


RESEARCH ARTICLE

# The Conference on the Future of Europe as a chance for democratic catching up? Towards a citizen-centred perspective on constitutional renewal in the European Union

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## Abstract

The Conference on the Future of Europe (CoFoE) was the first initiative to include citizens in deliberations about the future of European democracy since the failed Constitutional Convention of 2002/03. Although embedded within broader trends to involve ordinary citizens in the political process, it is of specific relevance in the European context because it raises expectations of democratic catching up and relates to ongoing discussions and struggles about the constitutional character of the European Union. This article argues for a citizen-centred perspective on constitutional renewal in the European Union that places European citizens as constituent subjects at centre stage. It outlines how making the European Union accessible as a political arena allows citizens to regain control over developments that have evolved behind people's backs. It concludes that deliberative tools of citizen participation should be used to pave the way for a wider reorganization of public authority and a renewal of the European Union's constitutional basis.

**Keywords:** Conference on the Future of Europe; constitutional renewal; democratic catching up; EU citizenship; political empowerment

## 1. Introduction

As many have criticized, despite several reforms the European Union has to date not enabled citizens to play an appropriate role in the democratic life of the Union. The democratic deficiencies of the European Union have been widely discussed for some time now, and calls for a Conference on the Future of Europe (CoFoE) were an attempt to address them and explore institutional paths for constitutional renewal. The CoFoE was the first initiative to include citizens in deliberations about the future of European

democracy since the failed Constitutional Convention of 2002/03.<sup>1</sup> This failure has been a persistent trauma for those who are convinced that the European Union needs an institutional reconfiguration to successfully address the basic political challenges of the twenty-first century.

The CoFoE is embedded within broader trends of involving ordinary citizens in the political process to improve efficiency and legitimacy of democratic governance. As a complement to electoral representation, sortition-based citizen participation is currently being experimented with on local as well as national levels.<sup>2</sup> At the European level, it is unprecedented and of specific relevance given widely discussed legitimacy problems within the institutional set-up of the European Union (Dawson and de Witte 2016; Offe 2015). The CoFoE has raised expectations of democratic catching up, invoking the history of previous attempts. Therefore, it is not just considered another experiment of democratic innovation – part of the ‘deliberative wave’ – but as linked to the ongoing discussion and struggle about the constitutional character of the European Union. Without doubt, this link is exactly what was so deeply contested from the start – as the reconstruction of the events will demonstrate – and it continues to be a major issue of debate as consequences from this experiment emerge.<sup>3</sup> Therefore, the ambition of this article is not only to argue why – in contrast to the persistent incremental pathway to change – pushing the bigger agenda of constitutional reform remains important, but also to discuss why (and how) taking European citizens on board for this process is crucial.

The CoFoE is taken as a starting point for reflecting on struggles of political empowerment in the European Union. It is linked to a citizen-centred perspective on constitutional renewal, which in the European context proves to be a persistent provocation, challenging the state-centred vision of the Union and potentially disrupting the legitimacy basis of the European Union. Discussion here begins with a reconstruction of the process leading to the CoFoE, analysing various points of friction and different approaches taken by the institutional actors involved, which hark back to the history of previous attempts of democratic catching up in the European Union and the different consequences drawn. Part II analyses the existing European citizenship status, and argues that empowering citizens is dependent on making the European Union accessible as a political arena. Whereas ‘politicization’ has long been regarded as something to be avoided in EU politics, public debate is increasingly being recognized as a necessary precondition for exploring ways of democratic catching up. Reflections on a citizen-centred approach to constitutional renewal will help to elaborate further on the transformative potential of citizen participation and confront it with EU citizenship’s missing political link (Part III). Shifting the perspective to citizens as agents of change suggests reinterpreting the dynamics of democratization and constitutional renewal in the European Union. Transformative citizen mobilization challenges established boundaries and is dependent on an institutional pathway of reform to become effective (Part IV). The article concludes that

<sup>1</sup>The European Convention of 2002/03 elaborated a Constitution for Europe that – after being subjected to a ratification procedure in accordance with the TEU rules – was stopped by referenda in France and the Netherlands. For a comprehensive analysis of the process, see Crum (2012), Barber, Cahill and Ekins (2018) and Maas (2007, Ch 3).

<sup>2</sup>On the national level, for example, Citizen Assemblies on Climate in France and Germany; on the regional level, for example, East Belgian Citizen Councils. For an overview of these ‘democratic innovations’, see OECD (2020) and for a systematic discussion, see Landmore (2020) and Geissel and Newton (2012).

<sup>3</sup>For a timely proposal to make citizens assemblies a permanent feature of policy-making in the European Union as a lesson drawn from the CoFoE’s citizens’ panels, see Abels et al. (2022).

accomplishing a real citizens' democracy in Europe demands changing the basic structures of authority which implies enabling citizens' constitutional rights by establishing citizen participation in Treaty changes.

## II. A new push for European democracy?

The idea for a conference based on novel forms of citizen participation was initially brought up by the French president Emmanuel Macron in a call 'For European Renewal', published in various European newspapers in March 2019. It received support from the then new European Commission under President Ursula von der Leyen after the European elections in May 2019.<sup>4</sup> The CoFoE, due to run for two years, finally started on 9 May 2021, after one year of delay due to the COVID-19 pandemic. Its three-level structure included a Multilingual Digital Platform (as the generally open, bottom-up dimension), European Citizens' Panels (deliberative spaces, for which citizens were chosen by lot – at least one man and one woman from every member state and a minimum of 30 per cent of young people aged 16–25 years) together with a Plenary Assembly of 433 members. Within this Assembly, citizens from the European citizens' panels, institutional representatives from the European Parliament and national parliaments (on parity), as well as the members of the Commission, the Council and representatives of civil society, could participate.<sup>5</sup> The plenary, as the 'deliberative constituent' place (Alemanno 2022: 503), was designed for various institutional actors and citizens to meet and deliberate on what was eventually to become the Final Report. For this report (which ultimately contained 49 proposals and over 200 measures) consensus was required among the three European institutions charged with exercising joint authority over the CoFoE: the European Commission, the European Parliament and the European Council.

