1 Introduction
Constitutional Challenges, Reform, and Acceleration

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Constitutional reform is high on the political agenda in European Union member states and Europe at large,[1] as well as beyond the European context, in other parts of the world. In the last two to three decades, some countries in Europe – including so-called established as well as more recently established democracies - have experienced a relative frequent number of attempts at changing their constitutional law(-s). From a more general, global perspective, Elkins and Melton observe that constitutional amendment has become more frequent since the 1950s, and, in particular, from the 1990s onwards.[2]

Powerful tendencies of transformation of modern constitutionalism (as a largely domestic, state-based framework), and even its demise, are observed,[3] not least having to do with the emergence of structures and institutions with constitutional relevance beyond the domestic context. This is most clearly evident in the process of European integration. An Italian constitutionalist, Gaetano Azzariti, recently observed that constitutionalists currently experience a 'situation of inquietude, determined by an insecurity with regard to their self-identity, and by the perception of an ever larger gap that separates traditional knowledge, necessary to interpret and hence represent the world, from the reality of the represented'.[4] The gap between a represented reality and the reality of the represented is equally observed from a sociological perspective, in terms of the process of 'social acceleration'. The latter is highly relevant for a discussion of modern constitutionalism, in that social acceleration requires increasingly rapid and frequent intervention into established institutions, including the constitutional framework. Indeed, one could argue that '[c]onstitutions will remain necessary, but more improbable'.[5]

The essays in this volume address a variety of crucial constitutional challenges as well as modes of change, analysed as dimensions of a more general tendency towards 'constitutional acceleration', that is, the increased propensity of different actors to engage in (formal) reform of the constitutional order.[6] In this introduction, constitutional change and acceleration are the main object of discussion, in that some of the main motivations for and triggers of constitutional reform in contemporary times will be looked into (§1), the idea of constitutional acceleration further explored (§2), different modes and instruments of revision and amendment outlined (§3), as well as different subjective approaches to constitutions ('constitutional mindsets') delineated (§4). In the final part (§5), the different sections and chapters of the book will be briefly introduced.

1. Motivations for, and triggers of, constitutional reform

In current times, constitutional reform is upfront in public, political debates for a number of significant reasons (often found in a combination in distinctive constitutional realities),

including *economic reasons*, not least related to the recent economic and financial crisis; reasons of *modernization*, stemming from the observation that existing constitutional orders are out of touch with the necessities of current times; reasons of *redefinition of political units*, in particular due to calls for extensive autonomy of distinctive regions; reasons of *identity and national self-rule*, relating to calls for a more upfront reflection of national identity in constitutional orders and the emergence of populist constitutional projects, allegedly defending national sovereignty, interests, and culture; reasons of *participation and popular sovereignty*, in which calls are made for allowing for more robust participation of citizens in constitutional reform and democratic politics, and reasons of *post-sovereignty*, in which calls are made for adaptation of constitutions to realities of shared sovereignty and/or the increased prominence of international and supranational legal regimes in national contexts.

Financial and economic crisis

One significant way in which the financial and economic crisis has affected constitutional orders is by importantly informing calls and mobilization for constitutional reform. This has been the case (in highly different ways) in, for instance, Hungary, Iceland, Ireland, and Italy. The crisis in financial and subsequently economic terms was in some cases translated into a crisis of political and even moral values (as most clearly occurred in Iceland in 2008/9).[7] Contiades and Fotiadou speak of a 'frenzy about constitutional reform'[8] in the immediate wake of the financial crisis. In a number of European countries, the crisis formed an external trigger for latent or on-going political projects for constitutional reform. The specific reactions and implications of the crisis for domestic constitutional orders have been variegated,[9] and have included the adoption of a new constitution,[10] attempts to draft and ratify a new constitution,[11] more modest formal attempts at constitutional revision,[12] forms of informal amendment, as well as important changes in the procedural underpinnings of processes of constitutional reform (see below).

Modernization

A related and in some cases significant motivation for reform is the observation that existing constitutional orders are obsolete or outdated. This observation has taken different forms in specific countries. A good example is Iceland, where the constitution is open to critique on the basis of its externally imposed nature, in that the existing constitution dates back to 1920, when Iceland obtained independence within the monarchy of Denmark and adopted its own constitution, which was however nearly identical to the Danish constitution.[13] When Iceland declared independence from Denmark in 1944, it basically replaced references to the king with references to the president in the constitutional document, leaving the Icelandic constitution open to the charge that it had not been adopted in an internal constituent process.[14] A further dimension of constitutional modernization is a drive to efficiency and the understanding of the constitution as an instrument for enhancing speed and efficiency in government (Contiades and Fotadiou 2013: 23). This dimension was perhaps most clearly observable in the attempt at reform of the Italian constitution, strongly informed by the idea of 'governabilitá' (governability) of the Italian state, and the view that the perfect bicameralism of the Italian parliament obstructs efficient government.[15]

Pluri-national states

A complex and potentially highly conflictive dimension of constitutional reform is in the case of pluri-national states and substate calls for decentralization, autonomy, and in some cases even independence.[16] Significant cases in Europe include pluri-national states such as the United Kingdom, where, in particular, Scotland has been pushing for greater autonomy and independence as well as Spain (the Basque Country and Catalonia). But calls for more substantial forms of autonomy are also made elsewhere, such as in Italy. The constitutional aspirations of substate nations involve calls for autonomy, representation, and/or recognition.[17] In important ways, subnational constitutional aspirations call into question taken-for-granted liberal notions of constitutionalism that tend to equate a constitutional settlement with a majority nation. Indeed, the notion of recognition implies the idea of explicit reference to the pluri-national nature of the state and of co-authorship of constitutional rules by substate nations: the 'demand is that the constitution should, in its own description of the nature of the state, reflect, declare and symbolize the reality of that state's national pluralism'.[18] An interesting example is article 68(1) of the (former) Hungarian Constitution of 1989: '(1) The national and ethnic minorities living in the Republic of Hungary participate in the sovereign power of the people: they represent a constituent part of the State'.

A particularly relevant case is that of post-Brexit United Kingdom. As the chapter by Silvia Suteu attests, the constitutional settlement of the UK is put strongly to the test in the aftermath of the Scottish independence referendum (September 2014), which led to calls for a UK constitutional convention, and subsequently the Brexit referendum, which strongly questioned the relations between the different units of the UK. Relations between the national state and regional levels are equally at stake, elsewhere, as for instance in on-going Italian constitutional reform.[19]

Identity and national self-rule

The centripetal forces affecting pluri-national states also point to a separate, but at the same time related, phenomenon, the emphasis on majority nationalism in projects of constitutional reform.[20] In Europe, nationalism and its relation to constitutionalism should be understood from a complex perspective of European integration, divided sovereignty, substate autonomy, and the increased diversity of societies, not least due to the recent upsurge in migration. The phenomenon of the endorsement of the national majority in constitutional reform is most clearly visible in the adoption of the new Fundamental Law in Hungary in 2011,[21] but increasingly plays a role elsewhere too (e.g. manifesting itself in different ways in Poland and the UK). The rationale of constitutional change in some of these cases is the idea that the national majority and its culture needs protection.[22] This type of constitutionalism, which could be referred to as communitarian constitutionalism, emphasizes national majority interests and the active promotion of a particular vision of communal life. The political vision is one of individuals embedded in and owing allegiance to a given community, and constitutionalism is understood as a means to protect a distinct community, its ethos, and its traditions. A communitarian view understands the individual as a 'socially embedded' self and the community as highly important in forming the individual.[23]

