CHAPTER 4

Direct Democracy

4.1 Introduction: The Vote to Abolish the Swiss Army

On 27 November 1989, the New York Times reported the following news from Switzerland:

Swiss Reject Plan to Scrap Army

Geneva. Switzerland today voted to keep its army as the best way of maintaining its neutrality. An initiative to abolish the army was turned down by a margin of almost two to one. ‘A majority of the states rejected it’, a Government spokesman said. Only in Geneva and Jura did the majority vote in favour of the proposal. The initiative, forced by a petition signed by 111,300 citizens, set off a fierce national debate on the usefulness of an army in a small neutral country.

Readers of the New York Times may well have been stunned and wondering:

- How is it that a handful of citizens can challenge the federal government to an extent of proposing such a revolutionary idea as the abolition of the entire army? And if the Swiss people can revolutionise their country at the ballot box, why is Switzerland’s government a symbol of stability and its policies so conservative?
• Does direct democracy really have an impact on policy, as this vote on the army implies, or is it just a kind of theatre with the political elite holding real power backstage?
• If—as described in Chap. 2—direct democracy is part of an old cultural tradition, has it now become obsolete? Can democracy in a modern society keep up with growing complexities if the most important decisions are taken by ordinary people?
• And if so, how does direct democracy actually work? Who participates, who does not and how do voters react when confronted with difficult questions? What are the wider effects of direct democracy on the politics of government and parliament as well as political parties?

In this chapter, we shall try to answer some of these questions.

4.2 Institutions, Historical Development and Meanings of Direct Democracy

4.2.1 Obligatory and Optional Referenda

A ‘referendum’ in this context means a popular vote on a specific parliamentary decision, with the citizens having the last word: they decide whether the proposal becomes law or is rejected. In Switzerland, there are two types of referendum. First, all proposals for constitutional amendments and important international treaties are subject to an obligatory referendum. This requires a double majority of the Swiss people and the cantons, thus offering a kind of federal participation (see Chap. 3). The obligatory referendum is relatively frequent. Since Article 3 of the Constitution leaves all powers to the cantons unless specifically delegated to the federation, the authorities have to propose an amendment for every major new responsibility undertaken at national level.

Second, most parliamentary acts and regulations are subject to an optional (or facultative) referendum. In these cases, a parliamentary decision becomes law unless 50,000 citizens or eight cantons, within 100 days, demand the holding of a popular vote. If a popular vote is held, a simple majority of the voting people decides whether the bill is approved or rejected, the wishes of the cantons being irrelevant. Since the obligatory referendum refers to constitutional amendments and the optional
referendum to ordinary legislation, the two instruments are often distinguished as the ‘constitutional’ and the ‘legislative’ referendum (Aubert and Mahon 2003, 1061–116) (Table 4.1).

At cantonal and local levels, referenda occasionally go even further. Some cantons hold an obligatory referendum for most laws and important acts, and referenda may also be held on specific financial decisions (Lutz and Strohmann 1998). Direct-democratic instruments are, on the whole, more widely used in the Swiss-German cantons and communes than in the French- and Italian-speaking parts of Switzerland (Vatter 2002, 219ff.; Trechsel and Serdült 1999; Lafitte 1987; Karr 2003). In the latter, the ‘liberal’, representative idea of democracy dominates the ‘radical’, participatory one (Bühlmann et al. 2014, 404–6).

4.2.2 The Popular Initiative

One hundred thousand citizens can, by signing up to a formal proposition, demand a constitutional amendment and/or propose the revision or removal of an existing provision. The proposition can be expressed as a fully formulated text or in general terms upon which the Federal Assembly can then make a formal proposition. After signatures have been collected successfully, the initiative is discussed by the Federal Council and parliament, which then adopt formal positions on the proposed changes. This can involve drawing up an alternative proposition or, if the popular initiative is couched in general terms, formulating precise propositions. Initiatives and eventual counterproposals are presented simultaneously to the people. As with all constitutional changes, acceptance requires majorities of both individual voters and cantons.

The cantons dispose of additional instruments of direct democracy. Whereas at federal level the popular initiative is restricted to constitutional matters, it can be used to propose ordinary laws and acts at the cantonal and local level. The process leading to popular votes, notably the number of signatures required and the time allowed for their collection, varies markedly from canton to canton. One would imagine that the height of this hurdle would influence the use of the referendum and the popular initiative. However, this is not the case. There is no statistical evidence to suggest that in cantons with high hurdles, referenda or initiatives are used less often than in cantons with low hurdles (Vatter 2018, 372; Moser 1987).
Table 4.1  Types of referendum and popular initiative (federal level)