However, even in advance of its setting up, this event generated considerable friction between the three institutional actors, which disagreed on the CoFoE's expected outcomes and the procedural consequences from the outset: Should the conference reach out for radical changes, including Treaty revisions, eventually leading to a Constitutional Convention, or should it be restricted to policy adaptations within the existing frame? The former position was taken by a majority in the European Parliament and pushed further after the Conference had closed. Following the Final Report's submission to representatives of the European institutions in Strasbourg on 9 May 2022, the European Parliament voted to trigger Article 48, TEU – the pathway to Treaty change – thereby initiating a Convention procedure. It was exactly this perspective that some member states in the Council were eager to circumvent in advance. In a note that was made public on 3 February 2021, the Council stated that, 'The Conference does not fall within the scope

<sup>4</sup>See <<https://www.elysee.fr/en/emmanuel-macron/2019/03/04/for-european-renewal>>; <<https://futureu.europa.eu>>.

<sup>5</sup>The exact composition and course of the procedure is outlined in the Final Report, available at: <<https://futureu.europa.eu/en/pages/reporting?locale=en>>. The CoFoE's European Citizens' Panels included four subject matters: (1) 'A stronger economy, social justice, jobs/Education, culture, youth, sport/Digital transformation'; (2) 'European democracy/Values and rights, rule of law, security'; (3) 'Climate change and the environment/Health'; and (4) 'EU in the world/Migration'. Member states could also organize national citizen panels under the organizational roof of the CoFoE, but only six of them did so. For an overview and first assessment of the set-up and its democratic credentials, see Alemanno (2022); Alemanno et al. (2021).

of Art. 48, TEU’, thereby trying to reject more ambitious revisions right from the start.<sup>6</sup> Although this sentence is missing in the final Joint Declaration, the Council remains divided on this issue. Shortly before the Final Conference, thirteen member states publicly stated that they would oppose any Treaty changes.<sup>7</sup> Any expectation that France would put the issue on the last Council meeting’s agenda under its presidency on 23/24 June 2022 ended in disappointment. A simple majority in the Council would have been sufficient to proceed further and initiate a process of Treaty reform.

For the time being, it remains an open question how this process will continue. Several MEPs and citizen representatives had advocated that citizens should be given a final say of approval by presenting the final result to citizens in an EU-wide referendum (see Final Report, Proposal 38). Whereas the European Parliament is determined to further push towards a Constitutional Convention, the Council has not yet given any response.<sup>8</sup> The Commission aims to make citizen deliberations a permanent feature of the policy process and has already announced three issue-specific citizen panels until summer 2023.<sup>9</sup>

As in the case of the 2002/03 Convention Procedure, there was a juxtaposition of different approaches *vis-à-vis* the CoFoE from the start, related to a variety of interests and perspectives about the objectives.<sup>10</sup> Consequently, there was not only an institutional power struggle but a rivalry of levels of discussion, situated between micro and macro reforms: first, policy adaptations (within the frame of the Commission’s overall goals); second, substantial reforms related to the European Union’s institutional architecture (such as the introduction of transnational lists and the expansion of qualified majority voting in the Council); and third, a comprehensive redefinition of the EU polity, an ambitious democratic ‘constitutional renewal’.

From a pragmatic perspective, the CoFoE can be seen as a process of exploring an opportunity structure, probing possible paths of further development – albeit this time without a predefined *finalité* (Alemanno 2022: 486). However, moving beyond feasibility calculations unavoidably raises the fundamental question of how the political authority of the European Union can be established and exercised in a democratically legitimate way. This question and the related challenge of engaging citizens in EU constitutional politics had been dropped like a hot potato since the failed Convention Procedure of 2002/03. As mentioned above, it is a persistent trauma for those who are convinced that the European Union needs not only an integrational boost to cope with future challenges, but also a democratic catching up to maintain its citizens’ support. For critics the constitutional path has been a maldevelopment in the first place. From this competing perspective constitution and state are inseparable – hence the use of EU law to deepen integration

<sup>6</sup>Revised Council position, 3 February 2021, available at: <[https://www.consilium.europa.eu/media/48588/st\\_5911\\_2021\\_init\\_en.pdf](https://www.consilium.europa.eu/media/48588/st_5911_2021_init_en.pdf)>.

<sup>7</sup>Germany adapted a more ambitious position after the federal elections of 26 September 2021, explicitly mentioning the CoFoE in the Coalition Treaty and committing itself to support the call for a Convention (Coalition Treaty, p. 131). It is significant, however, that hardly any public debate was kicked off on the issue.

<sup>8</sup>A complaint of inactivity was published by civil society actors and former participants: see <<https://citizenstakeover.eu/blog/open-letter-from-the-citizens-to-the-european-commission>>.

<sup>9</sup>The first of these citizen panels organized by the European Commission was on ‘food waste reduction’ and took place on 16–18 December 2022 in Brussels: see <[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_7734](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7734)>. Two other panels were held on ‘learning mobility’ and ‘virtual worlds’.

<sup>10</sup>See (n 1). For the discussions around the first attempt of constitution-making, see also Kleger (2004, 2009); Kleger, Karolewski and Munke (2001: 299ff).

destabilizes rather than stabilizing the project (De Witte 2018: 476).<sup>11</sup> To the extent that law-giving is decoupled from democratic procedures in the nation-state, the project of European integration leads to ever greater contestation and resistance. The answer to these two incommensurable perspectives has been a persistent strategy of ‘constitutional avoidance’ (Fossum 2008). Since 2007, when the essentials of the failed Constitutional Convention were transferred to the Lisbon Treaty, the European Union has not embarked on any further process of institutional reform. Key institutional actors have shied away from openly taking up the constitutional question again, arguably with plausible reasons. Given the high hurdles of consensus requirements, why start a process that is again doomed to fail?

