



Llywodraeth Cymru
Welsh Government

Evidence Review: Engaging citizens in drafting a statement of constitutional and governance principles for Wales

Commissioned by the Welsh Government at the request of the Innovating Democracy Advisory Group

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Executive Summary

This evidence review discusses what can Wales learn from experiences of participatory constitution-making around the world, to inform its advice to Welsh Government on a project that engages citizens in the development of a statement of constitutional and governance principles?

It is vital that we learn by listening to international experience on how to overcome [the challenges to democracy]. We believe that Wales has the potential to create a more robustly democratic culture, to become an expansive democracy, through innovative engagement mechanisms that enrich the work of elected representatives.¹

These words – taken from the Final Report of the Independent Commission on the Constitutional Future of Wales – reinforce the value of lesson-learning from participatory constitution-making around the world.

These lessons are relevant to any context, and provide a background to this report. The report also provides targeted advice to the Innovating Democracy Advisory Group (IDAG), to inform its advice to the Welsh Government on engaging citizens in the development of a statement of constitutional and governance principles. It engages with the following themes:

1. Arguments for and against engaging citizens in constitutional processes.
2. Trends and examples in relation to participatory constitution-making around the world.
3. Participatory and deliberative methods for involving citizens.
4. Opportunities and challenges for engaging citizens in constitutional processes.
5. The impact on citizens of involvement in constitutional processes.
6. Involve citizens in developing a statement of constitutional values and principles: general principles and specific recommendations for IDAG to consider.

Having engaged with these themes, we can establish recommendations for involving citizens in a statement of constitutional values and principles. These recommendations include:

1. Consider whether, not just how, to incorporate public participation into constitutional processes.
2. Combine participation with inclusion and deliberation.
3. Co-ordinate public input and party buy-in.
4. Consider the impact of the process on citizens, not just the impact of citizens on the process.

¹ Independent Commission on the Constitutional Future of Wales (2024). *Independent Commission on the Constitutional Future of Wales: final report*, p.3.

1. Why engage citizens in constitutional processes?

“Public participation” has become “an almost ubiquitous feature of constitution-building processes”², to the extent that “the key question for decision-makers is not whether to involve the public, but how and when to involve them and in what ways”.³

Nevertheless, substantial debate remains as to what difference participation makes to a constitution, and to democracy more broadly. Numerous empirical studies observe “no explicit causal links between public participation in constitution-making and higher quality of democracy, enhanced levels of rights protection, or greater degrees of popular attachment to the constitution”.⁴

The amount of direct public input into constitutional text is also highly variable. For example, “in Iceland’s 2011 process ... 10% of the submissions from the public generated a change in the draft constitution”.⁵ This is acknowledged to be “a rather low rate” but still “significant” and “likely higher than many observers of constitution-drafting processes would expect”.⁶ However, this ‘rather low rate’ contrasts with post-Arab Spring constitutional reform in Tunisia, in which “43 percent of public proposals were included in the final draft”.⁷

This variance in eventual public input could reflect differences in “the incorporation of particular consensus-building institutions”.⁸ In the case of Tunisia, the National Constituent Assembly’s “supermajority vote requirement for approving the constitution ... prevented unilateral decisions by the majority group” and “facilitated [cross-party] consensus building”; there was also “an ad hoc body which had the final vote on controversial provisions”.⁹

Gathering the various case studies on this topic, there is no clear pattern in the relationship between public participation and constitutional democracy. Consider the following:¹⁰

1. *South Africa...[is] a case in which participation was extensive, and the resulting document scores well on measures of rights, endurance, and enforcement.*
2. *Eritrea, Ethiopia, and Thailand used broadly participatory processes that had little to no effect on the subsequent political system.*

2 International IDEA (2021). *Practical Considerations for Public Participation in Constitution-Building What, When, How and Why?*, p.7.

3 Ibid., p.19.

4 Pasarlay, S. (2024). ‘Public Participation in the Constitution-Making Process: The Afghan Experiment’. 49 *Brook. J. Int’l L.* 50., p.61.

5 Hudson, A. (2021). ‘Political Parties and Public Participation in Constitution Making: Legitimation, Distraction, or Real Influence?’. *Comparative Politics*, 53(3), p.504.

6 Hudson, A. (2018). ‘When Does Public Participation Make a Difference? Evidence From Iceland’s Crowdsourced Constitution’. *Policy & Internet*, 10(2), p.199.

7 Maboudi, T. (2020). ‘Reconstituting Tunisia: Participation, Deliberation, and the Content of Constitution’. *Political Research Quarterly*, 73(4), p.774.

8 Ibid., p.774.

9 Ibid., p.785.

10 Ginsburg, T., Elkins, Z. & Blount, J. (2009). ‘Does the Process of Constitution-Making Matter?’. *Annual Review of Law and Social Sciences*, 5(5), pp.15-16.

3. *Constitutional orders in Germany, Japan, and Eastern Europe appear healthy despite the fact that these documents were either imposed by foreign powers or were the result of elite-level round-table negotiations.*

It is also important to be aware of “the long causal chain that exists between the moment of constitution drafting and the level of democracy that may exist in the state a decade later”.¹¹ In other words, it may not be possible to isolate public participation as causally significant to a constitutional process (or the constitution itself), especially in the long-term, given the complexity of political culture across space and time.

