COUNTRY REPORT

LUXEMBOURG

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Constitution-making & Deliberative democracy

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Country Background[1]

Home to more than 600,000 inhabitants and with a national territory of just 2 586 km², the Grand Duchy of Luxembourg is among the least populous and smallest countries in Europe. At the same time, Luxembourg is, by various metrics, one of the continent's wealthiest societies. The country is simultaneously constitutional monarchy and parliamentary democracy: if sovereignty resides in the nation, the Head of State is the Grand Duke and the Head of Government the Prime Minister. Luxembourg ranks among Europe's most stable political communities, with a juridical regime of civil law and a political culture predicated on consensus and pragmatism.

In many ways, Luxembourg's political culture is the reflection of its constitutional order. Ratified in 1868, Luxembourg's present constitution is one of the few 19th century constitutions still in force around the world. Since ratification, this constitution has been amended 35 times, albeit in important respects, such that the document resembles more and more a patchwork quilt of basic institutions and goods. Popular attitudes towards the constitution mirror this confusion: the constitution is at once an historical artifact to be preserved and an inadequate expression of a 21st century political community's founding values. Nevertheless, the dynamics of Luxembourgish constitutional politics have historically tended towards stability with little popular involvement.

Yet the past twenty years have seen a consensus amongst Luxembourg's constitutional players – especially the major political parties – on the need for constitutional modernization (Gerkrath 2013). Certainly, this consensus is primarily motivated by the desire for a more coherent constitution after more than a century of significant changes. Still, it is also a response to two major developments in the country's recent history. First, there has been a growing sentiment that the country suffers from a democratic deficit. On the one hand, this could be attributed to a tradition of political paternalism and social and economic democracy wherein officeholders, industry leaders and trade unions decided most important matters behind closed doors (Heuschling 2016).

On the other, Luxembourg's peculiar demography brings with it acute problems of legitimation and cohesion. Of the resident population, only a slim majority are Luxembourgish nationals (52% or roughly 310,000), with the rest divided between European Union nationals (41% or 250,000) and third country nationals (7% or 40,000). This is not counting the non-resident daytime population of approximately 200,000 cross-border workers from France, Germany and Belgium, with the result that non-Luxembourgish nationals represent more than half of the total workforce in Luxembourg (54%) (Eurostat 2019). In a democratic state, these factors will eventually generate political malaise.

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Second, as head of state, the Grand Duke was previously required by the constitution to sanction parliamentary acts before they could be legally enforced by the executive power. That changed in 2008 when the Grand Duke refused, on conscientious grounds, to sanction a law which legalised euthanasia and assisted suicide. Faced with this refusal, Luxembourg's 60-member unicameral parliament, the *Chambre des députés* ('Chamber of Deputies'), amended the constitution in 2009 such that the Grand Duke's sanction was no longer needed for parliamentary acts to become legally enforceable.

For all these reasons, the topic of constitution-making has been a constant presence in Luxembourgish politics for more than twenty years – sometimes occupying the foreground, sometimes receding into the background. Though the process of revising the constitution has predominantly been an elite-driven affair, spearheaded by parliament and major political parties, it has included some participatory elements and deliberative moments. In this report, we give an overview of Luxembourg's formal constitution-making mechanisms, its incremental constitution-making processes and, most importantly, a series of recent constitution-making experiments. Along the way, we will gain a better understanding of the ongoing constitutional revision's fate, as well as the prospects for deliberative constitution-making in Luxembourg.

Formal Constitution-Making

Since its ratification, the 1868 constitution has been amended just 35 times. This is due in part to the original, rigorous amendment procedure outlined in Article 114. It called for a three-step process: 1.) the Chambre and the Grand Duke made a declaration indicating which article(s) needed to be modified; 2.) the Grand Duke dissolved the Chambre and called for new parliamentary elections; 3.) the members newly elected to a five-year term put the constitutional modifications to a two-thirds majority vote and submitted them to the Grand Duke for sanction. When a 1919 popular referendum on the form of the country's political regime and the ensuing constitutional revision made Luxembourg a parliamentary democracy extending the suffrage to all citizens and located sovereignty in the Luxembourgish nation, the Chambre began to treat the Grand Duke's role in Article 114 as mere formality (on which more in the next section) (Gerkrath 2013).

Only in 2003 was the letter of Article 114's revision procedure amended to reflect the spirit in which it had been exercised for almost a century. In its amended form, Article 114 vests the Chambre with the power to initiate and to approve constitutional amendments in a simplified two-step process. To be ratified, an amendment must be approved in identical terms by a two-thirds majority (that is, at least 40 of the Chambre's 60 members) in two successive votes, with the second vote taking place at least three months after the first vote.

