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How do Participatory Constitution Building Processes Effect the Quality of Democracy?

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ABSTRACT

Public participation in constitution building processes has been advanced as a standard operational measure, in post-conflict contexts, when states transition from non-democratic to democratic rule and during other periods of institutional crisis or reform. This is the case regardless of the scope of the constitution making activity - be it a complete overhaul of the pre-existing constitution and the creation of an entirely new document or a more incremental approach to the endeavour. Ordinary citizens, civil society organizations and local non-governmental organizations are now sitting in the front seat doing the steering, whereas domestic as well as international legal experts and national political elites serve to properly incorporate, endorse and, in the case of domestic authorities, finally approve by making it to legal provisions, the opinions of the people in the final constitution. Top-down constitution making has been replaced by bottom-up constitution building. This is at least the idealistic idea. Indeed, public participation in constitution building processes is gaining ground for a number of reasons, which will be presented on the following pages. The question of how public participation effects the subsequent quality of democracy in states that have undergone such processes however remains unanswered. As there is not one uniform, predefined “toolkit” that guides the procedures of a participatory process, there are as many methods to engage in the endeavour as there are cases. “Public participation” is by no means a neutral term, and how a given constitution building process is shaped in terms of public involvement will have consequences for the state of democracy subsequent the venture.

In this paper I will present my dissertation project and discuss the need for research in the specific area. Systematic comparisons of participatory constitution building processes are needed both for the purpose of being able to detect patterns as to what it is in the process that leads to various levels of democracy as well as for the purpose of untangling the concept of public participation in the various forms that this may actually be exercised. The theoretical field of participatory constitution building will be presented as will the quality of democracy concept. As the dissertation will take on a different methodological approach than previous research within this specific area, the method and the rational for applying this procedure will also be presented.
Introduction

Participatory constitution building – what is it?

“How the constitution is made, as well as what is says, matters. Process has become equally as important as the content of the final document for the legitimacy of a new constitution”

(Hart 2003; 1)

During the past twenty-five years, half of the existing national constitutions have been written or re-written (Hart 2003; 2). The significant increase in constitutional activity has served to reignite the scholarly debate on constitution making as well as encouraged a re-evaluation of best practices for constitution building (Moehler 2006; 277). Constitution making as the “hour of the lawyers” (Arato 2000; 229) is no longer accepted as the standard procedure through which constitutions come into existence, at least not if public ownership of the document is sought after. Hence, a new trend that values ordinary citizens as the prime agenda setters and decision makers has emerged; participatory constitution building, a trend that also acknowledges constitution making as a process rather than an “event” (Moehler 2006; 275, Hart 2003; 12).

The meaning of public participation in constitution building, and the practical employment of such an approach, is constantly being broadened to include various methods of involving the citizenry in the process; before the writing phase, during drafting, and after the constitution is finalized, promulgated and implemented. New strategies for engaging the population may include organizing public hearings during which constitutional submissions are gathered, arranging constitutional education programs, organizing popular referendums for electing constitution making bodies, arranging media campaigns for the purpose of keeping the public informed about the process as well as providing them a channel for conveying their viewpoints, and many other forms of engagement (Hart 2003; 2-7).

Scholars and practitioners call attention to a number of reasons for more public participation and less elite control during a constitution building process (see for example; Widner 2005; Widner 2008; Ghai & Galli 2006; Hart 2003; Samuels 2006; Samuels 2009; Moehler 2006). Firstly, and most importantly, public participation has been recognized as being closely linked to values of democracy and legitimacy. Supporters of a participatory approach frequently stress two aspects; that a constitution can only reflect democratic values if it has been produced during such circumstances, and that a constitution cannot be written for the people
without input from the people that it sets out to rule; it will simply lack legitimacy (Hart 2003; Samuels 2009; Samuels 2006; Widner 2008; Moehler 2006; Ghai & Galli 2006). In essence; for the document to be respected by the citizenry and survive implementation it must be based on the views, values and aspirations of the same (Hart 2003; Samuels 2009; Ghai & Galli 2006; Moehler 2006). Holding of public engagement until the last stages of the process and limiting public contribution to a “yes” or “no” vote on an already prepared, drafted and elite deliberated constitution is questioned as a legitimate democratic procedure (Samuels 2009). Also related to the enhancement of democracy argument, public participation in the process is believed to educate people in democratic values and even broaden the democratic polity as it offers previously excluded groups an opportunity to have their voices and values considered (Ghai & Galli 2006; 14, Samuels 2006; 8, Widner 2005). In other words, the process is seen as an exercise in democracy and as a way of supporting the growth of a democratic political culture in a society (Hart 2003; 12, Moehler 2006; 276-278). It is also suggested that a participatory approach builds much needed social capital especially in war torn societies since ownership induces a sense of influence and trust (Widner 2005; 506).