» 1.1: The case for

Arguments in favour of public participation in constitutions typically make their case according to processes and outcomes. The case for processes states that participation is a valuable and meaningful exercise in its own right (regardless of outcome), and a necessary expression of popular sovereignty. It describes constitution-making as a forum in which citizens can “deliberate, engage in peaceful exchange, acknowledge differences, debate settlements, and foster trust and tolerance”.¹²

The **process** can be considered “legitimation from below”;¹³ revising or replacing a constitution disrupts an established institutional order, and legitimacy via participation is a means of re-consolidation. This is “a complementary legitimacy, rather than one that is in any way pre-eminent to ... elected institutions”.¹⁴ Discussions around the Irish Constitutional Convention (2012-14) celebrated the process in its own right, even when it was:

*too early to judge the success of this ICC [in terms of outcomes]... as a process, in terms of how the ICC operated, it was seen as a great success: many who had been critical before admitted to being converted, and senior politicians from all parties talk of the possibility of creating another ICC in the future.*¹⁵

The case for **outcomes** posits that participatory processes can result in higher levels of legitimacy, stability, and constraints on government.¹⁶ The constitutions themselves are also more likely to benefit from provisions that protect minority rights and religious freedoms.¹⁷ These democratic benefits remain debatable, but are argued to be especially apparent “in the years following ratification, particularly when there is a high level of participation in the first stage of the process”.¹⁸

11 Hudson (2021), p.504.

12 Pasarlay (2024), p.61.

13 Hudson (2021), p.503.

14 Carolan, E. (2015). ‘Ireland’s Constitutional Convention: Behind the hype about citizen-led constitutional change’. *International Journal of Constitutional Law* 13(3), p.736.

15 Farrell, D. (2014). ‘The Irish Constitutional Convention offers a potential routemap for renewing UK democracy’. *Democratic Audit UK*.

16 Carey, J. (2009). ‘Does It Matter How a Constitution Is Created?’. In: Barany, Z.D. & Moser, R.G. (eds.), *Is Democracy Exportable?*, pp.156–77. Wallis, J. (2016) ‘How Important Is Participatory Constitution-Making? Lessons from Timor-Leste and Bougainville’. *Commonwealth & Comparative Politics*, 54, pp.362–86.

17 Fruhstorfer, A. & Hudson, A. (2021). ‘Majorities for Minorities: Participatory Constitution Making and the Protection of Minority Rights’. *Political Research Quarterly*, 75(1), p.105.

18 Hudson (2021), p.504.

» 1.2: The case against

In discussing the Irish Constitutional Convention, so often “cited as an example to be aped”, with “particular resonance in the United Kingdom’s post Scottish referendum constitutional discussions”,¹⁹ we still see warnings that “involving the people (or, more accurately, some people) in the process provides no guarantee that those people will – or indeed should – be listened to”.²⁰

Even when making the case for participation in general, a distinction needs to be drawn between amending a constitution and making a constitution. The latter “occurs almost invariably in the wake of power struggles, armed conflict, and violent upheaval”²¹. These circumstances, in which substantial divisions necessitate constitution-making in the first place, render compromise extremely difficult among public participants.²²

Public participation, then, should not be assumed to automatically benefit all constitutional processes. The limitations of participation are also evident in

*the three most widespread systematic participatory processes ever – in Iceland 2010, Egypt 2012, and Chile 2016 – [which] have all ended, at least for the time being, in failures to negotiate a draft (Chile), ratify the constitution (Iceland), or even survive more than 6 months after promulgation (Egypt) ... none of these efforts yielded a new, stable constitution.*²³

These cases arguably prioritised participation over inclusion; in other words, prioritising “the number of participants in the room” over “the widest possible range of interests [being] included”²⁴. After all, “deliberation about fundamental principles of social organization might easily be turned into struggles between majorities and minorities”, with “majorities often aim[ing] to impose a large part of their vision of societal organization onto minorities”.²⁵

This illustrates a broader argument that “participation alone cannot generate constitutions that improve levels of democracy, or, sometimes, even the very promulgation of new constitutions”, and that “participation without inclusion is doomed to failure”.²⁶

There is also a risk of political elites using “citizen-led or citizen-oriented participatory processes ... for political buck-passing”, in which “a lengthy institutional process to examine potential reforms” becomes “[a] way ... to efficiently entrench their position until such time as the pressure for reform has dissipated”.²⁷ In such scenarios, “[o]stentatiously involving ordinary citizens in this process, particularly where the political elite retain control over its agenda and over the ultimate outcome of the process” can be perceived “as providing only an impression of consultation or commitment to reform”.²⁸

19 Carolan (2015), p.734.

20 Carolan (2015), p.735.

21 Pasarlav (2024), p.52.

22 See: Negretto, G. (2020). ‘Constitution-making and liberal democracy: The role of citizens and representative elites’. *International Journal of Constitutional Law*, 18(1), pp.206–232. This is an important consideration, given the importance of compromise to constitution-making. Compromise in these circumstances is often more achievable among ‘political elites’ (see Section 4).

23 Eisenstadt, T. A. & Maboudi, T. (2019). ‘Being There Is Half the Battle: Group Inclusion, Constitution-Writing, and Democracy’. *Comparative Political Studies*, 52(13-14), p.2136.