However, conversely, the status quo can hardly be sustained either. The European Union has recently been confronted with a multiplicity of crises, and its strategies for conflict settlement have provoked massive protest, fostering latent Euroskepticism if not manifest dissensus (Chalmers 2016). Solving the crisis of integration with an incremental increase in integration arguably exacerbates the negative effects of crisis politics: massive strengthening of executive and non-majoritarian actors at the expense of parliamentary accountability (Genschel and Jachtenfuchs 2016). Crisis management has promoted a kind of emergency politics, operating in the shadow of the Treaties – in fact, circumventing formal institutional procedures in favour of exceptional use of powers (White 2023). Moreover, even in the normal mode, intergovernmental policies in the Council suffer from a structural lack of transparency, shielding controversial issues from public debate, which counteracts the de facto depth of structural integration. As Peter Mair and others have argued, without the possibility for contestation *within* the European Union, dissatisfaction quickly translates into structural contestation *of* the European Union, and in turn provokes a retreat to a ‘protective logic’ to push back anti-democratic actors (de Witte 2018; Mair 2013; Norman 2021). Furthermore, the European Union’s institutional set-up fosters an ‘authoritarian equilibrium’: with its ingrained reluctance to interfere in domestic politics, the European Union has allowed some member governments to backslide towards competitive authoritarianism, while funding and investment from the European Union help to sustain these regimes (Keleman 2020). This pushes towards the more basic ‘existential question’ of how the European Union is at all capable of surviving in any recognizable form and living up to its own normative standards (Walker 2022: 7). Under these conditions, maintaining a strategy of ‘constitutional avoidance’ becomes risky. In a situation in which external challenges and systemic interdependencies continue to increase, a lack of imaginary for dealing with these interdependencies *politically* is likely to exacerbate the legitimacy crisis.

The CoFoE and the follow-up process could be an exceptional opportunity of democratic catching up – a chance to redress the Lisbon Treaty’s democratic ‘sin’ and to re-engage with questions that have been neglected for too long.<sup>12</sup> Nevertheless, given persistent divisions in the Council and member states’ institutional self-interest, it is still an unresolved question how a procedural path for institutional reforms could be opened

<sup>11</sup>Constitutionalization can be considered a specific type of legalization insofar as it not only describes the legally structured conditions of a state/polity but also refers to law that concerns itself with the establishment and exercise of political rule itself. Since the second half of the eighteenth century, constitutionalism has been linked to the normative expectation of acceptance by the people: cf. Grimm (2016: 89–124).

<sup>12</sup>What has been considered a ‘sin’ is the fact that essentials of the Constitutional Convention of 2002/03 have been transferred into the Lisbon Treaty even after the Draft Constitution was rejected by the French and Dutch peoples – ‘it might have been a necessary sin but a sin all the same’ (Nicolaidis 2018: 49).

up and European citizens effectively empowered to shape the European Union's constitutional order. Studying the Final Report, the lesson drawn from the previous attempt of constitution-making seems to have been an *inductive* approach: avoid becoming entangled in highly divisive themes such as 'Treaty revision' (which veto players could block) and talking about substantial policy issues first. The irritating consequence is that one finds policy recommendations and more radical propositions for institutional reform next to each other – as if they were on the same level.<sup>13</sup>

Fundamental questions concerning the EU legal order's democratic legitimacy – the 'constitutional register' (Walker 2022) – are somehow hidden in between proposals that limit themselves to policy adaptations and micro-reforms. From a pedagogical perspective, this might be plausible: engaging participants in the CoFoE's citizens' panels in a debate on policy reform first will make it more likely to realize the point at which it is impossible to move forward within the current Treaty frame. Confronting them from the top down with the idea of a Constitutional Convention is avoided. Yet, from a conceptual perspective, this is unsatisfying given that European democracy is not one among other issues, but right at the centre: it determines the institutional decision-making procedures and is the precondition that gives legitimacy to all other policy proposals and changes. The CoFoE opened up the possibility for European citizens to experience the primary importance of participatory democratic procedures in the citizens' panels, but the Final Report blurs rather than highlights this important insight. Thus it mirrors the dilemma of an inductive approach quite well: by equating the political content of the different proposals, it tends to conceal the need for more fundamental renewal and the empowerment of citizens as constituent subjects in this process. In the context of disagreement and power struggle between the three 'constituent' institutional actors, the inductive approach thus risks perpetuating the unfortunate strategy of 'constitutional avoidance'.

### III. EU citizenship and democratic catching up

The European Union comprises an institutional context in which a transnational citizenship status is already legally constituted. Empowering EU citizens could thus be the obvious way to dissolve blockages that arise from the current institutional architecture, with its state-centred structure of authority. However, although regularly addressed in top-down educational programmes and despite several innovations (such as new rules for regulation and funding of pan-European political parties and the introduction of a European Citizen Initiative), the political dimension of this status has not yet been sufficiently developed. This is not only to do with unresolved constitutional questions but also a lack of political practices for visualizing and experiencing this status as creating possibilities for action. Since its introduction in the Maastricht Treaty, EU citizenship has been a disputed concept. While political advocates framed its introduction as a paradigm shift, critics have continued to doubt that it is worth the name since it lacks major characteristics of democratic and social citizenship as inherited from the traditions of the member states (Menéndez and Olsen 2019). As a legal status, it was granted from above rather than struggled for from below (Shaw 2007: 36–39). Its social and political anchoring is insufficient and the European Commission's repeated objective of 'bringing

<sup>13</sup>Compare, for instance, proposal no 4: 'provide modern, green infrastructure', and proposal no 38: 'strengthen European democracy' by giving European Parliament the right to legislative initiative, changing European Parliament election rules or triggering a European Union-wide referendum.

Europe closer to its citizens' is in itself taken as a proof of the democratic deficit (Colliot-Thélène 2016: 140).