<table>
<thead>
<tr>
<th>Type, year of introduction and of eventual revisions</th>
<th>Trigger</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constitutional referendum (1848), accession to organisations for collective security or to supranational organisations (1921, 1977)</td>
<td>Automatic (obligatory)</td>
<td>In cases of total revision of the Constitution, in cases of amendments and, since 1977, for decisions concerning membership of supranational organisations. All obligatory referenda must win a double majority—more than 50% of the votes nationwide and a majority of votes in a majority of cantons.</td>
</tr>
<tr>
<td>Legislative referendum (1874), referendum on international treaties (1921, 1977, 2003)</td>
<td>50,000 signatures or 8 cantons within 100 days of the publication of the act</td>
<td>Any law of the Federal Assembly and any important international treaty may be challenged. If a popular majority votes no, the law or treaty does not enter into force.</td>
</tr>
<tr>
<td>Abrogative referendum I (1949)</td>
<td>50,000 signatures or 8 cantons within 100 days of the publication of the act</td>
<td>‘Urgent’ laws become immediately valid but may be challenged by way of an optional referendum during the first year after enactment.</td>
</tr>
<tr>
<td>Abrogative referendum II (1949)</td>
<td>Automatic (obligatory)</td>
<td>‘Urgent’ laws without constitutional base become immediately valid but have to be submitted to an obligatory vote within a year. They are abrogated unless accepted by the double majority of the people and the cantons.</td>
</tr>
<tr>
<td>Popular initiative for the total revision of the Constitution (1848)</td>
<td>100,000 signatures within 18 months</td>
<td>The proposal is submitted first to the people. If a simple popular majority agrees, parliament is dissolved and a new assembly elected to draft a new Constitution. The resulting document is then be submitted to a referendum, in which it must gain a double majority.¹</td>
</tr>
<tr>
<td>Popular initiative for the partial revision of the Constitution (1891)</td>
<td>100,000 signatures within 18 months</td>
<td>Citizens’ proposal for a constitutional amendment/partial change. Government and parliament propose to reject or endorse the popular initiative. The constitution is changed only if the proposal is accepted by a majority of the people and the cantons.</td>
</tr>
</tbody>
</table>

¹A popular initiative for the total revision of the Federal Constitution was only submitted once, in 1935, by the so-called Frontist Movement, and rejected in stage one (Swissvotes 2019)
4.2.3  Direct and Semi-direct Democracy: Historical Origins and Development

Swiss political rights have resulted from cultural patterns and history, political struggles and coincidences. There are some myths about direct democracy. Its protagonists in the nineteenth century claimed that it was a revival of old democratic freedoms. In reality, the Swiss confederation in medieval times had its landlords and familial oligarchies just as their neighbours had their nobility. The French Revolution ended the Ancien Régime and the privileges of old cantons over their subject regions in Switzerland. Democracy was imposed by Napoleon, not invented in old Switzerland.

Alfred Kölz (1992, 615–20), in his book on the history of the Swiss Constitution, shows that democratic institutions were directly influenced by theorists of the French Revolution, but official history in the nineteenth century declared them to be of Swiss origin. When in 1831 the progressive cantons began to establish democracy, it was under the slogan ‘sovereignty of the people’, and the constitutional framework provided for the division of power and the free election of representatives. But the representative system reminded the protagonists of democratisation too much of the old regime and its power elites. Thus, democratic forces called for full democracy, that is, law-making by the people and self-government. Whereas the holding of referenda would give the people control over parliament by ensuring they would have the last word on all important decisions, the initiative would bring citizens’ own ideas to bear on law-making. The democratic forces demanding these rights were successful. The referendum and the initiative were introduced first in the cantons, and later in the federation, whose original 1848 Constitution more resembled a parliamentary democracy.

When the legislative referendum and the initiative for partial revisions of the Constitution were introduced at federal level in 1874 and 1891, respectively, there was a second motive behind the calls for direct democracy: to prevent political and economic power being concentrated in the same few hands. As Karl Bürkli, a fervent democrat and trade union leader, wrote in 1869:

Our law-makers, elected by the people, are incapable of making good laws for the working class, even if they make excellent laws for the bourgeois class. Why? Because the representative bodies, in their majority, consist of capitalists and their servants who are hostile to social progress. Just as slave-holders are incapable of making laws in the interests of slaves, capitalist-representatives are incapable of making laws in the interest of workers.
Representative democracy is not a form of government able to improve the living conditions of the working class and to resolve social problems. (Own translation)

But unlike Karl Marx, who 20 years previously had called for a revolutionary class struggle against the ‘bourgeois’ state, Bürkli put all his hopes in direct democracy as law-making by the people. If direct democracy is realised, he wrote, ‘the people will find the right way to social freedom, because they feel themselves its daily sorrows and the need for change’.

From the very beginning, this expansion of the people’s rights not only to elect its authorities but also to vote on certain issues led to another understanding of democracy. The model of pure representative democracy promotes the idea of an elected government and parliament who decide for the people. They are entitled to do so because they represent the people or its majority. Representative democracy requires trust in the parliamentary elite, and trust that the will of parliament is consistent with the preferences of the majority of citizens. Bürkli was not the only political leader distrusting the political elites. In the cantons, many bourgeois politicians, too, were unsatisfied with the politics of their government and parliament. Distrust in government for the people led to the different idea of government through the people, that is, ‘self-rule’ in the name of the ‘sovereignty of the people’.

The Swiss were aware that government through the people was not possible for every decision. However, they wanted citizens to participate in the most important ones. Democrats demanded that the people should not be excluded from participation in the most important decisions, and that there should be agreement between the authorities and the electorate on all important issues. This constitutional system involves three types of procedures (see also Table 4.2):

Table 4.2  Constitutional selection of direct-democracy issues at federal level

<table>
<thead>
<tr>
<th>Issue</th>
<th>Legal form</th>
<th>Deliberating authority</th>
<th>Participation by the people</th>
</tr>
</thead>
<tbody>
<tr>
<td>Most important</td>
<td>Constitutional amendment</td>
<td>Parliament</td>
<td>Popular initiative, obligatory referendum</td>
</tr>
<tr>
<td>Important</td>
<td>Ordinary legislation</td>
<td>Parliament</td>
<td>Optional referendum</td>
</tr>
<tr>
<td>Less important</td>
<td>Ordinance</td>
<td>Parliament, executive</td>
<td>None</td>
</tr>
</tbody>
</table>
The most important questions are constitutional. Here, the people—and the cantons—always participate through obligatory referenda (voting on all amendments proposed by parliament) or popular initiatives (proposing constitutional amendments).