24 Ibid., p.2137.

25 Fruhstorfer & Hudson (2021), p.105.

26 Eisenstadt & Maboudi (2019), p.2136.

27 Carolan (2015), p.746.

28 Ibid.

Table 1: Summary of case for and against engaging citizens in constitutional processes

The case for	The case against
Increasingly assumed that participation will be included (questions of how and when more likely)	Possible to neglect important questions of whether participation should be incorporated, and why
Positive correlation with democratic quality	No clear causal relationship with democratic quality
An increasingly frequent constitutional requirement	Not a traditional constitutional requirement
Possible and beneficial in constitutional amendment	Difficult and even detrimental to constitution-making
Can bring benefits to processes and/or outcomes	Can fail to yield new stable constitutions
Particularly effective when combined with inclusion	Doomed to failure without inclusion

2. Participatory constitution-making around the world: trends and examples

If it is now “inconceivable that a government would attempt to draft a new constitution without at least a nominal commitment to a process in which the public is consulted”,²⁹ This is a substantial departure from “traditional methods of arriving at a final document” which “for a long time [have] been an area strictly reserved for political elites and lawyers”.³⁰

This traditionally exclusive process changed profoundly during “the second half of the 20th century”; a time of “remarkable increase in the level of public participation in constitution-making and a significant expansion of the roles that the people play in constitutional reform processes”.³¹ A particular turning point was “the 1994-1996 South African constitution-making process”, after which “citizen participation expanded as a key ingredient of democratic constitutional processes throughout the globe”.³² Until this time, it was still possible to argue that “[t]he sovereignty of the people is in some way denied and suppressed, rather than affirmed and expressed, in the existing constitutional forms”.³³

Therefore, the last three decades have seen an “understanding of who the legitimate “constitution-makers” are, dramatically expand to now also include ordinary citizens of countries”.³⁴ This expansion is reflected in the formation of a Citizens Assembly in British Columbia in 2004, consisting of 160 residents, selected at random: “[f]or the first time in modern history, the task of creating an electoral system was given to ordinary citizens rather than politicians or experts”.³⁵

Moreover, Iceland’s 2010-13 constitutional reform process was the first time that “a country’s foundational text (or at least a draft proposal for it) was written with the more or less direct participation of its people”.³⁶

29 Kirkby, C. & Murray, C. ‘Constitution-Making in Anglophone Africa: We the People?’. In: Ndulo, M. & Gazibo, M. (eds.), *Growing Democracy in Africa: Elections, Accountable Governance, and Political Economy*, p.87.

30 Saati, A. (2016). ‘Different Types of Participation in Constitution Making Processes: Towards a Conceptualisation’. *Southern African Journal of Policy and Development*, 2(2), p.18.

31 International IDEA (2021), p.13.

32 Pasarlay (2024), p.57.

33 Tully, J. (1995). ‘Cultural demands for Constitutional Recognition’. *The Journal of Political Philosophy*, 3(2), p.5.

34 Saati, A. (2020). ‘Participatory constitution-building in Fiji: A comparison of the 1993-1997 and the 2012–2013 processes’. *International Journal of Constitutional Law*, 18(1), p.261.

35 Participedia. *British Columbia Citizens’ Assembly on Electoral Reform*. www.participedia.net/case/1

36 Landemore, H. (2015). ‘Inclusive Constitution-Making: The Icelandic Experiment’. *The Journal of Political Philosophy*, 23(2), p.167.

Case Study 1: The Icelandic Constitutional Assembly³⁷

Purpose	25 citizens appointed to create a constitutional draft between 6 April – 29 July 2011, overhauling and updating the 1944 constitution.
Institutions	Icelandic Parliament: initiated the Constitutional Assembly; appointed publicly-elected members to sit on the Assembly.
Participants	522 stood for election; 25 elected to the Assembly.
Methods	Advertising for public proposals [hence claims of being the first country to ‘crowdsource’ constitutional revision]. Publishing preliminary drafts online for public review; additional public suggestions (approved for consideration by the Assembly) published for public to debate, potentially to include in the next constitutional draft.
Impact	Non-binding constitutional referendum held on 20 October 2012; resulting bill supported by a majority of MPs but did not come before parliament for a vote before recess was called prior to 2013 election.

It is also becoming more common to involve citizens earlier in the process, through such means as public consultations, petitions, written and oral submissions, and even popular amendments. Moreover, direct forms of participation (including input on the text itself) are increasingly prevalent, with the advent of new technology to facilitate citizen input, for example in legislative drafting:³⁸

the lower chamber of Brazil’s Congress created a “Hacker Lab” to develop innovative ways to involve citizens in lawmaking ... One of their projects, called Wikilegis, allows citizen participants to collaborate to write the text for new legislation ... a tool for online public participation ... was developed for Egypt’s constitution-making process in 2012 ... drafts of the constitution were posted online, and citizens were given the opportunity to comment upon, and like or dislike individual articles.

Some trends nevertheless illustrate continuity rather than change. For example, if public participation is involved in constitution-making, it is usually through a voting process; either in the form of an elected drafting body, or the constitution itself being ratified through a referendum:³⁹

Between 1789 and 2016, 168 constitutions were ratified through a referendum, and as of 2018, more than a third of in-force constitutions were ratified through a referendum. This number is likely to grow, as more than half of the constitutions ratified after 2000 were approved by the voters in a referendum.