EU citizenship guarantees citizens of EU member states particular rights, independent of nationality. Its cornerstones are the *right to mobility* and the *right to non-discrimination*. These cornerstones are in fact conflictual: they express rivallogics between the economical and the political (Seubert 2023). Freedom of movement for persons has developed as one of the 'four freedoms' that form the basis of EU law (Barnard 2010). Having a right to free movement opens the door for border crossing, but it does not grant an unconditional right to residency. Insofar as free movement is not only to do with *entering* a country, but also *residing* there, legal residency is dependent on being economically self-supporting.<sup>14</sup> Hence, the right to move has given rise to a criticism that EU citizenship is nothing more than a 'market citizenship' (Everson 1995; Shuibhne 2010). Non-discrimination, on the other hand, expresses a right to equal treatment: no EU citizen in any EU member state shall be put in a position that is more disadvantaged than that of a national citizen. In principle, the right to equal treatment expresses a move beyond the economic rationale: any person can expect to be treated on an equal footing and integrated into the host society.<sup>15</sup> With this non-discrimination principle, the European citizenship regime has so far followed an idea of horizontal integration: opening national polities and their citizenship regimes to one another (de Witte 2015; Ferrara 2016). As a consequence, EU citizenship constitutes a relative status of equality, guaranteeing that treatment for everyone will be the same as for a national citizen in the respective state – in other words, like an Italian in Italy, like a French person in France, or like a Hungarian in Hungary. Being an EU citizen is thus deeply mediated through a national framing (Azoulai 2017: 179). The right to equal treatment is supposed to guarantee non-discrimination in the national domain, but – as is widely criticized – allows for unequal levels of protection on a European scale (Kochenov 2017).

In principle, the introduction of EU citizenship embodies a normative innovation: it detaches entitlement to rights from privileges of national membership. Rights to equal treatment are granted on the basis of residence rather than nationality. EU citizens have *political* rights – passive and active voting rights on communal and European levels – and these transnational political rights are granted without naturalization. The shift to a residence-based principle of access to political rights is not applied *all the way down*, though: political rights on the *national* level still presuppose the acquisition of national citizenship. This is not only inconsistent, but is also a key reason why the political status remains thin. Without national voting rights, moving EU citizens have only limited possibilities of co-authoring precisely those laws that substantially underpin their status according to the non-discrimination principle (Seubert 2019).<sup>16</sup> Political rights are the

<sup>14</sup>Legal residence is restricted for those who are likely to become 'a burden on the host country's social assistance system' or a threat to public security and public health (Cf. Council Directive 2004/38/EC of 29 April 2004).

<sup>15</sup>The European Court of Justice (ECJ) has contributed to gradually expanding the rights relating to EU citizenship to non-economically active persons (students, pensioners, job-seekers). While some interpreted this as an attempt to re-embed the European market, although with limited success, others have criticised the Court's activism as a democratically problematic constraint on policy-making. For the former position, see Buckel (2013: 93); for the latter, see Schmidt (2018: 12). Recently, the ECJ has been engaged in a partial roll-back from previous (more expansive) interpretations of EU citizenship rights, in particular with regard to social rights (see Shuibhne 2015).

<sup>16</sup>For a critical discussion, see Bauböck (2019: Part 1).



normative core of democratic citizenship: they entitle a person to participation in a process of law-making and are thus a presupposition for the further democratic interpretation of all other rights.<sup>17</sup> In modern democracies, they are predominantly spelled out as voting rights to representative institutions. However, if European citizens are truly to be empowered as democratic citizens, the extension of voting rights alone is insufficient. Voting rights must be complemented by other rights, such as the right to form a European Party or a European right to associate – but so far both are non-existent.<sup>18</sup> There are extensive theoretical debates on the role of parties and partisanship in the European Union's transnational setting, which make it clear that democratization of power beyond the nation-state will not proceed unless commitments that overstep national boundaries are backed up by an enabling institutional environment and organized forms of community (White 2014, 2023; Wolkenstein 2020, 2022). Voting rights must be embedded in civic practices that prepare *inter alia* opinion-formation and articulation of conflicts. In order to conceive of political rights conveyed by a status as possibilities for action, citizens must consciously appropriate and make use of them in order to create communicative spaces and explore common interests or conflicts. The depoliticized, top-down modus of European integration has hardly been helpful in the formation of a critical mass public and the self-perception of the European citizenry as a concrete collectivity. If EU citizenship is left without social anchoring and opportunities for forming political subjectivity are missing, the European Union remains the 'abstract Universal' (in Hegelian terms) (Colliot-Thélène 2016: 143). As the history of modern democracy shows, a sphere of public debate, together with the 'critical infrastructure' of intermediary institutions, is indispensable for the formation of democratic institutional structures and for citizens' political empowerment (Müller 2021). Such a sphere, which intertwines parliament and society, is still underdeveloped and faces specific problems on a European scale. Apart from linguistic diversity, this concerns missing social feedback mechanisms and the lack of incentives for national parties to put European (constitutional) politics on the agenda.<sup>19</sup>

Whereas 'politicization' has long been regarded as something to be avoided in EU politics, public debate is increasingly recognized as a necessary precondition for reopening questions of democratic legitimacy and exploring ways of (re-)appropriating the EU's institutional structures as a political space (Bremberg and Norman 2023). In the wake of its multiple crises, the European Union is increasingly perceived as a context in which the emergence of a democratic public has become ever more important. However, public debate does not just presuppose transnational communication channels; it also needs an institutional pathway of reform to become effective. The European Union's already constituted legal environment seems to be an advantage at first glance – at least compared with a less-structured global environment. The failed Constitutional Convention has at least transferred a procedural tool into the Lisbon Treaty, namely the legal

<sup>17</sup>For further elaboration of the reflexive character of political rights, see Habermas (1992: Ch III, 3).

<sup>18</sup>For constraints and perspective on the Europeanisation of (national) parties and the pitfalls of 'half-baked politicization' on a European level, see Keleman (2020). Fundamentals such as a robust European voting rights Act are still missing. Initiatives for a European association law are currently pushed from a pro-European partisan perspective: see <<https://www.boell.de/de/2022/09/13/es-ist-die-richtige-zeit-fuer-ein-europaeisches-vereinsrecht>>; <<https://lagodinsky.de/eunite4democracy>>.