Questions of secondary importance concern ordinary laws and regulations, decided by parliament. Here, citizens can intervene if they so wish: the optional referendum permits them to challenge parliamentary decisions. However, at the federal level it is not possible to propose your own law by means of the initiative.

Questions of less importance are settled through simple regulations or government ordinances. They are left to the government, sometimes to parliament.

This constitutional order fulfils four functions:

1. **Selectivity**: The above given constitutional order provides a selection system. Not all decisions are open to the people, but the people always have the last word on the most important issues of constitutional policies, and they have an option to control the legislation on important issues.

2. **Securing the highest legitimacy for the most important and controversial political decisions**: In the ideology of the ‘sovereignty of the people’, the people’s own decisions are seen as the ‘purest’ form of democracy. ‘Authentic’ decisions by the people enjoy the highest legitimacy because they constitute ‘self-rule’. That is also the reason why the Federal Supreme Court cannot invalidate Federal Laws: the people have either approved them in a referendum or decided not to contest it, which amounts to the same (*qui tacet consentit*).

3. **Keeping parliament involved**: Only a small part of all laws enacted by parliament are actually challenged through a referendum, and government ordinances are excluded from direct participation. Hence, most decisions in Swiss politics are taken by the parliament and the executive, just as in representative systems. That is why the Swiss system is best referred to as a ‘semi-direct democracy’, which means

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1 We therefore use the term ‘semi-direct democracy’ when referring to the Swiss political system and its elements of representative and direct democracy as a whole, and ‘direct democracy’ when referring to the two instruments of the referendum and the initiative as well as to their use.
that decision-making contains elements of both representative and
direct democracy. The constitutional order tells us how this shall be
done, indicating who has the last word on a political decision.

4. **No plebiscites:** In countries which have ‘plebiscites’, it is the par-
liament or the president who call a referendum. France’s General
de Gaulle, for instance, endorsed his project to give indepen-
dence to Algeria by a plebiscite in order to have more political
support and legitimacy for this historical decision. Swiss direct
democracy is fundamentally different. It is not the privilege of
politicians to decide if a referendum is held, but the Constitution
states that all constitutional amendments have to be voted upon,
and that every law must be open to an optional referendum.
Sometimes constitutional lawyers have different opinions on
whether an issue must be regulated by a constitutional amend-
ment or an ordinary law, but this discretionary power is marginal.
Thus, the constitutional order provides an effective guarantee of
the people’s right to direct participation.

Over the last hundred years, much of the great enthusiasm for direct
democracy has disappeared. Many of the hopes put on the effects of
‘people’s law-making’, as expressed by Bürkli in 1869, have been
dashed by the experiences of semi-direct democracy. The political left
had to learn that the people did not want revolutions. But the same
people also rejected many projects of the bourgeois majority. Direct
democracy has not replaced, but rather complemented parliamentary
politics: both the referendum and the initiative have become the most
powerful instruments of the opposition and allow for protest against
the political elite. This partly explains why the political rights have
become so popular: in surveys, they regularly show up as the most pre-
cious elements of Swiss democracy and identity—even for those who
belong to the losers in many votations.

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2 For a recent, forceful defense of the optional (‘bottom-up’) referendum from a normative
perspective, see Cheneval and el-Wakil (2018) and el-Wakil and Cheneval (2018).
4.3  A Closer Look At the Referendum and the Initiative

4.3.1 The Issues

We remember the call of democratic forces for the ‘sovereignty of the people’ when fighting for participation rights. They believed that no decision of great importance should be excluded from the direct influence of the people. This historical expectation was probably too optimistic. But when looking at the list of federal votations held in the last three years alone (Table 4.3), we can see that there is practically no kind of issue that was not subject to either a referendum or an initiative.

Table 4.3  Federal votations held 2017–2019

<table>
<thead>
<tr>
<th>Date</th>
<th>Title/Topic</th>
<th>Typea</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>19.05.2019</td>
<td>Implementation of EU gun law directive</td>
<td>LR</td>
<td>Accepted</td>
</tr>
<tr>
<td></td>
<td>Corporate tax and public pension reform</td>
<td>LR</td>
<td>Accepted</td>
</tr>
<tr>
<td>10.02.2019</td>
<td>Urban sprawl</td>
<td>PI</td>
<td>Rejected</td>
</tr>
<tr>
<td>25.11.2018</td>
<td>Insurance detectives</td>
<td>LR</td>
<td>Accepted</td>
</tr>
<tr>
<td></td>
<td>Self-determination</td>
<td>PI</td>
<td>Rejected</td>
</tr>
<tr>
<td></td>
<td>Cow horns</td>
<td>PI</td>
<td>Rejected</td>
</tr>
<tr>
<td>23.09.2018</td>
<td>Food sovereignty</td>
<td>PI</td>
<td>Rejected</td>
</tr>
<tr>
<td></td>
<td>Fair food</td>
<td>PI</td>
<td>Rejected</td>
</tr>
<tr>
<td></td>
<td>Bicycle lanes and hiking paths</td>
<td>CP</td>
<td>Accepted</td>
</tr>
<tr>
<td>10.06.2018</td>
<td>Gambling</td>
<td>LR</td>
<td>Accepted</td>
</tr>
<tr>
<td></td>
<td>Sovereign money/banking</td>
<td>PI</td>
<td>Rejected</td>
</tr>
<tr>
<td>04.03.2018</td>
<td>Public TV and radio fees</td>
<td>PI</td>
<td>Rejected</td>
</tr>
<tr>
<td></td>
<td>Federal taxes</td>
<td>CR</td>
<td>Accepted</td>
</tr>
<tr>
<td>24.09.2017</td>
<td>Pension reform</td>
<td>LR</td>
<td>Rejected</td>
</tr>
<tr>
<td></td>
<td>Financing of pension reform</td>
<td>CR</td>
<td>Rejected</td>
</tr>
<tr>
<td></td>
<td>Food security</td>
<td>CP</td>
<td>Accepted</td>
</tr>
<tr>
<td>21.05.2017</td>
<td>Energy law</td>
<td>LR</td>
<td>Accepted</td>
</tr>
<tr>
<td>12.02.2017</td>
<td>Corporate tax reform</td>
<td>LR</td>
<td>Rejected</td>
</tr>
<tr>
<td></td>
<td>Highway and urban street plans and financing</td>
<td>CR</td>
<td>Accepted</td>
</tr>
<tr>
<td></td>
<td>Simplified naturalisation of foreigners</td>
<td>CR</td>
<td>Accepted</td>
</tr>
</tbody>
</table>