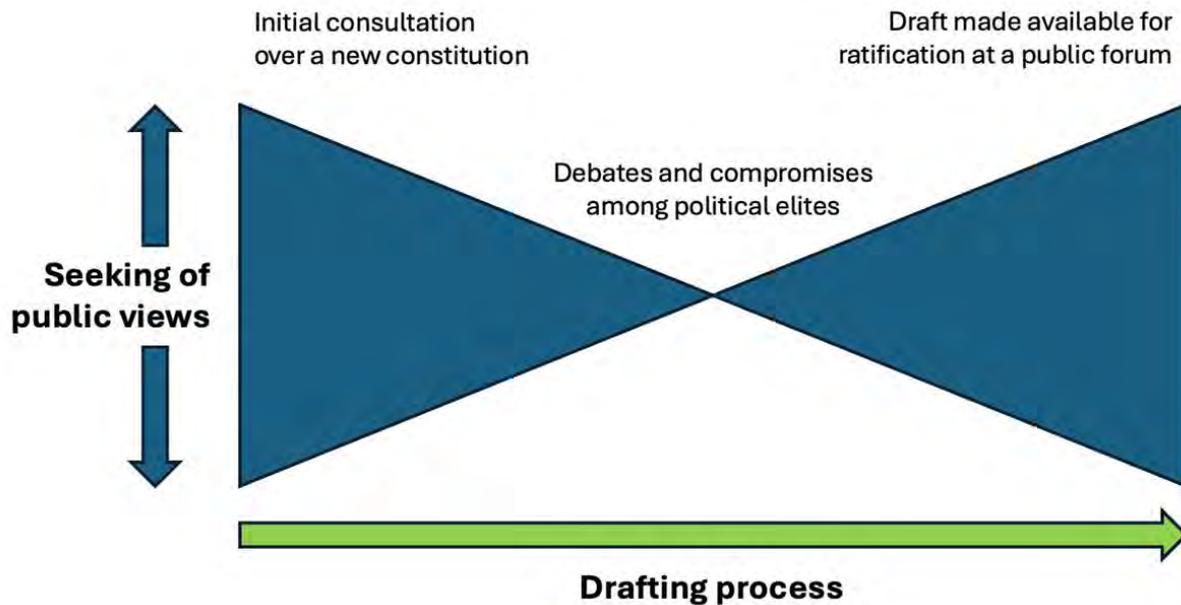
37 Participedia. *Icelandic Constitutional Assembly 2011*. www.participedia.net/case/131

38 Hudson (2018), p.190.

39 Hudson (2021), p.502.

To this day, the process is illustrated as ‘hourglass shaped’,⁴⁰ with “the public engaging at the beginning of the process – for example by electing representatives to the constitution-making assembly – and at the end of the process, through a referendum on the final text”:⁴¹

Figure 1: The ‘hourglass’ concept of public participation in constitutional processes⁴²



This commonly-cited model of public participation has nevertheless been subject to critique over the last decade,⁴³ since public participation is now more common throughout. The Icelandic example illustrates continuous engagement, as well as a broader evolution in constitutional processes.⁴⁴ For example, if we compare those present at the signing of the US Constitution in 1787 with the composition of Iceland’s Constitutional Council in 2011, we see a visible contrast “between two epochs and two styles of constitution-making, one elitist and secretive, the other inclusive and open”:⁴⁵

40 Elster, J. (1995). ‘Forces and Mechanisms of the Constitution-Making Process’. *Duke Law Journal*, 45, pp.395-396.

41 International IDEA (2021), p.13.

42 Drawing in particular on the description provided in Pasarlay (2024), pp.53-54.

43 Eisenstadt, T.A., Levan, A.C., Maboudi T. (2015). ‘When Talk Trumps Text: The Democratizing Effects of Deliberation during Constitution-Making, 1974-2011’. *American Political Science Review*, 109(3), pp.592-612.

44 This visual representation is prompted by a discussion by Landemore (2015).

45 Ibid., p.167.



Howard Chandler Christy's Scene at the Signing of the Constitution of the United States (1940)



Iceland's Constitutional Council members Credit: Skrifstofa Stjórnlagaráðs/ Flickr

The difference between these images illustrates increased breadth of participation, not only in constitutional processes but in those responsible for them. This development is highly significant in terms of who and what can be represented through a constitution.⁴⁶

[Iceland's] Constitutional Council included ... Freyja Haraldsdottir, a human rights activist with severe disabilities, who is credited with influencing the human rights section of the crowdsourced proposal (and modifying it considerably from its last 1995 update).

However, “the Icelandic exercise in constitution-making put an end to the idea that inclusiveness of the population can only be done vicariously, via the representativeness of the drafting body”.⁴⁷ In other words “it is not enough that an assembly simply looks representative or conforms to a statistically valid sample”; it is also crucial to examine “[t]he way in which the body acquires information, understands that information and engages with it”.⁴⁸ This necessitates examining the various methods of public inclusion, whether the focus is on participation (“who is involved in the decision-making process”), deliberation (“how that involvement takes place”),⁴⁹ or a combination of both.

46 Landemore, H. (2020). ‘When public participation matters: The 2010-2013 Icelandic constitutional process’, *International Journal of Constitutional Law*, 18(1), p.198.

