliberative democratic thinking. A system does not need to be totally or exclusively deliberative. It may have non-deliberative components that potentially contribute to the overall deliberative system (Mansbridge et al. 2012). In other words, non-deliberative components may have a role to play in supporting deliberation in general, and different forms of democratic practices may be supported or strengthened by deliberation.[3] Nevertheless, although we cannot expect to find perfect forms of deliberative communication in practice, this should not lead us to classify any discussion as deliberative or as contributing to a wider deliberative system.

Finally, when we look at deliberation in the context of constitution-making, we can see that there are various potential labels for it, including, but not limited to, constitutional deliberation, deliberative constitutionalism, and deliberative models of constitutionalism. Here, it is important to distinguish elite deliberation from public deliberation on constitutional reform. Deliberation per se is not deliberative democracy. For it to be democratic, public involvement is required. Here, we are asking questions about deliberative democracy and how it can be incorporated into constitutional reform processes. Finally, we see a deliberative event as a gathering that relies on the participation of citizens who engage in a collective deliberation, face-to-face or online or both, in order to arrive at forms of collective output.

Below, we will briefly discuss various ways in which citizen deliberation has been made part of constitutional reform and constitution-making processes (with a predominant focus on Europe, as we have seen). This discussion will consider a number of dimensions that can be taken as parameters of citizen deliberation in constitution-making and constitutional reform. These include those initiating the constitutional change processes, the ways citizens are selected for participation, specific forms of deliberation, the wider deliberation setting, outcomes, and the existence of other forms of participation in the process (these dimensions are presented briefly in Table 2.2).

In the case of the Icelandic constitutional reform attempt (2010–2012; see the chapters by Eirikur Bergmann and Jón Ólafsson in this volume; cf. Árnason and Dupré 2020; Bergsson 2017; Landemore 2015) both civil society associations and the Socialist Party pushed for comprehensive, citizen-driven constitutional reform. Two one-day deliberative forums were set up, in which circa 1,000 citizens took part. A Constitutional Council consisting of 25 independent citizens was elected at the end of 2010, which was responsible for producing a draft constitutional revision within four months (April–July 2011) (Landemore 2015). The draft was effectively an entirely new constitution and, amongst other things, emphasized a range of important participatory institutions, while the drafting process itself has often been hailed as highly innovative in its use of social media to solicit comments and suggestions from citizens (see Hudson 2018; Abat i Ninet 2021). In autumn 2012, a 6-question referendum was put to the population (Bergsson and Blokker 2014;

Elkins, Ginsburg, and Melton 2012; Landemore 2015). The Icelandic experiment ultimately did not lead to constitutional change, but the experience did encompass a number of deliberative experiences, while the resulting draft constitution continues to play an important part in Icelandic political debate (Bergmann 2021). Its most significant outcome is perhaps inspiring other participatory processes throughout the world.

In the case of Ireland (see the chapter by Eirikur Bergmann in this volume), on one hand, two major political parties – Fine Gael and the Labour Party – endorsed inclusive constitutional reform and, on the other, academics and civil associations pushed for participatory and deliberative reform, in particular through the organization We The Citizens. At the end of 2011, a one-year Constitutional Convention was set up in which 66 citizens (selected by lot) deliberated together with 33 politicians over constitutional reforms. One of the results of this process was the (successful) May 2015 referendum on same sex marriage. The experience of the convention was followed by a Citizens' Assembly (2016–2028) in which citizens were randomly selected to deliberate on five issues (abortion, ageing population, fixed-term parliaments, referendums, and climate change) (Harris et al. 2021). Politicians did not take part in this second assembly. The assembly resulted in a parliamentary report, and its most tangible result was the organization of a referendum on the liberalization of abortion, which was overwhelmingly endorsed by Irish citizens in May 2018. A third Citizens' Assembly on Gender Equality was set up by Parliament in 2020 (Harris et al. 2021).

The Estonian Citizens' Assembly experience, which included a Deliberation Day (*Rahvakogu*), is relevant to our focus on constitutional change. The assembly was the result of a public outcry against a corruption scandal in 2012 (Jonsson 2015). President Toomas Hendrik Ilves asked Estonian grassroots organizations to set up an assembly, which included the Deliberation Day as well as an online platform to allow crowdsourcing of ideas, to discuss the amendment of laws on political parties and party financing as well as the electoral system and citizen engagement (Gunnar, Giedre, and Hille 2015: 34). The Estonian deliberative event differed from other citizens' assemblies. In terms of organization, it resembled the Australian Citizens' Parliament that was convened in 2009 to discuss potential ways of strengthening the Australian political system (New Democracy Foundation 2009). However, in Estonia, the topic was institutional and constitutional reform and, rather than a longer process, it involved a one-day deliberative event preceded by online crowdsourcing and public discussions. The idea behind the deliberative day was to process the many (around 6,000) proposals submitted to the platform. The Deliberation Day invited 550 randomly selected citizens to take part, of which 320 ultimately did so. The proposals submitted to the online platform were grouped by experts and analysts, and five thematic seminars were organized to discuss and decide which issues would be put on the assembly's agenda. Ultimately 18 proposals made it to Deliberation Day, during which 15 top proposals were selected and proposed to Parliament by the Estonian president (Gunnar, Giedre, and Hille 2015: 34). Various proposals were implemented in the form of

new laws or amendments: three proposals were made law, and a further four were modified or partly implemented (Praxis Centre for Policy Research 2014).

The Romanian Forum Constitutional (March–July 2013) was the result of joint efforts by the civic organization Asociaţia Pro Democraţia (APD) and the Romanian Parliament (a similar endeavour took place in 2002). Strictly speaking, the forum was not a deliberative assembly as it did not follow the design logic of a deliberative assembly based on sortition, but rather an organized series of open deliberative events that included citizens, scholars, and politicians and were held in major Romanian cities (Forumul Constituţional 2013: 12) as well as gathering citizens' comments on an online platform (cf. Blokker 2013, 2017). The forum was arranged by the APD and included more than 50 local debates. The objective was to engage in public deliberation and to gather the views of citizens and civil society to be included in a report to be submitted to Parliament and debated in a parliamentary reform process (Mişcoiu and Pârvu 2021). The process did not, however, ultimately lead to constitutional amendment – not least due to the fragmentation of the supporting political coalition (cf. Blokker 2017).

The transnational CoFE (2021–2022) was citizens' deliberation on fundamental themes and norms. The CoFE was originally put forward in 2019, as the brainchild of Emmanuel Macron (cf. Alemanno 2020; Fabbrini 2020). In a joint non-paper on the CoFE, France and Germany suggested a 'strong involvement of our citizens' and a 'bottom-up process' with 'EU-wide participation of our citizens on all issues discussed'. The plan was subsequently adopted by the Von der Leyen Commission that strongly emphasized the involvement of citizens, civil society, and European institutions as 'equal partners' and even showed an initial willingness to consider treaty change. It is the latter dimension that makes CoFE relevant to our discussion here. In it, citizens have deliberated on recommendations for change in the EU, which has, in some cases, included treaty change – the EU equivalent of constitutional change.

CoFE was not a direct response to a specific crisis, nor the result of spontaneous, bottom-up calls for change. It is rather an attempt to re-legitimize the European Union in the context of increasing distrust of it among citizens in recent years. The process started from the top-down – by the EU institutions – and is largely controlled by these institutions (Ballangé 2021; Blokker forthcoming). In this regard, the process very much reflects the aforementioned models of competitive democracy and elite deliberation. The CoFE does, in fact, involve innovative (multi-lingual, multi-level) forms of citizen participation, in the digital platform, the Citizens' Panels, and the Plenary. In particular, the four Citizens' Panels, with their 800 randomly selected European citizens (and, notably, a one-third quota of young people), are relevant to our discussion of public deliberation on constitutional norms. The four panels discussed a wide range of themes – including democracy, the rule of law, Europe in the world, migration, and the environment – in three weekend meetings (two in-person, one online) in late 2021 and early 2022. The deliberations led to 178 recommendations, which have been discussed in the CoFE Plenary, which is made up of members of the European Parliament, the Commission, Council,

national MPs, civil society representatives, 80 ambassadors (citizens representing the Citizens' Panels), and 27 national panel representatives. The Plenary itself has deliberative moments, especially its Working Groups, whose task is to transform its recommendations into clear reform proposals. At the time of writing, it is not yet clear which recommendations will be taken forward in the Plenary and what the exact follow-up will be. An important discussion revolves around whether to proceed with a Convention on Treaty Change. Another important outcome might be the institutionalization of a permanent Citizens' Assembly in the EU (Alemanno and Nicolaïdis 2022).

Moving out of the European context to Chile[4] (see the chapter by Heiss and Mokre in this volume), huge social uprisings in the country from October 2019 onwards ultimately resulted in a call for a new constitution (Couso 2021: 242). Under social and political pressure, President Piñera eventually gave in to these demands (Couso 2021: 243). The subsequent Chilean process has been likened to Andrew Arato's model of post-sovereign constitution-making (Verdugo and Prieto 2021) due to its insistence on legal continuity with the existing constitution[5] (Couso 2021: 244), rather than disruption, and the fact that the process is grounded in a multi-party consensus and abides by a limited, non-revolutionary mandate for the convention (Verdugo and Prieto 2021: 13). The process began with a consultative referendum designed to verify citizens' endorsement and their preferences regarding the set-up of the assembly, and a Constitutional Convention was then elected by general vote. Finally, the draft of the new constitution was rejected by the voters in a confirmatory referendum. While intense citizen participation in the form of deliberation was not planned for the process itself and the convention seemed grounded in a 'competitive democracy' logic, throughout the process there were various moments in which citizens directly participated. The convention's regulations envisaged public hearings, a digital platform, and popular initiatives allowing civil society, indigenous peoples, and youth to present proposals that needed to be treated on a par with proposals by convention delegates when a minimum of 15,000 signatures from at least four regions had been gathered (Aninat 2021).

As Table 2.2 – a summary of the cases discussed – attests, deliberative practices have taken a variety of forms and intensities. For instance, the Irish, Estonian, and Icelandic cases would seem to include more deliberative qualities than the others. In two cases, deliberative events – strictly speaking – were not part of the process (Romania, Chile). Clearly, there is no single way of embedding citizen participation and deliberation in democratic processes. The variety of historical, political, and social contexts, differences in power differentials, as well as the diverse nature of the issues involved (e.g., amendment of an existing constitutional document, extensive revision of the constitution, or a full-blown constitution drafting process) means that a range of design choices may be feasible. An analytical focus on this variety helps us to identify productive and democratically feasible dimensions, but it should also help us to keep our experimental democratic imaginations alive in a field that is clearly full of ferment and experimentation.

Table 2.2 Deliberative experiences in constitutional change processes

Cases	Initiators	Participant selection	Deliberation (site/stage)	Nature of deliberation	Products	Other forms of participation
Iceland	Both civil society and political parties	Sortition	Two ex-ante, one-day deliberative forums	First: free-standing, second: part of process/preparatory	Broad orientations	*Ex-post* referendum on constitutional draft
		Elected	25-member Constitutional Council producing draft constitution	Main constituent forum	Draft Constitution	
Ireland	Civil society initiative and political parties	Sortition	Ex-ante deliberative process	Part of process/preparatory	18 Recommendations	*Ex-post* referendum
Estonia	Civil society; politicians	Sortition	Deliberation day	Part of process	15 recommendations	Digital platform
Romania	Civil society and Parliament	Self-selection	Various meetings throughout the country	Part of process	Report, orientations	—
CoFE	EU institutions	Sortition	Online forum 4 Citizens' Panels Plenary	Part of process	178 recommendations	Digital platform; national panels
Chile	Civil society, political parties, president	Sortition Election	Constitutional convention	Part of process	Draft constitution	Public hearings, digital platform

Source: Authors' elaborations.

2.4   Citizens' assemblies in constitutional reform processes: A panacea?

Although there are different ways of embedding citizen deliberation in processes of constitutional revision and constitution-making, the most pertinent cases have taken the form of citizens' assemblies. In fact, many observers regard citizens' assemblies as some of the 'most promising innovations' in contemporary democracy (Lacelle-Webster and Warren 2021: 1; cf. Suteu and Tierney 2018; Parkinson 2018). Despite this optimism and wide-ranging consensus, deliberative practices and citizens' assemblies have encountered several significant hurdles, problems, and challenges.

2.4.1   *Ad hoc nature*

Despite some optimism about the potential for citizen participation by means of citizens' assemblies, these processes have important hurdles and uncertainties to overcome. One broad but complex problem is how to effectively and systematically bring deliberative participation into the existing democratic institutional context. Citizens' assemblies are often *ad hoc* rather than systemic, being set up for distinct issues rather than institutionalized as a structural dimension of the political process. Deliberation tends to be confined to specific themes within a circumscribed period of time (as in the case of the French Climate Convention or the electoral reform assemblies). It would seem to be important – as recent processes in Belgium, for instance, indicate (Niessen and Reuchamps 2019) – to permanently institutionalize deliberative forums into existing democratic systems in order to increase the deliberative and participatory benefits and accord participatory and deliberative practices their due weight vis-à-vis representative politics. In this regard, it makes sense to approach participation, deliberation, and deliberative assemblies systemically (cf. Parkinson 2018; Alemanno and Organ 2020). The idea is to take citizens' discursive and deliberative capacities seriously and, rather than tapping into such capacities on an *ad hoc* and non-structural basis, make citizen deliberation an integral part of the democratic process, without replacing existing representative institutions, thus variegating and enriching forms of input. Citizen deliberation may contribute positively to processes of constitutional reform and drafting (cf. Lacelle-Webster and Warren 2021). This is evident in practical experiences of constitutional deliberation, showing that the intrinsically complex and technocratic nature of constitutional norms can be adequately discussed by citizens in carefully constructed deliberative processes (cf. Landemore 2015; Parkinson 2018: 252). In this regard, the structural inclusion of deliberative democratic practices in trajectories of constitutional reform and constitution-making ought to be considered.

2.4.2   *Representativeness and relationship to the wider public*

A specific problem is how to relate the intense deliberative experiences of mini-publics (as in citizens' assemblies) to the larger maxi-public (Suteu and Tierney 2018). This is particularly important in the context of constitutional norms and

amendments, in that such fundamental rules and norms are generally understood to need broad societal consensus. Such a broad consensus can only emerge by means of publicity and communication targeting citizens as a whole. The public dimension exposes the difficulties and complexities of deliberation and collective learning at the macro-level (and this is even relevant at the transnational level, as the CoFE shows). In fact, mini-public deliberative standards cannot always be fully guaranteed due to time, money, and political will constraints. If constitutions – understood as the fundamental rules and norms of specific societies – are to be broadly supported by wider society and a range of relevant actors, then constitutional reform and drafting cannot be the outcome of deliberation in 'mini-publics' alone. The micro needs to be connected to the macro (Suteu and Tierney 2018; Parkinson 2018). To what extent micro events are capable of significantly stimulating macro-level societal constitutional deliberation remains an open question.

2.4.3   *Citizen involvement*

A further issue is the effective involvement of citizens in designing participatory processes and the choices involved in these. For instance, this includes the specific design of procedures regarding how citizens' recommendations can effectively be included in political follow-up processes. The latter may consist in effective constitutional changes resulting from deliberative events (cf. Landemore 2015). In Iceland and Ireland, for example, whether the specific procedural paths taken were to lead from deliberative events to follow-up remained unclear until after deliberation was complete. Furthermore, in the CoFE process, the procedural rules were generated *ad hoc*, often with no citizen involvement, leading to frustration and a lack of clarity regarding the outcome of the process. In addition, commitments regarding significant actor outcomes, such as parliaments and governments and, in the case of the EU, member states and the Council, have often remained unclear. When citizens participating in deliberative assemblies are unsure about how their recommendations are being processed and responded to, levels of engagement in the process and the legitimacy produced may suffer.

2.4.4   *Representativeness*

A further significant issue is that of representation. Citizens' assemblies are mini-publics, and in this context, a general tendency towards an endorsement of descriptive representation can be detected in the literature. As Smith (2009: 72) argues, the distinctiveness of mini-publics is the selection method used, i.e., random selection ('lottocracy').[6] In fact, stratified random selection is viewed as underpinning a more representative mini-public. MP electoral representativeness is of a rather different kind than the descriptive representation of randomly selected citizens (even if some argue that deliberative assemblies are better understood as part of representative democracy rather than participatory democracy, see Lacelle-Webster and Warren 2021: 5). The latter also begs the question as to whether different political viewpoints and understandings are to be understood as related (or

reduced) to demographic, educational, and socio-economic criteria, or whether representation should more robustly involve ideological differences and distinct political subjectivities.

Although descriptive representation would seem to be the norm, it is, however, not the only way to understand or examine representation in mini-publics or other deliberative events. While descriptive representation highlights the importance of the presence of people – in the spirit of the politics of presence (Phillips 1995) – Dryzek and Niemeyer (2008) highlighted the presence of a range of ideas and discourses. In this discursive understanding context, it is more important to include all the important discourses to be found in a society, rather than involving citizens on the basis of their demographic qualities. In a more abstract discussion, Gül (2019) argues that representation in mini-publics is better understood as a public claim-making process.

In brief, citizens' assemblies constitute interesting representation case studies, in that principle-agent relationships are absent in them and electoral representation does not apply. In fact, assemblies can be representative in alternative ways. In descriptive representation terms, assemblies tend to appear more representative than many parliaments.

2.4.5   *Competition with other democratic actors*

The relationship between citizens and other significant actors in the process – politicians, the judiciary and other institutions, experts, scholars – remains a complex one. Clearly, deliberative assemblies compete with parliaments for representativeness and democratic legitimacy. This may lead to resistance from MPs to the representative claims of assemblies and the role of citizens in the decision-making process (cf. Lacelle-Webster and Warren 2021: 13). This is also related to the question of whether or not politicians are part of the deliberative process and in what ways. As far as the role of politicians is concerned, the situation is a diverse one in practice. In British Columbia and Iceland, politicians were excluded from the process. In Ontario, although they were not formal participants, former politicians from different parties provided input to the assembly. Politicians took part in the first Irish Convention alongside other citizens. Politician involvement is a matter of organizational choice and depends on the context, and excluding politicians from the process may be expected to lead to obstructive behaviour from them.

Another highly significant group of actors is civil society organizations. These may feel excluded from a process in which deliberative assemblies are prominent while civil society actors tend to be marginalized. In fact, a representation and legitimacy tension may exist that citizens in deliberative processes are, in some way, competing with civil society actors who also claim to represent society. From a critical perspective, it can be argued that citizens' assemblies might in some cases be used instrumentally to marginalize civil society actors and claim democratic legitimacy through citizens' assemblies, which are made up of individual, non-professional, and non-mobilized citizens. After the deliberative experience, citizens go their separate ways and return to their everyday lives. This is in stark

contrast to civil society actors who are professional, have accumulated knowledge, and pursue specific political objectives over time, and thus tend to remain a structural part of the political process.

2.4.6   *Civic empowerment in constitution-making*

For constitutional arrangements to enjoy democratic legitimacy, it is extremely important that citizens perceive their own engagement as meaningful and consequential. Processes of involvement in constitution-making may enhance the selected participants' perceptions of co-authorship and membership of a community. The identification and empowerment of citizens as a whole, however, remains doubtful (Carolan 2015). In this, it becomes clear that mini-publics and deliberative assemblies should develop a distinct influence on broader public discussion and discourse. In other words, they need a dynamic that spirals into broad public debate. An impact of this sort obviously requires social awareness of mini-publics and hence the high visibility of such events. In reality, however, such social recognition is frequently absent and the work of deliberative assemblies tends to go unnoticed by the wider public. In fact, empirical analysis indicates that mini-publics have a mixed influence on public opinion (Cutler et al. 2008; Devillers et al. 2020; Gastil et al. 2016).

However, the extent to which a Citizens' Assembly should be empowered in constitution-making processes – for instance, in terms of the binding nature of the results of citizens' recommendations – remains an important and complex question. On one hand, providing assemblies with some form of decision-making power is replete with legitimacy and accountability challenges. On the other hand, inconsequential deliberative events risk losing their appeal in the public eye. It would seem that achieving the right balance depends on the context and the reform issues being examined. A significant way of mitigating legitimacy concerns might be to combine citizens' assemblies with referendums. *Ex-post* referendums would improve the legitimacy of the recommendations of a particular assembly. When a distinctive recommendation passes the referendum test (as with same sex marriage and abortion in Ireland), wider public endorsement increases perceptions of legitimacy.

2.5   Conclusion

This chapter has discussed the emerging phenomenon of citizen deliberation in the context of constitutional change processes, contextualizing citizen deliberation in the wider framework of constitutional reform and constitution-making (inter alia through parliamentary committees, conventions, and assemblies). Deliberative events and assemblies are now more frequently seen as part of a more complex constitutional change process. We have also discussed the nature of the deliberation–constitutionalism relationship, citing some of the specifics of constitutional reform. We briefly discussed seven cases of deliberative citizen engagement in constitutional change, indicating a variety of experiences and trajectories, and discussed the hurdles, problems, and challenges experienced in citizen deliberation on

constitutional change, including visibility, representation, relationships with other democratic actors, and the frequently *ad hoc* nature of these processes.

The purpose of the chapter was to highlight the dynamic nature of the experience of public deliberation on constitutional change. While no clear-cut standard or set of best practices can be identified, several indications and potential lessons relevant to citizen deliberation can be teased out. Citizen deliberation can be understood as a promising method with which to renew constitutional arrangements – in democratization and legitimation terms – in the current democratic fatigue context. Citizen deliberation also puts existing democracies to the test, however, requiring them to rethink issues such as representation, inclusion, and democratic decision-making.

Notes

1 In Chile, the initiation of the process clearly and extensively involved societal forces, but formal initiation depended on presidential action.
2 The Chilean Assembly elected in 2021 shows that such an assembly does not necessarily need to be an expression of political establishment forces, but may involve a range of societal forces, such as ethnic minorities and political forces emerging out of protest movements.
3 For a critique of systemic understanding, see Owen and Smith (2015) who show that allowing for non-deliberative components may be detrimental to deliberative democracy in some cases.
4 The chapter was finalized in September 2022 and hence does not take into account the constitutional developments that occurred since.
5 Consciously marking itself out from the disruptive nature of the 'Bolivarian' forms of constitution-making used in Venezuela, Ecuador, and Bolivia (Couso 2021: 244).
6 For a critique, see: Lafont (2017). As Urbinati and Vandelli argue, random citizen selection is seen as a significant response to the failures of representative democracy and, particularly, of political parties and representative elites. Regarding the latter, the idea is that these randomly selected citizens would partly replace elitist, technocratic politician forms with a more authentic type of citizen governance. Random selection tends to replace elite representation by means of a kind of 'mirroring' representation, that is, the citizens selected act as a statistical proxy for society as a whole (Urbinati and Vandelli 2021). Whether such a form of descriptive representation is, however, capable of being fully inclusive of societal diversity and whether assemblies and mini-publics can replace professionalized, technocratic decision-making remains a complex issue.

References

Abat i Ninet, A. (2021). *Constitutional Crowdsourcing: Democratising Original and Derived Constituent Power in the Network Society*. Cheltenham: Edward Elgar Publishing.

Alemanno, A. (2020). Unboxing the Conference on the Future of Europe and its Democratic Raison d'être. *European Law Journal*, 26(5–6), 484–508.

Alemanno, A. and Organ, J. (2020). *Citizen Participation in Democratic Europe: What Next for the EU.* London: ECPR.

Alemanno, A. and Nicolaïdis, K. (2022). Citizen Power Europe. The Making of a European Citizens' Assembly. In Alemanno, A. and Sellal, P. (eds.), *The Groundwork of European Power*. RED (Revue Européenne du Droit), 3.

Aninat, I. (2021). A Balancing Act: Public Participation, Decision-Making, and Freedom of Speech at the Chilean Constitutional Convention, ConstitutionNet, https://constitutionnet.org/news/balancing-act-public-participation-decision-making-and-freedom-speech-chilean-constitutional.

Árnason, Á. Þ. and Dupré, C. (eds.) (2020). *Icelandic Constitutional Reform: People, Processes, Politics.* London: Routledge.

Bächtiger, A., Dryzek, J. S., Mansbridge, J. and Warren, M. (2018). Deliberative Democracy: An Introduction. In Bächtiger, A., Dryzek, J. S., Mansbridge, J. and Warren M. (eds.), *The Oxford Handbook of Deliberative Democracy.* Oxford: Oxford University Press.

Bächtiger, A. and Parkinson, J. (2019). *Mapping and Measuring Deliberation: Towards a New Deliberative Quality.* Oxford: Oxford University Press.

Ballangé, A. (2021). Why Europe Does not Need a Constitution: On the Limits of Constituent Power as a Tool for Democratization. *Res Publica*, 28(4), 655–672.

Bergmann, E. (2021). *Iceland. Country Report*, COST Action CA17135 Constitution-making and Deliberative Democracy (ConstDelib).

Bergsson, B. T. (2017). The Constitution as a Political Tool in Iceland: From the Periphery to the Center of the Political Debate. In Blokker, P. (ed.), *Constitutional Acceleration within the European Union and Beyond*. Routledge, pp. 155–174.

Bergsson, B. T. and Blokker, P. (2014). The Constitutional Experiment in Iceland. In Pocza, K. (ed.), *Verfassunggebung in konsolidierten Demokratien: Neubeginn oder Verfall eines Systems?*. Baden-Baden: Nomos.

Blokker, P. (2013). *New Democracies in Crisis? A Comparative Constitutional Study of the Czech Republic, Hungary, Poland, Romania and Slovakia*. London/New York: Routledge.

Blokker, P. (2017). Introduction. Constitutional Challenges, Reform, and Acceleration. In Blokker, P. (ed.), *Constitutional Acceleration within the European Union and Beyond*. London: Routledge, pp. 1–22.

Blokker, P. (forthcoming). Participatory Citizenship, Constitutional Reform, and the Conference on the Future of Europe, under submission.

Blount, J. (2011). Participation in Constitutional Design. In Ginsburg, T. and Dixon, R. (eds.), *Comparative Constitutional Law.* Cheltenham: Edward Elgar, pp. 38–56.

Bohman, J. (1996). *Public Deliberation: Pluralism, Complexity and Democracy.* Cambridge, MA: MIT Press.

Bustamante, T. and Fernandes, B. G. (eds.) (2016). *Democratizing Constitutional Law.* Cham: Springer.

Carolan, E. (2015). Ireland's Constitutional Convention: Behind the Hype About Citizen-led Constitutional Change. *International Journal of Constitutional Law*, 13(3), 733–748.

Contiades, X. and Fotiadou, A. (eds.) (2016). *Participatory Constitutional Change: The People as Amenders of the Constitution.* London: Routledge.

Couso, J. (2021). Chile's 'Procedurally Regulated' Constitution-Making Process. *Hague Journal on the Rule of Law*, 13(2), 235–251.

Cutler, F., Johnston, R., Carty, R. K., Blais, A. and Fournier, P. (2008). Deliberation, Information, and the Trust: The British Columbia Citizens' Assembly as Agenda Setter. In Warren, M. E. and Pearse, H. (eds.), *Designing Deliberative Democracy: The British Columbia Citizens' Assembly*. New York: Cambridge University Press.

Devillers, S., Vrydagh, J., Caluwaerts, D. and Reuchamps, M. (2020). Invited but not Selected: The Perceptions of a Mini-Public by Randomly Invited – but not Selected – Citizens, February. *ConstDelib Working Paper Series*, no. 4: 1–21.

Dryzek, J. S. and Niemeyer, S. (2008). Discursive Representation. *American Political Science Review,* 102(4), 481–493.

Eisenstadt, T. A., LeVan, A. C. and Maboudi, T. (2017). *Constituents Before Assembly: Participation, Deliberation, and Representation in the Crafting of New Constitutions*. Cambridge: Cambridge University Press.

Elkins, Z., Ginsburg, T. and Melton, J. (2012). A Review of Iceland's Draft Constitution. *The Comparative Constitutions Project*, 14, 1–11.

Fabbrini, F. (2020). The Conference on the Future of Europe: Process and prospects. *European Law Journal*, 26(5–6), 401–414.

Fishkin, J. S. (2009). *When the People Speak: Deliberative Democracy and Public Consultation*. Oxford: Oxford University Press.

Fishkin, J. S. (2011). Deliberative Democracy and Constitutions. *Social Philosophy and Policy*, 28(1), 242–260.

Forumul C(2013). *Raportul Forumului Constituţional*. Bucharest: Asociaţia Pro Democraţia.

Gastil, J., Rosenzweig, E., Knobloch, K. R. and Brinker, D. (2016). Does the Public Want Mini-Publics? Voter Responses to the Citizens' Initiative Review. *Communication and the Public*, 1(2), 174–192.

Goodin, R. E. (2005). Sequencing Deliberative Moments. *Acta Politica*, 4(2), 182–196.

Gunnar, G., Giedre, R. and Hille, H. (2015). Rahvakogu - How the People Changed the Laws of Estonia. Компютърни науки и комуникации, 4(3), 33–39.

Gül, V. (2019). Representation in Minipublics. *Representation*, 55(1), 31–45.

Habermas, J. (1996). *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Cambridge, MA: MIT Press.

Harris, C. L., Cahillane, D. M., Farrell, P., Stone and Suiter, J. (2021). Ireland. Country Report, COST Action CA17135 Constitution-making and Deliberative Democracy (ConstDelib).

Helbig, K. and Schaal, G. S. (2018). Four Parameters for Measuring Democratic Deliberation: Theoretical and Methodological Challenges and How to Respond. *Politics and Governance*, 6(1), 11–21.

Houlihan, Erin C. and Bisary, S. (2021). Practical Considerations for Public Participation in Constitution-Building. What, When, How and Why?, International IDEA Policy Paper No. 24.

Hudson, A. (2018). When Does Public Participation Make a Difference? Evidence From Iceland's Crowdsourced Constitution. *Policy & Internet*, 10(2), 185–217.

Jonsson, M. E. (2015). Democratic Innovations in Deliberative Systems–the Case of the Estonian Citizens' Assembly Process. *Journal of Deliberative Democracy*, 11(1), 1–29.

Lacelle-Webster, A. and Warren, M. E. (2021). Citizens' Assemblies and Democracy. In *Oxford Research Encyclopedia of Politics*, https://oxfordre.com/politics/display/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-1975 (accessed on 2 June, 2023)

Lafont, C. (2017). Can Democracy be Deliberative & Participatory? The Democratic Case for Political Uses of Mini-Publics. *Daedalus*, 146(3), 85–105.

Landemore, H. (2015). Inclusive Constitution-Making: The Icelandic Experiment. *Journal of Political Philosophy*, 23(2), 166–191.

Lutz, D. S. (1995). Toward a Theory of Constitutional Amendment. In Levinson, S. (ed.), *Responding to Imperfection. The Theory and Practice of Constitutional Amendment*. Princeton: Princeton University Press, 237–274.

Maboudi, T. (2020). Reconstituting Tunisia: Participation, Deliberation, and the Content of Constitution. *Political Research Quarterly*, 73(4), 774–789.

Maboudi, T. and Nadi, G. P. (2016). Crowdsourcing the Egyptian Constitution: Social Media, Elites, and the Populace. *Political Research Quarterly*, 69(4), 716–731.

Mansbridge, J., Bohman, J., Chambers, S., Christiano, T., Fung, A., Parkinson, J., Thompson, D.F. and Warren, M. E. (2012). A Systemic Approach to Deliberative Democracy.

In Parkinson, J. and Mansbridge, J. (eds.), *Deliberative Systems*. Cambridge: Cambridge University Press, 1–26.

Mişcoiu, S. and Pârvu, C. (2021). Romania. Country Report, COST Action CA17135 Constitution-making and Deliberative Democracy (ConstDelib).

New Democracy Foundation (2009). *New Democracy: Putting People Back into Politics*. http://www.newdemocracy.com.au/library/case-studies/104-the- australian-citizens-parliament-2009.

Niessen, C., and Reuchamps, M. (2019). Designing a Permanent Deliberative Citizens' Assembly: The Ostbelgien Modell in Belgium. *Working Paper Series of the Centre for Deliberative Democracy and Global Governance*, 6. https://www.delibdem.org/_files/ugd/2965ca_dab3c0ac86b44b06adf6a3251bddb52d.pdf

Owen, D. and Smith, G. (2015). Survey Article: Deliberation, Democracy, and the Systemic Turn. *The Journal of Political Philosophy*, 23(2), 213–234.

Palermo, F. (2017). Towards Participatory Constitutionalism? Comparative European Lessons. In Blokker, P. (ed.), *Constitutional Acceleration within the European Union and Beyond*. London: Routledge, 26–47.

Parkinson, J. (2018). Ideas of Constitutions and Deliberative Democracy and How They Interact. In Levy, R., King, H., Orr, G. and King, J. (eds.), *The Cambridge Handbook of Deliberative Constitutionalism*. Cambridge: Cambridge University Press, 246–255.

Phillips, A. (1995). *The Politics of Presence*. Oxford: Clarendon Press.

Praxis Centre for Policy Research. (2014). *People's Assembly in Estonia – Crowdsourcing Solutions for Problems in Political Legitimacy: Case Description of Deliberative Process.* https://www.kogu.ee/wp-content/uploads/2013/01/Peoples-assembly_summary-by-Praxis_2014.pdf.

Renwick, A. (2014). *After the Referendum: Options for a Constitutional Convention*. The Constitution Society.

Reuchamps, M. and Suiter, J. (2016). *Constitutional Deliberative Democracy in Europe*. Colchester: ECPR Press.

Smith, G. (2009). *Democratic Innovations: Designing Institutions for Citizen Participation*. New York: Cambridge University Press.

Steiner, J. (2008). Concept Stretching: The Case of Deliberation. *European Political Science*, 7, 1–5.

Suteu, S. and Tierney, S. (2018). Squaring the Circle? Bringing Deliberation and Participation Together in Processes of Constitution-Making. In Levy, R., King, H., Orr, G. and King, J. (eds.), *The Cambridge Handbook of Deliberative Constitutionalism*. Cambridge: Cambridge University Press, 282–294.

Thompson, D. (2008). Deliberative Democratic Theory and Empirical Political Science. *Annual Review of Political Science*, 11, 497–520.

Tully, J. (1995). *Strange Multiplicity: Constitutionalism in an Age of Diversity.* Cambridge: Cambridge University Press.

Urbinati, N. and Vandelli, L. (2021). *La democrazia del sorteggio.* Turin: Einaudi.

Verdugo, S. and Prieto, M. (2021). The Dual Aversion of Chile's Constitution-making Process. *International Journal of Constitutional Law*, 19(1), 149–168.

Welp, Y. and Soto, F. (2020). Beyond Fashion and Smokescreens: Citizens' Deliberation of Constitutional Amendments. ConstDelib Working Paper No. 7/2020.

Wheatley, J. and Mendez, F. (2007). *Patterns of Constitutional Design: The Role of Citizens and Elites in Constitution-Making*. London: Routledge.

Zurn, C. F. (2016). Democratic Constitutional Change: Assessing Institutional Possibilities. In Bustamante, T. and Fernandes, B. G. (eds.), *Democratizing Constitutional Law*. Cham, Switzerland: Springer, pp. 185–212.

3 From deliberative systems to democracy

Peter Stone

3.1 Introduction

Over the past decade, the *systemic* approach to deliberative democracy has garnered increasing attention among deliberative democrats. The approach was pioneered in the seminal paper "A Systemic Approach to Deliberative Democracy" (2012), co-authored by leading deliberative democrats Jane Mansbridge, James Bohman, Simone Chambers, Thomas Christiano, Archon Fung, John Parkinson, Dennis Thompson, and Mark Warren.[1] The deliberative systems literature has since taken up many questions raised by Mansbridge et al., but one of these questions has received surprisingly little attention. Just what makes a deliberative system *democratic*? In this chapter, I will take up this question.

Section 3.2 introduces the deliberative systems approach and reviews some of the controversies generated by it. It also lays out the three functions Mansbridge et al. claim deliberative systems must undertake—the *epistemic*, *ethical*, and *democratic* functions. Section 3.3 considers the relationship between democracy and deliberation in the deliberative systems approach, and stresses the critical importance of the democratic function. Section 3.4 then examines this function in more depth, challenging the way it is employed within the deliberative systems literature. It argues that Mansbridge et al., and most deliberative systems theorists to follow them, have understood this function primarily in terms of *inclusion*. At the same time, however, they have implicitly made use of a more expansive and multidimensional understanding of the democratic function in applying deliberative systems theory—in critiquing, for example, excessive reliance upon deliberative minipublics. Section 3.5 suggests that *popular sovereignty* represents a second critical dimension of the democratic function, a second value alongside inclusion. It is this value to which deliberative systems theorists have implicitly appealed in their critiques of minipublics. The explication and defence of the various dimensions of the democratic function—dimensions taking this function beyond inclusion—is a vitally important task for deliberative systems theory.

3.2 Deliberative systems

Mansbridge et al. contend that "it is necessary to go beyond the study of individual institutions and processes to examine their interaction in the system as a whole." To do this is to adopt "what might be called a *systemic approach to deliberative*

democracy." Such an approach is necessary because "no single forum, however ideally constituted, could possess deliberative capacity sufficient to legitimate most of the decisions and policies that democracies adopt" (emphasis in original; Mansbridge et al., 2012, pp. 1–2).

Since the publication of Mansbridge et al.'s seminal paper, the deliberative systems approach has generated numerous controversies.[2] Some theorists, for example, have taken issue with the effort of deliberative systems theorists to expand the range of communication counted as "deliberation" (Owen and Smith, 2015). While some theorists have supported the idea of counting forms of "everyday talk" as deliberation (Mansbridge, 1999), others oppose the inflation of what counts as deliberation as a pernicious form of "concept stretching" (Steiner, 2008; see also Goodin, 2018; Parkinson, 2018). Still others maintain a conservative definition of "deliberation," but fear the consequences for political activism of prioritizing deliberation, even at a systemic level (Cross, 2021; see also Boswell and Corbett, 2017, p. 814).

One question considered by Mansbridge et al., however, has received little sustained scholarly attention. This is the question of the *functions* that a deliberative system must serve. This relative neglect is surprising, given the importance of the topic. As Mansbridge et al. point out, "In the systemic approach, we assess institutions according to how well they perform the functions necessary to promote the goals of the system." They admit that any list of such functions is likely to prove controversial with deliberative democrats, but offer three functions they believe to be "relatively non-controversial in their most general articulation." These are the *epistemic*, the *ethical*, and the *democratic* functions. They do not take this list to be definitive, merely illustrative of "how a system approach can be applied" (Mansbridge et al., 2012, pp. 10–11).[3]

Of the three elements on Mansbridge et al.'s list, the epistemic function has proven by far the most controversial. According to Mansbridge et al., "The *epistemic* function of a deliberative system is to produce preferences, opinions, and decisions that are appropriately informed by facts and logic and are the outcome of substantive and meaningful consideration of relevant reasons" (emphasis in original; Mansbridge et al., 2012, p. 3). This will presumably cause the system to reach decisions that are reasoned and well-justified. Epistemic democrats have no problems designing deliberative systems with a critical focus upon their epistemic potential (e.g., Landemore, 2012). Other democratic theorists, however, fear the focus upon epistemic considerations necessitates a sidelining of democracy (e.g., Chambers, 2009). Mansbridge et al. are less clear on the ethical function, but they note that it involves (among other things) the promotion of "mutual respect among citizens" (Mansbridge et al., 2012, p. 11). The idea seems to be a deliberative system performs ethically if it leads to the system's members being treated (and treating each other) in ethical ways. The ethical function has proven less controversial among deliberative systems theorists than the epistemic function. This is probably because it squares well with the long tradition of thought on the educative effects of democracy, a tradition associated with Mill (Pateman, 1970). The democratic function has also generated little critical scrutiny. This is unfortunate, because

contrary to what Mansbridge et al. suggests, it is often genuinely unclear what the democratic function requires of a deliberative system. And this matters because the democratic function, or something like it, regularly plays a prominent role in the evaluation of deliberative systems.

Consider, for example, the question of the role *deliberative minipublics*—randomly-selected groups of citizens selected to examine a question of public importance—should play in contemporary democracies. Deliberative minipublics play an increasing role in democratic politics, including high-stakes constitutional politics. Witness, for example, the central role played by three successive citizen assemblies[4] in the reform of the Irish Constitution. Many deliberative democrats cite the Irish experience as exemplifying the contribution deliberative minipublics can make to democratic systems, and urge further reliance upon them (Farrell, Suiter, and Harris, 2019; Farrell and Stone, 2020). Other democratic theorists, however, caution against excessive reliance upon deliberative minipublics, fearing they can compromise the system's democratic credentials (Lafont, 2015). And so do deliberative minipublics render deliberative systems *more* or *less* democratic? Do they facilitate or impede the performance of the democratic function? The answer most likely depends upon other relevant features of the deliberative system in question, but any answer will depend upon how the democratic function is specified. This is not as easy a task as Mansbridge et al. imply, for reasons I will explain. Before taking up this task, however, I will briefly consider the relationship between deliberative systems and democracy more generally.

3.3   Deliberative systems and democracy

According to Mansbridge et al., "A *deliberative system* is one that encompasses a talk-based approach to political conflict and problem-solving—through arguing, demonstrating, expressing, and persuading." This definition makes plain the normative attractiveness of a political system oriented around deliberation. In a deliberative system, political actors resolve political disagreements (to the greatest extent possible) by talking things through, in an effort to find solutions to political problems acceptable to everyone. "In a good deliberative system, persuasion that raises relevant considerations should replace suppression, oppression, and thoughtless neglect" (emphasis in original; Mansbridge et al., 2012, pp. 4–5). And even when complete consensus is impossible (as is routinely the case in decision-making systems of any real size), and decisions must be made in the end via other means (such as voting), the efforts at persuasion should go a long way to persuade the losers that the winners had good reasons for doing what they did, and that the losers' concerns were taken into account. This will never happen perfectly, but a deliberative system should accomplish this task better than any other possible approach.[5]

A deliberative system is thus an obviously desirable form of decision-making system. But it is important to note that there is nothing in the definition that requires a deliberative system to be democratic. A "talk-based approach to political conflict and problem-solving" could in principle be practiced only within a small political

elite. This should not be surprising given the theoretical history of deliberative democracy. After all, while the concept of deliberative democracy had been developing since at least the 1970s, the term itself originates in the work of Joseph Bessette (Floridia, 2018, p. 38). Bessette's *The Mild Voice of Reason* (1994), a major work in the area, consists of a study focused on the U.S. Senate. While the Senate has long been regarded as a forum for meaningful deliberation, it has also long been one of the less democratic features of the U.S. political system.[6] Mansbridge et al. admit as much, noting that their focus will be on "deliberative *democratic* systems," or "systems that are broadly defined by the norms, practices, and institutions of democracy" (emphasis in original; Mansbridge et al., 2012, p. 8).

At the same time, however, there are good reasons for wanting any decision-making system to be democratic, and these reasons apply *a fortiori* to deliberative systems. If the talk-based approach to political conflict were practiced only within an exclusive circle, those excluded from this circle would be denied any opportunity to take part in the conversation. They would not be able to argue their case for why certain political options were unacceptable to them. It is hard to see how the relationship between the included and the excluded could be governed by anything other than strategic considerations such as force. A deliberative system that is to count as legitimate to the entire population, then, must be democratic in some sense. It is therefore natural to demand that deliberative systems perform the democratic function identified by Mansbridge et al. This point is recognized by them in their description of the democratic function, as will become evident shortly.

But this again raises the question of what specifically the democratic function requires of a deliberative system. The next section tackles this question, but first one final observation is appropriate in this section. Deliberative democrats have tended to treat deliberative democracy as one among several forms of democracy (e.g., participatory democracy, radical democracy, etc.). In other words, the word "deliberative" modifies "democracy." On Mansbridge et al.'s approach, however, it is "democracy" that qualifies "deliberative." A deliberative democracy—that is, a democratic form of deliberative system—is just one particular (if highly desirable) form of deliberative system.[7] As noted before, this is consistent with the history of both the theory and practice of deliberation, given that the talk-based approach to politics can be (and has been) confined to a small elite. But it makes a bit more understandable the concerns some democrats have expressed as to the democratic credentials of deliberative systems. Establishing those credentials—and working out how those credentials get established—therefore becomes all-the-more important.

3.4   The democratic function

Mansbridge et al.'s description of the democratic function deserves to be quoted in full:

> A final function of deliberation, not completely separable from the first two, is to promote an inclusive political process on terms of equality. We call this the *democratic* function. The inclusion of multiple and plural voices,

interests, concerns, and claims on the basis of feasible equality is not simply an ethic added to democratic deliberation; it is the central element of what makes deliberative democratic processes democratic. Who gets to be at the table affects the scope and content of the deliberation. For those excluded, no deliberative democratic legitimacy is generated. In short, a well function-ing democratic deliberative system must not systematically exclude any citi-zens from the process without strong justification that could be reasonably accepted by all citizens, including the excluded. On the positive side, it ought also actively to promote and facilitate inclusion and the equal opportunities to participate in the system.

> (emphasis in original; Mansbridge et al., 2012, p. 12)

Mansbridge et al. thus neatly summarize the primary reason[8] why deliberative sys-tems should be democratic: the process will enjoy substantially less legitimacy in the eyes of anyone excluded from the deliberative process.[9]

At the heart of Mansbridge et al.'s specification of the democratic function is the demand for *inclusion*. This demand has a negative and a positive side, as Mans-bridge et al. acknowledge. Negatively, no one must be systematically excluded from the deliberative system without strong justification. Positively, the system ought actively to promote the inclusion of everyone.[10] In specifying the democratic function this way, Mansbridge et al. conform to a pattern followed by many other deliberative systems theorists. Hayley Stevenson and John Dryzek, for example, want deliberative systems to be "authentic, inclusive, and consequential" (Ste-venson and Dryzek, 2014, p. 32; quoted in Owen and Smith, 2015, p. 215). And Cross (2021, p. 869) sees the demand for increased inclusion as motivating much of the deliberative systems theory project. (See also Curato and Böker, 2016, p. 174.) Similarly, Boswell and Corbett (2017, p. 804) equate fulfilling the demo-cratic function with eliciting "a plurality of voices and claims." For all of these theorists, ensuring inclusion seems tantamount to ensuring that the democratic function of deliberative systems is properly performed.

At the same time, however, Mansbridge et al. implicitly rely upon an under-standing of the democratic function that goes well beyond inclusion. In other words, they tacitly assume that a democratic system could perform well at inclu-sion and yet still fail to perform the deliberative function because it lacked other features. This is most clearly evident in their treatment of deliberative minipublics.

To fix ideas, consider a *lottocratic* political system (Guerrero, 2014). In such a political system, all important political decisions are entrusted to randomly-selected deliberative minipublics. As noted before, there are different types of deliberative minipublics, so assume that the ones used in decision-making are citi-zen assemblies. Citizen assemblies are typically larger than other types of delib-erative minipublic, and they are convened for longer periods of time, so it makes sense that if any type of minipublic could be entrusted with real decision-making power, it would be this one (Farrell and Stone, 2020, Table 11.1). The assemblies are filled via a stratified process, to ensure proportionate representation along important social dimensions (race, gender, etc.). Such assemblies take up policy

questions, receive information collected by government agencies, hear from and question experts, and receive input from the general public. The assemblies then make their decisions after intensive deliberation, and widely publicize both their decisions and their reasons for making them. Imagine that such assemblies function in accordance with the protocols of James Fishkin's deliberative opinion polls (Fishkin, 1991), which have been described as embodying the "gold standard" for deliberative processes (Mansbridge, 2010). This is important, as not all minipublic types meet the high deliberative standards ensured by Fishkin's process. (I am grateful to Keith Sutherland for stressing this point.)[11]

While a lottocracy remains a hypothetical decision-making system at present, it has its proponents (e.g., Van Reybrouck, 2016; Hennig, 2017),[12] and more importantly, is worth taking seriously as a hypothetical case here. Just how well would a well-constructed lottocracy perform Mansbridge et al.'s deliberative system functions? In particular, how well would it perform the democratic function?

On the one hand, Mansbridge et al. clearly do not believe that a lottocracy could ever perform the democratic function. As John Parkinson notes,

> [O]ne of the key motivations behind the systemic turn in deliberative theory is to put the democracy back into deliberation because of concerns about the democratic possibilities of isolated minipublics both in principle and in practice in modern technocratic states. Indeed, it has been thought for some time now that the deliberative and democratic desiderata pull in opposite directions, with deliberative criteria being maximized in small-scale settings and the democratic being maximized in large.
>
> (Parkinson, 2012, p. 152)

Parkinson does not elaborate here upon the "concerns about the democratic possibilities of isolated minipublics," although he does elsewhere (as will be seen). But it is clear that in the eyes of Parkinson, and many deliberative systems theorists like him, minipublics represented a move that threatened to enshrine deliberation *at the expense* of democracy. And this even while deliberative minipublics were used only in an advisory capacity. It is hard to imagine a move to grant minipublics a monopoly on political decision making could increase democracy, at least according to this line of thinking.

On the other hand, it is hard to see how Mansbridge et al. could deny that a lottocracy performs the democratic function well, at least if inclusion really is the defining feature of this function. As noted before, they specify this function almost exclusively in terms of inclusion—of who "gets to be at the table" during the deliberative process. How well would a lottocracy satisfy the inclusivity demand, either negatively or positively?

It is hard to see how a lottocracy would not score well on the negative side. A random selection process, after all, could hardly be accused of systematically excluding anyone from the deliberative process. Indeed, the entire point behind

selecting citizens via lottery is to ensure there is no reason favouring one citizen over any other (Stone, 2011). The situation is less clear on the positive side, but there is a very reasonable case to be made for lottocracy on this score as well. After all, Fishkin-style citizen assemblies undertake stratification so as ensure that all relevant segments of society are represented in proportion to their numbers in the population. In the case of deliberative opinion polls, this stratification is accomplished along various demographic lines (gender, race, etc.). But there is no reason in principle why it could not be accomplished along other lines. Perhaps one may wish for proportionate representation of "discourses" within the population (Dryzek and Niemeyer, 2008). In other words, whether one wishes to see the inclusion of people according to their "voices," their "interests," their "concerns," or their "claims," stratification can be arranged so as to ensure that the inclusion takes place proportionately. Such stratification surely counts as a very active effort to "promote and facilitate inclusion." Indeed, such an effort would likely be as successful as any could be given the limited number of participants on any such decision-making body.

Nicole Curato and Marit Böker, in a sympathetic but highly critical paper on deliberative minipublics and deliberative systems, claim that "a systemic analysis underscores that mini-publics do not play a constitutive but rather an auxiliary role in deliberative democratisation" (Curato and Böker, 2016, p. 185). They elaborate that minipublics can only "claim relevance and legitimacy in the deliberative system" by being "consequential in a deliberation-enhancing sense," what they call the "external quality" of minipublics (*ibid.*, p. 176). In other words, deliberative minipublics must usefully inform the real "centres of power" in the decision-making system without overstepping their bounds. But in a lottocracy, the deliberative minipublics are the centres of power, and they have no bounds to overstep. It is hard, therefore, to see the objection to reliance upon them, especially given their ability to contribute to what deliberative systems theorists seem to regard as their central democratic value—inclusion.

3.5   Beyond inclusion

Democratic theorists, as noted before, routinely associate the democratic function of deliberative systems with inclusion. Deliberative systems must not systematically exclude anyone, and must ensure that everyone is included on the same terms. Lottocracy, I have suggested, can fully realize this demand. I do not make this point as a defence of lottocracy. Rather, my point is that, to whatever extent that deliberative systems theorists find lottocracy inadequate (in terms of the democratic function), it must be on the grounds of something over and above the characterization of inclusion noted above. In other words, it must be because inclusion does not fully characterize the democratic function of deliberative systems, contrary to what many deliberative systems theorists seem to suggest.

Unfortunately, deliberative systems theorists are often unclear as to what else they might require in terms of the democratic function. Indeed, they often seem to

take for granted that the demand for inclusion somehow rules out reliance upon randomly-selected minipublics all by itself. A good example of this is provided by John Parkinson:

> But let us not forget that many small-scale democratic innovations have inclusion problems too. They involve *some*, quota-sampled or stratified, randomly selected citizens; in an event not of their choosing; to answer questions posed to them by others; and while some formats give those few citizens some ability to challenge the agenda, make disruptive recommendations, and some effective voice outside the room, they are all, at the end of the day, tools in the hands of their commissioners, even academic commissioners, set in a context of wider interests and power relations…a democracy must include not only invited spaces, in which the power of invitation rests solely with the already-powerful; but claimed spaces too, spaces in which all citizens have an absolute right to participate and need not wait for the roll of the random selection dice.
>
> (emphasis in original; Parkinson, 2018, p. 437; see also Parkinson, 2012, p. 151)

It is difficult to know what to make of this objection. Does Parkinson mean to suggest that the mere fact that an institution does not allow anyone to participate, any time they wish to participate, renders the institution undemocratic? If so, an elected legislature—indeed, pretty much any large-scale decision-making institution except a referendum—fails the same test. Parkinson also seems to equate invitation at the discretion of the powerful with invitation at the discretion of "the roll of the random selection dice." Assuming God is not the one playing dice, this gets things exactly backwards; random selection is often desirable precisely *because* it takes discretion out of the hands of the powerful (Delannoi, Dowlen, and Stone, 2013). Contrary to what Parkinson suggests, random selection has fewer inclusion problems than virtually any selection mechanism one might devise.

Parkinson's claim, however, does get at another side of the democratic function that many deliberative systems theorists seem to have in mind when they fret about deliberative minipublics. Recall Parkinson's suggestion (quoted earlier) that "the deliberative and democratic desiderata pull in opposite directions, with deliberative criteria being maximized in small-scale settings and the democratic being maximized in large" (Parkinson 2012, p. 152). For Parkinson, true democracy can only be democracy "in the large." This demand goes significantly beyond inclusion. It is not enough that everyone has the same opportunities to participate as everyone else. It is not enough for no interest (or perspective, or discourse) to be excluded from decision-making. There must be a place—and a place at the heart of the political process, no less—in which the entire citizen body, the *demos*, acts as one.[13]

This distinct demand—call it the demand for *popular sovereignty*—appears in many arguments by deliberative systems theorists. In examining the question of what makes a deliberative system democratic, for example, Parkinson argues that

"a response needs to consider how a system is both 'plugged in' to the source of legitimate authority, the demos, and to the outlet of binding collective decisions and executive power" (Parkinson, 2018, p. 432). He later adds that the "democratic requirements" of a deliberative system must include the following: "binding collective agreements…are subject to formal legitimation either by representatives under a regime of authorization and accountability or directly through referendums" (*ibid.*, p. 436). In other words, formal legitimation by the *demos*, either directly via referendums or indirectly via elected representatives.

Deliberative minipublics, no matter how well-constructed, are not "plugged in" to the *demos* in any way. They may provide inclusiveness, but they do not provide a space in which the entire citizen body can participate, or a direct connection to that body. Elections and referenda (under something like universal suffrage) do provide this, and so to the extent that the democratic function depends upon such a space, a deliberative minipublic could be suspected of detracting from it, and a lottocracy could stand accused of foreclosing upon it. It is, I believe, this fact—this failure of deliberative minipublics to embody the value of popular sovereignty— that explains why so many democratic theorists are suspicious of them.

Parkinson, then, implicitly appeals to the value of popular sovereignty in explaining the so-called democratic limitations of deliberative minipublics. He does not, however, defend this criterion, nor does he make plain that he is modifying the articulation of the democratic function expressed by Mansbridge et al. Rather, he acts as though the conclusions generated via this popular sovereignty requirement follow from inclusion all by itself. The same move, I would argue, is made by any deliberative systems theorist who defines the democratic function in terms of inclusion alone and yet dismisses minipublics as inadequate for performing this function.