<sup>19</sup>On the contrary, national parties might oppose the further democratization of the European Union and achieve short-term gains by externalizing problems and shifting the blame onto the European Union (de Witte 2018; Offe 2015).



provisions of Article 48 of the TEU for changing the ‘rules of the game’, even though this tool is barely accessible for citizens. On the one hand, the ‘Convention Method’ does indeed represent an alternative model to government conferences by envisaging publicly accessible consultation with a deliberative, rational and inclusive character, which could in principle function as an extraordinary pacemaker for a European public sphere.<sup>20</sup> On the other hand, though, it has high hurdles of consensus and ultimately leaves institutional authority structures untouched. Ultimately, the power to unleash (or stop) the whole process rests with the Council. This is not a signal of empowerment for citizens but reinforces the perception of ‘Europe entrapped’ (Offe 2015).

With the ‘citizen paradigm’ (Kochenov 2013), the process of European integration embodies a normative reference point for struggles of reform that has not yet been fully tapped. The European citizen status was deliberately created to counter-balance a state-centred perspective as well as dominance of the ‘market dispositive’ (Buckel 2013). Since the introduction of EU citizenship and the Union’s recognition as an autonomous legal personality, the Treaties have de facto become the basis of a politically constituted European community (von Bogdandy 2022; Habermas 2011). Calls for empowering citizens in their role of constituent subjects relate to an idea of democratic catching up: seeking correction for the fact that direct public approval has largely been circumvented. Habermas’s rational reconstruction of European integration suggests that the genesis of the EU’s peculiar legal structure should be understood *as if* it had been democratically constituted (Habermas 2011: 63–64). This is a counter-factual assumption that does not prescribe how such a transformation should be brought about in the real world, but it presupposes that paths of constitutional development are laid down in the founding documents – a normative substance that can be actualized in further struggles (Frank 2010: 241). Although Habermas has not repeated his call for a Europe-wide referendum after the draft of the Lisbon Treaty, it is clear that making up for missed democratic opportunities is still on the agenda. This implies that the work of democratically reappropriating what is already constituted has still to be accomplished.

Experiments with democratic innovations such as sortition-based citizen panels might well present an opportunity for democratic catching up. In an environment of ‘half-baked politicization’, citizen panels could contribute to empowering citizens as political subjects and help to stir pan-European public debate on specific policy issues. Their ‘anticipatory use’ could be to provide a preview of what an overarching perspective would look like once citizens learn to adopt a European (instead of purely national) perspective.<sup>21</sup> Citizen panels could thus play a crucial role in filling the void and preparing for a perception of the Union as a political arena. They could provide a promising pathway for empowering citizens as active participants of constitution-making.

<sup>20</sup>Article 48 of the TEU provides legal provisions for Treaty amending and revision. The fact that institutional questions of power are unresolved leads to a dynamic of anticipating what is possibly consensual (Göler and Marhold 2003). For a comprehensive discussion (including an enumeration of reform projects that have been left undone), see Liebert (2019: Ch 4, in particular 90–92).

<sup>21</sup>For the anticipatory use of mini-publics, see Lafont (2020: 156–59). Lafont is essentially sceptical regarding the use of mini-publics: there is a constant danger of becoming just another epistemic short-cut. Nevertheless, Lafont suggests the anticipatory use of mini-publics for situations in which the public does not have any opinion at all about the issues in question but the stakes are too high for the citizenry to remain ignorant. She explicitly mentions the European Union in this context.

#### IV. European citizenship in transformative perspective

Moving beyond the incremental pattern goes along with addressing basic questions about the constitution of political authority on a European scale. However, in order for citizens to consider them as basic in the first place, a process of political reconstruction, of reinterpreting social relations and interconnections, is necessary, ultimately challenging and eventually overcoming the traditional state-centred framing that is to a large extent upheld by the current institutional set-up. EU citizens' effective political empowerment would not only shift the power balance between European institutions but also change the general framing of the political discourse in which many European issues are primarily perceived from a national perspective. This presupposes a transformative process, the dilemmas of which are well known from political experience and reflected in the history of political thought. As Rousseau (2002) famously notes regarding transition to a republican political order, men should be, prior to the laws, what they ought to become by means of them. The effect should become the cause.<sup>22</sup> This paradox of founding is a dilemma of circularity, with citizens and institutions mutually presupposing each other. There is no clear beginning and end, but rather a (conditional) process of 'citizenization'.<sup>23</sup> This dilemma is not unique to the national context, but repeats itself in the transnational constellation. In the context of European constitution-making, it means promoting pan-European democratic dispositions with insufficiently pan-European institutions.

In contemporary Europe, nation-states are increasingly challenged from above (transnationalization) and below (regionalization) while common thinking about popular sovereignty and constitutional change remains largely attached to traditional political imaginaries. These are not only to do with myths of 'beginning' but also concern the Westphalian condition of state sovereignty (Canovan 2005: Ch 6; Keating 2017). Although the Lisbon Treaty had already removed much of the statist structure, the fact that the process was pushed behind people's backs contributes to the 'epistemic resilience' (Celikates 2017) of the Westphalian framing. States continue to claim normative supremacy, which translates into structures of authority when it comes to constitutional matters.<sup>24</sup> A citizen-centred approach to constitutional renewal in the European Union suggests a switch in perspective: it envisages citizens as primary subjects within the EU political order and expects them to be empowered as agents of change. Contrary to dominant state-centred perspectives, the 'citizen paradigm' is considered from the outset not as a simple add-on to European (economic) integration but as its essential foundation (Kochenov 2013, 2017). At the time of the founding of the European Union, nation-states were deeply discredited and their destructive potential was still a vivid memory.<sup>25</sup> European integration was considered as a means of national (self-)containment, of

<sup>22</sup>In Rousseau's (2002) 'Social Contract', this is a dilemma faced by the legislator: a transformation of dispositions effected by republican institutions but at the same time to be adapted by (not yet republican) citizens. 'In order that a newly formed nation might approve sound maxims of politics and observe the fundamental rules of state-policy, it would be necessary that the effect should become the cause; that the social spirit, which should be the product of the institution, should preside over the institution itself, and that men should be, prior to the laws, what they ought to become by means of them.' (Rousseau 2002: Book 2/Ch 7)

<sup>23</sup>For the idea of 'civic citizenship' and practice- and institution-dependent processes of 'citizenization', see Tully (2014: 36–42).