47 *Ibid.*, p.201.

48 Carolan (2015), p.738.

49 Suteu, S. & Tierney, S. (2018). ‘Squaring the circle? Bringing deliberation and participation together in processes of constitution-making’. In: Levy, R., Kong, H., King, J. & Orr, G. (eds.), *The Cambridge Handbook of Deliberative Constitutionalism*. pp.282-294.

3. Participatory and deliberative methods

Participation is “about the numbers, the ‘breadth’ of people who participate, and less about the ‘depth’ of the participation”, potentially with “a tendency toward establishing political power”.⁵⁰ It is “exemplified by the popular referendum” and thus “aims to mobilise large numbers of citizens towards deciding, by way of a yes/no vote, on a concrete issue typically framed by political actors”; its “success tends to be evaluated on the basis of voter turnout and clarity of the vote”,⁵¹ and is therefore more quantifiable.

Deliberation is about “the quality (deliberativeness) of participation, much less about large numbers, and ... the establishment of common ground”.⁵² It is “exemplified by citizens’ assemblies and constitutional conventions” and “is more concerned with the quality of decision-making and its capacity to induce public reason and reach consensus. Its success ... may be determined in terms of reflection, responsiveness, and exchange of reasons”,⁵³ and is therefore more frequently qualified than quantified.

Table 2: participatory and deliberative methods in constitutional processes⁵⁴

Method	Approach/phase		Uses	Examples
Participation	Voting	Referendums	Yes/no vote in approval phase Popular legitimation/rejection of draft proposal	Chile 1980; Ecuador 2008; Egypt 2014; Guinea 2020; Ireland 2015 & 2018; Kenya 2005 & 2010
		Elections	Initiation of process included in campaign platforms Electing representatives to constitution-making assembly	Bolivia 2005 & 2006-7; Chile 2013; Hungary 2010-14; Mongolia 2017; South Africa 1994-99; Sri Lanka 2015; Tunisia 2011-14; Vietnam 2011-16
	Consultations	Consultative referendum/plebiscite	Non-binding results provide decision-makers with information about public views Can shape processes and decisions on content	Canada 1992; Colombia 1990; Iceland 2012; Luxembourg 2015; South Africa 1992; Spain 1976

50 Carson, L. & Elstub, S. (2019). *Comparing participatory and deliberative democracy*, p.4.

51 Suteu & Tierney (2018), p.13.

52 Carson, L. & Elstub, S. (2019), *Comparing participatory and deliberative democracy*, p.4.

53 Suteu & Tierney (2018), p.13.

54 Source: International IDEA (2021).

Method	Approach/phase		Uses	Examples
Participation (Cont'd)	Consultations (Cont'd)	Requests for submissions/ comments	Can target both general public and specialized/expert organizations Online submissions via websites/social media to supplement paper submissions	Egypt 2012; Iceland 2011-13; Mexico City 2016-17; Tunisia 2011-14
		Surveys/ questionnaires	Assess views on process/ substantive issues	The Gambia 2017-18; Kenya 2002; Nepal 2008-12
		In-person meetings	Necessary for participatory, educational and consultative purposes May be deliberative or one-way	Eritrea 1997; Fiji 2012; Uganda 1995
Deliberation	Mini-publics		Review agenda items and prioritise amendment issues	Iceland 2010
			Generate recommendations for drafting body	Ireland 2017 & 2019; Mongolia 2017
			Generate recommendations for referendum	British Columbia 2004; Ontario 2006
			Review proposals prior to referendum	Oregon (permanent)
	Self-selecting bodies		Understand and contextualise an issue or conflict Review details / previous work Generate collective points of view and plans of action	Chile 2016
		Constitutional conferences	Develop initial agreements/ recommendations for reform One of several bodies in multi-stage process	Zambia 2007

Though participation and deliberation differ in terms of aims, methods, and understandings of ‘success’, they “are not binaries and in the name of democracy must not be binaries”.⁵⁵ An outline of a combined participatory-deliberative constitutional process is provided below; one which provides “room for the demands of a particular moment: the nature of the issues being considered, local practice and the meanings those practices have, scale and whether we are talking about a grand constitution-making moment or a more specific issue”.⁵⁶

55 Suteu & Tierney (2018), p.11.

56 Parkinson, J. (2018). ‘Ideas of Constitutions and Deliberative Democracy and How They Interact’. In: Levy, R., Kong, H., Orr, G. & King, J. (eds.). *The Cambridge Handbook of Deliberative Constitutionalism*, p.253.

a very broad and open agenda-setting stage that is anchored in the informal public sphere; a more small-scale but still public, deliberative option-generation step which combines experts, lay citizen representatives and other stakeholders; decision-making, either by direct, mass methods or indirectly via representatives; and then more narrow implementation and scrutiny processes. Such a sequence starts large-scale and diffuse to stimulate and capture narratives of experience, ideas and claims ... then focuses its energies into particular deliberative venues to clarify the options and link them with evidence and arguments, to sort out what is at stake; then goes large-scale again for mass choice and legitimacy; before focusing once more for implementation and scrutiny.