Source: Swissvotes (2019)

Note: *CR = Constitutional/obligatory referendum; LR = Legislative/optional referendum; PI = Popular Initiative, CP = Counter-proposal
4.3.2  Direct Democracy’s Role in Political Agenda-Setting

Table 4.3 shows a wide variety of issues that have been put to popular vote, ranging from more bicycle lanes to less public TV and radio. We could certainly ask whether these two issues should be removed from a future list of votations—the first because it is of too little importance to merit a popular vote, the second because it is of too great an importance. Yet this would not be in line with Swiss thinking. With the optional referendum and the popular initiative, it is left to the people, political parties and other organisations to decide what they consider to be a case worth voting upon. Politicians may complain about the overloading of direct democracy with minor issues, but they would not overtly deny the right of any group to place a ‘bothersome’ problem on the agenda if it successfully attracts the required number of signatures.

As regards popular initiatives, there is first a formal control by the Federal Chancellery and then by the Federal Council of whether or not the proposal is compatible with constitutional law and certain principles of international law. On the abolition of the army, for example, some officials claimed that the proposal was unconstitutional because it would destroy the fundamental task of the Swiss federation to defend its independence and neutrality in times of war. The Federal Council, however, did not find it politically wise to follow this advice and preferred a democratic vote to be held on the issue—they were convinced that the people’s common sense would lead them to vote the ‘right’ way.

The role of the Federal Assembly is to ensure that popular initiatives are in accordance with the principle of ‘consistency of subject matter’. This means that a popular initiative cannot combine different issues; citizens must be able to express their preference on a single question at a time. If an initiative contains more than one issue, it has to be split up into separate initiatives that are voted upon individually. The Federal Assembly is reluctant to invalidate an initiative on the ground that it concerns questions that do not belong to the constitutional domain. The fact that practically any issue can become the subject of a popular initiative has two effects:

First, the Swiss Constitution is much less a historical document to preserve the spirit of the founding generation than an open book which every generation of people and parliament is authorised to change. The Swiss

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3 On the cantonal level, we find similar procedures for cantonal initiatives, with the difference that a final decision on the validity of a popular initiative may be demanded from the Federal Supreme Court (cf. Schubiger 2017).
Constitution, therefore, has become a rather unsystematic charter, a collection of important fundamental principles as well as of rather unimportant and detailed regulations. This was the reason why, in 1999, the Constitution was totally revised, bringing more coherence to the constitutional text. Even so, with 32 new amendments accepted since then (Swissvotes 2019), the Constitution remains a living document. It is the written evidence on the development of Swiss politics and policies—initiated mostly by the parliament but controlled by the people and the cantons.

Second, the people have a considerable influence on the political agenda. The control of the political agenda is an unresolved problem in theories of representative democracy because, by tacit arrangement, ruling political elites can agree to circumvent questions that would impair their re-election. Some scholars go as far as to say that the ‘politics of non-issues’—that is, withholding ‘bothersome’ questions from the agenda—represents the core of a hidden power game. It limits democratic discussion to questions of conformity and suppresses issues disliked by the political elites (Bachrach and Baratz 1963). Direct democracy corrects some of these imperfections. In fact, many issues—abolition of the army, immigration policy, restrictions on genetic engineering, protection of the environment and so on—were brought forward by means of popular initiatives and sometimes against the firm convictions of almost the entire political elite. Though their direct success is limited, popular initiatives widen the horizon of what is politically conceivable. Government and parliament do not have complete control of political agenda-setting, and direct democracy enables decisions to be taken on questions which the political elite would prefer to remain ‘non-issues’.

4.3.3 The Use of Referenda and Initiatives

In the first decades of the Swiss federation, popular votes were rare. After World War II, the constant expansion of the responsibilities and expenditures of the federal state made votations much more frequent. Today, on four Sundays per year, the Federal Council organises a ballot, and the people vote on up to about 12 issues. Table 4.4 shows the number of votes held between 1848 and 2019—644 in total.

The first section refers to constitutional amendments proposed by the Federal Assembly, subject of the obligatory referendum. About one quarter of all proposals were rejected by the people and/or cantons, which
reflects the rather sceptical attitude of the Swiss people towards giving the federal government new responsibilities.

The popular initiative is also widely used, but it does not always lead to a votation. In a few cases, the proposal is invalid for practical or legal reasons. More than one fourth of all popular initiatives are withdrawn, sometimes after successful negotiations with the authorities for a counterproposal. At 10%, the success rate of popular initiatives is rather low. Counterproposals by the Federal Assembly, mostly voted upon in direct confrontation with the initiative, have a considerably higher success rate.

The optional referendum is the instrument challenging the ‘ordinary’ legislative activity of the Federal Assembly. Groups contesting a bill may fail to collect the required number of signatures within the 100-day limit.