This move is problematic for three reasons. First, and most obviously, it oversimplifies the democratic function by acting as though this function required fulfilment of a single value only. This oversimplification makes it difficult to apply in evaluating and comparing deliberative systems. Second, because the popular sovereignty requirement is implicit, it never seems to receive proper articulation and defence. This makes productive argument over deliberative systems more difficult. Parkinson's demand, for example, for "formal legitimation either by representatives under a regime of authorization and accountability or directly through referendums," dismisses deliberative minipublics as nondemocratic by fiat.[14] Given the long association between sortition and democracy—an association dating back to fifth-century BCE Athens—such a dismissal cannot be made without proper argument.

The third problem stems from the first two. Many of the arguments made by deliberative systems theorists seem to depend upon this second side of the democratic function, but leaving this side underspecified makes it difficult to see how the proposals of these theorists could satisfy it. James Bohman, for example, takes "democracy in its most minimal sense to be some ideal of *self rule*" (emphasis in original; Bohman, 2012, p. 72). At the same time, however, he argues that "there is an unavoidable gap between the ideal of self rule and the requirements of

representation" (*ibid.*, p.78), one that no single institution can fill. As a result, he argues that "a deliberative system ought to be structured so as to promote political interaction across various levels and types of institutions so as to achieve the possibility for self rule" (*ibid.*, p. 75).

It is natural that Bohman should wish to do this. After all, he is among the deliberative systems theorists for whom "the deliberative system is de-centred from a focus on the state, enabling analysis of deliberative systems at any level and form of governance" (Owen and Smith, 2015, pp. 215–216; see also Dryzek 2011). But this raises the obvious question of what "self rule" could mean in such a decentred context. It is one thing to argue that a single elected legislature represents the *demos*, given that it was the *demos* who selected the representatives. But by what process could a *demos* be said to rule when no agent can be said to represent it as a whole? Indeed, what could "self rule" even mean in a decentred context, where the boundaries of the *demos* may not be well-defined? Doesn't "self rule" require a self that can be said to rule? Of what could such a self consist, on Bohman's understanding? Any answer will require some way either of articulating the popular sovereignty condition in a revisionist way or an alternative understanding of what the democratic function requires.

To summarize: deliberative systems theorists have hitherto treated the democratic function as a single-dimensional function, embodying only a single value (inclusion). In practice, however, they have relied upon an understanding of this function that is multidimensional, embodying at least one additional value (popular sovereignty). This reliance is implicit in their critique of deliberative minipublics, a critique that cannot be sustained by appeal to the demands of inclusion alone. Deliberative systems theorists should acknowledge the multidimensional nature of the democratic function; more than that, they must either offer a defence of popular sovereignty as an integral part of this function or else cease reliance upon it.[15] The performance of either of these tasks would significantly advance deliberative systems theory.

Acknowledgements

Notes

1 Owen and Smith (2015, p. 213) describe the paper as a "manifesto for the systemic turn." Note that the term "deliberative systems" was introduced by Mansbridge (1999), although the idea has many antecedents (Mansbridge, et al., 2012, p. 2, n. 1).
2 For overviews of some of the key debates, see Owen and Smith (2015) and Parkinson (2018).

3 Owen and Smith (2015, p. 225) note the three functions, describing them as "far weaker than the standards usually articulated within theories of deliberative democracy," but without offering more than "provisional guidance" as to a different set of functions.

4 A citizen assembly is one particular type of deliberative minipublic (Escobar & Elstub, 2017).

5 Cf. Owen and Smith (2015, p. 218): "the core justification of deliberative democracy as a political ideal [is] that the legitimacy of our collective political arrangements (institutions, laws, policies) rests on mutual justification enacted through deliberative practices amongst free and equal citizens."

6 Most U.S. senators were not directly elected until 1913, after the Seventeenth Amendment to the U.S. Constitution was ratified. Moreover, states are still represented in the U.S. Senate equally, without regard to population, enabling a form of "minority rule." The U.S. Senate was of course modelled on the Senate of the Roman Republic, a body with a similarly deliberative self-image but with a similarly inegalitarian and undemocratic pedigree.

7 Owen and Smith (2015, p. 228) stick with the traditional usage, describing "deliberative democracy" as "simply one species of the genus of democratic deliberation." They see deliberation as one component—and not necessarily the most important one—within a democratic decision-making system (*ibid.*, p. 232). This is compatible with Mark Warren's "problem-based" approach to democratic theory, which treats deliberation as "one means among others for addressing (democratically) desirable functions with political systems" (Warren, 2017, p. 39).

8 There are other possible reasons. The democratic and epistemic functions, for example, may overlap, such that maximally inclusive deliberative systems make better decisions by virtue of the diversity of voices they include. This is a point stressed by Landemore (2012).

9 Less legitimacy, but not necessarily none at all. After all, a deliberative system is a reason-giving system, and those excluded from the reason-giving process might still be impressed by the quality of the reasons put forward to justify decision-making, even if they still resent being excluded. In other words, a deliberative system may generate a certain amount of legitimacy simply by performing the epistemic function well, even if it would enjoy more legitimacy if it also performed the democratic function well.

10 It is worth asking, as an aside, how large the gap is between the negative and the positive side of this demand. What would a deliberative system look like if it realized the negative side of the demand but not the positive side? What does the positive side add to the demand for inclusion? (I assume that realization of the negative side is a necessary but not sufficient condition for the realization of the positive side, much as formal equality of opportunity is a necessary but not sufficient condition for substantive equality of opportunity.)

11 The citizen assemblies in a lottocracy would differ from Fishkin's deliberative opinion polls in that they would enjoy real decision-making power. This would make them "minidemoi," according to James Bohman (2012). This may have repercussions for the ability of such bodies to ensure the deliberative quality attained in assemblies without such power, a concern that has animated many critics of lottocratic proposals (e.g., Landa & Pevnick, 2021). Space precludes further consideration of this problem here.

12 To employ the terminology used in Farrell and Stone (2020, pp. 239–243), lottocracies embody the strong, rather than the weak, vision of citizen assemblies.

13 Chambers (2009) inquires whether deliberative democracy has abandoned mass democracy. But given the understanding of the democratic function upon which Parkinson et al. implicitly rely, a deliberative democracy that wasn't a mass democracy wouldn't be a democracy at all.

14 Stone (2021) distinguishes between *aleatory democracy*, *direct democracy*, and *electoral democracy*. Parkinson would simply rule out aleatory democracy as a form of democracy.

15 Landemore (2020) provides an account of democracy that focuses upon inclusion at the expense of popular sovereignty. I discuss Landemore's account in Stone (2022).

References

Bessette, J. M. (1994). *The Mild Voice of Reason: Deliberative Democracy and American National Government.* Chicago: University of Chicago Press.

Bohman, J. (2012). Representation in the Deliberative System. In J. Parkinson, & J. Mansbridge (Eds.), *Deliberative Systems* (pp. 72–94). Cambridge University Press.

Boswell, J., & Corbett, J. (2017). Why and How to Compare Deliberative Systems. *European Journal of Political Research, 56*(4), 801–819.

Chambers, S. (2009, June). Rhetoric and the Public Sphere: Has Deliberative Democracy Abandoned Mass Democracy? *Political Theory, 37*(3), 323–350.

Cross, B. (2021). Deliberative Systems Theory and Activism. *Critical Review of International Social and Political Philosophy, 24*(6), 866–883. doi:10.1080/13698230.2019.1584842

Curato, N., & Böker, M. (2016). Linking Mini-Publics to the Deliberative System: A Research Agenda. *Policy Sciences, 49*(2), 173–190. doi:10.1007/s11077-015-9238-5

Delannoi, G., Dowlen, O., & Stone, P. (2013). *The Lottery as a Democratic Institution.* The Policy Institute. Dublin: Trinity College. Retrieved from https://www.tcd.ie/policy-institute/assets/pdf/Lottery_Report_Oct12.pdf

Dryzek, J. S. (2011). Global Democratization: Soup, Society, or System? *Ethics & International Affairs, 25*(2), 211–234. doi:10.1017/S0892679411000074

Dryzek, J. S., & Niemeyer, S. (2008). Discursive Representation. *American Political Science Review, 102*(4), 481–493.

Escobar, O., & Elstub, S. (2017). *Forms of Mini-Publics.* newDemocracy. Retrieved from https://www.newdemocracy.com.au/2017/05/08/forms-of-mini-publics/

Farrell, D. M., & Stone, P. (2020). Sortition and Mini-Publics: A Different Kind of Representation. In R. Rohrschneider, & J. Thomassen (Eds.), *The Oxford Handbook of Political Representation in Liberal Democracies* (pp. 228–246). Oxford: Oxford University Press. doi:10.1093/oxfordhb/9780198825081.013.11

Farrell, D. M., Suiter, J., & Harris, C. (2019). 'Systematizing' Constitutional Deliberation: The 2016–18 Citizens' Assembly in Ireland. *Irish Political Studies, 34*(1), 113–123. doi:10.1080/07907184.2018.1534832

Fishkin, J. S. (1991). *Democracy and Deliberation: New Directions for Democratic Reform.* New Haven, CT: Yale University Press.

Floridia, A. (2018). The Origins of the Deliberative Turn. In A. Bächtiger, J. S. Dryzek, J. Mansbridge, & M. Warren (Eds.), *The Oxford Handbook of Deliberative Democracy* (pp. 35–54). Oxford: Oxford University Press. doi:10.1093/oxfordhb/9780198747369.013.25

Goodin, R. (2018). If Deliberation Is Everything, Maybe It's Nothing. In A. Bächtiger, J. S. Dryzek, J. Mansbridge, & M. Warren (Eds.), *Oxford Handbook of Deliberative Democracy* (pp. 883–899). Oxford: Oxford University Press. doi:10.1093/oxfordhb/9780198747369.013.23

Guerrero, A. A. (2014). Against Elections: The Lottocratic Alternative. *Philosophy and Public Affairs, 42*(2), 135–178.

Hennig, B. (2017). *The End of Politicians: Time for a Real Democracy.* London: Unbound.

Lafont, C. (2015). Deliberation, Participation, and Democratic Legitimacy: Should Deliberative Mini-publics Shape Public Policy? *Journal of Political Philosophy, 23*(1), 40–63.

Landa, D., & Pevnick, R. (2021). Is Random Selection a Cure for the Ills of Electoral Representation? *Journal of Political Philosophy, 29*(1), 46–72.

Landemore, H. (2012). *Democratic Reason: Politics, Collective Intelligence, and the Rule of the Many.* Princeton, NJ: Princeton University Press.

Landemore, H. (2020). *Open Democracy: Reinventing Popular Rule for the Twenty-First Century*. Princeton, NJ: Princeton University Press.

Mansbridge, J. (1999). Everyday Talk in the Deliberative System. In S. Macedo (Ed.), *Deliberative Politics: Essays on 'Democracy and Disagreement'* (pp. 211–39). Oxford: Oxford University Press.

Mansbridge, J. (2010). Deliberative Polling as the Gold Standard. *The Good Society, 19*(1), 55–62.

Mansbridge, J., Bohman, J., Chambers, S., Christiano, T., Fung, A., Parkinson, J., Thompson, D.F., and Warren, M. E. (2012). A Systemic Approach to Deliberative Democracy. In J. Parkinson, & J. Mansbridge (Eds.), *Deliberative Systems* (pp. 1–26). Cambridge: Cambridge University Press.

Owen, D., & Smith, G. (2015). Survey Article: Deliberation, Democracy, and the Systemic Turn. *Journal of Political Philosophy, 23*(2), 213–234.

Parkinson, J. (2012). Democratizing Deliberative Systems. In J. Parkinson, & J. Mansbridge (Eds.), *Deliberative Systems* (pp. 151–172). Cambridge: Cambridge University Press.

Parkinson, J. (2018). Deliberative Systems. In A. Bächtiger, J. S. Dryzek, J. Mansbridge, & M. Warren (Eds.), *The Oxford Handbook of Deliberative Democracy* (pp. 432–446). Oxford: Oxford University Press. doi:10.1093/oxfordhb/9780198747369.013.8

Pateman, C. (1970). *Participation and Democratic Theory.* Cambridge: Cambridge University Press.

Steiner, J. (2008). Concept Stretching: The Case of Deliberation. *European Political Science, 7*(2), 186–190.

Stevenson, H., & Dryzek, J. (2014). *Democratizing Global Climate Governance.* Cambridge: Cambridge University Press.

Stone, P. (2011). *The Luck of the Draw: The Role of Lotteries in Decision Making.* Oxford: Oxford University Press.

Stone, P. (2021). Democracy in Ireland: Theory and Practice. In D. M. Farrell, & N. Hardiman (Eds.), *Oxford Handbook of Irish Politics* (pp. 89–103). Oxford: Oxford University Press.

Stone, P. (2022). Why Open Democracy? Paper presented at "What Demos for the 21st Century?" American University in Paris, April 21–22.

Van Reybrouck, D. (2016). *Against Elections: The Case for Democracy* (L. Waters, Trans.) London: The Bodley Head.

Warren, M. E. (2017). A Problem-Based Approach to Democratic Theory. *American Political Science Review, 111*(1), 39–53.

4 Gender and deliberative constitution-making

Claudia Heiss and Monika Mokre

4.1   Introduction

Democratic theory identifies gender as a relevant source of misrecognition and inequality in public deliberation, as well as a key element to assess the quality of democracy. While legal studies have increasingly assumed a gender perspective, constitutionalism has only recently developed a specific concern for the role played by gender in constitution-making (Baines and Rubio-Marin 2004). This chapter seeks to contribute to this literature by approaching constitution-making and deliberative democracy from a gender perspective, where gender issues are understood as embedded in intersectional societal structures. On the basis of theoretical considerations and two case studies, we aim to elaborate the nexus between the participation of women's organizations and individual women in law-making and the outcome of these procedures, i.e., legislation shaped towards the specific interests and needs of women in general and specific groups of women.

The theoretical section starts from the position of women in democracy and extends the gender perspective to an intersectional approach. It then discusses the role of constitutions in democratic societies and of constitution-making procedures with a focus on civil society and deliberation.

The two case studies are the development of gender-related basic legislation in the European Union (EU) and Chile. These case studies in no way exhaust the many ways in which gender issues influence the contents of constitutions and the forms of constitution-making. As comprehensive representativeness cannot be achieved by this article, the case selection is based on the principle of the 'most different' cases. In this way, a great variety of possible constitutional developments and outcomes can be presented.

The two case studies have in common that gender issues and the participation of women have played a paramount role in constitution-making. They differ in that (1) unlike Chile, the EU is not a nation state; (2) EU Treaties (the EU equivalent to national constitutions) have developed over a long time, while the Chilean constitutional process has been relatively short; and (3) the ongoing Chilean constitutional process is a very recent phenomenon, which coincides with a belated expansion of women's rights after the military dictatorship, while gender legislation in the EU goes back to the 1950s.[1]

4.2 The partial inclusion of women in democracy

According to Robert Dahl (quoted after Urbinati 2012: 469), democracy begins with the 'moral judgment that all human beings are of equal intrinsic worth'. Still, in early periods of modern democracy, slaves, people without property, and women were legally excluded from citizenship rights (Brubaker 1994:71).

> [E]ven when citizenship is formally extended to ever-broader groups of subjects, widespread enjoyment or practice of citizenship is not thereby guaranteed. Rather, there is often a gap between possession of citizenship status and the enjoyment and performance of citizenship in substantive terms.
>
> (Bosniak 2005: 195)

It is of crucial importance here that political rights and protection have been mostly understood as part of the public sphere, while women's lives have been relegated to the private sphere. 'The integrative effect of citizenship rights [is] applied to male citizens, while for women family relationships and marriage should form the most important social relations' (Appelt 1999: 89, translation by the authors). Strategies for women's empowerment and participation in politics can develop 'from above', through political institutions, or 'from below', through civil society activism (cf. Siim 2000). In practice, these two strategies frequently go hand in hand.

4.3 An intersectional approach

Arguably, the partial exclusion of women from democracy must be approached from an intersectional perspective as women are included/excluded in different ways depending on their ethnicity, nationality, and class (cf. Crenshaw 1995; Siim and Mokre 2018). Intersectionality is to be differentiated from a 'multiple discrimination' approach. Exclusions due to race and gender do not simply add up but lead to specific problems for, e.g., black women or lower-class women. In contemporary migration societies, national citizenship plays a paramount role here. For example, in the EU, gainful employment frequently is a condition for residence permits and naturalization. While this is a problem female citizens do not encounter, for immigrant women, care responsibilities can lead to their exclusion from legal residence or the acquisition of citizenship. Among indigenous women in Chile, discrimination has the triple source of gender, class, and ethnicity, as exemplified by Lorenza Cayuhan, a Mapuche woman imprisoned in 2015 accused of stealing tools from a forestry company. Cayuhan was forced to give birth in front of a prison guard and while shackled. The case reached the Supreme Court and led to the first judicial ruling in the country that mentions the concept of intersectionality. The court followed the '100 Brasilia rules', basic standards to guarantee access to justice for people in vulnerable conditions.

> The problem with the logics of exclusion and enclosure is that they assume that such identities as "woman" and "immigrant" preceded citizenship

and were excluded from it. Becoming political involves questioning such essential categories as "woman" or "immigrant" as given and assumes that they were produced in the process of constituting citizenship and that they are internally, not externally, related to it.

(Isin 2002: 4)

'"Citizen" is a general and artificial identity' (Urbinati 2012: 476), but in its concrete understanding, it is based on societal relations and power distribution in society.

4.4   Constitutions as mirrors and actors of societal development

'The imaginary of modern constitutionalism rests on the founding role of the people expressed in a constitutional agreement' (Negretto, quoted after Welp and Soto 2020: 2). The term 'imaginary' already hints at the fact that, in most historical cases, people were not involved in constitutional procedures. In more recent times, however, citizens have been included in several cases of constitution-making. Arguably, the factual and symbolic significance of constitution-making is nowadays enhanced by direct engagement of the population. 'Ginsburg et al. (2009) point out that constitutions gain weight when they are developed in extraordinary contexts of popular mobilization, which include extra-parliamentary processes of ratification and communication' (Welp and Soto 2020: 2). Suiter and Reuchamps (2016) even see 'the multiplicity of recent deliberative experiences in Europe' as a possible sign of 'a new wave of constitutional turn towards deliberative processes' (quoted after Welp and Soto 2020: 3).

The development of laws forms a crucial part of politics. Both politics and the law develop and change normative concepts and mutually influence each other regarding these normative foundations, as well as in their implementation. Put slightly differently, it is in the interaction between public spheres (on different levels, e.g., of the political elites, of non-governmental organizations (NGOs) and interest groups, of media and the citizens) and the performance of legal acts that justice is strived for.

In this vein, women have struggled for a long time to include gender-specific issues in constitutions. At the same time, other under-represented groups, such as ethnic and religious minorities, have claimed their place in constitutionalism (Baines and Rubio-Marin 2004). Still, it is a question of political contestation and negotiation who counts as a minority and whose rights, therefore, have to be recognized. Also, the importance of 'politics of presence' is politically contested as it can be argued that presence (or representation) of a social group is not necessary to represent its rights and interests.

4.5   Constitution-making and gender democracy

Empirical evidence and experiences show, however, that constitutional changes on gender-specific issues were mostly brought about by female agents. Besides this pragmatic claim for the inclusion of (structural) minorities as agents in political

decision-making and law-making, there is also the normative claim 'that all the citizens should be given a chance to express their views in order to influence and, if necessary, repeal existing laws or decisions. Furthermore, by making their voices heard, minorities remind the majority that theirs is just one possible and temporary majority' (Urbinati 2012: 69).

Thus, a feminist constitutional agenda must include contents as well as procedures of constitutionalism. Baines and Rubio-Marin (2004: 4) enumerate seven points for such an agenda: (i) constitutional agency; (ii) constitutional rights; (iii) constitutionally structured diversity; (iv) constitutional equality; (v) women's reproductive rights and sexual autonomy; (vi) women's rights within the family; and (vii) women's socioeconomic development and democratic rights. It is important to formulate the agenda in a gender-specific and intersectional form in order to make the inclusion of all women explicit as 'normatively and institutionally, democratic processes are deeply gendered' (Galligan 2012: 1).

Demands for constitutional amendments have been developed in women's and feminist movements, thus moving from a general claim for equality to the recognition of the position of women in society and to differentiations of the positions of different women due to intersectionality. The use of constitutional rights for individual and collective litigation has played a further important role for constitutional changes in books and, even more so, in action.

A crucial point here is the possibility for all women to participate in constitution-making, thus, the development of procedures adequate to an intersectional gender democracy. Gender democracy

> considers democracy to be grounded in a commitment to deliberation, and that deliberative processes rest on gendered foundations. […] Gender democracy, then, envisages a democratic process in which the voices, interests, perspectives, and representatives of women are fully integrated and accountable as equals in a deliberative decision-making process. [...] Thus, gender democracy is closely aligned with proceduralist conceptions of democracy
> (Galligan 2012: 2)

From an intersectional perspective, one should emphasize that this normative claim must include a plurality of social groups and their claims. As Urbinati (2012: 473) argues, politics of presence become more important the more diverse a society is, 'when pluralism of interests and identities [become] more fragmented and pronounced'.

An intersectional approach to gender democracy cannot be introduced in every understanding of democracy.

> A reading of democratic theory aided by feminist conceptions of democracy (Galligan and Clavero 2008: 5–6) revealed that the requisites for gender democracy were: a substantive conception of democracy, an expansive interpretation of the equality principle, and attention to the accountability dimension. The work of deliberative democratic theorists seems to offer

a sympathetic framework for the elaboration of these gender democracy dimensions. At its core, deliberative democracy claims that legitimacy is accorded a decision when it is the outcome of a critical examination by "qualified and affected members of the community" (Habermas 1998). [...] In addition, it supposes rational debate, in which decisions are arrived at after a process of reason-giving, free of coercion, and in which the positions of all participants are justified and accepted. Thus, [...] a political decision is "democratic" if it fulfils the dimensions of inclusion [...], accountability, and recognition. For gender democracy, with its focus on both substantive and procedural politics, these dimensions are foundational

(Galligan 2012: 3)

For deliberative endeavours, this would mean concretely that two groups of conditions have to apply:

those referring to the mechanism of deliberation (access to information, time given for it, actors included and opening of the debate) and to the method of processing the contents generated (if something like a method exists or not, if it has been previously communicated, if it is traceable and if it allows to connect – and how – the contents with the final text).

(Welp and Soto 2020: 2)

Furthermore, it seems important to mention the preconditions for such a deliberative setting. 'In an ideal gender democracy, [all] women would be endowed with resources (economic, social, personal and political) equal to those of men so as to enable them to join with men as equals' (Clavero and Galligan 2012: 24).

From an intersectional perspective, one can critically assess the requirement of rationality for deliberative debates as, arguably, this is a Eurocentric claim for discussions coming out of enlightenment and excluding emotional approaches towards politics and forms of discourse used in the global South, such as narration (cf. Mokre 2021). When the 'issue of recognition' is seen as 'a touchstone for feminist politics' (Clavero and Galligan 2012: 24), from an intersectional perspective, we must ask which forms of recognition would be necessary for the inclusion of different political and cultural traditions. The claim for equality in 'epistemological authority' (Sanders, quoted after Clavero and Galligan 2012: 24), i.e., for acknowledgement of one's argument can also be applied here, perhaps, including acknowledgement of the form of one's argument.

4.6   Gender, intersectionality, and deliberation in the EU

Legally, the Treaties form the constitution of the EU as the introduction of a formal constitution failed in 2004. Gender equality policies were part of these Treaties from the outset. The principle of 'equal pay for equal work' can be first found in Article 119 of the Rome Treaty from 1957, at a time when 'it was common throughout Europe to have a "women's rate" and a "men's rate" of payment for

the same job'. (Hoskyns 1996: 52) The Article was subject to heated negotiations at the time, and the reason to include it was not so much gender equality as the French government's fear of losing competitiveness due to the earlier inclusion of this Article in French legislation. It was drafted in working groups consisting only of men. While equal pay for equal work was addressed, equal pay for work of equal value was not mentioned (Kantola 2010: 28). Due to three cases related to the question of equal pay in the 1960s, the European Court of Justice (ECJ) became involved in this question – the Belgian Herstal strike for equal pay in 1966 and two cases of Gabrielle Defrenne, which were brought to the ECJ during the latter part of the 1960s (Hoskyns 1996: 68–75). Thus, activism and legal activities by a women's movement and an individual woman led to clarifications of the Article, enshrined after the ECJ judgment in the Equal Pay Directive of 1975.

During the 1970s, gender equality policies were broadened to include other parts of women's working life, especially questions of pregnancy and parenthood. This development was due to the new feminist movement of the 1960s and 1970s (Borchorst and Mokre 2012). Hoskyns (1996: 78) argues that

> the external force of second-wave feminism acted to empower lone women (and some lone men) within the EC institutions and in national delegations that were then able to make use of the particular shape of Article 119 to achieve practical gains
>
> (Hoskyns 1996: 78)

Thus, the European directives on equal treatment for men and women at work and in social security were adopted between 1975 and 1978.

Hitherto, the evolution of EU gender policy developed in three phases: from equal opportunities to positive action and to gender mainstreaming (Rees 1998, quoted after Kantola 2009). Positive action (called at this stage 'appropriate measures') is first mentioned in the Equal Treatment Directive of 1978 – not as a recommendation but within a paragraph permitting such measures. In the following Social Security Directive, special treatment for women played a considerably more important role and included more areas of social life. These directives were also of paramount importance for feminist groups and women in trade unions. Positive action was, however, controversial and in 1995, the ECJ found that the principle of positive action contradicted the principle of anti-discrimination (Kantola 2010: 44).

In the early 1990s, the EU implemented gender mainstreaming (GM). GM generally means that a gender perspective is included in every step of every policy process. In some understandings, a transformative aim of achieving equality between women and men is also included. Principally, GM applies to both sexes and is not meant to replace specific measures for women (see e.g., European Commission 2006: 2).

The concept of GM first came up in development politics and stood at the centre of debates at the World Conference on Women in Nairobi in 1985. The participants criticized the ineffectiveness of specific women's programmes within a general context that was not adequate to the needs and claims of women. Thus, all

political programmes and activities should be legally obliged to take gender issues in consideration. In the 1990s, NGOs started to discuss the concept in a broader framework of gender equality when the concept was also taken up by the European Community (Pollack and Hafner-Burton 2000: 8). Equality of opportunities for men and women as well as GM were enshrined in primary law by inclusion in the Treaty of Amsterdam of 1997.

While, thus, the GM strategy came out of the activities of NGOs, it has also met harsh criticism from feminist organizations. As a top-down strategy, it is understood as part of power politics, disenabling and delegitimizing political activities of feminist organizations (Schunter-Kleemann 2003: 22–23). Its focus on the improvement of existing economic and political structures is seen to be opposed to the feminist claim to a fundamental critique of domination (Jegher 2003: 5). In this way, GM can be understood as a loss of critical public discourses on feminist issues. At the same time, due to this strategy, gender questions have found their way into broader public debates including men and non-feminist women.

4.7   A broader concept of equality policies and anti-discrimination

In the 1980s, a possible anti-racist engagement of the EC was already being discussed. In 1986, a joint declaration against racism and xenophobia was signed by the presidents of the Commission, the Parliament, and the Council (Hoskyns 1996: 178). However, this declaration did not lead to political measures. Among other reasons, this was due to different opinions on whether the EC was at all competent for this question. Still, the Treaty of Amsterdam included Article 13 claiming for EU-measures against discrimination 'based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation'. This success was due to the lobbying of civil society:

> The rise in extreme right parties and racist violence in Europe as well as emerging EU policies creating a "Fortress Europe" galvanized a cross-border EU lobby against racism (Bell 2002: 68, Hoskyns 1996: 175). The lobby was pivotal in changing the views in the Council for the enactment of the Article 13 in the Treaty of Amsterdam that provided a legal basis for action in the field of racial discrimination.
>
> (Kantola 2009: 19)

As some Member States were critical of this Article, Council decisions in this field had to be made unanimously with only consultation rights for the European Parliament.

In 2000, two directives regarding discrimination were issued:

• The Racial Equality Directive (2000/43) prohibits discrimination on grounds of racial or ethnic origin within the labour market as well as in other aspects of social life (housing, healthcare, education, social protection, and access to goods and services).

• The Employment Equality Directive (2000/78) prohibits discrimination on grounds of religion or belief, disability, age, and sexual orientation exclusively in employment and vocational training.

In an evaluation report from 2008 (European Commission 2008), implementation in most Member States is seen as satisfactory; however, the actual effects of anti-discrimination-legislation are less clear: the number of cases based on this legislation is limited – and this could indicate several obstacles for individuals to make use of it. Probably, awareness of personal rights in the case of discrimination is low, although in Article 10, the Directive requires the Member States to inform all potentially concerned persons of the contents of the Directive. Furthermore, victims of discrimination are probably afraid of further victimization when bringing a case to court; this might, above all, hold true for discrimination on the basis of sexual orientation (p. 8 of this report). This situation could be improved; for example, NGOs and other legal bodies were granted legal standing in anti-discrimination cases in some Member States (e.g., Belgium), but this was not foreseen in the Directive that grants this right only to individuals (Bell 2008: 17).

The two anti-discrimination directives have led to far-reaching public debates on the question of which forms of unequal treatment are unlawful and which can be legitimized. The European Network Against Racism (ENAR), among others, discusses the fact that discrimination due to national origin is not only not forbidden by EU law but in fact prescribed in its differentiation between third and second nationals. However, it may be difficult to differentiate between legal discrimination on the basis of nationality and illegal ethnic discrimination (Bell 2008: 10).

Besides legal acts, the EU has also introduced a broad range of action plans, programmes, and projects on anti-discrimination. Many of these programmes are explicitly aimed at raising public awareness of the issues at stake (Borchorst and Mokre 2012).

4.8   The Charter of Fundamental Rights

In the Charter of Fundamental Rights of the EU of 2000, the civic, political, economic, and social rights of European citizens were condensed into one document for the first time in the history of European integration (Pollak 2006: 179). The Charter goes beyond the Treaty of Amsterdam regarding anti-discrimination, forbidding in its Article 21 'any discrimination on any grounds such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation'.

Article 23 prescribes equality between men and women and mentions the possibility of positive action. Family protection and gender equality, as well as the reconciliation of family/private life with work, form other important parts of the Charter. The Charter became part of primary EU law by its inclusion in the Lisbon Treaty of 2009 and, thus, gained legal status. It has been the most important stage of the development of EU anti-discrimination legislation as it enlarged its scope and gave it the status of fundamental rights.

4.9   Multiple discrimination and intersectionality

With the Amsterdam Treaty, from 1997, the term 'multiple discrimination' was introduced in EU primary law – stipulating that several dimensions of inequality such as gender, race/ethnicity, age, disability, sexual orientation, etc. should be considered. However, there was a tendency to treat the different dimensions of inequality separately and in a similar way as a 'one size fits all' (Verloo 2006). Later, a more integrated approach to inequality developed, focusing on intersections between different dimensions of inequality (Krizsan et al. 2012). There is a fear among academic scholars and feminist organizations that the adoption of a multiple approach to inequality will lead to a downsizing of gender equality policies and institutions (Verloo 2006; Kantola 2010).

   However, the implementation of EU anti-discrimination legislation in the Member States has frequently led to a hierarchy of protection as EU concepts of equality and anti-discrimination have remained fragmented or even contradictory (Schiek 2009). Whereas anti-discrimination laws for the labour market include a broad range of possible discriminations, only gender and ethnicity are protected outside the labour market. The differences between the Anti-Racism-Directive and the Anti-Discrimination-Directive have rather absurd legal consequences.

> It would, for example, be unlawful to refuse to rent an apartment to a Muslim woman from North Africa because of her ethnic origin, but it would not be unlawful to make this refusal on grounds of her religion.
>
>   (Bell 2008: 4)

   In 2004, the Gender Goods and Services Directive was issued to warrant the principle of equal treatment between men and women in the access to and supply of goods and services. In 2006, the Gender Recast Directive replaced the directives on equal pay, equal treatment in employment, training, promotion and working conditions, social security schemes, and burden of proof. It uses equivalent legal definitions to the Race Equality Directive for direct and indirect discrimination, harassment, victimization, positive action, sharing of the burden of proof, the right to complain, and sanctions. Since 2019, the Work-Life Balance Directive regulates the right to parental leave and leave for caregivers. However, a Horizontal Directive, proposed by the European Commission in 2008, against discrimination based on age, disability, sexual orientation, and religion or belief beyond the workplace has still not been issued.

4.10   Deliberation in the EU

In European integration research, the EU has frequently been understood as a case in point for deliberative democracy as the success of EU politics depends to a high degree on negotiations in complex networks. Arguably, cooperation and consensus, above all by the Member States but also of the three power centres – the Commission, the Council, and the Parliament – play a more important role than in

less complex national governance structures. Furthermore, unofficial deliberative forums such as expert forums, consultative bodies, or lobbies play an important role in EU policy making (Bieling 2011: 113–115).

Also, in the case of gender and anti-discrimination policies, lobbies that originated in civil society play an important role, above all the European Women's Lobby and the ENAR. Both started their work in the 1990s and have influenced EU legislation since then (Bruell, Mokre, and Siim 2012).

However, political scientists have also pointed out that deliberation is not necessarily democratic, and that the EU forms a case in point for this assessment as the influence of citizens has been limited up to now, deliberative forums cannot replace formal political rights, and lobbyism sometimes fosters undue political influence rather than rational debate (Bieling 2011). Furthermore, lobbyism of single-issue organizations can hinder rather than further an intersectional approach towards discrimination by leading to a hierarchy of discriminations (Bruell, Mokre, and Siim 2012).

Still, in summary, it can be said that EU legislation led to significant progress regarding anti-discrimination measures in the EU Member States. This progress has been shaped by EU institutions as well as feminist movements and organizations and has partly been the result of deliberative procedures inside and outside of the EU institutional framework. However, up to now, truly intersectional legislation has not been developed.

4.11   Gender and constitution-making in Chile

In the context of the deliberative turn described above, the Chilean constitution-making process triggered by the social uprising of 2019 sought to broaden the scope of political actors through affirmative action. In addition to opening electoral competition to non-party lists, the Chilean Constitutional Convention established, for the first time, reserved seats for indigenous peoples (17) and a historic gender-parity rule, which makes this the first process in the world to include an equal number of men and women in drafting a national constitution.

The constitution-making process was the outcome of intense social mobilization starting on 18 October 2019, including clashes between protesters and the police that resulted in serious human rights violations (OHCHR 2019). Demands focused on access to social rights and expressed anger at elites and political parties from the entire ideological spectrum.

On 15 November 2019, political parties agreed to carry out a plebiscite to allow for the replacement of the 1980 constitution, inherited from the military dictatorship (1973–1990). Constitutional replacement proposals had been discussed for decades, but were rejected by the right, gathered only a tepid support from the centre-left, and faced the difficulties of a legal system that was well rigged to impede the expression of majoritarian preferences (Busch 2012; Atria 2013; Heiss 2017). This time, social pressure, and the attempt by political actors to reduce uncertainty in order to maintain as much control as possible of events deemed inevitable, opened the way for constitution-making (Escudero 2021).

The 15th November agreement called for a plebiscite where citizens would be asked *if* they wanted to replace the constitution, and *through which type of assembly*: an elected Constitutional Convention or a Mixed Constitutional Convention, half elected and half composed of legislators already in office. The agreement also established that rules for the new constitution would be approved by two-thirds of the Convention, and that in the absence of agreement, no rule would apply by default. The Constitutional Convention would be chosen through an electoral system like the one used for the Chamber of Deputies. That system had been reformed in 2012, going from mandatory to voluntary vote. Later, in 2015, the binomial system (two seats per district) was replaced by a proportional system with a 40% gender quota of candidates at the national level. The quota increased the presence of women from 16% in the legislature of 2014–2017 to 23% for 2018–2021 and 30% for 2022–2025 (Comunidad Mujer 2022).

4.12   Gender parity at the Constitutional Convention

Since the return of democracy in 1990, several studies had shown concern for the low presence of women in positions of power in Chile, compared both with high-income countries and with other countries in Latin America (PNUD 2020; Ríos 2008; Valdés and Férnandez 2006; Miranda and Suárez 2018). Despite an initial moderate effect, the gender quota introduced in 2015 and applied for the first time in 2017 was a relevant achievement in a context where affirmative action had been resisted by the political establishment (Arce 2018: 80). With this precedent, Congress decided to introduce new reforms for the election of the Constitutional Convention to increase its legitimacy (Suárez-Cao 2021).

Non-party members or 'independents', women, indigenous peoples, and persons with disabilities were granted special rules to increase their eligibility. Law 21,216 allowed independent electoral pacts to compete and guaranteed gender parity. This norm established a 50% gender quota at the district level, and most importantly, gender parity in the allocation of seats through a correction mechanism after the election. The rule was promoted by civil society organizations such as the network of women political scientists *Red de Politólogas*, the network of feminist lawyers *Abofem,* PNUD Chile, *Chile Mujeres* Foundation, *Humanas* Corporation, and others. It had broad citizen support and gathered across-the-aisle political adherence (Freidenberg and Suárez-Cao 2021).

The plebiscite of 25 October 2020 resulted in over 78% support both for drafting a new constitution and for a completely elected Convention. In December 2020, Congress passed a reform setting 17 reserved seats for indigenous peoples and a small quota of candidates with disabilities (Law 21,298). It is worth noting that negotiations to guarantee these reserved seats were much more difficult and took nine more months than gender parity. The proposal to have one reserved seat for the Afro-descendant community was rejected.

In May 2021, 78 men and 77 women were elected to the Constitutional Convention. Women obtained more votes than men. The fact that female candidates were required by law not only to compete for but to enter the Convention seems to have

made parties and lists support women in a much more substantive way than the congressional quota. If the final correction of the parity rule had not been applied, the Convention would have been made up of 84 women and 71 men, as several women had to give up their seats to male colleagues on their lists.

4.13   Catching up with gender equality

The historic achievement of gender parity in the Constitutional Convention was not an isolated event. As analysts have observed, the presence and articulation of women in the political sphere is expected to favour other women in legislation and the formulation of public policies (PNUD 2020; Reyes-Housholder 2018). While demands for political inclusion by other under-represented groups exist in Chile, the feminist movement has been the most successful in recent years in producing institutional change. After approval of the candidates' quota for legislative elections in 2015, other legal changes promoted the presence of women in political parties' internal governance and as candidates (Hafemann 2020: 78).

Women voters were key to grant the electoral victory to the leftist candidate Gabriel Boric and his coalition 'Apruebo Dignidad' in the November 2021 presidential election, against a candidate of the extreme right with an anti-feminist agenda. The first cabinet appointed by Boric was composed of 14 women and 10 men, with the first-ever female Home Affairs minister and other important positions given to women, such as Defence and Foreign Affairs. This historic cabinet with a majority of women follows the precedent of the half men/half women first cabinet of President Michelle Bachelet in 2006. In the November 2021 elections, the participation of women in the Chamber of Deputies increased from 22.5% to 35.5% (the Senate rose only by 0.5%) (Comunidad Mujer 2022; Hafemann 2020). The number of women candidates to the Chamber of Deputies increased from 395 (41.1%) in 2017 to 561 (44.7%) in 2021; in the Senate, it went from 53 (40.2%) to 83 (48%). The political change expressed by the Constitutional Convention, as well as the 2022 Chamber of Deputies and Cabinet, echoes important social developments against conservative gender roles implicit in the constitutional design of the dictatorship. Intense social mobilization within and outside political parties took place in recent decades, most notably the feminist student movement of 2018.

Catholic conservative moral views informed the political project of the military dictatorship led by Augusto Pinochet as much as economic neoliberalism and a cold-war anti-communist and nationalistic ideology. This project was insulated, as far as its designers could, from future democratic reform by institutional 'enclaves' (Garretón 2003), provisions demanding high supermajorities and protected from reform by the constitutional court. On issues of 'moral politics' – those that lie at the core of religious and ethical worldviews, and to which the role of women is key (Blofield 2006: 1) – Chile stood out for its conservatism after the return of democracy in 1990, deeply affecting women's rights. Divorce was only legalized in 2004, while a very limited permission of abortion was approved in 2017. Abortion was then allowed on three grounds: to save the life of the mother, fetal infeasibility, or rape.

The inability to modify the strict prohibition of abortion after the Chilean transition to democracy contrasts, for example, with Spain, where the end of the Franco dictatorship meant radical institutional change, including a new democratic constitution approved in 1978 and the liberalization of abortion laws. In Chile and Argentina, abortion remained illegal for decades, coupled with high rates of its clandestine practice (Blofield 2006). The crisis of legitimacy of the Catholic Church, partly due to sexual abuse scandals, contributed to a change of relative power between the Church and feminist social movements. Argentina legalized abortion in 2020, and the 'green tide' that accompanied the process was a precedent for feminist struggles in Chile.

Access to legal divorce was another demand of feminist movements opposed by the Catholic Church and conservative parties. The inexistence of this option in Chile led to unregulated separations and a decrease in the rate of marriages. Lack of access to legal divorce hurts the most vulnerable members of a broken family, mainly women and children. It can complicate inheritance rights and leave family members abandoned, as well as new families unprotected. Spain and Argentina legalized divorce within five years of democratization (in 1981 and 1987, respectively) while Chile only passed a conservative divorce law in 2004, after 14 years of civilian rule (Blofield 2006: 8).

As conservative Catholic views contrary to gender equality weakened, public opinion increasingly supported feminist demands. Transnational movements against sexual violence like 'Me Too' and 'Not One Less' (*Ni Una Menos*) increased awareness about violence against women, which became legally recognized in 2005 with a law against domestic violence (Law 20,066). Later, in 2010, the crime of 'femicide' was typified in the Chilean criminal code (Law 20,480). In 2012, a law was approved to prevent discrimination based on

> race or ethnicity, nationality, socioeconomic status, language, ideology or political opinion, religion or belief, union membership or participation in trade union organizations or lack thereof, gender, motherhood, breastfeeding, sexual orientation, gender identity and expression, marital status, age, affiliation, personal appearance, and illness or disability
>
> (Law 20,609)

Known as 'Zamudio Law' in tribute to a young homosexual man murdered by Neo-Nazis, this norm has, however, been criticized for shortcomings in establishing specific deadlines and responsibilities, as well as not including preventive measures.

As the 'Las Tesis' collective saw their performance 'A Rapist in Your Path' go viral all over the world at the time of the social outburst of 2019, discrimination at work and the difference in salaries became more and more politicized, as well as the notorious under-representation of women in spaces of power such as Congress, ministries, higher courts, and corporate boards.

The Constitutional Convention has declared its will to challenge classical divisions between public and private spheres by putting stress on mechanisms of political inclusion as well as substantive rights to care as a social responsibility, sexual

and reproductive rights, protection against gender violence, labour rights and equal pay, and others. Effective political rights were thus presented as a precondition for the fulfilment of other rights on grounds of equal citizenship (Zúñiga 2019; Sepúlveda and Pinto 2021).

4.14   Conclusion

While democracy has always been defined as a universal principle of general inclusion, it has also always been exclusionary of people and of claims. Every enlargement of democratic rights had to be won in struggles of movements and interest groups. The inclusion of women, their experiences, and interests has been fought for since the beginnings of democracy; struggles against other forms of discrimination started later but have also been going on for many decades now.

In the two cases addressed in this chapter, gender issues and the participation of women have played a paramount role in constitution-making. The EU Treaties have a long history of gradually advancing gender rights, dating back 70 years. Chile, on the other hand, stands out for its delay in catching up with gender rights after the recoil caused by the military dictatorship, with new rules on divorce (2004), gender violence (2005, 2010), gender quotas (2015), anti-discrimination (2012), and abortion (2017), among others.

The Chilean feminist social movement reached a high point with student protests in 2018, contributing to the gender-parity rule at the Constitutional Convention of 2021. While these are promising developments, Chilean laws still limit the economic autonomy of women, preventing them from managing their assets when they are married, or making them solely responsible for childcare. These issues were addressed by the EU as early as the 1950s and, particularly, in the reforms of the 1970s. The idea of GM, adopted by the EU in the 1990s, has been set as a goal at the Chilean Constitutional Convention, but so far it is not present in the country's legislation or public policy. Specific anti-discrimination provisions, adopted by the Amsterdam Treaty of 1997 and included in the Lisbon Treaty of 2009, have a pale equivalent in Chile in the Zamudio Law of 2012, which needs to be strengthened.

Political struggles need to penetrate and change institutional structures in order to succeed. For this, they make use of democratic procedures – and, arguably, forms of deliberative democracy are more apt to include different political claims than other democratic procedures due to their relative openness to different actors and their commitment to a substantive understanding of democracy. An important part of the institutionalization of different claims leads to their inclusion in legislation and in the constitution.

The two case studies of this chapter show two very different ways towards a more inclusive democracy mirrored in constitutional change, based on an intersectional understanding of societal exclusions and remedies for them. Although not comparable in many regards, these examples can shed light on the ways in which democracy develops towards more inclusiveness by deliberative procedures – as well as on the many pitfalls of this development.

Note

 1 At the time, the European Union was called the European Community (EC).

References

Appelt, Erna (1999). *Geschlecht – Staatsbürgerschaft – Nation. Politische Konstruktionen des Geschlechterverhältnisses in Europa*. Frankfurt am Main/New York: Campus.

Arce, Javiera (2018) "Ley de cuotas a la chilena: notas para una autopsia" in Miranda, L. and Suárez-Cao, J. (eds.) *La política siempre ha sido cosa de mujeres: elecciones y protagonistas en Chile y la región*. Santiago: FLACSO Chile.

Atria, Fernando (2013). *La constitución tramposa*. Santiago: LOM

Baines, Beverley and Rubio-Marin, Ruth (2004). "Introduction. Toward a Feminist Constitutional Agenda" in Baines, B. and Rubio-Marin, R. (eds.) *The Gender of Constitutional Jurisprudence*. Cambridge: Cambridge University Press, 1–10.

Bell, Mark (2008). *Extending EU Anti-Discrimination Law: Report of an ENAR Ad Hoc Expert Group on Anti-Discrimination Law.* Brussels: ENAR https://ec.europa.eu/migrant-integration/node/7872_de?lang=de

Bieling, Hans-Jürgen (2011). "European Governance: Zum Verhältnis von demokratischer und nicht-demokratischer Deliberation im europäischen Mehrebenensystem". *Österreichische Zeitschrift für Politikwissenschaft (ÖZP)*, 40. Jg. (2011) H. 2, 111–123.

Blofield, Merike (2006) *The Politics of Moral Sin: Abortion and Divorce in Spain, Chile, and Argentina*. New York: Routledge.

Borchorst, Anette and Mokre, Monika (2012). "EU's Gender and Diversity Policies and European Public Spheres" in Mokre, M. and Siim, B. (eds.) *Intersectionality and the European Public Sphere. Gender and Ethno-national Diversity in the European Union.* Houndmills: Palgrave MacMillan.

Bosniak, Linda (2005). "Citizenship" in Tushnet, M. and Cane, P. (eds.) *The Oxford Handbook of Legal Studies*. New York: Oxford University Press, 183–201.

Brubaker, Rogers (1994). *Staats-Bürger. Deutschland und Frankreich im historischen Vergleich*. Hamburg: Junius.

Bruell, Cornelia, Mokre, Monika and Siim, Birte (2012). "Inclusion and Exclusion in the European Public Sphere. Intersections of Gender and Race". *Javnost-the Public*, 19(1): 35–50.

Busch, Tania (2012). "El concepto de Constitución y la incomodidad constitucional en Chile". *Global Jurist*, 12(2), DOI: 10.1515/1934–2640.1410

Clavero, Sara and Galligan, Yvonne (2012). "Gender Equality in the European Union: Lessons for democracy?" in Galligan, Y. (ed.) *Deliberative Process and Gender Democracy. Case Studies from Europe.* Oslo: Arena, 21–54.

Comunidad Mujer (2022). "Mujer y política: ¿Cómo funcionó la cuota de género en las Elecciones Parlamentarias 2021?". *Serie Comunidad Mujer* 51, Jan. 2022.

Crenshaw, Kimberlé (1995). "Mapping the Margins: Intersectionality, Identity Problems and Violence against Women of Colour" in Danielsen, D. and Eagle, K. (eds.) *After Identity. A Reader in Law and Culture*. London and New York: Routledge, 332–354

Escudero, Maria Cristina (2021). "Making a Constituent Assembly Possible in Chile: The Shifting Costs of Opposing Change". *Bulletin of Latin American Research* 41–4, 641–656. DOI:10.1111/blar.13290

European Commission (2006). *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee*

of the Regions: A Roadmap for Equality between Women and Men, 2006–2010. Brussels: European Commission. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2 006:0092:FIN:EN:PDF; 2008–09–17

European Commission (2008). *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: The Application of Directive 2000/78/EC of 27 November 2000 Establishing a General Framework for Equal Treatment in Employment and Occupation.* Brussels. https://eur-lex.europa.eu/legal-content/PT/ALL/?uri=CELEX:52008DC0225R(01), 2022–04–19.

Freidenberg, Flavia and Suárez-Cao, Julieta (2021). "Creando redes de mujeres en una disciplina masculinizada: el caso de la Red de Politólogas". *Revista Polis,* 20(59): 147–164.

Galligan, Yvonne (2012). "Justice, Democracy, and Gender" in Galligan, Y. (ed.) *Deliberative Process and Gender Democracy. Case Studies from Europe.* Oslo: Arena, 1–20.

Garretón, Manuel Antonio (2003). *Incomplete Democracy.* University of North Carolina Press.

Hafemann, Michelle (2020). "Chile, de la exclusión a la paridad: Participación de mujeres en política y la convención constitucional". *Política. Revista de Ciencia Política*, 58(2): 77–90. doi:10.5354/0719–5338.2021.64153

Heiss, Claudia (2017). "Legitimacy Crisis and the Constitutional Problem in Chile: A Legacy of Authoritarianism". *Constellations*, 25(3): 470–479

Hoskyns, Carolyn (1996). *Integrating Gender. Women, Law and Politics in the European Union*. London: Verso.

Isin, Erin (2002). *Being Political. Genealogies of Citizenship*. Minneapolis: University of Minnesota Press.

Jegher, S. (2003). "Gender Mainstreaming. Ein umstrittenes Konzept auf feministischer Perspektive," *Widerspruch. Beiträge zu sozialistischer Politik*. 23. Jg./1. Hj. 2003, No.44: Feminismus, Gender Geschlecht, 5–18.

Kantola, Johanna (2009) "Tackling Multiple Discrimination: Gender and Crosscutting Inequalities in Europe" in Franken, M., Woodward, A., Cabó, A. and Bagilhole, B. M. (eds.) *Teaching Intersectionality: Putting Gender at the Centre*. Utrecht and Stockholm: ATHENA 3, 15–30. https://atgender.eu/wp-content/uploads/sites/207/2017/08/Teaching_Intersectionality.pdf.

Kantola, Johanna (2010). *Gender and the European Union*. New York: Palgrave Macmillan.

Krizsan, Andrea, Skjeie, Hege and Squires, Judith (2012). "European Equality regimes: Institutional Change and Political Intersectionality" in Krizsan, A., Skjeie, H. and Squires, J. (eds.) *Institutionalizing Intersectionality*. Houndmills: Palgrave MacMillan.

Miranda, L. and Suárez-Cao, J. (Eds.). (2018) *La política siempre ha sido cosa de mujeres: elecciones y protagonistas en Chile y la región*. Santiago: FLACSO Chile.

Mokre, Monika (2021). *Can the Subaltern Deliberate?* Paper for the International Conference organized by the COST Action CA17135 "Under-Representation, Direct Democracy and Deliberation: Mapping Contemporary Challenges", Ljubljana, 7–8 September 2021

Office of the High Commissioner for Human Rights (OHCHR). Report of the Mission to Chile. 30 October–22 November 2019. https://www.ohchr.org/Documents/Countries/CL/Report_Chile_2019_EN.pdf

PNUD (2020). *Nuevo mapa del poder y género en Chile (1995–2018)*. Santiago de Chile: Programa de Naciones Unidas para el Desarrollo.

Pollack Mark and Hafner-Burton Emilie (2000). "Mainstreaming Gender in the European Union." *Harvard Jean Monnet Working Paper 2/00*. http://www.jeanmonnetprogram.org/papers/00/000201.rtf.

Pollak, Johannes (2006). *Repräsentation ohne Demokratie. Kollidierende Systeme der Repräsentation in der Europäischen Union.* Wien/ New York: Springer.

Reyes-Housholder, C. (2018). "Presidentas, poder y cambios pro-mujer en Chile y Brasil" in Miranda, L. and Suárez-Cao, J. (eds.) *La política siempre ha sido cosa de mujeres. Elecciones y Protagonistas en Chile y la Región*. Santiago: FLACSO Chile.

Ríos, M. (Ed.) (2008). *Mujer y Política. El impacto de las cuotas de género en América Latina*. Santiago de Chile: Catalonia, FLACSO-Chile, IDEA.

Schiek, Dagmar (2009). "From European Union Non-discrimination Law Towards Multidimension Equality Law for Europe" in Schiek, D. and Lawson, A. (eds.) *European Union Non-Discrimination Law. Investigating the Triangle of Racial, Gender and Disability Discrimination.* London and New York: Routledge, 3–27.

Schunter-Kleemann, S. (2003). "Was ist neoliberal am Gender Mainstreaming?" In: *Widerspruch. Beiträge zu sozialistischer Politik.* 23. Jg./1. Hj. 2003, No.44: Feminismus, Gender Geschlecht, 19–33.

Sepúlveda, Barbara and Pinto, Florencia (Coord) (2021) *La constitución feminista.* Santiago: LOM.

Siim, Birte (2000). *Gender and Citizenship. Politics and Agency in France, Britain and Denmark*. Cambridge: Cambridge University Press.

Siim, Birte and Mokre, Monika (2018). "Gender, Citizenship, and Political Inclusion/ Exclusion in the European Union: An Intersectional Approach" in Tsakiropoulou-Summers, T. and Kitsi-Mitakou, K. (eds.) *Women and the Ideology of Political Exclusion. From Classical Antiquity to the Modern Era*. London and New York: Routledge, 312–326.

Suárez-Cao, Julieta (2021) "Reconstructing Legitimacy After Crisis: The Chilean Path to a New Constitution". *Hague Journal on the Rule of Law,* 13: 253–264.

Suiter, J., and Reuchamps, M. (2016). "A Constitutional Turn for Deliberative Democracy in Europe?" in M. Reuchamps and J. Suiter (eds.) *Constitutional Deliberative Democracy in Europe* (pp. 1–13). Colchester: ECPR Press.

Urbinati, Nadia (2012) "Why Parité Is a Better Goal than Quotas". *I·CON (2012)*, 12(2): 465–476.

Valdés, Teresa and Férnandez, Maria de los Angeles (2006). "Género y política: un análisis pertinente". *Política. Revista de Ciencia Política*, 46: 9–33.

Verloo, Mieke (2006). "Multiple Inequalities, Intersectionality and the European Union". *European Journal of Women's Studies,* 13(3): 211–228.

Welp, Yanina and Soto, Francisco (2020). "Beyond Fashion and Smokescreens: Citizens' Deliberation of Constitutional Amendments". *ConstDelib Working Paper Series*, no. 7.

Zúñiga, Yanira (2019) "Constitución, Género e Igualdad. Sobre la necesidad de redefinir lo público y lo privado en la nueva Constitución" in Bassa, Ferrada and Viera (eds.) *La constitución que queremos.* Santiago: LOM.

