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PARTICIPATORY CITIZENSHIP, CONSTITUTIONAL REFORM, AND THE CONFERENCE ON THE FUTURE OF EUROPE

Paul Blokker¹

Abstract

The paper discusses a broader tendency towards participatory citizenship as an intrinsic part of a wider development of rethinking democracy. The focus is on participation in constitutional reform - as a core dimension of reimagining democracy - in a variety of manifestations and intensities. It will also briefly discuss various stages of constitutional reform processes in which participation may be considered, using a number of examples of reform processes. The Conference on the Future of Europe (CoFoE) in the EU is discussed, which, while not a constitutional reform process in strict terms, may be understood as a pre-constituent endeavour with broad involvement of citizens, and with a more or less broad reform mandate. As such, the CoFoE may provide a highly promising and complex case-study. In the concluding part, some of the benefits as well as pitfalls of participatory citizenship in constitutional reform will be discussed.

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Keywords

Citizenship - Conference on the Future of Europe - Constitutional reform Participation

1. Introduction

Liberal, representative democracy appears to be in a dire state. It suffers from augmenting citizen distrust in politicians, political parties, and institutions, a structural decline in citizen participation in elections, increasing voter volatility, a weakening of traditional representative political parties, high volatility in terms of the formation of new political movements and parties, and increased polarization and radicalization of the political landscape. According to many observers, democracy needs to be reinvented or at least prominently renovated. One core problem, also indicated by citizens themselves,² appears to be a lack of meaningful and effective input by ordinary citizens in the democratic decision-making process. Also in an attempt to counter populist forces which often have undermining effects on democratic checks and balances, pluralism and human rights, a good part of the solutions endorsed for

² As for instance indicated in the Special Eurobarometer Survey 500 “Future of Europe” (FoE) of March 2021, p. 25.

the current predicament of liberal democracy lie in the area of participatory citizenship.

Very broadly speaking, the participation of citizens takes two forms: the participation in deliberative fora and assemblies (with only a small, and sometimes even tiny, part of the citizenry included) or the direct participation of citizens through referenda (with the potential inclusion of the whole of society). The involvement of citizens in recent years has been occurring around substantive themes with a high level of interest for citizens (such as climate change, see the French *Convention Citoyenne pour le Climat*), but more frequently citizen participation has been related to matters that tend to appeal less (such as electoral rules, as in the cases of citizens' assemblies in British Columbia, the Netherlands, and Ontario). It is striking nevertheless that the most comprehensive forms of participation seem to emerge after moments of deep societal crisis, as in the cases of Iceland and Ireland after the deep financial and economic crisis, or in recently in Chile, after widespread protests and a broad rejection of the existing constitutional rules of the game (still based on the 1980 Pinochet Constitution).

This paper discusses participatory citizenship in the context of fundamental reforms related to constitutional change. Even if constitutional rules are often understood as a highly technical, expert type of issue, in some precise ways lay citizens may bring a specific, non-advocacy, more reflexive and less instrumental approach to constitutional matters (while experts, politicians, and stakeholders tend to be closely wedded to specific positions). Furthermore, broad citizen inclusion in the drafting of changes and of constitutional documents may enhance the democratic legitimacy of the changes themselves and make them part of a larger constitutional culture.³

Despite the optimism of some on the potential of participatory citizenship (in the form of direct voting, deliberation in citizen assemblies, crowdsourcing, or consultation), the participation of citizens is not without important hurdles and insecurities. One broad but complex problem is how to effectively and systematically include participation into the existing democratic institutional context. This includes more specific problems such as how to relate the intense deliberative experiences of

³ Cf. P. Blokker, *New democracies in crisis?: a comparative constitutional study of the Czech Republic, Hungary, Poland, Romania and Slovakia* (Routledge, 2013); K.L. Scheppele, 'The social lives of constitutions', in P. Blokker and C. Thornhill (eds.), *Sociological Constitutionalism* (Cambridge University Press, 2017).

mini-publics (as in citizens' assemblies) to the larger maxi-public.⁴ This involves issues of publicity and communication towards the wider citizenry, but it also raises questions of whether it is possible to allow for some form of deliberation and collective learning possible on the macro-level. And even the deliberative standards of mini-publics are not always fully guaranteed, due to constraints of time, money, and political will. A further issue is the effective involvement of citizens in the design of and choices made in participatory processes and their transparency.⁵ Also, the issue of representation remains a cumbersome matter. The electoral representativeness of parliamentarians is of a very different kind than the descriptive representation of randomly selected citizens. The latter also begs the question of 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. In relation to random selection, there is equally the issue of possible exclusion of minorities.

The paper will discuss the broad tendency towards participatory citizenship as an intrinsic part of a broader development of rethinking democracy. The focus is on participation in constitutional reform - as a core dimension of reimagining democracy - in a variety of manifestations and intensities. I will also briefly discuss various stages of the reform process in which participation may be considered, using a number of examples of reform processes. Subsequently, I will discuss the recently concluded Conference on the Future of Europe (CoFoE) in the EU. The CoFoE is, strictly speaking, not a constitutional reform process, but may be understood as a pre-constituent endeavour with broad involvement of citizens, and with a more or less broad reform mandate.⁶ As such, the CoFoE may provide a highly promising and complex case-study. In the concluding part, I will indicate some of the benefits as well as pitfalls of participatory citizenship in constitutional reform.

⁴ S. Suteu and S. Tierney, 'Squaring the circle? Bringing deliberation and participation together in processes of constitution-making, in Ron Levy, Hoi Kong, Graeme Orr, Jeff King, a cura di, *The Cambridge Handbook of Deliberative Constitutionalism* (Cambridge University Press, 2018), pp. 282-294.

⁵ Cf. H. Landemore, 'Inclusive constitution-making: The Icelandic experiment' (2015) *Journal of Political Philosophy* 23(2), 166-191.

⁶ In fact, many of the recommendations of European citizens made in the so-called Citizens' Panels but also on a digital platform indicate a call for intense reform and not merely the calibration of existing policies and institutions.