Table 4.4  National referenda and popular initiatives, 1848–2019

<table>
<thead>
<tr>
<th>Obligatory referenda</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Voted</td>
<td>198 (100%)</td>
</tr>
<tr>
<td>Accepted by the cantons and the people</td>
<td>148 (74.7%)</td>
</tr>
<tr>
<td>Rejected by the cantons and/or the people</td>
<td>50 (25.3%)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Popular initiatives</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposals handed in</td>
<td>474</td>
</tr>
<tr>
<td>Insufficient number of signatures</td>
<td>120</td>
</tr>
<tr>
<td>Withdrawn</td>
<td>100</td>
</tr>
<tr>
<td>Lapsed or declared invalid</td>
<td>6</td>
</tr>
<tr>
<td>Pending at time of writing (Oct. 2019)</td>
<td>32</td>
</tr>
<tr>
<td>Voted</td>
<td>216 (100%)</td>
</tr>
<tr>
<td>Accepted by the cantons and the people</td>
<td>22 (10.2%)</td>
</tr>
<tr>
<td>Rejected</td>
<td>194 (89.8%)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Counterproposals (to popular initiatives)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Voted</td>
<td>42 (100%)</td>
</tr>
<tr>
<td>Accepted</td>
<td>26 (61.9%)</td>
</tr>
<tr>
<td>Rejected</td>
<td>16 (38.1%)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Optional referenda</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Bills subject to referendum (–June 2019)</td>
<td>3012</td>
</tr>
<tr>
<td>Referendum attempted but failed at signature stage</td>
<td>35</td>
</tr>
<tr>
<td>Referendum passed signature stage</td>
<td>190 (6.3% of all bills)</td>
</tr>
<tr>
<td>Referendums voted (–May 2019)</td>
<td>188 (100%)</td>
</tr>
<tr>
<td>Challenge by referendum failed (=parliamentary bill successful)</td>
<td>108 (57.4%)</td>
</tr>
<tr>
<td>Challenge by referendum successful (=bill rejected)</td>
<td>80 (42.6%)</td>
</tr>
</tbody>
</table>

Sources: Swissvotes (2019); BK (2019)

*For a concise discussion of every popular vote held between 1848 and 2007, see Linder et al. (2010). For later votes, see https://swissvotes.ch/*
From Table 4.4, we see that less than 7% of all bills passed by parliament are actually so challenged. If, however, the referendum challenge materialises into a popular vote, opponents of the bill have a 43% chance of success. This means that less than 3% of all parliamentary bills are actually rejected at the polls.

From these statistics, we can draw some preliminary conclusions. Constitutional policies of the Federal Assembly, which is mainly concerned with providing legal bases for new federal responsibilities, suffer frequent defeats, being rejected once in every four votations. Nevertheless, groups of citizens who wish to promote new federal activities by means of the popular initiative are even less successful. Their success rate is a mere 10%. From a first glance at statistics on ordinary legislation we might think that the optional referendum is of comparatively low effect. In fact, the reverse is true for two reasons. First, the 6% referenda cases typically represent important bills of a controversial nature and, if there is a vote, the chances of the opponents of the bill are rather high. Therefore, the risk of an optional referendum defeat is taken seriously by federal authorities. Second, and as we shall discuss in the next chapter, the perceived omnipresent risk of a referendum being organised leads the federal authorities to avoid the referendum trap by two means: first, an intensive pre-parliamentary consultation phase allows ascertaining the degree of disapproval by different actors. Second, in taking into account opposing views that are dangerous enough to bring everything down, the government then presents a legislative bill to parliament that is already a compromise backed by a large coalition of interest groups and political parties.

4.3.4 ‘Braking’ Referenda and ‘Innovating’ Initiatives: Two Different Devices of Direct Democracy

Our previous discussion has shown that both initiatives and referenda in some ways ‘correct’ the policies of government and parliament. Yet apart from this, the two instruments of direct democracy fulfil fundamentally different functions. The referendum, particularly in its optional form, allows people to object to proposals by the authorities. The popular initiative, however, is conceived as an active way of shaping constitutional rules—in most cases against the will of government and parliament. From a citizen’s point of view, we could argue that the referendum has a ‘braking’ effect and the initiative an innovative one. Let us take a closer look at this distinction.
4.3.4.1 The Braking Effect of the Referendum

Democrats—the faction of the Radicals that fought for the introduction of the referendum in the nineteenth century—considered themselves ‘progressive’ and saw in the referendum a tool to promote reformist policies with the help of the people. Yet things turned out differently. From the very start, when the referendum was introduced in 1874, it was used by the Catholic-Conservative opposition to their own advantage, and projects of the radical liberal majority were shot down as if with a machine gun (Steiner 1991, 139).

The democratic forces had to learn a lesson important to many institution-builders: the consequences of institutional designs are very hard to foresee. Decision-making devices are tools which can be used both by other actors and for purposes other than those envisaged by their protagonists. In many cases, only history can reveal the effects of institutional mechanisms.