5 Ethnic groups and constitutional deliberation

Understanding participation in Bosnia-Herzegovina and Romania

Sergiu Gherghina, Jasmin Hasić,
and Sergiu Mişcoiu

5.1   Introduction

The participation of ethnic minorities in deliberation processes has been often approached from the perspective of group interests in ethnically diverse settings (Wheatley, 2003; Schneiderhan, Khan and Elrick, 2014) or from the angle of multicultural democracy (Siapera, 2005). However, less is known about the ways in which ethnic minority groups engage in deliberative processes organized in their communities. This chapter addresses this gap in the literature and aims to understand how ethnic groups engage in public deliberation. This is an important issue because many countries are multiethnic and communitarianism expands to several parts of the world. The issues concerning the new democratic processes (such as deliberation) taking place within and among different communities has become increasingly salient. This chapter compares the cases of local deliberation in Bosnia and Herzegovina (BiH) with the constitutional deliberation forum organized at the national level in Romania.

We choose the two countries based on their differences in terms of experience with deliberation and ethnic diversity and plurality. Although democratic deliberation is quite limited in both countries, there are important nuances. In BiH, there were no national level deliberations, but only several attempts to organize them. Romania had one large deliberation at the national level – which is investigated in this chapter – and several deliberative practices at the local level, especially in the form of participatory budgeting. This chapter covers two models of consolidation of deliberative set-ups in BiH that aim to stimulate discussions on constitutional reforms to reshape the current deliberation paradigm. In BiH, there were various internationally driven initiatives that attempted to resolve this issue and incentivize citizens to be more active in the process. In Romania, the initiatives were coordinated by political parties and provided opportunities for people to contribute to the reform outcomes. We use an inductive approach that allows studying the engagement of ethnic groups in the deliberation processes based on rich description in the two countries.

We start with a theoretical section that discusses the inclusiveness character of deliberation and reviews the literature referring to the involvement of ethnic groups in deliberative processes. The next two sections outline the characteristics

of the deliberative processes in BiH and Romania. The fourth section derives explanations about the exclusion of ethnic groups from these descriptions and provides an in-depth discussion about the similarities and differences. The conclusions summarize the key findings and explore avenues for further research.

5.2   Inclusive deliberation and ethnic groups

Democratic decisions are understood as legitimate if and only if those subjected to them have the right, opportunity, and capacity to participate in political decision-making (Goodin and Dryzek, 2006; Hendriks, Dryzek and Hunold, 2007; see also the chapter by Stone in this volume). However, it is well known that the interests of several parts of the population are not taken into account in democratic decision-making due to different exclusionary mechanisms (Bartels, 2008; Rosset and Stecker, 2019). As majority decisions form an important part of democratic procedures, the interests of smaller groups, such as ethnic or sexual minorities, tend to be overruled.

The main aim of deliberative processes is to include citizens in the entire cycle of the decision-making process, ranging from the definition of problems and information acquisition, to implementation or evaluation of policies (Anderson, 2011; Fishkin, 2011). The claim for inclusiveness applies to deliberative democracy and originates in the general principle of equal participation opportunities, requiring that a maximum number of viewpoints are considered (Goodin and Dryzek, 2006; Karpowitz, Mendelberg and Shaker, 2012). Deliberative procedures enhance the chances for minorities to be heard, understood, and taken into consideration in political decisions. Ideally, in deliberation, all participants are granted the necessary amount of time and goodwill to develop their arguments, so that, by the end, a consensus rather than a majoritarian decision is reached (Habermas, 1996). In this way, it can be expected that claims of minority groups will be included in the final decision (Benhabib, 1996). Deliberation is of paramount importance for the enhancement of social cohesion and for reducing the chances of escalation of conflicts, as observed in many multiethnic areas (O'Flynn and Caluwaerts, 2018).

The degree of inclusiveness in deliberative processes depends on organizational principles at three points: the recruitment stage, during the event, and with regard to the outcomes (Beauvais and Bachtiger, 2016). There is a difference between external and internal inclusion. External inclusion is understood as the openness of deliberation to all those who are affected (Mansbridge et al., 2010; Curato et al., 2017), while internal inclusion refers to the equality of voice of those involved (Young, 2000; Gerber, 2015). Deliberative practices that are well designed and implemented can generate support for decisions among the general public. The latter might be more inclined to trust a decision that has been vetted and proposed by ordinary people in an open and transparent procedure that fosters equality in obtaining input and allows for more adequate self-positioning of those who seek to be included in the processes (Agarin, McCulloch and Murtagh, 2018).

Deliberation can help ethnic groups in conflict to deal democratically with existing division. One way to do this is through deliberative consociation (O'Flynn, 2006),

which originates from the idea of consocation in representative democracies. A consocation means that different ethnic parties agree to form a government coalition to ensure political stability in divided societies (Lijphart, 2008). The representative consocation relies on the idea of high inclusiveness, but has some problems that can be addressed with the help of deliberative consocation (O'Flynn and Caluwaerts, 2018). For example, the scope for ethnic outbidding is minimized through dialogue and by weighing the arguments of the other side. This also applies to instances in which polarizing political issues are covered because such issues are less likely to exacerbate the political conflict in deliberation. Instead, quality of deliberation between ethnic groups is high because citizens do not stick to their ethno-linguistic group but engage with other groups (Caluwaerts, 2012).

5.3   Deliberation in BiH

Historically, before the 1990s, the constitutional system of Bosnia and Herzegovina did not follow the principles of ethnic or national affiliation linked to a specific territory. The violent international conflict taking place from 1992 to 1995 generated a new complex constitutional structure based on political compromises: inter alia, the principles of multinational federalism supported by weak constitutional asymmetries (Sahadžić, 2019).

In complex multiethnic societies with multilevel governance like Bosnia and Herzegovina, ethnic minorities engage in several forms of political participation. In doing so, they aim to increase the importance of their group or challenge the consequences of limited participation channels; i.e. navigating the exclusion-amid-inclusion dilemma and finding channels for participation from within the structures that are available to them (Savić-Bojanić, 2023). BiH, as a representative democracy with multiple levels of decentralized subnational governance, has no constitutional provisions for direct participation of citizens. There is no reference to popular sovereignty in the BiH Constitution, and instead the term 'constituent peoples along with Others and citizens of BiH' is used. The three constituent peoples' groups in the country (i.e. Bosniaks, Croats, and Serbs), together with other 'micro' minorities in BiH had limited opportunities to engage in public deliberation processes (Hasić, 2015).

The 'micro' minorities in BiH, with lower relevance to representatives and voters of constituent groups, are institutionally almost completely sidelined, and do not effectively participate in power-sharing systems, unless they decide to opt for one of the constitutionally recognized categories, and run for the seats reserved for those categories.[1] The 'others' in BiH face the challenge of the so-called 'corporate consociations' (Stojanović, 2018) where political participation in the power-sharing system is subjugated by 'preserving the peace' discourse and accommodating ethnic, linguistic, and other identities, rather than civic and equal access rights (Agarin, 2019).

Motivations for citizens' enhanced representativeness and participation in public deliberation in various deliberative practices in BiH were driven by international organizations (Hasić and Telalović, 2021). Many of them pay specific attention to

deconstructing the notions of dominance that three ethnic groups have in shaping public policy. They foster a sense of greater inclusion for other statistical minorities in the processes by crafting admission criteria, which allows for more guarantees of an optimal representativeness.

There are two ongoing initiatives based on Citizens' Assembly models,[2] each of which is initiated and funded by the European Union (Office of the EU's Special Representative in BiH) and the Council of Europe (Office in Sarajevo), respectively. These initiatives are aimed at accommodating citizens' participation in public decision-making processes related to electoral law reforms (as a part of a wider constitutional reform process) and in tailoring deliberative processes at local levels in Mostar[3] (as a part of a wider reform of City's Statute and imperfect electoral practices).[4] Both are focused on enhancing citizens' capacity to initiate, act on, and directly take part in said processes, thus revitalizing citizens' confidence and trust in public authorities in BiH. Both are attentive to basic features of representative deliberative processes, and aim to integrate them into the wider systemic change needed in the country. Both also advocate for opening spaces for 'constructive engagement' of statistical minorities, and thus alleviating the byproducts of marginalization within the power-sharing structures.

The Office of the EU Special Representative in BiH (EUSR) was officially launched in late 2021[5] in consultation with other partners supporting the existing initiatives on the constitutional and electoral reform process in BiH. The EUSR Office will support the establishment of a Citizens' Assembly consisting of 57 members. The process was designed and managed by a Coordination Team, independent of the authorities. The primary goal is to introduce a process in which citizens can speak directly about issues that shape the country's future. As announced, the composition of the Citizens' Assembly will reflect the country's demographic criteria and is intended to be more representative than regular open public debates. Assembly meetings are planned to begin with a learning phase and only then move on to consideration. The participants will engage in topic-focused discussions in detail for an optimal period of time, so that the Citizens' Assembly can produce high-quality outcomes that can be trusted. This project has not officially begun yet, and there were discussions in 2022 to have the first Citizen's Assembly organized soon.

The second initiative on enhancing citizen's capacities in deliberative processes is local in its nature and also follows a Citizens' Assembly model. It is based in the City of Mostar, and consists of four main phases: selection of citizens, learning and capacity building, consultations and deliberation. It was initiated and supported by the Council of Europe's Office in Sarajevo[6], and titled 'Building democratic participation in the City of Mostar. The project is set to open up opportunities for 40 citizens to engage in a deliberative process and participate in local decision-making processes. The laws for local self-government allow for direct participation of citizens in decision-making in their units. Citizens can directly decide on matters within the competence of local self-governance through a referendum, local Assembly of citizens, and other forms of direct expression. The procedures for direct decision-making of citizens from the self-governing scope of local self-government units

are regulated by law and local municipal-city statutes. Citizens can submit their proposals through a citizens 'initiative, citizens' associations, non-governmental organizations, and in other ways described and regulated by the statute. Local self-government units may introduce any other mechanisms of participatory democracy that are not otherwise prohibited by law. The project also entails expert support and guidance, as well as activities centred on capacity development for local decision-makers, politicians, and other relevant stakeholders.

The Citizens' Assembly initiative in Mostar, designed by the Council of Europe, uses a broadly representative sample (40 members)[7] of a specific population to create recommendations that have been informed by a wide variety of diverse backgrounds and experiences. The entire process is divided into several phases, and each segment entails the presence of various stakeholders, including the general public, interest groups, NGOs, and local political parties. The admission to the Assembly was open for all citizens, aged 16 and above. The final cohort was selected from a pool of invited applicants who had previously expressed willingness to participate in the project, based on different criteria like gender, age group, level of education, address, economic characteristics, and ethnicity. The selection criteria were set to secure diversity, while the impartiality was ensured through adoption and implementation of a rulebook that prescribes the ineligibility criteria for participation. The entire process, guided by facilitators and experts, was carefully designed to maximize openings for every participant to put forward their inputs.

The Citizens' Assembly was designed to encourage active listening, critical thinking, and full regard between participants, on topics and issues that go beyond the short-term incentives of electoral cycles. Inclusive and representative deliberation models, along with a tailored selection methodology and sensibly chosen topics of interest, are aimed at fostering more responsive and accountable policies that addressed both the economic and psychological costs of political participation citizens face in participating in the project. After the formal procedures are completed and the proposals are made, as anticipated, local authorities, citizens, and civil society organizations were able to apply new deliberation tools and mechanisms, while local stakeholders would benefit from improved skills and knowledge about democratic approaches. On top of this, local decision-makers would be able to create favourable conditions for enhanced citizen engagement and enhance their own capacities to implement democratic approaches based on citizens' deliberation and proposals. In the long run, local stakeholders would be able to identify the best applicable models of citizen participation and improve their knowledge of democratic standards, electoral systems, open and transparent government, as well as strategic planning at the local level.

The governance structure of the Assembly is based on rules and procedures applicable and standardized in other similar deliberative platforms around the world. Yet, the structure was adapted to reflect the specificities of the particular process features in the City of Mostar. There are several international and local teams that set the general rules, methodology and timeline, as well as provide guidance on the baseline procedures. The Design Team, composed of the Council of Europe project team (two international experts and one local expert), is in charge

of managing the entire process strategy and crafting the implementation activities. The Coordinating Team, also consisting of the Council of Europe representatives, was responsible for the organization of the Assembly (selection, recruitment, programme design, organization of meetings), and provided various services in different stages of the process. The Oversight Team, consisting of 19 representatives of mixed backgrounds, was in charge of supervising the process and ensuring that it follows the standards set out in the rulebook. The Arbitration Team, composed of five members, was to get involved when the Assembly Standards were violated. Additionally, the Arbitration Team could be called to take action to restore compliance with set standards, while the Facilitation Team, also consisting of 5 members, was in charge of mediating the procedures. The process yielded 32 recommendations, developed in July 2021. Each recommendation generated over 90% support from members. The recommendations were officially submitted to the City Council of Mostar for consideration. The Council has unanimously adopted the Action plan for the implementation of the Citizens' Assembly recommendations in November 2021. Mayor of Mostar, Mario Kordić, supported the process and announced the City of Mostar will take over the organization of a second edition of the Citizens' Assembly in Mostar (Citizens' Assembly of Mostar, 2021).

In general, the COE's Mostar Citizens' Assembly initiative highlights an inclusive 'active resistance' approach, void of purely political motivations, and it fosters 'associational political participation' standards through development of a live social network, which allows all participants to engage in a communal 'social capital' of trust and exchange. However, minorities' perspectives were not necessarily taken into account, raising the question of whether the Citizens' Assemblies were doing justice in providing voices to minorities. By focusing on "representativeness" and poorly designed "randomization", they additionally emphasize the already strong "ethnic" features of the three main constituent groups (Bosniaks,[8] Croats, Serbs), which further sidelines the minority groups and constitutional "Others", whose claims and court appeals had started the whole process in the first place (e.g., Sejdić and Finci). The three main constituent groups have divergent but ethnic-based policy-making interests. The political system of Bosnia and Herzegovina is founded on the principle of proportional representation of "collective interests" and "collective identities" of the dominant ethnic groups. The system has various tools for protection of these "collective right-based interests" like veto powers that can challenge or ban the adoption of decisions or legislation if it is "found and declared to be detrimental for the interest of one of the groups".

Most local political decision-making bodies in BiH are often not descriptively representative of the wider population, nor are they meant to be. There are no legal mechanisms or intrinsic political willingness that promotes democratic representation (equality), citizens' participation, and quality deliberation at local levels. This is why externalized initiatives are vital in developing these participatory practices, especially in building 'microscopic deliberation' tools. Overall, involving a small and representative sample of the population helps in realizing the democratic

values of equality and deliberation, because large-scale participation is not fully achievable by deliberative practices alone.

5.4   Ethnic groups and deliberation in Romania

Romania recognizes 18 ethnic minority groups of different sizes, from the more territorially compact Hungarians (6% of the total population) or the more dispersed Roma (officially 3%, but estimated at around 7–8%) to the smaller groups of Polish, Italian, and Armenians (the latter consisting in only 1,300 people). Each of these minority groups is represented by one member of the Chamber of Deputies (the Lower Chamber of the Romanian Parliament), except for the Hungarians who have systematically succeeded to meet the 5% electoral threshold that allows them to have MP factions both in the upper and in the lower chamber of the Parliament. If ethnic minorities enjoy extensive rights in the cultural, linguistic and educational, and judicial fields, claims for more political rights, including territorial autonomy and protection against discrimination, have been expressed by both the Hungarian and Roma populations.

   In Romania, the only major deliberative exercise at the national level was the 2013 Constitutional Forum. The 2013 initiative deserves attention as it emerged in the context of changing civic engagement and as one of the few deliberative constitutional revisions in Europe (Gherghina and Mişcoiu, 2016). In more than 30 years of post-communism, Romania witnessed several procedures to amend its 1991 Constitution. The sole successful one took place in 2003 and was motivated by Romania's process of accession to the EU. On that occasion, the most important amendments were the introduction of articles allowing the EU and NATO accession and a series of political and administrative reforms (including the extension of the president's term of office to five years).

   However, there was no deliberative component of the revision process as there was a general consensus among political elites about the need for constitutional change. Therefore, the entire process was based on a top-down approach and the reform was approved in a binding referendum that had to meet a 50% participation quorum. The more recent revision was scheduled ten years later and envisaged mainly as a response to major institutional problems that had become visible over time (Gherghina and Mişcoiu, 2016). There were demands for a more precise definition and application of rights and liberties, and of citizen control over institutions. There was also an obvious need to constitutionally and institutionally prevent further political conflicts (such as two votes of no confidence in one term, in October 2009 and in April 2012; and two impeachments of the President, in April 2007 and in July 2012).

   The parliamentary elections of 2012, when a two-thirds majority made of the Social-Liberal Union (USL, composed of the Social-Democrats and the National-Liberals) was elected, offered the first opportunity in more than 20 years of democracy to operate a process of constitutional revision that was theoretically supported by the needed majority and consequently had fair chances to succeed.

Instead of keeping the constitutional revision process within the closed perimeter of the Parliament, as had happened in 2003, the leaders of USL decided to involve various stakeholders and regular citizens in this process. This decision was determined after the Pro-Democracy Association, one of the most important civil society organizations in Romania, expressed willingness to participate in the constitutional reform. This was helped by the new governmental coalition's desire to be seen as responsive to popular demands, after wide success in the 2013 parliamentary elections. Consequently, the political elites held a process of Constitution change in Parliament based on proposals from citizens. The latter were expected to meet and debate in an organized framework (the Constitutional Forum) and all their proposals were voted on by the parliamentary committee in charge of the revision.

The crowd-sourcing of constitutional change in Romania had an *a priori* well-defined status: deliberations were aimed to produce proposals that were later submitted for approval to a parliamentary committee. The role of the deliberative body was not to draft a constitutional revision, but to gather proposals from civil society organizations and citizens, and to prepare an exhaustive report that served as the basis for the work of the parliamentary committee.

In early 2013, the Romanian Parliament voted to set up the Constitutional Forum as an autonomous and consultative structure, meant to organize debates and consultations with society members regarding the revision of the Romanian Constitution. Complementarily, it set up a parliamentary committee with the task to discuss proposals emerged from the deliberative practices of the forum. The Forum Coordination Team asked for a minimum of six months to deliver a report and the parliamentary committee decided to grant them only two and half months, including the public consultations and proceedings' synthesis (February–May 2013). The main consequence of this precipitation was the insufficient time to prepare some of the public debates and to draft a coherent and consistent final report.

The Pro-Democracy Association was the only NGO able to organize representative debates on constitutional reform at a national level, and coordinated the forum for two reasons as it had an extensive network of local organizations all over Romania. The Pro-Democracy Association's national scope was very important because debates were supposed to be organized throughout the country. Despite the limited time frame, the idea of local-level debates was extensively implemented in practice: more than 50 debates were organized at the local level in March–May 2013, where more than 1,200 people participated.

Nonetheless, while the number of meetings and participants was high for such a short deliberative process and the amount of constitutional amendments proposed by the citizens involved in the process was considerable (more than 400), the variety of the socio-demographic profiles of the people involved was rather limited, as the proportion of educated urban participants was much higher than the national average. Moreover, the participation of the citizens belonging to the two main ethnic minority groups in Romania – the Hungarians and the Roma – was also significantly lower than the proportion of these ethnic groups in Romania, while the Romanian majority was overrepresented (Mișcoiu, 2016). This is worth further exploration since it targets some crucial aspects of civic participation and

engagement, minority–majority relations and, most importantly, the concrete limitations of deliberative democracy in practice. The following pages try to explain the main reasons for the very low degree of participation of the Hungarian and Roma ethnic Romanian citizens in the 2013 Constitutional Forum.

From the perspective of liberal democracy, limited participation by the two groups reflects a systemic dysfunctionality within the Romanian socio-political system. The entire social and political life of the communities is meant to be organized within the respective structures, including debates, discussions, and collective decisions. The latter are supposed to be further on defended and promoted by the elected representatives of the minorities (municipal councillors, MPs, MEPs, NGOs, church leaders, etc.) within the national decision-making institutions (Salat et al., 2014). This chain of representation does not include a stage of direct interaction between the minority and the non-minority citizens. The way in which the relations between the minorities and the majority are conceived could allow for some forms of debate within the different minority groups but do not offer the framework needed for wider and direct societal collaboration and even less for processes of deliberation involving members of different ethno-linguistic communities. The community-based structure of decision-making, elections, and representation mechanisms is perceived both by the minorities and the majority as a guarantee for the preservation of the ethno-cultural identity of the minority groups (Mişcoiu and Harda, 2007).

Under these circumstances, the Constitutional Forum was seen by a considerable part of the Hungarian ethnic citizens of Romania as a process of consultation limited to the Romanian majority. As a consequence, the number of Hungarian ethnic participants was about 25 individuals (out of the 1,200 total participants: about 2% compared with the 6% proportion of Hungarian population in Romania). The great majority of the Hungarian participants took part either in the debate organized in Târgu Mureş or in the one held in Cluj-Napoca. In both cases, they presented their views as being the official stances of the Hungarian community, and did not get involved in proper debates and further discussion that could alter the contents of the propositions they read in the first place.

Regarding the Roma ethnic group in Romania, their estimated share in the Romanian population is roughly 5%. Their levels of civic and political participation are traditionally low for historical reasons (Mişcoiu, 2006; McGarry, 2008). They widely ignored the existence of the constitutional revision process (Mişcoiu, 2016). Additionally, most of the Roma population has only minimal political engagement – those who do vote make up only a small share of the total Roma population (McGarry, 2008; Buta and Gherghina, 2023) and predominantly rely on the local political Roma leaders to represent their interests. Moreover, within the Roma communities, there is no tradition of discussing political matters outside the very narrow circle of the ethnic groups' leadership. The very few Roma participants who attended the Constitutional Forum (eight persons in total) were representatives of specific NGOs and ethnic parties, having a specific pre-settled agenda. As with the case of the Hungarian population, in four of the five debates where the Roma participants attended, the interaction was limited to the enunciation of a series of

points of view regarding the needed constitutional reforms that were supposed to be shared by the Roma communities.

Another obstacle hindering the participation of the members of the Hungarian and of the Roma communities at the Constitutional Forum was related to the very possibility of direct communication with the other participants. Since 1990, the development of school, high school, and university programmes taught exclusively in Hungarian led to the severe reduction of Romanian language proficiency by many members of the group. This is visible especially to those educated in the last 30 years and mainly among Hungarians who live in ethnic compact areas in Eastern Transylvania (Rácz, 2021). At the same time, there is virtually no opportunity for the Romanian ethnic citizens to learn Hungarian as a foreign language in school. If we add to this the impressive material and symbolic efforts of Budapest to reinforce the Hungarian identity of the ethnic Hungarian Romanians, we can draw the picture of an increasing trend towards a de facto minority–majority societal separation. As a result, low levels of participation by ethnic Hungarians in Romania in the 2013 Constitutional Forum could be explained by the fact that all the debates were organized in Romanian and so those who did not feel comfortable with their language skills preferred not to attend the meetings.

In the case of the Roma communities, the linguistic obstacles were less salient but were substituted by some more drastic limitations related to the overall level of education and to the perceived capacity to effectively take part in civic and political deliberations. According to data before the launch of the forum, 1 in 20 Roma had a higher education degree and roughly 1 in 5 had a high school degree (Roma Education Fund, 2007). In spite of the diversity of the Romanian Roma groups, the widespread feeling among the ensemble of the Roma population is that there is still a literacy gap between themselves and the others. This gap is reflected in the social roles (i.e. jobs, functions, positions) that Roma ethnic citizens occupy, many of which require only a basic level of education and social integration. Many of these pursuits do not include civic participation and engagement, which require some more sophisticated knowledge about the state, institutions, and citizenry.

Finally, the low attendance degree of these two minority groups to the proceedings of the Constitutional Forum can be explained by the fact that both the Roma and the Hungarians believed that such debates have no impact on the achievement of their specific interests. On one hand, many minority members believe that they share many of the general interests of broader society (better living standards, safety, stability, development, etc.). Therefore, there is limited room to add to what the majority members would claim in such debates. On the other hand, there are specific interests of the minority groups that could be described as being different and in most cases opposite to those of the majority. For the Hungarian minority, these include: regional autonomy based on ethno-linguistic criteria, a wider use of the Hungarian language for education and administration, and in the institutions of the judiciary, and full restitution of the historical properties of the Hungarian churches, etc. For the Roma, the specific claims are related to the implementation of inclusion and non-discrimination policies, ample programmes of investment and development in the Roma areas, villages, and neighbourhoods,

policies of protection of the Roman cultural and linguistic identity, the recognition of the WWII Roma holocaust, of the pre-mid-nineteenth century Roma slavery-related abuses and, consequently, a strategy for granting retributions, etc. Such topics are not seen as being discussable in open and grass-root debates because of the virulent opposition of the majority. Instead, the representative organizations of the two minorities, the Democratic Alliance of the Hungarians in Romania and, respectively, the Party of the Roma, are better placed to negotiate their support in the Parliament for the governmental majorities in exchange for the advancement of these claims.

In fact, within the forum deliberations, all the Roma and most of the Hungarians claimed they represented structured organizations and groups and that if the regular citizens were much less inclined to express their thoughts, it was because they knew there were better mechanisms for achieving specific minority demands, while acquiescing that the general propositions for revising the Constitution are very similar to those expressed by the Romanian majority. Nevertheless, the participation of the representatives of these two communities in the debates that they considered more relevant (the two meetings organized in the major cities in Transylvania – Cluj-Napoca and Târgu Mureş – in the case of the Hungarian minority, and five meetings held in areas with a higher proportion of Roma ethnics, in the case of this second minority group) was meant to ensure the representation of the respective groups and demonstrate that their specific demands were indeed heard.

5.5   Conclusions

This chapter aimed to understand how ethnic groups engage in public deliberation. We reveal two contrasting realities. On the one hand, the external interventions in BiH incentivize public deliberation and create an open space for active engagement of experts and regular citizens. As the integrity of BiH and the status of peace among its entities is still dependent on the permanent surveillance of the international community, pressures for creating mechanisms for inter-ethnic and inter-confessional political consultation, participation, and deliberation also come from organizations, such as the European Union, the Council of Europe, or the U.S. Department of State. The deliberation processes in the City of Mostar accommodate citizens' initiatives, and relate to citizens' capacity to initiate, act on, and directly take part in constitutional reform processes. The Citizens' Assembly initiative in BiH fosters the concept of 'active resistance' and allows representative political participation of citizens in public deliberation practices. This is void of purely political motivations, but it highlights the benefits that regular procedures lack when some minorities are not engaged. The Mostar Citizens' Assembly operationalizes the 'associational political participation' model through the development of a live social network, which all participants recognize and want to preserve as the communal 'social capital' of trust and exchange. This is a mission that they feel could countermand their size and fragmentation, and pronounce a more nuanced form of constructive engagement that influences policy-making.

On the other hand, in Romania, the participation to the forum was not taken into consideration as an option by the wider Hungarian and Roma communities but instead it was perceived as another opportunity to highlight the collective demands of the community as articulated by their "classical" representatives. To put it more abruptly, what may have seemed for its initiators and by other participants as a mechanism of civic engagement and an exercise of deliberative democracy became for these two communities' political leaderships an occasion among others to voice and reconfirm some specific demands in the name of their ethnic groups.

Notes

1 Sejdić and Finci group of cases (ECHR) challenged the existing power-sharing arrangement in BiH and revealed that communities of 'Others' and citizens of BiH, although minuscule in numbers, can fully participate in the BiH general elections, thus fully exercise their political rights and demand the constitutional changes that institutionally limit these rights.
2 The Citizens' Assembly is one of the representative deliberative processes models, designed as a platform where ordinary citizens, can consider, deliberate on, and contribute to the design of new public policy proposals (Elstub and Escobar, 2019).
3 Mostar is split between Bosniaks and Croats. It has not held a local election since 2008, when Bosnia's constitutional court declared its election rules discriminatory and ordered them changed. The two dominant political parties in the city long failed to agree on how to do so, until 2020, following the Recommendation 442 (2019) on local and regional democracy in Bosnia and Herzegovina and the ruling of the European Court of Human Rights in the case *Baralija v. Bosnia and Herzegovina*.
4 The project is rooted in the work of the Reflection Group on Mostar, established in 2017 with the goal of proposing a sustainable solution for restoring democracy in the City.
5 The first official meeting took place in February 2022, at the same time with the writing of this chapter.
6 This project is supported by the Congress of Local and Regional Authorities of the Council of Europe, as part of the Council of Europe Action Plan for Bosnia and Herzegovina 2018–2021.
7 The CoE's design team randomly distributed invitation letters to 5,000 households in Mostar. A total of 40 members were selected in accordance with the set criteria, along with eight substitute members entitled to participate in the deliberation meetings in case one or more members of the primary participants was unable to attend.
8 The term 'Bosnian' principally refers to the citizens of BiH belonging to any and all ethnic groups. The term 'Bosniak' refers to a member of one of the dominant Slavic ethnic groups in BiH who are predominantly adherents of (mostly Sunni) Islam. In some political circles in BiH, the term 'Bosniak' is often used interchangeably with 'Muslim Bosnian'.

References

Agarin, T. (2019) 'How Power-Sharing Includes and Excludes Non-Dominant Communities: Introduction to the Special Issue', *International Political Science Review*, 41(1), pp. 3–14.
Agarin, T., McCulloch, A. and Murtagh, C. (2018) 'Others in Deeply Divided Societies: A Research Agenda', *Nationalism and Ethnic Politics*, 24(3), pp. 299–310.
Anderson, J. E. (2011) *Public Policymaking: An Introduction*. Boston: Cengage Learning.

Bartels, L. M. (2008) *Unequal Democracy. The Political Economy of the New Gilded Age*. Princeton: Princeton University Press.

Beauvais, E. and Bachtiger, A. (2016) 'Taking the Goals of Deliberation Seriously: A Differentiated View on Equality and Equity in Deliberative Designs and Processes', *Journal of Public Deliberation*, 12(2), pp. 1–18.

Benhabib, S. (ed.) (1996) *Democracy and Difference: Contesting the Boundaries of the Political*. Princeton: Princeton University Press.

Buta, O. and Gherghina, S. (2023) 'Organisational Capacity and Electoral Gains: Why Majority Parties Nominate Roma Candidates in Local Elections', *Journal of Ethnic and Migration Studies*, 49(9), pp. 2154–2171.

Caluwaerts, D. (2012) *Confrontation and Communication. Deliberative Democracy in Divided Belgium*. Bern: Peter Lang.

Citizens' Assembly of Mostar (2021) 'Conclusion Regarding the Implementation of the Citizens' Assembly Recommendations Published in the City of Mostar Official Gazette', *Gradimo*. Available at: https://mostargradimo.ba/en/conclusion-regarding-the-implementation-of-the-citizens-assembly-recommendations-published-in-the-city-of-mostar-official-gazette/.

Curato, N. *et al.* (2017) 'Twelve Key Findings in Deliberative Democracy Research', *Daedalus*, 146(3), pp. 28–38.

Elstub, S. and Escobar, O. (eds) (2019) *Handbook of Democratic Innovation and Governance*. Cheltenham: Edward Elgar Publishing.

Fishkin, J. S. (2011) *When the People Speak: Deliberative Democracy and Public Consultation*. Oxford: Oxford University Press.

Gerber, M. (2015) 'Equal Partners in Dialogue? Participation Equality in a Transnational Deliberative Poll (Europolis)', *Political Studies*, 63(1), pp. 110–130.

Gherghina, S. and Mişcoiu, S. (2016) 'Crowd-sourced Legislation and Politics: The Legitimacy of Constitutional Deliberation in Romania', *Problems of Post-Communism*, 63(1), pp. 27–36.

Goodin, R. E. and Dryzek, J. S. (2006) 'Deliberative Impacts: The Macro-Political Uptake of Mini-Publics', *Politics & Society*, 34(2), pp. 219–244.

Habermas, J. (1996) *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Cambridge: MIT Press.

Hasić, J. (2015) *Konsocijacija u političkom sistemu Federacije BiH: Testiranje teorijskog modela konsenzualne demokracije Arenda Lijpharta u praksi*. Sarajevo: Federalno ministarstvo pravde FBiH.

Hasić, J. and Telalović, A. (2021) 'Diaspora, Deliberation and Democracy: Examining Externally-Sponsored Initiatives for the Development of Local Fora in Bosnia and Herzegovina', *Innovation: The European Journal of Social Science Research*, 34(5), pp. 766–781.

Hendriks, C. M., Dryzek, J. S. and Hunold, C. (2007) 'Turning up the Heat: Partisanship in Deliberative Innovation', *Political Studies*, 55(2), pp. 362–383.

Karpowitz, C. F., Mendelberg, T. and Shaker, L. (2012) 'Gender Inequality in Deliberative Participation', *American Political Science Review*, 106(3), pp. 533–547.

Lijphart, A. (2008) *Thinking about Democracy: Power Sharing and Majority Rule in Theory and Practice*. New York: Routledge.

Mansbridge, J. *et al.* (2010) 'The Place of Self-Interest and the Role of Power in Deliberative Democracy', *The Journal of Political Philosophy*, 18(1), pp. 64–100.

McGarry, A. (2008) 'Political Participation and Interest Articulation of the Roma in Romania', *Journal on Ethnopolitics and Minority Issues in Europe*, 7, pp. 1–25.

Mişcoiu, S. (2006) 'Is There a Model for the Political Representation of the Romanian Roma?', *Sfera Politicii*, (123–124), pp. 78–90.

Mişcoiu, S. (2016) 'Légitimité et délibération. Réflexions sur le projet de révision constitutionnelle roumaine de 2013', in Delteil, V. and Ivan, R. (eds) *Trajectoires de transformation et d'intégration dans l'Europe du Sud-Est. Défis pour les élargissements futurs*. Bucharest: Editura Universității din București, pp. 307–331.

Miscoiu, S. and Harda, Ştefan-I. (2007) 'Impactul europenizării asupra politicilor publice pentru minorități naționale în România', in Coman, R. and Dobre, A.-M. (eds) *Politici publice românești în perspectivă europeană*. Iasi: Institutul European.

O'Flynn, I. (2006) *Deliberative Democracy and Divided Societies*. Edinburgh: Edinburgh University Press.

O'Flynn, I. and Caluwaerts, D. (2018) 'Deliberation in Deeply Divided Societies', in Bächtiger, A. et al. (eds) *The Oxford Handbook of Deliberative Democracy*. Oxford: Oxford University Press, pp. 823–837.

Rácz, K. (2021) '"Creating the Illusion of Speaking Romanian well": Hungarian Speakers' Teaching and Learning the Majority Language in Romania', *Multilingua*, 41(1), pp. 29–56.

Roma Education Fund (2007) *Evolutia Educatiei Romilor in Romania*. Komárom: Komáromi Nyomda és Kiadó Kft.

Rosset, J. and Stecker, C. (2019) 'How Well Are Citizens Represented by their Governments? Issue Congruence and Inequality in Europe', *European Political Science Review*, 11(02), pp. 145–160.

Sahadžić, M. (2019) 'Mild Asymmetry and Ethnoterritorial Overlap in Charge of the Consequences of Multinationalism. A Country Study of Constitutional Asymmetry in Bosnia and Herzegovina', in Popelier, P. and Sahadžić, M. (eds) *Constitutional Asymmetry in Multinational Federalism. Managing Multinationalism in Multi-tiered Systems*. Cham: Palgrave Macmillan, pp. 47–75.

Salat, L. *et al.* (eds) (2014) *Autonomy Arrangements around the World: A Collection of Well and Lesser Known Cases*. Cluj-Napoca: Romanian Institute for Research on National Minorities.

Savić-Bojanić, M. (2023) 'Why Small Ethnic Minorities Participate in Politics: Comparing Jews and Poles in Bosnia and Herzegovina', *European Societies*, 25(2), pp. 281–303.

Schneiderhan, R., Khan, S. and Elrick, J. (2014) 'Deliberation and Ethnicity', *Sociological Forum*, 29(4), pp. 791–807.

Siapera, E. (2005) 'Minority Activism on the Web: Between Deliberative Democracy and Multiculturalism', *Journal of Ethnic and Migration Studies*, 31(3), pp. 499–519.

Stojanović, N. (2018) 'Political Marginalization of "others" in Consociational Regimes', *Zeitschrift für Vergleichende Politikwissenschaft*, 12(2), pp. 341–346.

Wheatley, S. (2003) 'Deliberative Democracy and Minorities', *European Journal of International Law*, 14(3), pp. 507–527.

Young, I. M. (2000) *Inclusion and Democracy*. Oxford: Oxford University Press.

6 'Deliberating the Rights of the Child'

The inclusion of children in deliberative democracy and some insights from Israel

Daniella Zlotnik Raz and Shulamit Almog

6.1   Introduction

Deliberative democracy is a democratic theory and practice that emphasises a decision-making process in which deliberation is a central component. On this view, the democratic legitimacy of decisions is based on whether all those who are subject to the decision have a right and an opportunity to freely deliberate, be heard, and influence the decision-making process (Beauvais & Baechtiger, 2016; Bohman, 1998). Increasing citizen participation in deliberative processes is not sufficient. Rather, there is a need to ensure diversity of participants' backgrounds, perspectives, and experiences. Therefore, inclusion has emerged as a central value of deliberative democracy, and theoretical and practical work focuses on ensuring that members of disempowered and under-represented groups are effectively incorporated in deliberative processes and systems (Karpowitz et al., 2009; Wojciechowska, 2019).

Prioritising inclusion, both in terms of *access* to deliberative processes and *meaningful and impactful* participation, drives the discussion of the role and rights of children in deliberations, and the benefits and concerns associated with such inclusion. Before delving deeper, a semantic note is required. Generally, and also in this chapter, 'children' are defined as human beings below the formal age of majority (typically 18). While we maintain that all children should have an opportunity to participate in matters relating to them, in accordance with their age and maturity, we acknowledge that participation in deliberative processes concerning constitution-making, legislation, and policy-making is perhaps especially critical, relevant, and practical for youth/adolescents (14–17), mainly due to youth's evolving capacities and enhanced abilities to tackle complex deliberative issues (UN Committee on the Rights of the Child, 2016). Having said that, throughout the chapter, we opted for the general term 'children' (unless the term 'youth/adolescents' is required for accuracy in a specific context). This choice is based on the terminology of the children's rights discourse, which is central to this chapter, and also reflects that distinguishing between children and youth and/or determining specific age limits, for deliberation, or whether such age limits are necessary is beyond the scope of this chapter.

In recent decades, children's role in public decision-making processes and deliberations has received increasing attention (Cockburn, 2010; Forde et al., 2020;

Nishiyama, 2017). Although deliberative democracy has been acknowledged as a 'promising starting point' for children in democracy (Nishiyama, 2017, 9), children today remain under-represented in, and in some cases, even excluded from deliberative processes. Thus, children's experiences, insights, and views are largely absent from decision-making processes relating to their lives and discussions on inclusion in deliberations are still predominately adult-centred, leaving the issue of children in deliberative processes under-developed in both theory and practice.

The chapter argues the case for including children in constitution-making, legislative, and national policy-related deliberative processes, based on the deliberative democratic approach and the children's rights discourse. It does so by considering the aims and values relating to deliberative democracy and how they justify child participation in decision-making, and by introducing a child rights perspective on children and deliberative democracy, anchored in the UN Convention on the Rights of the Child (CRC) and the work of the UN Committee on the Rights of the Child (CRC Committee).

Based on these two theoretical perspectives, the chapter offers a spotlight on children's involvement in deliberative democracy in Israel, analysing two recent cases in which children participated in policy-related deliberative processes at the national level: the Israel National Council for the Child (NCC) Youth Parliament (NCCYP), with a focus on the 'Child Participation in Policy-Making' deliberation, and the Children's Meeting in the Inter-Sectoral Roundtable on Children and Youth during COVID-19' (IRTCY). This section focuses on the mechanisms and impact of these cases and concludes with some insights on children's participation in deliberation in Israel, and potentially, beyond.

6.2   The inclusion of children in deliberative processes

6.2.1   *Including children in legislation and policy-making deliberative processes*

The discussion on children in the public-political sphere is long established, and its diverse arguments have been analysed and debated in many of its more well-known 'offshoot' discussions on issues such as children's enfranchisement (Cook, 2013; Farson, 1978; Holt, 1974) or child citizenship (Assim, 2019; Invernizzi & Willams, 2007). Focusing on the aims and values of deliberative democracy, this section addresses the key justifications for and objections to the inclusion of children in legislative and policy-making deliberative processes.

From this standpoint, the case for including children in deliberative processes is based on four main justifications. First, hearing children in decision-making fulfils the aim of *inclusion*, which is at the core of deliberative democracy. In many respects, children meet the criteria of a disempowered and under-represented group that has limited influence on public policy: they are often excluded from deliberative processes due to their age and legal standing as minors; they encounter unique barriers to participation in terms of access and meaningful participation (age-based restrictions; need for parental consent; 'age-blind' mechanisms that are

not designed for or adapted to children, etc.) and; they lack resources, effective organisation, and representation (Cockburn, 2010; Karpowitz et al., 2009). Indeed, children are not a homogeneous group in terms of their backgrounds and lived experiences and in contrast to other socially excluded or under-represented groups, their under-representation is temporal (as they will eventually 'grow-out' of being children and could participate as adults). Still, we propose that children share similar characteristics relating to their age, development, social realities, and expectations that provide them with unique perspectives. Accordingly, incorporating children in decision-making processes adds to the diversity of opinions; may result in novel insights and suggestions; and potentially enhances the acceptance and legitimacy of decisions by children themselves (Harris, 2021; Kulynych, 2001; Nishiyama, 2017). Therefore, the under-representation and, in many cases, exclusion of children from deliberative decision-making on matters relating to their lives undermines the principle of inclusion and thereby weakens the democratic legitimacy of decision-making processes relating to them.

Second, hearing children fulfils the *epistemic/educational* aim of deliberative democracy, which seeks to enhance civic knowledge and promote the (re-)engagement of citizens in democracy (especially in light of growing evidence of young people's disillusionment with current democratic institutions, the shifting patterns of their political participation, and the global decline in formal and electoral political activities; Beauvais & Baechtiger 2016; Smith, 2010; van Deth, 2016). The educational aim is particularly suited for children: given their developmental capacity for learning, 'early interventions' that promote engagement can increase their current and future interest and involvement in political and policy discussions (Kulynych, 2001; Nishiyama, 2017).

Third, acknowledging that children's experiences make them 'experts' on their own lives and uniquely positioned to comment on decision-making concerning them means that hearing children on such legislative and policy matters can enhance deliberation and generate *more informed decision-making* (Kulynych, 2001; Nishiyama, 2017; Nylund, 2020). Generational gaps and the constantly evolving concept of childhood also mean that hearing children cannot be a one-time initiative, but that it is necessary to speak with children periodically to understand their changing needs and interests (Kulynych, 2001; Nolan, 2011).

Fourth, participation in deliberative processes is arguably particularly important to children as they *lack any other political, legal, or (strategic) economic power*. Children are generally unenfranchised and excluded from political or law-making bodies, as a result of which their interests are not effectively represented (Nolan, 2011). Participation in deliberative processes is one of the only paths in which children can be heard and can impact legislation and policy-related decision-making that concern them.

One objection to including children in deliberative processes reflects *concerns regarding children's capacities, knowledge, and skills* and whether children are 'fit' to effectively participate in and contribute to deliberative processes. Children lack autonomy, which is considered an 'entrance ticket' to democracy (Nishiyama, 2017, 3). They are often viewed as inherently immature and vulnerable, lacking a

capacity to seriously reflect on legal and social issues, form meaningful opinions, and adequately communicate them to others. As a result, they are not only considered to be incompetent at deliberation, but also at risk of manipulation and harm in the process (also Kulynych, 2001; Nishiyama, 2017). Yet, while children may merit different treatment than adults, calling for their complete exclusion from deliberative processes is paternalistic, excessive, and unjust. Moreover, as many adults also lack capacities and knowledge, singling children out as the only group requiring protection or adaptation in deliberations is also 'problematic and naïve' (Daly, 2016, 7; Tobin, 2015).

Another prevalent argument against including children in deliberations is related to the *concept of citizenship*. Some scholars uphold a 'developmental' approach to citizenship, noting that individuals must be autonomous and acquire skills before assuming the responsibility to participate in deliberations (Habermas, 1990), thereby excluding children. In recent decades, however, some scholars have called for a broader understanding of citizenship, also for children (Assim, 2019; Cockburn, 2010; Invernizzi & Williams, 2007; Kulynych, 2001; Nolan, 2011). Additionally, as some deliberative processes are open to (adult) non-citizens (e.g., asylum-seekers), there should also be a place in public decision-making for other classes of less than 'fully' autonomous citizens such as children.

Additionally, there are concerns *that involving children in deliberative processes is against their best interests* in the sense that it will not be interesting for them, that the exposure to 'political responsibility' is burdensome and stressful, and that negative experiences in deliberations (for example, inability to impact decision-making) could dishearten children and deter them from further engagement in adulthood. However, according to the CRC Committee (2013), the 'best interests of the child' principle should not be employed to justify decisions that deny children their rights, or represent 'adult' interests disguised as those of children. In fact, the growing engagement of children—particularly youth—in human rights and social and economic issues (CRC Committee, 2018; Daly, 2016) and their participation in deliberative and consultative forums (Inter-Parliamentary Union, 2021; Nishiyama, 2017) reflect the desire of many children globally to positively impact their societies and be involved in legislation and policies relating to their lives.

Therefore, we hold that concerns related to children's capacities and safeguarding issues should be addressed in ways that ultimately enable their participation in deliberation and decision-making. One key proposal in that regard is instituting enclaved deliberations for children. Enclaved deliberations have been recognised as a useful tool for inclusion by providing disempowered and under-represented groups with a safe space to discuss issues among themselves, identify needs, form and express views, and develop recommendations for decision-making. As a result, such deliberations ensure that deliberative processes are more inclusive, empowering, and attentive to the voices of diverse social groups (Beauvais & Baechtiger 2016; Himmelroos et al., 2017; Karpowitz et al., 2009).

Enclaved deliberation may be particularly appropriate for children, by ensuring them a non-intimidating and safe environment in which they can express

themselves in their own words; contact with peers for support and discourse; a child-friendly communication format and facilitation style that supports learning and skill development; and, potentially, an opportunity to be involved in the design and operations of the deliberative process itself (Cockburn, 2010; Harris, 2021; Kulynych, 2001). Additionally, by empowering children and motivating action and advocacy in relation to their rights and shared interests (Karpowitz et al., 2009), enclaved deliberation can achieve important social and democratic goals.

Interestingly, children's deliberations are considered a unique case of enclaved deliberations, with arguably less risk of severe polarisation. Compared with other disempowered or under-represented groups, children are not a 'homogenous' or 'like-minded' group, but rather an age-based group, whose members share similar characteristics only in terms of their age, developmental needs, rights, and, to some extent, the social realities that relate to their age and legal standing. Accordingly, children's deliberation can support diverse and competing views and perspectives, with less risk of extreme polarisation, when discussing policy issues related to them (Himmelroos et al., 2017; Karpowitz et al., 2009; Strandberg et al., 2019; Sunstein, 2002). This understanding also implies that children's deliberations themselves may require additional layers of enclaved deliberations for children experiencing internal exclusion (Wojciechowska, 2019).

6.2.2 A children's rights approach to including children in deliberative processes

The CRC provides a comprehensive framework on the human rights of children and serves as the guiding legal instrument on all aspects relating to children's lives. It contains several provisions that are particularly relevant to the discussion on children's role in the public-political sphere, as well as in relation to deliberative democracy, and requires States-Parties to implement these rights in practice (CRC §4; on children's political rights and participation under the CRC, Zlotnik Raz & Almog, 2023). The CRC also reflects a new image of the child, portraying children as independent rights holders with valuable voices and evolving agency and capacities (Tobin, 2015). Thereby, it positions children as active right-bearing members (not merely future members) of their societies whose voices should be heard – a perspective that ties well to the discussion on children and deliberative democracy.

The most central right in the discussion on children and deliberation is the right to be heard, broadly conceptualised as the right of participation. It is a general principle of the CRC that confers to a child (or a group of children) who is capable of forming their own views the right to express those views freely in all matters affecting them, and requires that the child's views are given 'due weight' in accordance with the child's age and maturity (CRC §12; CRC Committee, 2003). Thus, the right to be heard includes an obligation both to hear children, both individually and collectively, and to ensure their views have an impact (albeit, not necessarily a decisive one) in decision-making relating to their lives (CRC Committee, 2009).

In its guidance, the CRC Committee has extensively developed the right to be heard, including in relation to children's participation in decision-making

processes, by linking this right to the principles of democracy and recognising that its implementation also calls for changes in the legal and social norms concerning children's role in the public sphere (CRC Committee, 2006). The CRC Committee has also consistently called for the inclusion of children in parliamentary and government decision-making processes including in relation to legislation, policy-making, developing national plans, and in monitoring and evaluating their implementation (CRC Committee, 2003, 2006, 2009, 2013). It particularly emphasised participation "as a means of political and civil engagement" for youth, holding that States-Parties should ensure "adolescents are involved in the development, implementation and monitoring of all relevant legislation, polices, services and programmes affecting their lives" (CRC Committee, 2016, para. 23–24), including at the national level, and that this is instrumental to the development of their active citizenship.

To implement the right to be heard, the CRC Committee has called on States-Parties to develop legal frameworks and specialised guidelines to enable children's meaningful participation (which should also be applicable to participation in deliberative processes) and establish consultative and deliberative mechanisms to that end (CRC Committee, 2003, 2006, 2009). Additionally, the CRC Committee has welcomed initiatives to engage children in decision-making processes (e.g., youth parliaments, children's councils; CRC Committee, 2009, 2013) and recognised that child-led organisations and initiatives 'offer valuable insight of the democratic process' (CRC Committee, 2006, para. 30). Acknowledging the importance of the digital environment for children's participation, the CRC Committee also called on States-Parties to actively use digital platforms to 'consult with children on relevant legislative, administrative and other measures' (CRC Committee, 2021, para. 18).

While the discussion on children and deliberative democracy from a children's rights perspective is by no means complete or fully developed, we hold that participation in deliberative processes on matters relating to their lives stems directly from children's right to be heard and that this right imposes clear obligations on States-Parties. In effect, the CRC and the work of the CRC Committee have elevated the discussion on child participation in deliberative processes to a *normative* level. Arguably, the guidance of the CRC Committee on this issue is even more expansive and rights-based than that of other human rights treaty bodies relating to (adult) citizen participation in deliberative democracy (e.g., CEDAW, 1997; United Nations Human Rights Committee, 1996). The guidance, then, not only affirms children's (particularly youth) participatory and discursive rights in relation to public decision-making, but also introduces a human rights dimension to their inclusion in deliberative processes.

6.2.3   *Including children in constitution-making*

Public participation in constitution-making has developed significantly in recent decades as 'both a right and a necessity' (Hart, 2003, 12), with many countries employing diverse and innovative means and processes that support citizens' engagement with constitutional content (Hudson, 2021; Wheatley & Mendez, 2013).

Although, some form of public participation in constitution-making has become more common, children are seldom involved. The absence of children from constitution-making processes is especially problematic in light of the increasing number of countries that incorporate children's rights in their constitutions (Haugli et al., 2020; Tobin, 2005; UNICEF Innocenti, 2008; Woodhouse, 1999)—a trend that is strongly influenced by the CRC (CRC Committee, 2003; Hoffman & Stern, 2020; Lundy et al., 2013). The CRC Committee has not (yet) commented on children's participation in constitution-making, but it is evident that the right to be heard should be understood broadly, and requires that children should be heard 'wherever their perspective can enhance quality of solutions' (CRC Committee, 2009, para. 26–27), that is, also in constitutional or other high-level normative deliberations that concern children's lives.

Additionally, the considerations examined in relation to children's participation in legislation and policy-making deliberative processes are equally applicable to the discussion on children and constitution-making. Participation in the latter, however, also introduces unique benefits. Including children in constitution-making has significant symbolic and declarative value regarding children's role in present society and, even more so in the case of constitutional deliberation, in future society. As constitutions concern the establishment (or amending) of fundamental laws and institutions in government, human rights, and shared societal values, including children in deliberative constitution-making processes underscores their recognition as meaningful actors in the public sphere in the eyes of policy-makers, children themselves, and society as a whole.

Also, constitutional rights for children encompass diverse aspects of their lives, including care, protection, welfare, education, and juvenile justice (Tobin, 2005; UNICEF Innocenti, 2008) and subsequently shape related legislation, policies, and services. As a result, deliberation on the scope and content of constitutional provisions is highly consequential and relevant for children, and children's inclusion can result in stronger and more expansive constitutional children's rights (Woodhouse, 1999). The rarity of constitutional changes and deliberative processes regarding such changes (relative to legislation and policy changes) makes children's involvement all the more important, as the adopted constitutional text will not only impact their lives, but the lives of many future generations of children (Gosseries, 2008; Harris, 2021).

Children's inclusion in constitution-making entails unique challenges. Compared with legislation and policy-making, constitution-making processes can be more complex, requiring appropriate mechanisms, training, and child-friendly information on the meaning of constitutional provisions, their relationship with domestic law and jurisprudence, their enforcement and implementation, etc. Also, compared with legislation and policy-making, constitution-making processes can be substantially longer, protracted, and uncertain. Such processes are not always successful (Wheatley & Mendez, 2013). Even if they are, constitutional amendments often take a long time to be adopted, and longer to have a discernable impact on the lives of citizens, including children. The extended timeline of constitution-making must be reconciled with children's different perception of time (CRC Committee,

2013) and their need to experience a sense of accomplishment in a foreseeable time frame. Therefore, to avoid disappointment and alienation of children from engaging in future deliberative processes, children must be informed regarding the constitution-making process, including its scope, length, and limitations.

6.3   The inclusion of children in deliberations in Israel

6.3.1   *Children and deliberative democracy in Israel*

Public participation and democratic deliberation are newly evolving themes in the Israeli context. They first emerged in the early 2000s, with most of the progress occurring in the past decade, focusing on public participation in legislation and government policy-making and, to a more limited degree, constitution-making (Knesset Research and Information Centre [RIC], 2019; Zlotnik Raz & Almog, 2021). Including children in deliberation, however, remains under-developed. Currently, legally binding procedures for children's collective participation are limited to the local level, and to the field of education (Gertel, 2019; Knesset RIC, 2016), with no legislation anchoring children's participation in decision-making or deliberative processes at the national level. Initiatives to include children in legislation and policy-making in Israel are therefore voluntary and primarily led by civil society organisations (CSOs), with differing degrees of government involvement.

6.3.2   *The selected cases: relevance and unique characteristics*

The two cases examined in this section are prominent examples of children's participation in high-level deliberative policy-making processes: the NCC Youth Parliament (NCCYP) Deliberation on Child Participation in Policy-Making and the Children's Meeting in the Inter-Sectoral Roundtable on Children and Youth during COVID-19 (IRTCY).