Otherwise, the process for constitutional revision largely follows that for ordinary legislation. The revised amendment or constitution is drafted by a

parliamentary committee, in this case, the twelve-member *Commission des Institutions et de la Révision constitutionnelle* ('Committee on Institutions and Constitutional Revision'). Once drafted, the amendment or constitution is submitted to the *Conseil d'État* ('Council of State'). This body is composed of 21 members who are nominated in turns by the Government, the Chambre and the Conseil itself and whose nomination is subject to three conditions: the Conseil must comprise at least 11 jurists or legal experts, a balance between the genders and an approximately proportional representation of the parties having won at least three seats in the two previous parliamentary elections.

Among its several functions, the Conseil notably exercises a constitutional check on all parliamentary acts before they come to a vote in the Chambre. More precisely, the Conseil convenes a closed-door session to study the proposal and to determine whether it conforms to the spirit and letter of Luxembourgish constitutional law. The Conseil then issues a report (approved by a majority of its members) wherein it presents its opinion on the proposal's content and constitutionality and, sometimes, a reformulated version of the proposal. The proposal is returned to the relevant committee – in the case of constitutional revision, the Commission – which then prepares and shares its own report with other members ahead of the public parliamentary session. The public session begins with a presentation of the Commission's report after which the Chambre's other members debate the parliamentary act, propose amendments and put the act to a vote.

In addition to the revision process just described, the amended Article 114 also enables a subset of members of Parliament (at least 16) or of registered voters (at least 25,000 or approximately 10% of the electorate) to request referenda on constitutional amendments having passed the first vote in the Chambre. So long as the request is made within two months of the first vote and the referendum is approved by a simple majority, it replaces the second vote in the Chambre. To date, this referendum device has never been used, perhaps due to the political culture and the elevated number of public signatures required. Regardless, whether it proceeds via the ordinary legislative procedure or via the referendum mechanism, the Article 114 amendment procedure works the same way both for revising individual constitutional articles or for adopting an entirely new constitutional document.

Accordingly, with the 2003 revision of Article 114, popular referenda became a formal vehicle for constitutional revision. Article 114 is not, however, the only device through which a popular referendum may trigger constitutional change. An earlier 1919 revision of Article 52 had enabled the Chambre to organize referenda via legislative acts (transferred in 1948 to Article 51). Under the revised Article 51, the Chambre sets both the terms and the timing of referenda. If these referenda may be called on both matters of constitutional and ordinary law and are considered to have only consultative value because they do not replace the parliamentary vote, referenda called under Article 51, though rare, have previously been vehicles for constitutional change in Luxembourg (on which more in the next section).

We place particular emphasis on the role which referenda may play in constitutional reform because they have been central to recent Government strategies for modernizing the constitution, either through partial revision or abrogation and replacement. The process of modernizing began in earnest in 2009 when the Commission launched the formal revision process with the *Proposition de révision portant modification et nouvel ordonnancement de la Constitution* ('Revision proposal for modifying and re-ordering the Constitution'). Between 2009 and 2013, the Commission held more than thirty meetings to discuss the proposal, as well as documents and feedback from the European Commission for Democracy through Law ('Venice Commission'), the governing coalition of the Christian Democrats (CSV) and the Social Democrats (LSAP), and the Conseil d'État (about which we say more in the next section). Considerable attention was paid to recommendations from the Conseil, which suggested that an entirely new constitution might be more appropriate than a reworking of key chapters and articles (Gerkrath 2013).

The Commission's work was, however, interrupted by the withdrawal of the junior partner LSAP from the Government in summer 2013 and the call for snap elections, set for October 2013. Although the CSV again emerged as the largest party, the next three parties in size – the Democratic Party (DP), the LSAP and the Greens (DG) – formed a coalition under a shared agenda, whereof constitutional reform remained a key element. As the Commission continued the revision process, the draft proposal was made public in March 2015 under a different name: *Proposition de révision portant instauration d'une nouvelle Constitution* ('Revision proposal for establishing a new constitution'). The Commission had evidently taken the Conseil's advice into consideration.

Whereas the previous Government had not committed to organizing a popular referendum to vote on the constitutional reform, parties then in opposition – notably the DP and the DG – had stated their intention to request a ratification-referendum via the process in Article 114 (Gerkrath 2013). Since the new coalition agenda also emphasized democratic renewal and institutional legitimacy, the call for a referendum on constitutional reform was a natural fit. Consequently, the new Government and its parliamentary majority planned a two-part referendum: the first, in summer 2015, would settle several outstanding issues on which the majority and the opposition had been unable to reach consensus; the second, in winter 2015, would seek popular approval of the new constitution as a whole.