2. Participatory citizenship and constitutional reform

A recent tendency in democratic systems in the last decades is a ‘participatory turn’, meaning that citizens are becoming increasingly involved in politics beyond the electoral dimension of representative democracy. A very distinctive - and less studied dimension of participatory citizenship - is the involvement of citizens in constitutional change.⁷ This may regard the formulation of recommendations as the result of citizen deliberation, which may in turn lead to constitutional amendment. It also may involve the crowdsourcing of ideas that result in the drafting of a new document. More generally, in recent times, constitutional politics and reform witnesses an increased emphasis on popular participation in the reforming of constitutional orders by means of a range of innovative instruments such as digital platforms, deliberative fora and citizens’ assemblies, and crowdsourcing.⁸ There are now quite some examples in the world where constitutional revision and amendment has been orchestrated in such a way as to include the active participation of citizens. A transversal set of arguments in these projects of constitutional revision is that they provide an explicit response to civic discontent, structural democratic deficiencies. There is a growing awareness that reforms can only be successful if citizens and/or civil society are able to participate. In recent years, examples of projects of reform with significant citizen involvement in Europe include Iceland, Ireland, the Netherlands, Romania, and, on the transnational level, the Convention on the Future of Europe. Also in the (post-Brexit) United Kingdom proposals have been made to set up a Constitutional Convention that is to include citizens, while in that same country, two decades of constitutional reform included allusions to democratizing the constitutional order. Outside of Europe, Colombia, Chile, Egypt and Tunisia are amongst important examples.⁹

⁷ J. Blount, ‘Participation in constitutional design’, in T. Ginsburg and R. Dixon, a cura di, *Comparative constitutional law* (Edward Elgar Publishing, 2011); Suteu and Tierney ‘Squaring the circle?’.

⁸ A. Abat i Ninet, *Constitutional Crowdsourcing: Democratizing Original and Derived Constituent Power in the Network Society* (Edward Elgar, 2021).

⁹ Abat i Ninet 2021; J. Couso, ‘Chile’s “Procedurally Regulated” Constitution-Making Process’. (2021) *Hague Journal on the Rule of Law*, 13(2), 235-251; S. Verdugo and M. Prieto, ‘The dual aversion of Chile’s constitution-making process’ (2021) *International Journal of Constitutional Law*, 19(1), 149-168.

The tendency towards recourse to the people is curious in a number of ways. First of all, arguably the main tendency in many constitutional orders since 1945 has been a turn away from the people, towards a form of ‘juristocracy’ in what has been called ‘new constitutionalism’.¹⁰ Second, in the European context, while the most significant constitutional changes in the postwar period were in important respects about the re-establishment of self-government, in most if not all cases of post-authoritarian systems, in particular in the building of post-communist constitutional orders, the emphasis has been on legalistic, rigid and entrenched constitutions in which there is an only relatively weak attention for civic democratic engagement.¹¹ Third, the emergence of constitutionalism beyond the state – arguably most developed in the European context – appears to involve an unbalanced emphasis on legalistic understandings of constitutionalism, which emphasizes aspects of the rule of law and a regulative dimension, but generally complicates relations with democracy and self-government. In this regard, many scholars appear to ‘theorize away’ the problem of democratic legitimation in post-national regimes.¹²

While citizen involvement in constitutional politics is hence adverse to longer term structural tendencies, it seems at the same time difficult to deny that some form of counter-tendency to ‘apopular constitutionalism’ or ‘counter-constitutionalism’ is increasingly part of process of change.¹³ This counter-trend is related to democratic innovation and legitimacy as well as to the contestation of purely technocratic

¹⁰ R. Hirschl, ‘The political origins of the new constitutionalism’ (2004) *Indiana Journal of Global Legal Studies* 11(1), 71-108. A. Stone Sweet, ‘Constitutions and judicial power’ (2008) *Comparative politics*, 218. T. Gyorfi, *Against the New Constitutionalism* (Edward Elgar, 2016); G. Martinico, *Filtering Populist Claims to Fight Populism: The Italian Case in a Comparative Perspective* (Cambridge University Press, 2021).

¹¹ See Blokker *New democracies in crisis?*.

¹² Cf. S. Besson, ‘The European Union and human rights: Towards a post-national human rights institution?’ (2006), *Human Rights Law Review*, 6(2), 323-360. P. Dobner, ‘More law, less democracy? Democracy and transnational constitutionalism’, in P. Dober and M. Loughlin, a cura di, *The twilight of constitutionalism*, (Oxford University Press, 2010), pp. 141-2; see, for examples, M. Kumm, ‘Beyond golf clubs and the judicialization of politics: Why Europe has a constitution properly so called’ (2006) *American Journal of Comparative Law*, 54, 505. G. Teubner, *Constitutional fragments: societal constitutionalism and globalization* (Oxford University Press, 2012).

¹³ The term is Richard Albert’s, R. Albert, ‘Counterconstitutionalism’ (2008) *Dalhousie Law Journal*, 31, 1.; Suteu and Tierney ‘Squaring the circle?’.

governance, and is part and parcel of various constitutional reform projects around the globe.

3. Different dimensions of citizen participation in constitutional reform

Even if there is persistent and growing attention to constitution-making and constitutional reform in scholarly debates, few studies engage in a comprehensive, comparative assessment of modes of constitutional amendment and reform in relation to citizen participation.¹⁴ This seems particularly true with regard to 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 the cases of Iceland and Ireland), and in some cases consist of complex, multi-stage processes. Constitutional reform processes involve different ‘modes of representation’, based on either elite appointment, direct election, or indirect selection of constitutional reform bodies.¹⁵ Modes of representation can be related to different understandings of democracy and tend to increasingly involve direct forms of citizen participation. In a rudimentary sense, processes of reform can be understood as either open or closed, that is, open (and pluralistic) when citizens and/or other actors have the right, and are allowed, to participate, and closed when the reform is taking place ‘behind-closed-doors’. A further consideration can be made regarding modes of legitimacy, including ‘elite adoption’, when it is politicians ratifying a reform, ‘institutional ratification’, when institutions such as Parliament or the Constitutional Court are involved, and popular ratification, when a reform is finalized with a constitutional referendum.