If the referendum is used as a plebiscite to give the authorities’ policy greater backing and legitimacy, the government should have the sole power to define under what conditions and on which occasions it is held. This is the case with plebiscites in France. The president of the French Republic organises a plebiscite when, confident that he has the backing of the popular majority on an important issue, the popular vote would help him to continue the general policy of his presidential mandate. Even then this procedure is not without risks, as De Gaulle learned in 1969, when the defeat of his proposal for regionalisation and senate reform forced him to resign (Aubert 1974, 43–4). Yet if plebiscites are unsuccessful, politicians find ways to do without them. When in 2005 the French and the Dutch people said No to the European Constitution, the EU authorities proposed similar steps to integration by way of the Lisbon Treaty, on which no plebiscites in these two countries were held.4

Swiss politicians have the discretionary power neither to make an issue the subject of a referendum, nor to prevent a votation. As explained earlier, the Constitution says which type of parliamentary decision is linked with which type of referendum. Parliament cannot circumvent referenda, even though for some decisions it may be particularly difficult to obtain a majority. New taxes, for example, are not very popular in any state. In pure representative democracies, political leaders impose them after elections in

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4 In Ireland, an obligatory referendum had to be held and failed in 2008. The Treaty was accepted in a second attempt one year later, however.
the hope that the people will have forgotten about them by the next election. This is not possible in Swiss direct democracy, where the political authorities have to convince the people that higher taxes are necessary. Therefore, the obstacles for success are high, not only for amendments to the Constitution where the double majority of the people and the cantons are required. In ordinary law-making, parliament can never rule out the possibility that its decision will eventually be challenged by a referendum launched by a political party, an interest group, or by a spontaneous social movement able to collect 50,000 signatures. Parliament therefore is bound to be cautious in law-making. Finally, it seems that negative majorities are easier to build than coalitions in support of change (Box 4.1).

Box 4.1 Difficulties of Building Up ‘Constructive Majorities’: The Example of Taxation in Theory and Practice

If the government needs more revenue, it must theoretically encounter tax resistance from all citizens. However, it may propose a solution that obtains a majority of rational voters, for instance reducing the tax burden for a majority of modest-income households by a small amount and raising taxes for a much smaller group with higher income. By doing so, the government may expect a political majority for its project of a net fiscal gain. However, its hopes can be dashed for two main reasons. Firstly, the proposed solution may have an impact on participation behaviour: higher-income classes, highly affected by and opposed to the bill, may mobilise and participate more in the vote than people with modest salaries. Moreover, the government cannot even be sure that people with a modest income will vote for the bill by offering them only a small gain: voters of lower social or economic status sometimes do not vote according to their actual status, but according to the status to which they aspire. So they may vote no, as if they belonged to a higher-income class. Secondly, opponents may bring up the argument of ‘federalism’, stating that new taxes are much more important on the cantonal than on the federal level. The ‘federalist’ argument is strong because in many issues it is able to divide the entire electorate.

Thus, the government will end up facing a coalition of three groups opposed to the bill, albeit for different reasons:

(continued)
For these reasons, the referendum is an instrument of the opposition and favours the status quo. Over decades, the referendum was the favourite instrument of conservative right-wing forces fighting against new competencies of the federation and the development of the welfare state. In the last 30 years, however, it has been the political left which successfully used the referendum against conservative propositions to cut social security programmes, privatisate and liberalise working regulations. This illustrates that the status quo bias of the referendum is of a systemic nature and can be used against innovations from any side. The referendum appears to be a versatile vessel, comparable to a sailing ship propelled by the wind of popularity—no matter the direction from which that wind blows. But there is no doubt about the shores the crews on referenda ships are heading for: the defeat of a bill. And this means the maintenance of the status quo.

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**Box 4.1 (continued)**

- higher-income groups affected by higher taxes;
- lower-income groups voting as if they had higher-income status;
- all income groups preferring cantonal taxes.

On the supporting side, the government may expect one group only: lower-income groups voting in line with their current status and preferring federal taxes. The actual supporting side may thus be smaller than expected and lose against a heterogeneous opposition.

In practice, the federal authorities were able to successfully raise revenue in the past but seemed well aware of the theoretical difficulties just mentioned. Value added tax (VAT), disliked by most households, is lower than in other countries, and federal revenue relies much more on income than consumer taxes. Progression of income tax is also high—a minority of people with high income contribute more to federal revenue than all other households. The regime on federal income and consumer taxes is also limited in time—after a decade or so, the people vote again on it. Finally, a good part of federal revenue is paid back to the cantons in the form of transfers. All these factors may have helped to build ‘constructive majorities’ on a difficult issue.
We now see the direct effect of the referendum on the political process. Its status quo bias renders ‘big innovations’ unlikely. Political elites must anticipate the risk of defeat in a future referendum and are therefore bound to incremental progress. For every political project they have to look for an oversized coalition able to defeat the veto power of possible opposition forces in a popular vote.

This leads to a second, indirect effect. The referendum has profoundly changed the Swiss way of political decision-making. When, at the end of the nineteenth century, the Radical majority realised it could be beaten time and again by a ‘destructive’ conservative minority via the referendum, it changed its policy of pure majority rule in government, allocating one of the seven seats of the Federal Council to a Catholic-Conservative (Neidhart 1970; Bolliger and Zürcher 2004). The majority thus began to strike political compromises with the minority, finding solutions that did not threaten the status quo of groups capable of challenging the bill. This integrative pressure of the referendum transformed majoritarian politics into power-sharing—an institutional effect of direct democracy discussed further in Chap. 5.

Finally, the referendum and its status quo bias had important long-term effects on the development of the federal state. Compared to other industrialised Western democracies, we note:

- The historically late development of certain activities of the Swiss central government, especially in social policy. As every new federal responsibility must obtain the double majority of people and cantons, obstacles are high. In fact, many proposals for amendments to the Constitution were rejected at first and accepted only in a second attempt.
- The low (33) percentage of total public expenditure accounted for by the central government and the modest public sector nationwide, which accounts for less than 35% of Switzerland’s GDP (EFV 2019, 5 & 97).
- The unique fact that among industrialised democracies, Switzerland’s central government is the only one which can rely on income and value added taxes only on a provisional legal basis.
- A small bureaucracy: only 11% (38,000 out of 325,000) of all Swiss administration employees work for the federation. The public sector in Switzerland amounts to only 14% of total employment (BFS 2019).
Compared with other neutral states, a rather discreet position in international affairs. In 1992, the Swiss people and cantons refused to join the European Economic Area, and Switzerland is unlikely to become a member of the EU in the near future. Switzerland was one of the last countries to join the UN, in 2002—the first to do so via a popular vote, however. One important reason for the sceptical attitude of Swiss voters in foreign affairs is neutrality. Neutrality is more than an elite’s preference in foreign policy. It is part of the national identity, even myth, held by a majority of people that Switzerland should always stay neutral and not be committing too much in international politics.