In February 2015, a parliamentary act invoked Article 51 and called a 'consultation-referendum' for June 2015. Simplifying somewhat, this referendum was intended to seek popular input on four questions: 1.) whether the voting age ought to be lowered to 16 years; 2.) whether foreign residents ought to be extended the right to vote in national elections; 3.) whether ministerial mandates should be subject to term limits; 4.) whether the state ought to stop financing treatments and pensions for officially recognized religions. Although the fourth question was ultimately settled prior to the parliamentary act calling the referendum, registered voters had the

opportunity to vote on the remaining three questions. They rejected all three proposals by large margins: 1.) No (80.87%); 2.) No (78.02%); 3.) No (69.93%).

Although the June 2015 referendum was called under Article 51 and was hence considered merely consultative, the Government and Chambre treated the results as binding and abandoned the proposed reforms. Moreover, the results had the further effect of delaying the second referendum on the new constitution as a whole. Foreseen for winter 2015, this referendum was later called off by the Government, at least in its original form. This delay may be partly explained by the Commission's ongoing work on the draft constitution, whereof a new version emerged in June 2018. The delay may also be partly explained by the Government's reluctance to leave the fate of the constitutional reform – a flagship measure from its agenda – in the hands of a hostile voting public. Indeed, analysis suggests that the strong 'No' vote in 2015 was motivated in great part by voters' negative feelings towards the Government, which had bypassed the largest party, the CSV, to form a coalition of smaller parties (Kies 2019).

Following i.) the October 2018 parliamentary elections which returned the coalition, ii.) further feedback from the Venice Commission and iii.) a number of revisions in spring and summer 2019, the new draft document was set to go back to the Conseil d'État. Yet, in July 2019, the CSV withdrew its support for the draft document and second referendum – necessary for the two-thirds majority – unless citizens were more directly involved in the reform process. Ultimately, the Commission announced in November 2019 that it was abandoning its project to draft an entirely new constitution. Instead, it would pursue a partial, though substantial, revision incorporating key elements from the draft document. Consequently, there would be no referendum on the new constitution. Nonetheless, the Commission left open the possibility of a series of referenda on specific constitutional revisions after these had been voted in the Chambre. At the time of writing, no timeline has been put forward.

From this presentation emerge several telling details about the deliberative quality of formal constitution-making procedures in the formal elite and the maxi-public. First, deliberation is largely restricted to political elites because formal amendment powers rest solely with the Chambre. Second, deliberation may be hindered if the Chambre's members are more sensitive to strategic considerations related to their partisan affiliation and less sensitive to rational considerations about the fact of the matter. Third, to the extent that deliberation informs the revision process, it takes place, on the one hand, between the Commission's members whose sessions are closed to the public and, on the other, between the Conseil d'État's members whose sessions are similarly closed.

Fourth, although deliberation on the wording of an amendment or a constitutional document may be enhanced by the interactions between Commission and Conseil, these interactions are one-sided as they neither convene together nor collaborate on the report. Fifth, there is little to no opportunity for maxi-public deliberation unless the Government and Chambre support a citizen consultation either via popular referendum or public hearing. Sixth, even when a referendum or public hearing influences the shape of certain amendments (see the discussion of *Är Virschléi*

below), maxi-public deliberation exercises no formal control over the wording of an amendment or a constitutional document, meaning that the formal constitution-making instances do not fully enjoy the deliberation-enhancing effects of societal pluralism and epistemic diversity.

Incremental Constitution-Making

Although the 1868 constitution has known 35 formal amendments since its ratification, it has also seen numerous incremental or informal constitutional changes. These can broadly be attributed to three causes: the plurality of constitutional sources in Luxembourg; constitutional custom initiated by de facto government practice; the Conseil d'État's constitutionality check.

Plurality of sources

To begin, although Luxembourg has a formal constitutional text and constitutional actors subscribe to the legal ideal of the *Rechtsstaat* (rule of law), this text does not exhaust the Luxembourgish Constitution considered holistically (Heuschling 2012a). Like many countries and European Union member states, Luxembourg is a signatory to international agreements and European Union treaties which constrain the shape of certain institutions and the decision-making process in certain policy areas. The Chambre need only ratify these agreements and treaties with a two-thirds majority. Despite being constitutional norms in their own right, these agreements and treaties do not appear in the constitutional text itself.

Otherwise, unlike many other constitutions, Luxembourgish constitutional norms are also partially determined by a body of law, the content of which is not public knowledge: *Fürstenrecht*, a descendant of German royal law, sets internal standards and norms for the Duchy's royal household. While the *Fürstenrecht* governs many matters of personal interest to the Duke's immediate family, its standards and norms also concern certain matters affecting basic political arrangements (given the Duke's role as head of state), some of which stand in an ambiguous relation to the civil code and international law (such as royal marriages and disciplinary affairs) (Heuschling 2012b).