Regarding the role of citizens in constitutional reform, in political science and comparative constitutionalism literature, only recently a more sustained interest in modes and practices of constitutional reform and civic engagement in reform has

¹⁴ D.S. Lutz, ‘Toward a Theory of Constitutional Amendment’ in S. Levinson (ed.), *Responding to Imperfection. The Theory and Practice of Constitutional Amendment* (Princeton University Press, 1995), pp. 237-74.

¹⁵ J. Wheatley and F. Mendez (eds), *Patterns of Constitutional Design: The Role of Citizens and Elites in Constitution-Making* (Routledge, 2007).

emerged.¹⁶ A few recent works have made important steps towards a more comprehensive analysis of citizen participation in constitutional reform process. In the work of Eisenstadt et al.,¹⁷ the authors make a useful distinction between different phases of potential citizen involvement in reform processes. They distinguish between the phases of convening, of debating, and of ratification of reform. The phase of convening 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’.¹⁸ Regarding the reform process, the authors further distinguish between ‘imposed’ constitutions, in which elites are in control of a non-transparent process, with little or no external consultation; ‘mixed modalities’, in which there is some form of interaction between elite control and bottom-up influence; and ‘popular participation’, when there are ‘extensive and meaningful opportunities for broad sections of the public to directly shape constitution-making processes’.¹⁹

Antoni Abat i Ninet in his excellent book *Constitutional Crowdsourcing* equally distinguishes between different forms of citizen engagement in constitutional reform, or, as Abat i Ninet puts it, the engagement of constituent power.²⁰ The participation of the people may be reduced to zero or non-existent, as was the case in the early moments of the emergence of modern constitutionalism at the end of the 18th century. This is clearly a form of elite control, where the drafters were an ‘enlightened

¹⁶ T. Bustamante and B.G. Fernandes (eds), *Democratizing Constitutional Law* (Springer, 2016); X. Contiades and A. Fotiadou (eds), ‘Participatory Constitutional Change: The People as Amenders of the Constitution’ (Routledge, 2016); T.A. Eisenstadt, A.C. LeVan, and T. Maboudi, *Constituents before assembly: Participation, deliberation, and representation in the crafting of new constitutions* (Cambridge University Press, 2018); M. Reuchamps and J. Suiter, *Constitutional Deliberative Democracy in Europe* (ECPR Press, 2016); Suteu and Tierney ‘Squaring the circle?’.

¹⁷ Eisenstadt, LeVan, and Maboudi, *Constituents before assembly*.

¹⁸ Eisenstadt, LeVan, and Maboudi, *Constituents before assembly*, p. 28.

¹⁹ (Eisenstadt, LeVan, and Maboudi, *Constituents before assembly*, pp. 28-9.

²⁰ Abat i Ninet *Constitutional Crowdsourcing*, p. 94.

group of citizens (white, rich, male) arguing, typing, and deciding for the people'.²¹ A more extensive involvement of citizens is when they get to opportunity to give their view on the changes drafted by others (elites, experts). In this, citizen involvement can be realized in an only ex-post ratification of constitutional changes by means of a constitutional referendum (particularly widely diffused after the Second World War). Finally, in the meaning that is closest to today's 'participatory turn', citizen involvement may consist in a constituent process which originates in popular and grassroots movements.²²

Practice is however not easily grasped by means of conceptual distinctions as we see a series of muddled and mixed practices.²³ Formal constitutional reform is predominantly initiated by specific political actors, that is, parliaments, the President (as, for instance, in Chile), and only in few cases may be initiated by a number of citizens (e.g. in the case of Romania). As comparative research and case-studies however show, different modes of constitutional revision and of inclusion of the citizenry are available and have been used in different reforms. For comparative purposes, James Fishkin has proposed a useful diversification. Fishkin is one of the few scholars who has attempted to look at constitutional reform from a perspective of different democratic models. These models provide analytical hold over formal constitutional reform, while equally 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 on one end and extensive participation on the other - elaborates four relevant models: competitive democracy, elite deliberation, deliberative democracy, and participatory democracy²⁴ (see table 1).

²¹ Abat i Ninet *Constitutional Crowdsourcing*, p. 94.

²² Abat i Ninet *Constitutional Crowdsourcing*, p. 95.

²³ Cf. Landemore, 'Inclusive constitution-making'; Suteu and Tierney 'Squaring the circle?'

²⁴ J. Fishkin, *When the people speak: Deliberative democracy and public opinion* (Oxford University Press, 2009); J. Fishkin, 'Deliberative democracy and constitutions' (2011) 28:1 *Social Philosophy and Policy*, pp. 242-260.

Table 1 Citizen involvement in constitution-making²⁵

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

Fishkin’s first two models, that of competitive democracy and of elite deliberation, put an emphasis on representation and elite-driven constitutional processes, in this allowing for an indirect role of citizens in constitutional reform. Competitive democracy emphasizes the role of elected representatives and the competitive struggle

²⁵ Source: Fishkin, *When the people speak*, Fishkin, ‘Deliberative democracy and constitutions’; based on an elaboration in P. Blokker, ‘The Romanian Constitution and Civic Engagement’ (2017) *ICL Journal*, 11(3), pp. 437-455.