Populism

Constitutional nationalism can be related to (right-wing) populist forms and understandings of constitutionalism.[24] This peculiar, and in many ways worrying, engagement with processes of constitution-making and constitutional reform is explicitly present in the constitutional developments in countries such as Hungary and Poland. The relation between populism and constitutionalism is generally understood as one of deep tension. As Jan-Werner Müller has recently put it, 'populism is inherently hostile to the mechanisms, and ultimately, the values commonly associated with constitutionalism: constraints on the will of the majority, checks and balances, protections for minorities, and even fundamental rights'.[25] According to Nadia Urbinati, populists seek to 'implement an agenda whose main and recognizable character is hostility against liberalism and the principles of constitutional democracy, from minority rights, division of powers, and pluriparty system'.[26] Populists are seen as impatient with procedures and institutions, and loath of intermediary bodies, as they prefer unmediated, direct relations between the populist ruler and the people. But it equally needs to be recognized that populism as a political phenomenon cannot be reduced to a form of anti-establishment critique and disdain for legal rules and formal procedures, as it equally contains a theory of power.[27] Recent developments in Poland and Hungary in particular have shown distinctive projects of getting hold of state power, with an explicit and extensive attention for, and engagement with, constitutional matters and constitutional reform. Populists tend to legitimate such engagement by reference to popular sovereignty and the national political community or the People. In this, populist constitutionalism causes significant tensions in the European Union, which is grounded in the fundamental values of democracy, the rule of law, and human rights (art. 2 TEU). In this, the populist-constitutional phenomenon has resulted in intense debates on both democratic backsliding and illiberal democracy in Europe, the effectiveness of conditionality, and the possibility of supranational monitoring of democracy.[28]

Participation and democracy

In strong contrast to the populist understanding of engagement with popular sovereignty is a tendency towards actual citizen participation in constitutional reform. Such reform is often informed by the perception that liberal, representative democracy is facing declining legitimacy. The insight is that in order to safeguard democracy, (constitutional) reform is necessary in order to strengthen and innovate democratic systems. Such a reasoning of democratization is visible in a range of constitutional projects throughout Europe in the last two decades or so, including the so-called Charter 88 movement in the UK, experiments with deliberative fora in, for instance, Belgium, the Netherlands, Iceland, Ireland, and Romania, and an attempt to grassroots constitution-making in Iceland in 2011. Two dimensions that stand out are that of constitutional design (introducing new forms of democratic participation in the constitution) and procedures of constitutional reform (introducing civic participation in reform processes). There appears to be a growing trend towards 'increasing public participation in the constitutional design process',[29] which may include public ratifications through referendums as well as referendums on constitutional matters, participation in the formulation of constitutional rules (in particular through deliberative processes), and the election of citizens in constituent fora.

Sovereignty and post-sovereignty

Domestic constitutionalism is increasingly affected by the development of transnational forms of constitution-like structures.[30] This phenomenon of 'constitutional pluralism' not only relativizes in important ways the status of national constitutions,[31] but it equally leads to forms of reaction and adaptation by nation-states, including in terms of constitutional revision or reform.

In the specific context of the EU, constitutional reform is frequently related to the integration process itself. This was perhaps most visible in the run-up to enlargement in the early 2000s, when various accession states engaged in constitutional reform in order to adapt to EU membership.[32] In this context, some have suggested the idea that a transnational constitutional template is being imposed on national states,[33] while others have questioned this.[34] Be that as it may, forms of adaptation to supranational law are clearly of wider significance, as recently attested by the constitutionalization of the so-called 'golden rule' in the context of EU austerity policy. The Court of Justice of the European Union evidently plays a crucial role, in that it engages in reviewing national constitutional norms in the context of EU law. In a similar manner, the European Court of Human Rights (ECtHR) is equally a significant international player with regard to reviewing state constitutions on the basis of the European Convention on Human Rights (ECHR).[35]

Beyond international and transnational legal regimes, and national interaction with and adaptation to these regimes, the increased prominence of international advisory bodies should be acknowledged.[36] In the European context, one of the most prominent bodies is the so-called Venice Commission or European Commission for Democracy through Law, originally established to assist the post-communist countries in the early 1990s.[37] The Venice Commission particularly operates through its Opinions on constitutional reform, drafted by its experts, and requested by member states, but also by the Council of Europe itself or other international organizations. Conspicuous cases of such Opinions have in recent years included Hungary, Iceland, Poland and Romania.

What is striking, though, in the European context, is that the idea of a national sovereign order within which constitutionalism operates has not disappeared, but that rather a dual interpretation or co-existence of a European constitutional order and national constitutional orders has emerged, expressed in the term divided or pooled sovereignty,[38] in terms of a 'self-limitation of nation state sovereignty'.[39] This also means that both a form of constitutional collaboration between the supranational and national constitutional orders has emerged (e.g. in the form of a judicial dialogue), but equally that the European constitutional context is characterized by enduring tensions, not least over definitions of sovereignty and democracy. The latter takes the form of judicial interpretations and legitimations, in the famous series of *So Lange* judgments of the German Constitutional Court, but it now increasingly also involves explicit political 'disobedience' and defiance on the part of some the EU member states (in particular, Hungary and Poland), and even an (attempted) breakaway, as in the case of Brexit. In the latter case, resistance is not only directed against the European Union and

the primacy of EU law, but also against the ECtHR and the ECHR. The latter institution and convention are also equally contested in other European states.[40]

Finally, a significant but as yet understudied phenomenon is that of international diffusion and emulation of constitutional reform. In particular, the cases of Iceland and Ireland seem to have had a wider European impact, and have become part of domestic discussions on constitutional reform.[41] In this respect, a prominent example is equally, even if in a very different manner, the case of Hungary and its new Fundamental Law. The latter seems to have particularly influenced recent, and highly problematic, constitutional politics in Poland, while other countries might follow suit.

2. Constitutional Acceleration

Constitutional acceleration has been defined as the 'intensification of the recourse to revision to update the constitution'.[42] Modern constitutionalism has always been characterized by the tension between its (various degrees of) rigidity and promise of endurance, if not eternity, on one hand, and the need for change and reform, not least informed by understandings of self-rule,[43] on the other.

Constitutional acceleration can – at least in part- be understood as a reaction to a wider, societal form of acceleration or 'high-speed society'.[44] In other words, in particular in relation to dynamics of globalization, modern societies are increasingly subject to phenomena of change, leading to increased perceptions of uncertainty and exposure to risk. Prandini has defines social acceleration as an 'increase in the decay rates of the reliability of experiences and expectations, and by the contraction of time spans definable as the present'.[45] Social acceleration can be understood as consisting of technological acceleration and innovation, social change or transformation, as well as a heightened tempo of everyday life.[46] This multi-faceted acceleration is significant from a modern constitutional point of view, in that constitutional law should be understood as not merely a meta-framework or superstructure of, but equally as deeply imbued in, social relations. Various forms of acceleration in society are bound to have major effects on the constitutional framework of society.