Finally, the Luxembourgish constitution also reflects de facto government practice and historical opinions from the Conseil's constitutionality check (about which we say more shortly). In short, changes in any of the constitutional sources will bring about changes in the Luxembourgish constitution. If this means that incremental constitution-making shapes constitutional norms in Luxembourg, it need not mean that such constitution-making is deliberative. Not only do the processes above involve the formal elite rather than the maxi-public, they may also entail little to no deliberation between the different decision-making instances of the formal elite.

Constitutional custom

A second source of incremental or informal constitution-making is constitutional custom emerging from de facto government practice. Good examples may be found in the constitutional revision procedures from Article 114 and in the institutional device of popular referenda from Articles 51 and 114. As explained above, in its original form, the Article 114 revision procedure was a three-step procedure involving, notably, a declaration of constitutional revision and the dissolution of parliament. Following the 1919 popular referendum on the form of the country's political regime and the ensuing constitutional revision which declared Luxembourg a parliamentary democracy, the Chambre appealed to that revision to reinterpret Article 114 to mean that the Grand Duke had only a formal role in the constitutional revision procedure (Gerkrath 2013). Indeed, the original first step in the process – the declaration of constitutional revision – was henceforth carried out by the Chambre alone.

The second step was also reinterpreted in light of the 1919 revision. Formally, Article 114 required that the Chambre be dissolved following the declaration of revision and that parliamentary elections be called so that the new members could review the merits of the proposed revision before putting it to a second qualified majority vote. Informally, Article 114 was judged by the Chambre's members to be compatible with a procedural workaround: if the first vote on a constitutional amendment came at the end of the Chambre's five-year term, then the second vote on that amendment could be held after the regularly scheduled parliamentary election and at the beginning of the Chambre's new five-year term without dissolving the parliament. Though Article 114 and its three-step procedure remained textually unchanged until 2003, the Chambre made 24 amendments using this reinterpreted procedure (Gerkrath 2013).

Coming back to popular referenda, recall that the Luxembourgish constitution includes mechanisms for either a 'consultation-referendum' via Article 51 or a 'ratification-referendum' via Article 114 (Gerkrath 2016: 140). In spite of their formal constitutional status as a political decision-making tool, popular referenda are rarely called. Certainly, this may be partly explained by the elite-driven political culture, but it also owes to the ambiguous constitutional significance of popular referenda. While Article 114's 'ratification-referendum' has decisional value and is explicitly binding, Article 51's 'consultation-referendum' has no explicitly stated decisional or advisory value. As a result, the Chambre's historical reaction to referenda called under Article 51 has been an important factor in defining their informal constitutional value.

A brief look at previous referenda confirms this observation. Of these – two in 1919, one in 1937, one in 2005, one in 2015 – all but one – the 1919 referendum on forming an economic union with France or Belgium – dealt with matters of constitutional import. The other 1919 referendum concerned the country's political regime and asked voters whether they wished to maintain the current Grand Duchess, to replace her with another member of the dynasty, to place the duchy under a different dynasty or to create a republic. Even though more than 77% of electors voted to

maintain the current Grand Duchess, the Chambre was under no formal obligation to respect that result.

The 1937 referendum concerned the limits of political pluralism in Luxembourg. Specifically, it asked electors whether they supported a law dissolving communist parties or other groups which seek to change constitutional or ordinary law through violence or threats. The referendum proposal was rejected by just over 50% of electors. The narrow margin confronted the Government and the Chambre with a question which its members had sidestepped following 1919's more decisive referenda results: ought the parliamentary power be bound by a bare majority of electors? While the Government resigned and Chambre did not pursue the legislation, they were again under no formal obligation to abide by the public's rejection.

The 2005 referendum concerned European integration and asked whether Luxembourg should ratify the Constitution of the European Union. Although the proposal was approved by over 56% of electors, the question again arose whether the members of the Chambre's different political groups ought to vote in accordance with the overall margin, with the party's official platform or with their voters' margins of support. In contrast, the wide margins of the 2015 referendum largely precluded such questions.

The Chambre's history of respecting referendum results has since led some political decision-makers to analyse the Article 51 referenda in terms of their distinct legal effects and political effects (Heuschling 2015). Whereas the Government and the Chambre have no legal obligation to abide by the referendum results, they have a political duty to heed the wishes of voters. As a result, the popular referendum of Article 51 has, at least in practice, become an informal veto power. Nevertheless, one can imagine situations where the Government and Chambre do not follow the referendum output. For example, if current demographic trends continue, it may come to pass that less than half the resident population may vote for a measure, such that constitutional actors could cite the democratic deficit as a reason to disregard the electorate's 'veto.'

