

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 & Boukhatia, 2015; Saati, 2015; Welp, 2021). Three cases illustrate well the diversity among existing experiences: Tunisia and its expected transition to democracy; Cuba and the re-legitimation 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 candidates. 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.

1.5 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-Gutián 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 Valtensberg, 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.

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