Modern constitutions involve attempts to freeze time, or to institutionalize and stabilize important characteristics of present society into the future.[47] High-speed society would lead, in this perspective, to an increased distance between (rapidly changing) society and institutionalized constitutional norms. In other words, modern constitutions are increasingly exposed to 'constitutional obsolescence'.[48] The idea of a sacred and unalterable constitution, grounded in the modern imaginary of order and stability or mastery,[49] is increasingly out of touch with rapidly changing societal circumstances, not least with regard to international and transnational phenomena.

The gap between the instituted and the to-be-instituted that potentially results from relatively rigid constitutional frameworks that lag behind rapidly changing societal circumstances may be identified as *constitutional anomie*.[50] Constitutional anomie emerges because of the discrepancy between the formal-institutional dimension of constitutional orders and wider

societal relations, forms of interaction, and related norms. Emile Durkheim's understanding of anomie is relevant here in that it – in one of its meanings – relates to the absence of regulation regarding (novel) social phenomena. In a Durkheimian view, anomie emerges in a situation of an absence of regulation of social relationships, resulting in declining social solidarity.[51] Anomie is about a disjunction between the legal and the social.[52] As Besnard argues, '[a]nomie, in this work [Durkheim's Social Division of Labour, pb], is conceived as the absence or the defect of a social regulation capable of insuring cooperation between specialized functions'.[53]

The idea that societal acceleration informs constitutional acceleration is useful, not least in the attempt to understand ongoing transformations of constitutionalism in the European context. As argued by William Scheuerman,[54] in a kind of Schmittian manner, social and economic acceleration tends to inform the strengthening of executive power in matters of constitutional amendment, not least in order to bypass slow parliamentary, deliberative processes (the recent Italian attempt at reform is a case in point). Executives are deemed more rapid in their response to accelerated social and economic life, but a predominance of executive, constituent power brings with it various thorny problems. Popularly-endorsed, executive constitutional action is likely to forego issues of wider consensus and political pluralism, and, as a *uni-vocal* institution, tends to reduce constituent power to a partisan instrument.[55]

A relation of constitutional acceleration to societal acceleration also brings to the fore the issue of crisis. In many cases discussed in the book, crisis (of an economic, political or even moral kind) is indeed a prominent factor in pushing for constitutional reform, and a crisis rhetoric often calls for 'rapid-fire *agere*' to the detriment of 'slow-going *deliberare*'.[56] In general, crisis-informed constitutional change seems to contribute to a less clear distinction between constitutional and normal politics, and a growing impatience with formal amendment procedures. As observed by Palermo, constitutional acceleration relates to a 'common tendency of intolerance with regard to formal revision and with regard to its intrinsic limits, accompanied by the necessity to experiment additional solutions'.[57]

In this, the impatience mentioned above takes a more manifest manifestation in a tendency towards what could be called 'populist constitutionalism', that is, an engagement in constitutional reform and constitution-making by political forces that articulate clear forms of legal skepticism and instrumentalism, and tend to have a predilection for majoritarian or even single-leader driven forms of engagement with constitutions (the most dramatic examples are that of Hungary and Poland).

3. Modes of constitution-making and constitutional reform

It is not unfair to argue that even if there is persistent and growing attention to constitution-making and constitutional reform in scholarly debates, there is an absence of comprehensive, comparative assessments of modes of constitutional amendment and reform, and the types of actors involved (including international actors).[58] This seems particularly true with regard to recent innovations and participatory forms. In particular the latter processes are often set up

outside or in parallel to existing formal amendment rules (such as in the cases of Iceland and Ireland), and in some cases consist of complex, multi-stage processes. Constitutional reform processes involve different 'modes of representation', based on either elite appointment, direct election, or indirect selection of constitutional reform bodies.[59] Modes of representation can be related to different understandings of democracy (see below) and tend to increasingly also involve direct citizen participation. In a rudimentary sense, processes of reform can be understood as either open or closed, that is, open (and pluralistic) when citizens and/or other actors have the right, and are allowed, to participate, and closed when the reform is taking place 'behind-closed-doors'.[60] A further consideration can be made regarding modes of legitimacy, including 'elite adoption', when it is politicians ratifying a reform, 'institutional ratification', when institutions such as Parliament or the Constitutional Court are involved, and popular ratification, when a reform is finalized with a constitutional referendum.[61]

What is central is evidently the role of constitutional amendment rules, which stipulate who can initiate amendment, what procedures are to be followed, which parts of the constitution are immune to change, and how an amendment is to be adopted and ratified.[62] Richard Albert distinguishes between foundations, frameworks, and specifications. The foundational dimension of formal amendment concerns a distinction between amendment and revision, the former indicating a change in the constitution within the existing framework, the latter indicating a more fundamental change, which might touch upon the constitutional framework.[63] Such a distinction may be made clearly (such as in the case of the Austrian Constitution), or may not be (such as in the case of the Italian rule art. 138 or the Czech Constitution). Often, in addition, an indication of an essential or non-changeable part of the Constitution is indicated (for instance, the republican form). Frameworks pertain to the procedures of change, and whether this are single-track or multi-track and the scope of amendment (comprehensive, restricted, exceptional). Multi-track involves (potentially) different procedures, for instance, majority votes in two houses of parliament, and the possibility (e.g. in case of the lack of a supermajority) of a final confirmatory popular referendum. Finally, specifications relate to operational restrictions on amendment in the form of, for instance, voting thresholds and quora, restrictions on subject matter, and deliberation requirements.[64]

Formal constitutional reform is predominantly initiated by specific *political actors*, that is, the parliament, the President, and in some cases even by a number of citizens (e.g. Romania). This seems to put the role of the *judiciary* in the background, but it should not be overlooked that also in formal change the judiciary often plays a prominent role. In some traditions, this is much more self-evident, as in common law systems, but increasingly also in civil law systems, the judiciary is upfront, not least by means, as is the case in some countries (again, Romania is an example), of constitutional review of constitutional amendments themselves.[65] In particular in the European context, the role of the judiciary is further increasingly important not least because of the growing standing of inter- and transnational legal regimes, with a (quasi-)constitutional status, such as EU law or the ECHR. Regarding the role of *citizens* in constitutional reform, in political science and comparative constitutionalism literature, only very recently a sustained interest in modes and practices of constitutional

reform and civic engagement in reform has emerged.[66] As comparative research and case-studies however show, different modes of constitutional revision and of inclusion of the citizenry are available and have been used in different reforms. For comparative purposes, it is useful to start from a diversification proposed by James Fishkin. Fishkin is one of the few scholars who has attempted to look at constitutional reform from a perspective of different democratic models. Fishkin's models provide analytical hold over formal constitutional reform, while equally shedding light on the place and form of citizen engagement in reform processes. Fishkin elaborates four relevant models: competitive democracy, elite deliberation, deliberative democracy, and participatory democracy[67] (see table 1).