The second factor that explains this new development relates to another twenty-one century trend; that of an increase in civil wars in societies with deep-seated ethnic and/or religious divisions. It has been brought to attention that a participatory post-conflict constitution building endeavour can serve to reconcile conflicting communities. By including all segments of the population in the process, previously marginalized groups as well as former adversaries will be provided an opportunity to collectively address past grievances and structural inequities at the root of the conflict (Ghai & Galli 2006; 13). Thus, it is suggested that reconciliation may be facilitated by means of conversation and deliberation in the context of building a new constitution (Hart 2003; 3, Samuels 2006; 5-6).

Lastly, the notion of public ownership, and the perceived necessity of it, at this particular moment in time is also related to recent foreign involvement in constitution building processes where those getting involved and pushing the constitutional agenda are not national citizens themselves – rather they belong to international organizations. In light of recent unsuccessful engagements by international actors in constitution building activities in particularly post-conflict states, their authority as the main “constitution builders” has become questioned, scrutinized and overall criticised from a legitimacy and accountability perspective (Samuels 2006).
There exists no uniform and practical manual that sets out to guide domestic and international constitution builders when they go about initiating a participatory constitution building process. As the focus is on the process, there are no instructions or recommendations concerning specific provisions that ought to be reflected in the content of the constitution either – although there is an implicit understanding that a democratic process will yield a democratic content; how this democratic content may present itself is however not stipulated. This can be contrasted to specific constitutional recommendations, particularly for divided societies, as provided by the consociational democracy model elaborated by Arend Lijphart (1969), and the integrative model presented by Donald Horowitz (1985). Rather, a participatory constitution building process may take many different forms which makes sequencing of events important, not to mention decisive, in identifying to what degree, if at all, “participatory” a participatory process actually is (Widner 2005; 505). For example, it is relevant to consider at which phase of the process the public are invited to engage as this may vary extensively from case to case. It may be as early as during the pre-constitutional phase when negotiations are only just initiated and the agenda is staring to take form, or perhaps during the constitution-making phase when the draft is being prepared, or maybe not until it is time for a final referendum. The public may be included both before and after the draft has been prepared, or only before or only after. They may be included all the way from the beginning, but not allowed to vote on the final constitution. The sequencing of public education also matters, if at all included. Have the public received education on constitutional matters before or after public hearings? (Widner 2005) Clearly the procedural variance is considerable. Consequently, a number of constitution building processes may be considered participatory but differ extensively in comparison to each other (Hart 2003; 11).

The transition from conflict to peace and to democratic governance, and in the longer perspective democratic consolidation, is not only cumbersome but also lengthy. In cases of protracted conflicts that have lasted for many years, even decades, war and norms coupled to war have become normalized. For these norms to change, passage of time is essential as is sufficient time set aside for the constitution building process (Samuels 2006; 5). In the words of Vivien Hart (2003; 11) “only a considerable commitment of time and resources will make genuine public participation possible”. The time aspect also has bearing for the above mentioned sequencing of procedures; not enough time might lead to rationalization in the sequencing, leaving out certain steps of the process entirely, or leaving out public engagement during certain phases.
To sum up; participatory constitution building has been advanced as a standard operational measure (at least from a normative perspective) due to the processes perceived contribution to democratic governance, increased legitimacy of the document and possibility for reconciling former adversaries.

Disposition of the paper

On the following pages I shall outline my thoughts related to my dissertation project. The disposition will be as follows; an initial brief section will give an idea of the character of previous research within this specific field which naturally leads up to the identified research problem and purpose of the dissertation. This is followed by a theoretical chapter in which participatory constitution building is situated within the deliberative democratic theoretic framework and where the concepts of democracy and quality of democracy are theorized. The paper then continues with a methodological chapter in which the comparative method is presented and discussed as the most suitable method given the purpose and research question of the study. The paper concludes with some reflections concerning prospective contributions of the thesis.