between parties. Constitutional reform from the perspective of competitive democracy may take the form of a constituent assembly, with elected members from a range of political forces.²⁶ Elite deliberation prioritizes public reason of a high cognitive standard and favours small elite bodies that deliberate 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. Further examples of elite-driven reform are expert commissions and negotiations between political leaders.²⁷ 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.²⁸ Participatory democracy is frequently understood in terms of the referendum instrument, which aggregates individual votes into a majority. In case of constitutional revision, referenda often take the form of *ex post*, confirmatory referenda on a finalized proposition for constitutional reform. Stephen Tierney has pointed to three main problems or dangers with the referendum instrument, in particular in the context of constitutional reform:²⁹ the elite control syndrome (the danger of elite manipulation of referenda), the deliberation deficit (the 'mere aggregation of individual wills'), and the majoritarian danger (the marginalization of dissenting individuals and minorities). A general danger is that political leaders turn directly to the voters for approval, claiming in this a sincerer form of democracy, but without providing effective voice to citizens (Tierney 2012). Participatory democracy can, however, equally be designed in more engaging ways, not least in the form of legislative (constitutional) initiatives, which allow citizens to mobilize in favour of a self-designed constitutional amendment. Experimentation in recent constitutional reform regards deliberative democracy and frequently takes the form of citizens' assemblies. Such assemblies form deliberative

²⁶ The Chilean Assembly elected in 2021 shows that such an Assembly does not necessarily need to be an expression of forces of the political establishment, but may anyhow involve a range of societal forces, such as ethnic minorities and political forces emerging out of the protest movements.

²⁷ A. Renwick, 'After the referendum: options for a constitutional convention' (2014) The Constitution Society.

²⁸ C. Zurn, 'Democratic Constitutional Change: Assessing Institutional Possibilities', in T. Bustamante and B.G. Fernandes (eds), *Democratizing Constitutional Law* (Springer, 2016).

²⁹ S. Tierney, *Constitutional referendums: The theory and practice of republican deliberation*, Oxford University Press, 2012).

fora, which may include citizens, alongside political representatives (as in the case of the Irish Constitutional Convention, 2012-13, where citizens were randomly selected), citizens and experts or scholars (as in the Romanian Forum Constitutional in 2013) or may even consist exclusively of citizens (as in the case of Iceland in 2011, the French Climate Convention, or the Citizens' Panels in the CoFoE). Citizens' assemblies ordinarily have a consultative function. In both participatory and deliberative democracy, active and direct citizen engagement in constitutional politics is prioritized.

If we turn to some of the more significant cases of citizen involvement in constitutional reform, we find combinations of the models discussed in action. In the case of the constitutional reform attempt in Iceland (2010-12), both civil society associations and the Socialist Party pushed for comprehensive, citizen-driven constitutional reform. Two one-day deliberative fora were set up, in which circa 1,000 citizens participated, while a Constitutional Council, consisting of 25 independent citizens elected at the end of 2010, was responsible for producing a draft constitutional revision in four months (April - July 2011). The draft produced, consisting of a fully new constitution, emphasized amongst others a range of important participatory institutions, while the drafting itself has often been hailed as highly innovative in its usage of social media in soliciting comments and suggestions from citizens. In the fall of 2012, a referendum with 6 questions was put to the population.³⁰ In the case of Ireland, on one hand, two major political parties – Fine Gael and the Labour Party – endorsed inclusive constitutional reform, and on the other, academics as well as 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 started 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. In Romania, a *Forum Constituțional* was set up (March – July 2013), a collaboration between the civic organization *Asociația Pro Democrația* (APD) and the Romanian Parliament (a similar endeavour took place in 2002). The Forum consisted of

³⁰ B. Bergsson and P. Blokker, 'The Constitutional Experiment in Iceland', in E. Bos and K. Pocza (ed.), *Verfassunggebung konsolidierten Demokratien: Neubeginn oder Verfall eines politischen Systems* (Nomos Verlag, 2014); Z. Elkins, T. Ginsburg and J. Melton, 'A Review of Iceland's Draft Constitution' (2012) available at: <https://webpace.utexas.edu/elkinszs/web/CCP%20Iceland%20Report.pdf>; Landemore, 'Inclusive constitution-making'.

deliberative events, including citizens, scholars, and politicians, organized in major Romanian cities as well as the gathering of citizens' comments on an online platform.

Moving out of the European context, in the case of Chile, it was the huge social uprisings from October 2019 onwards that ultimately resulted in the call for a new Constitution.³¹ Social and political pressure eventually made President Piñera surrender to the demand for a new Constitution.³² The subsequent Chilean process has been likened to Andrew Arato's model of post-sovereign constitution-making,³³ due to the insistence of legal continuity with the existing Constitution³⁴, rather than disruption³⁵, and the fact that the process is grounded in a multi-party consensus and respects a limited, non-revolutionary mandate for the Convention.³⁶ The process started with a consultative referendum in order to verify citizens' endorsement and their preferences regarding the set-up of the Assembly. Subsequently, a Constitutional Convention was elected by general vote. Finally, a ratification of the new Constitution is foreseen in a confirmatory referendum. While the process itself does not foresee intense citizen participation in the form of deliberative fora, and the Convention seems grounded in a logic of 'competitive democracy', throughout the process there are various moments in which citizens directly participate. The Convention's regulations foresee public hearings, a digital platform, and popular initiatives which allow civil society, indigenous peoples and youth to present proposals, which need to be treated at the same level as proposals by Convention delegates when gathering minimally 15,000 signatures from at least 4 regions.³⁷

³¹ Couso, 'Chile's "Procedurally Regulated" Constitution-Making Process', p. 242.

³² Couso, 'Chile's "Procedurally Regulated" Constitution-Making Process', p. 243.

³³ Verdugo and Prieto, 'The dual aversion'.

³⁴ In conscious differentiation from the disruptive nature of the 'Bolivarian' forms of constitution-making in Venezuela, Ecuador and Bolivia (Couso 2021: 244).

³⁵ Couso, 'Chile's "Procedurally Regulated" Constitution-Making Process', p. 244.

³⁶ Verdugo and Prieto, 'The dual aversion', p. 13.

³⁷ I. Aninat, 'A Balancing Act: Public Participation, Decision-Making, and Freedom of Speech at the Chilean Constitutional Convention' (2021) ConstitutionNet, available at: <https://constitutionnet.org/news/balancing-act-public-participation-decision-making-and-freedom-speech-chilean-constitutional>.