Please insert Introduction, Figure 1 here[68]

Fishkin's first two models, that of competitive democracy and of elite deliberation, put an emphasis on representation and elite-driven constitutional processes, in this allowing for an indirect role of citizens in constitutional reform. *Competitive democracy* emphasizes the role of elected representatives and the competitive struggle between parties. In this model, citizen participation is valued little and in general politics is about competition over votes, rather than deliberation or participation.[69] Constitutional reform from the perspective of competitive democracy may take the form of the constituent assembly, with elected members from a range of political forces, as in the case of the Italian Constituent Assembly of 1946-48. Ordinary citizens are represented by political elites, and have no direct say in the constitutional deliberative process, as citizens are seen as unable to deal with the complex issues of constitutional reform.[70]

Elite deliberation prioritizes public reason of a high cognitive standard and favours small elite bodies that deliberate on matters of justice and the common good on behalf of the people. In constitutional reform, the deliberative elite is in charge of the 'refinement' or 'filtering' of public views, so that it is able to unearth 'what the public *would* think if it were able to consider the issue in the way the representatives can in a deliberative body'.[71] In constitutional reform, small elite bodies are bestowed with a mandate (or claim to have one) to deliberate on a new constitution or far-going constitutional changes. A clear-cut example is the Philadelphia Convention of 1787, the members of which were appointed by state legislatures.[72] Further examples of elite-driven reform are expert commissions and negotiations between political leaders.[73] A hybrid example of constitutional reform following both the ideals of competitive democracy and elite deliberation is that of parliamentary committees. Special-purpose committees, consisting of representatives from different political parties, and with *distinctive expertise*, deliberate on constitutional reforms and produce reform bills for the parliament to vote on *in plenum*.

Fishkin's participatory and deliberative models include innovative and experimental forms of constitution-making that foresee a more direct involvement of citizens in constitutional revisions.[74] Participatory democracy is frequently understood in terms of the referendum instrument, which aggregates individual votes into a majority. In case of constitutional

revision, referenda often take the form of *ex post*, confirmatory referenda on a finalized proposition for constitutional reform. Stephen Tierney has pointed to three main problems or dangers with the referendum instrument, in particular in the context of constitutional reform:[75] the elite control syndrome (the danger of elite manipulation of referenda), the deliberation deficit (the 'mere aggregation of individual wills'), and the majoritarian danger (the marginalization of dissenting individuals and minorities). A general danger is that political leaders turn directly to the voters for approval, claiming in this a sincerer form of democracy, but without providing effective voice to citizens.[76] Participatory democracy can, however, equally be designed in more engaging ways, not least in the form of legislative (constitutional) initiatives, which allow citizens to mobilize in favour of a self-designed constitutional amendment.

Much of the experimentation in recent constitutional reform regards deliberative democracy[77] and frequently takes the form of citizens' assemblies. Such assemblies form deliberative fora, which may include citizens, alongside political representatives (as in the case of the Irish Constitutional Convention, 2012-13, where citizens were randomly selected), citizens and experts or scholars (as in the Romanian Forum Constitutional in 2013), or may even consist exclusively of citizens (as in the case of Iceland in 2011). Citizens' assemblies ordinarily have a consultative function. In both participatory and deliberative democracy, active and direct citizen engagement in constitutional politics is prioritized.

If we turn to some of the more significant examples of citizen involvement in constitutional reform, we find combinations of the models discussed in action. In the case of the constitutional reform attempt in Iceland (2010-12), both civil society associations and the Socialist Party pushed for comprehensive, citizen-driven constitutional reform. Two one-day deliberative fora were set up, in which circa 1,000 citizens participated, while a Constitutional Council, consisting of 25 independent citizens elected at the end of 2010, was responsible for producing a draft constitutional revision in four months (April - July 2011). The draft produced, consisting of a fully new constitution, emphasized amongst others a range of important participatory institutions, while the drafting itself has often been hailed as highly innovative in its usage of social media in soliciting comments and suggestions from citizens. In the fall of 2012, a referendum with 6 questions was put to the population.[78] In the case of Ireland, on one hand, two major political parties – Fine Gael and the Labour Party – endorsed inclusive constitutional reform, and on the other, academics as well as civil associations pushed for participatory and deliberative reform, in particular through the organization *We The Citizens*. At the end of 2011, a one-year Constitutional Convention was started in which 66 citizens (selected by lot) deliberated together with 33 politicians over constitutional reforms. One of the results of this process was the (successful) May 2015 referendum on same sex marriage. In Romania, a *Forum Constituţional* was set up (March – July 2013), a collaboration between the civic organization *Asociaţia Pro Democraţia* (APD) and the Romanian Parliament (a similar endeavour took place in 2002). The Forum consisted of deliberative events, including citizens, scholars, and politicians, organized in major Romanian cities as well as the gathering of citizens' comments on an online platform.[79]

4. Constitutional 'mindsets'

Constitutional change is often discussed in terms of norms, procedures, circumstances, and outcomes, but it has to be emphasized that legal change is the result of a variety of social agents engaging in legal, political, and social action. In the words of Hauke Brunkhorst, 'modern law does not follow a developmental *telos* of ever more rational, inclusive, and liberal formation, but faces social conflicts *and* struggles between social groups and classes, which are always struggles over material and ideological interests'.[80] Constitutional change hence involves the 'mindsets' of actors that endorse or resist change. By doing so, these 'constitutional subjects' (most prominently politicians, judges, and scholars) continuously shape and reshape the meanings of constitutional concepts and principles. Empirical constitutional reality, in this view, is characterized by an 'ongoing political struggle over who defines concepts and how'.[81] Such mindsets can be related to different tendencies in constitutional change, understood as an instrument to deal with societal acceleration. One of the tendencies discussed in this volume, participatory constitutionalism, relates to a constitutional mindset that stresses democratic self-legislation. In specific ways, it could also be argued that populist constitutionalism appeals to the rule of a democratic people. But other tendencies, not least on an emphasis on legal constitutionalism and court-driven change, draws a different mindset, particularly endorsed by experts and professionals, and promotes incremental change and order.[82]

Hauke Brunkhorst, following Martti Koskenniemi, has helpfully engaged in the delineation of two principal 'constitutional mindsets' that inform constitutional subjects: the Kantian and the managerial mindsets. Whereas the Kantian mindset invokes autonomy, egalitarian self-determination, representative government, and universal rights, the managerial mindset endorses the rule of law, judicial review, possessive individualism and competition.[83] The Kantian constitutional mindset is 'not just the rule of law – but the *emancipation from any law that is not the law to which we have given our agreement*'.[84] Whereas the Kantian mindset can be related to revolutionary change and the *pouvoir constituant*, the managerial mindset pursues negotiation, diplomacy, and compromise. The managerial constitutional mindset is 'designed to *preserve* the evolutionary advances of the structural coupling of law and other functional systems'.[85] In this, the Kantian mindset speaks of universal language, while the managerial mindset is the language of technocrats, and political and economic elites.[86]