These examples are relevant and unique in three respects: First, they concern participation in important policy matters in Israel, with pertinent constitutional dimensions. Second, both cases concern deliberative processes for children (one independently, and the other part of a general deliberative process) and constitute a form of 'enclaved deliberation'. Third, both cases are recent (2020–2021), having taken place during the exceptional situation of the COVID-19 outbreak in Israel (the NCCYP was an established 'physical' programme adapted to the digital environment; the IRTCY was established specifically to address COVID-19's impact on children). COVID-19, and the restrictions adopted to mitigate the spread of the virus, impacted children significantly, globally and in Israel. Among others, it disrupted education, exacerbated socio-economic and digital divides, limited social interactions, and increased risk situations and mental health issues (Morag et al., 2021; Peleg et al., 2021). Furthermore, both examples tie to the broader discussion on the importance of and obligation to hearing children also, and especially during emergencies and crisis situations (CRC Committee, 2009). The Israeli cases stand out as relatively rare examples of children's deliberation during COVID-19, as

studies show that children's participation in decision-making during COVID-19 was lacking, and that children generally felt unheard and limited in their opportunities to participate (Ben-Arieh et al., 2020; Lundy et al., 2021; NCC, 2020)

6.3.3   The NCCYP case

6.3.3.1   Mechanism

The NCCYP, first launched in 2018, is an annual programme designed to include children in policy-making and provide an opportunity for dialogue and deliberation between children and government, as well as other relevant stakeholders (CSOs, academia) on concrete, actionable issues concerning children's lives (Naamat & Zlotnik Raz, 2021). The programme was developed and is led by the NCC, an independent CSO working to ensure and safeguard the rights, welfare, and well-being of children in Israel (NCC, n.d.).

The NCCYP, which is held in the Negev region in Israel, is attended by ~100 children (aged 15–17) from Beer-Sheva and Rahat, representing many of the population groups in the Israeli society (gender, ethnicity, religiosity, etc.). Participants are divided into groups (25–30 children) that focus on different policy-related topics, which are selected on the basis of several criteria, including their relevance for children and whether they are currently (or plan to soon be) addressed and developed by government, which implies that hearing children could potentially have an impact on decision-making (Naamat & Zlotnik Raz, 2021).

For the sake of clarification, while youth parliaments vary in terms of their institutional design, aims, and impacts, the NCCYP is quite dissimilar from the common youth parliament model. The NCCYP's aim is to enable children's participation in specific policy issues through deliberative processes with policy-makers and relevant stakeholders. It does not replicate parliamentary procedures nor does it take place in parliament, it is not organised by government, and there is no selection process (participation is open to all interested students from the schools in the NCCYP programme; Matthieu et al., 2020; Patrikios & Shepard, 2014; Shepard & Patrikios, 2013).

One of the policy topics in the 2021 NCCYP was 'child participation in policy-making.' The children-participants discussed the importance, benefits, and challenges of children's involvement in democratic decision-making through participatory and deliberative processes, and proposed principles to ensure children's meaningful participation (Naamat & Zlotnik Raz, 2021). In their recommendations, the children-participants viewed participation as essential for children and called to establish inclusive mechanisms to hear children at the national level, especially on matters directly impacting them, recognising that implementation requires a 'brave vision' and an extensive multi-stage programme (Naamat & Zlotnik Raz, 2021). The NCCYP's transition from physical to online format due to COVID-19 also introduced new opportunities in the deliberations: Some children-participants felt more comfortable to express themselves; it facilitated simultaneous translations (Arabic–Hebrew); it included interactive instruments and polls to which children

could respond in their preferred language or anonymously. Consequently, children-participants overwhelmingly expressed a desire to have participatory and deliberative processes take place in a hybrid/blended model (Naamat & Zlotnik Raz, 2021).

The NCCYP culminated with a deliberative meeting of the children and relevant stakeholders working on the topic, in which children-participants shared their views and recommendations, received feedback, and asked and answered questions. The deliberative session on 'child participation in policy-making' included high-level policy-makers (from the Ministry of Justice, Ministry of Education, and Unit for Public Participation under the Prime Minister's Office [PMO]), as well as relevant representatives from the municipal level and academia (5 in total; Naamat & Zlotnik Raz, 2021). Discussing the children-participants' views, the (adult) experts acknowledged the importance of hearing children in policy-making through deliberative mechanisms, but held that children's inclusion requires a gradual process, and that not all policy-related issues are suitable. Discussing the format, the children-participants held that deliberative processes should ideally enable children to 'sit at the table' with adults, deliberate together, and be included in general decision-making processes and forums (Naamat & Zlotnik Raz, 2021).

6.3.3.2   Impact

The children-participants' insights and recommendations were included in the NCCYP report, which was the main output of the project. It was disseminated to relevant stakeholders, including policy-makers in government ministries, Knesset committees and Members of Knesset, government agencies, representatives in local authorities, CSOs, and academics (notably, a draft of the report was sent to all child-participants for comments before publication). The NCC is also implementing the children's recommendations in its on-going advocacy work regarding related policy themes (Israel National Council for the Child, 2021a). While the NCCYP report's specific recommendations on 'child participation in decision-making' have yet to be incorporated into legislation or governmental guidelines/policies, this is not necessarily indicative of a lack of impact on policy-making, as its publication was recent, in November 2021, and it includes insights and recommendations, as opposed to 'ready to use' policy proposals.

The NCCYP's impact is also tied to its operations, which provide a platform for children–government dialogue. Involvement in the NCCYP exposes policy-makers and other stakeholders to children's views and potential contribution to deliberative processes. Following the 2020–2021 NCCYP, participating policy-makers conducted follow-up participatory initiatives with children to discuss further policy-making issues on two occasions (Naamat & Zlotnik Raz, 2021). Furthermore, several comments by children-participants during the deliberative sessions, which were quoted in the NCCYP report, indicated that the children felt their views were seriously considered by the adult stakeholders. For example, one participant (from Beer-Sheva) commented on the issue of children's participation and held that 'A population without rights will not be cooperative, or create a better future and society.' Another participant (from Rahat) noted, 'The fact that we can stand in

front of respected experts in the field and say what we think, give them answers, is very meaningful' (authors' translation; Naamat & Zlotnik Raz, 2021, 12). Additionally, after the conclusion of the NCCYP, an online survey was sent to all child-participants for their anonymous feedback. Overall, results were quite positive: 89.7% of respondents agreed or strongly agreed that the NCCYP encouraged them to be more involved in matters that are important to them, and 79.4% felt or strongly felt that their recommendations could impact policy-making. However, because the total response rate in the survey was low (~42% of all child-participants in the NCCYP programme; NCC, 2021b), additional qualitative data is required to better assess children-participants' views on the programme.

In summary, the NCCYP's output was broadly disseminated, and its sessions motivated additional participatory initiatives, further advancing children's participation in national decision-making. Still, as a programme, the NCCYP could benefit from additional follow-up measures to advocate for the implementation of children's recommendations on the deliberation themes and to collect additional qualitative data on children- and adult-participants' experiences. The NCCYP could also benefit from expanding as a national platform and increasing the number of children-participants to be more (geographically) representative while still ensuring effective participation.

6.3.4.   The IRTCY case

6.3.4.1   Mechanism

Following the COVID-19 outbreak in Israel, an Inter-Sectoral Roundtable was established under the PMO to discuss issues arising from the crisis (the Inter-Sectoral Roundtable is a national platform for on-going discourse between government, CSOs, and the business sector on forming and implementing large-scale policies: Israel Government Decision 3190, 2008; PMO, 2008). Designated roundtables focusing on specific themes and population groups were also established, including the Inter-Sectoral Roundtable on Children and Youth at Risk (IRTCY; Gold & Windman, 2020).

The IRTCY was established in March 2020 and is co-led by the Ministry of Justice and the NCC. Its aims were to identify the challenges arising from the COVID-19 crisis for children, particularly those at risk, to address the unique needs of children during the pandemic and post-pandemic return to (new) normalcy, and to devise relevant solutions from an inter-sectoral perspective (Gold & Windman, 2020). The IRTCY examined various issues related to children at risk during COVID-19, with many of its recommendations adopted in governmental COVID-19 emergency regulations (Gold & Windman, 2020). Due to the prolonged lockdown, the transition to online learning, and the emotional and mental health effects of these developments on children, the IRTCY recognised the need to broaden its focus from children and youth at risk to all children. Therefore, a general children's meeting was held, in which IRTCY members could consult with and hear children directly on the impact of COVID-19 on their lives, specifically

the effects of online learning on children's educational and emotional needs and well-being (IRTCY, 2021a).

This meeting took place in June 2021, consisting of a single two-hour online session. The 16 children-participants (aged 15–17) included 8 graduates of the NCCYP programme (see section 6.3.3) and 8 representatives of the National Student Council. To ensure a children-participant majority, the meeting included only four adults, who were key IRTCY members (both IRTCY co-leaders and representatives of the Ministry of Welfare and Social Affairs and the PMO). Additionally, as the group included Hebrew and Arabic speakers, both written and simultaneous translations were made available, and children could speak directly in their preferred language.

During the meeting, children stated that they and their peers experienced emotional distress (loneliness, anxiety, etc.), social difficulties, and problems related to access and quality of online education, which resulted in educational gaps and under-performance. In particular, the children-participants advocated a return to physical learning, and held that they felt unheard in decision-making, even though decisions related to education affected them directly. Children-participants stressed their desire to be heard in participatory and deliberative decision-making, with one participant holding that 'We [children – DZR] are here, we want to have an impact, we always have an opinion' (authors' translation; IRTCY, 2021a, 03:32).

6.3.4.2   Impact

The children-participants' main insights and recommendations were incorporated into a video and into the IRTCY's written recommendations. Both outputs were presented to the Israeli Minister of Education, senior policy-makers at the Ministry of Education, and the Knesset Committee on Children's Rights, and the video was also made available online. Additionally, after the children's meeting, several children-participants were featured in a national news item and expressed their views on the plans to return to physical learning (Alon & Marciano, 2021).

While it is impossible to establish a clear causal relationship, many of the recommendations of the Children's Meeting were actually reflected in the Ministry of Education's plans for the following school year, including emphasis on maintaining physical learning (even during new 'pandemic waves') and ensuring the availability of emotional and social support in schools (Ministry of Education, 2021; IRTCY, 2021b). It is unclear at this time if and to what extent the IRTCY's work will influence the inclusion of children in deliberative decision-making during future states of emergency and crisis. However, in light of the IRTCY's overall impact during COVID-19, its decision to initiate a children's meeting is significant and potentially set a standard for future (COVID-19 and other) decision-making forums in emergency situations, particularly regarding policy issues that directly impact children, such as education. The IRTCY did not include a participant survey of child or adult deliberators, making it difficult to assess its impact on participants.

In summary, the IRTCY output was presented to high-level stakeholders, and subsequent national educational policies were aligned with the main views reflected in the IRTCY recommendations. However, the IRTCY could have benefitted from

additional qualitative data on child- and adult-participants' experiences. Also, for future similar meetings, it would be beneficial to employ academic or professional evaluations to review the process and its outcomes, in order to inform prospective government actions for hearing children during times of emergency and crisis.

6.3.5   *Analysis*

The Israeli cases offer several insights into child participation in deliberation. Both cases reflect *CSO-government collaboration* (the IRTCY is co-led by a CSO and the government; the NCCYP is CSO-led but includes government stakeholders in deliberation). While organisation by government or other official stakeholders may enhance the standing and influence of deliberation, CSO involvement, in particular, the involvement of children's rights CSOs, has special importance: Such CSOs are more likely to advocate for including children in deliberations and to promote their inclusion as a children's rights issue; their involvement enables better and more inclusive outreach to children; and they can provide child-centred facilitation, training, and support (CRC Committee, 2005, 2009).

Also, notwithstanding the importance of face-to-face communication for children, the cases illustrate some *benefits of incorporating online deliberation* (e.g., real-time language translation, use of digital participation methods such as polls into deliberations). Conducting online deliberations (exclusively digital or in hybrid/blended form) also ties to the recognition of children as digital natives and to their digital literacy and participation in the digital environment (Livingstone et al., 2019; Livingstone & Bulger, 2014). The growing use of online deliberation since COVID-19, which will likely continue to expand, calls for closer attention to the particular advantages, challenges, and adaptations required for children's meaningful participation online.

Finally, to further examine the significant impact already evident in these cases, we believe that a *holistic, multi-layered view* is necessary. Such a view should also take into account the themes and targets for deliberation, the qualitative means used to assess child- and adult-participants' experiences, the mechanism's operations and inclusivity, implementation of children's views in policy-making, and indicators to periodically assess changes in the legal realities of children in the public-political sphere (e.g., Was child participation in decision-making anchored in legislation or national policies? Have existing deliberative processes been adapted to children, or have new mechanisms been adopted by government?). Developing such evaluation criteria for evaluating physical and online processes and implementing them in the unique Israeli context can enable better assessment of children's deliberations, identifying what works and what challenges persist.

6.4   **Conclusion**

We argued that the inclusion of children in constitution-making, legislation, and national policy-related decision-making derives from both a deliberative democratic approach and a children's rights approach. Specifically, we suggested that the CRC,

and the CRC Committee, elevated the discussion on including children in deliberation to a normative level by imposing obligations on States-Parties to ensure that children are heard, both as individuals and collectively, in matters relating to their lives.

From a democratic perspective, the justifications for including children in deliberations outweigh the objections and valid concerns. This position is reinforced by the children's rights discourse, particularly the development of the child's right to be heard in the CRC also in the public-political sphere and in decision-making processes. The current situation, in which children are largely under-represented, even excluded, from such decision-making, violates children's discursive and participatory rights (namely, the right to be heard) and is untenable from a CRC perspective. Children's exclusion also carries democratic implications for both the particular policy decision (as deliberation will lack the views, needs, and perspectives of the children affected), and, more generally, for the democratic 'credentials' of deliberative processes, inclusion, and the role of children in democratic decision-making.

Indeed, adopting a children's rights-based perspective on children's role in deliberative democracy is not limited to children's inclusion in deliberations. Special considerations and concerns exist with respect to children as deliberators, including their protection, training (for children and adult-participants), age-appropriate information, guidance, and facilitation, and required adaptations to deliberation online. These issues warrant additional focus and development, in both theory and practice, taking into account that efforts to address and mitigate these concerns must be consistent with children's right to be heard in constitution-making, legislation, and policy-making concerning them.

Establishing enclaved deliberations for children is one feasible option for exercising children's right to be heard. We examined two interesting cases of enclaved deliberations from Israel, identifying key points of interests in relation to the importance of CSO involvement, the suitability of (non-exclusive) online deliberations for children, and the importance of assessing impact from a holistic, multilayered perspective. The cases are examples of innovative participation of children in decision-making. Both promoted child–government dialogue, produced strong and well-disseminated outputs, and show promise as scalable models. Analysis of the cases was based primarily on official reports and outputs of deliberative sessions. Both cases could have benefitted from additional qualitative data. Despite these limitations, focusing on the cases adds to the budding and under-explored discussion on deliberative democracy in Israel, in routine and in crisis situations.

In conclusion, recognising that the CRC establishes a human rights imperative to including children in deliberation, we propose to link this rights-based discourse to the evolving discussion on children and deliberative democracy. In particular, we hold that including children in deliberations is not limited to day-to-day 'childhood' decision-making, but is equally applicable to constitution-making, legislation, and policy-making on issues related to their lives. The inclusion of children in high-level deliberation is essential both for children and for society. Childhood that benefits from structured deliberation can produce more strongly engaged adult citizens who, hopefully, develop a deep commitment to democratic processes and to the inclusion of future children in deliberation relating to their lives.

6.5   Declaration of interests

Shulamit Almog – None.

Daniella Zlotnik Raz: Zlotnik Raz is currently (2023) employed at the NCC as the Deputy Legal Adviser. In this capacity, she worked on the NCCYP programme and co-wrote its reports. She was not involved in the IRTCY programme. This chapter is written as part of her PhD research and was not supported in any way by the NCC.

References

Alon, A., & Marciano, K. (2021, August 1). High-schoolers are asking for a normal year: "Students have become deeply depressed." *N12 News*. shorturl.at/ACEOS [Hebrew]

Assim, U. M. (2019). Civil rights and freedoms of the child. In U. Kilkelly & T. Liefaard (Eds.), *International human rights of children*. Springer. https://doi.org/10.1007/978-981-10-4184-6_7

Beauvais, E., & Baechtiger, A. (2016). Taking the goals of deliberation seriously: A differentiated view on equality and equity in deliberative designs and processes. *Journal of Public Deliberation,* 12(2), 2. https://doi.org/10.16997/jdd.254

Ben-Arieh, A., Brooke, H., & Farkash, H. (2020). The perceptions and feelings of children and youth in Israel regarding the coronavirus and their personal lives. *Haruv Institute*. shorturl.at/fCLR9 [Hebrew]

Bohman, J. (1998). Survey article: The coming of age of deliberative democracy, *Journal of Political Philosophy*, 6, 400–425. https://doi.org/10.1111/1467–9760.00061

Cockburn, T. (2010). Children and deliberative democracy in England. In B. Percy-Smith & N. P. Thomas (Eds.), *A handbook of children and young people's participation* (pp. 306–317). Routledge.

Cook, P. (2013). Against a minimum voting age. *Critical Review of International Social and Political Philosophy*, 16(3), 439–458. https://doi.org/10.1080/13698230.2013.795707

Daly, A. (2016). *A commentary on the United Nations Convention on the Rights of the Child, Article 15: The right to freedom of association and freedom of peaceful assembly* (Vol. 15). Brill Nijhoffs. https://doi.org/10.1163/9789004258839

Farson, R. (1978). *Birthrights: A bill of rights for children*. Penguin.

Forde, L., Kelleher, D., Kilkelly, U., & Lundy, L. (2020). *The right of children to participate in public decision-making processes*. Save the Children International. https://resource-centre.savethechildren.net/pdf/the_right_of_children_to_participate_in_public_decision-making_processes-save_the_children_0.pdf/

Gertel, G., (2019). *Youth participation in policy design: Report*. The Initiative for Applied Research in Education. http://education.academy.ac.il/SystemFiles/23298.pdf

Gold, M., & Windman, V. (2020). *Interim report, recommendations, and future measures*. Inter-Sectoral Roundtable on Children and Youth at Risk during COVID-19 Crisis. https://beinmigzari.pmo.gov.il/Emergency/Documents/kids240620.pdf (Hebrew).

Gosseries, A. (2008). On future generations' future rights. *The Journal of Political Philosophy*, 16(4), 446–474. https://doi.org/10.1111/j.1467–9760.2008.00323.x

Habermas, J. (1990). *Moral consciousness and communicative action* (C. Lenhardt & S. W. Nicholsen, Trans.). MIT Press.

Harris, C. (2021). Looking to the future: Including children, young people and future generations in deliberations on climate action: Ireland's Citizens' Assembly 2016–2018. *Innovation: The European Journal of Social Science Research*, 34(5), 677–693. https://doi.org/10.1080/13511610.2021.1968356

Hart, V. (2003, July). *Democratic constitution making* (Special Report 107). United States Institute of Peace. https://www.usip.org/sites/default/files/sr107.pdf

Haugli, T., Nylund, A., Sigurdsen, R., & Bendiksen, L. R. L. (Eds.), 2020. *Children's constitutional rights in the Nordic countries*. Brill Nijhoff. https://doi.org/10.1163/9789004382817

Himmelroos, S., Rapeli, L., & Grönlund, K. (2017). Talking with like-minded people – Equality and efficacy in enclave deliberation. *The Social Science Journal*, 54(2), 148–158. https://doi.org/10.1016/j.soscij.2016.10.006

Hoffman, S., & Stern, R. T. (2020). Incorporation of the UN Convention on the Rights of the Child in national law. *International Journal of Children's Rights*, 28(1), 133–156. https://doi.org/10.1163/15718182-02801001

Holt, J. C. (1974). *Escape from childhood: The needs and rights of children*. Dutton.

Hudson, A. (2021). *The veil of participation: Citizens and political parties in constitution-making processes* (Comparative Constitutional Law and Policy). Cambridge University Press. https://doi.org/10.1017/9781108878685

Inter-Parliamentary Union (2021). *Youth participation in national parliaments*. https://www.ipu.org/youth2021

Inter-sectoral Roundtable on Children and Youth at Risk during COVID-19 (2021a). *IRTCY deliberative meeting with children-participants* [Video]. https://www.youtube.com/watch?v=DrRGJlHyfHw [Hebrew]

Inter-sectoral Roundtable on Children and Youth at Risk during COVID-19 (IRTCY) (2021b). *The effects of COVID-19 on children and youth: Data and recommendations of the Inter-sectoral Roundtable on Children and Youth during COVID-19*. [Power Point slides][Hebrew]

Invernizzi, A., & Williams, J. (Eds.) (2007). *Children and citizenship*. Sage. https://dx.doi.org/10.4135/9781446214756

Israel Government (2008, February 24). *Government, civil society and business sector relations as a contributing factor to achieve public goals* [Decision 3190 of the 31st Government]. [Hebrew]

Israel National Council for the Child (n.d.). Israel National Council for the Child. https://www.children.org.il/?lang=en

Israel National Council for the Child (2020). *Israeli youth talk about the COVID-19 crisis: Advice, thoughts and coping in a time of emergency and the new routine*. shorturl.at/bpH89

Israel National Council for the Child (NCC) (2021a, February 13). *Position paper on digital violence against children submitted to the Knesset Committee on the Rights of the Child*. https://fs.knesset.gov.il/24/Committees/24_cs_bg_613703.pdf [Hebrew]

Israel National Council for the Child (NCC) (2021b). *NCCYP 2021 survey*. [Unpublished report]. [Hebrew]

Karpowitz, C. F., Raphael, C., & Hammond, A. S. (2009). Deliberative democracy and inequality: Two cheers for enclave deliberation among the disempowered. *Politics & Society* 37(4), 576–615. https://doi.org/10.1177/0032329209349226

Knesset Research and Information Centre (2016). *Child and youth participation in decision-making processes and policy design*. https://fs.knesset.gov.il/globaldocs/MMM/ca5bd3de-e662-e611-80df-00155d010ede/2_ca5bd3de-e662-e611-80df-00155d010ede_11_9577.pdf [Hebrew]

Knesset Research and Information Centre (2019). *Public participation in government offices and local authorities*. https://fs.knesset.gov.il/globaldocs/MMM/ca7ab07c-d87d-e811-80de-00155d0a0b8d/2_ca7ab07c-d87d-e811-80de-00155d0a0b8d_11_13614.pdf [Hebrew]

Kulynych, J. (2001). No playing in the public sphere: Democratic theory and the exclusion of children. *Social Theory and Practice,* 27(2), 231–264. https://www.jstor.org/stable/23562064

Livingstone, S., & Bulger, M. E. (2014). A global research agenda for children's rights in the digital age. *Journal of Children and Media*, 8(4), 317–335. https://doi.org/10.1080/17482798.2014.961496

Livingstone, S., Kardefelt-Winther, D., Kanchev, P., Cabello, P., Claro, M., Burton, P., & Phyfer, J. (2019). *Is there a ladder of children's online participation? Findings from three Global Kids Online countries* [UNICEF Innocenti Research Brief 2019-02]. UNICEF Office of Research-Innocenti. shorturl.at/ejxNT

Lundy, L., Byrne, B., Lloyd, K., Templeton, M., Brando, N., Corr, M., Heard, E., Holland, L., MacDonald, G. M., McAlister, S., McNamee, C., Orr, K., Schubotz, D., Symington, E., Walsh, C., Hope, K., Singh, P., Neill, G., & Wright, L. H. V. (2021). Life under coronavirus: Children's views on their experiences of their human rights. *The International Journal of Children's Rights,* 29, 261–285. https://doi.org/10.1163/15718182-29020015

Lundy, L., Kilkelly, U., & Byrne, B. (2013). Incorporation of the United Nations Convention on the Rights of the Child in law: A comparative review. *International Journal of Children's Rights*, 21(3), 442–463. https://doi.org/10.1163/15718182-55680028

Matthieu, J., Vrydagh, J., Caluwaerts, D., & Ezreel, S. (2020). The democratic credentials of youth parliaments. The case of the Belgian Jeugd Parlement Jeunesse. *The Journal of Legislative Studies*, 26(2), 204–222. https://doi.org/10.1080/13572334.2020.1731982

Ministry of Education (2021). *National plan to open the 2021–2022 school year during Covid-19, Update 1*. https://meyda.education.gov.il/files/Bitachon/emergency/Outline-opening-of-school-year-Corona.pdf [Hebrew]

Morag, T., Sabag, Y., Zlotnik Raz, D., & Arazi, T. (2021). Ensuring the rights of children and youth during the COVID-19 Crisis: Looking through the perspective of the UN Convention on the Rights of the Child. *Refua VeMishpat [Israeli Journal of Medicine and the Law]*, 53. https://brookdale.jdc.org.il/wp-content/uploads/2021/11/Medicine-and-law_Vol.52_2021.pdf]Hebrew]

Naamat, A., & Zlotnik Raz, D. (2021).*Youth parliament: Including children and youth in policy-making* [Project report 2021]. Israel National Council for the Child. https://urlzs.com/vFGpy]Hebrew[

Nishiyama, K. (2017). Deliberators, not future citizens: Children in democracy. *Journal of Public Deliberation*, 13(1), Art. 1. https://doi.org/10.16997/jdd.267

Nolan, A. (2011). *Children's socio-economic rights, democracy and the courts*. Hart. http://hdl.handle.net/1814/19734

Nylund, A. (2020). Children's right to participate in decision-making in Norway: Paternalism and autonomy. In T. Haugli, A. Nylund, R. Sigurdsen, & S. R. L. Bendiksen (Eds.), *Children's constitutional rights in the Nordic countries* (pp. 201–225). Brill Nijhoff. https://doi.org/10.1163/9789004382817

Patrikios, S., & Shepard, M. (2014). Representative and useful? An empirical assessment of the representative nature and impact of the Scottish Youth Parliament? *The Journal of Legislative Studies*, 20(2), 236–254. https://doi.org/10.1080/13572334.2013.829278

Peleg, N., Lundy, L., & Stalford, H. (2021). COVID-19 and children's rights: Space for reflection, tracing the problems and facing the future. *International Journal of Children's Rights*, 29(2), 255–259. https://doi.org/10.1163/15718182–29020014

Prime Minister's Office (2008). *Israeli government, civil society and business sector: Partnership, empowerment and transparency*. https://beinmigzari.pmo.gov.il/Documents/Policy_Hebrew.pdf (Hebrew)

Shepard, M., & Patrikios, S. (2013). Making democracy work by early formal engagement? A comparative exploration of youth parliaments in the EU. *Parliamentary Affairs*, 66(4), 752–771. https://doi.org/10.1093/pa/gss017.

Smith, G. (2010). *Democratic innovations: Designing institutions for citizen participation*. Cambridge University Press. https://doi.org/10.1017/CBO9780511609848

Strandberg, K., Himmelroos, S., & Grönlund, K. (2019). Do discussions in like-minded groups necessarily lead to more extreme opinions? Deliberative democracy and group polarization. *International Political Science Review*, 40(1), 41–57. https://doi.org/10.1177/0192512117692136

Sunstein, C. R. (2002). The law of group polarization. *The Journal of Political Philosophy*, 10(2), 175–195. https://doi.org/10.1111/1467-9760.00148

Tobin, J. (2005). Increasingly seen and heard: The constitutional recognition of children's rights. *South African Journal on Human Rights*, 21(1), 86–126. https://doi.org/10.1080/19962126.2005.11865129

Tobin, J. (2015). Understanding children's rights: A vision beyond vulnerability. *Nordic Journal of International Law*, 84, 155–182. https://doi.org/10.1163/15718107-08402002

UNICEF Innocenti (2008). *Law reform and implementation of the Convention on the Rights of the Child*. UNICEF Office of Research-Innocenti. https://www.unicef-irc.org/publications/493-law-reform-and-the-implementation-of-the-convention-on-the-rights-of-the-child.html

United Nations Committee on the Elimination of Discrimination against Women (CEDAW). (1997). *CEDAW general recommendation No. 23: Political and public life*. https://www.refworld.org/docid/453882a622.html

United Nations Committee on the Rights of the Child (UNCRC) (2003, November 27). *General comment No. 5: General measures of implementation of the convention on the rights of the child (arts. 4, 42, and 44, para. 6), 2003*. [*CRC/GC/2003/5*] https://www.refworld.org/docid/4538834f11.html

United Nations Committee on the Rights of the Child (UNCRC). (2006). *Day of General Discussion (DGD) 2006: On the right of the child to be heard report*. https://www.ohchr.org/sites/default/files/Documents/HRBodies/CRC/Discussions/Recommendations/Recommendations2006.doc

United Nations Committee on the Rights of the Child (UNCRC). (2009, July 20). *General comment No. 12: The right of the child to be heard*. https://www.refworld.org/docid/4ae562c52.html

United Nations Committee on the Rights of the Child (UNCRC) (2013, May 13). *General comment no. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)** [CRC/C/GC/14]. https://www2.ohchr.org/english/bodies/crc/docs/gc/crc_c_gc_14_eng.pdf

United Nations Committee on the Rights of the Child (UNCRC). (2016, December 6). *General comment No. 20 (2016) on the implementation of the rights of the child during adolescence* [CRC/C/GC/20*]. https://www.refworld.org/docid/589dad3d4.html

United Nations Committee on the Rights of the Child (UNCRC). (2018). *Day of General Discussion (DGD) 2018: Protecting and empowering children as human rights defenders report*. https://urlzs.com/3uTSa

United Nations Committee on the Rights of the Child (UNCRC). (2021, March 2). *General comment No. 25 (2021) on children's rights in relation to the digital environment* [CRC/C/GC/25]. https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-25-2021-childrens-rights-relation

United Nations Convention on the Rights of the Child, opened for signature November 20, 1989, 1577, p. 3 (entered into force September 2, 1990). https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child

United Nations Human Rights Committee (1996, July 12). *General comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25)* [CCPR/C/21/Rev.1/Add.7]. https://www.equalrightstrust.org/ertdocumentbank/general%20comment%2025.pdf

van Deth, J. W. (2016). What is political participation? *Oxford Research Encyclopaedia of Politics*. https://doi.org/10.1093/acrefore/9780190228637.013.68

Wheatley, J., & Mendez, F. (2013). *Patterns of constitutional design: The role of citizens and elites in constitution-making*. Routledge. https://doi.org/10.4324/9781315599762

Wojciechowska, M. (2019). Towards intersectional democratic innovations. *Political Studies*, 67(4), 895–911. https://doi.org/10.1177/0032321718814165

Woodhouse, B. B. (1999). The constitutionalization of children's rights: Incorporating emerging human rights into constitutional doctrine. *2 University of Pennsylvania Journal of Constitutional Law*. https://scholarship.law.upenn.edu/jcl/vol2/iss1/1

Zlotnik Raz, D., & Almog, S. (2021). *Israel and deliberative democracy: Country report*. COST Action Constitution-Making and Deliberative Democracy Publication. https://constdelib.com/wp-content/uploads/2021/04/Israel-report-CA17135.pdf

Zlotnik Raz, D., & Almog, S. (2023). Children's Political Rights and the UN Convention on the Rights of the Child. *The International Journal of Children's Rights*, 31, 500–523. https://doi.org/10.1163/15718182-31020008

7 Inclusiveness and effectiveness of digital participatory experiments in constitutional reforms

Raphaël Kies, Alina Östling, Visvaldis Valtenbergs, Sébastien Théron, Stéphanie Wojcik, and Norbert Kersting

7.1   Introduction

Constitutional reform has been used by many countries to reshape political structures and to ensure better governance for the future. About half of the nearly 200 national constitutions across the world have experienced some form of amendment (Dressel 2005). Constitutional reform processes often include deliberative participatory instruments (Welp and Soto 2020; Mendez and Wheatley 2013; Reuchamps and Suiter 2016; Farrell et al. 2017), such as mini-publics. Moreover, digital participatory instruments are playing an increasingly important role in political communication, a trend that has been reinforced by the ongoing Covid-19 pandemic (Falanga 2020).

Considering the importance of public participation in constitutional reform processes and the growing use of digital tools to carry out the consultations, the objective of this chapter is to provide a first typology of the online hybridization of consultation processes and to discuss to what extent the online parts of the processes affect the inclusiveness and outputs of the reforms. At the core of this chapter is the idea that the possibility of online participation can open the reform process to the general public and this could have an effect on constitutional amendments.

Political participation is seen as one of the three pillars of democracy (see root concept of polyarchies, Dahl 1971). This essentialist approach is also rooted in Barber's concept of strong democracy as an essential feature of democracy (Barber 1984, see also Blanco, Lowndes, Pratchett 2011). From this perspective, the main challenge is to assess the extent to which participation fulfils certain procedural criteria that ensure its democratic legitimacy. From the instrumental perspective, the key challenge is to find evidence of the impact of participation and to discover the causal links between participation and outcomes. In different participatory theories, from Habermas (1989) to Laclau and Mouffe (2001), openness is included. Equal access is highlighted and participatory inequality should be diminished. Dryzek's (2002) notion of the 'deliberative turn' considers dialogical public engagement and champions' deliberation as a relevant goal in political participation. Inclusiveness, defined as equal open access to the instrument as well as to the discussion, and effectiveness, determined by the outcome and impact, became important criteria for the evaluation of participatory instruments (Geissel and Newton 2012; Kersting 2007, 2013).

While digital tools are broadly used to inform and interact with the general public, and could be essential in involving lay citizens in the constitutional reform processes, their role is understudied, with a few exceptions (Gylfason and Meuwese 2016; Suteu and Tierney 2018). This chapter develops original criteria that allow the use of information and communications technologies (ICTs) in consultative processes to be mapped, which could be used in other constitutional reform processes. It also reviews five cases of constitutional consultation in different contexts (Iceland, Estonia, Latvia, Luxembourg, and the German region North Rhine-Westphalia [NRW]) and explores to what extent the opinions emerging online contribute to enriching the debate around constitutional reforms and to what extent they were included in the consultative and law-drafting process. The research questions that we are trying to answer in this chapter are the following:

RQ1 (Inclusiveness): Did the use of ICT contribute to involving the general public in the constitutional reform processes?

RQ2 (Effectiveness): Did the input from online participants affect the agenda setting and the constitutional amendments?

The research method to examine these RQs involved both first-hand and secondary research, mainly focusing on qualitative methods. In the Estonian case, we conducted a document analysis and interviewed (face-to-face) several stakeholders involved in the organization of the consultation process and experts that have studied the case; we also used secondary surveys of the participants of the consultation, and secondary literature that examined the Estonian case.[1] The Icelandic, German, and Luxembourgish cases are based on document analysis and secondary literature dealing specifically with the use of ICTs in the process. In the Latvian case, interviews were conducted with the staff of *MyVoice* internet platform (the platform was instrumental in mobilizing public support for the constitutional amendments); news articles and secondary sources were also consulted.

In the following section, we will provide a short presentation of the following cases of public consultations related to constitutional reforms:

- Citizens' constitutional convention in Iceland (2009–2011)
- Estonian People's Assembly (2013)
- *MyVoice* platform for legislative crowdsourcing and e-petitions in Latvia (2014–2019)
- Constitutional reform Luxembourg (2014–)
- Constitutional review process in the German region North Rhine-Westphalia (NRW) (2013–2016)

In all these cases, the general public was consulted through the use of ICTs. In some of them, the aim was to produce a completely new constitution, while in others, the scope was limited to partially amending the existing constitution.

The citizens' constitutional convention in Iceland, which the media like to praise as the first crowdsourcing constitutional reform (Landemore 2015), was triggered by the financial crisis that hit the country in 2008–2009. The population was increasingly dissatisfied with the semi-presidential regime and a political culture

tainted by corporatism, secrecy, and instances of nepotism. The consultation was based on a complex process at the heart of which stands the constitutional assembly that is composed of 25 elected citizens. Its role was to draft a new constitution during a period of four months in 2011. During this phase, the broader public was invited to make online contributions. A referendum was held on October 20, 2012. It obtained large support (67%) and had a high turnout (49% of the citizens entitled to vote) despite a very limited implication of the political parties during the referendum campaign (Gylfason and Meuwese 2016: 10). In the end, the bill on the new constitution was not adopted by the Parliament, even though the majority of MPs had declared in writing that they would support its ratification.

The Estonian People's Assembly (Rahvakogu) was a deliberative initiative aiming to address burning political issues in Estonia. It started in 2012, when – in light of a major scandal about political financing and widespread public dissatisfaction with the political system – the president of Estonia organized a meeting with representatives of political parties, social interest groups, NGOs, and other stakeholders, known as the "The Ice-Cellar Process".[2] At the meeting, it was decided that solutions should be sought through public deliberation in two interconnected initiatives: (1) an online crowdsourcing platform for collecting proposals and (2) an offline Deliberation Day to discuss these ideas (Praxis Centre for Policy Research 2014). In the Ice-Cellar Meeting, it was also agreed that five specific topics connected to party financing should be defined in order to serve as a basis for crowdsourcing and the Deliberation Day. The People's Assembly was organized by volunteers from various CSOs. They launched a crowdsourcing platform in January 2013, where the five pre-determined topics (the electoral system, the functioning of political parties, the financing of political parties, public participation in political decision-making, and the politicization of public offices) were up for debate. Citizen proposals had to fall under one of these five topics; those that did not were left out from further discussions.[3] The platform allowed citizens to comment, support, or criticize the submitted proposals. The whole Assembly process was only 14 weeks long.[4]

In Latvia, since 2011, when citizens' rights to directly petition the Parliament were introduced, citizen initiatives on the *MyVoice* platform have changed several laws and even led to a constitutional amendment.[5] One of the initiatives promoted by *MyVoice* aimed at a constitutional amendment ensuring that there will be an open parliamentary vote in the election of the president. The initiative for amending the constitution was proposed in 2014 on the *MyVoice* platform by an individual (Jānis Veide) who argued for a more transparent process of electing the highest officials. His initiative was quickly endorsed by the non-governmental organization "Delna" (the chapter of Transparency International in Latvia), but it took three years for the initiative to gather the necessary number of signatures. Once done, the initiative was forwarded to the Parliament, which amended the constitution a year later in 2018, but in 2019, the Parliament elected the president by open vote.

In 2013, the constitutional review process began in the German province, North Rhine-Westphalia (NRW) in connection with the 70th anniversary of the constitution. It focused on four topics, including the lowering of the voting age, the rights

of Members of Parliament, debt ceiling ("Schuldenbremse"), and subsidiarity. The constitutional committee (in the Parliament) worked on the new constitution from 2013 until 2016. All sessions were streamed on the internet (like parliamentary debates) and protocols were freely accessible to the public. The online participation was supposed to broaden and support the public hearings of experts, as well as representatives of social groups. Citizens could hand in email (or paper) comments to the commission, and participate through a portal put in place by the constitutional committee. However, at the end of the process, only minor constitutional changes were accepted, while important topics were not even on the agenda due to a failure of the bigger political parties to find a compromise. The decision-making process remained a top-down (parliamentary) process with input from major stakeholder organizations in a traditional neo-corporatist way. The possibility of citizens participating in the reform process was not advertised and the process did not trigger any broader public debate in the region.

As in the case of Iceland, the objective of the Luxembourgish constitutional process was to establish a new constitution. Citizens were involved in the process in three phases: the 2014 CIVILEX project; the 2015–2016 Är Virschléi web platform (Your Suggestions); the 2016 CONSTITULUX project. CIVILEX and CONSTITULUX projects had the objective of informing the decision-makers about the state of public opinion and knowledge level regarding the constitution reform and to present to the Chamber a range of proposals for meaningfully involving and informing citizens in the referendum campaign (Burks and Kies 2021). The first referendum (which occurred in June 2015) concerned three constitutional questions, while the second that was planned in July 2016 was on the entire constitution. The latter, however, never took place due to political disagreement partially stemming from the fear of a negative outcome. In both cases, the general public was not invited to make proposals online. Differently from the two above-mentioned face-to-face discursive processes, Är Virschléi is a website allowing citizens to express their ideas and suggestions for improving the constitutional process. From July to October 2015, this portal collected suggestions on constitutional reform and proposals for specific constitutional revisions. The Committee on Institutions and Constitutional Affairs reviewed the suggestions and proposals and, in July 2016, convened a public hearing with 36 citizens to discuss the citizen contributions. Several proposals stemming from Är Virschléi were integrated into the new draft constitution, which however is still waiting to be approved.

7.2   Comparative analysis

The citizens' consultations are generally initiated by the governments to reinforce the legitimacy of the constitutional reform processes. In the cases of Iceland and Estonia,[6] lay citizens were invited to participate in response to severe political and economic crises of the system. In the cases of Luxembourg and NRW, citizen participation was perceived as a procedure that would contribute to accelerating constitutional reform and could be considered as a more symbolic type of participation (see Arnstein 1969). The case of *MyVoice* in Latvia stands out given that the

Table 7.1 Basic characteristics of the cases

Case	Process initiator	Reform scale (scope)	Agenda setting
Citizens' constitutional convention in Iceland (2009–2011)	Top-down	Global (new constitution)	Mixed (experts and citizens)
Estonian People's Assembly (2013)	Mixed	Limited	Mixed (politicians and civil society)
***MyVoice* support platform for e-petitions in Latvia (2014–2019)**	Bottom-up	Limited (one topic)	Citizens
Constitutional reform Luxembourg (2014–)	Top-down	Global (new constitution)	Mixed (politicians and citizens)
Constitutional review process in North Rhine-Westphalia (2013–2016)	Top-down	Limited (two broad topics)	Politicians

initiative stems from a single individual, although it later received public support from a non-governmental organization.

The scale of the reform – and hence the amount of effort requested from citizens when consulted off- and online – varies a lot. In two cases (Iceland and Luxembourg), the scope was comprehensive, that is to elaborate a new constitution. In the other cases, the scope was limited: in Estonia, five topics were open to discussion (among which, one was related to constitutional reform), in NRW, the reforms were limited to two general topics, and in Latvia, only one constitutional amendment was discussed.

In most cases, the agenda setting, which we define here as the choice of topics open to citizen discussion, was defined by several actors. The agendas generally resulted from preliminary processes of consultation that involved experts and citizens (see Iceland and Luxembourg), politicians and civil society (see Estonia). However, in the case of NRW, the agenda was fixed by politicians, and in the case of *MyVoice*, it was defined by a single individual.

In order to compare the cases, we rely on two original analytical tables. Table 7.1 below provides a basic overview of the cases and elements, namely: (i) the process initiator: a governmental/parliamentary body (i.e., an 'invited space') or civil society (i.e., an 'invented space') (see Kersting 2013 for details and definitions); (ii) the reform scale and scope: reform of the entire constitution or just an amendment to it, and (iii) the agenda setting: who defined the topic that is discussed by the citizens? Politicians (i.e., the Parliament or government) or civil society/citizens.

7.3   Online participation

The next step of our analysis aims to understand whether the online participation contributed to involving the general public in the constitutional reform process. Based on the available data, it is possible to review three of the cases in detail – Iceland, Estonia, and Luxembourg – and provide a limited analysis of the German and Latvian cases.

Here, the second table (see Table 7.2) provides an overview of cases based on the research questions examined in this chapter and considers the following sub-questions:

RQ1: Did the use of ICT contribute to involving the general public in the constitutional reform processes?

- At which phase of the process was online participation introduced? – timing
- Did the consultative process include a mini-public, i.e., a representative sample of citizens invited to deliberate online on issues related to the constitution? Or was there an offline mini-public making suggestions for further online debate? – mini-public
- How open was the online participation? (Inclusiveness is examined by an assessment of the number of suggestions expressed online and the socio-demographic characteristics of the online users). How open was the online participation regarding the number of suggestions expressed online and the socio-demographic characteristics of the online users. – inclusiveness
- Were citizens invited only to post suggestions or also to debate? If so, how was this debate organized? – discursiveness

RQ2: Were the inputs from online participants included in the constitutional amendments?

- To what extent were the inputs from online participants discussed in further debates or even included in the constitutional amendments? Did the overall consultative process lead to a reform of the constitution? – effectiveness

With the first three variables in Table 7.2, we examine the inclusiveness of the online participation. First, we look at the timing of citizen involvement (see Table 7.2 below). In most cases, citizens are only allowed to vote on a completed draft of the constitution (e.g., through referendums), while ideally, citizen engagement should be part of the amendment drafting process. Second, representative mini-publics play an important role in bringing in a broad range of non-partisan perspectives. These can be combined with open online instruments based on self-selection. Mini-publics – intended here as one or more phases where a representative sample of citizens were invited to deliberate about constitutional reform(s) – occurred in Iceland, Estonia, and Luxembourg. However, the role of citizens strongly varied. In Iceland, citizens were invited to *elaborate* a new constitution, in Estonia they were invited to *debate* about five predefined topics (among which only one referred to constitutional reform). In Luxembourg, they were invited to *discuss* the new version of the constitution (through CIVILEX and CONSTITULUX); however, concrete suggestions for reform stemmed from a non-deliberative platform, Är Virschléi. In Latvia, there was no mini-public, only a system intended to support the elaboration of e-petitions without the possibility to deliberate. Instead of the involvement of a mini-public, the proposal was reviewed by an anonymous body of experts before it was published on the *MyVoice* platform. Moreover, an important

role in the advancement of the issue in the public agenda was played by a civil society organization, the local chapter of *Transparency International* in Latvia.

Third, openness/inclusiveness is examined mainly by an assessment of the socio-demographic characteristics of the online users and the number of suggestions expressed online.

Fourth, discursiveness considers whether citizens were allowed to deliberate or if only posting of suggestions was possible (without explanations and arguments). The latter may lead to more expressive demonstrative behaviour and lacks reflexivity (see Habermas 1989).

With the last variable in Table 7.2, effectiveness, we examine the outcomes to discover to what extent the opinions expressed online by citizens were considered in the final version of the constitution. Here, the results are contrasting and more-or-less straightforward. However, differently from most other e-participation attempts (Van Dijk 2012), some of the consultations resulted in a further debate in Parliament that led to legislative amendments. The most successful process was the one in Latvia, in so far as the constitutional reform proposal was finally adopted by the Parliament after five years. In NRW, the overall process resulted in smaller and less relevant reform measures but these did not stem from citizens' suggestions. Interestingly, the two cases that did not lead to any reform so far are Luxembourg and Iceland. They are both characterized by the ambition to elaborate an entirely new constitution based on a constitutional referendum. This seems to indicate that the broader the ambition to reform the constitution is, the more difficult it is to reach it.

Table 7.2 Online participation

	Timing (phase of the process)	Use of mini-public	Openness	Discursiveness	Effectiveness
Citizens' constitutional convention in Iceland (2009–2011)	During drafting phase	Yes (but proxy)	Low	Yes	Yes
Estonian People's Assembly (2013)	Before drafting phase	No	Low	No	Yes
MyVoice support platform for e-petitions in Latvia (2014–2019)	During drafting phase	No	Low	No	Yes
Constitutional reform Luxembourg (2014–)	During drafting phase	Yes	Low	No	Yes
Constitutional review process in North Rhine-Westphalia (2013–2016)	During drafting phase	No	Very low	Yes	Small

7.3.1 Timing, socioeconomic composition, and discursive nature of participation

In the Icelandic case, the constitutional assembly decided from the start that the drafting process would be as open as possible to the public. The information and interaction with the public at large was organized through the use of Facebook, Twitter, and an *ad hoc* official constitution-making website. This website was designed with interactive features enabling users to make comments and to discuss amongst users and Council members (Gylfason and Meuwese 2016). The ICTs offered the possibility of interaction between users and members of the constitutional assembly, where the Assembly has the final say on the drafting of the constitution.

The Act on a Constitutional Assembly (ACA), passed by the Icelandic Parliament, organizing the constituent process and the activities of the constitutional assembly, does not mention ICTs at any point. Its Article 20, entitled 'Public presentation and participation', only refers to a dedicated website, with no rules of operation and no precise or clear information to answer the question 'how will public presentation and participation be organized?'

As for Iceland, in Luxembourg, web-participation occurred during the drafting phase, in so far as the drafting process was never interrupted. But differently from the Icelandic case, the web-participation was not based on interaction but only the possibility to submit proposals. To that end, the Parliament sought to engage the public via a new web portal: www.ärvirschléi.lu. From July to October 2015, this portal collected suggestions on the constitutional reform and proposals for specific constitutional revisions. Over time, the Committee on Institutions and Constitutional Affairs reviewed the suggestions and proposals and, in July 2016, convened a public hearing with 36 citizens to discuss the citizen contributions.

The NRW web-participation also took place during the drafting process and allowed citizens to make suggestions. Furthermore, it was possible for all citizens to submit written paper or email comments to the commission. Finally, there was a chance to participate in an online forum, which was implemented as a kind of participatory portal for the constitutional commission. The number of contributions was very small. The instrument was used predominately by the organized interest groups. Due to the lack of marketing and a lack of interest by the media, there was no debate (Landtag NRW 2016).

In the Estonian case, web-participation took place essentially before the drafting phase through the crowdsourcing platform, and comprised five pre-determined topics (the electoral system, the functioning of political parties, the financing of political parties, public participation in political decision-making, and the politicization of public offices) defined by the Ice-Cellar Meeting (see above). In other words, the deliberative process that started in the ice-cellar was initially shaped by the elites present at the meeting (Jonsson 2015). The objective of the online crowdsourcing platform was to collect proposals that would then be reviewed by a group of experts, the so-called 'smart-crowd'. The platform allowed citizens to comment, support, or criticize the submitted proposals. The 'smart-crowd' reviewed citizens'

proposals and prepared the stage for five offline deliberative seminars that took place throughout one week in March 2013. During these seminars, political representatives, experts, and citizens who had contributed to the original proposals on the platform deliberated in order to decide which of the ideas could best solve the initial problems put forward by the Assembly. Finally, 18 key issues were selected for discussion during the Deliberation Day.

In the Latvian example, it is possible to talk about a narrower version of a 'smart-crowd' during the drafting phase of the constitutional amendment. According to the inner policy of the *MyVoice* platform, the proposal was first submitted for an internal quality test by an anonymous body of experts consisting of the platform's staff and external experts. Neither experts nor authors were disclosed in the process. According to the platform's director, this expert-driven evaluation process, though less transparent and egalitarian, was designed to encourage better prepared citizen initiatives.

To assess inclusion, we examined the number of participants (active and passive), if the participants were self-selected and if there were attempts to correct the self-selectiveness, and more generally, if they were representative of the general population.

In the case of Iceland, the passive use of the website is quite high, the active use is much lower. Existing studies on the use of ICTs during the draft process show that the Council's website, dedicated to citizen participation and the dissemination of developments in the Council's work, was visited during the experiment by 40,000 unique visitors (Barnes and Ralley 2016), which represented 12.5% of the national population (approximately 320,000 inhabitants during the process). With regard to active participation, only 204 individuals were responsible for publishing the 311 formal proposals for articles to be included in the draft constitution on the website of the Constitutional Council (Hudson 2017: 14). Of these 204 individuals, only 9 were responsible for almost a quarter of the proposals (75) (Hudson 2017: 14). In terms of the demographic profiles of the participants, the 9 individuals were all male, as were 77% of the 204 people who submitted formal proposals for the draft constitution (Helgadóttir 2014). Moreover, a sample of participants shows that 80% of the participants were likely to be between 40 and 65 years old (Helgadóttir 2014). This occurred despite a clear effort to ensure that the less motivated and less connected people (i.e., those living in rural areas and/or older people) were kept informed and were able to participate. Indeed, ICTs, by their ability to almost cancel out the costs of citizen participation (no transport costs, time savings), and by the possibilities offered to ordinary citizens (to try to influence the draft, to correspond with Council members, with other citizens) meant that 'no one (or a very small minority with valid reasons) could justifiably complain that he or she did not have access to the process' (Gylfason and Meuwese 2016: 23). The participation was not limited to the Icelandic citizens but was also open to the outside world. The Constitutional Council even actively encouraged a degree of 'global participation' through its active use of English in all sorts of communications, including a generous treatment of translation requests. This participation was perceived positively.

In Estonia, the online platform attracted 60,000 visitors (of which nearly 2,000 users were registered on the platform), and received circa 2,000 proposals and 4,000 comments on proposals within three weeks after its launch (Jonsson 2015). This was quite an achievement in a country with only 1.3 million inhabitants. In order to post proposals and comments on the platform, people needed to log in with their electronic ID (Jonsson 2015). However, there were some limits to the inclusiveness of the platform and the Assembly's consultation process as a whole. If we examine the different components of the Assembly, first, the users of the online platform were self-selected. Considering that the platform was developed in just three weeks, the organizers did not have the time to 'correct' the self-selection by trying to involve potentially under-represented groups. According to a survey of participants ($N = 848$), the platform was dominated by men, who were already politically active, with higher education, and working as professionals (Jonsson 2015). Moreover, although the Russian minority living in Estonia constitutes circa 26% of the population, only 3% of the surveyed participants identified with Russian ethnicity (Jonsson 2015). The online platform itself was to some extent exclusive since it was available only in Estonian. Finally, although Estonia has a very high proportion of internet users, there is still a share of the population that does not use the internet. To address this gap, Rahvakogu offered people the possibility to send comments on paper. Nevertheless, people with an electronic ID card and internet access had easier access to participation.

In the case of Luxembourg and Germany, we do not have data on the socio-demographic characteristics of participants. In Luxembourg's case, only 139 citizens made a contribution via the web portal, which (due to its small size) could not have been a fully representative sample of the population.

In the Latvian instance, it is safe to argue that contextual factors such as high internet use and the relative openness and transparency of the parliamentary system were important conditions to ensure a greater level of inclusion than in the absence of online participation. *MyVoice* platform allowed the collection of signatures of Latvian citizens who were at least 16 years old, thus extending the right of political participation to young people for whom the age limit to vote was 18. Since the threshold for law initiation is rather high in Latvia (the signatures of at least 1/10th of the electorate or approximately 150,000 were required to initiate changes in laws),[7] the collective addresses in the form of electronically submitted citizen initiatives with a threshold of 10,000 signatures offered a lower-barrier opportunity for the direct involvement of citizens in politics. *MyVoice* also made it easy to participate in national politics from abroad, which is important for the sizeable Latvian diaspora of more than 370,000 (about 19% of the population) (Latvian Central Statistical Office 2019).[8] Unlike in Estonia, *MyVoice* content was automatically translated into Russian, thus making its contents potentially more accessible to the Russian speakers (37.7% of Latvia's population).[9]

To sum up, we note that while passive participation is rather satisfactory in the cases analyzed (Iceland and Estonia), active participation appears to be generally low and not representative of the general population.

7.3.2   *Effectiveness: outcome*

The outcomes vary across the cases examined. The Latvian case exemplifies the power that an online civic platform can have in promoting legislative reform. The platform's petition led to an amendment of the constitution, albeit four years after its submission. In addition to public support for the petition on *MyVoice*, the effectiveness of the outcome was likely shaped by growing political receptiveness to the issue among the ruling coalition in the wake of the 2018 elections (Kozins 2021).

The effect of the other web-participation processes is less straightforward. In the case of Iceland, the Council members made a clear effort to respond to all the proposals that they received. 'The end result in quantitative terms was a total number of 3,600 comments received in addition to some 320 formal suggestions from citizens, which were all discussed and answered by the three committees of the Council' (Gylfason and Meuwese 2016: 14).