Previous research on participatory constitution building

Previous research within this particular field of state building has been focused to single case studies. This trend has been further characterized by the South African case receiving considerable scholarly attention in comparison to other countries which too have undertaken a participatory process when writing their constitutions (see for example; Haysom 2001; Ibrahim 2001; Jagwanth 2000; Maphai 1999; Mbete-Kgositsile 2001). The focus on South Africa is undeniably understandable for a number of reasons: Firstly, the country’s constitution building process of 1994-1996 was indeed a remarkable exercise in far reaching public participation both in terms of number of people engaged in the process, and in terms of innovative ways of engaging the citizenry. Secondly, due to the nature of the South African constitution building process, the country has successfully established itself as an international point of reference, a role-model, when it comes to successful constitution making; thus continued scholarly attention is justified (Ibrahim 2001; 155, Hart 2003; 7). Thirdly, as nearly fifteen years have passed since the promulgation and adoption of the final constitution it is interesting, not to mention relevant, to continue to study the South African
experience as valuable lessons that may be related to the constitution building process are perhaps only now starting to reveal themselves.

With all this said and the relevance and importance of researching the South African case acknowledged, research design that focuses on single case study analysis has left this research field without systematic comparisons between countries that have undertaken a participatory process when making their constitutions. As Jennifer Widner (2008; 1514) has said; “our instincts tell us that process [of constitution building] makes a difference”, yet there is still no research that analyses how, meaning what it is in the process, that makes a difference, and in relation to what it makes a difference and lastly, that sets out to study these aspects systematically in several cases in order to be able to compare the processes. Furthermore, previous research makes no distinction between various ways of engaging the public in a participatory process – rather any and all engagement is labelled as “participatory constitution building” which is problematic since there are considerable differences of genuine public participation when studying the individual cases closer.

**Research problem**

As conveyed in the introduction, an inclusive, open-ended, transparent and publically available constitution building process may have many merits. Characteristics such as increased legitimacy, accountability, a sense of national ownership, etc. has made governments in post-conflict countries and in states transitioning from non-democratic to democratic rule eager to be associated with such a procedural approach. By using the constitution building endeavour in itself as an exercise in democracy, incumbent governments have realized that there is much to gain; not only will the process yield high levels of legitimacy with the domestic public, but the country will also gain international recognition as a state that values the opinions of its people and a truly democratic process. However, when studying a number of, particularly post-conflict, states that have engaged in participatory constitution building processes it becomes clear that “public participation”, as defined, perceived and finally procedurally employed, varies greatly from one context to another. Since there is no uniform, pre-designed set of standards when it comes to a participatory constitution building process, there are as many ways of attempting the endeavour as there are cases. To clarify with an example: East Timor, Afghanistan and Rwanda have all engaged their citizens when making their constitutions, yet the ways that they have attempted to do so and the extent to which they have done it varies greatly. Not all participatory constitution
building process are alike and hitherto there has been no analytical distinction between these various participatory approaches and the consequences of them. This naturally leads us to the purpose of the dissertation.

**Purpose**

In line with the statement made by Jennifer Widner concerning the belief that the process of constitution building indeed matters and that public participation in such processes make a difference, this dissertation sets out to understand *how* participatory processes matter; and how it matters in relation to the quality of democracy. To be exact, the purpose of the study is to analyze various ways of applying a participatory constitution building process and to study how these different attempts have affected the subsequent *quality of democracy* in states that have undergone such processes. The purpose may be further distilled into one research question, namely: what feature, or features, in the constitution building process explain the difference in outcome when it comes to the quality of democracy? The main focus will be on post-conflict states\(^1\), but participatory processes during other circumstances will also be analyzed, to be precise when, 1) the process has taken place during a transition from a non-democratic regime to democratic rule and, 2) when the process has been instigated during some other period of institutional crisis or reform.