The two constitutional mindsets are informed by a dual imperative dimension that is at the basis of modern constitutionalism. On one hand, modern constitutionalism is strongly informed by the idea of the division, order, and constraining of power. In this respect, constitutionalism is marked by the idea of order and stability, and it reflects a largely negative idea of constitutional law as a medium that constrains rulers and prevents the abuse of political power. On the other hand, modern constitutionalism is equally strongly oriented towards the idea of popular sovereignty, and it expresses the view that 'governmental power ultimately is generated from the 'consent of the people'.[87] Martin Loughlin has reformulated this dual imperative as a 'modern constitutional imagination', which understands the modern constitution as 'a document drafted in the name of the people to establish and regulate the

powers of the main institutions of government, to specify the relationship between government and citizen, and to take effect as fundamental law'.[88]

The dual mindsets provide the observer with an important frame to explore and analyze more specific instances of constitutional change and reform, exposing an inherent tension in order-based and technocratic discourses, on the one hand, and democracy and emancipatory discourses, on the other. But the distinction also reveals the ultimate connection between the two discourses and ideas, that is, without the managerial approach to constitutionalism, the realization of the democratic, Kantian project would not be possible.[89]

5. Overview volume

The first part opens the volume with a number of theoretical and empirical reflections on constitutional reform and change, and significant tendencies affecting constitutionalism, in the contemporary context.

Francesco Palermo's chapter provides an in-depth discussion of the phenomenon of participatory forms of constitutional revision from the perspective of pluralism. Throughout Europe (and beyond), there is an increasing interest in forms of constitution-making which prominently involve citizens in a variety of ways, and beyond the limited involvement that characterizes the ex-post referendum, present in many European constitutional systems (e.g. Ireland, Italy, Romania). In Palermo's account, the widespread attention for civic participation should be understood against the backcloth of representative democracy, which is increasingly facing problems of legitimation and representation, growing claims for voice on the part of (groups of) citizens and other societal actors, as well as an increasing complexity of decision-making. In a contribution to a theorization of participatory processes in constitution-making (so far not available), Palermo discusses a number of recent, paradigmatic and intriguing cases in Europe: the EU, Germany, Austria, Ukraine, Ireland, Iceland, and Italy.

Zoran Oklopcic's chapter explores new ground in a highly stimulating and critical discussion of peoplehood. The people, demos, ethnos, plebs, or populus is the work of imagination, and as such an imaginary (recalling the idea of Benedict Anderson). But rather than arguing that we should remain stuck with the idea of the people as some form of collective figure that provides unity, Oklopcic calls for a triple role that peoplehood plays in political and social discourse and practice, that is, as arbiter, warden, and manager. The people as an imaginary functions as a selective mechanism in political, legal, and moral choices, as a form of investment in distinctive collective projects, and as a constituent force. Oklopcic's discussion is of a constitutional or foundational nature in that he argues that the social imaginary of peoplehood is constituent, it shapes the substance as well as the outer limits of any discussion of the possibility for constitutional democracy. This imaginary takes a radical, Sieyèsian form in calls for a radically sovereign people in radical democracy or much more modest role of rebellion in the ultimate instance – against great oppression - in the Lockean view. It is the latter that leads to the binary view of radical change (revolution) or incremental change (amendment). Oklopcic argues however that ultimately the Sieyèsian and the Lockean view

share an important dimension: the investment in the vocabulary of peoplehood. The liberal-democratic constituent imagination provides an orderly view of democratic society and invents its people as patient, as being reasonable and willing to wait for incremental change (apathetic). The radical-democratic constituent imagination invents its people as the opposite, the people as active and engaged, as always willing to challenge the instituted order. Both imaginaries, however, obscure legitimate demands for either comprehensive and responsive change, or in the name of significant minorities, in the name of the people. The chapter takes a highly original turn in the final part, in which Oklopcic stages an imaginary conversation between four characters, named Chatterjee, Pettit, Lefort, and Rosanvallon.

The chapter by Andrew Arato and Gabór Attila Tóth offers a compelling analysis of the role of international actors in process of constitution-making. Such an analysis is most relevant given the variegated roles of international actors in the making of new constitutions, but also increasingly in processes of constitutional amendment and revision. The latter is particular evident in the interventions of the Venice Commission in countries such as Iceland, Hungary, Poland, and Romania. Arato and Tóth provide a rich discussion of different types of constitutional regime change, in particular counterposing the 'classical' revolutionary form (the United States, France) with what they see as a novel, post-sovereign form of constitution-making.[90] The analysis raises intriguing questions regarding the democratic nature of constitution-making and of constituent power, the locus of sovereignty, and different forms of constitutional legitimacy (normative, sociological). Arato and Tóth argue in favour of a multi-actor, post-sovereign type of constitution-making, inter alia, as it allows for a wider inclusion of different actors, which positively effects the legitimacy of the process and the constitutional outcome, and as it manages to operate within legality. Constitutions need to live up to procedural legitimacy (allowing different actors and groups to participate), a more structural sociological form of legitimacy (longer term support of social actors on the ground), and normative legitimacy (universalistically understood norms and rights). In particular, with regard to the last point, normative legitimacy, the role of international actors seems warranted, embedding constitutions in a wider, international web of juridical and constitutional regimes.

The second part of the volume discusses singular and highly significant case-studies in 'established' democracies in Western Europe, exploring and analyzing recent processes of constitutional reform.

The chapter by Paul Blokker engages with the Italian 'season of constitutional reform', focusing in particular on the recent attempt (2013-16) at a comprehensive reform of the second, organizational part of the Italian Constitution of 1948. The political-sociological approach focusses on constitutional conflict and analyzes various constitutional subjects involved, including civil society, as well as major shifts in constitutional discourse as well as practice (in the form of constitutional instrumentalism) that became prominent from the early 1990s onwards. The postwar narrative of constitutionalism as an anti-totalitarian and democratic compromise among the major (victorious) political forces, upheld by a form of constitutional veneration by wider society, has during the 1990s increasingly become the target of claims for comprehensive reform, often on the basis of the observation that the 1948

Constitution is in some of its parts obsolete and obstructs an efficient form of 'governabilità'. In this, Italy forms of case-study of shifts in understandings of constitutionalism, away from a post-war 'constitutional veneration', and towards instrumentalist, majoritarian views of the Constitution, and populist endorsements of popular involvement (not least by means of referenda) and a direct relation between the leader/executive and the people. But the chapter also describes a pattern of constitutional resistance from below, against what are seen as an assault on the 1948 Constitution, attempts at establishing decisionist, plebiscitarian, and executive-driven democracy. Such constitutional resistance has (once again) led to a rejection of the recent attempt at comprehensive reform, the project of the Renzi government, in a referendum held in December 2016.