Constitutionality checks

Another important engine of incremental constitution-making is to be found in the constitutionality checks performed by the Conseil d'État on parliamentary proposals. Cumulatively, these checks reinterpret the formal constitutional text and are therefore an important source of informal constitutional norms. To illustrate, we return to the ambiguous status of popular referenda under Article 51.

Again, most constitutional players understand this referendum device as follows. Although Article 51 does not explicitly state it, such referenda have only consultative force even if the Chambre may abide by the result. Though this understanding emerges somewhat organically from de facto political practice in the Chambre, the Conseil – widely considered the guardian of the Constitution – has sought to reinforce this understanding through a number of constitutional justifications which we shall now briefly survey.

Heuschling (2015: 37-42) inventories three justifications marshalled by the Conseil to show that Article 51 referenda are merely consultative: 1.) ontologically, since these referenda have no direct immediate effects, they cannot be binding, decisional referenda; 2.) interpretatively, when the Luxembourgish constitutional text creates a source of law, it does so explicitly; 3.) systematically, if Article 51 taken as a whole declares Luxembourg a parliamentary democracy and parliamentary democracies *par excellence* are representative, then power is reserved exclusively to the elected representatives. Following the Conseil's lead, the Chambre's members have to differing degrees drawn on these justifications to motivate their conclusions that Article 51 referenda are neither binding nor decisional.

Certainly, these justifications have their problems (Heuschling 2015). The ontological argument stands or falls with its contentious definition of decisional referenda. The interpretative argument is supported by no explicit meta-principle in Luxembourgish law. The systematic argument may engage in cherry-picking when identifying the constitutional texts in light of which 'parliamentary democracy' ought to be holistically interpreted. Additionally, in support of the systematic argument, the Conseil also cited the model of Belgian constitutional law, a model which sometimes appears in the Conseil's opinions and which would seem to suggest that a systematic understanding of Luxembourgish constitutional law must also include the Belgian (Heuschling 2013). All the same, these justifications illustrate the degree to which the Conseil's opinions are a driver of incremental constitution-making in Luxembourg.

To what extent do the causes of incremental or informal constitution-making – plurality of sources, constitutional customs, constitutionality checks – promote deliberation in the formal elite and the maxi-public? The plurality of constitutional sources appears to have an uneven effect on deliberation in the formal elite and a hindering effect on deliberation in the maxi-public. As regards the formal elite, while the plurality of sources may create in theory the need for the exchange of rational considerations between the constitutional players and political actors most knowledgeable about the different sources, this does not translate to the practice of negotiating those differences. Some sources are opaque to players (*Fürstenrecht*) whereas others may be more or less obscure (international norms), generating an overly compartmentalized division of deliberative labor. As for the maxi-public, these problems are felt even more acutely. The plurality of sources conflicts with the ideal of the rule of law to the extent that the full array of constitutional norms is not publicly available. This plurality may also create a high barrier of entry to deliberation about constitutional matters.

As for the second cause, constitutional custom emerging from de facto government practice, we may observe generally that it hinders deliberation in much the same way as the first cause. Otherwise, whether this cause promotes deliberation in the formal elite and the maxi-public will depend on the particular custom at issue. In the case of referenda custom, this neither obviously helps nor hurts deliberation amongst the formal elite. Perhaps the consultative nature of referenda may promote further

deliberation on novel issues between political actors precisely because they are not bound to respect the results. This could, however, mean that political actors are less incentivized to ensure a quality information campaign with broad public discussion because the results are only of secondary importance. In short, this constitutional custom may be either deliberatively net-positive or net-negative depending on the context. More generally, one might add that the development of constitutional custom fosters no maxi-public deliberation and only limited formal elite deliberation insofar as it involves no voting procedure, which could serve as a further deliberative node. Indeed, the only potentially deliberative check on custom would seem to be the Conseil d'État which may be problematic as we explain next.

Finally, regarding the third cause, the Conseil's constitutionality check, we again note that it cross-applies to the deliberative difficulties created by the first cause, the plurality of sources. Independently of any particular opinion, this check may generate more difficulties than benefits for both formal elite deliberation and maxi-public deliberation. Certainly, the Conseil is structured as a deliberative body: it brings together legal experts and partisan interests which ensures some degree of diversity. At the same time, its composition may create concerns about partisan contagion and the legal background of its members, most of whom are not specialists in constitutional law given Luxembourg's unusual jurisprudential culture (Heuschling 2013). Otherwise, while its mode of operations – closed-door meetings – does not necessarily conflict with deliberative norms, other political actors typically defer to the Conseil's opinions in a way that may hinder deliberation. As far as the maxi-public is concerned, the Conseil's constitutionality check does little to generate deliberation even if most opinions are publicly available. This may be due to a lack of information about the Conseil's role, its membership and the content of many opinions.