**Theory**

*Participatory constitution building and deliberative democratic theory*

Deliberative democratic theory is experiencing somewhat of a renaissance as it is has evolved from merely a theoretical concept to a working theory. In making this transition, its basic principles are currently being implemented in a number of research fields (Chamber 2003; 310-311). Undeniably, the central principles of participatory constitution building, as described in the previous section, fit firmly within the deliberative democratic theoretical framework. Even though deliberative democracy is a familiar concept to political science researchers, “deliberation” and its distinctiveness in comparison to “ordinary talk”, negotiations and bargaining is not always entirely clear. Chamber attempts a general

\(^1\) In accordance with Miller (2010; 656), this study agrees that the term “post-conflict” can cause confusion since conflicts do not usually abruptly end, rather states transition from conflicts. In this study, a “post-conflict” context is thus taken to mean such a transitioning environment.
definition that captures the essence of the concept which also illustrates how deliberative
democratic theory and the idea of participatory constitution building relate to each other:

“...deliberation is debate and discussion aimed at producing reasonable, well-informed opinions
in which participants are willing to revise preferences in light of discussion, new information, and
claims made by fellow participants. Although consensus need not be the ultimate aim of
deliberation, and participants are expected to pursue their interests, an overarching interest in the
legitimacy of outcomes ideally characterizes deliberation”.

(Chamber 203; 309)

Deliberative theorists whom are particularly interested in how a working theory of
deliberation can be applied in the field of public law argue that by establishing a relationship
between the public and the legislative authority through means of communicative processes
rather than the voting booth, legitimacy of the legislative framework will be secured
(Chambers 2003; 309-312). Habermas (2001; 772) goes further by asserting that the content
of a constitution, the rights and obligations stated therein, and their perceived legitimacy is
dependent on equally entitled participants engaging in the making of the constitution. Thus it
seems as the practice of participatory constitution building corresponds to a working theory of
deliberative democracy, if applied in a manner which is truly participatory. One should bear in
mind that deliberative democracy is difficult to realize even when conditions are favourable
not to mention in contexts where countries are only just returning to peace after conflict or
transitioning from military to civilian rule. The challenge is further compounded in societies
that are culturally/ethnically/religiously divided as “equally entitled participants” in a
deliberative democracy as envisioned by Habermas may be an elusive ideal during such
circumstances. A well-ordered political sphere in which all social groups can deliberate on an
equal footing can be difficult to establish as minority groups and social groups that have
previously been excluded from the political arena are not likely to have an equal influence in
the democratic process (Chambers 2003; 321-322). These challenges are consequently equally
relevant for a participatory constitution building process. “The people” who are the prime
agenda setters and drivers behind the constitutional agenda must be disaggregated into the
various sub-groups that actually make up the population; “the people” are not one
homogenous group with equal influence, and the fact that deliberations will be effected by
power relations between groups needs to be taken into consideration (Noël 2006; 433). The
process of engaging the citizenry in a manner that is as participatory and as representative for
all segments of the population as possible is undeniably a complex mission (Ghai & Galli
2006; 15). With these challenges in mind it is relevant to place participatory constitution
building processes, which are deliberative in nature, in the larger context of a representative democratic governing structure. The fact of the matter is that proponents of participatory processes, and deliberative theorists alike, rarely suggest that deliberative democracy should substitute representative democracy, but rather be valued as a compliment to it which serves to democratize democracy further (Chamber 2003; 308).

It is relevant to note that deliberative theorists and advocates of participatory constitution building processes are united in their belief of deliberation as a reconciliation mechanism. Both of these strands of thought acknowledge that democratic deliberations create and transform social actors, make room for new actors and effect the relationship of actors vis-à-vis each other and vis-à-vis political institutions (Noël 2006; 434). And since reconciliation is one of the three central arguments, next to the enhancement of democracy and legitimacy, for the implementation of participatory constitution building processes it is necessary to define the concept for the purposes of the dissertation.