The chapter by Silvia Suteu deals with the case of the United Kingdom from a perspective of participatory constitution-making. The UK is a key example of constitutional acceleration in the last 25 years or so, with significant changes introduced by the Labour government in the 1990s, including the adoption of the Human Rights Act in 1998, the process of evolution, and the usage of the referendum instrument. The constitutional order of the UK has not, however, settled, and, as Suteu argues, the constitutional question remains on the agenda, in particular after the radical break introduced by the Brexit referendum. Suteu's chapter is focused on the idea of a constitutional convention in the UK, stemming from the idea that in-depth change ought to involve the citizens. Suteu outlines the main proposals for such a convention and asks thorny questions regarding the effectiveness of a participatory process, related to the convention's legitimacy, its mandate, and the involvement of political institutions. Suteu concludes that the setting up of a constitutional convention in the UK should be done with caution, and, drawing on comparative insights from the Icelandic and Irish cases, suggests the need for paying close attention to a convention's inclusiveness, the clarity of the mandate, and inclusiveness towards political actors and institutions.

The chapter by Jane Suiter, David Farrell, and Clodagh Harris discusses the Irish experience with constitutional reform in recent years. The Irish case is one in which constitutional acceleration is particularly visible, as the pace of constitutional revision in recent years has sped up, with five amendments being approved since 2010, while demands for further constitutional change are frequent (not least in political party manifestos). The formal route to constitutional change in Ireland is via referendums.[91] Suiter et al. introduce a useful distinction regarding the substance of revisions, distinguishing between EU-Treaty related matters, institutional change, and social change/modernization issues. In the second part of the chapter, Suiter et al. pay detailed attention to the 2012-14 Constitution Convention, a much-discussed and unprecedented event (inspired by citizens' assemblies in British Columbia and the Netherlands), in which citizens were selected randomly to participate in various deliberative meetings regarding constitutional amendment in the timeframe of14 months. The Irish case is clearly relevant with regard to the trend towards participatory forms of constitutional revision (see also the chapters of Palermo and Suteu), and, while not providing a clear-cut case of success, it does shed light on the potential and the future relevance of the Irish 'Convention method'.

Baldvin Thor Bergsson's chapter analyses the often-discussed but ill-understood case of constitutional revision in Iceland. Bergsson discusses the constitutional revision process in a thorough and detailed manner, paying due attention to the societal mobilization around constitutional change that emerged in the mass protests in 2008/9, the cumbersome set-up of the so-called Constitutional Council in 2011, the proceedings of the Council and the production of a constitutional draft, and the holding of a referendum on the draft in October 2012. Bergsson brings to the fore the significant hurdles the citizen-based Council faced in its role of constitutional revision, not least in the form of the annulment of the elections of the Council by the Supreme Court due to alleged irregularities. Bergsson importantly argues that the label of 'crowd-sourced' constitution is misplaced, and emphasizes the diminishing interest of voters in constitutional change, coming through in general elections as well as in public opinion polls. The sorts of the constitutional draft of the Constitutional Council remain uncertain, even if some proposals in parliament have been made regarding specific amendments. The most recent general elections in October 2016 seemed to indicate some potential new interest in constitutional revision (not least in the form of the Pirate Party's general adhesion to the process), but no structural outcome can be observed so far.

The third, and final, part of the volume discusses distinctive, problematic case-studies in 'new' democracies in East-Central Europe, analyzing constitutional reform and revision in the context of recently established democratic-constitutional regimes.

The chapter by Bogdan Iancu on constitutional reform in Romania provides an in-depth discussion of constitutional change in the post-1989 period, and is a perfect example of partisan attempts at constitutional engineering by both the political centre-right and centre-left, in particular since 2007. Iancu gives a comprehensive account of the constitution-making process in the early 1990s, arrives at the conclusion that it was a majoritarian process, without extensive involvement of the wider public nor of the political opposition, and in which inexperience and a somewhat uncritical borrowing from foreign experiences ('ludic experimentation') resulted in a rigid constitution, of which the endurance, according to Iancu has been inversely proportional to its capacity to integrate Romania society and perhaps even to provide legal stability. In this, the semi-presidential model is highly unstable and has frequently led to protracted conflict between the President and governmental forces. The strengthening of the Constitutional Court since 2003, in particular by increasing its independence and by providing it with the final say over constitutionality of law, has led to the rise of an additional power centre with, however, a very mixed track record. Iancu concludes importantly by arguing against what he sees as academic fads (such as both the recent 'participatory' and 'deliberative' turn and the global standard of 'new constitutionalism') and by endorsing an approach in constitutional law that is cautionary and contextually sensitive.

In Kriszta Kovacs' chapter on constitutional identity and its relation to constitutional amendment offers both a conceptual discussion and the analysis of the case of Hungary. In general terms, Kovacs discusses the idea of constitutionalism in the context of change, and limits of change in terms of unamendable parts (often in the form of 'eternity clauses') or provisions of constitutions, and complex, often aggravated amendment procedures, present

in many but not all European countries. What is particularly intriguing, is the tension between formal amendment which follows the existing amendment rules but appears to be in contrast to the basic principles of a constitution or its 'basic structure'. This is where Kovacs introduces the notion of constitutional identity which she understands as referring to the 'constitutional essence' of a constitutional order, relating to the essence of a particular political community. Such a constitutional essence is frequently to be guarded by constitutional courts by means of reviewing constitutional amendments. In Kovacs' view, in the Hungarian case of post-communist democracy, constitutional identity has changed twice by means of amendment, first in 1989 and then in 2011, and in both cases important tensions with the idea of constitutionalism are present. The recent 2011 change in constitutional identity has however not, as it promised to, led to a resolution of problems inherent in the constitutional change of 1989 (in particular with regard to legitimacy problems) but has actually exacerbated legitimatory matters, and as a consequence compromised constitutionalism in Hungary.

In the final chapter, Gabor Halmai further discusses the highly significant case of Hungary, which has drastically moved away from its position as the democratic frontrunner amongst post-communist societies in the 1990s to an increasingly illiberal democratic regime in the 2010s. The Hungarian transition from communism to constitutional democracy has been understood as a process of post-sovereign constitution-making[92] in that several societal forces, rather than one force (the parliament as singular representative of the People) produced the new constitutional order. In Halmai's view, the adoption of the Fundamental Law in 2011 constituted a move against the practice of post-sovereign constitution-making, as the new Law had been drafted and adopted by the parliamentary majority. Halmai provides a comprehensive set of reasons for the Hungarian 'backsliding to illiberal democracy'. These reasons include a lack of historical experience with democratic rule as well as the development of a sense of national victimhood as a result of historical defeats or 'fiascos', a socialist legacy of socio-economic expectations and state paternalism, a predominance of a legalistic, judicial control of democratic politics and a concomitant lack of development of societal forces (civil society), and the design failures of the democratic system (the electoral system as well as the amendment rule). Halmai ends with a discussion of the democratic prospects for the Hungarian state. He characterizes contemporary Hungary as a hybrid regime, an illiberal democracy, which is somewhere between full-fledged democracy and dictatorship. The future of Hungarian democracy is problematic in that the illiberal assault on democratic constitutions face little resistance from wider society, as a political and constitutional culture has not robustly developed. Furthermore, a political trend away from liberal democracy can be detected, while important institutions that endorse liberal democracy in Europe (notably the EU) do not seem to be able to forcefully impose this model amongst EU member states.