Deliberative Events And Incidents

Although the constitutional reform described above clearly falls into the category of elite-driven constitution-making, the process has seen some participatory and deliberative experiments. For the purposes of the present COST Action, three events are of interest: the 2014 CIVILEX project; the 2015-2016 Är Virschléi web platform; the 2016 CONSTITULUX project.

CIVILEX

As each part of the referendum process was supposed to be preceded by informational campaigns and public forums for popular participation, the Chambre charged the University of Luxembourg's *Chaire de recherche en études parlementaires* ('Parliamentary Studies Research Chair') with assessing the state of public discussion surrounding the referendum prior to the June 2015 referendum on three constitutional questions. To that end, the Chaire adapted its ongoing CIVILEX project with an eye to three goals: a.) to test a citizens' forum in the referendum context; b.) to inform the Chambre on the state of public opinion and knowledge-level regarding the referendum through analysis of citizen contributions from the consultation; c.) to present the

Chambre a range of proposals for fruitfully involving and informing citizens in the referendum campaign (Kies 2015).

To meet these goals, the Chaire organized in May 2014 a citizens' forum modelled along the lines of a 21st century Town Meeting. The forum brought together a representative panel of citizens for a day of discussion on each of the four referendum questions: 1.) whether the voting age ought to be lowered to 16 years; 2.) whether foreign residents ought to be extended the right to vote in national elections; 3.) whether ministerial mandates should be subject to term limits; 4.) whether the state ought to stop financing treatments and pensions for officially recognized religions. To ensure a demographically representative panel, the Chair commissioned an independent polling company to prepare a random selection of 35 residents of Luxembourg, stratified according to age, sex, education, nationality and referendum voting intentions. Those selected then received by email an informational document prepared by the Chaire. Distributed a few weeks ahead of the consultation, this document provided participants factual information on each referendum question, the position taken by the various political parties, the costs likely to be incurred, and examples of existing institutions or practices similar to those in the proposals. To avoid discouraging readers, each proposal received no more than two pages of treatment.

Due to last-minute cancellations and unforeseen absences, only 27 citizens took part in the forum. As a result, the group was demographically skewed away from women and resident nationals and towards men and resident non-nationals. Following the introductory meeting, expert information session and pre-deliberation questionnaire, the participants were divided into three groups of nine people. The first group took up the topic of the limitation of ministerial mandates, the second the extension of the vote to those 16 years or older and to resident non-nationals, and the third the end of state financing for officially recognized religions. In addition to the nine participants, each group included i.) an independent professional moderator to promote inclusivity and constructive dialogue, ii.) an academic expert to provide information and assistance with opinions, proposals and questions, and iii.) a student secretary to take notes.

Following a lengthier opening discussion, each group rotated to a different table to discuss the remaining issues in two shorter discussions. Afterwards, each group returned to its original table for another lengthier discussion which focused first on debating the other groups' contributions. They next prepared a synthetic account of their discussion which one or two selected table representatives would present at that evening's plenary session before opening debate with invited political officials representing different parties. That account summarized the main arguments for and against each proposal put to referendum, suggested alternative proposals and raised any lingering questions. Before the plenary session started, each participant was finally given a post-deliberation questionnaire to complete.

Analysis of the pre- and post-deliberation questionnaires and of the discussion transcripts allowed researchers to establish the knowledge-level of citizens on the referendum issues, their understanding of the referendum questions, their initial

opinions and the intensity thereof, the evolution of their opinions, the main arguments for and against each proposal, as well as those arguments most likely to prompt citizens to rethink their initial opinions. Overall, researchers found that group discussion sometimes produced significant shifts in opinion between the pre- and post-deliberation questionnaires – particularly on questions 1.) and 3.) (Kies 2015). This effect was especially pronounced on those issues where participants were relatively uninformed or where they were relatively informed but lacked highly structured preferences regarding the outcome.

Furthermore, once experts had cleared up certain misunderstandings or filled in missing information, citizens ably discussed the referendum proposals. Indeed, they reliably identified the most potent arguments for and against, considered the distant consequences of the reforms and deployed reasoning by analogy to formulate further arguments. Participants left the forum feeling better informed on the issues, better able to discuss the referendum campaign, and more persuaded that the campaign ought to include similar forums to involve more citizens.

Despite these largely positive experiences, this deliberative experiment was not renewed during the campaign leading up to the June 2015 referendum. Although i.) the parliamentary discussion framing the referendum explicitly mentioned the need to organize citizens' forums and discussion spaces across different media and ii.) the Chaire's subsequent report formulated guidelines for successful citizen consultation and laid out a citizens' forum model inspired by the Oregon model of Citizens' Initiative Reform (Gastil et al. 2014), no action was taken by the Government or the Chambre to implement the suggestions of either citizens or researchers to enhance public participation and informedness. In short, the CIVILEX experiment generated little to no political uptake in the run-up to the referendum. Nonetheless, it laid the groundwork for future deliberative projects in Luxembourg by showing their potential contribution to the state of public discussion on constitutional reform.