To provide a clear and undisputed definition of reconciliation is however not an easy task. Beside the basic line of agreement among peace and conflict scholars that reconciliation is something positive, and particularly relevant for post-conflict states, and that it should thus be strived for, the concept remains vague at best. The ambiguity has in turn resulted in multiple interpretations, including normative understandings of what reconciliation ought to be (Ramiah & Fonseka 2006; Hazan 2009). Some common interpretations of the concept that one may encounter when reviewing the reconciliation literature ranges from it being understood as a religious and moral concept, a social and political process, a horizontal and vertical process where the former has to do with establishing trust between citizens and among social groups and the latter involves creating trust between citizens and state institutions (Hazan 2009). It is also very common that a legal perspective is added to the term; in fact, researchers and practitioners frequently employ the concept of reconciliation interchangeably with the term “transitional justice” which in itself is a broad notion covering various mechanisms ranging from truth commissions, reparations, amnesties, to domestic and international trials, and other instruments. Finally, reconciliation is interpreted by some as forgiveness. Archbishop Desmond Tutu, who also chaired the South African Truth and Reconciliation Commission, is a prime example of a person who views reconciliation and forgiveness as synonyms, implying the essentialness of forgiveness in order for reconciliation to even be possible (Tutu 2000).
In accordance with The International Institute for Democracy and Electoral Assistance (International IDEA) this study defines reconciliation as *peaceful coexistence* between former adversaries (Bloomfield 2004; 12). Peaceful coexistence does not, necessarily, involve forgiveness, and it does not mean that past injustices must be forgotten – but it does mean that former destructive relationships between conflicting communities need to be restructured (Bloomfield 2004; 12). Furthermore, peaceful coexistence will only be attainable if future conflicts are addressed within the institutional democratic framework, through democratic procedures and via political institutions, provided by state institutions rather than by the use of arms on the battlefield. For past enemies to agree to transfer their differences to the democratic arena rather than to resort to violence or other undemocratic means, *political tolerance* is fundamental. Political tolerance means nothing more than being able to “put up” with people who have other ideas and viewpoints than one’s own (Gibson 2004; 15-16). As stated in reference to the context of post-war Kosovo: “However, even when one cannot forgive, there are some minimum standards that below which one should not sink: social reconstruction demands respecting the rights of those one detests” (Clark quoted in Bloomfield 2004; 20). Thus becomes respect for the rule of law a central aspect when attempting to measure political tolerance; this will be elaborated further under heading “Measuring the quality of democracy” on page 14-15. Respecting the rule of law and acknowledging its relevance for everyone on an equal basis, and particularly valuing and protecting minority rights is essential for facilitating trust between citizens of conflicting communities vis-à-vis each other, vis-à-vis the governing elite, and vis-à-vis the institutional framework, and an absolute essential for the survival of democracy at large (Gibson 2004; 216).

*Democracy & quality of democracy*

This study considers constitutions as essential building blocks of democracy and aims to analyse how the process through which they come into existence effects the quality of democracy in states that have undergone such processes. Therefore it is necessary to theorize the concepts of democracy and “quality democracy”.

What democracy is and the more normative question of what it ought to be has engaged political scientists past and present. However, despite, or perhaps because of, the immense scholarly interest in issues pertaining to democratic theory it is nearly impossible to identify a universal conception of “democracy” and what it is that constitutes a “good”, “high quality”
democracy (Diamond & Morlino 2004; 20). Notwithstanding the definitional challenge, there is scholarly agreement over two things; firstly, that certain political institutions need to be installed in order for a state to be referred to as a democracy, and secondly; that these political institutions are desirable to install as democracy is a desirable governing structure – democracy is a moral good (Dahl 1989; 2; Diamond & Morlino 2004; 20). Indeed, as Dahl (1989; 2) states: “Today, the idea of democracy is universally popular”. Clearly, he is correct in his statement as regimes of nearly all types and characters, ranging from representative democracies, to authoritarian states and military administrations, are eager to define themselves as democratic states (Dahl 1989; 233). attempting to classify a country as either a clear-cut “democratic state” or a definite “non-democratic state” is still difficult, not to mention misleading, since countries can demonstrate some democratic practices but fail to deliver on others. Therefore, a fruitful discussion on democracy benefits from the concept being recognized as a continuous concept, implying the existence of various degrees of democracy (Lijphart 2008; 89-90). Nevertheless, there are some basic requirements, fundamental political institutions and procedures, which must be met for a state to be considered democratic. Firstly, universal adult suffrage must be assured. Constitutional guaranteed universal adult suffrage and the subsequent right to vote provides the basis for legitimate and democratically elected governing bodies (Choe 2003; 9). In representative democracies the right to vote and the usage of this right constitutes the most fundamental method by which the citizenry can participate and influence the governing of their country (Choe 2003; 9). Political participation is also closely related to political equality, as unequal participation implies unequal influence. This indicates that high levels of voter turnout have the potential to combat political inequalities (Lijphart 2008; 18, 201). Secondly, a democratic state must hold recurring, free, competitive and fair elections. Thirdly, it must have more than one serious political party. A variety of political parties in a representative democracy is essential for the overall quality of democracy and particularly important from an accountability perspective. Simply put; it is through elections that the public are given the chance to “reward” or “punish” political parties by giving them renewed confidence for another term in office or voting for another party if disappointed with the performances of the party which received their vote in the previous election (Bäck 2003; 66-67). With this said, for the electorate to even be able to exercise such an accountability instrument, there needs to be more than one serious political party in the country (Bäck 2003). Lastly, a criterion which is inherently coupled with fundamental freedoms such as freedom of expression and freedom of the media: namely that a democratic state provides alternative ways for political parties to
reach the electorate with information and thus also allows open political campaigning (Diamond & Morlino 2004; 20-21). The four criteria can be summarized into one definition: *electoral democracy*. It shall be emphasised that a democratic political order also requires that the people, or their political representatives, have authored the laws which they are obliged to comply with – these may not have been imposed by others who themselves are not required to obey those laws (Dahl 1989; 108). This also means that a country in which significant decision making authority resides in the hands of an unelected power, as for example an international actor/organization, cannot be considered an electoral democracy (Freedom House 2008).