The importance of “build[ing] linkages between participation and deliberation” – i.e. between the quantity and quality of inclusion – has been used to explain “Iceland’s failure to adopt the popularly produced constitutional draft ... attributed at least in part to the late involvement of political elites who had felt alienated from the process”, as well as “the initial success of the Irish process ... in no small measure due to the respectful interactions within the convention and to the fact that politicians involved did not appear to dominate the debates”.⁵⁷

Case Study 2: The Irish Constitutional Convention⁵⁸

Purpose	Convened in late 2012 to discuss constitutional amendments; considering aspects of the Constitution to ensure applicability for 21 st Century.
Institutions	Initiative of Irish Parliament; financed within the Vote of the Department of the Taoiseach; administered by small team of civil servants.
Participants	Random sample of 66 citizens representative of Irish population as delegates to the Convention; 66 citizens shadow each of the delegates, fill in if unavailable. 33 delegates drawn from political parties (4 representing each of Northern Ireland’s political parties); 1 independent chairman appointed by government in consultation with opposition parties.
Methods	Convention website allowed users to submit proposals for discussion; plenary sessions video-streamed; related documents and deliberations published. Convention meetings in plenary sessions; members briefed prior to formal deliberations; advisory panel comprised of academics, political scientists, and constitutional lawyers to provide specialist guidance.
Impact	Government formally responded to all nine Convention reports; put three proposals to referendum, two in 2015 (one passed) and one in 2018 (passed).

⁵⁷ Ibid., p.12.

⁵⁸ Participedia. *Irish Constitutional Convention (2012-2014)*. www.participedia.net/case/850

4. Opportunities and challenges

Public participation represents challenges and opportunities for constitution-making in its own right. It is important to recognise the inherent challenge of

*writing a legal document which reflects public demands while ensuring it has a cohesive and democratic content that satisfies all political and social groups. Participatory processes usually increase the number of demands which make reaching agreement more difficult.*⁵⁹

However, these inherent challenges, and “limitations to the effectiveness of citizen participation in constitution-making processes ... do not fundamentally undermine the merits of public participation” discussed so far.⁶⁰ This section discusses these challenges and limitations, as well as opportunities for involving citizens in constitutional processes.

» 4.1: Institutional and constitutional context

A significant opportunity for participatory and deliberative methods (beyond voting) “is a growing disenchantment with the performance of elected institutions” and “disillusion[ment] with the electoral process”.⁶¹ This disenchantment and disillusionment may explain the fact that even in prominent cases of public participation in constitutional processes, some quantifiers suggest a lack of public desire for participation. Turnout for election to the Icelandic Constitutional Assembly “was around 83,000 people from a population of 320,000, a 35.95% participation rate”.⁶² Other indicators include:⁶³

The small amount of votes backing the majority of the Assembly members (15 of which did not manage to gather even a thousand votes) ... [and] the fact that just over 4,000 people have “liked” the Assembly’s Facebook page during the constitutional drafting ... It is therefore unclear whether the revision process has succeeded in truly engaging the Icelandic population.

In the UK specifically, “the public is as critical now of how [they are] governed as they have ever been,” while “[l]ow trust helps fuel support for constitutional change”, for example with respect to devolved governance.⁶⁴ Support for constitutional change presents an opportunity or challenge depending on whether a participatory constitutional process in Wales takes account of this political and electoral context and seeks to actively address it. Considering the specific constitutional relationship between Wales and Westminster, and the limited constitutional role of the ICCFW,

59 Maboudi (2020), p.785.

60 Ibid.

61 Carolan (2015), p.735.

62 Participedia. *Icelandic Constitutional Assembly 2011*. www.participedia.net/case/131

63 Ibid.

64 National Centre for Social Research (2024). *Trust and confidence in Britain’s system of government at record low*. www.natcen.ac.uk/news/trust-and-confidence-britains-system-government-record-low

*it would not be possible to create a self-standing and comprehensive constitution for Wales ... However, drawing on [the components of a written constitution in the devolution settlement] these statutory examples and amplifying them with some general principles of good governance to produce a declaratory statement about how Wales is and should be governed could be a valuable step. If done by involving the citizens of Wales, this could provoke debate and reflection and enhance democratic and civic literacy in Wales.*⁶⁵

A ‘declaratory statement’ is an opportunity for effective constitution-making but not necessarily via public participation, since “particularly in complex transitions, sequencing foundational elite agreements on basic constitutional principles before opening the process to public participation can contribute to longer-term democratic performance”.⁶⁶ This can avoid the problems associated with “Brazil’s 1988 Constitution, which was developed through a strongly participatory process but ... involved little coordination” and failed to “establish fundamental principles”.⁶⁷

Failure to establish fundamental principles was also crucial for cases like Chile in which “thousands of people were consulted in extensive focus groups, about norms they sought to prioritize for inclusion in a new constitution⁶⁸ ... but without any politically anchored party or interest group elites who could get their constitution approved”.⁶⁹ Future constitutional processes in Wales are likely to involve prioritisation of norms, so it is vital to learn from cases such as Chile and Iceland about the importance of co-ordinating the point at which public input encounters existing political debates and contexts in representative institutions.