Är Virschléi

Given the referendum results, the Chambre made a renewed effort to involve citizens in the constitutional reform process. To that end, the parliament sought to engage the public via a new web portal: www.ärvirschléi.lu. From July 2015 to October 2015, this portal collected suggestions on the constitutional reform and proposals for specific constitutional revisions. Over time, the Commission reviewed the suggestions and proposals and, in July 2016, convened a public hearing with 36 citizens to discuss the citizen contributions. During this hearing, those who had initiated proposals could present them and debate their merits with the deputies. Following the hearing, the Commission reconvened to discuss the exchange and to decide on the proposed changes to be submitted to the Conseil d'État.

In this way, the process yielded some participatory and deliberative outcomes, including notably the elaboration of several constitutional amendments. For instance, Committee members reached consensus on strengthening the rights of children and of

animals compared to their original text. The deputies agreed to specify these rights in a chapter of the constitution which defines the state's objectives. Regarding children's rights, members decided to add an article i.) specifying that the State ensures that every child 'enjoys the protection, measures and care necessary for their well-being and development' and ii.) granting children 'the right to freely express their opinion on any question which concerns them according to their age and their discernment.' These formulations were added to the notion of 'the best interests of the child' that the state must guarantee (from the draft constitution's Article 38). On animal rights, members agreed to incorporate the notion of 'living things' which are 'endowed with sensitivity' and a corresponding state obligation 'to protect their well-being' (in Article 43). Beyond these, there has been discussion among Committee members around several other proposals made by citizens to amend the Constitution.

Nonetheless, these conclusions about Är Virschléi's participatory and deliberative character must be nuanced. If the public hearing following the online consultation can charitably be considered a deliberative process involving self-selected citizens, representatives of civil society and deputies, the broader process in which the hearing was embedded was rather less deliberative. On the one hand, the process was partially public insofar as deliberations in public session were livestreamed and uploaded to the Chambre's website. On the other, the webportal was not developed as an online deliberative forum or a micro-deliberative citizens' forum and saw limited public participation as only 139 citizens ended up making a contribution via the web portal. Consequently, even if this was the only concrete involvement of citizens in the constitutional reform, it was the least deliberative of the three exercises, such that one ought to be critical of the supposed citizen influence via this process.

CONSTITULUX

Since the Government and the Chambre still anticipated calling a second referendum to vote on the constitutional reform as a whole, the Chambre again tasked the Chaire de recherche en études parlementaires with gauging public opinion on the proposed constitutional reform. To that end, in July 2016, the Chaire organized a new citizens' forum under the banner of its CONSTITULUX project ahead of what was then supposed to be a year-end referendum. The goals for this new project echoed those for the CIVILEX project: a.) test citizens on the constitutional reform and its main stakes; b.) inform decision-makers of citizens' knowledge- and approval-levels of the constitutional reform; c.) communicate to decision-makers new constitutional proposals on which participants reached consensus; d.) identify strategies to enhance participation and informedness in the referendum campaign (Poirier and Kies 2017). Participants were similarly asked to complete a pre- and post-questionnaire to establish changes in their knowledge-levels, opinions on the reform, etc. Like the CIVILEX citizens' forum, the CONSTITULUX forum drew on a random stratified sampling of the population conducted by an independent polling group.

That being said, the CONSTITULUX forum differed in important ways from the CIVILEX forum. To start, the sample was larger – 60 participants – and stratified

to select five groups of Luxembourgish nationals: a.) a general group of registered Luxembourgish voters 18 years and older (meeting all sociodemographic criteria); b.) a youth group of Luxembourgish nationals between 16 and 24 years old; c.) a group of salaried workers earning an average salary or less and having an average or lower level of education; d.) a group of Luxembourgish nationals residing in or near the capital; e.) a senior group of Luxembourgish nationals having retired or preparing to retire. As a result, the structure of deliberation was also different: each group worked independently and in parallel on the same sequence of topics related to or taken from the draft constitution as it existed in June 2016.

Given the breadth of topics, the Chaire organized two days of discussion over consecutive weekends. The first day was more general in scope: participant expectations for the consultation; general education about the Constitution, the reforms and the political system; the June 2015 referendum results; the state, nation and sovereignty; language and nationality; European integration; human rights; the state and personal belief. In contrast, the second day bore on more specific questions related to the constitutional reform: constitutional values and education; legal rights and the legal system; the Grand Duke and the transfer of power; the powers of parliament; the Government's formation, conditions and powers; a future referendum and informational campaign. The last session of the second day also allowed participants to choose two discussion topics for themselves.