<sup>24</sup>Cf. Michael Keating (2017), who criticizes the European Union for having failed to develop a post-sovereign perspective and develops an idea of multilevel federation.

<sup>25</sup>This is not meant to inscribe, retrospectively, an alternative *telos* to the integration process – market versus citizen paradigm – but to point out different logics between both (see Seubert 2023). I agree with

taming the nation-state and making it ‘safe for democracy’ (Eriksen 2014: 45; see also Menendez and Olsen 2019: 32–35). Counterbalancing the excesses of state sovereignty by way of taking human beings as primary units of moral concern has been the underlying thinking behind the project of European integration since the Schuman Declaration. It is this spirit to which a citizen-centred perspective links.

The citizen paradigm implies a transformative perspective on citizenship and political identity. In contrast to a traditional Westphalian framing (but also to current approaches of *demoicracy*), a transformative approach has no reason to assume that common identities could not emerge on a transnational scale if structural conditions and individual attachments change.<sup>26</sup> It is sceptical about normative defences of currently existing nationalities against those that may evolve. Under conditions in which the firm connection between citizenship and territorial nation-state can no longer be taken for granted and citizenship rights are lifted to higher levels of political organization (as in the European Union), transformative perspectives on citizenship become particularly relevant. Following up on the ‘practice turn’ in citizenship studies, Melissa Williams’ (2009) concept of ‘citizenship as agency’ lucidly points to the process of becoming aware and working through (asymmetrical) relations of interdependence that transcend national boundaries. Citizenship as agency refers to actors who do not act within existing political communities. Confronted with weak institutional background conditions, they are not primarily aiming at creating a polity, but ‘the political’ in the first place: creating a public by organizing protest and demanding justification. According to Williams, this is a way of making interdependencies subject to conscious political agency and ultimately rendering them legitimate and just.

A transformative approach envisages citizenship as a set of practices that can be situated on two levels: on an ordinary level, these practices address intra-frame issues of injustices *within* a given polity (which are still going on!), but on a secondary level they address the boundary-setting aspect of the political itself: injustices that result from misframing (in Nancy Fraser’s sense) and misperception of actually existing social connections that give rise to (new) claims of justice (Fraser 2008). Since the simple facticity of interdependencies does not by itself guarantee that they are transformed into conscious relationships and a new sense of transnational political community, ‘acts of citizenship’ are needed to redefine boundaries that could be shared among citizens of formerly separated polities (Isin 2008). These ‘polity *constituting*’ (in contrast to ‘polity *activating*’) engagements make no prior assumptions about the proper ‘container’ or context (Saward 2013a: 230–31). This does not just underline the constructed character of political community; it also demonstrates the extent to which activists might become ‘purveyors’ of new ways of imagining social relationships (Isin 2008: 38).

By shifting the perspective to citizens as agents of change, a transformative perspective suggests reinterpreting the societal dynamics that have developed in the course of the EU’s multiple crises. There has been significant mobilization around the European Union for some time now: critical activists have been formulating not only singular reform agendas, but also demands for redefining the ‘rules of the game’ more broadly – frequently using

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Colliot-Thélène (2016: 140) that the construction of the European Union faced several successive moments of choice that could have given it an entirely different shape.

<sup>26</sup>The extent to which approaches of *demoicracy* incorporate transformations of political identity, and hence envisage contestations of existing state-peoples, is not completely clear. To some extent, see Nicholaïdis (2012); for a sceptical position, see Bellamy (2019).

the language of ‘constitutional renewal’ and democratic ‘re-founding’ (Seubert 2021).<sup>27</sup> In line with the meta-perspective on political agency outlined above, European critical activism can be reconstructed as drawing attention to the boundary-setting aspect in European politics and questioning the established (national) reference group of political claims. By creating a scene and ‘staging’ a new commonality, these actors are claiming to represent a different ‘we’, which challenges the traditional (national) ‘we’ (Saward 2013b: 64). They are not just raising new questions, but also producing new subjectivities, attitudes and mindsets. Enacting citizenship on a European scale is thus not only about making certain claims but also about transforming national citizens into citizens of another, yet to be constructed, political community.

The respective initiatives and appeals have created public awareness, countering widespread narratives of Euroscepticism and contributing to a dynamic of disruption that ultimately found resonance in European institutions. When announcing the intention to launch a Conference on the Future of Europe, EU Commission president Ursula von der Leyen explicitly made reference to European citizens demanding greater involvement in the way politics is shaped.<sup>28</sup> The Conference on the Future of Europe thus appears as part of a momentum in which attempts for a revolution from *within* the institutions meet with mobilization from *below*, namely civil society and activist citizens struggling for change. By voting to start a convention procedure, the European Parliament has chosen a path of constitutional reform on the legal basis introduced in the Lisbon Treaty. However, this path fails to include European institutions and citizen representatives on equal terms. Apart from the established institutional actors that represent different levels of EU governance, the CoFoE has included randomly selected European citizen representatives. Whereas consensus was required among the three institutional actors recognized as constituent by Article 48 of the TEU, citizen panels had only a consultative function.<sup>29</sup> Meanwhile, the existing legal framing, with its state-centred authority structure and high hurdles of consensus for constitutional change, allows individual states to block the advance of the process.

