

## 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<sup>1</sup>), 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

<i>Form of citizen involvement</i>	<i>Democratic models</i>	
Indirect, representation	<b>Elite deliberation</b> Governmental committees Conventions (delegates) Expert committees Parliamentary committees	<b>Competitive democracy</b> Constituent assemblies
Direct participation	<b>Participatory democracy</b> Confirmatory referendums Constitutional initiatives	<b>Deliberative democracy</b> 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.<sup>2</sup> 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.<sup>3</sup> 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 Eiríkur 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 Eiríkur 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 *Asociația Pro Democrația* (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 Constituțional* 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 (Mișcoiu and Pârnu 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<sup>4</sup> (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<sup>5</sup> (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

<i>Cases</i>	<i>Initiators</i>	<i>Participant selection</i>	<i>Deliberation (site/ stage)</i>	<i>Nature of deliberation</i>	<i>Products</i>	<i>Other forms of participation</i>
Iceland	Both civil society and political parties	Sortition	Two ex-ante, one-day deliberative forums 25-member Constitutional Council producing draft constitution	First: free-standing second: part of process/ preparatory Main constituent forum	Broad orientations Draft Constitution	<i>Ex-post</i> referendum on constitutional draft
Ireland	Civil society initiative and political parties	Sortition	Ex-ante deliberative process	Part of process/ preparatory	18 Recommendations	<i>Ex-post</i> 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	Part of process	178 recommendations	Digital platform; national panels
Chile	Civil society, political parties, president	Sortition Election	Plenary 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 systematically (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. Landmore 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’).<sup>6</sup> 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.

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