Hudson's 2017 article is the first to provide some insightful quantitative analysis on the extent to which participation through ICTs had an effect on the draft of the Icelandic Constitution. He compared successive drafts posted on the Council's website (11 in total) with the proposals (311) from the Icelandic public. He found that 29 of these 311 proposals (or 9.3%) had an impact on the draft, explaining that there were '29 instances where a proposal is almost certain to have caused a change in the text of the draft constitution' (Hudson 2017: 18). His analysis suggests that there are areas where ICTs are more likely to have a real influence on public participation, such as that of rights in the Icelandic case. This area is itself quite broad, ranging from personal rights, civil rights, cultural rights, and rights related to nature and its resources, to very modern rights such as the right to internet access (reaffirming the democratic nature and possibilities of ICTs), which 'came straight from the crowd' (Landemore 2015: 178). According to Hudson, public participation is more likely to be influential in these areas; these decisions have clear costs and benefits for established elites, the drafters are likely to encounter conflicting proposals from the public, and because 'the proposals are more likely to be additive, rather than competitive' (Hudson 2017: 21). While Hudson's results indicate that the institutional field of public proposals had extremely limited effects, this does not seem to be completely the case. For instance, Gylfason and Meuwese observe that proposals targeting the Icelandic electoral system (an aspect among others of the institutional field) were 'arguably those where the effects of the wide public participation [were] most visible' (2016: 19). The truth probably lies somewhere between these two positions: the online contributions to institutional reforms had partial effects that concerned only a few aspects, while online contributions related to rights had more general and obvious effects. It should also be noted that the ideals rooted in the 'Pots and Pans Revolution',[10] and themselves echoed on the internet numerous times, undoubtedly promoted and pushed for 'the uplifting spirit of the preamble' (Gylfason and Meuwese 2016: 17). Furthermore, Hudson also identified several variables that influenced the inclusion of a proposal in the draft: the timing of the proposal ('later proposals were less likely to be included in the constitution') and the 'popularity' of the proposal, understood as the number of

comments it received. In contrast, the nature of the author of the proposal had no particular effect (2017: 19–20).

In the case of Estonia, the online crowdsourcing proposals were categorized into 59 subtopics and reviewed by a group of experts, the so-called 'smart-crowd'. The experts were invited without any specified selection criteria and it is unclear how much they influenced the content of the final proposals. In particular, it seems unclear how the 59 sub-categories were shaped from the platform proposals and why some of the ideas were left out. The proposals made by citizens were then reviewed by the 'smart-crowd', composed of analysts from the CSO 'Praxis Centre for Policy Research', who grouped and synthesized citizens' proposals into 5 main topics and 59 subtopics. A methodology specialist helped Praxis to set up the taxonomy and tagging system. After this grouping exercise, around 30 experts from various fields carried out an impact assessment of citizen proposals. Consequently, political representatives, experts, and citizens who had contributed to the original proposals on the platform deliberated in order to decide which of the ideas could best solve the initial problems put forward by the Assembly, and selected 18 key issues for discussion during the Deliberation Day seminars (Praxis Centre for Policy Research 2019). On Deliberation Day, the participants discussed the 18 proposals and selected 15 proposals for presentation to the Estonian Parliament.

In the case of Luxembourg, the web portal and the subsequent public hearing yielded several constitutional amendments. For instance, the members of the Constitutional Review Commission found a consensus to strengthen the rights of children and animals compared with their original text. The deputies agreed to specify these rights in a chapter of the constitution that defines the objectives of the state. Regarding children's rights, members decided to add an article that should specify that the state ensures that every child 'enjoys the protection, measures and care necessary for their well-being and development' and that it grants the children 'the right to freely express their opinion on any question which concerns them according to their age and their discernment'. These formulations (not yet exact) should be added to the notion of 'the best interests of the child' that the state must guarantee. On animal rights, MPs agreed to incorporate notions of 'living things' that are 'endowed with sensitivity' and that the state should ensure 'to protect their well-being'. Other proposals stemming from the citizens are the social dialogue, freedom of academic research, and the legislative initiative by citizens (Chambre des députés 2021). Currently, members of the Parliamentary Committee are discussing several other proposals made by citizens to amend the constitution.

To sum up, in most of the cases reviewed, the online contribution influenced the final constitutional draft. The effect is, however, more-or-less straightforward. In some cases, the effect was rather direct – such as in Latvia and Luxembourg – in the sense that there was just one step before the impact: the opinions emerging from the web were directly addressed to the political representatives who then decided whether or not to adopt those suggestions. In other cases, the effect must go through the deliberative processes of experts and/or mini-publics, which then submit a proposal to the politicians, as for Iceland.

What is more problematic is that none of the cases analyzed had clearly defined rules on how the citizens' proposals should be considered. For example, in the case of Iceland, the endeavour to consider proposals from the general public finds its roots in the sole willingness of the Council. As mentioned before, the ACA (and especially its Article 20) does not provide any clear rules for filtering and selecting proposals (and other types of public input: comments, etc.) from participants using ICTs. This absence of clear rules implies that the working methods of the Council (and that of its three committees), and thus the methods of filtering and including input from individuals using ICTs, were not clearly and methodologically defined, being 'rather haphazard' for Gylfason and Meuwese (2016: 15) and established 'on a rather *ad hoc* basis', without 'evidence of fair process of evaluation of the suggestions submitted to the constitutional council' for Hudson (2017: 10, 21). This is a problem that is also relevant for Luxembourg, Germany, Estonia, and Latvia.

7.4   Conclusions

This research is descriptive and exploratory. It is based on a limited number of data sources that are not always fully comparable. This makes it difficult to draw general conclusions, but the idea was to define relevant variables and to develop a methodology that can be used for other cases of citizens' constitutional reform and other contexts.

In our analysis of the use of online constitutional review processes, we focused on inclusiveness and effectiveness. The main indicators characterizing the whole constitutional deliberation process were: scale (scope) of the constitutional review, initiator of the instrument, main agenda setting, and output of the whole process. Further indicators related to our main research questions encompass the level of openness (inclusiveness), discursiveness, timing, and finally the outcome of the online participation that measures the effectiveness.

The timing and intended functions of online deliberation matter. The citizens' web-participation was generally used as a crowdsourcing tool aiming to enrich the drafting and decision-making constitutional phases. In other words, it is complementary to other deliberative phases composed by elected or selected citizens and/or experts and/or politicians. Despite generally poor planning, in most cases the web-participation occurred during or just before the constitution drafting process, which makes sense since this stage is ultimately the 'crucial stage' (Landemore 2015: 173).

The inclusion is low and self-selection shows a strong bias. Organized interest groups, younger age groups, and previously or already engaged citizens dominate the online participatory process. This finding, which is observed in most of the other studies on online consultation, should not be considered as problematic as long as this natural auto-selection bias is compensated by the introduction of mini-publics that offer a broader representation of the public and could therefore filter suggestions that do not serve the common interest. This appears to be relevant for the Icelandic and Estonian consultations, and not the case for the German and Luxembourgish ones.

Constitutional reform processes seem to be less interesting to the media as well as citizens. Online and offline participatory instruments open the participatory

space. The inclusion of small representative groups (in offline mini-publics) offers an additional perspective, but it should be intended to include a broader public space and to trigger a national debate. Open online platforms, forums, etc. need special marketing and promotion, as is demonstrated in Latvia where the *MyVoice* platform receives regular publicity in national media and is also very familiar to politicians. If this is not realized by the unpaid media such as TV and newspapers, the organizers themselves should enhance marketing of the new democratic innovations. Our analysis showed that the inclusive potential is limited, which shows that a participatory mix of blended participation may be necessary. Online participatory instruments need online and offline channels to become more visible.

Lastly, relevant web-participation related to constitutional reforms only included deliberative elements in Estonia and Iceland. In Iceland, citizens could debate proposals in the elected citizens' convention taking place online. In Luxembourg, which did not include cases without any online deliberation, this was compensated by other forms of citizen deliberation including in-public hearings, which also involved political representatives. In NRW, online proposals and original proposals were only discussed by political representatives. No citizen deliberation occurred in the Latvian case in which the constitutional amendment was largely discussed among the experts and politicians. In Luxembourg and Latvia, citizens could only post proposals, without the possibility to discuss them online. In all the cases, however, the core of the citizens' deliberation took place in other face-to-face forums.

It is difficult to measure the effectiveness of online and offline instruments. What is the effect of online participation? What is the effect of offline participatory instruments? Nevertheless, we observe that in most cases, online deliberation had an impact on the drafting of the process. In most cases, it was far more than a purely symbolic instrument. Although the informal instruments are predominately consultative, they have an effect in the decision-making process. This seems to be dependent on the level of public debate and the role of important advocates in the form of political parties, politicians, or powerful civil society organizations and media supporting the instruments. The level of preparedness and quality of online proposals also seem to have an impact on the uptake of these proposals among these actors, as in the Latvian case. Effectiveness is related to the scope and scale of the decision-making. We saw that bottom-up initiatives are taken over by the government or Parliament. In these cases, the government tries to dominate the agenda setting. Regarding the topics open for discussion, in some cases, citizens were free to discuss any constitution-related topic (such as in Luxembourg and Iceland), while for other cases, the scope of discussion was limited to certain topics (Estonia and WBR).

Our analysis shows some important deficits and factors and more *lessons that we can derive from it. It was obvious that online constitutional deliberation is still at a starting point. There was only a small number of cases that showed great variety in their use of ICTs in constitutional deliberation. Furthermore, it was an informal process*, which means most constitutional deliberations were characterized by a lack of regulation and non-planification of the use of ICT (see Iceland in particular). In many cases, the role of the web-participation was not clearly defined from the start. It is also important to bear in mind that, although

transparency, openness, and direct contact with citizens is the essence of this constituent process, particularly through ICTs, the use of digital technologies as democratic tools (for information, participation, and legitimization) was not directly self-evident.

Notes

1 Interviews conducted by Alina Östling with Hille Hinsberg on August 28, 2019 and with Kari Käsper, TalTech and the Estonian Human Rights Centre on August 20, 2019. Interview conducted by Visvaldis Valtenbergs with MyVoice content editor, Didzis Meļķis on January 14, 2021.
2 The name came about because the meeting took place in the old ice-cellar of a building in the Kadriorg neighbourhood of Tallinn.
3 https://www.kogu.ee/en/activity/peoples-assembly/
4 Source: "Three Proposals of People's Assembly Became Laws in a Year". Press release dated 6 April 2014. https://heakodanik.ee/en/news/three-proposals-of-peoples-assembly-became-laws-in-a-year/
5 From 2011 to 2021, 84 legislative initiatives were submitted via the *MyVoice* platform and about 50 have resulted in some form of legislative change at the national or local level. Source: https://manabalss.lv/pages/paveiktais. Notable policy successes include the introduction of a beverage bottle deposit system, the right for motorcycles to use the public transportation lane, the provision of state support for the treatment of lung cancer, hepatitis C, and melanoma, automatic reimbursement of overpaid income tax, reduced VAT rates for certain fruits and vegetables, and many others.
6 In the case of the Estonian People's Assembly (Rahvakogu), the Estonian president played an important role in launching the idea of the Assembly and bridging the gap between the public and the Parliament, while the process itself was run by an informal network of civil society organizations.
7 The law initiation by citizens in Latvia is regulated by the Law on National Referendums, Legislative Initiatives and European Citizens' Initiative adopted in 2012. Available: https://likumi.lv/ta/en/en/id/58065
8 Centrālā statistikas pārvalde. IRS 010. Iedzīvotāju skaits gada sākumā, tā izmaiņas un dabiskās kustības galvenie rādītāji. Oficiālais statistikas portāls. Available: https://data.stat.gov.lv/pxweb/lv/OSP_PUB/START__POP__IR__IRS/IRS010/table/tableViewLayout1/ [In Latvian].
9 Centrālā statistikas pārvalde, 02.08.2019. 60,8 % Latvijas iedzīvotāju dzimtā valoda ir latviešu. Available: https://www.csb.gov.lv/lv/statistika/statistikas-temas/iedzivotaji/meklet-tema/2747-608-latvijas-iedzivotaju- dzimta-valoda-ir-latviesu [In Latvian].
10 Icelandic protest following the 2009–2011 financial crisis: i t was also known as the 'kitchenware revolution', because demonstrators banged kitchenware to disrupt the meeting of Parliament.

References

Arnstein, S. (1969). A Ladder of Citizen Participation. *Journal of American Institute of Planners* 35(4): 216–224.

Barber, B. (1984). *Strong Democracy. Participatory Politics for a New Age*. Oakland: University of California Press.

Barnes, J., and Ralley, J. (2016). Finnur Magnusson - Icelandic Crowdsourced Constitution. Interview Given for the Publication of the Book Democracy2, L. http://www.democracysquared.io/1-finnur-magnusson-icelandic-crowdsourced-constitution/ (link no longer available)

Blanco, I., Lowndes, V., and Pratchett, L. (2011). Policy Networks and Governance Networks: Towards Greater Conceptual Clarity. *Political Studies Review* 9: 297–308.

Burks, D., and Kies, R. (2021). Deliberative constitution-making in Luxembourg. Paper presented at ConstDelib Country Report Workshop. http://hdl.handle.net/10993/46518

Chambre des Députés (2021). *La révision de la constitution*. Luxembourg: Chambre des Députés.

Dahl, R. (1971). *Polyarchy*. New Haven, CT: Yale University Press.

Dressel, B. (2005). Strengthening Governance through Constitutional Reform. Asian Development Bank. https://www.adb.org/sites/default/files/publication/28636/governancebrief13. pdf [accessed Jan 06 2022].

Dryzek, J. (2002). *Deliberative Democracy and beyond*. Oxford: OUP

Falanga, R. (2020). *Citizen Participation during the Covid 19 Pandemic*. Bonn: FES

Farrell, D., Harris, C., and Suiter, J. (2017). Bringing People into the Heart of Constitutional Design. In: X. Contiades and A. Fotiadou (Eds.) *Participatory Constitutional Change: The People as Amenders of the Constitution*. Milton Park, Abingdon, Oxon; New York, NY: Routledge. https://doi.org/10.4324/9781315599489

Geissel, B., and Newton, K. (Eds.) (2012). *Evaluating Democratic Innovations. Curing the Democratic Malaise?* Milton Park, Abingdon, Oxon; New York, NY: Routledge. https://doi.org/10.4324/9780203155196

Gylfason, T., and Meuwese, A. (2016). Digital Tools and the Derailment of Iceland's New Constitution (SSRN Scholarly Paper ID 2821479). Social Science Research Network. https://papers.ssrn.com/abstract=2821479

Habermas, J. (1989). *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*. Cambridge: Polity.

Helgadóttir, R. (2014). Which Citizens? – Participation in the Drafting of the Icelandic Constitutional Draft of 2011. *International Journal of Constitutional Law Blog.* http://www. iconnectblog.com/2014/10/which-citizens-participation-in-the-drafting-of-the-icelandic-constitutional-draft-of-2011/

Hudson, A. (2017). When Does Public Participation Make a Difference? Evidence from Iceland's Crowdsourced Constitution. *Policy & Internet*, 10(2), 185–217.

Jonsson M., (2015) "Democratic Innovations in Deliberative Systems – The Case of the Estonian Citizens' Assembly Process", *Journal of Public Deliberation*, 11(1). doi: https://doi.org/10.16997/jdd.224

Kersting, N. (2007). Assessing Participatory Democracy. Trends and Criteria for an Evaluation. In H. Reynart, P. Delwit, K. Steyvers, and J.-B. Pilet (Eds.) *Towards DIY-Politics? Participatory and Direct Democracy at the Local Level in Europe* (pp. 31–50). Van den Broele.

Kersting, N. (2013). Online Participation: From 'Invited' to 'Invented' Spaces. *International Journal of Electronic Governance,* 6(4), 270–280. https://dx.doi.org/10.1504/IJEG.2013.060650

Kozins, I. (2021). Impact of Public Initiatives Portal "ManaBalss.lv" on the Legislative Process in Latvia: The Legislator's Perspective in Decision-Making. Master's thesis. University of Latvia. [In Latvian].

Laclau, E., and Mouffe, C. (2001). *Hegemony and Socialist Strategy. Towards a Radical Democratic Politics*. London/New York: Verso.

Landemore, H. (2015). Inclusive Constitution-Making: The Icelandic Experiment. *Journal of Political Philosophy*, 23(2), 166–191.

Landtag NRW (2016). *Abschlussbericht. Kommission zur Reform der Nordrhein-Westfälischen Verfassung (Verfassungskommission)*. Düsseldorf.

Mendez, F., and Wheatley, J. (Eds.) (2013). *Patterns of Constitutional Design. The Role of Citizens and Elites in Constitution-Making*. London: Routledge. https://doi.org/10.4324/9781315599762

Praxis Centre for Policy Research. (2014). People's Assembly in Estonia – Crowdsourcing Solutions for Problems in Political Legitimacy. Case Description of Deliberative Process. https://kogu.ee/wp-content/uploads/2013/01/Peoples-assembly_summary-by-Praxis_2014-1.pdf

Reuchamps, M., and Suiter, J. (Eds.) (2016). *Constitutional Deliberative Democracy in Europe*. Colchester, ECPR Press.

Suteu, S., and Tierney, S. (2018). Squaring the Circle? Bringing Deliberation and Participation Together in Processes of Constitution-making. In: R. Levy, H. Kong, J. King, and G. Orr (Eds.) *The Cambridge Handbook of Deliberative Constitutionalism*. Cambridge: Cambridge University Press, 282–294.

Van Dijk, A.g.m, J. (2012). Digital Democracy: Vision and Reality. In: I. Snellen, W. Van De Donk, and M. Thaens (Eds.) *Public Administration in the Information Age: Revisited*. Amsterdam: IOS Press.

Welp, Y., and Soto, F. (2020). Beyond fashion and smokescreens: citizens' deliberation of constitutional amendments. ConstDelib Working Paper Series; no. 7. https://www.graduateinstitute.ch/library/publications-institute/beyond-fashion-and-smokescreens-citizens-deliberation-constitutional

8 Lessons from two island nations

Re-reading the Icelandic deliberative constitutional process in light of the success of the Irish Constitutional Convention

Eirikur Bergmann[1]

In the wake of the international financial crisis of 2008, both Iceland and Ireland – two island nations in northern Europe, severely strained by the calamity – embarked on novel voyages of re-examining their constitutional foundation via direct citizen participation in deliberative forums. The two highly innovative processes share many characteristics, but there were also significant differences between them.

The Icelandic deliberative constitutional process was initiated earlier than the Irish, and it was far more ambitious. The Icelandic draft constitution has not yet been implemented; thus, it must be considered as a failed attempt at constitutional change by deliberative means – at least for now. The Irish Constitutional Convention – and later subsequent Constitutional Assemblies – began with more modest tasks, and has proved to be far more successful. It has already led to significant changes to the Constitution of the Republic of Ireland.

In designing the Irish Constitutional Convention, its constructors were able to draw lessons from the Icelandic constitutional process, as well as from several other exercises.[2] In this chapter, I attempt to turn the heuristic course in the opposite direction. I aim to re-examine the Icelandic deliberative constitutional process by considering the success of the Irish Constitutional Convention. Can Iceland now learn from the Irish case?

In this chapter, I will map the similarities of the two processes, and, more significantly, identify the main differences between them. In addition to the Irish process being more limited in scope, the most obvious difference was in the selection of the mini-public. The Icelandic Assembly was nationally elected, while citizen participation in Ireland was based on stratified random selection. A third significant difference revolved around the involvement of Parliament. In Ireland, parliamentarians participated in the Forum, while they were firmly kept at bay in the workings of the Icelandic Assembly. The main purpose of the chapter is to draw lessons from the Irish constitutional process for the benefit of possible future continuation of the still-unfinished Icelandic constitutional process that began in 2009, and which became stranded leading up to the parliamentary election in spring 2013.

In this chapter, I first briefly discuss where the two cases might fit within a wider evolution of innovative democratic exercises that use citizen panels. I then discuss the two cases alternately, in accordance with the relevant themes. Lastly,

by drawing lessons from the Irish case, I offer suggestions for a preferable course of action to restart the Icelandic constitutional process.

8.1   The international arena – a tour de table

Before delving further into the two cases, is worth noting how they fit alongside several similar initiatives of citizen participation in public decision-making, often set up to increase democratic legitimacy, to roughly situate the two cases at hand into the wider overall trend. In this short chapter, it is not, however, viable to provide a systemic and holistic overview of these processes. I therefore limit the discussion to only a few examples that I believe might help shed light on the context of the Icelandic and Irish constitutional processes.[3]

In addition to the design of the processes in the two cases here examined, one of the most interesting contexts for them, I find, is that both were instigated in the wake of crisis, precisely to regain legitimacy in the eyes of the public. When examining other similar cases of deliberative mini-publics, it becomes evident that a poly-crisis is often a part of their back-stories. Let us look at just a few.

The first Citizens' Assembly empowered to set a constitutional agenda that I here discuss was held in 2004 in British Columbia, Canada, in a climate of political crisis. It was composed of 161 members, who, apart from the Chair and aboriginal representation, were selected by a civic lottery in stratified sampling of the wider public. The Assembly met periodically for almost a year to deliberate on electoral reform. Subsequently, a relatively radical proposal was put to referendum, where it was accepted by majority of voters but failed to meet a steep threshold for ratification set by the government (for more, see Warren & Pearse, 2008). The momentum soon died out, but the work of the Assembly inspired similar exercises in Ontario, Canada, and in the Netherlands as well.

This illuminates another interesting aspect of these endeavours. Sometimes these exercises tend to set off a snowball effect. Instigation of a mini-public in one place can spur calls for the use of another in other communities or countries, often of a differing kind, in accordance with the situation on the ground in each case. In this regard, a process that fails to lead to a significant change at home might have an impact elsewhere, serving as an inspiration for citizen participation in mini-publics elsewhere.

In the 2002 and 2003 elections in the Netherlands, the vulnerability of the extremely proportional electoral system became evident with the rise and fall of right-wing populist parties. This spurred a political crisis and led to the instigation of the Dutch Citizens Forum (BurgerForum) held in 2006. In a manner like the Canadian exercises, 140 randomly selected citizens deliberated on electoral reform. The work of the BurgerForum was, however, highly politicized, and in the end, it fell victim to party-political infighting. Its suggestions were not put to the public but were referred to politicians, who proved to not have much interest in implementing them (for more, see Caluwaerts & Reuchamps, 2013). As will be seen in this chapter, here are many similarities with the Icelandic case.

For context, a few other similar exercises can be mentioned. In 1998, the Australian prime minister called for a Constitutional Convention that, for example,

discussed the country's link with the British monarchy. The Convention consisted of 152 delegates, of whom half were elected and half, governmentally appointed. The deliberative aspect of the work was, however, limited as most decisions were taken by vote (Webb, 2000). Further similarities are found in public participation in local-level budgeting in South America, most prominently, the participatory budgeting process in Porto Alegre in Brazil (Wampler, 2007).

These and other similar exercises around the world should be kept in mind when discussing the Icelandic and Irish deliberative processes, as they align with some of these initiatives of deliberative mini-publics applied in constitution-making. However, apart from the Irish case, none of these previous mini-publics have been successful in pushing through real change.

It is also worth noting several examples of mini-publics that were instigated after the two main cases examined in this chapter. In 2017, a Citizens' Assembly in South Korea led to changes in the country's energy law. There are also a few examples where authorities have made it mandatory to use mini-publics when changing constitutions. In 2017, Mongolia issued a law requiring constitutional amendments to first pass through a process of deliberative polling. In 2019, the Parliament of the German-speaking authority in Belgium decided to establish a Citizens' Council that would be consulted for legislative change (for more on these, see Landemore, 2020).

Several other highly interesting examples of deliberative mini-publics are operating around the world at the time of writing this chapter. In France, for example, one and a half thousand people have been involved in a Citizen Convention on Climate Change. One of the most interesting examples of this kind is in Chile, where the government called for a wide-scope Citizens' Assembly to re-examine the country's constitution. In the international arena, we can refer to the EU initiative of gathering randomly selected citizens in the Conference on the Future of Europe.

Another category of citizen-driven mini-publics are those that have been instigated by civil society rather than by public authorities. Several of these were held in the wake of the 2008 financial crisis. Here I mention just a few for context. In 2012, a citizen-driven initiative in Finland led to reforms in laws regarding marriage equality. Another example is found in the G1000 in Belgium in 2012, where the main aim was to explore a new constitutional platform for the increasingly fragmented country following a prolonged political crisis. The victory of the populist Flemish nationalist party in 2010 resulted in a 500-day gridlock over the long-drawn-out formation of a coalition. A completely grassroots organization consisting of civil-society activists, writers, and intellectuals instigated a Forum for the public to discuss the state of Belgian politics. Through an online suggestion box, the organizers attracted more than 2.000 comments. In the second phase, 1,000 randomly selected people were invited to a one-day consultation. Empty seats were partly filled with participants gathered by snowball sampling through minority organizations. In the end, however, only 704 people attended, but in parallel to the physical Assembly, an online discussion was open to the public at large (Caluwaerts & Reuchamps, 2013). Similarly in Estonia, the so-called People's Assembly (Rahvakogu) was an online platform set up in 2013 to crowdsource proposals for constitutional reform and other issues related to the future of democracy ("What Is Rahvakogu?", n.d.).

It is especially interesting that both the Icelandic and Irish cases were spurred by bottom-up citizen-driven initiatives in the wake of the international financial crisis, which hit these countries especially hard. Both cases thus also follow a similar apparent track of constitution-making following crisis.

8.2   Citizens' initiatives

Both the Icelandic and Irish cases followed the same trajectory: first, a bottom-up civil initiative led to the instigation of forums for deliberative discussion among the public in the wake of crisis; second, governments responded to wide-scale public protest by instating deliberative mini-publics for constitutional re-examination.

In the Icelandic situation, not only had ordinary people taken to the streets in protest but numerous actors also engaged much more actively in public discussion. A group of self-appointed engaged citizens, calling themselves the Anthills (in Icelandic: Mauraþúfan), for example, initiated a structured national debate in an exercise held in November 2009 under the title of a National Meeting (in Icelandic: Þjóðfundur).[4] The task of the National Meeting was to map ideas for societal reform in the wake of the crisis, allowing ordinary people the opportunity to express their frustrations and wishes. About 900 participants were randomly selected by stratified sampling, in addition to 300 representatives from different civil-society associations and interest groups. These 1,200 participants were then divided into small round table groups, each led by a professional facilitator. At the end of the process, a handbook mapping the discussions and drawing conclusions was published. Many of the conclusions bordered on overtly simplistic and general values, and many were reflective of the recent financial crisis, including, for example, an emphasis on honesty, equal rights, respect, justice, love, responsibility, freedom, sustainability, and democracy.

Like Iceland, the Irish 2013 Constitutional Convention was also held in the wake of the financial crisis of 2008; this up-ended the previous Irish boom, unemployment fell to levels not seen since the Great Depression of 1929, and the country had to revert to the EU and the International Monetary Fund for financial help (Baudino et al., 2020). The back story of the Irish case is similar to Iceland in this regard, and can be linked to a citizens' initiative named 'We the Citizens' instigated by the Political Studies Association of Ireland in 2009. Its purpose was to deliberate on pressing issues for political reform. Open meetings were held around the country to gather input for a reform agenda. About 700 people shared their ideas and 150 people representing a cross-section of society were selected to participate in a national debating Forum, of which around 100 attended.

Both cases, the Anthills in Iceland and 'We the Citizens' in Ireland, were of a similar nature. Both were citizen-driven initiatives spurred by crisis. More interesting, perhaps, is that both instances were later used as templates for the respective governments to instigate and operate Constitutional Assemblies, as I will return to discussing later in this chapter.

8.3   The two processes

As has been established, both the Icelandic and Irish cases were spurred by financial crisis, and in both cases, the citizens' initiatives led the governments to answer a popular call to open a new public space for debating the very foundation of society. Iceland can be viewed as a post-colonial country, where the national debate is highly impacted by Iceland's past as part of the Danish state. This is mirrored in Ireland by its past relationship with the United Kingdom. For many in Iceland, the current constitution, which was firmly based on the Danish one, is representative of that past colonial oppression. It is therefore not surprising that the constitutional question sprang to the forefront of the debate in the post-crisis era, with many Icelanders viewing it as an unfinished part of Iceland's independence struggle (see Bergmann, 2014). This is interesting here, not least as in this volume Jon Ólafsson argues that the Icelandic constitutional process, as well as similar ones in Greenland and the Faroe Islands, has a certain decolonial dimension to it. Ólafsson contends that complexities around colonial heritage partly explain the failure of the post-crisis constitutional process in Iceland.

In the wake of the crisis, many called for the establishment of Iceland's Second Republic or, in data lingo, the updating of the system to 'Iceland 2.0' (Bergmann, 2014). This was similar to the situation in Ireland, where the Euro-crisis in the wake of more general financial crisis spurred a debate about the very foundation of the Irish republic (Suiter et al., 2016). The Irish Constitutional Convention, first held in December 2012, emerged out of a compromise between the new post-crisis government of Fine Gail and Labour. Leading up to the 2011 elections, all parties had on their manifesto some sort of citizen-orientated Forum for potential constitutional reform. Researchers have identified that the issues put to the Convention were a bit of a mixed bag and simply resulted from what the new coalition could not agree on (Suiter et al., 2019). The topics included, for example, stipulations on term limits for the President of the Republic, reduction of voting age, review of the electoral system, provision for same sex marriage, the role of women in the household, and removal of the ban on blasphemy.

Faced with similar pressure for reform, the new left-wing government in Iceland who came to power after the so-called 'Pots-and-Pans Revolution' of 2009 agreed to start a highly participatory process, which would be tasked with drafting a new constitution. The structure of the Icelandic process was novel in many ways. It was based on a three-phase engagement of randomly selected citizens, appointed experts, and nationally elected non-party-political individual representatives.

First, a National Forum of a thousand ordinary people, randomly selected by stratified sampling, gathered for a one-day meeting to discuss the principles and values on which the new constitution should be based. The new National Forum was structured on the Anthills citizen-driven initiative. Second, a seven-member political-party-appointed Constitutional Committee would gather information, analyse the core issues discussed by the National Forum, and propose ideas for constitutional revision. Third, and most importantly, Parliament called for a national election of an independent 25-member Constitutional Assembly, which

would revise Iceland's constitution or, possibly, draft a completely new one, based on the work of the National Forum and the review of the Constitutional Committee.

In Ireland, the post-crisis government decided to instigate a Constitutional Convention, made of 66 randomly selected citizens and 33 Members of Parliament, in addition to an independent Chair. The design was in effect based on the 'We the Citizens' Assembly, which of course had no legal standing. The main novelty of the Irish case was to mix MPs in with randomly selected citizens. The Convention met several times throughout most of 2013 to deliberate on pre-selected articles of the constitution and put forward suggestions for the government to consider (Farrell et al., 2013). Later, the process in Ireland was repeated in several Citizens' Assemblies. One exercise ran from 2016 to 2018 and another was instigated in 2020, specifically tasked with issues of gender equality.

The design of the Icelandic process was different to the Irish exercise in significant ways. In Iceland, a nationally elected Constitutional Assembly was tasked with drafting a new constitution, while in Ireland, a body of randomly selected citizens were called to debate much more narrowly defined changes to the Irish constitution. Here we find two of the three main differences between the two cases examined in this chapter. First, Iceland had nationally elected representatives compared with randomly selected citizens in Ireland. Second, while the task of the Irish Convention was relatively small in scale, and much more narrowly focused on a few specific changes to the Irish constitution, the Icelandic process was open to a much more ambitious revision of the entire constitution. The third and perhaps most significant major difference lies in the involvement of Parliament. MPs were directly involved in the Irish Convention, while they were firmly kept at bay in the Icelandic process. MPs also did not participate directly in the workings of the Council, nor did the Council consult parliamentarians in any significant way during the drafting process.

Leading up to the Irish Convention, many feared that the professional politicians would apply their skills to manipulate the deliberation for their preferred outcome.[5] This fear was, however, never realized. Actually, the opposite occurred; the MPs appointed by their respective political parties to the Convention saw their role as facilitators, allowing the opinions of the randomly selected citizens to come to light (Suiter et al., 2019).

In order to be able to identify lessons for the Icelandic process from the Irish case, I will now turn to analysing in more detail the operation of the Icelandic constitutional process from 2009 to 2013.

8.3.1   *National Forum*

Similar to the Irish Constitutional Convention, which was two-thirds randomly selected, the Icelandic National Forum also comprised ordinary citizens randomly selected by stratified sampling. The National Forum that met in Reykjavik on 6 November 2010 was based on the Anthills initiative, which essentially was a grassroots civil-society movement. The National Forum was, however, a government-initiated body. This time, 950 randomly selected Icelanders were brought together.

The Forum's task included identifying the main values on which the constitutional draft should be based. The report produced by the National Forum was both wide-ranging and far-reaching. Among its main demands were better protection of human rights, the protection of Iceland's sovereignty and language, and guarantees that the nation's natural resources would remain in public ownership. The Forum also agreed that the weighted votes that give proportionally higher influence to rural constituencies should be abolished, and each vote should be equally weighted. It also called for representatives to be elected through preferential voting.

As mentioned above, similarities can be drawn between the Icelandic Citizens' Forum and the Irish Constitutional Convention. There are also significant differences. Contrary to the Irish Convention, which deliberated and proposed narrowly defined specific changes to the Irish constitution, the Icelandic Forum was only trusted with identifying basic principles for the further work of, first, a politically appointed Constitutional Committee and, second, the nationally elected Constitutional Assembly. In essence, other bodies were trusted with proposing specific changes to the Icelandic constitution.

8.3.2   Constitutional Committee

The second phase of the overall constitutional process in Iceland consisted of a Parliament-appointed seven-member Constitutional Committee. The Committee was supposed to be made up of constitutional experts, but as it was appointed by Parliament, the Committee ended up being filled by individuals with ties to each of the country's political parties. Some of the constitutional experts appointed had links to a respective party, while other parties appointed non-specialist party trustees. These kinds of bodies were not part of the Irish process – although limited similarities can perhaps be drawn to the Academic Council within the Irish Convention.

The Constitutional Committee had a dual task in the Icelandic process. The first was to administer the National Forum. The second task was to identify and draw conclusions from its deliberations, and then to list potential changes to the constitution for the subsequently held Constitutional Assembly to consider. Soon, though, the Committee was split along party lines in two opposite camps, and it failed to reach a compromise on common suggestions. The Committee therefore offered two different sets of suggestions for substantial change, one from each of the separate camps that were listed in the joint report as propositions A and B. This highlighted how politicized the task of the Committee had become.

8.3.3   Nationally elected mini-public

The third and final component of the three-phase process in Iceland was a nationally elected Constitutional Assembly. Here is where Iceland separates completely from Ireland. Icelanders were called to the polls in November 2011 to elect 25 individuals, who were trusted with the actual drafting of a new constitution. In all, 523 candidates stood for election to the Constitutional Assembly, marking an unprecedented political involvement of ordinary citizens in Icelandic politics. As this was a vote of

individuals and not political parties, which is not common in Iceland, the electoral system used was based on the system of Single Transferable Vote (PR-STV) – which, incidentally, is the system mainly used in Ireland. PR-STV allowed voters to select one or more candidates, ranking them in preferential order. There were no political parties behind candidates and the vote was not split by electoral districts. Each candidate had to collect signatures from more than 30 supporters, which meant that almost five per cent of the entire population signed to support each of the candidates.

The vast number of candidates overwhelmed the media, who were faced with the impossible task of covering the politics and preferences of each of them. This was a special extraordinary election and the level of media coverage proved to be only one-quarter of the normal coverage of periodically fixed Icelandic elections, as could be expected. In effect, the media responded to the challenge by limiting its coverage, instead of increasing it. Still, the entire maxi-public was very much aware of the elections.

Only 37% of the electorate participated in this unique election – by comparison, more than 80% of the electorate usually participate in general elections. Political parties were not allowed to field candidates in their name, and MPs were not eligible to run. This did not legally prevent political parties from backing certain candidates. However, perhaps because of the troubled political climate, the political parties did not formally back candidates, and interest organizations refrained from putting up candidates and, instead, gave public support to various individuals. However, days before the election, the secretariat of Iceland's hegemonic power until then, the Independence Party (IP) distributed to its members a list of candidates considered 'favourable' to the party.

In total, 25 members from a broad range of backgrounds were elected, including a few of those the IP secretariat had listed in its circular. Among the elected were artists, professors, priests, lawyers, political scientists, media people, former MPs, doctors, a company board member, a farmer, a campaigner for the rights of handicapped people, a mathematician, a nurse, and a labour-union leader. Thus, representation was relatively broad. However, soon after the results were announced, opponents of the process complained that only previously well-known individuals had been elected, mostly from the ranks of the left-leaning Reykjavik elite. Although most were not affiliated with any political party or party-political association, this criticism further undermined the input legitimacy of the Council.

In an extraordinary move, the election's judicial body ruled the elections null and void. The decision was solely based on technical discrepancies (for more on this, see Axelsson, 2011); there was never any suspicion of wrongdoing. To salvage the process, Parliament decided to simply appoint those individuals that had been elected to the Constitutional Assembly to a Constitutional Council, which would perform more or less the same task.

8.4   The deliberative process

The Constitutional Council started its work in April 2011. Working full time, the Council was endowed with a report from the Constitutional Committee and an extensive 'value map' from the thousand-person National Forum. However, as the

Committee was split into two camps, each offering their own sets of suggestions, the Council did not feel itself bound by the suggestions and, as mentioned before, decided to rewrite the entire constitution anew. Contrary to Ireland – where a randomly selected Assembly debated specific changes to the constitution – the constitution drafting in Iceland was solely in the hands of the elected Council. Its mandate stipulated that the Council should consider changes in certain areas that Parliament listed. However, the mandate also stated that the Council could revisit the entire constitution, and, thus, draft a completely new one; an initial decision that the Constitutional Council chose to pursue.

Despite the diverse positions espoused by its members, the Council was able to unite on three main initial tasks: first, to update the human-rights chapter of the old Icelandic constitution so that it incorporated social and civil rights, and to add a chapter on nature-protection and the collective ownership of natural resources; second, to distinguish more clearly between the branches of government; and third, to develop functional tools for increasing direct democracy, for example, with preferential voting in parliamentary elections and clear guidelines on how the people could call for referendums on vital issues. Council members broke into three working groups along these lines.

Opinion polls indicated that popular trust of Parliament was at a historic low, with less than one in ten feeling content with its work (Bjarnason, 2014). In this climate, it can be argued that the Council made a point of distancing itself from Parliament. This is perhaps the most vital difference from the Irish case, where parliamentarians were firmly involved, and, thus, shared ownership of the process together with the citizens within the Constitutional Convention. Contrary to the Irish case, some members of the Icelandic Council even openly expressed their hostility to parliamentarians, who they referred to as the 'political elite' (Ólafsson, 2012). Some of the members instead saw themselves as representing the public rather than the privileged elite. As a result of widespread anti-establishment rhetoric, the Council alienated itself from the Parliament (Bergmann, 2016).

8.4.1   *Open process*

Contrary to the advice of many constitutional experts, such as Professor Jon Elster, who visited Iceland at the time, the Council decided to open its work up to the public as much as possible. This interactive engagement with the public contrasted with the more typical distance at which professional politics takes place.

This opening-up of the drafting process was achieved through a variety of means. Through social media outlets, like Facebook and Twitter, the Council attracted several thousand submissions in addition to 370 formal proposals via more traditional correspondence. The Council also published minutes of meetings and working documents online. Even foreigners who could overcome the language barrier were allowed to participate. Viewing it from a distance, the international media started to brand the Council's production as the world's first 'crowdsourced' constitution, drafted by the interested public in clear view of the world (Morris, 2012). In essence, although perhaps to a somewhat lesser degree, engagement of the public

was similar in Ireland, where the Convention received 2,500 submissions from the public (Suiter et al., 2016).

In Iceland, the drafting process was covered extensively not only by the domestic media but also by many major international news outlets. The Council welcomed this attention and used it to their advantage in domestic politics. The world's first 'crowdsourced constitution' was, however, never a realistic description of the drafting process.

Despite the open access and the existence of a robust secretariat staffed with many experts to assist the Icelandic Council, the Council was not able to systematically plough through all the extensive public input as it only had four months to complete its task. I noted that some Council members never looked at any of it; it was entirely up to each member to navigate through the information and decide which contributions to take in or consider. Furthermore, members never felt obligated to adopt any input they did not agree with. Many in the international media, including the *International Herald Tribune*, nevertheless, reported that enthusiasts for open government around the world were insisting that the Icelandic constitutional process should serve as a model for how ordinary people could wrest power from the political elites that have monopolized political decision-making (Morris, 2012).

8.4.2   *Repeated iterations*

Rather than developing the document in a traditional linear fashion, the Icelandic Council had decided to apply the 'agile' method of iteration (doing things in many rounds rather than in consecutive order, often used in software development), completing the document gradually. The three committees of the Council deliberated separately on articles relating to their themes. Each week, the committees presented their proposal to the Council plenary meetings, which were open to the public.

The Council debated each proposed article and agreed on relevant changes and amendments before they were posted on the Council website as provisional articles for perusal by the public. When comments and suggestions had been received from the public as well as from experts, the Council posted revised versions of the articles. In this manner, the document was gradually refined, and the final version of the new constitution was arrived at in several rounds of revision. In all, the Council published 12 separate drafts.

In a final round, the Council voted on each article and any proposed amendments to them by show of hands. The decision-making process in the Council can thus be described as based on a mixture of deliberation and open-ballot voting.

8.5   Role of Parliament

After four months of deliberation, the Council members in Iceland had reached a consensus with unanimous approval of the final version of the draft constitution. This came as a surprise to many, including Parliament, which had no set plan in place for how to proceed. One of the main reasons for the cool reception given to the draft in Parliament was clearly that the Council had refused to cooperate with

Parliament or political parties on the drafting. Members of Parliament and others among the political elite therefore felt alienated from the draft (Bergmann, 2014). This was unfortunate for the Council as ratification of the draft constitution was in the hands of Parliament. In Iceland, a two-phase parliamentary action is needed to change the country's constitution: first, Parliament must accept a specific constitutional change with single majority vote; next, national elections are held and the newly elected Parliament is tasked with ratifying the decision of the previous Parliament.

The experience of the Irish Constitutional Convention, in contrast, indicates that involving politicians in the process can help to secure output legitimacy. The MPs participating in the Irish Constitutional Convention in effect turned into campaigners for the process within Parliament in Dublin, which ultimately had to implement the mini-public's recommendations. In Ireland, the Convention proved skilful in stretching the limits of its tasks beyond the narrow confines set by the government (Harris et al., 2020). The Irish Constitutional Convention proposed 40 specific recommendations, of which 18 would require constitutional change. Over the coming years, most of these recommendations have been accepted in one form or another. The Irish government has only openly rejected eight of them (for more on this, see Harris et al., 2020). Some of the recommendations were put to referendum, eventually leading to constitutional changes in Ireland.

To understand the success of the Irish case, it is vital to contemplate how the dual position of parliamentarians worked to the advantage of the process. Covering the breadth of political opinion, the Irish MPs participating in the Convention were able to advocate for the recommendations of the Convention within Parliament across political party lines. This was vital to secure passage of the Convention's recommendations onwards to national referendums (Suiter et al., 2019). The first referendums resulting from the Irish Constitutional Convention were held in 2015, for example, leading to a constitutional change securing marriage equality between husband and wife. However, not all the suggestions were successful, such as the second proposal that was defeated in a referendum. Another success came in 2018 when a constitution-based ban on blasphemy was removed by a referendum. Most significantly, however, for the ongoing wider discussion of the merits and feasibility of mini-publics, is that the Irish Convention was the first citizens' mini-public to lead to real constitutional change, paving the way for many more such initiatives around the world. The success of the Irish Constitutional Convention fuelled interest in instigating similar processes in many countries and on several continents.

In Iceland, on the other hand, the absence of parliamentary participation had the opposite effect. After quite a commotion in Parliament when receiving the draft constitution from the Council in July 2011, Parliament settled on holding an advisory referendum on 20 October 2012. Six questions were on the ballot for the public to consider. The primary question put to the people was whether or not the draft should be the basis for a new constitution. Around half of the electorate turned out for the referendum, of which two-thirds accepted the draft as the basis of a new constitution, which Parliament was to complete via routes stipulated in the old constitution. This overwhelming support for the proposal came as a surprise to

many. With the electorate approving the proposed draft constitution by two-thirds in a national referendum, one can argue that much of the legitimacy that was lost with the judicial ruling was won back in the early output phase.

The fate of the whole exercise was, however, still in the hands of Parliament and, like many other political reform proposals and initiatives involving deliberative constitutional mini-publics, the constitutional process eventually ran into trouble in the implementation phase. After submitting the draft, the whole process was caught in a new critical order of Iceland's post-crisis politics, where every proposal for reform was being contested. Running out of time leading up to the April 2013 election, the government reached an agreement to delegate the decision on the bill for a new constitution to the next Parliament, which would convene after the elections. Here, Iceland's participatory constitutional deliberative process also fell victim to traditional party-political infighting. Subsequently, the new government that came to power in mid-2013 quietly abandoned the constitutional process and instead appointed its own Constitutional Committee, consisting of party-political appointees, including many of the country's most conservative constitutional lawyers. Two separate further committees have since been appointed, but due to political divisions, neither has produced meaningful results.

8.6   Lessons

From this examination of the two different constitutional processes, several lessons can be drawn. The main one obviously revolves around the involvement of Parliament.

The Icelandic constitutional process of 2009–2013 has been highly celebrated around the world, yet it has still not led to the ratification of a new constitution for the country. It must thus be considered, until now, as a failed attempt at direct constitutional change by way of citizens' engagement in a mini-public – and a piece of unfinished business in Icelandic politics. Now, more than a decade after the Constitutional Council submitted its draft constitutional bill to Parliament in 2011, the issue is still unresolved. However, the Icelandic constitutional process has served as inspiration for the instigation of several citizens' panels worldwide (Bergmann, 2016).

It is interesting that although the deliberative constitutional process initiated in 2009 was derailed after falling victim to the above-mentioned critical order of Iceland's post-crisis politics, the issue has refused to go away in public discussions. Several political actors continuously campaign for the draft and the matter is still highly prominent in the national debate; for example, several political parties uphold a policy of passing a new constitution for the republic of Iceland based on the draft by the Council, such as the Social Democratic Alliance and the Pirate Party. Opinion polls furthermore repeatedly indicate that a strong majority of Icelanders support ratifying the draft constitution (Rúnarsson, 2021). Whether it will come to pass in the future remains to be seen.

In this chapter, I have revisited several issues around the still-unfinished Icelandic constitutional process in light of the success of the Irish Constitutional

Conventions and Assemblies. In terms of design, I have identified three main differences between the two processes. In Iceland, the proposing body was nationally elected, while in Ireland, it was trusted to a mostly randomly selected body. The task of the Icelandic Constitutional Council was far more ambitious, while it was much more limited in scope in Ireland. The most significant difference, however, lies in the involvement of MPs. In Iceland, Parliament was firmly kept at bay in the drafting process while in Ireland, parliamentarians not only participated in the Convention, but, directly because of that, became the main advocates for the Convention's recommendations in Parliament in the ratification process. In this chapter, I argue that the success of the Irish case in many ways results from the parliamentarians' commitment to the process, while the failure of the Icelandic case can, at least to some degree, be attributed to the cool reception to the draft in Parliament, due to their alienation from the drafting process.

For the wider world, several lessons can also be drawn from the two processes. One might be that poly-crisis can open a space for re-examining societal foundations, in what has been called a constitutional moment. In recent years, we have seen populists skilfully occupying such a space in many countries (Bergmann, 2020). However, populism is not necessarily the only response to crisis, democratic innovation can serve as a much more constructive response. One of the main lessons is thus that Citizens' Assemblies, in the form of mini-publics representative of the maxi-public, can have their role in public decision-making, running alongside our contemporary system of representative democracy. In fact, means of deliberative democracy can effectively augment our contemporary system of representative democracy, and help to strengthen it.

The Icelandic and Irish cases each have their strengths and weaknesses. The strength of the Icelandic process lies in its grand design of using many different instances of public debate; a randomly selected Forum, specialist Committee, nationally elected Assembly, and a general referendum. Here the very variety of means is helpful for future designs of such processes. Citizen panels can, thus, be either randomly selected or elected. However, some sort of random selection is favourable. The main lesson from Ireland, however, indicates that involving politicians in the process can help secure output legitimacy.

8.7   Suggestions for continuing the Icelandic constitutional process

In moving forward with the still-unfinished constitutional process in Iceland, I have from this examination developed a few suggestions, with which I will close this chapter. I propose that a new Assembly be convened in Iceland to finish the process that was started in 2010. The draft constitution produced by the Icelandic Constitutional Council, with later amendments by several constitutional bodies instigated by Parliament, should be submitted to the new Assembly, tasked with reviewing the text, revising it at will, and bringing the revised document to a renewed ratification process.

The new Constitutional Assembly could be based on certain aspects of the Irish model. I propose that the new Constitutional Assembly called by Parliament should

comprise 66 members plus a Chair. In the new Assembly, the political parties in Parliament should appoint 22 members, while 44 should be citizens randomly selected by stratified sampling from the national register. Preferably, the political parties in Parliament should unite in appointing an independent outside Chair of the Assembly. Learning from the Irish case, it would be beneficial for the Assembly to convene over one weekend once a month for six months, thus convening over six weekends in total. The Chair should be tasked with staffing the Assembly with an appropriate secretariat to provide access to relevant expert knowledge, such as legal, administerial, political, historical, and human-rights expertise, to mention a few disciplines. In accordance with the current Icelandic constitution, I finally propose the following ratification process:

- If a final proposal materializes, the Assembly will vote on it.
- If accepted in the Assembly, the draft is referred to Parliament for ratification.
- If ratified in Parliament, the draft should be put to an advisory referendum held alongside parliamentary elections.
- If accepted in the referendum, it is then up to the following Parliament to finally accept the new constitution – which by then would therefore already have been accepted by the previous Parliament and in a national referendum.

Notes

1 I was one of the 25 members of Iceland's Constitutional Council. Some of the descriptions here of the constitutional process in Iceland, and the workings of the Council, are based on my own observations during that time.
2 Leading up to the Irish Convention I was, for example, invited to Dublin in November 2012 for a workshop at the Royal Irish Academy, titled 'Deliberation in practice: The use of mini-publics in contemporary democracies'. The workshop convened academics and practitioners who were thought to possess best-practice lessons for the the benefit of the Irish convention. My role in the workshop was to discuss lessons from the Icelandic constitutional process. (See https://politicalreform.ie/2012/10/17/deliberation-in-practice-the-use-of-mini-publics-in-contemporary-democracies/).
3 For a more systemic and holistic overview, I refer the reader to a recent report by the OECD, which has branded this turn a 'deliberative wave' (*Innovative Citizen Participation and New Democratic Institutions*, 2020).
4 The concept of 'Þjóðfundur' (National Meeting) refers to a pivotal gathering in Iceland's Independence Struggle held in 1851. For more on the Anthills movement, see http://kriaarchives.com/collections/show/25.
5 I, for example, voiced this exact concern during the previously mentioned workshop in Dublin in November 2012.

References

Axelsson, R. (2011). *Comments on the Decision of the Supreme Court to invalidate the election to the Constitutional Assembly*. University of Iceland. http://stjornarskrarfelagid.is/wp-content/uploads/2011/07/Article_by_Reynir_Axelsson.pdf

Baudino, Murphy, & Svoronos. (2020). *The Banking Crisis in Ireland* (No. 2; FSI Crisis Management Series). Financial Stability Institute.

Bergmann, E. (2014). *Iceland and the International Financial Crisis: Boom, Bust and Recovery*. Palgrave Macmillan.

Bergmann, E. (2016). Participatory Constitutional Change in Wake of Crisis: The Case of Iceland. In *Constitutional Deliberative Democracy in Europe*. ECPR Press.

Bergmann, E. (2020). *Neo-nationalism: The Rise of Nativist Populism*. Springer Nature.

Bjarnason, T. (2014). Traust í kreppu: Traust til Alþingis, lögreglu, stjórnmálamanna og forseta Íslands í kjölfar hrunsins. *Íslenska Þjóðfélagið*, *5*(2).

Caluwaerts, D., & Reuchamps, M. (2013). Generating Democratic Legitimacy through citizen deliberation. *APSA 2013 Annual Meeting Paper*. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2299559

Farrell, D. M., O'Malley, E., & Suiter, J. (2013). Deliberative Democracy in Action Irishstyle: The 2011 We the Citizens Pilot Citizens' Assembly. *Irish Political Studies*, *28*(1), 99–113.

Harris, C., Farrell, D., Suiter, J., Cahillane, L., & Stone, P. (2020). *Country Report: Ireland*. Cost Action 17135.

Innovative Citizen Participation and New Democratic Institutions: Catching the Deliberative Wave. (2020). OECD. https://www.oecd.org/gov/innovative-citizen-participation-and-new-democratic-institutions-339306da-en.htm

Landemore, H. (2020). Open Democracy: Reinventing Popular Rule for the Twenty-First Century. In *Open Democracy*. Princeton University Press. https://doi.org/10.1515/9780691208725

Morris, H. (2012, 10). Crowdsourcing Iceland's Constitution. *International Herald Tribune*.

Ólafsson, J. (2012). An experiment in Iceland: Crowdsourcing a Constitution. *Bifrost University*, *Working Paper*.

Rúnarsson, B. (2021, July 12). *Meirihluti hlynntur tillögum stjórnlagaráðs*.

Suiter, J., Farrell, D., & Harris, C. (2016).

Suiter, J., Farrell, D. M., Harris, C., & O'Malley, E. (2019). The First Irish Constitutional Convention: A Case of "high legitimacy"? *Participations*, 23(1), 123–146.

Wampler, B. (2007). *Participatory Budgeting in Brazil: Contestation, Cooperation, and Accountability*. Penn State Press. http://www.google.com/books?hl=en&lr=&id=Y6-14Zpr0lkC&oi=fnd&pg=PP1&dq=Brian+Wampler+Porto+Alegre+Participatory+budgeting&ots=-NynZC2lo0&sig=xwUEF_ykwBco9L4FhzGYxbayq2c

Warren, M. E., & Pearse, H. (2008). *Designing Deliberative Democracy: The British Columbia Citizens' Assembly*. Cambridge University Press. http://www.google.com/books?hl=en&lr=&id=STL8BHQC4R8C&oi=fnd&pg=PR1&dq=Canadian+citizen+assemblies&ots=0S_SNqrp8z&sig=_mc_rFAgtjD1h4iAQjE2h6WMpbQ

Webb, M. (2000). *When No Means No: The Failure of the Australian 1999 Republican Referendum and Its Root in the Constitutional Convention of 1988*. http://escholarship.org/uc/item/4hp7z2qf.pdf

What Is Rahvakogu? (n.d.). *Rahvakogu*. https://www.rahvakogu.ee/pages/what-is-rahvakogu

9 Deliberative constitution-making and local participatory processes in Poland and Hungary

Agnieszka Kampka and Daniel Oross

9.1 Introduction

A process of democratic deliberation requires norms (legal or at least customary), institutions (political or social), and competence from participants (ability to present their position and to evaluate arguments critically). As a political process, deliberation in social and political life involves both the formal, institutional frameworks of such practices and the cooperation of citizens or politicians who understand and appreciate the value of deliberation as a political and civic instrument. This chapter analyses the deliberative component of selecting formal and informal, local and national, experiences of political participation in Hungary and Poland. The main purpose of our chapter is to reveal the rules that provide spaces for deliberation and describe the attitudes of the main actors who initiate deliberation by bringing examples from Poland and Hungary between the years of 2010 and 2022.

We aim to answer the following questions: how do different social actors treat deliberation in the two polarised societies, what are their motivations and by which social, cultural, and political factors are they influenced? Is it just a political weapon, a part of an electoral strategy, or is deliberation also an instrument for collective learning and decision-making?

We compare the deliberative process in Hungary and Poland for several reasons. First, the historical, political, and cultural similarities are evident. Second, both countries share many parallels in their history of national liberation movements, survival of the Stalinist period, and democratic and market transformation (Rose-Ackerman 2005). Third, both countries are among the so-called young democracies; both have a very high citizen satisfaction with EU membership. At the same time, both countries are analysed in the context of rising populism (Bugarič 2019) and deteriorating democratic quality (Marcau 2019; Szent-iványi & Kugiel 2020), especially in terms of civil rights and the procedures of representative democracy, the rule of law, political pluralism, and the protection of minority rights (Brusis 2016). Thus, on the one hand, we have a process of ongoing democratic consolidation and, on the other, symptoms of an interrupted or reversed democratisation process.