As was the case for CIVILEX, an informational document was provided to participants ahead of time. A moderator and a secretary were also present in each group, and experts again gave a brief introduction at the start of each session and served as a resource person in case of questions. That said, there was no plenary session involving a debate between participants and political decision-makers. Rather, the group sessions were designed to bring out participants' opinions on the general topics and specific constitutional issues. As a result, the structure of the CONSTITULUX forum reflected several different kinds of deliberative mini-publics.

Subsequent analysis of the discussion and questionnaires enabled researchers to compile a list of articles from the draft constitution. This list distinguished between 'relatively unproblematic' articles (those about which more than 70% of respondents were in agreement or mostly in agreement) and 'potentially problematic' articles (those about which less than 70% of respondents were in agreement or mostly in agreement).

Amongst those judged relatively unproblematic were Article 2 (regarding the form of government, the rule of law and human rights), Article 4 (regarding the status of Luxembourg's different languages), Article 5 (regarding participation in European integration), Article 9 (regarding the conditions for citizenship), Article 16 (regarding formal equality), Article 17 (regarding the rights of non-nationals), Article 23 (regarding the right to express personal beliefs), Article 36 (regarding the conditions for removal of private property), Article 38 (regarding family rights), Article 42 (regarding ecology and nonhuman animals), Article 74 (regarding citizen initiatives in the Chambre), and Article 76 (regarding national referenda). Amongst the potentially problematic appeared Article 4 (regarding the national flag and symbols), Article 5

(regarding the transfer of powers from the national to the European level), Article 41 (regarding the State's commitment to housing and quality of life), Article 43 (regarding the Grand Duke's official role), Article 44 (regarding the Grand Duke's share of executive power), Article 52 (regarding the conditions for abdication) and Article 94 (regarding the Supreme Court).

When discussing the articles, citizens i.) raised pertinent questions about the values expressed, the powers conferred and the rights guaranteed, ii.) identified short- and long-term concerns and iii.) suggested alternate concepts, wordings or proposals to improve the draft articles. Hence, one output of the CONSTITULUX project was, as reflected in the post-questionnaires, that participants left feeling better informed, more ready to vote and more supportive of the proposed constitutional reform (Poirier and Kies 2017). Another output was that a significant number of citizens found that their thinking had evolved over the two-day consultation.

Two further outputs are worth mentioning. First, political decision-makers consulting the report would have a clearer idea of the kinds of opinions, misunderstandings and suspicions which might emerge in the referendum campaign. Second, as they had done with the CIVILEX project, researchers presented decision-makers with possible actions to improve the deliberative quality of the referendum campaign: a.) multiply the channels of communication (more citizen consultations, a citizens' initiative review, multilingual brochures, televised debates, informational advertisements, social media presence); b.) avoid politicizing the campaign (focus on the national interest, increased role for non-politicians); c.) structure and begin the referendum campaign as early as possible (as many voters had decided on their votes before the June 2015 referendum campaign even began) (Poirier and Kies 2017).

All told, the CONSTITULUX project's two-day citizen consultation was largely successful in meeting its internal goals. Yet, like the CIVILEX project, it generated little in the way of concrete action from the Government and the Chambre. The consultation did not presage a participatory and deliberative turn in Luxembourgish national politics. No further citizen consultations were organized, and the referendum campaign and constitutional reform were ultimately waylaid by the political disagreements signalled above. For this reason, these deliberative events did not factor into either the formal or the incremental constitution-making processes from the previous sections. Their incidental and experimental nature meant that there was no political obligation to extend their use, particularly as the political equilibrium shifted after the 2015 referendum and in the run-up to the 2018 parliamentary elections.

Moreover, the incidental and experimental nature of these events also meant that there was little to no public engagement with them beyond those directly involved. Given the lack of engagement from either the formal elite or the maxi-public, there is little reason to speak of either use or misuse of the findings from these deliberative experiments. Nor did they crowd out other forms of deliberation which might have grown up around the issue of constitutional reform. All the same, the project brought into focus the conditions under which the referendum campaign and constitutional reform might become more participatory and deliberative. It may yet come to pass that

the Government and the Chambre take actions like those recommended above. Moreover, these experiments have had a more diffuse effect on the participatory and deliberative culture in Luxembourg. The researchers involved are still invited to discuss them with officials, local participatory and deliberative exercises have influenced political decision-making, and broadly consultative projects such as the ecological 'Luxembourg in Transition' have emerged. In sum, only time will tell what the future holds for deliberative democracy and constitution-making in Luxembourg.

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