A *quality democracy* is captured by adding to the basic requirements of an *electoral democracy* the functioning’s and status of the *rule of law* (Diamond & Morlino 2004; Karvonen 2003; 16-19). In the words of Diamond and Morlino: “the rule of law is the base upon which every other dimension of democratic quality rests” (2004; 23). An overall understanding of democratic rule of law implies the existence of a legal system that defends the political rights and procedures of democracy, maintains the citizenry’s civil rights and secures horizontal accountability between branches of government (O’Donnell 1999; 31). Hence, the rule of law concept can, similarly to “electoral democracy”, be classified in specific categories so that a clear understanding of a quality democracy is made possible, and its assessment achievable. A state which secures democratic rule of law firstly ensures ethnic, cultural, religious and other minority groups equal political rights. Secondly, it guarantees civil rights in the form of allowing religious institutions, indigenous communities and ethnic groups the right to practice their faith and customs and express themselves in the public and the private. These two categories of rights are more substantive in nature than the first three criteria for an electoral democracy which are mostly concerned with rules and practices. As the conditions for an electoral democracy are necessary and essential basic requirements for a state to secure a democratic status, the rule of law criteria go even further as they indicate whether or not fundamental rights are upheld by state institutions vis-à-vis citizens and social groups in an equal manner (Diamond & Morlino 2004; 22-27; Karvonen 2003; 16-19). Lastly, democratic rule of law implies an independent judiciary which is free from interference from the executive branch of government and other political, economic and religious influences. An independent judiciary constitutes one of the fundaments of democracy and is vital for valid separation of powers between governmental branches and for the sake of ensuring checks and balances in the system. Only when the judicial branch of
government is allowed to work without interference from illegitimate influences can it assure that the rights of the people are respected in an equal and unbiased manner (Gordon & Bruce 2007; 6-7; Karvonen 2003; 17).

_Measuring the quality of democracy_

As has been illustrated on previous pages, the theoretical assumption in this study is that there is a close connection between the design of a participatory constitution building process and the subsequent quality of democracy in the concerned state. In fulfilling the purpose of the study an analysis of the quality of democracy in the cases under examination will be carried out. To be absolutely clear, the quality of democracy will be measured by investigating the seven criteria; 1) the exercise of universal adult suffrage; 2) the existence of political pluralism; 3) the exercise of recurring free, competitive and fair elections; 4) the existence and observance of freedom of expression and freedom of the media; 5) the observance of granting ethnic, cultural, religious and other minority groups equal political rights; 6) the observance of granting civil rights in terms of allowing religious institutions, indigenous communities and ethnic groups the right to practice their faith and customs and express themselves in the public and the private; 7) the observance of an independent judiciary. This approach of assessing the quality of democracy corresponds to the theoretical definition of the concept and finds support in similar research (Karvonen 2003; Samuels 2005; Diamond & Morlino 2004), which in turn strengthens the validity of the measurements and consequently the validity of the entire study (King et al. 1994; 25).