[1] J. Wheatley and F. Mendez, *Patterns of Constitutional Design: The Role of Citizens and Elites in Constitution-Making* (Routledge, 2007); F. Palermo, *La manutenzione costituzionale* (CEDAM, 2007); X. Contiades (Ed.), *Engineering Constitutional Change: A Comparative Perspective on Europe, Canada and the USA* (Routledge, 2012); Xenophon Contiades and Alkmene Fotiadou (eds), *Participatory Constitutional Change: The People as Amenders of the Constitution* (Routledge, 2016); E. Bos and K. Pocza (Eds),*Verfassunggebung in konsolidierten Demokratien: Neubeginn oder Verfall eines politischen Systems?* (Nomos, 2014); D. Oliver and C. Fusaro (eds), *How constitutions change: A comparative study* (Hart Publishers, 2011).

[2] See T. Ginsburg and J. Melton, 'Does the constitutional amendment rule matter at all? Amendment cultures and the challenges of measuring amendment difficulty' (2015) 13:3 *International Journal of Constitutional Law* 686-713, figure 1.

[3] G. Azzariti, *Il costituzionalismo moderno può sopravvivere?* (Laterza, 2013); M. Loughlin and P. Dobner, eds. *The Twilight of Constitutionalism?* (New York: Oxford University Press, 2010); C. Mac Amhlaigh, Cláudio Michelon, and Neil Walker, eds. *After Public Law* (OUP Oxford, 2013).

[4] Azzariti (n 3) vii.

[5] R. Prandini, 'The Future of Societal Constitutionalism in the Age of Acceleration' (2013) 20:2 *Indiana Journal of Global Legal Studies* 731-776, 737.

[6] The emphasis in the volume is largely on formal, political projects of constitutional reform, while informal change – through judiciary interpretation, legislative action, or political practice – are less of an explicit focus.

[7] B. Bergsson and P. Blokker, 'The Constitutional Experiment in Iceland', in E. Bos and K. Pocza (ed.), *Verfassunggebung konsolidierten Demokratien: Neubeginn oder Verfall eines politischen Systems* (Baden-Baden, Nomos Verlag, 2014); see the chapter by Bergsson.

[8] X. Contiades and A. Fotiadou, 'How Constitutions Reacted to the Financial Crisis' in X. Contiades (ed.), *Constitutions in the global financial crisis: A comparative analysis* (Routledge, 2013) 9-62, 22.

[9] Contiades and Fotiadou (n 8).

[10] For the case of Hungary, see the chapters by Kovacs and Halmai in this volume.

[11] For the case of Iceland, see the chapter by Bergsson in his volume.

[12] For the case of Ireland, see the chapter by Suiter, Farrell, and Harris; for the case of Italy, see the chapter by Blokker in this volume.

[13] A. Th. Arnason, 'A Review of the Icelandic Constitution-Popular Sovereignty or Political Confusion' (2011) *Tijdschrift voor Constitutioneel Recht* 342, 343.

[14] Arnason (n 13) 345.

[15] See Blokker's chapter on Italy in this volume.

[16] Cf. J. Lluch, 'Introduction: The Multiple Dimensions of the Politics of Accommodation in Multinational Democracies' in *Constitutionalism and the Politics of Accommodation in Multinational Democracies* (Palgrave Macmillan UK, 2014), 1-18; S. Tierney, *Constitutional Law and National Pluralism* (Oxford University Press, 2005).

[17] S. Tierney, 'Flexible accommodation: another case of British exceptionalism?' in J. Lluch (ed.) *Constitutionalism and the Politics of Accommodation in Multinational Democracies* (Palgrave Macmillan UK, 2014), 159-179, 160.

[18] Tierney (n 17) 162.

[19] See the chapters by Blokker and Palermo in this volume.

[20] B. Kissane and N. Sitter, 'The marriage of state and nation in European constitution' (2010) 16:1 *Nations and Nationalism*, 49-67.

[21] See the chapters by Kovacs and Halmai in this volume.

[22] Cf. L. Orgad, *The cultural defense of nations: A liberal theory of majority rights* (Oxford University Press, 2015).

[23] Cf. L. Thio, 'Constitutionalism in illiberal Polities', in *The Oxford Handbook of Comparative Constitutional Law* (OUP, 2012), 133.

[24] C. Mudde, 'Are Populists Friends or Foes of Constitutionalism?' Policy Brief, The Social and Political Foundations of Constitutions (Oxford University, 2013); C.R. Kaltwasser, 'Populism vs. Constitutionalism? Comparative Perspectives on Contemporary Western Europe, Latin America, and the United States' Policy Brief, The Social and Political Foundations of Constitutions (Oxford University, 2013).

[25] J.W. Mueller, *What Is Populism?* (University of Pennsylvania Press, 2016), 68.
[26] N. Urbinati, *Democracy disfigured* (Harvard University Press, 2014) 129.
[27] Urbinati (n 26); Mueller (n 25).
[28] Cf. C. Closa, and D. Kochenov, *Reinforcing rule of law oversight in the European Union* (Cambridge University Press, 2016)
[29] J. Blount, 'Participation in constitutional design' in T. Ginsburg and R. Dixon (eds), *Comparative constitutional law* (Edward Elgar, 2011): 38-56, 38; cf. Xenophon Contiades and Alkmene Fotiadou (eds), *Participatory Constitutional Change: The People as Amenders of the Constitution* (Routledge, 2016); Thomas Bustamante and Bernardo G. Fernandes (eds), *Democratizing Constitutional Law* (Springer, 2016); Min Reuchamps and Jane Suiter, *Constitutional Deliberative Democracy in Europe* (Colchester: ECPR Press, 2016).
[30] G. Teubner, *Constitutional fragments: societal constitutionalism and globalization* (Oxford University Press, 2012); J. Přibáň, *Sovereignty in Post-sovereign Society: A Systems Theory of European Constitutionalism* (Routledge, 2016).
[31] Cf. P. Holmes, 'The politics of law and the laws of politics: The political paradoxes of transnational constitutionalism' (2014) 21:2 *Indiana Journal of Global Legal Studies* 553-583.
[32] Cf. A. Albi, EU enlargement and the constitutions of Central and Eastern Europe (Cambridge University Press, 2005); C. Karlsson and K. Galic (2016), 'Constitutional change in light of European Union membership: trends and trajectories in the new member states' (2016) 32:4 *East European Politics* 446-465.
[33] Cf. C. Parau, 'Explaining Judiciary Governance in Central and Eastern Europe: External Incentives, Transnational Elites and Parliament Inaction' (2013) 2 *Europe-Asia Studies*.
[34] See, e.g., the chapter by Iancu in this volume.
[35] Cf. M. Madsen 'International human rights and the transformation of European society: from 'Free Europe' to the Europe of human rights' in M. Madsen and C. Thornhill (eds), *Law and the Formation of Modern Europe: Perspectives from the Historical Sociology of Law* (Cambridge: Cambridge University Press, 2014), 245-274.; A. von Bogdandy and P. Sonnevend (eds), *Constitutional Crisis in the European Constitutional Area* (Nomos, 2015).
[36] See Arato and Toth in this volume.
[37] For a critical view, see M. De Visser (2015), 'A Critical Assessment of the Role of the Venice Commission in Processes of Domestic Constitutional Reform' 63(4*) American Journal of Comparative Law* 963-1008. See further P. Craig, 'Transnational Constitution-Making: The Contribution of the Venice Commission on Law and Democracy' (forthcoming) *UCI Journal of International, Transnational and Comparative Law*; J. Nergelius, 'The role of the Venice commission in maintaining the rule of law', in A. von Bogdandy and P. Sonnevend (eds), *Constitutional Crisis in the European Constitutional Area* (Nomos, 2015), pp. 291-310.
[38] Cf. J. Priban, *Sovereignty in Post-Sovereign Society. A Systems Theory of European Constitutionalism* (London: Routledge, 2015) 21.
[39] Priban (n 38) 22.
[40] For the example of the Netherlands, see B. M. Oomen, 'A serious case of Strasbourg-bashing? An evaluation of the debates on the legitimacy of the European Court of Human Rights in the Netherlands' (2016) 20:3 *The International Journal of Human Rights* 407-425.
[41] Cf. Alan Renwick, *After the referendum: options for a constitutional convention* (The Constitution Society, 2014).
[42] Palermo (n 1) 15.
[43] Cf. Prandini (n 5).
[44] H. Rosa and W. E. Scheuerman, *High-Speed Society: Social Acceleration, Power, and Modernity* (University Park: Penn State Press, 2009).
[45] Prandini (n 5) 733.
[46] W.E. Scheuerman, 'Constitutionalism in an Age of Speed' (2002) 19 *Constitutional Commentary* 359-60, 353.
[47] Prandini (n 5).
[48] Scheuerman (n 46) 361.
[49] Cf. P. Blokker, 'The Imaginary Constitution of Constitutions' (2017) 3:1 *Social Imaginaries*.
[50] P. Blokker, 'Constitutionalism and constitutional anomie in the new Europe' (2010) Quaderno 53 (Department of Sociology and Social Research, University of Trento).
[51] E. Durkheim, *The Division of Labour in Society* (The Free Press, 1997).