4.3.4.2 The Innovating Effect of the Popular Initiative
In contrast to the referendum, the popular initiative is a promoter of political innovation. Moreover, it promotes innovation against the will of the political elite. We have already discussed one such innovating effect: the initiative widens the political agenda and gives authoritative voice to problems that might remain non-issues as far as the elites are concerned. Yet agenda-setting alone does not mean gaining majority approval for a proposal. Statistics show that hopes for political change by means of the initiative are dashed in 90% of cases that come to a vote (Table 4.4). If the people are so sceptical towards grass-roots innovation, we have to ask why so many initiatives are handed in. Practice shows that the popular initiative may serve four different objectives:

1. Direct success against the federal authorities: In parliament, the permanent coalition of governmental parties may constantly ignore the claims of the opposition parties. Thus, the popular initiative can be an instrument for parliamentary minority groups. They hope that their issue will be popular enough to find a majority in the vota-tion—even against the mainstream of the political elite. For a long time, it was primarily the Social-Democrats and trade unions who used the initiative to compensate for the lack of support for social reform in parliament. They made the experience, however, that an initiative is a good instrument for political protest but less suited to realise their claims. For initiatives seeking direct success, the degree of innovation must be modest. Typical examples are the introduction of a national holiday on 1st of August in 1993 or the protection
of moor landscapes in 1987. In recent years, however, some quite radical conservative initiatives (ban on minarets, ‘against mass immigration’ and life-long detention for sex-offenders) were successful.

2. **Indirect success through negotiation with the authorities:** As just mentioned, direct success in a popular vote is rare. But defeat does not always leave proponents with nothing. Sometimes the federal authorities pick up ideas from an initiative by drafting a counterproposal or fitting them into ongoing legislative projects. This way the long shots of popular initiatives are transformed into proposals that are more in line with conventional wisdom and therefore stand a better chance of being accepted. At the root of many important federal policies—from social security through the environment to equal rights—we can find a popular initiative. In this way, ideas too innovative and radical at first can later be transformed into proposals acceptable to a majority. In the long run, these indirect effects of the initiative may be even more important than rare direct success (Delley 1978; Sigg 1978; Werder 1978; Papadopoulos 1994).

3. **Mobilisation of new issues and political tendencies:** The objectives of radical groups are different. They may prefer agenda-setting and discussion of political taboos and non-issues, which is provided by the arena of a popular vote. They refuse to pay the price of negotiation and compromise. Therefore, these groups draft ‘long-shot’ propositions, even if their chances of success are minimal or even zero. The initiative on the abolition of the Swiss army is a good example. From the very beginning, its proponents were aware that they would not win a majority of the vote. Still, they used the four years’ discussion to change political attitudes on the formerly taboo subject of Swiss military and peace politics, and with considerable success.

4. **Self-staging and mobilisation for electoral success:** Finally, political parties and social movements can use the popular initiative as a platform for electoral success. Popular initiatives not only ‘create’ issues but also help to establish new political parties and rally the followers around a common cause. This is typical of the way in which several grass-roots movements of the 1970s put environmental issues onto the national agenda and finally established a new, national Green Party. The xenophobe movement of that period also regularly
launched popular initiatives asking for restrictions on immigration. This helped the small anti-immigration parties not only to keep their pet issue on the political agenda, but also to survive for quite a long time.\footnote{This ended only in the 1990s, when the Swiss People’s Party took over the immigration issue and ‘swallowed’ the small anti-immigration parties and their protest voters.}

## 4.4 Participation in Direct Democracy

### 4.4.1 The Deciding Majority, Or Who Are the People?

On the evening of a popular vote, the news readers on TV and radio often say: ‘The Sovereign of Switzerland has accepted (or rejected) the following propositions …’. The allusion to the ‘Sovereign’ (der Souverän) is an old expression for the highest democratic organ or authority, but who is that? The expression ‘direct democracy’ implies that it is the people, or at least its majority. We shall see that, in practice, it is far from this.

First, the share of people who are qualified to vote in Switzerland is only about 62% of the total population. Those under the age of 18 and foreign nationals, who make up 25% of the resident population, are not allowed to vote. Then again not all those who do qualify take part in a vote—participation over past year averaged some 45%. If voters are split roughly 50:50, the deciding majority may become rather small. Using the above figures, 100% * 0.62 * 0.45 * 0.5 equals 14% of the entire population. Figure 4.1 shows the deciding majorities in federal votations as a percentage of the total Swiss population since 1866.