Returning to the European context, the recently concluded transnational CoFoE (to be further discussed in section 3 below) is not the result of a direct response to a specific crisis, nor is it the result of spontaneous, bottom-up calls for change. The process has been started from the top-down, has been initiated by the EU institutions and is largely controlled by these. In this regard, the process is very much reflecting the models of competitive democracy and of elite deliberation. The CoFoE did involve innovative (multi-lingual, multi-level) forms of citizen participation, in the Digital Platform, the Citizens’ Panels, and the Plenary (see table 2 below). Among other things, the CoFoE suffered however from a lack of transparency and citizen input in the organization, as well as a lack of clear objectives and follow-up, also with regard to the process of ratification of possible reforms recommended.

Table 2 Citizen involvement in the Conference on the Future of Europe³⁸

Organization CoFoE			
<i>Elite/institutional control</i>	Common Secretariat Responsibility for material process; methodology		Executive board Final decision-making power; representation of three EU institutions/ the ‘constituent’ forces
<i>Direct citizen participation</i>	Digital platform Information provision;	Citizens’ Panels 4 thematic deliberative	Conference Plenary

³⁸ Source: own elaboration.

	possibility for European citizens to suggest ideas	assemblies with 200 randomly selected citizens each National panels/events ³⁹ (variegated)	20 ambassadors per panel represent their panels and function as Plenary members; 27 additional national panel members
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4. Participatory Citizenship in the Conference on the Future of Europe

The attempt to adopt a political constitution for the European Union in the early 2000s left constituent power - *de facto* - in the hands of constituted powers. The constitution-making process was dominated by political elites and institutional actors, whereas wider civil society and citizens were only involved to a limited extent.⁴⁰ Similar arguments have been made regarding the earlier Convention on the Charter of Fundamental Rights.⁴¹ The European Union's attempt to adopt an explicit, political constitution was largely an elite affair. The main consultation of citizens took place *ex post*, in the subsequent referendums, the stage of ratification. These, however, led to the Constitution's failure. As Andrew Arato states,

[c]ertainly neither one or the other [the draft Constitution and the Lisbon Treaty] was the work of any European people, nor was it the product of a primarily participatory

³⁹ For instance, in the Netherlands, the *Kijk op Europa* project included surveys, consultations, dialogues with citizens.

⁴⁰ M. Patberg, *Constituent Power in the European Union* (Oxford University Press, 2020), p. 215.

⁴¹ J. Schönlau, *Drafting the EU Charter: rights, legitimacy and process* (Springer, 2005).

process. Neither could be seen as the final version that European institutions should take, especially as neither would have brought the masters of the treaties under the constitution of a genuinely “constitutional” amendment rule based on majorities of some kind.⁴²

But the question of a European Constitution has not disappeared. Constituent dimensions have particularly been stimulated by the ‘poly-crisis’ which developed over the last two decades (in terms of financial and economic matters, European solidarity, as well as crucial matters for which pan-European coordination appears unavoidable, such as migration, health, and the rule of law; the war in the Ukraine has made radical reform even more difficult to avoid). In other words, the constitutional deficit has disappeared neither in the form of specific dimensions to be constitutionalized (e.g. economic and fiscal policy, social policy, citizen participation), nor in the sense of the creation of genuinely constitutional and democratic rules of political operation.

The CoFoE, which started in the summer of 2021, potentially indicates a (partial) return to a constituent dimension in European politics. Even if the Council has denied the Conference’s status of a *convention*, the endeavour nevertheless echoes the *Convention* on the Future of Europe of the early 2000s in name, but also in its set up (the Conference was led by three co-chairs of the EU institutions and aimed – at least in rhetoric - at the inclusion of civil society and citizens).⁴³

The need for structural reform of the EU is undeniable, not least as many of the EU’s responses to recent crises have seen ad hoc and unfinished legislative reactions, regarding inter alia migration policy, health policy, and the banking union. Even more important is the open question of selection of EU leaders and the ongoing weaknesses in democratic legitimacy.

⁴² A. Arato, ‘Europe, European Constitution’ in “Why Europe Needs a Constitution”, in H. Brunkhorst, R. Kreide e C. Lafont, a cura di, *The Habermas Handbook* (Columbia University Press, 2018), pp. 437-38). Hence, the constituted powers or institutions have the formal ability to revise the constitutional norms of the EU, but have not done so in a manner that has led to the constitutional limitation of the revision of such norms (and hence a form of European constitutionalism). Indeed, in article 48 TEU, ‘consensus’ and ‘ratification by all member states’ are crucial.

⁴³ N. von Ondarza, And M. Ålander, ‘The Conference on the Future of Europe. Obstacles and Opportunities to a European Reform Initiative That Goes beyond Crisis Management’ (2021) SWP Comment 2021/C SWP, p. 4.

The CoFoE was originally put forward in 2019, originating in an idea of Emanuel Macron.⁴⁴ In a joint non-paper on the Conference on the Future of Europe, 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, which put strong emphasis on the involvement of citizens, civil society, and European institutions as ‘equal partners’ and indicated, as remarked above, an initial willingness to consider Treaty change. The EP presented two documents on the CoFoE in 2020, inter alia proposing the idea of citizens’ agoras. While the Council - representing the sovereign Member States - endorsed the idea of a Conference, it clearly demonstrated (and demonstrates) hesitance towards citizen involvement as well as towards Treaty change. Core issues with regard to citizen involvement and empowerment concern: the effective influence citizens might have through the CoFoE (in terms of the actual translation of citizens’ views in policy-making and reform), the mobilization of EU-wide participation amongst citizens, and the willingness of institutions and member states to consider clear legislative follow-up to citizens recommendations and to consider structural reform.