[52] D. Augenstein and J. Hendry, 'The "Fertile Dilemma of Law": Legal Integration and Legal Cultures in the European Union' (Tilburg Institute of Comparative and Transnational Law) Working Paper 2009/06, fn 24.
[53] P. Besnard, 'The True Nature of Anomie' (1988) 6:1 *Sociological Theory* 91-95, 92.
[54] Scheuerman (n 46).
[55] Cf. Scheuerman (n 46) 383.
[56] Scheuerman (n 46) 384.
[57] Palermo (n 1) 14.
[58] Cf. D.S. Lutz, 'Toward a Theory of Constitutional Amendment' in S. Levinson (ed.), *Responding to Imperfection. The Theory and Practice of Constitutional Amendment* (Princeton University Press, 1995) 237-74.
[59] Jonathan Wheatley and Fernando Mendez (eds) (2007), *Patterns of Constitutional Design: The Role of Citizens and Elites in Constitution-Making*, Routledge, chapters 1 and 2.
[60] Mendez and Wheatley (n 59).
[61] Mendez and Wheatley (n 59).
[62] Cf. R. Albert, 'The Structure of Constitutional Amendment Rules' 49 *Wake Forest Law Review* 913 (2014).
[63] Albert (n 62) 929.
[64] Albert (n 62) 948-9.
[65] Cf. Contiades and Fotiadou (n 8).
[66] Bustamante and Fernandes (n 29); Contiades and Fotiadou (n 29); Reuchamps and Suiter (n 29).
[67] James Fishkin, *When the people speak: Deliberative democracy and public opinion* (Oxford University Press, 2009). James Fishkin, 'Deliberative democracy and constitutions' (2011) 28:1 *Social Philosophy and Policy* 242
[68] Source: Fishkin, *When the people speak* (n 67); Fishkin 'Deliberative Democracy' (n 67); Renwick (n 41); own elaboration.
[69] Fishkin, *When the people speak* (n 67).
[70] Fishkin, *When the people speak* (n 67), 68
[71] Fishkin, *When the people speak* (n 67), 72; italics in original.
[72] Fishkin 'Deliberative Democracy' (n 67).
[73] Renwick (n 41).
[74] See also Reuchamps and Suiter (n 29); Christopher F. Zurn, 'Democratic Constitutional Change: Assessing Institutional Possibilities' in Thomas Bustamante and Bernardo Gonçalves Fernandes (eds) *Democratizing Constitutional Law* (Springer International Publishing, 2016).
[75] Stephen Tierney, *Constitutional referendums: The theory and practice of republican deliberation* (Oxford University Press, 2012), 23-42.
[76] Urbinati (n 26) 171.
[77] Renwick (n 41) 24; Reuchamps and Suiter (n 29); Zurn (n 74).
[78] Cf. Bergsson and Blokker (n 7); Z. Elkins, T. Ginsburg and J. Melton (2012), 'A Review of Iceland's Draft Constitution', available at: https://webspace.utexas.edu/elkinszs/web/CCP%20Iceland%20Report.pdf.
[79] Cf. P. Blokker, *New democracies in crisis?: a comparative constitutional study of the Czech Republic, Hungary, Poland, Romania and Slovakia* (Routledge, 2013).
[80] H. Brunkhorst, 'Constituent power and constitutionalization in Europe' (2016) 14:3 *International Journal of Constitutional Law* 680-696, 681.
[81] A. Jakab *European Constitutional Language* (Cambridge University Press, 2016), 2.
[82] H. Brunkhorst, 'European Constitutionalization Between Capitalism and Democracy' (2016) 23: 1 *Constellations* 15-26, 15.
[83] H. Brunkhorst, *Critical Theory of Legal Revolutions: Evolutionary Perspectives* (Bloomsbury Publishing USA, 2014); Brunkhorst, 'Constituent power' (n 78) 682.
[84] Brunkhorst (n 83) 46; italics in original.
[85] Brunkhorst (n 83) 46; italics in original.
[86] Brunkhorst, 'Constituent power' (n 80) 683.
[87] M. Loughlin and N. Walker, *The paradox of constitutionalism: constituent power and constitutional form* (Oxford University Press, 2007), 1; Cf. Blokker (n 49).
[88] M. Loughlin, 'The constitutional imagination' (2015) 78:1 *The Modern Law Review* 1-25, 2.
[89] Brunkhorst, 'European Constitutionalization' (n 82) 16.

[90] See also A. Arato, *Post Sovereign Constitutional Making: Learning and Legitimacy* (Oxford University Press, 2016).
[91] As according to article 46 of the Irish Constitution. Article 46.2 states that 'every proposal for an amendment of this constitution shall be initiated in dáil Éireann as a Bill, and shall upon having been passed or deemed to have been passed by both houses of the oireachtas, be submitted by referendum to the decision of the people in accordance with the law for the time being in force relating to the referendum'.
[92] Arato (n 90).