Formal democratisation dominates over internalised democratic values in Poland and Hungary; the transformation and the EU pre-accession process have

built democratic institutions and defined rules for their operation. However, the lack of cultural and historical traditions supporting deliberation, the rule of parties critical of the EU, socio-economic problems, and populism contribute to the weakening of liberal democratic procedures (Blokker 2014; Szymański 2018). There are also similarities in the constitution-making process that have occurred in a highly polarised social and political environment in recent years.

Moreover, as we will investigate within this chapter in detail, pseudo-deliberative activities have appeared in both countries in recent years. These initiatives are similar in that the authorities emphasised their deliberative character, the value of the confrontation of different opinions and ideas, and substantive discussions involving representatives of different backgrounds (experts and all interested parties). Meanwhile, in reality, the impartiality of experts or the transparency of objectives and procedures could be questioned.

This study compares several deliberative practices implemented in Poland and Hungary between 2010 and 2021. The first part of the chapter explains constitution-making within the two countries and our theoretical framework. The examples analysed in the chapter concern elements of deliberation in constitutional change and the use of deliberative and participatory practices at the local level. We show deliberation as a tool to legitimise state authorities' actions and as a tool chosen by ordinary citizens when they demand changes in government. Following the analysis of the selected cases, the conclusion discusses pseudo-deliberative activities, deliberative and participatory processes within the two countries, and a summary of cultural and historical factors that determine different actors' use of deliberation.

9.2   Constitution-making and constitutional amendments in Poland and Hungary

Constitution-making in Poland and Hungary has never been an open deliberative process. The constitutional projects were drafted among parliamentarians and experts. The fragmented political scene and distrust between the post-communist and post-opposition elites hampered the negotiation process (Pócza & Oross 2021; Kampka 2021).

Poland's Constitution was adopted in 1997. After the victory of the Solidarity movement in 1989, changes were introduced to the previously binding, communist Constitution, and in 1992, the so-called "small constitution" was passed, concerning the basic principles of the political system after the transformation. At the same time, a Constitutional Committee began to draft a new Constitution. After several years of drafting, the Constitution was adopted by Parliament and approved by the people in a referendum. The text of the Constitution provoked many objections, and less than half of the eligible citizens participated in the referendum. Nevertheless, 53.5% voted in favour of the Constitution. Despite the initial controversy and the difficulty in achieving consensus, the functioning of the Constitution did not provoke significant disputes for the next 20 years (Welp 2013, 95).

During the more than 20 years of the Polish Constitution's validity, various drafts of changes have been submitted many times. Many of them were related to

Poland's accession to the EU. For instance, the first amendment to the Constitution adopted (in 2006) was the introduction of the possibility to extradite a Polish citizen in connection with a European arrest warrant. In 2009, the second amendment linked to the right to stand for election. By 2017, 18 draft amendments had been submitted (by parties, groups of experts, or the President), which were not adopted (the legislative process was halted at various stages). The proposals for amendments concerned such issues as (1) the immunity of parliamentarians, (2) regulations relating to the competence of Polish institutions in the context of EU law, (3) the proportionality of elections to the Sejm, (4) vetting and decommunisation, (5) rules of conducting a referendum.

Since 2015, Poland has had a political and legal dispute over the Constitutional Tribunal. The Law and Justice government's changes to the composition of the Tribunal and changes to the entire judicial system have led to a constitutional crisis (Radziewicz 2020). As a result, the interpretation of the provisions of the Constitution has changed without formal amendment.

During the democratic transformation process in 1989/1990, inclusive deliberation on the future institutional structure of Hungarian politics was almost unimaginable. It was an elite-driven negotiation between the reform communists and the democratic opposition in which strategic considerations about their future positions determined the mindset of all relevant political actors. Citizens' participation was, in general, less desired by the parties. A second chance was given to the political elite in 2010, as the Fidesz Party won a two-thirds majority and the power to change, amend, and rewrite the Hungarian Constitution. Directly after the landslide victory, the second Orbán government set up a small advisory committee (consisting of former intellectuals, legal scholars, and scientists), which had the task of giving advice directly to the prime minister on how the new Constitution of Hungary would look. Little publicity was given to this body, and in the end, nobody knew what kind of influence this small advisory committee had on the new Fundamental Law. As a second step, an ad hoc parliamentary commission was set up with the task of *travaux préparatoires* and drafting the framework of the new Constitution. This committee invited a wide range of scholars and experts from the public sphere to submit proposals discussed in the ad hoc commission. However, due to the polarised context of Hungarian politics, left-wing and green opposition parties left the commission no sooner than the first proposals had arrived. It was a protest against the constitutional amendments adopted by the right-wing two-third majority, which overwrote some of the most recent decisions of the Hungarian Constitutional Court. The commission continued its work without the left-wing and green MPs, but it was again unclear which proposals came from the public sphere and the selection criteria into the commission's final report. Even more disappointing was the destiny of the commission's report, since after being adopted, it landed practically in the dustbin of the Hungarian Parliament. Thus, public involvement became obsolete and entirely neglected by January 2011 as the commission finished its work. As a third stage, the government started a national consultation on the Constitution and, at the same time, asked the parliamentary factions to prepare their version of a draft constitution on which a debate would take place in the

Parliament. As the only process that involves public consultation in this chapter, we will focus on this process more in detail. Ultimately, from a normative point of view, both processes (in 1989 and 2010) were instead directed and managed by the political elite with few incentives for including deliberative bodies or techniques.

Both the former Constitution, adopted in 1989, and the new Fundamental Law of Hungary (adopted in 2011) had been very flexible. There have not been any special restrictions on how constitutions could be amended; the only criterium was to have a two-thirds parliamentary majority in a unicameral parliamentary system. The Parliament adopts the Constitution and can amend it with a simple supermajority. The founding fathers did not differentiate between the *pouvoir constituant originaire* (Constitution-making power) and the *pouvoir constituant dérivé* (power of amending the Constitution.) Furthermore, there is no special requirement of popular involvement or confirmation by the next Parliament after a new election. Even the head of state does not have any role in the constitution-making process or constitutional amendment. In this procedural sense, the Hungarian Constitution has been highly flexible. Due to this flexibility, formal amendments have been quite frequent in the last 30 years. Beyond this formal flexibility, however, the Hungarian Constitutional Court's constitutional adjudication also played a crucial role in an unceasing "post-sovereign constitution-making" process as reflected in practice. The Hungarian Constitutional Court also played an important role in informal amendments of the Constitution and the Fundamental Law.

9.3 Polarisation and deliberative practices – theoretical background

Low social trust and civic participation are a legacy of the previous political system of the two selected countries. The main factors unfavourable to deliberative practices are profoundly rooted distrust between elites from the communist period and representatives of the democratic opposition, the high social costs of political and economic transformation, and fragmentation of the political scene. We agree with Sarah Sorial, who aptly observes:

> Civics infrastructure refers to the set of social background conditions necessary for deliberation to function in the ways in which deliberative theorists hope it will. These conditions include an active, engaged and informed citizenry, who are aware of both their rights and their civic duties; a comprehensive civics education about the workings of Government, political and law-making processes, and the content and function of the Constitution; and a robust culture of deliberation, or knowledge about *how* to deliberate.
>
> (2018, p. 324)

With the rise of populism and deepening social polarisation, deliberation becomes a challenging process within the two societies.

The experience of countries building democracy after a period of authoritarian rule proves that deliberation appeared in public space and public discourse in

conjunction with other phenomena such as democratisation, decentralisation, or recognition of cultural diversity (cf. Pogrebinschi 2018). Democratisation is linked to the emergence of civil society, an essential part of the Polish and Hungarian transformation process. The political involvement of citizens, the emergence of NGOs, the development of social movements, with particular emphasis on urban movements, created a landscape in which deliberative practices became a natural need and form of action.

Decentralisation requires the active role of local and municipal authorities. In the Hungarian and Polish cases, deliberative practices accompanied participatory budgeting, implemented in many cities. Economic development made possible by the support of international organisations is another factor contributing to the adaptation of deliberative practices. In the case of Hungary and Poland, EU funds were of great importance. EU programmes require public consultation at various stages of project implementation, which is undoubtedly a factor favouring civic participation at the local level. Residents, officials, and local authorities had to accept the formal rules of consultation, but at the same time, they learned to interact and discuss. As Hungary and Poland are 'new' EU members, exchanges organised within the town, county, or regional partnerships were also important. They allowed Polish and Hungarian local communities to learn the practices of co-governance, deliberation, and participation practices that function in mature democracies (examples of participatory budgets).

In the period analysed in this chapter, the ruling parties are conservative and nationalist in the case of Poland (Law and Justice Party since 2015) and Hungary (Fidesz). On the other hand, interesting examples of deliberation concern left-wing parties that appear on the political scene (the case of Biedroń's Spring or the Hungarian Two Tailed Dog Party). In addition, social movements use deliberative practices related to the rights of sexual minorities (the example of the Polish Women's Strike or events organised by LGBT activists in Hungary). This confirms the assumption that deliberation is a tool whose value increases as social and cultural diversity increase.

Deliberative or participatory practices involving citizens in public affairs appear to be an antidote to cure the democratic malaise (Dryzek et al. 2019; Smith 2009; Geissel & Joas 2013; Newton & Geissel 2012). In addition, there is a growing body of literature on the spread (Dias 2020) and internal functioning of deliberative and participatory procedures (Bächtiger et al. 2018; Caluwaerts & Reuchamps 2015; Elstub & Escobar 2019; Fishkin & Luskin 2005).

The examples discussed in this chapter show actions that have the character of deliberation or are defined as such. We assume that in the public space, discourse is a political action. Furthermore, we assume that social ideas and images of deliberation are as important as the practices themselves. In post-communist countries, the term 'deliberation' emerged in the public space in the context of democratisation and a sense of agency. It was popularised by activists, local government officials, and civil society researchers (Juchacz 2006; Sroka 2009 2018; Wesołowska 2010). It functioned in public and media spaces as one of the possible signs that confirmed the democratic character of the state.

We reflect on a phenomenon that we conventionally refer to as pseudo-deliberate activities and deliberation. The criteria for evaluating deliberative practices and the basis for the typology of these practices are very different (cf. Curato, Hammond & Min 2019). In our approach, we do not focus on formal issues. Instead, we are interested in how different social actors treat deliberation in its discursive and practical dimensions; what they call deliberation and why they refer to it.

In a very simplified form, we assume that deliberation consists of social actors (politicians, local authorities, NGOs, citizens) wanting to deliberate on something important. To deliberate means to present legitimate demands, present one's positions, and learn and understand the positions and needs of other participants. The actors want to deliberate because they are convinced that it can lead to beneficial solutions, which they want to implement. Pseudo-deliberative activities occur when (1) the actors do not see the need or sense of deliberation because they consider other methods of decision-making to be better, (2) they do not treat the (potential) participants in deliberation as real partners, and (3) they do not want (or know that they will not be able) to implement the solutions worked out during deliberation.

In the examples presented below, we point to these elements based not on assumptions about individual actors' real motivations and intentions, but on a description of facts that allow for such an interpretation.

At a national level, the chapter focuses on constitutional changes from three perspectives: (1) top-down: Government initiated processes to consult with citizens (e.g. the 2011 National Consultation about the Fundamental Law of Hungary; presidential proposal for a national referendum on amending the Constitution in 2018 in Poland); (2) Processes initiated by civic actors (e.g. protests, petitions) at the national level related to constitutional changes; and (3) new initiatives of national political movements to introduce new activities at a national and local level.

9.4   Analysis

9.4.1   Case selection

Our chapter's primary purpose is to understand how different actors utilise deliberation, so cases where deliberation is a formal or informal process are analysed. By bringing examples from the period between 2010 and 2021, the chapter identifies common factors that have shaped processes in the two countries. We selected cases that reveal the interaction among the actors and the underlying factors that determine the use of deliberation in polarised contexts (see Table 9.1).

Various institutions and social actors use deliberative practices in Poland and Hungary at different levels of social life. However, these practices characterise a great diversity, dispersion, and above all, a relatively short history of their application and only the emerging tradition of undertaking such activities in local communities (at the municipal or city level). Since 2015, the Polish Government has changed the judicial system without a formal amendment to the Constitution.

Table 9.1 Selected cases

Selected cases		
	Poland	*Hungary*
National level	President initiative of the national referendum on the Constitution (2017/2018) Formation of a new political party Spring [Wiosna] (2018)	National Consultation about the new Hungarian Constitution (2011) Do-it-yourself urbanism (Hungarian Two Tailed Dog Party)
Local level social/urban movements	Participatory Budgeting The Polish Women's Strike	Participatory Budgeting (in Budapest) Citizens' Assembly in Budapest urban movements Student Network

Examples of civic movements that emerged in response to the actions of the authorities are Komitet Obrony Demokracji [The Committee for the Defence of Democracy], Obywatele RP [Citizens of the Republic of Poland], and Ogólnopolski Strajk Kobiet [The Polish Women's Strike]. These organisations' activities mainly include organising protests, providing legal aid, and organising events to increase knowledge and civic participation. Some of these activities are deliberative. In Hungary, university students were the most active segment of the society following the constitutional changes of 2011.

Another space is the emergence of new parties based on social movements, some of which refer to deliberation when formulating their electoral programmes. In recent years in Poland, examples include the left-wing parties Razem [Together] and Wiosna [Spring] or the centrist Polska 2050 [Poland 2050]. In Hungary, new parties emerged in response to the government's actions and are the main initiators of democratic innovations (Hungarian Two Tailed Dog Party, Dialogue, Momentum Movement).

The cases described below have been selected because they are well documented (media reports, academic studies) and can be regarded as typical of different levels of deliberation. All types of these deliberative activities will be considered through the prism of the rules (legal or customary) by which they are organised, the actors (initiators and participants), and their attitudes, all of which shape how deliberation is understood and treated.

9.4.2 Top-down processes – pseudo-deliberative activities

Politicians and state institutions are actors who can introduce deliberation into political life. In both countries analysed, deliberation is not regulated by the legislation on constitution-making. However, it is present in public discourse and understood as a way of legitimising government decisions rather than working out political solutions.

9.4.2.1 Public consultation on constitutional change – referendum proposal by President Duda

During a national holiday to celebrate the adoption of the May 3 Constitution (1791), Polish President Andrzej Duda expressed his belief in the need to amend the current Constitution. He declared the idea of a referendum in order to involve as many citizens as possible in the debate. The President wanted the referendum during the centenary of independence celebrations (November 2018) as the starting point for further work on a new Constitution. The President argued that there was a need to change the Constitution, but most Poles did not share this belief. According to public polls, 70% of respondents did not want changes to the Constitution. Constitutionalists also disagreed on the existence of a 'constitutional moment' (Ziółkowski 2018). Polish law allows the President to announce a referendum after receiving the consent of the Senate. In the proposal presented to the Senate, the President proposed the following procedure:

1 Public consultations, which would confirm the will to amend the Constitution and identify the most critical demands
2 A consultative referendum, in which citizens would answer questions on constitutional issues that had emerged from earlier consultations
3 Preparation of a draft Constitution
4 Enactment of the Constitution by Parliament
5 A confirmation referendum.

In this planned sequence of activities, deliberative elements appear in the first stage in the form of public consultation. At the moment of submitting the presidential proposal, this stage had already been completed. Meetings organised by the President's Office as part of the social information campaign 'Together about the Constitution' had been held for nearly a year. These included conferences and panel discussions on issues identified by the Chancellery. The selection of participants in the meetings was inclusive, especially when it came to regional meetings. However, there was no specific procedure or information on how these discussions would translate into a draft constitution. In his application to the Senate, the President proposed ten referendum questions (Appendix 9.2). However, he did not specify how these questions were derived from the discussions held during the meetings. The subject matter and format of the questions raised questions and criticism from senators. In the vote on July 25 2018, the senators did not support the presidential proposal, and the initiative was not implemented (Kampka 2020).

The lack of transparency in the selection of participants and the translation of their debates into effects (the level of rules), the image goals of the President (the level of actors and attitudes) make this initiative a façade deliberation (see Table 9.2).

9.4.2.2 National Consultation about the new Hungarian Constitution

Deliberative mini-publics (in the form of citizens' assemblies and conventions) are not a common practice of Hungary's constitutional landscape. A chance was given

to the political elite in 2010, as the Fidesz Party won a two-thirds majority and the power to change, amend, and rewrite the Hungarian Constitution.

The National Consultation – designed by the elites of the national conservative party Fidesz – Hungarian Civic Alliance in 2005 as a deliberative practice to increase the party's social embeddedness – became a government-funded questionnaire sent to Hungarian citizens by mail. In 2011, the Hungarian Government used National Consultation to detect the public mood on specific questions regarding the new Constitution. A consultative body was appointed by the prime minister to set the main principles of the new Fundamental Law of Hungary. Debates about the text of the new Constitution were organised among the members of the body, and the National Consultation Committee prepared the formula for public consultations. Parallel to the debates of the Constituent Assembly, a questionnaire with 12 questions entitled "Citizens' Questionnaire on Fundamental Law" was posted to all Hungarian households in late February/early March 2011. Citizens were invited collectively to comment on the main principles of the document by answering those 12 questions. National Consultation about the new Constitution offered no space for lively deliberation or forming a consensus. Participants were allowed to respond to the questionnaire by post, using pre-paid envelopes (Appendix 9.1). The questionnaire contained a mixture of questions based on the decision-maker's sincere curiosity and questions formulated with latent suggestions implicitly promoting the "right answer". Some questions were tendentious, presupposing an existing consensus within the Hungarian society or within at least part of the Hungarian society that was supposed to send back the questionnaire (for example, the third question was worded as 'Some people suggest that the new Hungarian Constitution should protect common values such as family, order, home, work, and health. Others don't think this is necessary. What do you think?'). This presupposed self-selection of the respondents mainly sympathising with the Fidesz Party was also reflected in the results of the National Consultation. Answers that promoted the conservative agenda of Fidesz got a clear majority, mainly between 80 and 90 per cent supporting the position of the right-wing party. Thus a presupposed existing consensus among Fidesz supporters was confirmed rather than formed through the consultation process. Some questions, nevertheless, had a real stake, and the agenda setter might have been interested in what the public thinks. Here, the agenda setter tested public opinion but efforts to argue for or against any of the propositions and, consequently, finding a compromise or consensus among participants, was not part of the game (Pócza & Oross 2022).

Seen from the normatively neutral perspective of participatory and deliberative democracy, any attempt to give voice to the people is an excellent incentive to connect voters with their representatives. However, more careful consideration is needed when analysing the actual practices of populist actors. Fidesz has been criticised for refusing to hold a referendum concerning the Constitution. National Consultation was used as a strategic tool for the party's interest, and it has given additional legitimacy to the draft constitution. Because of its design and practice, National Consultation served political purposes. It has lent more credibility to the Government, provided effective arguments against criticism, and provided an opportunity for shaping public opinion (Oross & Tap 2021).

9.4.2.3   Deliberation in the creation of a new political party –
the example of the Spring

An example of the marketing use of deliberation was creating a new political party programme: Biedroń's Spring (Wiosna).[1] As an analysis of the content of the party's website and press coverage shows, meetings called 'brainstorming sessions' were held in various cities for several months. The objective was clearly defined: to collect suggested changes demanded by citizens. The meetings were inclusive. These suggestions were to be included in the programme of the new party. The meetings were led by Robert Biedroń and a local activist who would later stand as a candidate for the European Parliament. Participants made proposals on political, social, and economic issues. They were first briefly discussed and then a vote was held on the demands made. In April 2019, the new party's programme was announced. According to the declarations, this programme was based on ideas submitted during the meetings. However, no clear rules were presented as to how this was done. The inclusiveness of the meetings, the sense of political empowerment, the nationwide nature of the meetings, the importance of the subject matter, the elements of the debate and the clearly stated expected outcome (a list of demands), allow us to consider this example in terms of deliberation. However, it must be admitted that the main objective was to engage people to benefit the new party and ensure its media publicity. The procedures for translating the results of the discussions into the party's programme were unclear. Participants also spoke of an insufficiently in-depth discussion of the conclusions and suggestions made in deliberation. Therefore, deliberation was used for marketing purposes.

The initiating politicians and participating citizens (the level of actors) acted according to nonformal and not fully defined norms (the level of rules). Citizen enthusiasm (or bitterness) was used to publicise a new political initiative rather than to work out solutions (the levels of attitudes) (see Table 9.2).

9.4.3   Urban/social movements' initiatives (demand for deliberation)

Protest as a civic activity has a longer tradition in post-communist countries than discussing public issues and consensus-seeking. Sometimes there are not only two sides of the conflict but instead two groups: active citizens and people who are not interested in public affairs. In such cases, deliberation is possible, though difficult. However, it always requires institutions to act as either a neutral mediator or an engaged agitator. We can also observe actions that attempt to use deliberation during social protests and activities of social movements. It is then sometimes used to manage participants' activity and formulate coherent movement demands.

9.4.3.1   The Polish Women's Strike

This feminist organisation has organised many protests against restrictions on women's rights. During the wave of protests in 2020, a consultative council was set up with 500 people, comprising activists and experts. The council's task was to gather the demands made during the protests and develop solutions that could

be implemented now and after the next parliamentary elections. These long-term solutions were to answer what ideally the state we want to live in should look like. The council works in 14 teams: Women's Rights, LGBT+ Rights, Rights of Persons with Disabilities, Rule of Law, Secular State, Education, Workers' Rights, Health, Mental Health, Fight against Fascism, Media, Culture, Climate, and Animal Rights. The proposals developed by the council are published online on the Loomio platform. The users can discuss and vote on the proposals.

Online deliberation is an initiative of the Polish Women's Strike. The inclusiveness of these discussions and their specific purpose indicate their deliberative nature. On the other hand, there is a lack of clearly defined procedures and an ensured possibility to implement proposed solutions. There are also limitations typical of online deliberation. Despite its inclusiveness, the participant groups are relatively small (in some thematic groups, less than ten people). Their statements are often only an expression of their own opinion and not an argumentative reference to the council's proposal or the statements of other participants.

9.4.3.2   *Protests organised by the Student Network in Hungary*

In December 2012, the Hungarian Government announced funding for only 10,480 free places[2] for the following year, down from over 44,000 in 2011. This led to nationwide protests beginning on December 10, with student and faculty meetings at various universities, the occupation of government offices, and a meeting with several thousand people at the Faculty of Social Sciences of the University of Budapest (ELTE) where participants formulated their demands to the Government. University meetings and protests were organised by the activists of a Student Network called HaHá ('Hallgatói Hálózat', or HaHá). HaHá is a non-governmental organisation that does not have any leaders or hierarchy but is based on grassroots democratic principles. Therefore, the decision-making process was based primarily on personal participation. Decisions were taken online, through Loomio, or through in-person meetings and forums. Forum technology was the decision-making technique of publicly convened, larger forums, facilitating participation (if someone was on-site). It was developed by the Spanish Los Indignados and brought to HaHá through Occupy. To solve the problem of personal participation, they offered online opportunities and networking. This did not include a large central assembly, but at the same time, each cell (or city by cell) held its assemblies, and there was an online connection between cells. This allowed for the discussion of common and local problems simultaneously, but at the same time, it required a high degree of intercellular communication and coordination (Susánszky - Gerő 2014, 139).

9.4.3.3   *Do-it-yourself urbanism came in the creation of a new political party: the Two Tailed Dog Party (MKKP)*

Members and activists of the Two Tailed Dog Party gave considerable attention to answering how to change Hungarian society, as changing the conventional line

of thinking in Hungary is of prime interest to the party. MKKP's street interventions are street art pieces and the delivery of Do-It-Yourself urbanism. Deliberation happens during specific meetings where they meet and ideate around public space issues, problems, or discuss how dull pieces of infrastructure can be made colourful and cheerful instead. These sessions are called "Rendkívüli Ügyek Minisztériuma" or "The Ministry of Extraordinary Affairs", and famously transform street infrastructure such as cabinets and ventilation shafts into SpongeBob SquarePants or mushrooms or pieces of smiling Lego bricks. Often when the activists of the party deliver an intervention, the police or people from the area ask them about permissions (often in a threatening tone and with reference to potential punishment). Yet, even more often nowadays, people greet the group more kindly and instead direct their anger at public servants who decide that such bus shelters or guerrilla-planted flowers are illegal and have to be removed (Le 2020).

To sum up our findings, we found that deliberative principles in protest movements are addressed on the go. The equality of protest participants fosters deliberation, but opposition to the authorities makes it difficult to include all stakeholders (actors). Moreover, the confrontational nature of the movements is not conducive to consensus-seeking (attitudes) (see Table 9.2).

9.4.4   *Local democracy (new opportunities for deliberation)*

The strengthening of local self-government that contributes to the civic engagement of residents happens parallel to the emergence of NGOs and urban movements in many cases. The participatory budget is one of the tools that can enhance deliberative practices.

The participatory budget in Poland appeared for the first time in 2011 in Sopot. Over the next few years, similar solutions were introduced in different cities. Their number grew exponentially: in 2013, 16 were implemented; in 2015, there was 171 (Starzyk-Durbacz 2016). The participatory budget aimed at managing local finances more effectively, strengthening local identity and civic education, and increasing social involvement and integration in the local community. It was a voluntary initiative of the local authorities where rules were not applied to everyone. The source of knowledge occurred through the exchange of experiences and good practices in which many NGOs participated[3]. In many municipalities, the procedure was the responsibility of councils and committees whose members were ordinary citizens. Researchers observed both the introduction of deliberative elements and the pursuit of inclusiveness (for instance, by lowering age requirements so that young people could also submit projects and vote) (Starzyk-Durbacz 2016).

On the other hand, funds allocated for civic projects constituted a small part of the entire city budget. The domination of local authorities was evident throughout the process, the criteria for evaluating submitted projects were not always clear, and implementation was sometimes a problem (Popławski 2018). In 2018, a new law obliged local governments to allocate 0.5% of their budget to civic projects every year. These projects were to be selected by a vote. The current legislation does not require any deliberative elements. However, some cities have stayed with

the earlier models (Łukasik 2020). The introduction of rigid rules for the civic budget increases the number of such practices. However, it does not improve their quality of civic participation (Podgórska-Rykała 2019).

The participatory budget has played an essential role in shaping civic awareness and is an important space for NGOs and urban movements (Kubicki 2019). It has allowed many people to take part in deliberation and its potential.

The 'community budget' institution was introduced in Hungary by the local Government of the XIX district of Budapest (Kispest), which fulfilled the incumbent socialist Mayor's electoral pledge inspired by the coalition partner green party. In 2016, the municipality enabled citizens to choose from 16 development projects, while in 2018, items to be put to the ballot were selected from local suggestions, refuting earlier critics who claimed that the process reduced citizen capacity. The Mayor's manifesto for the 2019 local elections promised to continue the process in each budget year and allocate budget resources based on neighbourhood votes. In 2019, the XXII district of Budapest led by the Mayor of Fidesz-KDNP also decided to introduce participatory budgeting.

Those early birds of participatory budgeting inspired the opposition candidates running for the Mayor of Budapest's position during the 2019 local elections. Opposition parties managed to turn municipal elections into 'a referendum against the government' and gained a majority both in the General Assembly of Budapest and in the majority of the 23 districts of the Hungarian capital city. Following the 2019 municipal elections and the Budapest Municipality, several local governments of Budapest (1st, 3rd, 8th, and 9th districts) allocated a small sum (about 1%) of their annual budget for local participatory budgeting in 2020.

Participatory budgeting has no legal background in Hungarian legislation and its implementation is in a preliminary phase in most districts of Budapest. The PB is created through decisions as part of the annual budget. The implementation of the process is controlled by the Mayor or a designated Deputy-Mayor of the municipalities with different levels of commitment to take up its recommendations. Budapest has a dual self-government system; there are different models of participatory budgeting in the districts and the City Council of Budapest. Participatory Budgeting in Budapest mostly resembles the participatory modernisation model of PB (Sintomer et al. 2016: 47) that offers consultation on public finances for citizens and gives local people a say in planning a small percentage of the total budget (Oross & Kiss 2021).

A participatory budget offers the possibility to use deliberation (at the level of rules), has the potential to develop self-government and civic attitudes (attitudes), and its implementation depends on the involvement of residents, authorities, and officials (at the actor level) (see Table 9.2).

9.5   Conclusion

The appearance of deliberation in post-communist countries such as Poland and Hungary was connected to political transformation processes. Deliberation was associated with transparency of the authorities and participation of citizens in

decision-making processes. It also gave rise to hopes for civic education and the transformation of the public sphere. Solutions worked out in consultations, beneficial to all, were to replace authoritarian decisions imposed from above. Involved citizens were to replace passive masses. Politicians began listening to voters and treating them as partners and not paternalistically. Rational argumentation and open discussion were to replace propaganda and official orders. However, this ideal has not yet been fully achieved. Populism invokes the people's voice without actually allowing citizens to have a say. A tendency to arbitrary decisions and centralisation are still present in the attitudes of the political elite. The appeal to national pride and emphasis on the state's power is not always accompanied by an appreciation of citizen empowerment, even if such slogans appear in political rhetoric.

This chapter revealed how different social actors treat deliberation within two polarised societies. The Hungarian and Polish cases show conditions for deliberative practices in relatively young democracies and political systems affected by populism. Table 9.2 presents social, cultural, and political factors that support or hinder deliberation at three levels: rules, actors, and attitudes.

Table 9.2 Factors supporting and hindering deliberation

Factors supporting deliberation		
Rules	Poland	Hungary
	EU requirements (mandatory public consultation on EU projects)	A legal obligation of local municipalities to hold at least one public hearing per year
	Unwritten rules of deliberation in municipal and NGO projects	
Actors	Municipal authorities	Municipal authorities
	NGOs	NGOs urban activists
	New politicians	Students
	Urban activists	
	Feminist and LGBT+ activists	
Attitudes	Erasmus experience	Development of civic awareness and culture
	Development of civic awareness and culture	International contacts
	International contacts	Cooperation between EU twin towns
	Cooperation between EU twin towns	

Factors undermining deliberation		
Rules	No deliberation in the constitutional process	Public administration reforms entailing radical re-centralisation
	No obligation of deliberation in participatory budgeting	No legal background regarding participatory budgeting
Actors	Politicians	Right-wing populist party in a dominant position within the party system
	Lack of politically neutral institutions promoting deliberative practices	
Attitudes	Polarisation	Polarisation
	Lack of education and civic engagement	Lack of education and civic engagement
	Use of pseudo-deliberation as a legitimisation tool	Use of pseudo-deliberation as a legitimisation tool

Constitution-making has never been a highly deliberative process within the two countries. For example, regarding the norms of a constitutional amendment in Poland, the adoption of the text requires approval by parliamentarians and by citizens in a referendum, whereas, in Hungary, the Parliament adopts the Constitution – there is no special requirement of popular involvement. Deliberative mini-publics invoked by the Polish President in 2018 were pseudo-deliberate activities due to the non-transparent selection of participants and the formulation of the outcomes of the debates (level of rules). These activities were also driven by the President's desire to enhance his image (levels of actors and attitude). In 2011, the Hungarian Government used National Consultation to provide additional legitimacy to the draft constitution. However, the lack of deliberative events and the careful selection of the 'correct answers' within the questionnaire confirmed a presupposed existing consensus among Fidesz supporters rather than forming it among members of society through the consultation process.

We presented the deliberative practices in creating a party's political programme (Spring example), and concluding that the meetings called 'brainstorming sessions' mirror a marketing use of deliberation. Thus, the subjective treatment of citizens, political accountability, and the requirement for transparency in decision-making are often at odds with the short-term marketing objectives that politicians wish to pursue.

The factors that are not conducive to deliberation are related more to attitudes and beliefs than formal rules and laws. Among the reasons for difficulties in implementing deliberative practices, the low level of political participation in general is mentioned first and foremost, as evidenced by voter turnout statistics. Protest as a civic activity has a longer tradition in post-communist countries than discussing public issues and consensus-seeking; therefore, social movements play a critical role in offering deliberative events for the public.

As the examples described above show, deliberation is sometimes an administrative requirement necessary to legitimise the decisions made by the authorities. It is also used as a political marketing tool. It may become a form of channelling social energy that otherwise may result in protests. Deliberation requires institutions that act as either neutral mediators or engaged promoters of deliberative practices. A participatory budget offers the possibility to use deliberation. It can develop self-government and civic attitudes, and its implementation depends on residents, authorities, and officials (see Table 9.2).

Both analysed countries are undergoing intensive social, cultural, and political changes. The course of these processes and their effects are still unknown today. However, there is no doubt that deliberation has already become one of the prominent tools of political action, especially for younger generations of politicians and citizens. Finally, it is worth noting the importance of membership of the European Union, international contacts, and a new generation of adults who were brought up in a democratic system.

Notes

1 Robert Biedroń is a Polish politician, MEP, local government leader, and activist. He is the first openly gay to get into the Polish Parliament. In the past, he was a member

of left-wing parties and has always been involved in sexual minorities' issues. He won local government elections and was mayor of Slupsk for one term. Then, in early 2019, he announced that he was going to form a new political party.

2 In Hungary, is it the government that decides on enrolment quotas.

3 Examples: stocznia.org.pl, partycypacjaobywatelska.pl, budzetyobywatelskie.pl

References

Bächtiger, A., Dryzek, J.S., Mansbridge, J. & Warren, M.E. (2018). *The Oxford Handbook of Deliberative Democracy*. Oxford University Press.

Blokker, P. (2014). *New Democracies in Crisis? A Comparative Constitutional Study of the Czech Republic, Hungary, Poland, Romania and Slovakia*. Abingdon.

Brusis, M. (2016). Democracies Adrift: How the European Crises Affect East-Central Europe. *Problems of Post-Communism*, 63(5–6), 263–276. https://doi.org/10.1080/10758216.2016.1201772

Bugarič, B. (2019). Central Europe's Descent into Autocracy: A Constitutional Analysis of Authoritarian Populism. *International Journal of Constitutional Law*, 17(2), 597–616. https://doi.org/10.1093/icon/moz032

Caluwaerts, D. & Reuchamps, M. (2015). Strengthening Democracy through Bottom-up Deliberation: An Assessment of the Internal Legitimacy of the G1000 Project. *Acta Politica,* 50(2), 151–170. https://doi.org/10.1057/ap.2014.2

Curato, N., Hammond, M. & Min, J.M. (2019). *Power in Deliberative Democracy Norms, Forums, Systems*. Palgrave Macmillan.

Dias, N. (2020). *Hope for Democracy*. Oxford University Press. https://doi.org/10.1093/oso/9780190084523.001.0001

Dryzek, J. et al. (2019). The Crisis of Democracy and the Science of Deliberation. *Science,* 363(6432), 1144–1146, https://doi.org/10.1126/science.aaw2694

Elstub, S. & Escobar, O. (2019). *The Handbook of Democratic Innovation and Governance*. Edward Elgar.

Fishkin, J.S. & Luskin, R.C. (2005). Experimenting with a Democratic Ideal: Deliberative Polling and Public Opinion. *Acta Politica,* 40, 284–298. https://doi.org/10.1057/palgrave.ap.5500121

Geissel, B. & Joas, M. (Eds.) (2013). *Participatory Democratic Innovations in Europe*. Barbara Budrich Publishers

Juchacz, P. (2006). *Deliberacja, demokracja, partycypacja: szkice z teorii demokracji ateńskiej i współczesnej.* Wydawnictwo Naukowe Instytutu Filozofii UAM.

Kampka, A. (2020). Między głosem a głosowaniem. Wokół debaty w Senacie RP o projekcie referendum z 2018 r. *Przegląd Sejmowy,* 4(159), 107–125; https://doi.org/10.31268/PS.2020.51

Kampka, A. (2021). Country Report. Poland, https://constdelib.com/wp-content/uploads/2021/04/Poland-report-CA17135.pdf

Kubicki, P. (2019). Ruchy miejskie w Polsce. Dekada doświadczeń. *Studia Socjologiczne,* 3(234), 5–30. https://doi.org/10.24425/sts.2019.126150

Le, M. (2020). *Potholes, Bus Shelters and the Four-Color Theorem: The Politics of Infrastructure in Contemporary Hungary*. Budapest: Central European University, CEU Sociology Department Master Theses. https://sierra.ceu.edu/record=b1429211

Łukasik, P. (2020). Budżet Obywatelski Miasta Krakowa jako przykład realizacji demokracji deliberatywnej. *Annales Universitatis Paedagogicae Cracoviensis Studia Politologica,* 25, 98–118. https://doi.org/10.24917/20813333.25.6

Marcau, F.C. (2019). Dynamics of Deconsolidating Democracies of Poland, Hungary and Romania. *Astra Salvensis* VII(14), 293–305.

Newton, K. & Geissel, B. (Eds.) (2012). *Evaluating Democratic Innovations Curing the Democratic Malaise?* Routledge.

Oross, D. & Kiss, G. (2021). More than just an Experiment? Politicians' Arguments Behind Introducing Participatory Budgeting in Budapest. *Acta Politica*, https://doi.org/10.1057/s41269-021-00223-6

Oross, D. & Tap, P. (2021). Using Deliberation for Partisan Purposes: Evidence from the Hungarian National Consultation. *The European Journal of Social Science Research*, https://doi.org/10.1080/13511610.2021.1995335

Pócza, K. & Oross, D. (2021). Country Report. Hungary. https://constdelib.com/wp-content/uploads/2021/04/Hungary-report-CA17135.pdf

Pócza, K. & Oross, D. (2022). From Deliberation to Pure Mobilization? The Case of National Consultations in Hungary. *Politics in Central Europe,* 18(1), 79–111.

Podgórska-Rykała, J. (2019). Budżet obywatelski a budżet partycypacyjny. Dwa rozwiązania dla jednego miasta w konsekwencji nowelizacji prawa samorządowego. *Roczniki Administracji i Prawa*, 19, 221–235. https://doi.org/10.5604/01.3001.0014.1029

Pogrebinschi, T. (2018). Deliberative Democracy in Latin America. In A. Bächtiger, J.S. Dryzek, J. Mansbridge & M. Warren (Eds.) *The Oxford Handbook of Deliberative Democracy* (pp. 830–841). Oxford University Press.

Popławski, M. (2018). *Budżet obywatelski* w *Polsce. Model i lokalne rozwiązania*. Wydawnictwo Adam Marszałek.

Radziewicz, P. (2020). Kryzys konstytucyjny i paradygmatyczna zmiana konstytucji. *Państwo i Prawo,* 20, 3–24.

Rose-Ackerman, S. (2005). *From Elections to Democracy: Building Accountable Government in Hungary and Poland*. Cambridge University Press.

Sintomer, Y., Röcke, A. & Herzberg, C. (2016). *Participatory Budgeting in Europe: Democracy and Public Governance.* Routledge.

Smith, G. (2009). *Democratic Innovations: Designing Institutions for Citizen Participation.* Cambridge University Press.

Sorial, S. (2018). Constitutional Reform and the Problem of Deliberation: Building a 'Civics Infrastructure' for Meaningful Debate. In R. Levy, H. Kong, G. Orr, & J. King (Eds.) *The Cambridge Handbook of Deliberative Constitutionalism* (pp.324–336). Cambridge University Press.

Sroka, J. (2009). *Deliberacja i rządzenie wielopasmowe: teoria i praktyka*. Wydawnictwo Uniwersytetu Wrocławskiego.

Sroka, J. (2018). *Współdecydowanie w wielopasmowej polityce publicznej.* Dom Wydawniczy Elipsa.

Starzyk-Durbacz, K. (2016). *O partycypacji. Podsumowanie badań i analiz dotyczących partycypacji obywatelskiej w Polsce*. Pracownia Badań i Innowacji Społecznych „Stocznia"

Susánszky, Pál & Gerő, Márton (2014). A Hallgatói Hálózat (HaHá) mobilizációs jellemzői In A. Szabó (Ed.) *Racionálisan lázadó hallgatók II: apátia, radikalizmus, posztmaterializmus a magyar egyetemisták és főiskolások körében* (pp. 135–151). Belvedere Meridionale, MTA Társadalomtudományi Kutatóközpont Politikatudományi Intézet.

Szent-Iványi, B. & Kugiel, P. (2020). The Challenge from Within: EU Development Cooperation and the Rise of Illiberalism in Hungary and Poland. *Journal of Contemporary European Research,* 16(2), 120–138. https://doi.org/10.30950/jcer.v16i2.1078

Szymański, A. (2018). Zmierzch demokracji liberalnej? Turcja oraz państwa Europy Środkowej i Wschodniej w perspektywie porównawczej. In K.A. Wojtaszczyk, P. Stawarz & J. Wiśniewska-Grzelak (Eds.) *Zmierzch demokracji liberalnej* (pp. 237–252). Oficyna Wydawnicza Aspra-Jr.

Welp, Yanina (2013) Transitions from Above: The Constitution-making Process and the Consolidation of Democracy. The Cases of Spain, Brazil and Poland. In Fernando Méndez & Jonathan Wheatley (Eds.) *Constitution-Making and Popular Participation* (pp. 87–102). London: Ashgate.

Wesołowska, E. (2010). *Deliberatywne rozwiązywanie konfliktów wartości. Wielość dróg do porozumienia*. Wydawnictwo Uniwersytetu Warmińsko-Mazurskiego.

Ziółkowski, M. (2018). Constitutional Moment and the Polish Constitutional Crisis 2015–2018 (A Few Critical Remarks). *Przegląd Konstytucyjny,* 4, 76–106.

Appendix 9.1

Questions and most supported responses of the "Citizens' Questionnaire on Fundamental Law" (Number of responses: 920 000)

Question	Number of answer options	Most popular answer	Policy impact
Q1: Some people say that the new Hungarian Constitution should only declare the rights of citizens and not obligations. Others argue that, in addition to securing rights, the most important civic obligations that express our responsibility to the community (work, learning, defence, protection of our environment) should be included in the document. What do you think?	3	In addition to rights, the new Hungarian Constitution should also include civic obligations. (91%)	Yes
Q2: Some people suggest that the new Hungarian Constitution should limit the level of indebtedness of the state, thereby taking responsibility for future generations. Others argue that there is no need to require such guarantee. What do you think?	4	The new Hungarian Constitution should set a maximum level above which public debt should not rise. This limit should be respected by all future governments in all circumstances. (53%)	Yes
Q3: Some people suggest that the new Hungarian Constitution should protect common values, such as family, order, home, work, and health. Others do not think this is necessary. What do you think?	4	In addition to the protection of human rights, the new Hungarian Constitution should protect commonly accepted social values (work, home, family, order, health). (91%)	Yes
Q4: Some people suggest that in accordance with the new Hungarian constitution, parents who raise a minor child, may exercise their children's right to vote in some way. What do you think?	3	According to the new Hungarian Constitution, parents or families with minor children should not be entitled to exercise further voting rights. (74%)	No

(*Continued*)

Question	Number of answer options	Most popular answer	Policy impact
Q5: Some people suggest that the new Hungarian Constitution should not allow Government to tax the costs of raising a child (i.e. the cost of raising a child should be recognised by the tax system). Others argue that this is not necessary, and that governments should be allowed to tax these costs. What do you think?	4	The new Hungarian Constitution should not allow the Government to tax the costs of raising children. (72%)	No
Q6: Some people suggest that the new Hungarian Constitution should commit to future generations. Others say that no such commitment is required. What do you think?	3	The new Hungarian Constitution should include a commitment to future generations. (86%)	Yes
Q7: Some people suggest that the new Hungarian Constitution should allow public procurement or state support only for companies with transparent ownership structure. What do you think?	3	According to the new Hungarian Constitution, only those enterprises should be allowed to get state support or to take part in public procurement opportunities, whose ownership structure is transparent and all owners can be identified. (92%)	No
Q8: Some people suggest that Hungary's new Constitution should express the value of national cohesion to Hungarians living beyond the borders; others do not think it is necessary. What do you think?	4	The new Hungarian Constitution should express the value of national belonging to Hungarians living beyond the borders and oblige the Government to protect this value. (61%)	Yes
Q9: Some people suggest that Hungary's new Constitution should protect the natural diversity of the Carpathian Basin, animal and plant species, and the Hungaricums. What do you think?	4	The new Hungarian Constitution should protect both the natural environment and traditional species. (78%)	Yes
Q10: Some people think that the new Constitution should protect national wealth, especially land and water resources. Others do not consider it important. What do you think?	3	The new Hungarian Constitution should protect national wealth. (97%)	Yes

(*Continued*)

(*Continued*)

Question	Number of answer options	Most popular answer	Policy impact
Q11: Some people suggest that Hungary's new Constitution should allow courts to impose actual life imprisonment for high-severity crimes. What do you think?	3	The new Hungarian Constitution should allow the courts to impose actual life imprisonment for crimes of high severity. (94%)	Yes
Q12: Some people suggest that Hungary's new Constitution should make participation compulsory for anyone summoned to a hearing by a parliamentary committee of inquiry and to impose a penalty on those who stay away. What do you think?	3	The new Hungarian Constitution should make participation compulsory for a person who is summoned to a parliamentary committee of inquiry. (83%)	No

Appendix 9.2

The questions presented by President Duda in the referendum request, July 2018

Q1   Are you in favour of:

    a the adoption of the new Constitution of the Republic of Poland?
    b enacting changes to the current Constitution of the Republic of Poland of April 2, 1997?
    c leave the Constitution of the Republic of Poland of April 2, 1997 unchanged?

Q2   Are you in favour of the Polish Constitution, making it obligatory to hold a nationwide referendum on the request of at least 1,000,000 citizens and for the result of such a referendum to be binding, if at least 30% of those eligible to vote take part?

Q3   Are you in favour of:

    a. a presidential system, i.e., strengthening of the constitutional position and competencies of the President of the Republic of Poland elected by the Nation?
    b. a cabinet system, i.e. strengthening the constitutional position and competencies of the Council of Ministers and the Prime Minister and election of the President of the Republic of Poland by the National Assembly?
    c. maintaining the current model of executive power?

Q4   Are you in favour of constitutionally regulating the election of members of the Polish Sejm:

    a. in single-member electoral districts (majority system)?
    b. in multi-member electoral districts (proportional system)?
    c. with a combination of both (mixed system)?

Q5   Are you in favour of emphasising in the Constitution of the Republic of Poland the importance of the Christian sources of Polish Statehood and the culture and identity of the Polish Nation? Yes/No

Q6   Are you in favour of the constitutionality of the Republic of Poland's membership of the European Union and NATO, with respect for the principles of national sovereignty and the primacy of the Polish Constitution? Yes/No

Q7   Are you in favour of guaranteeing the protection of Polish agriculture and Poland's food security in the Polish Constitution?

Q8   Are you in favour of a constitutional guarantee of the protection of the family, maternity and paternity, the inviolability of acquired family rights (such as the benefits of the 500+ programme) and the entitlement to special health care for pregnant women, children, the disabled, and the elderly? Yes/No

Q9   Are you in favour of a constitutional guarantee of special protection: of work as the foundation of the social market economy and of the right to a pension, acquired at a statutorily defined age (60 years for women and 65 years for men)? Yes/No

Q10   Are you in favour of regulating the division of local government units into communes, districts, and voivodships in the Polish Constitution? Yes/No

10 Can the decolonial be deliberative? Constitution-making and colonial contexts

Iceland, Greenland, and the Faroe Islands

Jón Ólafsson

Introduction

The attempt to revise the Icelandic constitution in the wake of a financial crisis that shook Icelanders to the core has been well studied and documented. Though unsuccessful, the revision process has long been celebrated as a primary democratic innovation in an era of increasing demand for public engagement in constitutional renewal (Landemore 2015; Aitamurto & Landemore 2016). This chapter looks at a different aspect of the Icelandic process arguing that it has more in common than generally acknowledged with constitutional debates and drafting processes in Greenland and the Faroe Islands where a constitution, in different ways, is a part of a drive to gain full independence from Denmark. It is argued that a decolonial strain in Iceland's constitutional discourse somewhat diminishes the drive for systematic democratic deliberation and may partly explain why the process has failed.

A rough outline of the Icelandic process is as follows: A Constituent assembly was elected in November 2010 to revise the 1944 republican constitution. A few weeks before the elections a so-called national meeting was conducted wherein 950 randomly selected citizens identified fundamental values and national priorities for a new constitution. The elected assembly was expected to take some orientation from the National Forum. The Icelandic Supreme Court, however, invalidated the elections due to numerous technical flaws. The Parliament, instead of calling off the revision, reappointed the elected assembly members to a Constitutional Council. 24 of the 25 elected members agreed to serve on the Council – one person chose not to join the Council and was replaced by a candidate who had received the 26th place in the elections.

From April and through July 2011 this group drafted a new constitution for Iceland and submitted it to Parliament for discussion and ratification. The drafting process was transparent for the most part. Anyone could engage in conversation with Council members via social media (Facebook and Twitter) and formal proposals could be sent directly to the Council. Weekly updates of the draft constitution were made available on the Council's website and its plenary sessions were streamed online. Verbatim transcripts of the plenary sessions were also published. The only part of the Council's work that was not open to the public was the meeting of its three

sub-committees. The constitutional bill, however, stalled in Parliament as its term ran out before the draft constitution could be voted on. Since 2013 there has been no parliamentary majority in favour of reviving the bill. Repeated unsuccessful attempts have been made since then to propose amendments to the currently valid constitution.

Why has it been so difficult to bring the constitutional revision process to con-clusion, given its original democratic credentials? In the constitutional debate, cor-porate interest is often seen as the main reason for the reluctance of right-wing parties in Iceland to support the process, but other reasons have been given such as the low juridic quality of the draft (Thorarensen 2020, pp. 99–101), overly ambitious goals of the drafters (Bergmann 2022), or the lack of a methodological approach by the Constitutional Council itself (Ólafsson 2011).

A decolonial context offers new ways to understand the shortcomings of the pro-cess and to place it in a regional and historical narrative that invites a comparison with the efforts of Iceland's closest neighbours in the North Atlantic – Greenland and the Faroe Islands – to create their own constitutions. These two countries are currently autonomous territories of the Danish kingdom, running their own gov-ernments and electing local parliaments, but without state sovereignty. Iceland became an independent state in a royal union with Denmark in 1918 but since 1944 it has been a republic fully separated from Denmark.

Iceland's historical relations to Denmark still play a major role in the Icelandic national identity. It is a widespread view in Iceland that the republican constitution is a relic of Danish supremacy that needs to be fully erased. In both Greenland and the Faroe Islands, constitutional design has been a contentious issue between local governments in Torshavn and Nuuk on one side, and the authorities in Copenha-gen on the other. I argue that even though Copenhagen is formally and effectively unconnected to the Icelandic constitutional process, the alleged Danishness of the republican constitution keeps Denmark in the picture; therefore, a new and genu-inely Icelandic constitution is a necessary final step for Iceland to break out of its colonial relationship with Denmark to become fully (and finally) independent. The direct and indirect dialogue with the heritage and presence of Danish authority has fateful consequences for constitutional discourse in all three countries giving national values, identity, and self-determination a more tangible role than a purely civic deliberation.

I will briefly describe the ongoing constitutional processes in Greenland and the Faroe Islands and draw some parallels with the Icelandic process which help to bring out what I call its 'decolonial aspects'. I draw a distinction between two motivations for constitutional revision that both appear in the Icelandic effort: a reformist agenda and a decolonial agenda. I argue that although the reformist agenda provides sufficient reason for engaging in substantive constitutional reform in Iceland, it is the decolonial agenda that brings substance to the idea that partial revision is not enough, and the constitution must be entirely rewritten.

I then discuss how the decolonial context – implicitly a part of the Icelandic project and explicitly a part of the Greenlandic and Faroese projects – affects delib-eration. I argue that the decolonial agenda undermines deliberation. Once national identity is at stake and the values and priorities that characterize the nation or

culture come to the foreground, deliberation on a future political community tends to be seen as a less important issue.

In Greenland and the Faroe Islands constitutional drafting is an elite-driven process. The Greenlanders have plans to eventually engage the public in creating the constitution but have not done so yet. In the Faroe Islands, where the process began in the 1990s, public engagement has not been a systematic part of the constitutional process. This chapter concludes that the specific role of the constitution in the establishment of sovereignty in Greenland and the Faroe Islands also has an impact on the constitutional discourse in Iceland, where the decolonial context gives the constitutional drive a certain populistic appeal beyond what a pure reformist agenda would be likely to do.

Colonies or dependencies?

It is fairly obvious that there is a strong connection between the constitutional debate in Iceland and the struggle for independence and separation from Denmark. Iceland's independence was achieved in several steps from 1874 to 1944, when a republic was founded. One of the main reasons for a radical revision of the Icelandic republican constitution frequently voiced by activists, academics, public commentators, and politicians alike was the pedigree of the document (Árnason 2011, p. 345; Ólafsson 2016, p. 259). It emerged in successive revisions of the original 1874 constitution 'on matters of exclusive Icelandic concern' (Althingi 2004, p. 8). The constitutional debate continued through the establishment of home rule in 1904 and the achievement of national sovereignty in 1918 when Iceland became an independent kingdom in a state union with Denmark under the Danish King. The language of monarchy still characterizes Iceland's republican constitution, although 'King' has been replaced with 'President'.

While Iceland has been a republic since 1944, when all formal ties with Denmark were severed, the issue of breaking free from a colonial past is still alive in its political discourse. One motivation for public involvement in creating a new constitution was to make sure that an old promise would finally be fulfilled: that of a truly Icelandic constitution. The republic was founded in some hurry during World War II when the Danish government was paralysed under Nazi occupation. The constitution then adopted was seen as provisional, to be replaced by a new Icelandic constitution in due time (Ólafsson 2011). In Greenland, a new constitution is being drafted as a part of the strategic positioning of an independence movement and this process shares the Icelandic idealization of constitution as an object of national renewal (See Kleist 2020). The constitutional process in the Faroe Islands has a longer history and today is not necessarily part of a Faroese drive for full independence, although it began as such (á Rógvi 2004).

The colonial question emerges in different ways in the three constitutional efforts. The Icelanders and the Faroese are not ethnically different from the Danes but the Greenlanders are. This difference signifies different paths in history and relations. Both Iceland and the Faroe Islands came under Danish domination through a series of agreements and exchanges within the Nordic countries. Icelandic explorers came

to Greenland and settled there in the tenth century, but the settlement disappeared around 1400 and for centuries there was no connection between Greenland and the Nordic countries, until Greenland was 'rediscovered' by Denmark and Norway in the eighteenth century and later made a Danish territory.

The colonial story behind the Danish-Greenlandic relations is therefore more clear-cut than is the case with Iceland and the Faroe Islands where, in the nineteenth and early twentieth centuries, the designation of colony was fiercely resisted (Thisted and Gremaud 2020, pp. 36–38). The Greenlanders were, on the other hand, seen as a people ready for enlightenment and modernization to be brought to them by Denmark. They were not consulted nor were any objections raised to the colonial description. It became common, however, to describe the three countries as 'dependencies' rather than colonies (Hálfdanarson 2014).

Contemporary societies in Greenland and the Faroe Islands deal with this past in different ways. In both cases, however, the relationship with Denmark and the colonial question are a part of what the national leadership must constantly face where an emerging political consensus suggests that independence from Denmark is only a matter of time. In Iceland, the colonial context is continually brought up by social movements through comparison with other countries. Iceland, it is argued, lags behind other European countries in demanding accountability from its political elite. Icelandic elites are seen to be emulating the colonial authority of the past. The Icelandic draft constitution, written by the Constitutional Council in 2011, is still presented as the people's constitution by vocal activists who have successfully undermined all moves to achieve partial constitutional reform and insisted that the 2011 process represents the will of Icelandic people, which must be respected by completing the ratification process of the draft constitution – usually referred to simply as the 'new constitution'. This movement sees its struggle as a matter of fundamental principle which must be continued even if success can take decades to achieve (see e.g., Oddsdóttir and Baldvinsdóttir Bjargardóttir 2020).