» 4.2: The role of parties

“Public participation is an almost ubiquitous feature of constitution-building processes, but it is not a panacea. It is not a substitute for political bargaining”.⁷⁰ Indeed, “consensus politics and bargaining between politicians from opposition factions” is so important that “if there is [none] to begin with ... there is very little public participation in the constitution-building process can achieve in terms of democracy enhancement”.⁷¹

The Icelandic constitutional process stands out as an example. It was hindered by minimal party buy-in by the time the proposals came to be passed, and the bill “did not come before parliament for a vote before recess was called prior to the 2013 election”, which was “partly through filibuster by the opposition”.⁷² Party involvement can thus be an opportunity at times and a challenge at others; after all, a lack of party influence was a possible reason for “[t]he impact of public participation” being “almost certainly much higher here than in any other case ... The drafters in Iceland were not bound to follow any agenda or program for constitution change other than the mandate they were individually given by the voters”.⁷³

65 ICCFW final report, p.38.

66 International IDEA (2021), p.20.

67 Ibid., p.21.

68 Eisenstadt & Maboudi (2019), p.2136.

69 Ibid., p.2156.

70 International IDEA (2021), p.7.

71 Saati, A. (2017). ‘Constitution-Building Bodies and the Sequencing of Public Participation: A Comparison of Seven Empirical Cases’. *Journal of Politics and Law*, 10(3), pp.15-16.

72 Participedia. *Icelandic Constitutional Assembly 2011*. www.participedia.net/case/131

73 Hudson (2018), p.207.

The involvement of both public and parties needs to be planned and co-ordinated. South Africa and Tunisia are examples, with the former establishing “a negotiated platform, agreed upon by political elites from a broad spectra of political parties, which preceded the public participation phase” and the latter having “a similar set-up ... a two-pronged constitution-building process in which the first phase was limited to political elite negotiations”⁷⁴.

Also crucial is “get[ting] political buy in from the parties as to the credibility of the process and respect[ing] the outcome”.⁷⁵ Even though minimal party involvement can stimulate public participation early on, these same circumstances can reduce the chances of a constitution’s successful implementation later. At a time when Iceland’s constitution remained in “a kind of limbo”,⁷⁶ it was argued⁷⁷

that the kind of drafting process that facilitates a high impact from public participation also decreases the likelihood that the draft can make it through ratification in the regular legislative assembly, as none of the parties have a significant stake in the document’s ratification.

In the case of Ireland, by contrast,

The [2013] Convention had an advantage in having politicians among the ranks of the members ... this minimised the risk of a ‘disconnect’ between the Convention and the political class – a problem that was apparent in the cases of the Canadian and Dutch citizens’ assemblies ... There, the political class quite deliberately stayed clear of the work of the citizens, making it difficult for these assemblies to gain much political purchase.⁷⁸

There is a greater tendency for participation in political contexts when parties are relatively weak.⁷⁹ In this context, ‘strength’ and ‘weakness’ can be defined in terms of “whether the political party approaches the constitution-making process with a clear vision of what the constitution should accomplish”.⁸⁰ Examples are provided below:⁸¹

- **Strong parties/weak participation**

- South Africa

- Significant time and money invested in facilitating public participation
- Text ultimately developed by compromises between two strong parties

- Chile; Iceland

- Highly participatory processes
- Failed when strong parties asserted themselves

74 Saati (2017), pp.21-22.

75 [IDAG discussion participant].

76 Hudson (2018), p.205.

77 Ibid., p.207.

78 Suiter, J., Farrell, D. & Harris, C. (2016). ‘The Irish Constitutional Convention: A Case of ‘High Legitimacy’?’. In: Reuchamps, M., Suiter, J. (eds.). *Constitutional Deliberative Democracy in Europe*, p.46.

79 Hudson (2021).

80 Ibid., p.505.

81 Ibid.

- **Weak parties/strong participation**

- Brazil

- High level of public engagement
- Weak parties meant civil society could shape constitutional text

- Tunisia

- Constitution text highly influenced by popular input
- Parties failed to consolidate their position

- Ecuador

- Weak parties prioritised public participation
- Constitution created a variety of means to empower citizens

This discussion informs an important recommendation; that the involvement of parties can and should complement, rather than conflict with, public participation. Without effective sequencing and co-ordination, these inputs can work against each other.

5. Impact on citizens

The impact of participatory constitutional processes on citizens can go beyond the experience itself. For example, “the Irish evidence suggests that citizens’ assemblies have positive effects not only on those taking part directly, but also on wider discussions – including on debates during the referendum campaigns”.⁸² Staying with the Irish example, interviews with members of the 2016-18 Citizens’ Assembly found that

*levels of satisfaction remained high across the five weekends (as they did across all eleven weekends of discussion): the bulk of members felt that they were free to raise their views, that they had ample speaking opportunities, and that other members respected what they had to say. For the most part, there were also few cases of domination of discussion by other members, though this is one area where we the members were somewhat more equivocal. Interviews ... in the final weeks of its operation also reveal high levels of satisfaction with the process.*⁸³

Beyond the scope of the process, “two members [of the first Irish Constitutional Convention in 2013] explained they had completely changed their views on issues as a result ... One of them also stressed that he would never have agreed to speak in front of such a large group if it had not been for his experience of doing so at the Convention”.⁸⁴

Public participation can pose risks to democratic quality (which then impacts the public in turn). Examples include the risks of “exacerbate[ing] conflicts among citizens over resources, identity, or other societal cleavages”, which would “ultimately prevent a constitution from emerging, or hinder its operation once adopted, through the intermediate effect on citizens”.⁸⁵

By contrast, “a meaningful participatory process” can positively impact citizens in the following ways:⁸⁶

- Promoting understanding and trust among communities
- Prompting new institutional arrangements, rights, and/or guarantees
- Recognising and empowering previously marginalized peoples
- Promoting reconciliation and forging a common vision, identity, and core values

82 Kaufman, H. (2018). “Citizens’ Assemblies: How can the UK learn from Ireland?”. *The Constitution Unit Blog*.

83 Farrell, D., Suiter, J. & Harris, C. (2019). “Systematizing’ constitutional deliberation: the 2016-18 citizens’ assembly in Ireland’. *Irish Political Studies*, 34(1), p.118.