At this juncture it is appropriate and necessary to revisit the discussion on reconciliation as political tolerance which was elaborated on pages 10-11. It is significant because when measuring the quality of democracy, particularly the two variables imbedded in the rule of law concept; _equal political rights for ethnic, cultural, religious and other minority groups_ and _civil rights in the form of allowing religious institutions, indigenous communities and ethnic groups the right to practice their faith and customs and express themselves in the public and the private_, the existence, or lack of, political tolerance in a society will also be captured which will give an indication of the level of reconciliation in the cases under investigation. In addition, this determines that democratisation and reconciliation are parallel processes that are intertwined and even interdependent (Gibson 2004; 5, Bloomfield 2004; 11).
Research Design

The dissertation will be presented in the form of three articles. In order to be able to fulfill the purpose of the thesis and stay committed to studying a larger set of cases with the aim of drawing some general conclusions concerning participatory constitution building processes and their effect on the quality of democracy, a comparative study of all identified participatory constitution building processes in contexts as defined in the Purpose (page 8) will be the choice of method in the first article.

First Article

As stated on foregoing pages; systematic comparisons between different participatory constitution building processes has not yet been done within this field of research and is thus what this dissertation sets out to do. The first step in reaching this aim, which corresponds to the purpose and research question of the study, is to carry out such a systematic comparison and categorize all identified cases in relation to how the participatory process actually manifested itself. This will reveal how “participatory” a participatory process actually was and will allow for comparisons between various approaches between the cases. When these differences in participation have been identified and categorized, the quality of democracy will be measured in each of the cases. Even though, since public participation in constitution making, is a relatively new phenomenon implying that there are not enough cases in order to conduct a comparative statistical analysis, there is a sufficient amount in order to provide a tour de horizon and convey patterns and probabilities concerning the outcomes of these processes on the quality of democracy – making the comparative method the most appropriate choice (della Porta 2008; 200-202).

Referring to concepts such as “patterns”, “probabilities” and “outcomes” naturally also leads us to the terms “causality” and “causal inference” which do not, generally, sit well with social scientists (King et al. 1994; 75-76). Nonetheless, one should call things by their rightful name, however uncomfortable; and the fact of the matter is that this study assumes that a certain type of participatory process will result in a certain type of democracy. This in turn virtually necessitates a method that settles the logic of independent/dependent variables, or “explanatory/outcome” variables – which is a central argument for employing the comparative method (Karvonen 2003; 14-15, King et al. 1994; 77). Before turning to a fuller

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2 At the moment the focus of, and the methodological approach to, the first and second article have been decided, the final article and its direction is however still undecided.
explanation of the logic of variables it must be emphasised that this study is aware of the fact that absolute certainty concerning causal inference can never be achieved within the social sciences – however, this should not deter us from attempting as such a method might at least be successful in detecting patterns and probabilities. In the words of King, Keohane and Verba (1994; 76) “…we should draw causal inferences where they seem appropriate but also provide the reader with the best and most honest estimate of the uncertainty of that inference”.

A variable-oriented comparative method means that there is a firm and established distinction between the independent variables, which in this study corresponds to various participatory constitution building processes, from the dependent variables, i.e., the quality of democracy and the criterions for this concept. In accordance with a number of scholars, this study completely agrees with the importance of maintaining this distinction for the sake of achieving a stringent and systematic analysis (King, et al. 1994; Esaiasson, et al. 2004; Karvonen 2003; Lindert & Schierenbeck; 2008; Landman 2000). The comparative method will be of great merit in this respect as it will guide the systematic and disciplined collection of the same information, according to the predefined and operationalized criteria of the dependent variable, across all cases of the study (King, et al. 1994; 45, Spencer et al. 2003; 211). This systematic approach in turn assures the study’s reliability (Esaiasson 2004; 67).

As in all comparative research, the most crucial factor when selecting cases is to establish and secure variation in relation to the independent variable; this has been the decisive factor guiding the selection of cases. Since the principal requirement of the independent variable is public participation in constitution building processes, the first study includes all identified cases where a participatory constitution building process has been implemented. In other words, the objective has been to include all known existing cases for the purpose of illustrating the broad variety of ways to engage in participatory constitution building endeavours; 1) during conflict or in post-conflict contexts, 2) in transitioning countries (from non-democratic regime to democratic rule), and 3) in cases that represent other periods of institutional crisis or reform. The case selection has partly been drawn from the categorization of constitution building processes by Miller (2010; 607-610), partly by the categorization of Samuels (2005) and partly by my own investigations. Thus, the cases listed in table 1 represent states that have used a participatory constitution building process. It is however important to stress that additional cases might be included during the course of writing the dissertation and that some cases that are currently listed in table 1, for example Nepal and Zimbabwe that are presently undergoing constitution building exercises, will have to be
excluded from the study if it turns out that the process could not be completed for one reason or the other.