Framing the decolonial

Contemporary Icelandic identity cannot be understood without the acknowledgement of Iceland's status – for centuries – as a dependency of the Danish Kingdom; a territory fully under Danish control. Iceland's history as an independent country came to an end in the thirteenth century with a protection agreement with the Norwegian King, which due to power shifts within the Nordic area transformed into a full-blown inclusion in the Danish state. Whether Iceland was a colony is still an open question – the word dependency is supposed to emphasize that this was not the case, yet even so it does not erase the decolonial quality visible in the effort to disentangle the contemporary Icelandic republic and its symbolisms from the Danish aspects of its history.

Icelandic historians have for the most part resisted the view that Iceland was a Danish colony. Formally and legally speaking, Iceland was not a colony, and neither were Greenland and the Faroe Islands. But in fact, even if these territories enjoyed rights and privileges beyond what Denmark's other colonies in the

West Indies (St. Thomas, St. Jan, and St. Croix) enjoyed, in many ways they were similarly administered. The difference between 'dependency' and 'colony' may therefore be seen as primarily rhetorical (Volquardsen and Körber 2014, p. 18). Ethnicity blurs the picture as well. The Greenlanders were, just as Danish subjects in the West Indies, ethnically distinct from the Danes. Since Icelanders and the Faroese were – unlike the Greenlanders and Danish subjects in the West Indies – not ethnically distinct from Danes, why not just see their territories as Danish provinces? Finally, Icelanders had a celebrated history of cultural achievements in the Middle Ages when books were written and manuscripts produced, which gave them a special status among the Nordic countries. Iceland's literary heritage was seen as a common Nordic cultural heritage, which boosted Iceland's cultural capital within the Danish realm (Hálfdanarson 2014, pp. 46–47). Yet Danish subjugation certainly put Icelanders in a subaltern position. The Danish elites admired and wanted to co-opt Iceland's cultural heritage while also seeing the Icelanders as pre-modern. Iceland thus shared with colonized people subjugation by an external power that perceived itself as culturally superior (Loftsdóttir 2014, pp. 6–7). This complicates the relationship of the two countries to this day and has raised fundamental questions about the ownership of Iceland's cultural heritage.

Icelanders in the nineteenth century – even before the demand for full national independence was really on the agenda – sought to distinguish themselves from Denmark. Yet they also wanted to make sure that they were not equated with the Inuits in Greenland. Thus, Icelanders demanded not to be seen as a colonial people but as equal to the colonizers, the Danes, and yet also preserve a clear distinction from them. In this position – paradoxical for many reasons – we see Icelandic decolonialism emerge: Instead of simply accepting the constitution's Danish roots, interpreting them as common European, the Icelandic public is open to the idea that the Icelandic constitution must be an expression of a distinct identity; Icelandic values and priorities which may or may not coincide with the emerging liberal core of the Danish constitution. After all, the Danes were one of the leading European nations of liberal reform. Rejecting the Danish constitution as 'zero-point hubris' (Mignolo 2009, p. 162) expresses ultimate epistemic defiance, showing the former colonial power that Iceland is not a part of its constitutional development but different and that Iceland's history is not the history of a development from absolute monarchy to constitutional democracy, but the history of fighting for and achieving full independence. For the most dramatic parts of this successful constitutional rhetoric, Iceland's independence itself is still repressed by the Danish constitution.

The ambiguous context of Iceland's past cannot simply be explained away by choosing a more neutral term such as dependency. The concept of crypto-colonialism has been suggested as an apt term for Iceland's position on the margins of the 'civilized' world struggling to ensure its place as a modern society while insisting on its cultural distinction (Thisted and Gremaud 2020, pp. 45–48). This is also the source of a postcolonial relationship with Denmark characterized by the Icelandic belated decolonial struggle to make sure that its national past and cultural and political development is not conflated with Denmark's.

Current constitutional reform: Initial debates

Constitutional innovation and reform have visited and revisited the political agenda in Iceland, Greenland, and the Faroe Islands over the last three decades. The Faroese national government initiated preparations for the creation of a Faroese constitution in the 1990s when an independence movement had grown very strong in the islands. The discussion of a Faroese constitution has more recently been pursued separately, as it has been argued that a new constitution should also be compatible with maintaining constitutional relations to Denmark (Færøernes Landsstyre 1999). The Greenlandic national Parliament decided in 2016 that a Greenlandic constitution should be drafted but, unlike the Faroese, the Greenlandic Parliament has never had any intention of adopting a constitution unless Greenland would become a sovereign state. A new constitution could partly be adopted before full independence had been declared but the Greenlanders saw no sense in pursuing it unless independence was in sight (Forfatningskommissionens sekretariat 2020).

Iceland's status is no different from any other sovereign country. Iceland is an equal partner with other Nordic countries in the Nordic community, institutionalized in the Nordic Council and the Nordic Council of Ministers. Although by far the smallest one, Iceland enjoys not only constitutional but also economic and cultural independence. Iceland, however, was hit hard by the 2008 financial crisis, so hard that the possibility of losing independence due to national bankruptcy became a bitter reality that even politicians had to openly face (Heimisdóttir 2020, pp. 58–59). While that danger was averted, public confidence in governmental structures was badly shaken. This episode made it all too clear for the ordinary citizen that Icelandic sovereignty was not a given. It could also be lost due to corruption, incompetence, or some calamity, natural or economic.

Activist groups in Iceland began calling for a national reset; some tangible effort to address and resolve the issues that systematically prevented Iceland from emerging as a fully and incontrovertibly sovereign and independent nation. Constitutional reform became a key factor in achieving this, since, on one hand, the constitution was widely thought to need serious revision in order to properly direct national politics. I refer to this as the primary reason for constitutional reform. On the other hand, Iceland was seen to be in need of a constitution it could confidently call its own, free of Danish origins. This I call the secondary reason for reform.

These two main reasons were powerful factors in debates about the creation of a new Icelandic constitution after the financial collapse the country suffered due to the international crisis in 2008. The primary reason is about institutional and political reform (Árnason et al. 2010). Supporters of a new constitution argued that the most effective means of renewing Iceland's political and administrative system was to have a new beginning – maybe even in the French spirit of facing crisis with constitutional renewal such as what happened when the current fifth republic was founded – a new Icelandic republic by means of a constitution created and adopted by Icelanders themselves, by the people directly rather than via some consensus of current elites (Njarðvík 2009). The secondary reason – frequently

mentioned and often blending with the primary reason – was about independence and the argument that Iceland had never really had its own Icelandic constitution since its republican constitution is essentially Danish. It was pointed out that the current constitution is a descendant of the 1874 constitution 'on the special affairs of Iceland' that the Danish King Christian IX 'gave' to the Icelanders. This constitution was to a large extent a verbatim repetition of the Danish constitution adopted 25 years earlier and composed without consultation with Icelandic political leaders (Moberg 2020, p. 204). The King presented it personally to Icelandic representatives, on Icelandic soil after having ceremoniously crossed the sea on his royal vessel for that purpose.

Iceland's constitutional history is about amending that constitution, first during the decades from its reception until independence in 1918, then in the years between the world wars, when Iceland continued to share the monarchy with Denmark, but as a sovereign state. A new constitution was adopted in 1922, based on the older one. In 1944, Icelandic voters overwhelmingly supported the foundation of an Icelandic republic and thus parted with their King. At the same time, they ratified a new Icelandic constitution. The republican constitution was designed so as not to cause unforeseen constitutional difficulties for the young republic, and therefore contained most of the language of the older constitutions – the Danish and the Icelandic. It had, for example, left in place the articles outlining the constitutional role and authority of the King, which, in line with the development of the Danish state from absolute to constitutional monarchy, limited royal power by placing it in the hands of ministers. Now the Icelandic president, like the monarch, was presented as a figurehead who entrusted ministers with executing his power (Constitution of the Republic of Iceland 1944). It was also argued that even if archaic language and an obvious link to its Danish past was a part of the constitution, its text had already been clearly interpreted by Icelandic courts and was therefore harmless. A frequent counterargument to this, however, was based on the necessity that the constitution be understandable to ordinary people and not a complicated legal text needing expert interpretation to be properly read and appreciated.

This meant that the political promise of a new constitution was functional from the start (Árnason and Dupré 2020). The primary and the secondary reason denote a reformist agenda and a decolonial agenda respectively, and both can be said to be present in this promise. Although these two agendas are distinct, they blend with each other, especially the first with the second: The archaisms contained in the current constitution are liable to be removed by a reformist agenda. It is, however, quite possible to present a strong case for rewriting the constitution solely from the decolonial perspective. Even if the archaisms are not seen as harmful per se, they move this fundamental document away from the people and make the constitution less relevant democratically than it should be. In public debates, however, a strong argument for a new constitution will, pragmatically speaking, also need a straightforward reformist argument. For these reasons, the reformist and decolonial arguments mostly appear hand in hand, and both seem to enjoy general acceptance among the Icelandic public.

Belonging or not belonging to 'the realm':
The Faroe Islands and Greenland

In 1999, the Faroese home government decided to initiate talks with the Danish government on an agreement between Denmark and the Faroe Islands whereby Denmark would recognize Faroese sovereignty. The model for this agreement was the Icelandic Danish Union treaty from 1918 according to which Iceland was recognized as a sovereign state in a royal union with Denmark. An argument based on historical and legal reasoning was presented by the government in an effort to show that there were no legal obstacles to Faroese sovereignty neither from a Danish perspective nor from the perspective of international law (Færøernes Landsstyre 1999).

Since 1999, the issue of independence has come up repeatedly in Faroese politics. Unity, however, has been lacking. There are strong voices that favour independence, but a sizeable part of the population opposes it. In recent years, the debate on the constitution has therefore turned more and more around the question of to what extent a Faroese constitution is compatible with a continued union of Denmark and the Faroe Islands. Again, the Icelandic precedent is used to argue that this is the case – Iceland was still considered a part of Denmark when the Danish King gave Iceland its own constitution.

The Faroese have thus chosen a path of legally oriented discussion to approach the question of independence in their dialogue (or attempted dialogue) with the Danish government in a quest to be accepted as equal partners. This is strongly reminiscent of Icelandic efforts in the nineteenth century when it was demanded without success to have an open dialogue with the Danish government. The government has been unwilling to engage in that kind of a dialogue, demanding instead that the Faroese leadership explain whether they are aiming for full independence and offering to start negotiations on Faroese independence, including on scaling down and eventually discontinuing any Danish payments to the Faroese.

In the 1860s and early 1870s, the Icelandic parliamentary leadership – the Icelandic Parliament, the Althing, had been reestablished in 1845 – wanted to negotiate Iceland's legal status within the Danish kingdom. The Icelanders resented the idea that Iceland should be considered an integral part of the kingdom. The Danish Parliament, however, passed legislation, the so-called Law of Standing, according to which Iceland would remain a part of Denmark. The law was passed without consultation with the Icelanders. The constitution, a direct consequence of the Law of Standing, created the framework for Iceland's autonomy, but was also prepared without consultation with Icelanders and was not intended to clear the way for independence. To requests from Iceland that Denmark engage in a discussion or negotiations on Iceland's status and future, Denmark, the colonial power, was silent (Sigurðsson 1874, pp. 84–88).

The Faroese, just as Icelanders had been earlier, want to be in control of the dialogue they have initiated with the Danish government, pointing out legal and historical reasons, but are effectively denied this. While they see a Faroese constitution as a means to a better future, the Danish government insists on an either/or character of the Danish–Faroese relationship (Marnersdóttir et al. 2020, p. 207).

The Danish government's legalistic fundamentalism has led to, on one hand, a policy effectively denying the Faroe Islands the right to make valid agreements with other countries, and, on the other, an indefinite postponement of their most recent attempt to create the conditions for a Faroese constitutional order. In 2017, the Danish Prime minister reemphasized Denmark's continued adherence to agreements about Faroese home rule made after the end of World War II but did not comment on the newest Faroese constitutional reform proposal (Marnersdóttir et al. 2020, p. 219).

The decision to initiate work on a Greenlandic constitution was made by Greenland's Parliament, the Inatsisartut, in 2016. The Greenlanders have not entered into negotiations with Denmark on the proposed constitution, since its adoption depends on Greenland achieving full independence. In their efforts, the Greenlanders have not emphasized the legal aspects of creating a Greenlandic constitution but rather presented their future constitutional framework as essential in their quest to become a fully independent and sovereign nation. As a recent update from Greenland's prime minister's office puts it: 'Essentially, the constitution must create a framework that embodies the Greenlandic people's culture, language, and identity. The starting point for including culture, language, and identity will be Greenlandic, which means the original Greenlandic people'.

The nationalistic prioritization of the indigenous Greenlanders has its roots in the role that constitution-making plays in the effort led by some of Greenland's political parties to move the country towards full independence from Denmark. Unlike the Faroese they refrain from historical or legal argumentation. Greenland was not even mentioned in the constitutional work preceding the Danish constitution of 1849 and had, unlike Iceland and the Faroe Islands, no formal representatives there (Marnersdóttir et al. 2020, p. 219). After World War II Greenland was considered an 'equal part of the realm'. In 1979, home rule was established but, as has been pointed out, Greenlandic independence was never an option (Alfreðsson 2004).

The Greenlandic effort is elite-driven but fuelled by the independence drive. The political parties that campaign for independence may not be under pressure to submit to a real deliberative process because their supporters emphasize the independence drive and the general goal of separation, not only political but also cultural, from Denmark – rather than looking critically at the individual issues actually covered by the constitution. That the constitution must be Greenlandic also shows that the Greenlandic point of departure is not the idea of a constitution containing solely universal principles. Rather, a declaration on Greenlandic national identity is the fundamental issue around which constitutional debates tend to revolve.

A constitutional commission with members from all political parties represented in the Inatsisartut laid the groundwork for the constitutional work emphasizing consultation with the public and describing the future constitution as having a distinct Greenlandic character. It is also quite clear that the Greenlandic constitution must deal with central issues of economy and especially the management of the country's considerable resources. Here, the most important goal is to prevent corruption and make sure that national resources are used for the benefit of the Greenlandic people.

While the Greenlanders and the Faroese have chosen different paths in their constitutional processes, both have looked to certain aspects of the Icelandic experience for inspiration and reasoning. There are also similarities in the reaction of the Danish government to continuous desire in both Greenland and the Faroe Islands for a dialogue as sovereign entities. The silence of the colonial power is no less weighty in the current century than the silence – and a certain indifference – towards similar wishes from the Icelandic side in the nineteenth century. The Danish leadership emphasizes readiness to discuss independence with both countries and the considerable financial obligations that independence would create but there is much less readiness to discuss possible paths to, or recognition of, their sovereignty prior to actual independence.

Colonial commons

The Icelandic decolonial argument shows that even though Iceland has been an independent state for more than 100 years, and a republic for almost 80 years, it is still struggling with its colonial relations to Denmark. It also brings to the fore the role of constitutional discussion as a part of the struggle for independence. In Iceland satisfaction with the constitution from 1874 was mixed because it was seen as a one-sided move by the Danish government. Icelanders had no part in creating the constitution. Yet the Faroese have in their institutional preparations for a new Faroese constitution made frequent reference to the Icelandic constitutional history and one of their arguments that Denmark should support a Faroese constitution is Iceland's constitution of 1874 (Larsen and á Rógvi 2012, pp. 361–362). This shows a selective understanding of history, of course, since the Faroese would clearly not be satisfied with a constitution 'given' to them by the Danish monarch.

In Greenland, there are also references to the Icelandic experience, but to the short (post 2008) constitutional history rather than the long one (post-1874) as Greenlanders have been interested in learning from the Icelanders how to engage the public in constitutional debate and create a constitution that can in some sense be presented as 'the people's' constitution (see Motzfeldt and Karlsen 2017). The Greenlandic constitutional commission has maintained that a Greenlandic constitution should express and establish the particular values that characterize Greenlanders as a nation (Forfatningskommissionens Sekretariat 2020, pp. 8–9). In Iceland the randomly selected National Forum discussed and ranked the central values of Icelanders for a similar purpose – to ensure that the values shared by Icelanders should also be reflected in their constitutional order. This goal is different from the narrower legal-historical approach chosen by the Faroese (á Rógvi 2004). Yet, in earlier constitutional debates, especially in 1874 and later, leading political figures in Iceland took a similar stance and presented historical and legal arguments to show the legitimacy of Iceland's demands (Sigurðsson 1874). Thus, the Greenlanders see their constitution as a decolonial enterprise to be achieved after formal independence has been gained. The Faroese, on the other hand, see it as an instrument of their struggle to free themselves from the remaining colonial authority of Denmark, which is more important in fact than independence itself.

While the Faroese argument tends to go back to the historical relations of Iceland and Denmark and the way Iceland freed itself from the Danish embrace, the Greenlanders seem less troubled by the past and more focused on future Greenlandic identity as distinct from the country's status within the Danish kingdom. In an interesting way, this also brings their independence struggle closer to the Icelandic decolonial effort to remove the last Danish traces from their constitutional order.

The Icelandic constitution first became a contested document after the financial crisis (Bergmann 2014, p. 175–176). Although the idea of an overhaul had been around since 1944, the constitution had not been treated dismissively or with contempt. It symbolized, after all, the final removal of foreign oppression (Hálfdanarson 2012, p. 264). Icelandic voters overwhelmingly expressed their support for it in a referendum in which they also overwhelmingly voted in favour of creating a republic. About 98.5% of the votes cast on the constitution were in support of it. It can safely be said that the Icelandic public did not consider their constitution to be 'Danish' even if the political elites saw it as provisional. Its Danishness was not important until the country emerged from the shock of the financial crisis, as that had inevitably put Denmark back in the picture. Even though the Icelandic public was not protesting Danish rule or arguing that Iceland was still in an inferior position against the former colonial power the fact that the constitutional order was perceived as essentially Danish was the reason given for certain constitutional amendments to be made. The Danishness of the constitution became something that needed to be changed. When some members of the Constitutional Council explained that, in some instances, the language of the constitution needed to be changed even where no actual change to the content was proposed this was partly the reason: An Icelandic constitution must be comprehensible to Icelanders as Icelanders – not to Icelanders as former subjects of the Danish King.

While in 2011 this issue seemed not to arouse much controversy as such that had not always been the case. One of the people who prepared the text of the constitution voted on in 1944 later argued that it was misleading to emphasize the Danish origins of the constitution. The Danes after all had been at the forefront of European liberal reform in the nineteenth century. Their constitution was generally admired and surely used as a model in some other European countries. Thus, the proud origins of the Icelandic constitution lay in European liberal thought (Marnersdóttir et al. 2020, p. 205). Revisionary efforts should therefore focus on the necessary reforms brought about by gradual social change, not as a necessity of national identity.

Decolonial or deliberative?

The emphasis on consensus, visible from the very beginning in the work of the Constitutional Council, weakened its deliberative impact while creating a tendency to cloak differences in formulations that could be understood in different ways by different Council members. Although it is difficult to give concrete examples of such instances, the different interpretations of some of the central proposals of the Constitutional Council given by Council members themselves illustrate this weakness (Ólafsson 2016, pp. 255–256).

But the weakness has a reason that a close look at the colonial context may explain. The decolonial argument creates what I call a 'pseudo-consensus' that emerges from the apparent incontestability of the claim: If the constitution's colonial character needs to be removed, then changes that seem to achieve this may enjoy initial support – support that is then amplified by the consensus-driven approach itself. The decolonial argument therefore impedes deliberation since it frames the debate in such a way as to create a prima facie reason for change, even in the case of constitutional articles whose interpretation is clear, where the vocabulary and formulation is the issue rather than the already agreed-upon content. By sticking to the old language for convenience, it is tacitly agreed that the colonial language is superior to native speech (Mignolo 2009, p. 165).

This is further illustrated in the National Forum convened before the elections to the constituent assembly were held in November 2010. The Forum, composed of 950 randomly selected Icelandic citizens, spent a day discussing values and proposals for a new constitution. The meeting expressed various assumptions about Icelandic exceptionalism such as the idea that there is some kind of special Icelandic knowledge (see Pitts 2017, p. 150), which can be expressed to become a part of a new constitutional order, and the underlying idea that Icelanders should excel in their own right showing the world how a small nation cannot only restore order but be an example to others (see Loftsdóttir 2014). The main result of the meeting was a ranked list of principal values which should guide the new constitution, and a list of proposals about various topics that received support at the meeting (National Forum 2010). The vague and largely symbolic nature of the proceedings can also be characterized in terms of a pseudo-consensus where the general idea of a truly authentic Icelandic constitution may have made participants feel that they were making a material contribution to the new Icelandic constitution in issuing statements that, in fact, added little to open public debates, surveys, and opinion polls.

The constitutional efforts have been unsuccessful in Greenland and the Faroe Islands so far, just as has been the case in Iceland. While a colonial or semi-colonial situation is certainly one main reason for the lack of success in Greenland and the Faroe Islands, such an explanation may seem out of place in Iceland. However, as I have argued, Iceland is entangled in decolonial anxieties, which, although not explicitly addressed on the surface, implicitly affect constitutional reasoning. The argument that the Icelandic republican constitution is 'Danish' refers to its pedigree and its vocabulary, but an underlying view is that the constitution needs purification to ensure full distance from the former colonial power. The need for an act of purification – the establishment of the truly Icelandic constitution – reveals the postcolonial aspect of the Icelandic constitutional moment.

During the Icelandic constitutional process, the idea of a constitution reflecting Icelandic values – over and above reflecting common human values or creating the framework for truly universal human rights – was quite strongly expressed, also by many radically progressive Constitutional Council members. While this was rarely seen as a potential source of conflict, the emphasis on an Icelandic value system also has a conservative, nationalistic tone. National conservatism is attractive to people fighting for their national independence, while for an already independent

nation that might be different as the history of Iceland's independence struggle shows (Hálfdanarson 2012, pp. 266–267). The blending of the progressive and the conservative, of national values and civil liberties fuels the decolonial enthusiasm of many supporters of the 'new constitution'. The frequent nationalist-populist reference to the 'constitution-giver' being the nation (rather than any representative institution) can certainly be interpreted as expressing a particular kind of constitutional experience (see Blokker 2017, p. 173); it can also be seen to be presenting a nationalist agenda which gains legitimacy due to an unspoken colonial reference.

Conclusion

I have attempted, in this chapter, to shed light on the constitutional processes in Iceland, Greenland, and the Faroe Islands, arguing that these processes have certain common decolonial dimensions that can be approached from a postcolonial perspective. These aspects also help us understand the failure of Iceland to rewrite its constitution since its decolonial agenda has made it difficult for progressive forces to deliberate limited constitutional amendments. The more general reason for this difficulty is a certain incompatibility of the nationally fuelled decolonial agenda and a liberal reformist agenda, which has so far been largely overlooked in the sizeable literature on the Icelandic constitutional process. While it can surely be argued that the decolonial agenda is a necessary part of the constitutional processes in all three countries, it also brings in a more conservative, nationalistic aspect, which, in the end, may create deadlocks and strong resistance to incremental constitutional change.

It should be stressed, however, that all these processes are incomplete. In Greenland constitutional reform is part of a long-term goal of leaving the Danish realm; in the Faroe Islands, it is embedded in a more complex idea of sovereignty. In Iceland, the stalled process symbolizes national insecurity, a heritage of a cryptocolonial status and a struggle to – at the same time – assert exceptionality and recognition in the community of Western nations. In all three countries, it remains to be seen to what extent their colonial past and present will influence deliberation on their political future and constitutional order. It follows from the discussion presented in this chapter, that genuine deliberation may be eclipsed by the spirit of campaigning where the sovereignty of the nation is seen to be prioritized over deliberative engagement.

References

á Rógvi, K. (2004). The Land of Maybe. A Survey of Faroese Constitutional History. In S. Skaale (Ed.), *The Right to National Self-Determination: The Faroe Islands and Greenland* (pp. 13–48). Nijhoff: Brill.

Aitamurto, T., & Landemore, H. (2016). Crowdsourced Deliberation: The Case of the Law on Off-Road Traffic in Finland. *Policy & Internet*, 8(2), 174–196. https://doi.org/10.1002/poi3.115

Alfreðsson, Guðmundur (2004). "Greenland Under Chapter XI of the United Nations Charter." In S. Skaale (Ed.). *The Right to National Self-Determination: The Faroe Islands and Greenland* (pp. 49–93). Leiden and Boston, MA: Nijhoff: Brill.

Althingi, Secretariat. (2004). *Althingi*. Parliament of Iceland. https://www.althingi.is/pdf/enska.pdf

Árnason, Á. Þ. (2011). A Review of the Icelandic Constitution Popular Sovereignty or Political Confusion. *Tijdschrift Voor Constitutioneel Recht*, 3, 342–352.

Árnason, Á.Þ., & Dupré, C. (2020). The Reform of the 1944 Constitution and Icelandic Constitutionalism. In C. Dupré & Á. Þ. Árnason (Eds.), *Icelandic Constitutional Reform: People, Processes, Politics* (pp. 26–53). London and New York: Routledge.

Árnason, V., Nordal, S., & Ástgeirsdóttir, K. (2010). "Siðferði og starfshættir í tengslum við fall íslensku bankanna 2008" [Morality and Working Practices in Relation to the Collapse of the Icelandic Banks 2008]. In P. Hreinsson, S. Benediktsdóttir & T. Gunnarsson (Eds.), *Aðdragandi og orsakir falls íslensku bankanna 2008 og tengdir atburðir [The Causes and Effects of the Fall of the Icelandic Banks and Related Events]* (Vol. 8, pp. 1–301). Reykjavík: Icelandic Parliament.

Bergmann, E. (2014). *Iceland and the International Financial Crisis: Boom, Bust and Recovery*. London: Palgrave Macmillan.

Bergmann, E. (2022). Lessons from Two Island Nations. Re-reading the Icelandic Deliberative Constitutional Process in light of the Success of the Irish Constitutional Convention. THIS VOLUME.

Blokker, P. (2017). The Imaginary Constitution of Constitutions. *Social Imaginaries*, 3(1), 167–194.

Constitution of the Republic of Iceland (1944). Government of Iceland https://www.government.is/library/01-Ministries/Prime-Ministrers-Office/constitution_of_iceland.pdf (accessed 29 April, 2022).

Færøernes Landsstyre. (1999). *Hvidbog – om vigtige forudsætninger for etablering af en suveræn færøsk stat*. Torshavn: Færøernes Landsstyre.

Forfatningskommissionens sekretariat. (2020). *Forfatningsarbejdet—Kort fortalt* (No. 1). https://tunngavik.gl/emner/publikationer/forfatningsarbejdet---kort-fortalt?sc_lang=da

Hálfdanarson, G. (2012). Icelandic Modernity and the Role of Nationalism. In J. Páll Árnason & B. Wittrock (Eds.), *Nordic Paths to Modernity* (pp. 251–273). New York: Berghahn Books.,

Hálfdanarson, G. (2014). Iceland Perceived: Nordic, European or Postcolonial Other? In L.-A. Körber & E. Volquardsen (Eds.), *The Postcolonial North Atlantic: Iceland, Greenland and the Faroe Islands* (pp. 39–66). Nordeuropa-Institut der Humboldt-Universität.

Heimisdóttir, K. (2020). Iceland's Near-Death Experience. In C. Dupré & Á. Þ. Árnason (Eds.), *Icelandic Constitutional Reform: People, Processes, Politics* (pp. 54–73). London and New York: Routledge.

Kleist, P. (2020). Grundlov skal forene landets befolkning. *Katu Infoavis Om Forfatningsarbejdet*, 1(1), 4–5.

Landemore, H. (2015). Inclusive Constitution-Making: The Icelandic Experiment: Inclusive Constitution Making. *Journal of Political Philosophy*, 23(2), 166–191.

Larsen, B., & á Rógvi, K. (2012). A New Faroese Constitution? – Faroe Islands between Parliamentary Sovereignty and Sub-Sovereign Constitutionalism, between Statutory Positivism and Pragmatic Reasoning. *The Yearbook of Polar Law Online*, 4(1), 341–363.

Loftsdóttir, K. (2014). Vikings Invade Present-Day Iceland. In E. P. Durrenberger & G. Palsson (Eds.), *Gambling Debt: Iceland's Rise and Fall in the Global Economy* (pp. 3–14). University Press of Colorado.

Marnersdóttir, M., Hálfdanarson, G., Thisted, K., & Gremaud, A.-S. N. (2020). Sovereignty, Constitutions and Natural Resources. In A.-S. Gremaud & K. Thisted (Eds.), *Denmark and the New North Atlantic: Narratives and Memories in a Former Empire* (vol. 2, pp. 199–260). Aarhus: Aarhus University Press.

Mignolo, W. D. (2009). Epistemic Disobedience, Independent Thought and Decolonial Freedom. *Theory, Culture & Society*, 26(7–8), 159–181.

Moberg, B.R. (2020). The Blue Atlantic: North Atlantic Imagined Geographies. In A.-S. Gremaud & K. Thisted (Eds.), *Denmark and the New North Atlantic: Narratives and Memories in a Former Empire* (vol. 1, pp. 181–221). Aarhus: Aarhus University Press.

Motzfeldt, V., & Karlsen, M. (2017). Forfatningskommissionen har afsluttet sin første inspirationsrejse til Island. Constitutional Commission Website, https://tunngavik.gl/nyheder/2017/08/forfatningskommissionen-har-afsluttet_8-aug-2017?sc_lang=da (accessed 28 April 2022).

National Forum (2010). Main Conclusions from the National Forum. http://www.thjodfundur2010.is/english/ (accessed 26 April 2022).

Njarðvík, Njörður P. (2009). Nýtt Lýðveldi. *Vísir*, January 14. https://www.visir.is/g/2009454712d.

Oddsdóttir, K., & Baldvinsdóttir Bjargardóttir, H. (2020). Takk Fyrir Samstöðuna. *Fréttablaðið*, April 11, 2020. https://www.frettabladid.is/skodun/takk-fyrir-samstouna/ (accessed 29 April 2022).

Ólafsson, J. (2011). *Experiment in Iceland: Crowdsourcing a Constitution? Epistemic Democracy in Practice*. Yale University.

Ólafsson, J. (2016). The Constituent Assembly: A Study in Failure. In Valur Ingimundarson, P. Urfalino, & Irma Erlingsdóttir (Eds.), *Iceland's Financial Crisis: The Politics of Blame, Protest, and Reconstruction*. Routledge, Taylor & Francis Group.

Ólafsson, J. (2020). Crowdsourcing the 2011 Proposal for a New Constitution: When Experts and the Crowd Disagree. In C. Dupré & Á. Þ. Árnason (Eds.), *Icelandic Constitutional Reform: People, Processes, Politics* (pp. 128–147). London and New York: Routledge.

Pitts, A. (2017). Decolonial Praxis and Epistemic Injustice. In *The Routledge Handbook of Epistemic Injustice* (pp. 149–157). New York: Routledge, Taylor & Francis Group.

Sigurðsson, J. (1874). Stjórnarskrá Íslands. *Andvari:Tímarit Hins Íslenska Þjóðvinafélags*, 1(1), 1–138.

Thisted, K., & Gremaud, A.-S. N. (2020). Envisioning the North Atlantic: Current Narratives and Official Discourses. In K. Thisted, & A.-S. N. Gremaud (Eds.), *Denmark and the New North Atlantic: Narratives and Memories in a Former Empire*, (vol. 1, pp. 9–74). Aarhus University Press.

Thorarensen, B. (2020). The Role and Impact of the Constitutional Commission in Preparing the Constitutional Revision. In C. Dupré & Á. Þ. Árnason (Eds.), *Icelandic Constitutional Reform: People, Processes, Politics* (pp. 77–102). Routledge.

Volquardsen, E., & Körber, L.-A. (2014). The Postcolonial North Atlantic: An Introduction. In L.-A. Körber & E. Volquardsen (Eds.), *The Postcolonial North Atlantic: Iceland, Greenland and the Faroe Islands* (1. Auflage, pp. 7–29). Nordeuropa-Institut der Humboldt-Universität.

11 Constitutional referendums and deliberation

Direct democratic integrity in Russia, Italy, and Turkey

Norbert Kersting

Constitutional referendums are important instruments in numerous transitions to democratic systems, as well as in constitutional review processes. In comparing different referendums at the national level, it becomes obvious that the majority are on constitutional issues (see Altman 2014; Qvortrup 2018; IDEA 2008; C2D 2022). It also becomes clear that authoritarian regimes have implemented referendums as well. In recent years with the deliberative turn (Dryzek 2002), constitutional deliberation has broadened and new actors are becoming part of the constitutional review process in writing a constitutional draft (Welp & Soto 2020; Reuchamps & Suiter 2016). The quality of constitutional deliberation is often criticized at this point (Negretto 2018; Saati 2015; Partlett 2012). In the following chapter, different forms of political participation in constitutional processes will be analysed. Here the focus is on deliberative participation, which includes different forms of dialogical participatory instruments. In the first section, the different forms of participatory instruments will be presented. This deliberative democratic innovation can be analysed by employing certain criteria following the principle of democratic theory: the participatory rhombus and its criteria for evaluation (Kersting 2013). Furthermore, an instrument to evaluate the integrity of referendums will be presented (see for electoral integrity, Norris 2013). This evaluation will identify areas where referendums are manipulated and misused by authoritarian regimes. Referendums always include campaigning and a deliberative phase. But with the deliberative turn (Dryzek 2002) in the 1990s, referendums often encompass new deliberative participatory instruments. The new evaluation instrument includes deliberation as an important aspect of the Direct Democracy Integrity Index (see Kersting & Grömping 2021). Following the electoral cycle model, this index defines the integrity of referendums. In the following chapter, three case studies will be analysed: Turkey 2017, Russia 2020, and Italy 2020. This selection of referendums follows the 'most different system' design, analysing those under authoritarian regimes and in an old established democracy. Empirical data from the Direct Democracy Integrity Index will be presented. It will analyse how important the deliberative instruments were in the constitutional process and conclude whether these are relevant for the overall integrity of the referendums.

The research question focuses on the aspect of deliberation in the integrity of referendums. The combination of direct democratic instruments and deliberative

participatory instruments is not fully developed in most countries. Is there a difference between authoritarian regimes, and what is the status quo of constitutional deliberation in the democratic system? The integrity of participation is also related to the following questions. When is deliberation included, what kind of participatory instruments are used, and how are these used? The last query focuses on the integrity of participatory instruments.

Democratic innovations, deliberative democracy, and participatory instruments have different characteristics. One important aspect is the motivation of the initiators. In a couple of cases, deliberative instruments have more of a symbolic character of tokenism (Arnstein 1969; Kersting et al 2008). In contrast, authentic participatory instruments really highlight positive contributions by the inclusion of a broader citizenry. Another important aspect of participatory instruments is continuity. In some cases, participatory instruments are only used once and there is no formal or legal framework for this instrument. In contrast, this sporadic instrument is often used symbolically and illegitimately by authoritarian leaders in order to strengthen their own political position.

The lack of a legal framework can lead to a participatory overflow with an unstructured process of participation (Welp & Soto 2020; Mendez & Wheatley 2013). In this process, organized interest and individual interest must be included. Finally, it is obvious that participation in constitutional assemblies is frequently related to demonstrations, which trigger the initiative. Therefore, it becomes a bottom-up participatory process – but this claimed invented space (Gaventa 2006) is often taken over and structured by governments and by the ruling incumbents.

11.1   Participatory rhombus and constitutional referendums

Political participation includes a broad range of different instruments, starting from interrelated participation towards the participation of organized interest groups such as legal experts, elected politicians, or stakeholders (see Figure 11.1). Here, a continuous participation or sporadic temporary intervention can be differentiated. Former definitions focus on the formality and informality between legal or illegal participation. These are also related to the question of legitimate or illegitimate instruments. Older definitions focus on conventional and unconventional participation (see Barnes et al. 1979). What is also important is whether political participation is more a symbolic instrument used by political incumbents or if it is an authentic and effective way to influence political decision-making (see Arnstein 1969).

In the following, the differentiation shows an invited participatory space and invented participatory space (see Kersting 2013). The invited participatory space includes participatory instruments that are developed in a kind of top-down process and are dominated by the government. Invented participatory space is triggered by civil society and is a bottom-up process. In recent years, with digitalization, new online participatory instruments have become more relevant. What we realized is that representative participation, direct democratic participation, deliberative participation, and demonstrative participation can be online or offline. Constitutional

review processes in this regard can combine different online and offline instruments, as well as different forms of participatory instruments.

The most important aspect in this regard can be seen in the representative participatory sphere. In liberal democracies, elections are the most important participatory instruments, but contact with politicians, etc., are also relevant. In the constitutional review process, we see that the representative participation mostly focuses on parliamentary councils where elected citizens decide on the new constitution. Other constitutional processes focus on constitutional assemblies that include more than the elected members of the Parliament and give other stakeholders a chance to be part of the decision-making process.

The role of popular protest in regime changes and democratic transitions is often controversial (see Chile, Argentina, and South Africa, see Soto & Welp 2017; Altman 2010; Kersting 2009). Nevertheless, in recent years, demonstrative participation has accompanied most transition processes (with and without referendums). In some countries, demonstrative participation has a significant effect and constitutional processes are initiated or triggered by demonstrative participation, especially when it comes to the transition from authoritarian rules to democratic systems (see e.g., 1989 protests in Eastern Europe, the Arab spring). We have seen that different forms of demonstration against the incumbents have led them to implement a referendum. In some cases, referendums are used by the incumbent to save authoritarian rulers and are intended to give them new legitimacy. Constitutional processes are
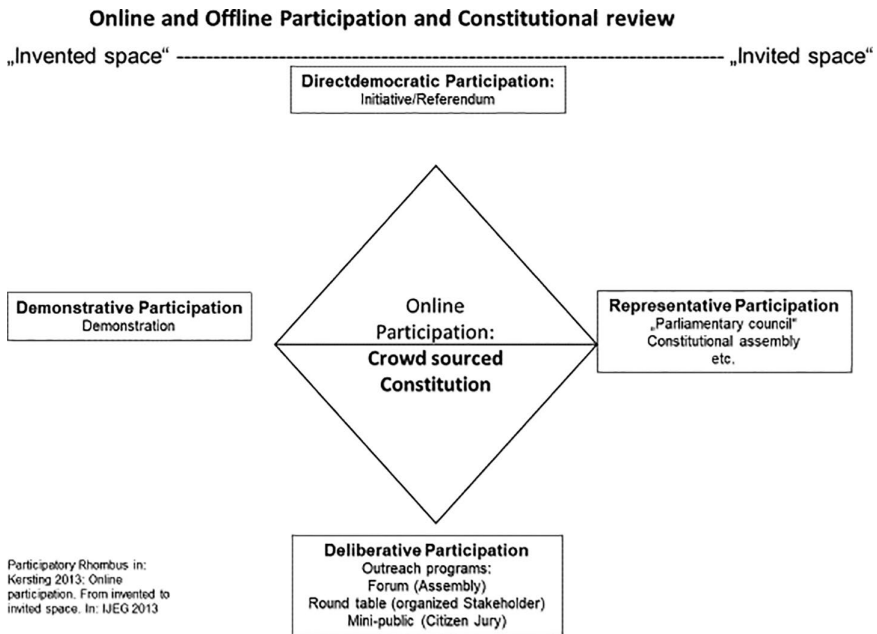
Figure 11.1 Participatory rhombus and constitutional referendums

often triggered by popular protest and demonstrative participation (see e.g., the Orange Revolution in Ukraine, the 'Pots and Pans Revolution' in Iceland, etc.).

In the direct democratic participatory sphere, the development of a constitution is put back in the hands of the citizens (see Bowler & Donovan 2002; Kaufmann et al. 2010; Qvortrup 2018; Ginsburg et al. 2009). They often have the final say when it comes to the approval of a constitution or constitutional revisions (Eisenstadt et al. 2017; Elster 1995). In numerous countries, constitutional amendments are related to direct democratic participation and referendums are obligatory with every constitutional amendment (e.g., Ireland, see Bergmann 2016). A number of state transitions to democratic rule have had a constitutional draft introduced by the head of state, but no referendum (such as Greece, Belarus, Hungary, Latvia, Thailand). Other countries had a constitutional assembly but did not include constitutional referendums (see e.g., Portugal, Bulgaria, Paraguay, Honduras, El Salvador, Guatemala, Nicaragua, etc.). Since the mid-1970s, several countries such as Spain, Russia, Romania, Ecuador, the Philippines, and South Korea have had constitutional referendums (see Qvotrup 2018).

Deliberative participation and constitutional deliberation can be regarded as a relatively new tendency (see the COST Action: Constdelib.com). Nevertheless, a couple of democratic and authoritarian regimes have implemented broad outreach programmes. These are frequently not just government campaigns pushing the idea of a new constitution. In a couple of cases, outreach programmes have been developed to collect new ideas and proposals for the draft constitution. The process is seen as giving additional legitimacy to the constitution. Here three different types of participatory deliberative democracy can be used for this purpose. First, deliberative participation in forums is open to everybody, so ordinary people can suggest ideas in online and offline forms of participation. Second, deliberative participation can be a round table for organized stakeholders only. These include predominantly organized interest groups, so this can be seen as a kind of citizens' assembly without elected politicians. Finally, in recent years, sortition and instruments using random selection have been reinvigorated. Mini-publics (some labelled as citizen assemblies or citizen juries) can be combined with the constitutional review process (see e.g., Ireland, Farrell et al. 2017; see Stone in this volume).

Different forms of direct and deliberative democracies can be arranged and also combined with constitutional deliberation (i.e., a Direct and Deliberative Democracy project). Mostly, a Direct and Deliberative Democracy is seen as any kind of interference by parliamentary representatives (see Direct and Deliberative Democracy [DDD]-Project). The process includes deliberative instruments used to discuss a version of a given constitutional draft or as part of the development of the new draft. The referendum can focus on the pre-draft and act as a kind of initiation to the constitutional review process (see South Africa 1992; Chile 2020). The referendum can be a vote on a final draft or it can be a post- or second referendum focusing on the final constitution (see Kersting 2010).

We have seen that demonstrative participation can be part of or lead to constitutional referendums. Bottom-up processes in the form of demonstrations can be seen as a claimed invented space (see Gaventa 2006; Kersting 2013).

Political participatory instruments can be analysed using the following evaluation criteria: openness, rationality, efficiency, and effectiveness (see Geissel & Newton 2012; Kersting 2007, 2013). Finally, integrity is an additional factor to assess the quality of direct democracy.

11.2   Direct democracy integrity, referendum typology, and referendum circle

Constitutional referendums are one type of direct democratic instrument. In the following, 'referendum' will be used as an umbrella term for all kinds of numeric vote-centric forms of participation that aim to reach a decision on a thematic topic. The definition of referendums encompasses two main types (Kaufman et al. 2010; Setälä & Schiller 2009). Constitutional referendums are often initiated by the Parliament or President in the form of a plebiscite. Referendums can also be initiated in some countries by bottom-up processes. In some countries, there is an obligatory referendum in cases of constitutional amendments. There may also be an abrogative referendum following and challenging a parliamentary decision (for definitions and characteristics of binding consultative direct democracy, see Qvortrup 2018).

Direct democracy integrity is defined analogous to the Electoral Integrity Project. Referendums should follow international standards and obligations throughout the whole process (see Norris 2014; Norris, Frank, & Martínez i Coma 2013; Beigbeder 1994). In this, they are very similar to elections. Nevertheless, referendums include different forms of initiation as well as other forms of deliberation in campaigning. Due to the thematic orientation of referendums, more comprehensive deliberation is necessary (Qvortrup 2018).

In the following, we use the Direct Democracy Integrity Index, a new instrument implemented to analyse referendums. It includes new indicators but also follows the electoral cycle approach used in the Electoral Integrity Project (Norris, Frank, & Martínez i Coma 2013). In a survey of experts, the different aspects of the various phases of the referendum are analysed (see Kersting & Grömping 2021; see Figure 11.2).

In the pre-referendum phase, referendums fall under different legislation. The referendum laws focus on the role of the government in the process. It questions whether government parties and the status quo side are favoured, and if minority rights as well as human rights are protected. The referendum initiation focuses on the legal provisions. Here the executive is often in a privileged position and can dominate the agenda-setting process. Draft constitutions can be predominantly developed in governmental ministries or cabinets (e.g., Kenya, Zimbabwe, see Kersting 2011, 2014), but they can also be part of a strong parliamentary process or citizen engagement before the first draft is developed. In some cases, it is obvious that representative parliamentary democracy seems to be undermined by direct democratic instruments in favour of authoritarian leaders.

In the pre-referendum phase, voter registration is also frequently an instrument of malpractice. In some countries, voter registration is organized with automatic
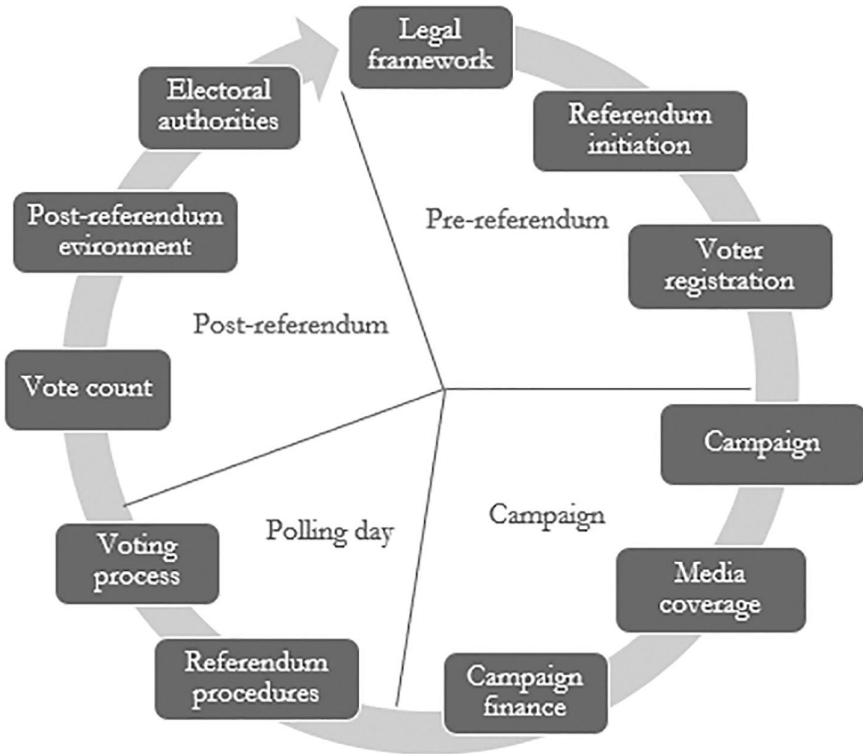
Figure 11.2 Referendum integrity:referendum cycle

registers. In others, vote rigging often starts at this point, which leads to artificial increases or decreases of certain groups in the electoral roll. Here practices such as the inclusion of ineligible voters, ghost voters, or the exclusion of certain existing social groups, breaches direct democracy integrity.

In the second phase, the 'campaign phase', three main integrity aspects are important: First, the campaign itself. Here in general, different interest groups lobby for and against the decision in the referendum. In constitutional referendums, the packages of a draft referendum may include various topics. Some may be less important and others are regarded as toxic. Here, there is the question of whether a draft should be partly dismantled and key components should have a separate vote. Constitutional referendums are often criticized as being a pure yes-or-no vote.

In general, an electoral management body should encourage a neutral wording of the referendum. In constitutional referendums, this question is more complex, since deliberative democracy processes and outreach programmes (crowdsourced constitutions) are becoming an important instrument. New deliberative instruments such as mini-publics are increasingly included in constitutional review processes. These are implemented before the final referendum takes place (see Ireland).

In other countries, online instruments have been implemented to discuss constitutional drafts (see Iceland, Landemore 2015, Kies et al. in this volume).

Electoral integrity is often compromised because of unfairness in relation to the media coverage of the campaign. Opponents often do not have abundant financial resources; meanwhile, the government may control the media and state resources can be improperly used. In some countries, special social groups financially control the media campaign during the referendum.

The third phase is the polling day itself. The referendum procedures, management of the referendum, treatment of the different actors, and the question of lawfulness are regarded as essential for fairness of the referendum. Historically, electoral observation groups focus on polling day. In particular, the voting process and violence at the polling station – which prevents voters from casting their ballot in secret, and which is characterized by coercion and clientelism – is seen as relevant. Otherwise, a fair referendum makes voting easy and convenient for proponents and opponents.

In the post-referendum phase, the vote count also often lacks fairness and needs to have neutral supervision with access to an auditable paper trail. For this purpose and for independent transparency, a professional electoral management body is seen as a prerequisite for the integrity of referendums.

11.3   Case studies: Turkey, Russia, Italy, and integrity

In the following, three constitutional referendums will be analysed. After a description of the referendum, an overview of its integrity will be presented. The Direct Democracy Integrity Index consists of a survey of experts (see Kersting & Grömping 2021). In the experts' survey, 229 Turkish, 436 Italian, and 400 Russian experts were invited to take part. In each country around 50 experts answered the survey. The questionnaire allows a comparative analysis. Firstly, only the overview will be presented. In the following chapter, the focus lies on the use of deliberative instruments.

Turkey

Six constitutional referendums have taken place in Turkey since 1961. Some of them were implemented directly after the coup (1961) or in a transition towards a more democratic system (1987, 1988). In the 2000s, different reforms of the Erdoğan government were legitimized by two referendums. A broader constitutional process took place from 2011 to 2013 with a number of outreach programmes, but due to disagreement did not lead to a new referendum. Nevertheless, the debate on constitutional reform continued, and after the so-called military coup in July 2016, a new constitutional reform started. Despite post-coup regulation, such as the dismissal of thousands of teachers and public sector officials, a new constitutional reform and referendum was initiated. This took place in an atmosphere of intimidation. It had to be implemented because the leading Justice and Development Party (AKP) and the Nationalist Movement Party (MHP) tabled

a new controversial constitution in 2016, but were not able to get a two-thirds majority in Parliament (Ekim & Kirisci 2017; OSCE 2017).

The constitutional draft included a strong presidential system. It was meant to abolish the office of the prime minister and strengthen the executive role of the president. With this system, presidential rights were expanded and the president was given the right to appoint supreme court judges and prosecutors, etc. The referendum also included some benefits for Parliament and the number of parliamentary seats was increased from 550 to 600. Meanwhile, the rights of Parliament were reduced and power was more centralized in the hands of the president (Yilmaz 2020).

According to the Turkish Constitution, constitutional changes require a two-thirds majority in Parliament, otherwise a referendum is necessary. In Turkey, when it comes to national elections, the Turkish diaspora is also allowed to vote. The Turkish diaspora in Germany, Italy, and other European countries is often regarded as strongly conservative. Here, as well as in Turkey itself, the ruling party and President Erdoğan strongly campaigned in favour of the new constitution.

The popular referendum was held in April 2017 and had a voter turnout of 85%. Surprisingly, the yes vote won, with only 51.4%. Meanwhile, 48.6% voted against the constitutional reforms. The country's opinion was split between the rural and urban areas. A strong vote against the constitutional amendment became obvious particularly in the bigger cities, as well as in the more touristic areas of the Mediterranean Sea and the Kurdish-dominated areas in the east of the country. On the other hand, the rural population in central Turkey, as well as the city of Ankara and in particular the north of Turkey, supported the constitutional amendments that would strengthen the position of President Erdoğan. In the diaspora, the Turkish population in Germany had more than 600,000 votes; there was a clear majority of 63% in favour of the constitutional amendments. It was stated that, to a certain extent, the diaspora's support was crucial for the electoral results.

Contrary to the constitutional reforms in the 2010s, the 2017 referendum did not include any outreach programmes. In contrast, an atmosphere of intimidation of the opposition reduced deliberation and discussion of the controversial amendments. Additionally, the government strongly used national media to campaign in favour of the amendments. Furthermore, the members of the ruling party and President Erdoğan also strongly campaigned towards the diaspora.

Russia

In Russia, in the 2010s, there was a long discussion about a new distribution of power and radical change to the 1993 constitution. President Putin was faced with the problem that this legislation required that his presidential term end in 2024. The arrangement, made in 2008, whereby Putin remained as a prime minister and later came back as the president, was no longer regarded as an option.

In December 2019, Putin announced a constitutional referendum process that was intended to modernize the Russian state and lead to higher transparency, accountability, and responsiveness. This announcement was criticized in 2020 in a speech at the National Assembly where Putin solidified his idea of the new

constitution. According to the 1993 Russian constitution, the Russian president can implement a national plebiscite according to Chapter 9 of the constitution. This only required a referendum for changes to Chapters 1, 2, and 9. Although it was not necessary, the Russian president seemed to focus on higher popular legitimacy and implemented this so-called referendum as a national vote or all-Russian vote in Russia and Crimea.

In a working group with 75 experts, a draft constitution was developed. Social and political actors were formally allowed to participate in regional outreach programmes (Smyth & Sokhey 2021; Goode 2021). The outreach programme also related to regional assemblies. Nevertheless, formal checks and balances were partly undermined (see Noble & Petrov 2021).

The new constitution was a package deal; on one hand strengthening the presidential competencies and, on the other hand, giving more power to regional politicians. It also focused on strong social welfare policies (pensions) and on patriotic education in schools. It disallowed same-sex marriage.

The new constitution placed social welfare above political and civil rights (Goode 2021). With the new constitution, Putin gained the power to be reelected until 2035. Candidates for the presidency and judicial roles were ineligible if they have or have ever had foreign citizenship or a foreign residence permit, and additionally a minimum of 25 years continuous residency in Russia was required. Instead of the old presidential cabinet of ministers headed by the prime minister, multiple new governmental councils were implemented, such as the security council, foreign policy council, and a state council.

The national vote had to be postponed because of the Covid-19 pandemic. During the campaigning, opinion polls showed quite narrow results and the campaign duly became relatively hostile and outreach programmes were dominated by the ruling party. Furthermore, the process was influenced by the imprisonment of opposition leaders (e.g., Alexei Navalny) and further repression of the opposition. The restrictions due to the Covid-19 pandemic were also used to hinder broad outreach programmes as well as mobilization in opposition parties, some of whom called for a boycott of the national vote. The constitutional referendum concluded on 1 July 2020. From 109 million eligible voters, 74 million voted, giving a voter turnout of 67.9%. 78.6% (57 million) voted in favour of the new constitution.

Italy

Italy has had 79 referendums since 1946. In 2006 and 2016, Italy saw two different referendums on the reduction of parliamentary seats in the lower and upper house. In both cases, the status quo was maintained and the reform was outvoted by a clear majority. In the referendum on the 20th and 21st September 2020, citizens were asked again if they were willing to reduce the number of parliamentary seats from 630 to 400 in the lower house and from 350 to 200 in the upper house.

This referendum had to be postponed and rescheduled due to the pandemic, but it had a longer history. The referendum was triggered by a government agreement between the Five-Star Movement (M5S) and the Lega in 2018. This idea

was continued by the new government coalition between the M5S, the Democratic Party (PD), and the left Free and Equal Party (LeU). Since in the two different initiatives different governments were supporting the electoral reform, the parliamentary reform also had a lot of supporters. More than two-thirds of the members of the lower chambers supported the text. Nevertheless, in the Senate, 70 members asked for constitutional referendums. During the campaign, the Conte government (M5S and PD) was strongly campaigning for the reduction of the Parliament. In the opposition, both populist parties, Berlusconi's Forza Italia and Renzi's Lega, criticized the new reform. However, there was no clear opposition against the idea because these populist parties allowed their voters freedom to vote. The referendum was not debated strongly on television or in the print media due to the pandemic. Furthermore, there were no outreach programmes implemented.