The fact that there already is a *constituted* legal environment, and in particular a European citizenship status, is simultaneously both an advantage and a burden. The burden lies in the path-dependency of its development: EU citizenship’s missing political

<sup>27</sup>There have been initiatives from academics demanding fundamental European reforms, like Thomas Piketty et al.’s (2018) *Manifeste pour la Démocratisation de L’Europe*; see also Ulrich Mückenberger and Alain Supiot at <<https://www.faz.net/aktuell/feuilleton/franzoesisch-deutsches-manifest-die-eu-muss-neugegruendet-werden-15800281.html>>; <<https://pulseofeurope.eu>>; <<https://bewegung.jetzt/bewegung>>; <<https://www.volteuropa.org>>. There have also been new pro-European social movements, some of which focus very decisively on European issues and reforms – for example, Pulse of Europe or, more specifically, CitizenstakeoverEurope: a union of civil society actors founded during the pandemic to foster European democracy. Others include the European dimension as one among other issues (such as climate or digital politics), but insist that these issues can only be properly addressed when taken up at the European level (e.g. Place Publique). Some movements have been turning into movement parties like Diem25 (with its German election wing Demokratie in Bewegung). Others, like VOLT, proclaimed themselves as the first really European *transnational* party, and have recently been successful in European Parliament as well as local elections.

<sup>28</sup>A new push for European democracy – the time is now’: see <<https://op.europa.eu/en/publication-detail/-/publication/ee68abe6-3dc5-11ea-ba6e-01aa75ed71a1/language-en>>.

<sup>29</sup>Participants of the citizen panels could only formulate minority opinions in case of dissent. This has been criticized for raising doubts about the seriousness of President von der Leyen’s promise to ‘bring together citizens ... and European institutions as *equal partners*’ (Alemanno 2022: 505).

link and its entanglement with economic integration (see above). The key advantage is that the European Union's constituted, albeit deficient, institutional environment is minimally democratic and thus suitable for channelling contestation and possibly transforming citizenship agency into real power for change. In the course of this process, citizens can take advantage of the double-edged character of 'legal revolutions'. Once democratic procedures are set up, even if they come from the top and work to stabilize existing rule, they can also empower actors to use the legal system for revolutionary and emancipatory purposes.<sup>30</sup> From this perspective, the CoFoE's participatory architecture is expected to have a lasting transformative effect on the EU's 'democratic eco-system' (Alemanno and Nicolaidis 2022: 5).

### V. Constitutional renewal and the problem of beginning

Citizens anticipating a yet-to-be-constructed community are confronted with the 'problem of beginning', the *great* problem of politics (Frank 2010: 46). As theorists of institutional transformation have argued there is a contingency in any construction of political community, frequently suppressed by retreat to apparently clear-cut distinctions such as ethnicity, language and culture (Offe 1996). In ordinary politics this construction is an issue below the radar of consciousness, an element of political institutions, culture and education, clotted in everyday practices. However, in extraordinary circumstances, established constructions of political community as well as presentations of 'the people' are challenged (Canovan 2005: 60–64; Smith 2015, Ch 6). According to the transformative perspective outlined above, enactments of citizenship invoke a 'new beginning' – the essence of politics in Hannah Arendt's (1992) sense – an opening up of new communities and commitments that are in principle unbounded.

A well-known political imaginary of 'beginning' is the idea of a 'constitutional moment'. As introduced by Bruce Ackerman (1991), such 'constitutional moments' are instances when the longing for a redefinition of a political order's basic understanding and its conditions of authority break through. The idea refers to moments of initial founding, but also considers that the constitution's spirit demands critical reworking from time to time, including moments of fundamental revision. Constitutional moments are considered exemplary moments, a dynamic of change crystallizing in time and space, which in perspective entails certain institutional consequences. In a critical reinterpretation of this idea, Judith Butler (2015) interprets 'founding' as an ongoing activity – as acts of self-constitution that are not representing a pre-existing collectivity, but rather contributing to the making of this 'we'. Butler conceives of 'constituent moments' as pluralistic enactments of popular sovereignty – with moments of founding and moments of dissolution close to each other. This includes constantly contesting and challenging the established institutional boundaries of the democratic 'we'.

Butler's (2015) reflections on constitutional change challenge the traditional picture in various respects. 'Constituent moments' are perceived as sequences of rupture rather than a single event. By focusing on citizens' micropolitical enactments in informal settings, she

<sup>30</sup>Hauke Brunkhorst (2014) characterizes 'legal revolutions' as transformations emerging out of structural conflicts that trigger a normative learning process. They are informed by judicial expertise, but also have a messianic dimension: they envisage a new, juridically articulated, idea of egalitarian freedom. In Brunkhorst's critical view, modern law has a double-edged character: enabling and stabilizing (class) rule and at the same time (legal or illegal) struggles against it (Brunkhorst 2014: 42–43).

is shifting the perspective to the *process* and the *subjects* pushing for change. There is no unitary agency embodied in one single organ or group. Any representation or invocation of ‘the people’ becomes contestable at the very moment it appears, which is seen as the essential paradox of constituent power: It is never fully contained or expressed in any specific legally constituted democratic order, and it is exactly this possibility of contestation that is the condition of its democratic character.

From Butler’s perspective, there is no strict division between ordinary and extraordinary politics and consequently between ‘constituent power and ‘constituted power’. This raises specific questions concerning the relationship between democratization and constitutional reform. If ‘constituent power’ is in principle unbounded and constitutional progress seen as an improvement regarding the constitution’s normative promise, which criteria make possible a differentiation between emancipatory enactments of popular sovereignty as opposed to discriminatory and oppressive forms? In Habermas’s (1992) understanding, constitutional progress is qualified as a self-correcting learning process. In this process, the discursive element of public deliberation is indispensable for determining which enactments of popular sovereignty can count as progressive in the sense of following an emancipatory path of fostering human rights and democratization (Habermas 1992: 324–48; see also Gerstenberg 2009). Moreover, paths of constitutional progress are not restricted to the boundaries of an already constituted (national) people, but include a possibility of reconstituting the *demos* in transnational perspective.<sup>31</sup> Constitutions must be responsive to their social environment, not freezing a particular condition but open to future developments. A constitution that prevents overdue reforms and is constantly circumvented undermines its inherent legitimacy and damages the idea of the constitution itself (Grimm 2016: 139–40). This reaches the heart of the risk of a policy of ‘constitutional avoidance’ in the European context. If constitutional change is blocked and the European Union’s *de facto* constitution does not provide an appropriate feasible path for change, decisions are made and implemented in the shadow of the Treaties. Retreat to emergency politics in order to be able to act only accelerates the delegitimation of national politics and at the same time discourages democratic change on an EU level.