Table 1

*Categorization of cases based on circumstances leading to the constitution building process*

<table>
<thead>
<tr>
<th>During conflict or transition from conflict</th>
<th>Transition from non-democratic regime</th>
<th>Other period of institutional crisis or reform</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>Albania</td>
<td>Brazil</td>
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<td>Bougainville</td>
<td>Kenya</td>
<td>Fiji</td>
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<td>Colombia (1991)</td>
<td>Nigeria</td>
<td>Uganda</td>
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<td>East Timor</td>
<td>South Africa</td>
<td>Zimbabwe</td>
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<td>Somalia</td>
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Second Article – Case Studies

As a systematic comparison of all identified participatory constitution building processes has been carried out in the first part of the study, the choice of method in the second part is case studies. The fact of the matter is that even though the phenomenon under scrutiny, participatory constitution building processes, is the prime source of focus and concern, it can never be separated from the context in which the process is actually taking place. This is not to say that general observations in terms of patterns and probabilities are not achievable as this study aims to demonstrate that it is indeed possible, but at the same time it is also vital to acknowledge and appreciate the importance of the specific contextual setting. Since process and context are inseparable, the case study method is practical and logical (Yin 2003; 13). As the first part of the study will have provided a categorization of various participatory processes as well as indicated certain aspects of the relation between a participatory process and the subsequent quality of democracy it will be necessary to move forward by looking

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3 The cases are placed in the table where they fit best. However, this does not mean that they exclusively only fit into one of above categories. For example the East Timorese constitution building process was instigated after a violent conflict, but it was also during a transition from a non-democratic regime, the same holds true for Afghanistan. The three categories of circumstances leading up to the constitution building process are drawn from Millers work (2010; 606).
closer at individual processes in order to analyse the specific conditions in those processes that have promoted/harmed the realization of a quality democracy. Examples of such specific conditions may, but are not limited to, include; the timing of the process, sequencing of events, the practice of constitutional education programs/non practice of education programs, type of constitution making body, election and/or appointment to such a body, inclusion and representation of various stakeholders in such a body, leadership during the process, various domestic (and international) actors and their role in the process, etc.

The empirical indications from the first study will guide the selection of cases for in depth case study analysis in the second article. Again, as variance in relation to the independent variable is essential, cases will be selected in order to represent participatory processes that have produced different levels of democracy. By studying a smaller number of cases that demonstrate this variation in terms of the quality of democracy, even though they all have implemented a participatory process, it will be possible to distinguish the specific features in the process that have generated these varying levels.

**Prospective contributions of the thesis**

The dissertation hopes to make the following contributions; 1) *Theoretical contribution*; Systematic distinctions between various approaches to participatory constitution building are needed. To continue to theoretically and terminologically gather the various ways of procedure in one collective term will cause further confusion, and might to some extent also be misleading as some processes that are labelled as “participatory” might not be as inclusive as suggested. Thus, this study will aim to make a contribution by further developing the present theoretical framework, hopefully by presenting some relevant distinctions. Furthermore, this study will also say something about the validity of participatory constitution building processes as a theoretical field. This, since the theory and its hypotheses concerning public participation and its relation to the quality of democracy will actually be empirically evaluated in each of the cases under investigation; thus revealing the (possible) boundaries for its application which in turn invites for refinement of the theoretical framework (King et al. 1994; 103-104); 2) *Empirical contribution*; to date there is no previous research that systematically studies the relationship between a specific participatory constitution building strategy and the subsequent quality of democracy in post-conflict states, transitioning states or in states that have carried out such a process due to for example an institutional crisis. Hence, this dissertation is the first study to undertake this task. Secondly, as this study will include a
larger set of cases, the empirical contribution will distinguish itself from previous research as it aims to say something about a phenomenon (constitution building strategies) that has relevance for more than one specific context. Even though individual circumstances need to be taken into account, and will be in this study as well (see Research Design above), research within this field is at a point where systematic comparisons are needed to complement single case studies.
BIBLIOGRAPHY