According to Article 138 of the Italian constitution, the possibility to request a constitutional referendum if approved by both houses exists. For this constitutional revision, an absolute majority is necessary. As soon as a two-thirds majority in both houses is reached, it is not necessary to request a referendum. The request for the referendum can be initiated by one-fifth of the members of each chamber, by five regional councils, or by 500,000 voters. Here, it differs from the Italian abrogative referendums as a popular initiative. In this case, only a two-thirds majority must be reached in the Chamber of Deputies and for one-fifth of senators to ask for a referendum. In order to avoid the possibility of large crowds developing during the Covid-19 pandemic, but to ensure wide participation, two voting days were implemented. The voter turnout was 51.1%. But this time, the yes vote won with a large margin: 70% of the voters voted for the constitutional amendment and less than one-third voted against it.

11.3.1   *Direct Democracy Integrity Index – overview and cross comparison*

The overall assessment of integrity of the constitutional referendums shows that the three different countries demonstrate a strong discrepancy between old established democracies such as Italy and modern authoritarian regimes such as Turkey and Russia (see Figure 11.3). In the authoritarian regimes, it is obvious that referendums are characterized by a low level of integrity and are predominantly used by political leaders to legitimize their own position. Malpractice of referendums is less oriented towards the procedures happening on the voting day and in the post-referendum phase. Problematic issues are frequently in the area of the referendum laws and the initiation of the referendum, but also in the period of campaigning where there is no even playing field and opposition is oppressed. In the Turkish referendum, for the initiation as well as the campaigning, media coverage and campaign finance got very low marks in the expert survey and were highly problematic.

In an atmosphere of intimidation and fear of the imprisonment of opposition leaders, these elements of the referendum cycle showed a very low level of integrity. On the other hand, referendum administration is becoming more professional and is less likely to face different forms of manipulation and electoral malpractice. Thus, voter registration and the procedures of the voting process were still
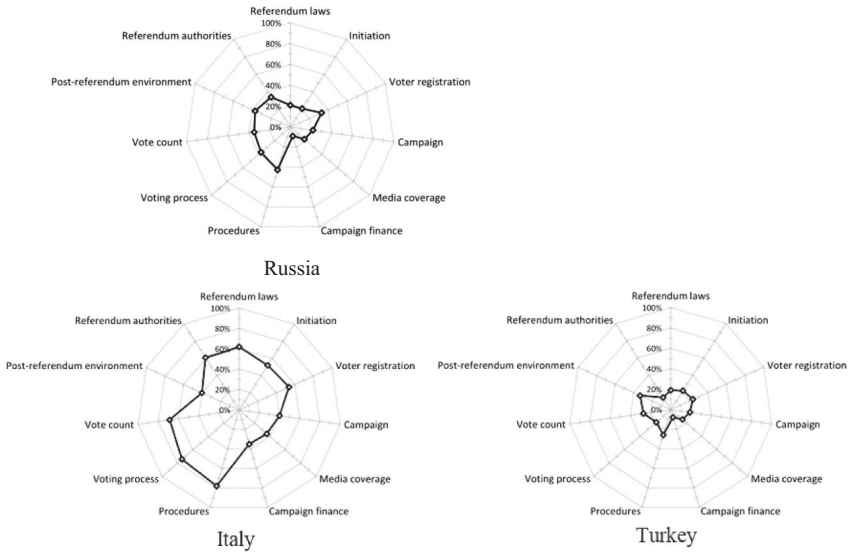
Figure 11.3 Direct democracy integrity and the referendum circle

problematic but less complicated than other phases within the referendum cycle. For this reason, referendum authorities were seen to be partial and unfair because they did not interfere in these areas. The voter administration was done according to the legal framework. It was also observed that the post-referendum environment was still characterized by the state of emergency and by intimidation of the opposition.

The Russian referendum can also be regarded as a direct democratic instrument, strengthening the powers of the president in the modern authoritarian regime. Here, referendum laws and initiation are deemed unfair. This is also the case for the initiation, campaign media coverage, and campaign finance. Voter registration is also criticized but the voting procedures on polling day and the process of the vote count itself did not trigger as much protest as it was seen in the Turkish case. Also, the referendum authorities were given relatively high marks. The clear result also did not lead to problems in the post-referendum environment.

In the established democracy of Italy, with numerous free and fair elections and referendums, electoral administration is regarded very positively. Although legitimacy in Italy is low for most institutions (low legitimacy), support is relatively high for the referendum authorities managing most of the electronic procedures. Therefore, especially when it comes to the voting phase, elections and referendums are regarded as very well managed by a clear majority of the citizens. Low marks are particularly given in the area of the referendum laws and the initiation phase, in the area of campaign media coverage and campaign finance.

11.4   Constitutional deliberation and direct democratic integrity

In the 2000s, constitutional deliberation and outreach programmes became increasingly prominent in several countries (see Welp & Soto 2020). With the deliberative turn, dialogical instruments were not only implemented at the local level but also in the development of policies, in times of democratic transitions, and particularly in the discussion of a draft constitution (see Kersting 2011). The first question here is when and for how long should constitutional deliberation be implemented. Deliberative participatory instruments are important in the pre-referendum phase, whether focusing on the development of a draft constitution or on the discussion and monitoring of an existing draft. The second question focuses on the quality of information during these discussions. Is the information policy sufficient? Constitutional referendums often focus on package deals that include numerous, often very complicated, legal issues. Here, it is the role of the government to translate this complicated issue into its different subcomponents and to give neutral and non-biased information on the pros and cons of the constitutional amendments. The next question focuses on the instrument implemented in constitutional deliberation processes. In recent years, mini-publics based on sortition have become a kind of gold standard for these participatory instruments. The Irish Citizens' Assembly is seen as a best practice model (Reuchamps & Suiter 2016; Farrell et al. 2017). Here the implementation of mini-publics triggered broad deliberation within the Irish citizenship on controversial topics of the constitutional reforms, such as same-sex marriage and abortion; finally, constitutional referendums took place. Constitutional deliberation is included in the Direct Democracy Integrity Index.

Time

When it comes to the discussion of constitutional amendments in an established democracy such as Italy, relatively broad satisfaction with the process becomes obvious. About 59% of the experts think that they were given sufficient time to discuss the issues of the constitutional reform. Only 18% disagree with this statement. The results for Italy show that there is still some disappointment and there could have been a broader and deeper deliberation, which was partly hindered by the lack of opposition as well as the Covid-19 pandemic. Less support in this regard is seen in the Russian case. Here, half of the experts said that the discussion time was long enough, but also more than one-third of the experts criticized the short time period. The time component is heavily criticized in Turkey: a majority of the experts (56%) say that the time period to discuss the issues was insufficient; only a quarter of the experts were satisfied with the duration (Figure 11.4).

Information

The quality and sufficiency of the information provided should give the citizens and voters a chance to understand the issues. Here it is obvious that in Italy, the majority of experts (53%) are satisfied. Less than a quarter of experts (22%) complain about the information policy in the referendum (Figure 11.5).

Citizens were given sufficient time to discuss the issue(s)
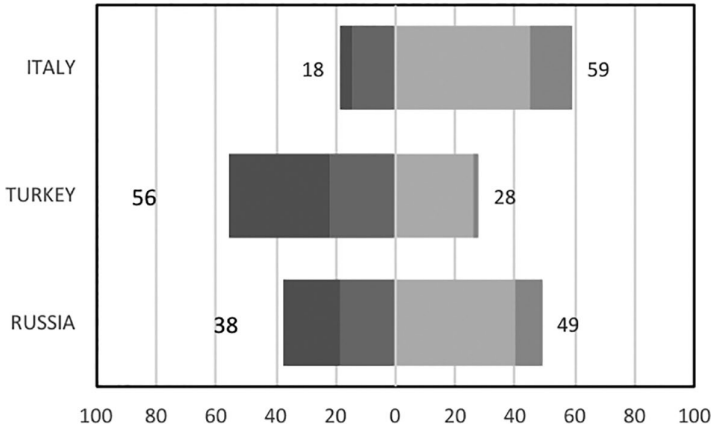
Figure 11.4 Time for Information

Citizens were given sufficient information to understand the issue(s)
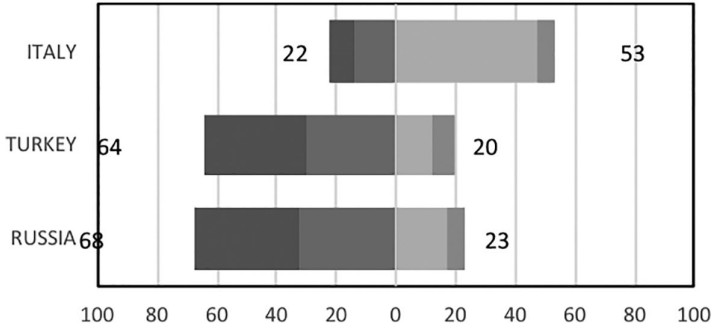
Figure 11.5 Quality of Information

This aspect is criticized much more in the modern authoritarian regimes in Turkey and Russia. In Russia, only one-quarter of the experts state that there was sufficient information while more than two-thirds deny this. In Turkey, only 20% of the experts are content with the information policy and 64% criticize it.

Dialogical outreach programmes, for example, in the form of mini-publics, were not included in a broad constitutional review process in the Italian referendum.

Its subject was an important amendment and parliamentary reform; nevertheless, the Italian referendum did not include broad outreach programmes and discussions among citizens. Italy has a very high number of referendums and constitutional amendments, but the campaigning by political parties and discussion of constitutional topics is not always seen as a process where the citizenry should be included in the development of these reforms. Given this background, it is understandable that the established democracy of Italy falls behind the modern authoritarian regimes such as Turkey and Russia. The Italian experts make clear that a dialogical outreach programme was not part of the Italian referendum in 2020 and the government did not implement broad programmes to discuss the proposals. In Italy, this is normally a debate between political parties campaigning for their different positions. Regarding the topic of the reduction of parliamentary seats, there was no strong controversy between the ruling and opposition parties. The small amount of information from the government on the topic was more a kind of mobilization of information about the polling day and infrastructure. Thus, only 6% of experts claim that there was a dialogue initiated by the government, and a much larger majority of 35% rejected this statement. The large majority of nearly two-thirds of the experts have a biased position in this regard.

In Russia, the outreach programmes were dominated by the ruling party. Only 26% of the experts see this as a successful inclusion of citizens. A majority of 51% reject this as a successful participatory instrument. Here they claim that the campaigning took place during a period of intimidation of the political opposition (Figure 11.6).

With digitalization, new participatory instruments have become important. Digital platforms provide information about political issues and can also include dialogical components to discuss constitutional amendments. Especially in the Covid-19 pandemic, which was present during the Italian and the Russian referendums, digital tools were seen as more important participatory instruments (Figure 11.7).

Figure 11.6 Referendums and deliberative outreach programs

The authorities successfully provided broad online crowd sourcing instruments for referendums
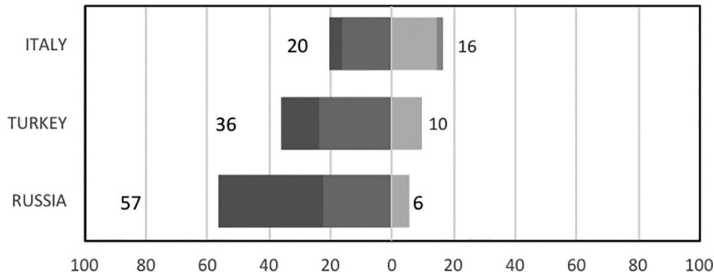
Figure 11.7 Referendums and online deliberation

The majority of the experts complain that an online information policy does not exist in established democracies nor in modern autocracies. Only 16% of the experts in Italy see a broad online crowdsourcing instrument, while 20% do not. Nearly two-thirds of the experts partly neither agree nor disagree. In general, this aspect can be seen as a deficit in the Italian referendum. The absence of this online component is criticized in the Russian case. Only 6% of the experts saw a good online participatory instrument in the 2020 campaign. A clear majority of 57% of the experts criticize the small number of online instruments and do not see this as a success. In Turkey, every tenth expert is satisfied with the online instruments during the referendum, while more than one-third of the experts are strongly dissatisfied.

11.5   Conclusion

Constitutional referendums are becoming more important in some countries. Referendums give constitutions higher input legitimacy. The combination of constitutional deliberation and a referendum follows the principle of 'first talk, then vote' (or deliberate). Referendums have always had deliberation and dialogues during campaigning. With the deliberative turn, new organized participatory instruments have been implemented in constitutional review processes. This is supposed to give a higher rationality. Constitutional referendums are frequently combined with innovative deliberative instruments. Here, the three different types of deliberative participation such as open forums for everybody, stakeholder conferences for organized interest groups only (party representatives, experts), as well as a randomly selected citizens' assembly are important participatory instruments in constitutional review processes.

According to the participatory rhombus model and its evaluation criteria, it can be shown that there are more instruments in the invited space. Because, in these cases, referendums are more than consultative, they are a strongly regulated and formalized instrument. Nevertheless, informal instruments can be included in the process.

In fact, in recent years, demonstrations are often seen to accompany new constitutional reforms – especially during the period of transition towards a more democratic system. In this case, the representative sphere and elected politicians and governments also play an important role. Here, Parliament is incorporated and participates in the development of a constitutional draft. In most cases, the deliberative process involving the citizenry focuses on the debate of this draft. In some cases, a discussion of the draft is included, while in very few cases, a longer and deeper process of participation tries to embrace the ideas of the citizenry. These inclusive processes are dominated by offline participatory instruments; only in recent years has the debate included more online participatory platforms for discussion.

Referendums are not only implemented in democracies but also in autocracies. Here, direct democracy is often used as a symbolic vote in favour of the incumbent authoritarian ruler (see Kampka and Oross in this volume). Authoritarian leaders also need and want this symbolic additional base of legitimacy. In some cases, they must use pork barrel strategies and additional electoral gifts to secure the support of political clientelistic networks and voters. Numerous cases of direct democracy have been used to postpone or extend limits on presidents' terms of office (for cases in Africa, see Kersting 2014). In fact, we can see that deliberative participation and outreach programmes became part of these modern authoritarian regimes. In these cases, it is obvious that these regimes try to control the process of dialogue. This deliberation is often either in a very local parochial new clientelistic network or strongly influenced by an atmosphere of intimidation of the political opposition.

Modern autocracies implement deliberative instruments, e.g., Russia in 2020. Here, the regional outreach discussions were highly under the control of regional leaders of the ruling party. Though legal, the uneven playing field and the misuse of state resources for the referendum finally led to the boycott of the referendum by the opposition. This uneven playing field produced a relatively clear win for the ruling party, who also used the Covid-19 pandemic to hinder their opponents' capacity to organize.

In the post-coup environment in Turkey in 2017, the ruling party threatened to lose the referendum. Only with huge mobilization, including the European diaspora, could the ruling party win the referendum with a very small margin. Here also, intimidation and repression of the opposition is highly obvious.

In liberal democracies such as Italy, the direct democracy integrity is much higher. In Italy, in the referendum as well as in other elections, the rule of law focused on a free and fair vote. Nevertheless, constitutional referendums demand a deeper deliberation of constitutional reforms. Here old democracies still have democratic deficits and a lack of inclusiveness. The process is highly dominated by the executive and by the parliaments. Also – or even especially – older established democracies lack constitutional deliberation. Their focus on representative democracies hinders a broader discussion and outreach programmes. This lack of deliberation was strengthened in the Covid-19 pandemic, which disallowed broad participatory instruments. But it is obvious that even online participatory instruments were underdeveloped in the Covid-19 pandemic. Finally, old democracies are very hesitant to include citizens in dialogue about the constitution.

The verdict exists that referendums can be seen as a bonus point for populist dictators; it is obvious that dictators and authoritarian leaders misuse referendums for their own purposes. Because of manipulation, intimidation, and unfairness, especially when it comes to media use in Russia and Turkey, there is a lack of integrity. This shows that instruments for the measurement of integrity and the evaluation of referendums and direct democracy are needed. The Direct Democracy Integrity Index seems to be necessary to enhance and to safeguard the standards of referendums around the world.

References

Altman, D. (2010). *Direct Democracy Worldwide*. Cambridge University Press.

Arnstein, S. (1969). A Ladder of Citizen Participation. *Journal of the American Planning Association* 35(4), 216–224. https://doi.org/10.1080/01944366908977225

Barnes, S. Kaase, M. et al. (1979). *Political Action: Mass Participation in Five Western Democracie*s. Sage publications.

Beigbeder, Y. (1994). *International Monitoring of Plebiscites, Referenda and National Elections*. Martinus Nijhoff Publisher.

Bergmann, E. (2016). Participatory Constitutional Deliberation in the Wake of Crisis: The Case of Iceland. In Reuchamps, M., & Suiter, J. (Ed.), *Constitutional Deliberative Democracy in Europe* (pp. 15–32). ECPR Press.

Bowler, S., & Donovan, T. (2002). Democracy, Institutions and Attitudes about Citizen Influence on Government. *British Journal of Political Science*, 32, 371–390.

C2D-Centre for Research on Direct Democracy 2022: A Database with Information on Direct Democracy Institutions such as the Referendum and the Initiative as Well as their Use in Popular Votes. Aargau: C2D. https:// https://c2d.ch/

Dryzek, J. S. (2002). *Deliberative Democracy and Beyond: Liberals, Critics, Contestations*. Oxford: OUP.

Eisenstadt, T., LeVan, C., & Maboudi, T. (2017). *Constituents before Assembly*. Cambridge University Press. https://doi.org/10.1111/lasr.12376

Ekim, S., & Kirisci, K. (2017). *Turkish Constitutional Referendum Explained*. Brookings Institute.

Elster, J. (1995). Forces and Mechanisms in the Constitution-making Process. *Duke Law Review,* 45(2), 364–96.

Farrell, D., Harris, C., & Suiter, J. (2017). Bringing People into the Heart of Constitutional Design. In Contiades, X., & Fotiadou, A. (Eds.), *Participatory Constitutional Change: The People as Amenders of the Constitution*. Routledge. https://doi.org/10.4324/9781315599489

Gaventa, J. (2006). Finding the Spaces for Change: A Power Analysis. *IDS Bulletin,* 37(6). https://doi.org/10.1111/j.1759-5436.2006.tb00320.x

Geissel, B., & Newton, K. (Eds.) (2012). *Evaluating Democratic Innovations. Curing the Democratic Malaise?* Routledge. https://doi.org/10.4324/9780203155196

Ginsburg, T., Elkins, Z., & Blount, J. (2009). Does the Process of Constitution Making Matter? *Annual Reviews of Law and Social Science,* 5, 201–223. https://doi.org/10.1146/annurev.lawsocsci.4.110707.172247

Goode, J. P. (2021). Patriotic Legitimation and Everyday Patriotism in Russia's Constitutional Reform. *Russian Politics*, 6(1), 112–129. https://doi.org/10.30965/24518921-00601007

International IDEA (2008). *Direct Democracy: An Overview of the International IDEA Handbook*. IDEA. https://www.idea.int/publications/catalogue/direct-democracy-international-idea-handbook?lang=ne

Kaufmann, B., Büchi, R., & Braun, N. (2010). *Guidebook to Direct Democracy in Switzerland and Beyond*. Initiative & Referendum Institute Europe.

Kersting, N. (2007). Assessing Participatory Democracy. Trends and criteria for an evaluation. In Reynaert, H., Delwit, P., Steyvers, K., & Pilet, J.-B. (Eds.), *Towards DIY-Politics? Participatory and Direct Democracy at the Local Level in Europe* (pp. 31–50). Brugge: Van den Broele.

Kersting, N. (2009). Direct Democracy in Southern and Eastern Africa. *Journal of African Elections,* 8(2), 1–22.

Kersting, N. (2010). *Direct Democracy in Constitutional Processes: The South African Plebiscite of 1992*. https://doi.org/10.1080/02589346.2010.522330

Kersting, N. (2011). Constitutional Review and Referendums in Kenya. *Africa Insight,* 40(4), 68–80. https://doi.org/10.4314/ai.v40i4.65930

Kersting, N. (2013). Online Participation: From 'invited' to 'invented' Spaces. *International Journal of Electronic Governance,* 6(4), 270–280. https://dx.doi.org/10.1504/IJEG.2013.060650

Kersting, N. (2014). Referendums in Africa. In Qvotrup, M. (Ed.), *Referendums Around the World* (pp. 186–206). Palgrave. https://doi.org/10.1057/9781137314703_7

Kersting, N., & Grömping, M. (2021). Direct Democracy Integrity and the 2017 Constitutional Referendum in Turkey: A New Research Instrument. *European Political Science,* 20(1), 216–236. https://doi.org/10.1057/s41304-020-00309-3

Kersting, N., Schmitter, P., & Trechsel, A. (2008). Die Zukunft der Demokratie. In Kersting, N. (Ed.), *Politische Beteiligung* (pp. 40–64)*.* Springer VS.

Landemore, H. (2015). Inclusive Constitution-Making: The Icelandic Experiment. *The Journal of Political Philosophy,* 23(2)*,* 66–191.

Mendez, F., & Wheatley, J. (Eds.) (2013). *Patterns of Constitutional Design. The Role of Citizens and Elites in Constitution-Making*. Ashgate. https://doi.org/10.4324/9781315599762

Negretto, G. (2018). Democratic Constitution-Making Bodies: The Perils of a Partisan Convention. *International Journal of Constitutional Law*, 16(1), 254–279. http://dx.doi.org/10.1093/icon/moy003

Noble, B., & Petrov, N. (2021). From Constitution to Law: Implementing the 2020 Russian Constitutional Changes. *Russian Politics*, 6(1), 130–152. https://doi.org/10.30965/24518921-00601008

Norris, P. (2013). The New Research Agenda Studying Electoral Integrity. *Electoral Studies*, 32(4), 563–575. https://doi.org/10.1016/j.electstud.2013.07.015

Norris, P. (2014). *Why Electoral Integrity Matters*. Cambridge University Press. https://doi.org/10.1017/CBO9781107280861

Norris, P., Frank, R. W., & Martínez i Coma, F. (2013). Assessing the Quality of Elections. *Journal of Democracy*, 24(4), 124–135. https://doi.org/10.1353/jod.2013.0063

OSCE (2017). *Republic of Turkey. Constitutional Referendum 16 April 2017. OSCE/ODIHR Limited Referendum Observation Mission Final Report*. OSCE - ODIHR.

Partlett, W. (2012). The Dangers of Popular Constitution-Making. *Brooklyn Journal of International Law,* 38(1), 194–238.

Qvortrup, Matt (Ed.) (2018). *Referendums around the World: The Continued Growth of Direct Democracy*. Palgrave. https://doi.org/10.1057/9781137314703

Reuchamps, M., & Suiter, J. (Eds.) (2016). *Constitutional Deliberative Democracy in Europe. ECPR Press.*

Saati, A. (2015). The Participation Myth: Outcomes of Participatory Constitution Building Processes on Democracy (PhD dissertation, Statsvetenskapliga institutionen, Umeå universitet). http://urn.kb.se/resolve?urn=urn:nbn:se:umu:diva-102719

Setälä, M., & Schiller, T. (2009). *Referendums and Representative Democracy: Responsiveness, Accountability and Deliberation*. Routledge.

Smyth, R., & Sokhey, S. W. (2021). Constitutional Reform and the Value of Social Citizenship. *Russian Politics*, 6(1), 91–111. https://doi.org/10.30965/24518921-00601006

Soto, F., & Welp, Y. (2017). *Los 'diálogos ciudadanos'. Chile ante el giro deliberativo*. LOM. https://www.academia.edu/34663239/Los_di%C3%A1logos_ciudadanos_Chile_ante_el_giro_deliberativo

Welp, Y., & Soto, F. (2020). *Beyond Fashion and Smokescreens: Citizens' Deliberation of Constitutional Amendments. Cost Constdelib Working Paper*. https://constdelib.com/wp-content/uploads/2020/06/WP7-2020-CA17135.pdf.

Yılmaz, Z. (2020). Erdoğan's Presidential Regime and Strategic Legalism. *Southeast European and Black Sea Studies*, 20(2), 265–287.

Conclusion

Hopes and limits of deliberative and democratic constitution-making

Yanina Welp

In the past, constitutions were commonly written behind closed doors by a selected group of powerful men (all-male panels). In scenarios of democratization, constituents were directly or indirectly elected (e.g., Spain 1978, the United States in 1787). In autocratic systems, they were nominated by the president and worked under his strict supervision (e.g., Chile under Pinochet in 1980). Inclusiveness and citizen participation were not principles to fulfil. Thus, in terms of the sociodemographic features of participants, most processes were rather homogeneous (dominated by men, mainly lawyers, middle-upper class, white). Also, it was not a goal nor an ideal to open the process to any form of direct participation by ordinary citizens, besides some referendums of ratification (Méndez and Wheatley 2013). Thus, from our contemporary normative ideals, we can wonder if all these processes were illegitimate and/or produced illegitimate constitutions? One can be tempted to answer that they were, but it would be unfair to treat all cases equally as it would disregard that many of these experiences had popular support and ended with a legitimate and durable constitution. In any case, as mentioned in the introduction, building on Elster's description of constitution-making ways, we could consider that the eighth wave we are facing nowadays distinguishes from the previous ones by the role given to ordinary citizens (despite, as this edited volume shows, there are many forms for this participation). Thus, it would be unthinkable to conduct a constitutional replacement in a democracy *now* without any form of direct citizen engagement and without some descriptive representation (including women, ethnic groups, etc.), but it would be equally remiss to assume that a participatory and descriptively inclusive process would guarantee a legitimate and durable constitution.

A constitution is expected to represent, embody, and organize the political, economic, and social life of a given community. A constitution founds the political community – when approved by the original constituent power – but at the same time, it needs to be revised and adapted to historical changes and new demands – through derived constituent power. This expresses the constitution's concrete relevance as well as its symbolic value and at the same time the field of disputes that quite commonly surrounds it (Heiss 2022, Negretto 2020). The requirements that the preparation of a constitution must meet in order to respond to its purpose of providing an accepted common ground have been debated at length (Elster 1995).

The role of citizens in its elaboration is nowadays one of the most prominent, and the main topic crossing the chapters included in this volume. Far from being clear, the topic presents many lacunae.

In theory, a constitution represents 'the will of the people'. However, empirical research shows the complexity of evaluating the fulfilment of that in at least two ways. First, there is *nothing* that can translate, reflect, or express that will *without conflict*: 'the people' are a group of individuals and groups with diverse interests, and many of these interests are complementary while many others are in competition. Second, the ways of articulating the expressions of that diversity are also multiple, and their legitimacy is configured in a certain historical moment and in a specific context (see García-Guitián, Chapter 1; Blokker and Gül, Chapter 2; Zlotnik Raz and Almog, Chapter 6; Kies et al., Chapter 7; Ólafsson, Chapter 10).

An abundant body of literature has argued that participatory constitutions have greater legitimacy and are more likely to survive over time (Hart 2003, Einsenstadt et al. 2017, Contiades and Fotiadou 2016). Another incipient body of studies contradicts this assertion, showing that many constitutions that were not elaborated in participatory contexts have managed to be legitimized and survive over time (Partlett 2012), while some of those elaborated participatively have not achieved that goal (Welp and Soto 2020, Negretto 2020, Saati 2017). The experiences of Iceland and Chile, both emblematic and failing in enforcing a new constitution, are probably the cases that most vividly illustrate the complexity of the debate (more on that below, see 'Participation per se does not resolve the legitimacy deficit'). To provide a more nuanced approach, our edited volume focused on covering the dimensions of the debate on a broader sense and articulating two key dimensions: constitution-making and deliberation, considering how actors (elites, parties, social movements, and civil society, among others) and institutions (political systems, electoral rules, etc.) struggle over ideas and power. Our approach based on Easton's systemic approach of legitimacy distinguishes between three types of legitimacy: input (the nature of representation and participation that deliberative democracy allows for), throughput (the shape and form that deliberation takes), and output (public endorsement, political uptake, and policy implementation). (See Introduction.) Accordingly, the reflections presented in what follows focus on the key dimensions emerging from the chapters included in this volume; it does not operate as a definitive conclusion but as a map of debates, because the included works offer different approaches, sometimes even in conflict, to participatory and deliberative constitution-making. I will centre the conversation on the role and understanding of deliberation, inclusiveness, drivers of institutional change, participation, public opinion formation, institutional designs, ICTs, the connections between participation and democracy, and the assessment of success.

C.1   Deliberation, not a magic bullet but a polysemic concept

In the origins of modern democracies, the legislative body – the Parliament – was designed to represent interests, deliberate and assess different options, and, only

after this, to make the best decisions. The evolution of political parties has eroded this capacity as well as the perception of this capacity, feeding a call to expand citizen participation. Having said that, the meanings of deliberation have been debated for a long time. For elitist theories, Parliaments were exclusively in charge of deliberating, having direct legitimacy provided by the popular election of representatives. Elena García-Guitián (Chapter 1) points out that critical views do not reduce deliberation to Parliament in the same way that there is not a preconceived 'public will' but a process of public opinion formation. In her words:

> The common assumption is that citizens (depicted as a nation, state, people, or citizenry) have not a predefined will that has to be expressed by the representatives, but what can be conceived as the common good should be articulated through public deliberation in institutional (judiciary, executive) and non-institutional (public sphere) settings.

There are also radical theories of democracy that go much further, assuming that deliberation is about self-determination (García-Guitián offers a brief and complete overview of that conception).

The move towards a more radical democracy that self-determination theories support can be traced back to the transition to democracy in Southern Europe and Latin America in the 70s and 80s, and the fall of the Berlin Wall with the consequent expansion of new democracies and new claims to reinvigorate democracy in the 90s. The mechanisms launched to do so have been as diverse as participatory budgeting, local councils, referendums and initiatives, and assemblies chosen by sortition (see Blokker and Gül, Chapter 2; for referendums see Kersting, Chapter 11), as well as the use of ICTs to promote citizen participation (see Kies et al., Chapter 7). In this, there is not only a discussion about who can participate and with what consequences, but also on the type of participation promoted. More recent trends, launched to counteract the legitimacy deficit produced by the 2008 economic crisis in Europe, go beyond the division between those pushing for direct incidence (for whom referendums and initiatives were the prominent mechanism) and others pushing for better quality of decisions (for whom sorted assemblies and other deliberative processes are the best forms), towards a deliberative turn that could combine both (see Blokker and Gül, Chapter 2; Bergmann, Chapter 8).

Far behind the rhetoric of radical democracy and the modest available empirical evidence (i.e., on the reduced capacity of most mechanisms of participation), it is important to understand that while for many deliberation and participation seem to be the solution, it is not so clear what exactly they mean by these terms and how they should be implemented. 'There are many different normative goals: increasing direct citizen participation as a way of self-determination; political education; facilitating self-expression; achieving legitimacy for public decisions; or contributing to the public debate in fairer terms' (see García-Guitián, Chapter 1). There is more agreement on the requirement for inclusiveness.

C.2   Inclusiveness, a necessary but insufficient condition for democracy

The question of who should participate in a constitution-making process directly tackles one of the main deficits of current democracies: the perceived lack of inclusion. Ethnic groups, minorities, women, and children are the main groups identified as under-represented, with different (but also intersectional) characteristics affecting the solutions that can be put on the table. As Mokre and Heiss point out (see Chapter 4),

> it is a question of political contestation and negotiation who counts as a minority and whose rights, therefore, have to be recognized. Also, the importance of "politics of presence" is politically contested as it can be argued that presence (or representation) of a social group is not necessary to represent its rights and interests.

As an example, Zlotnik Raz and Almog (Chapter 6) argue in favour of including children in constitution-making, legislative, and national policy-related deliberative processes. There is an ongoing discussion on the matter, particularly related to the UN Convention on the Rights of the Child (CRC) and the work of the UN Committee on the Rights of the Child (CRC Committee) but also to the growing incidence of youth environmental protests. Children and youth are not a group in the same way that an ethnic minority or women are, given that the condition of children is a transitional one. Nevertheless, there are good arguments to include children and an ongoing discussion on the different alternatives to do so (see Zlotnik Raz and Almog, Chapter 6; also Nishiyama 2017, 2023).

Ethnic groups present a specific challenge for achieving inclusive democracies. In their study of constitutional deliberation in Bosnia-Herzegovina (BiH) and Romania, Gherghina, Hasic, and Miscoiu (Chapter 5) stress that, 'Democratic decisions are understood as legitimate if and only if those subjected to them have the right, opportunity, and capacity to participate in political decision-making'. They analyse the initiatives promoted in BiH, where international organizations had a prominent role, and those launched in Romania, coordinated by political parties with a particular focus on ethnic groups. The two cases show to different extents that the right may exist on paper, but the opportunity and capacity to participate are rather weak. At the same time, they assess to what extent – or if – legitimacy is understood to be derived from direct participation, then many constitutional processes would qualify as democratic.

With very few exceptions, the distance between the discourse in favour of including participation and the current practices looks quite broad in liberal democracies as well as democracies facing populist threats. Kampka and Oross (Chapter 9) analyse the deliberative component of selecting formal and informal, local and national, experiences of political participation in Hungary and Poland (2010–2020) where deliberation was associated with the political transformation of these post-communist countries.

> However, this ideal has not yet been fully achieved. Populism invokes the people's voice without actually allowing citizens to have a say. A tendency

to arbitrary decisions and centralization are still present in the attitudes of the political elite. The appeal to national pride and emphasis on the state's power is not always accompanied by an appreciation of citizen empowerment, even if such slogans appear in political rhetoric.

Both studies of Eastern European countries raise concerns on the goals of participatory processes on different levels, by populist leaders and or by an instrumental and quite weak form of legitimation.

Taking up the case for female participation, Heiss and Mokre (Chapter 4) follow the definition of gender democracy, a system that envisages a democratic process in which the voices, interests, perspectives, and representatives of women are fully integrated and accountable as equals in a deliberative decision-making process. This is aligned with proceduralist conceptions of democracy. Looking at different processes of female participation in law and constitution-making, they observe how varied forms of participation interact and how some could play against others. As an example, they show how the lobbyism of single-issue organizations can hinder an intersectional approach to discrimination by leading to a hierarchy of discriminations. The contradiction then is noted because, 'While democracy has always been defined as a universal principle of general inclusion, it has also always been exclusionary of people as well as of claims'. Thus, again, this is not only about who participates and how, but also about who decides who is entitled to participate, which is the focus of our next remarks.

C.3   Institutional changes are driven and never take place on a blank slate

Institutional change is shaped by political struggles over ideas and power. This happens generally, and particularly in institutions that organize the power distribution. Contemporary new and old democracies – and even non-democratic regimes – challenged by growing citizen dissatisfaction are experiencing a shift towards the inclusion of institutions of participation (Welp 2022). However, to include deliberation and participation does not necessarily imply effectively opening decision-making processes to new actors, as many chapters in this volume show. Institutional changes never take place on a blank slate and never produce results in a linear fashion. The search for the common good is guided by the perspective from which this common good is viewed and is not exempt from being mobilized by particular interests, and in the same vein can be blocked by these (see Ólafsson, Chapter 10). The struggle for normative views engages with the struggle for power, and both strongly condition the results that can be achieved. In this vein, institutional rules are fundamental and insufficient. The power struggle takes place in a given context that shapes the alternatives to resolve conflicts.

The mechanisms that enact participation and representation are diverse and, far from being opposed, feed off each other. Participation refers to a multiplicity of formats that in no case eliminate mediations (see Blokker and Gül, Chapter 2). Electoral rules with their validation thresholds and requirements for decision-making, the features of leaderships, and even the order of speaking, to mention a few

aspects, have an influence on a deliberation process and its results. This discussion is particularly relevant when analysing referendums (see Kersting, Chapter 11) but has been less prominent for other institutions. Processes with apparently more incidences of decision-making, such as those analysed by Heiss and Mokre (Chapter 4), show that

> political struggles need to penetrate and change institutional structures in order to succeed. For this, they make use of democratic procedures – and, arguably, forms of deliberative democracy are more apt to include different political claims than other democratic procedures due to their relative openness to different actors and their commitment to a substantive understanding of democracy.

One of the most prominent discussions on institutional change and deliberation comes from the opportunities and challenges posited by sorted citizen assemblies. This type of assembly seems to represent the ideals of deliberation (while potentially offering the best conditions for informed reasoning) and inclusiveness (allowing the production of descriptive representation through sortition). However, they also attract criticism (see Vrydagh et al. 2023). Stone (Chapter 3) focuses on the specific challenge faced by so-called 'lottocracy' (the idea of promoting sorted assemblies as a replacement for elected legislative bodies) by stressing that deliberative systems theorists have treated the democratic function as a single-dimensional operation embodied by the value of inclusion, but leaving aside a fundamental function that refers to popular sovereignty. Interestingly, not only for this specific conversation but for the whole debate about participatory systems, there is not much discussion on the mechanisms employed to engage people in the decision-making or how to further advance people's participation.

C.4   Participation per se does not resolve the legitimacy deficit

The legitimacy deficit cannot be resolved just by 'injecting participation', because participation and representation go hand in hand. If one is absent or very deficient, the final result will be bad. It is worth recalling that in contemporary democracies the most widespread method of participation is electoral, and decreasing turnout could be also problematic for new forms of participation (an equivalent problem coming from the difficulties of getting participants in sorted assemblies has been observed in recent processes, see Vrydagh et al. 2023). Strengthening democracy requires a good design of institutional channels so that citizens can make their voices heard – for example, with popular initiatives that can be activated by collecting signatures – and a good quality of representation – parties and social leaderships that have support. Many conditions are required for a participatory process to be fair and meaningful.

The complex relation between participation and representation is illustrated in this volume by the case of Romania (see Gherghina et al., Chapter 5). In 2013, the Romanian Parliament voted to set up the Constitutional Forum as an autonomous

and consultative structure whose aim was to organize debates and consultations with society members regarding the revision of the constitution. Complementary to this, they also set up a Parliamentary Committee whose task was to discuss the proposals coming from the Forum. The Forum coordination team asked for a minimum of six months to deliver a report, and the Parliamentary Committee decided to grant them only two and half months. According to the authors, 'the main consequence of this precipitation was insufficient time to prepare some of the public debates and to draft a coherent and consistent final report'. Thus, the specific conditions under which the participatory and deliberative processes are conducted matter. But not only that, the authors also find that in Romania, ethnic groups chose to not participate or participated to a minor extent because they prefer to be represented by their leaders.

Iceland and Chile's attempts at constitutional replacement illustrate the ideas developed here. Both processes derived from popular mobilization that, each with its distinctions, has in common the rejection of the traditional parties. The participatory elaboration of a new constitution was an axis of the claims that, in both cases, arose from highly innovative processes; in Iceland with the election of a citizen assembly, in Chile with the election of a Convention made up of representatives of parties and citizens, with a majority of independents and new parties. Both processes were successful in producing a draft but failed to get it approved. In Iceland, the Parliament rejected it (see Chapters 8 and 10, by Bergmann and Ólafsson respectively). In Chile, the constitution was rejected in a referendum on 4 September 2022 (61.9% against and 38.1% in favour, with a participation rate of 85% in a first compulsory vote). If the Icelandic experience shows the relevance of articulating participatory processes with representative institutions, the Chilean experience shows that the construction of legitimacy does not automatically derive from the participatory elaboration of laws. Deliberation occupies a prominent place in this debate, because it is expected to produce the best decisions and those having greatest support. However, again, the question arises of the conditions that a deliberative process must meet to be considered democratic and legitimate as well as succeed in reaching the expected outcome in constitutional terms. This connects with our next topic, how to understand and capture 'the will of the people'.

C.5 The will of the people is shaped, not reflected, and is not epistemically superior

The expected superiority of the people has been fed both by a philosophical tradition that has its roots in Rousseau (the assembly of free and equal participants as the ideal democratic model) and reaches Hanna Pitkin (representation as the available option for putting democracy into action because of the impossibility of implementing direct participation; in other words, representation as 'the second best'). In recent times, the so-called crisis of democracy has given space to new voices that have identified the origin of all problems in representative institutions. The *leitmotiv* lies in rejecting political parties, perceived as machines that in the search to achieve and keep power prioritize their electoral strategies over the search for the common good. In doing

so, they cannot find the best solutions to the problems arising in their environments. It is clear that political parties have a notable responsibility for such a perception; however, accepting it does not imply validating alternative fallacies such as considering the people to have an epistemic superiority or supposing that just by injecting participation, the legitimacy deficit will be resolved.

The fact that the parties are not working well does not lead to identifying the people's epistemic superiority, although neither does this claim lead to rejection of the need for popular sovereignty. Nothing allows us to attribute to non-partisan leaders or those from social movements the idea of 'being the people', acting as spokespersons for the general will and accordingly transcending pettiness for the benefit of the whole. This is because 'the people' is not an entelechy but a diverse collection of individuals living in a community, grouped according to agendas in dispute; and those who act as their representatives cannot get rid of their conditioning factors (ethnic, gender, class, etc.). Far from being a problem, this is good given that in greater descriptive representation lays the foundation for greater inclusion (on that, see Chapter 5). Stone (Chapter 3) goes further in this discussion to show that epistemic democrats have no problems designing deliberative systems with a critical focus on their epistemic potential, but other democratic theorists fear that the focus on epistemic considerations necessitates the sidelining of democracy. As already mentioned, and part of a broader debate, there are challenges coming from the side of authorization and accountability.

Public opinion is shaped and context matters. Ólafsson (Chapter 10) deals with the issue by analysing the case of decolonialism and constitution-making in Iceland, Greenland, and the Faroe Islands. His main argument is that the decolonial agenda undermines deliberation: 'Once national identity is at stake and the values and priorities that characterize the nation or culture come to the foreground, deliberation on a future political community tends to be seen as a less important issue'. One of the arguments in favour of changing the Icelandic constitution is, however, that the constitution inherited from the past colonial period with minor changes needs to be understandable to ordinary people and not a complicated legal text needing expert interpretation to be properly read and appreciated. But again, this does not necessarily create space for a deliberative process engaging the public. Something similar happens in Greenland where, according to Ólafsson,

> the political parties that campaign for independence may not be under pressure to submit to a real deliberative process because their supporters emphasize the independence drive and the general goal of separation, not only political but also cultural, from Denmark – rather than looking critically at the individual issues actually covered by the constitution.

It is in this sense that the author argues that the decolonial argument creates a pseudo-consensus emerging from an apparently incontestable claim. Interestingly enough, a similar path emerges under populist leaderships, wherein it seems to be clear what the will of the people means and who purports to be entitled to incarnate it in an uncontested way (Welp 2022).

C.6   The central relevance of institutional designs

Institutional designs have an impact on how a process of participation is conducted and the outcomes achieved. If, for example, citizen initiatives are under consideration, it is relevant to define the number of signatures required, if there are certain topics excluded from the discussion, or a set time given to collect signatures. There are multiple examples and systematic studies showing the extent to which design affects performance. In a study of 29 citizen deliberation cases in constitution-making processes, we found that the characteristics of the mechanism of participation (the extent to which complete information was provided, there was enough time for a reasoned debate, and the degree of openness and plurality of the process) and the method of content processing (if it existed, had been previously communicated, derived from reports that allow traceability, and establishes a link with the constituent process itself) were highly relevant for the deliberation to be deemed fair and democratic (Welp and Soto 2020). The combination of results attributed to the two dimensions identified allowed the classification of five types: (i) 'symbolic' deliberative processes (neither the participatory mechanism nor the systematization procedure meets the minimum requirements); (ii) 'prejudiced' (the mechanism manages to attract a significant number of actors, is planned and has time to be developed, but the processing is deficient, being controlled by the government, with different levels of lack of transparency; exemplified by the case of Cuba in 1976 – no transparency at all – and 2018 – when documents are available); (iii) 'participatory overflow' (when deliberation is relatively plural and inclusive but there is little planning and even fewer methods of processing the generated content); and, finally, (iv) 'constituent openness' and (v) 'constituent participation', both of which have plural and inclusive participation and clear outcomes, but only the latter has this in direct connection with the formal constitution-making body (see Welp and Soto 2020).

Bergmann (Chapter 8) shows that institutional designs also play a role explaining the different outcomes of the Icelandic and Irish processes of constitution-making. He points out three main differences: in Iceland, the constitutional body was directly elected, in Ireland, randomly selected; the ambition of the Icelandic experience was big, a general change, in Ireland, it focused on concrete points; the Iceland deliberative Forum was purely composed by citizens, whereas Ireland mixed citizens and civil servants.

> The Icelandic and Irish cases each have their strengths and weaknesses. The strength of the Icelandic process lies in its grand design of using many different instances of public debate; a randomly selected forum, specialist committee, nationally elected assembly, and a general referendum. Here the very variety of means is helpful for future designs of such processes. Citizen panels can, thus, be either randomly selected or elected. However, some sort of random selection is favourable. The main lesson from Ireland, however, indicates that involving politicians in the process can help to secure output legitimacy (Bergmann, Chapter 8).

C.7   It is about politics: The potential and limits of ICTs

Let us also consider the promises and pitfalls of digital media use for improving democracies. Even if the world remains far from the utopian vision of digitally connected participatory democracies, assessing where we are and the prevailing direction of change is not clear, as technological change proceeds rapidly and with multiple and often unpredictable effects. There was a time of great expectations for the role of ICTs to promote democracy, and a time in which it became quite clear that the effects were more about 'preaching to the converted' (Norris 2003). The rise of social media later had a powerful double effect, changing the prior trend. On one hand, right-wing extremists pushing disinformation and 'fake news' have found fertile ground for fomenting their views. On the other hand, social movements focused on addressing climate change and advancing racial and gender equality have also been able to amplify their voices and engage new activists through social media, as the experiences of Fridays for Future or Black Lives Matter demonstrate. If we move to the study of more institutionalized actions aiming to include participation in law and constitution-making, the panorama is less clear.

Kies et al. (Chapter 7) propose a typology of the online hybridization of consultation processes that helps us to understand the extent to which the online parts of the processes affect inclusiveness and the outputs of the reforms. Their departure point is that digital tools are broadly used to inform and interact with the general public, and could be essential in involving lay citizens in constitutional reform processes. They review five constitutional consultation cases (Iceland, Estonia, Latvia, Luxembourg, and the German region North-Rhine-Westphalia) to explore their inclusiveness (defined as the ICT's contribution to involving the general public in the constitutional reform processes) and effectiveness (understood as the inputs made by online participants affecting the agenda-setting and constitutional amendments). Their findings dismiss the expectations. In the authors' words:

> We saw that bottom-up initiatives are taken over by the government or Parliament. In these cases, the government tries to dominate the agenda setting. Regarding the topics open for discussion, in some cases citizens were free to discuss any constitution-related topic (such as in Luxembourg and Iceland), while for other cases, the scope of discussion was limited to certain topics (Estonia and WBR).

Their analysis shows important deficits in the design and implementation of digital participation that undermine the potential for ICTs to foster a revitalization of democracy. The main reason for this happening is much more related to the factors driving institutional change and struggles for the meaning of deliberation than to the potential or limits of ICTs as tools.

C.9   Participation is not democratic by default

The erosion of democracy and the increasing appeal of hybrid and autocratic leaders to 'the will of the people' calls attention to the connection between participation and democracy. There was an overly optimistic view of what participation

could produce, while the constraints under which participatory institutions were developed were underestimated. This explains why they were not able to minimize the ongoing worldwide democratic erosion. It is worth considering that even if constitutions are pillars of democracy, a constitution could also play a role in promoting or consolidating authoritarianism, and that authoritarian or hybrid regimes could also be interested in launching some forms of citizen participation. Just as an example, it is quite clear that in Hungary, Viktor Orban has undermined the independence of the judiciary and challenged political and human rights – such as elections, the right to asylum, and the right to assembly – while promoting legal changes including mechanisms of citizen participation. Referendums seem to be a common practice in hybrid and authoritarian regimes. A presidential system was introduced in Turkey by Recep Tayyip Erdoğan through a controversial referendum in 2017, ending a debate about liberal constitution-making of the previous decades. Why, if Orban and Erdoğan seem to govern without restrictions, would they be interested in changing the rules? Dictators also need information and want to control present and future options. It is rare for dictators to step down, but when they do accept, it is because they have a feasible alternative. So, constitutions are expected to provide future solutions for the members of the regime as well as some form of domestic and international legitimacy. They need to perform in front of potential domestic opponents (sometimes also within the regime) as well as in front of international pressure.

Referendums are not only implemented in democracies but also in autocracies; for example, modern autocracies implement deliberative instruments, as shown by Russia (Kersting, Chapter 11). Here, direct democracy is often used as a symbolic vote in favour of the incumbent authoritarian ruler (see Kampka and Oross, Chapter 9; Kersting, Chapter 11). Authoritarian leaders also need and want this symbolic additional base of legitimacy. In some cases, they have to use 'pork barrel' strategies and additional electoral gifts to secure the support of political clientelist networks and voters.

> In fact, we can see that deliberative participation and outreach programmes became part of these modern authoritarian regimes. In these cases, it is obvious that modern authoritarian regimes try to control the process of dialogue. This deliberation is often either in a very local parochial new clientelist network or strongly influenced by an atmosphere of intimidation of the political opposition (Kersting, Chapter 11).

C.10 What does success mean?

Let us discuss, finally, the notion of success. The results of the Chilean constitution-making process at the end of 2022 illustrate the many dimensions on the table (for an overview of the background, see the introduction and Mockre and Heiss chapter). Let me focus on two explanations for the overwhelming rejection of the draft constitution in the plebiscite in Chile on 4 September 2022. One maintains that the constitutional proposal was defeated because it was bad, i.e., a long and disjointed list of good wishes, too ambitious, incoherent; in short, unfeasible. The

other explanation affirms that the Convention lacked legitimacy, primarily because the vote as a method of selection inhibits ordinary citizens and catapults partisan actors and the most radical to the fore. Further, there was low participation: it would not be really representative. These ideas come from almost opposite backgrounds – one more attached to the status quo, the other characterized by expectations of radical transformation of democracy. Curiously, they converge in pursuing the displacement of models of direct citizen authorization by supposedly neutral procedures; one claims to be technical, the other epistemically superior. Both start from false assumptions.

For those for whom the constitution itself was bad, the solution is for the experts to take the reins with an elected assembly that would accept their guidance. However, any institutional decision has pros and cons. A majoritarian electoral system values governability. A proportional model values representativeness. Over-representing the vote in rural areas can be seen as something unfair from the centre but, from the peripheries, it is a way of not being ignored given their irrelevant electoral weight. There are no technical solutions but good (not perfect) institutional designs that must be endorsed by the majority. The black hole of the proposal is: who decides which experts sit at the table?

Those who allege that the Convention lacked legitimacy suggest an assembly made up of people selected by lottery following sociodemographic criteria (age, gender, educational levels, territorial, etc.). This would achieve descriptive representation in that it would be a mirror of society. These people would draft the constitution without interference from political-partisan interests, in ideal conditions for informed debate, with time and access to fundamental information provided by the experts coordinated by a moderator. However, this proposal is based on a mistake. That an assembly is descriptively representative does not make it legitimate in the eyes of the citizenry. The Convention was legal and legitimate, but it did not manage to maintain its legitimacy and keep public support. Nothing can guarantee that an assembly chosen by sortition will have legitimacy for the sole fact of being descriptively representative. It might work, or it might not. On the other hand, organizing a participatory process from a laboratory would be undemocratic if there is no citizen demand or authorization to do so.

The constitutional proposal was rejected due to a multiplicity of factors that will continue to be analysed, but we already know that there are not 17 million constitutionalists in Chile, nor in the history of the formation of public opinion has there been a people's will that emerged in abstract, from isolated individuals. With good or bad methods, some campaigns were more effective than others. In addition, it is false to say that the problem was the absence of technical knowledge. The transparency with which the Convention worked saw a multiplicity of people invited to provide information and arguments about electoral systems, decentralization, and mechanisms of direct democracy, among many others. The Chilean academy was involved, as were many scholars from abroad. Last, to think that 'the experts' possess the truth and have no ideology is simply nonsense or manipulation. In a few words, success can be assessed in terms of the participatory process, the legitimacy reached and the results achieved, and evaluations could differ from one to the other.

C.10.1 *Final words*

In general and with few exceptions, the institutions of participation engaged for constitution-making have been mostly limited in their effects on democracy, and in many cases, controlled by political incumbents in ways that reduce the impact or autonomy of participants. In cases of more radical citizen participation, success was limited – at least in approving a constitution (Iceland and Chile). The counter example is Ireland, where a good combination of sorted assemblies with referendums and interaction of representatives offers more room for inspiration. Positive, democracy-enhancing effects are more likely under certain formal conditions, mostly related to their institutional design, and informal conditions, such as political actors' behaviour and acceptance of rules, among others. Digital participation shows a similar path but with an even more reduced impact and more weaknesses in their institutional design and implementation. Revolutionizing democracy by including citizens in decision-making processes has been one of the great hopes since the 1990s. More than 30 years later, the focus in much of the democratic world is on impeding democratic backsliding. There is a need for better participatory institutions, not simply more, because just 'more' can serve to weaken, distract, or diffuse social demands.

References

Contiades, Xenophon and Fotiadou, Alkmene (2016). *Participatory Constitutional Change: The People as Amenders of the Constitution.* Nueva York: Routledge.

Einsenstadt, Todd, LeVan, Carl and Maboudi, Tofigh (2017). *Constituents before Assembly*. Cambridge: Cambridge University Press.

Elster, John (1995). Forces and Mechanisms in the Constitution-Making Process. *Duke Law Review*, 45(2), 364–396.

Hart, Vivien (2003). *Democratic Constitution Making*, USIP, Disponible en la web: https://www.usip.org/publications/2003/07/democratic-constitution-making.

Heiss, Claudia (2022). What Can a Constitution Do? Seeking to Deepen Democracy through Constitution-Making in Latin America. *LASA Forum*, 53(3), 10–15.

Méndez, F. and Wheatley, J. (Eds.) (2013). *Constitution-Making and Popular Participation*, London: Ashgate.

Negretto, G. (2020). New Constitutions in Democratic Regimes. In Negretto, G. (Ed.), *Redrafting Constitutions in Democratic Regimes* (pp. 1–30). Cambridge: Cambridge University Press.

Nishiyama K. (2017). Deliberators, Not Future Citizens: Children in Democracy. *Journal of Public Deliberation*, 13(1), Art. 1. https://doi.org/10.16997/jdd.267

Nishiyama, K. (2023). Deliberation in citizens' assemblies with children. In Reuchmaps, M., Vrydagh, J., and Welp, Y. (Eds.), *De Gruyter Handbook of Citizens' Assemblies*. Berlin, Boston, MA: De Gruyter.

Partlett, William (2012). The Dangers of Popular Constitution-Making. *Brooklyn Journal of International Law* 193, 193–238. Disponible en: https://ssrn.com/abstract=1924958

Saati, A. (2017). Constitution-Building Bodies and the Sequencing of Public Participation: A Comparison of Seven Empirical Cases. *Journal of Politics and Law*, 10(3), 13–25 https://doi.org/10.5539/jpl.v10n3p13

Reuchmaps, M., Vrydagh, J. and Welp, Y. (Eds.) (2023). *De Gruyter Handbook of Citizens'
Assemblies*. Berlin, Boston: De Gruyter.

Welp, Yanina and Soto, Francisco (2020). Beyond Fashion and Smokescreens: Citizens'
Deliberation of Constitutional Amendments. *ConstDelib Working Paper Series*, no. 7.

Welp, Yanina (2022). *The Will of the People. Populism and citizens participation in Latin
America*. Berlin: De Gruyter.

Index

Note: **Bold** page numbers refer to tables; *italic* page numbers refer to figures and page numbers followed by "n" denote endnotes.