The experience of the CoFoE is of direct relevance for participatory citizenship in several ways. First, *procedurally*, the operational process of the Conference (which was an ad hoc process not foreseen in the EU Treaties and was hence not supposed to follow the Convention method of Art. 48 TEU) was to significantly allow for citizen participation, deliberation, and input. It hence was to provide a form of input-oriented legitimacy (allowing voice for citizens), relating civic participation to political and legislative processes. The fabrication of citizens’ recommendations have seen potential suggestions for constitutional change, as for instance in the first two sets of recommendations produced by Panels in December 2021 and January 2022.⁴⁵ Second, the CoFoE can only have any real efficacy if it addressed the level of the *political*, that is, if it mobilizes a political will to indicate structural reforms with regard to the *democratic functioning* of the EU and to the rule of law, including on the constitutional/treaty level (the process is still playing out as we speak). As the citizens who participated in European Citizens’ Panel 2 on democracy, the rule of law, human

⁴⁴ S. Fabbrini, ‘Differentiation or federalisation: Which democracy for the future of Europe?’ (2021) *European Law Journal*. First published: 06 May 2021.

⁴⁵ See <https://reconnect-europe.eu/blog/the-future-of-europe-are-citizens-taking-over/>; A. Alemanno and K. Nicolaidis, ‘Citizen Power Europe: The Making of a European Citizens’ Assembly’, in: A. Alemanno and P. Sellal, *The Groundwork of European Power* (2021) *Revue Européenne du droit* 3.

rights, and security, have recommended, one important outcome of the CoFoE ought to be the institutionalization of a permanent citizens' assembly (recommendation 39). Such a view has been echoed in endorsements by European civil society organizations as well as by scholars, and is now further elaborated in policy-oriented proposals by experts.⁴⁶ One report, co-authored by Niccolò Milanese, founder of the transnational civil society coalition European Alternatives (Cooper et al. 2021; cf. Patberg 2020), called for permanent forms of citizen participation:

Create a permanent European Citizens Assembly: Recent experiences with citizens assemblies in Ireland, in Belgium, in France, in Germany and elsewhere have shown that a sortition-based format of citizen participation can create social consensus for change, can build social trust, and can reinvigorate politics. A European Citizens Assembly would be a pioneering transnational experiment which should be led by independent civil society, with a view to providing a permanent space in which the European Union can fulfil its obligations of dialogue with citizens and civil society under Article 11 of the Lisbon Treaty.⁴⁷

Let us now turn the participatory process of the CoFoE. Following Eisenstadt et al.'s and Abat i Ninet's stages and/or modalities of participatory citizenship in constitutional reform, different issues may be observed with regard to the (recently concluded) Conference.⁴⁸ For a start, the Conference was clearly not the result of bottom-up pressure and spontaneous societal calls for radical change (as was, for instance, the case in Iceland or Chile), but the outcome of elite and institutional propositions, first by Emanuel Macron (who launched the idea in 2019), to be taken

⁴⁶ Conference on the Future of Europe Observatory, 'Conference on the Future of Europe:

What worked, what now, what next?', High-level advisory group report, 22 February, 2022, available at: https://conference-observatory.eu/wp-content/uploads/2022/03/High_Level_Advisory_Group_Report.pdf; Gabriele Abels, Alberto Alemanno, Ben Crum, Andrey Demidov, Dominik Hierlemann, Anna Renkamp, Alexander Trechsel, 'Next level citizen participation in the EU Institutionalising European Citizens' Assemblies', BertelsmannStiftung, available at: https://cor.europa.eu/en/events/Documents/Future-of-Europe/Next_Level_Citizens_Participation_in_the_EU.pdf.

⁴⁷ L. Cooper et al., 'The Rise of Insurgent Europeanism. Mapping Civil Society Visions of Europe 2018-2020' (2021) LSE Ideas Report.

⁴⁸ I had the privilege to be invited as an expert in the second, online session of Citizens' Panel 2 (on democracy, the rule of law, security, and human rights), as well as observer and expert in the third session held at the European University Institute in Florence.

over by the head of the Commission Ursula Von der Leyen. The whole process was notably delayed due to political infighting over whom was to preside over the event and what its functions were to be.

The convening stage of the CoFoE, which relates to the design, organization, and implementation of the Conference,⁴⁹ was entirely elite- and institution-driven. The Common Secretariat was run by representatives of the three main EU institutions (the Commission, the Parliament, and the Council), and was responsible for the day-to-day operation of the Conference. Main decisions regarding the Conference were made by the Executive Board, headed by three co-chairs, representatives of the main institutions (Guy Verhofstadt for the EP, Dubravka Šuica for the EC, and a representative from the rotating Presidency of the Council). In the final instance, choices on organization seemed to be restrained by a reticent attitude of Council.⁵⁰ The operation of the Secretariat and Executive Board has in many ways shown to be top-down, non-transparent, and not receptive to external influences in any transparent fashion. While this was to a significant extent due to the intricacies of the inter-institutional culture of the EU, in practice it has meant that the organization gained a certain Byzantine, opaque, and unpredictable flavour. What is more, the selected citizens, or wider European society for that matter, did not have any input on the way the Conference has been set up, on its agenda-setting, nor how it has been executed.

It is the debating stage where citizens were prominently included in the process, providing some ground for labelling the whole CoFoE process a ‘new, experimental

⁴⁹ For an extensive discussion of the whole process, see A. Alemanno, ‘Unboxing the Conference on the Future of Europe: A Preliminary View on its Democratic Raison-d’être and Participatory Architecture’ (2021) HEC Paris Research Paper.

⁵⁰ This has become more than clear in the hostile position of the Council with regard to any kind of Treaty reform (in fact, the Council has not taken up the EP’s resolution of 8 June in its Summit at the end of the same month). It has, however, also come through in more specific choices on the methodology of the Conference. For instance, over the summer of 2021, the Common Secretariat organized an online brainstorming session with some 60-70 experts to lay down major questions to be discussed in the Citizens’ Panels. However, this whole exercise has subsequently been set aside, allegedly because of resistance from specific (right-wing, conservative) forces in the Council. The latter insisted on a tabula rasa approach. While on the one hand, this has left the citizens entirely free to decide what themes and topics they want to discuss, on the other, it has arguably led to an excessive broadness and quantity of themes to be discussed by the deliberating citizens, rendering deliberation in practice highly cumbersome.

democratic ecosystem'.⁵¹ As argued above, the contours – in terms of organization, methods, selection of facilitators/moderators, venues, and experts – were in the hands of the EU institutions. Nevertheless, in processual terms, the design allowed for direct citizen participation in the Conference in three different ways.

