

Constitutional Modernization and Deliberative Democracy: a Political Science Assessment

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Constitutional modernization & Deliberative democracy

- Constitutional changes through processes of democratic deliberations that include not only constitution-makers but also – parts of – the general public
- Larger deliberative movement
- Democratic innovation through deliberation
>< Democratic deficit of representative democracies

Political Science Assessment = Assessment of legitimacy

- Input legitimacy
 - Representation = who?
 - Agenda = what?
 - (In)formation (epistemic completion) = how?
- Throughput legitimacy
 - Participation
 - Quality of decision-making
 - Contextual (in)dependence
- Output legitimacy
 - Public endorsement
 - Weight of the results
 - Responsiveness and accountability

Case 1: Iceland

Context

- Aftermath of the 2008 financial crisis → 3-phased mechanism of constitutional revision
 - National forum of 1000 randomly selected citizens: principles and values
 - Constitutional Committee of seven members nominated by the government: collect information and analyse the issues and problems + suggestions
 - Constituent Assembly (→ Constitutional Council) composed of 25 members: new draft

Case 1: Iceland

Input legitimacy

- National forum:
 - 2009: 900 citizens randomly selected + 300 additional representatives from interest groups and associations → honesty, equal rights, respect, justice, responsibility, liberty, durability, democracy
 - Another National forum 2010 (initiated by the government): 950 citizens randomly selected, but less mediatized
- Constitutional Committee:
 - Experts chosen by the government = highly politicized
- Constituent Assembly/Constitutional Council:
 - Low turnout + election is judged null
 - Then nomination by government

Case 1: Iceland

Throughput legitimacy

- Opening the work on constitutional reform to the general public
- Constitutional Council:
 - Calls for contributions on social networks and media
→ ‘crowd-sourced’ Constitution >< time constraints (4 months)
 - Methodology: iterative process based on 3 committees → mixed of deliberation and voting → unanimous adoption of new draft
- Throughput legitimacy: rather strong because of its innovative and participatory method

Case 1: Iceland

Output legitimacy

- Parliament and political parties felt alienated from the process + political tensions
- Advisory referendum with six questions (2012):
 - New draft written by the Constitutional Council should serve as the foundation of the new Icelandic Constitution?
 - Five sub-questions dealing with debated articles
 - Results: 50% turnout and 2/3 approval rate
- Parliament in charge but elections in 2013
 - But 'Icesave' conflict
 - New government, new Constitutional Committee made of experts
 - 2014: Chairman resigned and declared: neither interest nor reason to change the current Constitution

Case 2: Ireland

Context

- Also aftermath of the 2008 financial crisis + compromise between 2 political parties → 2012: Irish Constitutional Convention
 - Elections of February 2011, all Irish political parties in favour of the establishment of citizen-oriented deliberative forums
 - Previous experiment (We The Citizens) and public debate
 - Inspiration from citizens' assemblies on electoral reform in CA
- Composition = 100 members: 66 citizens, 33 elected legislators, and one President

Case 2: Ireland

Input legitimacy

- Composition:
 - 66 randomly selected citizens
 - 33 elected legislators (current MPs)
- Inputs from the maxi-public:
 - Calls for inputs: 2500 contributions, ranging from well-developed propositions to short messages
 - Various associations and interest groups played the role of amplifiers to mobilize the wider public
- Agenda:
 - Predetermined by the Parliament + rather full
 - But ability to stretch the remit of the Convention
- Level of information:
 - Information sessions >< Debate sessions
 - Ten topics had to be discussed in only eight weekends

Case 2: Ireland

Throughput legitimacy

- Tables of 8:
 - Majority of citizens, some politicians (from different parties), one note-taker, and one trained facilitator
 - Gender inclusive but less women
 - Table-composition differed from meeting to meeting
- Decision-making
 - Inclusiveness and depth of reasoning during debates
 - Equal voice during votes
- Co-habitation between randomly selected citizens and elected legislators:
 - Citizens quite deferential
 - Secret vote
 - Legislators supporters of the process

Case 2: Ireland

Output legitimacy

- Obligation for parliament and government to respond to convention's reports within four months
- Inclusion of MPs = less disconnection
- Two referendums in Spring 2015
 - Marriage-equality referendum passing by a safe margin (62 per cent in favour)
 - The presidential age referendum being roundly defeated
- Others to come
- 100% of Convention members agreed that the Government should establish another Convention

Case 3: Luxembourg

Context

- Referendum campaign over the revision of the Constitution, in 2 phases
 - 7 June 2015: four advisory referendum questions that were prepared by the government of the time
 - right to vote at age 16
 - voting rights for foreigners residing in Luxembourg
 - a 10-year limitation on a ministerial mandate
 - finally the funding of ministries of cults
 - At the end of 2016, the citizens of Luxembourg will have to cast their votes, this time with legally binding force, on the whole project of constitutional revision
 - In-between: Parliament prepares the revision
- Citizen panel of 27 citizens to prepare the first referendum

Case 3: Luxembourg

Input legitimacy

- Composition:
 - 27 randomly selected citizens
 - Smaller group than in Iceland and Ireland
 - Set up by a group of scholars
- Information sharing about the four questions
- Agenda setting
 - Citizens had no say
 - Determined by the government, partly in collaboration with the political parties of the opposition
- Input legitimacy seems thus weaker

Case 3: Luxembourg

Throughput legitimacy

- Methodology: 27 divided into three groups of nine
 - One group working on the limitation of ministerial mandates
 - One group on the question of the extension of voting rights to individuals aged 16 to 18,
 - One group working on the question of funding of cult ministries
- Aim: summary of the main arguments in favour and against for each topic, and to think about potential alternatives
- Three experts were present to answer questions of the participants and to help them formulate their ideas and opinions
- Inclusive process: confirmed through an analysis of the content and evaluation by the participants
- Weaknesses:
 - Lack of time: only one day
 - Linguistic barrier

Case 3: Luxembourg

Output legitimacy

- Citizens of Luxembourg took part in four non-binding referendums on the 7 June 2015
- For each referendum, the result was a landslide victory for the 'No' option
 - <http://www.elections.public.lu/fr/referendum/2015/resultats/index.html>
- They are not legally binding, but the government of the time held itself as politically responsible in regard to the results
- We have to wait for the end of the process towards the end of the year 2016, when the binding referendums will take place

Tentative conclusions

- Tensions between different dimensions of legitimacy
- Being high on the input side does not necessarily mean being high on the output dimension, quite the contrary sometimes
- A high quality throughput is not automatically the result of high legitimacy and does not for sure lead to decisions that are enacted politically and/or legally
- Thorough assessment of the design of such constitutional modernization procedures, in all their legitimacy dimensions
- No magic solution, but rather homegrown solutions that fit the needs of a given polity