84 Suiter et al. (2016), p.47. Consistent with the ‘long causal chain’ discussed previously, data on public impact and perceptions of the process tends to be either during or immediately after it, rather than taking a longitudinal focus. Longer-term effects on understandings and perceptions of democracy and participation are therefore difficult to determine.

85 Elkins, Z., Ginsburg, T. & Blount, J. (2008). ‘The Citizen As Founder: Public Participation In Constitutional Approval’. *81 Temple Law Review* 361, p.370.

86 Gluck, J. & Brandt, M. (2015). *Participatory and Inclusive Constitution Making: Giving Voice To The Demands Of Citizens In The Wake Of The Arab Spring*, p.12.

Taking the case of South Africa,⁸⁷

public constitutional forums ... enabled black South Africans to hear from their white countrymen and women their ideas of a future state that recognized the reality of a black majority while simultaneously enabling whites to hear directly from blacks their ideas of a country that included a fair and equitable role for the white minority.

In discussing why “[t]ransitional leaders across the globe – from South Africa, Thailand, and Uganda to Papua New Guinea, Brazil, and Kenya – have chosen to invest significant time and resources to implement inclusive and participatory constitution-making processes”, explicit benefits to citizens include “strengthen[ing] and promot[ing] a common sense of belonging, national unity, and identity”, as well as “acknowledge[ing] and incorporat[ing] the aspirations of citizens who have been previously marginalized”.⁸⁸

The process also brings educational benefits “on matters of public import, accelerating the acquisition of political information and equipping citizens to evaluate their government more critically”, as well as “promot[ing] democratic values in citizens and educat[ing] them in the operations of democratic processes [and] the contents of the constitution.”⁸⁹ Like impact more broadly, education and its benefits can be considered a two-way process, therefore it is important to “include civic education both on the constitutional reform process itself and on substantive constitutional and political issues”, but also “tap into the expertise of members of the public; this includes, but is not limited to, civil society organizations and experts in relevant subjects”.⁹⁰

87 Ibid.

88 Ibid., p.6.

89 Elkins et al. (2008), p.370.

90 International IDEA (2021), p.20.

6. Recommendations for involving citizens in a statement of constitutional values and principles

It is essential to consider **(1) whether, (2) how, (3) when, and (4) with what methods public participation can, or should, be incorporated into constitutional processes**. It is also important to consider who, or what group(s), should be responsible for planning, monitoring, and evaluating this process (and public participation in it). Establishing the answers to these questions should be done holistically, to encourage broad consensus, and buy-in, on the rationale, methods, and review.

Wales is a sub-state nation, in a state with no codified constitution. Most of the examples discussed above relate to sovereign states, presenting a different political context for constitutional discussions. The ICCFW's Final Report concludes that this context means "[t]he mechanism for reform of an unwritten constitution is less clearly defined but thus more flexible".⁹¹ In this constitutional environment, in which there is widespread support for constitutional change, a statement of principles can help maintain structure and coherence, as well as flexibility (as with the participatory-deliberative approach discussed in Section 3).

1. **Consider whether, not just how, to incorporate public participation into constitutional processes.** The causal significance of public participation to effective constitution-making remains highly debatable. Even though participation has unquestionably become a significant and widely-practiced element of constitutional processes – a trend likely to increase over time – there should always be an explicit intention for its use. Without this intention, public participation might not improve or even change a constitution.
2. **Combine participation with inclusion and deliberation.** The range of interests captured (inclusion) is as important as the number involved (participation). Moreover, the quality of interactions (deliberation) is just as important as the quantity. Participation and deliberation can inform different stages of the process, and need not conform to the traditional 'hourglass' model; for example, an open and participatory agenda-setting stage, followed by smaller-scale deliberative option-generation, participatory decision-making, and deliberative implementation and scrutiny.
3. **Co-ordinate public input and party buy-in.** Parties are an important consideration in terms of buy-in, and bargaining between political elites. Low party input may facilitate public participation early on, but can ultimately hinder a constitutional process. Successive assemblies and conventions in Ireland demonstrate the usefulness of involving parties as members, in order to avoid a disconnect between citizens and the 'political class'.

91 Independent Commission on the Constitutional Future of Wales (2024), p.103

4. **Consider the impact of the process on citizens, not just the impact of citizens on the process.**

Citizens can profoundly impact a constitutional process, but participatory constitution-making is a two-way dynamic. A participatory constitutional process can impact citizens in both positive and negative ways. In the case of the latter, it can exacerbate divisions in society and hinder effective constitution-making. In the case of the former, benefits can include increased trust, recognition, and a common vision. These benefits are relevant (and beneficial) to the process itself, but can go beyond it.