First, a Digital Platform, set up to allow all European citizens to suggest ideas and recommendations, to be discussed in the Citizens' Panels (which hosted some 800 randomly selected European citizens) and the Conference Plenary, has been gathering numerous ideas from a wide range of European actors.⁵² The core participatory dimension was to be found, however, in the second dimension, the Citizens' Panels as an instantiation of citizens' assemblies. Four thematically driven panels were set up, hosting 200 randomly selected citizens each, and meeting in three deliberative weekends (a first one in Strasbourg, a second one online, and a third one in one of four European cities: Florence, Natin, Maastricht, and Dublin). If compared to the standards indicated by Eisenstadt et al. and Abat i Ninet regarding participatory processes, a few dimensions of the European Citizens' Panels (ECPs) stand out. To start, the citizens' influence on the actual set-up and design of the deliberative process in the Panels was highly limited. The execution of the ECPs could be partially labelled as 'imposed' if following the definition by Eisenstadt et al. It is largely top-down, driven by the institutions and executed on the ground by a number of professional organizations with well-developed deliberative and participatory methods, which did not, however, allow citizens to co-design the process. Such influence could consist, for instance, in having a say in the selection of experts or in priority choices in agenda-setting or for the deliberation of specific themes. Also, citizens had difficulty in taking control due to the fact that they received notifications on procedure and methodology very late in the process (admittedly, complicated by the pandemic situation)⁵³, and they had limited time to actually engage in the exchange of viewpoints and deliberation. In addition, the deliberation of the Panel was in part taken over by aggregation, in terms of voting and rationalization (for instance, in the form of

⁵¹ Alemanno and Nicolaidis, 'Citizen Power Europe', p. 6.

⁵² Although if related to the overall number of European citizens, the citizens participating on the platform and the number ideas fed into it remains highly modest. In addition, it remains unclear or non-transparent how these ideas are effectively feeding into the citizens' debates within the Conference.

⁵³ Many of the problems – including last minute changes – seem to stem from eleventh-hour interventions into the processes by the EU institutions.

expressing preferences for specific recommendations in a kind of ‘market of ideas’, not unlike the process found on social media such as Facebook in the form of ‘likes’), rather than in-depth deliberative practices or the identification of divergent opinions and positions.

But, in other ways, citizens clearly did have influence on the process, as they formed an integral component of the discussion on the future of Europe (by formulating ideas in the form of orientations) and were collectively responsible for the recommendations produced. In this regard, Eisenstadt et al.’s ‘popular participation’ definition is relevant too. The recommendations formulated by the different Panels were the outcome of an interactive, participatory process⁵⁴. And while at the start of the Conference the role of citizens in the Plenary was not yet defined, ultimately citizens’ representatives - so-called ambassadors - become part of the Conference Plenary too, together with inter alia politicians, representatives of the institutions, and of civil society,

This was indeed the third part of the debating stage where citizens play a role, the Plenary of the CoFoE. The recommendations formulated by the ECPs were to be taken up and carried forward in the Plenary. The Plenary was itself populated by political actors (local and regional authorities, national and European members of parliament; Council, Commission, and Committee of the Regions representatives), social partners, civil society organizations and the citizens themselves (80 ‘ambassadors’, selected from the Citizens’ Panels as well as 27 representatives of national panels or events).⁵⁵ The Plenary’s task was to ‘debate and discuss the recommendations from the national and European Citizens’ Panels, and the input gathered from the Multilingual Digital Platform, grouped by themes, in full respect of the EU’s basic principles and the Conference Charter, without a predetermined outcome and without limiting the scope to pre-defined policy areas. After these

⁵⁴ As already indicated, different problems have emerged in this process. It has to be admitted, though, and as is abundantly discussed in the literature on deliberative democracy, many similar innovative participatory experiences have faced identical issues.

⁵⁵ The composition of the Plenary – if understood as some form of deliberative forum - is unprecedented in its inclusion of multiple levels of governance. The mixing of politicians and citizens (as well as other stakeholders) constitutes according to some authors a recent trend in deliberation (one instance is the Irish Constitutional Convention, see K.J. Strandberg, J. Berg, T. Karv and K. Backstroem, ‘When Citizens met Politicians: The Process and Effects of Mixed Deliberation According to Status and Gender’ (2021) Working Paper No. 12/2021 ConstDelib, available at: <https://constdelib.com/wp-content/uploads/2021/10/WP12-2021-v.2-CA17135.pdf>).

recommendations have been presented by and discussed with citizens, the Plenary will on a consensual basis put forward its proposals to the Executive Board' (Rules of procedure, article 17). In fact, on 9 May 2022, the plenary's final report with 49 proposals and some 320 measures was presented.

The citizens' ambassadors (the 80 representatives of the ECPs) played a double role in the Plenary: they were both representatives of the ECPs and full members of the Plenary. This means they both needed to articulate and present the recommendations formulated by the Panels and constituted deliberating members of the Plenary as such.⁵⁶ This appeared to involve some form of citizen empowerment. It needs, however, to be recognized that the ultimate recommendations formulated by the Plenary were adopted 'on a consensual basis' by EU institutional and political representatives, that is, those actors recognized as 'constituent' forces by art. 48 TEU.⁵⁷ The citizens (but not the other stakeholders or civil society representatives) did have some form of right to a 'dissenting opinion'.⁵⁸

Regarding the follow-up of the process or forms of ratification (to render 'fixed' (*ratius*) or to validate the outcomes), it remains unclear what will come out of the Conference. According to article 23 of the Conference regulations, the 'final outcome of the Conference will be presented in a report to the Joint Presidency. The three institutions will examine swiftly how to follow up effectively to this report, each within their own sphere of competences and in accordance to the Treaties'. The final report has indeed been presented on 9 May 2022. This process has left little room for explicit ratification by European citizens, although an evaluation meeting with the citizens involved is to take place in October 2022. A core issue has become the matter of Treaty change. Some political actors have indicated the need for a full-blown Convention for Treaty change. In particular the European Parliament has called for a Convention by means of a resolution adopted on 9 June.⁵⁹ Whether the idea of a Convention is a more widely shared view amongst EU Member States remains to be seen, even if the rapidly

⁵⁶ Alemanno, 'Unboxing the Conference', p. 26.