A ‘new beginning’, a democratic transformation of an existing constitution, can be brought about either by revolution or constitutional reform. This apparently clear-cut distinction has increasingly been challenged (Arato 2017: 31–41; Grimm 2016: 139–42). A revolution – from a purely legal point of view – would be a complete revision of the constitution’s principles. Constitutional reform, in contrast, would imply a change according to rules provided by the existing constitution.<sup>32</sup> The idea of constitutional *renewal* is situated in between: it implies a fundamental overhaul, a restructuring with the aim of establishing new foundation of democratic legitimacy. Concerning constitutional politics in the European Union, a shift to citizens as constitutional subjects would be such

<sup>31</sup>The extent to which Habermas (1992) argues for this more radical perspective in his reflections on a constitution for Europe is debatable. For a productive (re-)interpretation, see Patberg (2020: 165–72). Patberg extends Habermas’s ‘intra-demos perspective’, arguing that the constitution of democratic states should allow free and equal citizens, if need be, to reactivate constituent power for the purpose of reorganizing public authority. For the conceptualisation of popular sovereignty in a multi-level perspective, see also Meine (2022).

<sup>32</sup>It can also be advanced by juridical praxis, i.e. interpretation and application of constitutional norms with the aim of contributing to structural social change – see von Bogdandy’s (2022: 119–27) reflections on ‘transformative constitutionalism’.



a fundamental overhaul. Putting citizens in their constitutional rights by establishing citizen participation in Treaty changes affects the basic structure of authority and establishes a real citizen democracy in Europe.

The European Parliament as institutional representative of a European citizenry has demonstrated its determination to push for a Constitutional Convention in accordance with existing rules, but given state blockades in the Council, it is left to rely solely on its normative powers. The main flaws within the Article 48 procedure are not only high hurdles and state veto powers, but diverse, uneven national ratification procedures for adopting a constitutional proposal.<sup>33</sup> A common European constitutional framework should not be adopted in diverse national procedures. Since developing a pan-European perspective is crucial, deliberation across boundaries must be supported, enhanced and made effective. In order to move towards real change, it will be necessary to split the deliberative and decisional elements of the European Convention procedure provided in the Treaty. Decision-making power should ultimately move from governments to European citizens. This would not reduce, but rather lead to a gain in, legitimacy: After a broad process of deliberation, supported by the European Parliament and institutional actors at national as well as supranational levels of the EU governance system, free and equal European citizens should have a final say in an EU-wide referendum.

## VI. Conclusion

A citizen-centred perspective on constitutional renewal in the European Union puts European citizens as constituent subjects right at centre stage. It reaches out to make the European Union accessible as a political arena, allowing citizens to regain control over developments that have evolved behind people's backs. This includes discovering a European dimension in political issues that are frequently nationally framed. Transformative citizenship agency is based on pluralistic enactments, continually contesting and challenging established institutional materialization and boundaries of the democratic 'we'. It is thus not only about making certain political claims; in its polity *constituting* dimension, it is about changing the framing of claims-making.

What role can the dynamic kicked off by the CoFoE contribute to such a process of democratic catching up? Can it initiate a process that might ultimately result in a renewed legitimacy basis for the European Union? No doubt, citizen panels as a democratic innovation in the European context potentially contribute to empowering citizens as political subjects and possible agents of change. Making them a permanent feature of EU policy-making, as the European Commission currently demonstrates, is nevertheless ambivalent. Deliberative tools of citizen participation can be abused as another top-down instrument of technocratic governance, but they can also be understood as paving the way for a wider reorganization of public authority and a renewal of the European Union's constitutional basis. In this sense, they *prepare* but do not *substitute*. European citizen

<sup>33</sup>This concerns, for instance, the fact that some member states require national referenda, while others need only parliamentary approval. For a discussion of this problem and arguments for harmonizing ratification procedures, see Cheneval and Schimmelpfennig (2013). As a step towards common standards, at least for ordinary politics – that is, the organisation of European elections – the European Parliament has recently adopted an EU election reform proposal: see <<https://www.europarl.europa.eu/news/en/headlines/eu-affairs/20220422STO27706/eu-election-reform-meps-push-for-common-rules-and-transnational-lists>>.



panels organized by the Commission should not distract from moving beyond the unfortunate strategy of ‘constitutional avoidance’.

For the time being, no either/or-decision between micro and macro reforms is needed. Sortition-based mini-publics on concrete policy issues can be a useful catalyst for stirring a pan-European public debate. They have a socializing dimension and thus serve a ‘citizenization’ function. Not by accident do the Final Report’s citizens’ recommendations mention a need for improving knowledge and communication about the European Union (and combatting misinformation) numerous times.<sup>34</sup> However, to support democratic transformation, citizen panels must also link up to the general public and integrate a spontaneous self-organization of civil society. Providing information, enhancing public visibility, and integrating various social groups and feedback channels will help a majority of citizens (and not only the selected few) to develop a considered judgement. In a process of public deliberation, within which a multiplicity of institutional actors and citizens interact, a renewal of the European Union’s legitimacy basis will be possible.

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<sup>34</sup>See, for example, proposal 37, p. 80: ‘Guaranteeing a minimum level of education on the EU and especially its democratic processes, including the history of European integration and European citizenship’. European citizen panels cannot do all the work, but certainly contribute in a positive way.

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