⁵⁷ Alemanno, 'Unboxing the Conference', p. 28.

⁵⁸ Alemanno, 'Unboxing the Conference', p. 28.

⁵⁹ See https://www.europarl.europa.eu/doceo/document/TA-9-2022-0244_EN.html. See further P. Blokker, 'Experimenting with European Democracy. Citizen-driven Treaty change and the Conference on the Future of Europe', *Verfassungsblog*, available at: <https://verfassungsblog.de/experimenting-with-european-democracy/>.

changed geopolitical context (the Ukraine war) seems to have stimulated more propensity towards Treaty change.

5. Conclusions: participatory citizenship and constitutional reform

In general, representative democracy is facing a trend of democratization by means of participation. In terms of fundamental reforms or changes in the ‘rules of the game’, we can speak of popular engagement being a ‘trend in constitutional practice’.⁶⁰ There is no solid, general design of how to instil citizen participation in constitutional reform processes. Different processes or experiments have indicated significant benefits but also formidable hurdles and obstacles. Benefits seem undeniable. Political deadlocks on sensitive ethical issues have been overcome due to citizen deliberation and direct participation. More broadly, the recognition that constitutional norms need to be socially embedded confirms the necessity of extensive citizen engagement with the reform of fundamental norms or even the drafting of a new constitution. It is difficult to imagine modern-day democracy without an actual involvement of the demos. Various kinds of elite and expert knowledge are being contested in the name of popular knowledge. More philosophically, in current times the democratic imaginary seems to be shifting from a broad consensus on representative politics to an acknowledgement of the need for direct forms of bottom-up involvement (the populist wave seems to be part of this shift).⁶¹

Modern democracy in the 2020s seems to be severely affected by a kind of belated sting of the 1968s scorpions’ tail of anti-paternalist and anti-establishment societal sentiment. To some extent, the Conference on the Future of Europe fits this *Zeitgeist* of an inevitability of taking recourse to the citizens’ voice. Examining the Conference, also in the comparative context of other global participatory processes, reveals a number of complex questions. One clear problem is the unwillingness of political institutions to diminish hold on organizational and design dimensions and to share some political sovereignty with citizens. This often results, in counterproductive fashion, in limited citizen input into the organization of specific and often ad hoc

⁶⁰ Suteu and Tierney ‘Squaring the circle?’, p. 282.

⁶¹ See P. Blokker, ‘Human Rights, Legal Democracy, and Populism’, in: N. Doyle and S. McMorrow (eds.), *Marcel Gauchet and the Crisis of Democratic Politics* (Routledge, 2022), pp. 157 – 175.

participatory processes. As discussed, this becomes clear in the convening as well as deliberative phases of the CoFoE. The same attitude also, however, prevents institutions from imagining any structural inclusion of citizens participation in the broader democratic constellation⁶².

Part of the problem in the European context is the lack of public pressure on the EU institutions from below (something which surely does happen in domestic settings; think of the *gilets jaunes* in France⁶³). The Conference is lacking the dimension of a societal ‘constitutional moment’ (in Bruce Ackerman’s terms), not least due to a great lack of broad public awareness of the process.⁶⁴ In a related sense, a key problem – which I did not consider explicitly in the discussion above, but which is clearly an acute issue – is how to connect relatively well-designed and innovative micro-level deliberation to broad societal, macro-level debate. The absence of a micro-macro linkage results in inexistent pan-European public debate and greatly compromises any durable beneficial effects in terms of the generation of democratic and societal legitimacy, and a broadly shared acknowledgement of being part of a political community-shaping process.

In sum, the great challenge of the participatory turn is how to effectively and durably institutionalize participatory citizenship, in the face of all odds.⁶⁵ In the case of the CoFoE, various voices have raised the idea of a permanent citizens’ assembly, in some cases imagined also with constitutional initiative in terms of Treaty reform.⁶⁶ The

⁶² An exemplary comment from the Greek former deputy prime minister and former minister of finance and of foreign affairs Evangelos Venizelos: ‘It would be, ..., harmful for the Conference on the Future of Europe to give the false impression that the state and prospect of European integration is a soft issue of consultative democracy that can be solved as long as we are discussing it. This can be a dangerous institutional illusion’, see <https://verfassungsblog.de/the-conference-on-the-future-of-europe-as-an-institutional-illusion/>.

⁶³See Ulrike Liebert, ‘Seven lessons on citizen participation for CoFoE’ (2021) available at: <https://blogs.eui.eu/transnational-democracy/seven-lessons-on-citizen-participation-for-cofoe/>.

⁶⁴ Nevertheless, also in the Chilean Convention, surely the result of large-scale citizen upheaval, citizen input is ultimately limited.

⁶⁵ G. Smith, ‘The European Citizens’ Assembly’, in: A. Alemanno and J. Organ (eds.), *Citizen Participation in Democratic Europe: What Next for the EU* (ECPR Press, 2021), pp. 204

⁶⁶ (see Cooper et al. 2021). The Citizens Take over Europe coalition of civil society organizations has launched this idea inter alia on the Digital Platform, see

permanent inclusion of participatory citizenship into an existing institutional environment remains one of the core challenges of modern democracy.

https://futureu.europa.eu/processes/Democracy/f/6/proposals/7627?component_id=6&locale=en&participatory_process_slug=Democracy.