It shows that during the long decades of male-only democracy, before women’s suffrage was introduced in 1971, the actual ‘Sovereign’ could be as small as 5–15%. Since then, the deciding majority has varied between 12% and 22%. Even so, the democratic majority never represents the majority of the population, and the ‘will of the Sovereign’ is in reality the vote of a minority. Moreover, as we shall see, the participation of the different strata of citizens is far from being equal. One could argue, therefore, that a serious survey of 30,000 people would cost less and give more accurate information on the true preferences of the people. This argument, however, misses the point.
The goal of a votation is not the most precise reproduction of public opinion, but the participation of active citizens in a collectively binding decision. This process of direct participation gives high democratic legitimacy to the decision taken, for several reasons. First, the legitimating effect lies in the fact that all citizens are offered the chance to participate, and in that those who do so put time and effort into making up their minds and casting their votes. Second, a popular vote is usually accompanied by intensive campaigns for and against the proposal, including adversarial public meetings, party recommendations, lobby slogans and extensive coverage in the media and online. This process of public deliberation and decision-making may lead to changes in public opinion and individual preferences. It is a collective learning process. Third, the collective decision is authentic: people are binding themselves with the consequences of their own decision. It is their own decision, not one imposed on them by political elites. Direct participation corresponds to the idea of ‘self-rule’. All this creates double legitimacy—for the concrete decision at stake and for the democratic institutions in general.

From a normative point of view, one could still argue about two imperfections of direct democracy. First, what about foreign nationals living in Switzerland who, despite paying taxes and otherwise contributing to public welfare, are excluded from participation? Indeed, while a large part of the Swiss citizens would not be willing to change this rule, others call it an
imperfect state of democracy. This reminds us that the concept of democracy continues to change. The entitlement to vote has evolved over time: once it was restricted to adult married men with some degree of wealth and social status. This restriction was later abolished. While Switzerland may have been late in granting political rights to women, there is one canton that introduced political rights for foreigners as early as in the nineteenth century: in the communes of the canton of Neuchatel, foreigners have participated in elections and votations since 1850. In the canton of Jura followed in 1979, but in many other cantons proposals to extend political rights to foreigners have failed.  In turn, Swiss citizens living abroad, counting for more than half a million by the end of 2019, have been given the possibility to vote since 1977. Since 1992, they can do so without having to travel to Switzerland to exercise this right (Kuenzi 2018). This illustrates that the historical process of the ‘inclusion’ by political rights is long but certainly not at its end yet.

The second question is, does low participation not discredit direct democracy despite its procedural value? Should not a turnout of, say, 40% or 50% be required, the result being invalidated if participation falls below that level—an idea that is applied in Italy, for example? In order to answer this question, let us have a closer look at individual participation.

4.4.2 Regular Voters, Occasional Participants and Abstentionists

As shown in Fig. 4.2, the level of participation in federal votations varies above and below an average of 45%, depending on the attractiveness of the issue voted. Controversial subjects of great importance to everybody attract the most voters, such as those to abolish the army, limit immigration, or joining the UN.

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6 One of the deputies in 1850 explained his motive as follows: ‘If we have to allow citizens of other cantons to vote on national issues, there is no reason why French or Italians should not have this same right’ (Schmitt 1989). Since 2001, foreign residents can also participate in cantonal elections and votes.

7 Some cantons allow foreigners to vote in local matters (Vaud, Fribourg and Geneva) whereas in a further three (Appenzell Outer-Rhodes, Grisons and Basel-City) the municipalities can decide. See https://www.ekm.admin.ch/ekm/de/home/staatsbuergerschaft-citoyennete/Citoy/buergerrechte/panorama.html [1.4.2020].
From post-vote surveys, Sciarini et al. (2015, table 1) and Serdült (2013, 48), we learn that Swiss voters fall into three groups which differ in behaviour and general attitude towards voting:

- The first group, comprising some 25–30% of citizens, always votes, that is, at least nine out of ten times. These ‘duty-conscious citizens’ interpret their political right to vote as being a citizen’s duty as well.
- The second group of about 20–25%, the ‘abstainers’, never participates at all. Different reasons can be found for such behaviour. Some are disillusioned; some feel incapable of dealing with the issues involved; others are simply not interested in politics.
- The third and largest group, some 50–55% of the electorate, consists of occasional voters, participating à la carte. They participate in between one and eight votes out of ten. Their selective interest in politics according to the issue at stake makes the participation rate fluctuate between 30% and 70%. Occasional voters participate when they feel they are personally involved or when concrete advantages or disadvantages for them are in play.

The criticism is often made that the low level of participation, which occasionally can go down to 25%, discredits direct democracy. However, proposals to introduce a minimum participation rate for the vote to be valid have been widely rejected by politicians and the public. Indeed, such
a measure would probably be more likely to punish and disappoint active voters than incite the inactive majority to take part. The strongest argument against a participation quorum is that it destroys the deliberative nature of a votation: while proponents have to argue with substantive arguments for the project, opponents can renounce on any argument by a simple call to boycott the vote. The opposition not only has better cards in the game but destroys it: if non-participation pays better than participation, the legitimation of direct democracy itself will suffer.

We also have to recognise that participation in direct democracy is very demanding. Voters in Swiss democracy are supposed to vote on issues that are sometimes very complicated. To read the official documentation on four or five proposals can take several hours. Together with votations on cantonal and local affairs, a voter is supposed to give his or her preference on up to 20 or 30 issues a year. In none of these can he or she expect to have more than an infinitesimal chance of being the one who makes the outcome decisive. The cost of participation therefore outweighs the expected individual benefit, and following the logic of rational choice, the voter would stay at home. Indeed, if many deplore the low participation rates, it could be argued that a turnout of 45% is surprisingly high, given the time and effort required. Thus, there is no satisfactory criteria to judge whether 45% of participation is low or high. Nor can we say whether this participation rate is a bad or good sign for a sound democracy and a mature civic culture.

Nevertheless, there are other reasons for worrying about low turnout. As mentioned above, many abstainers are disappointed or feel unable to participate. Direct democracy does not provide guarantees against political frustration or alienation. More importantly, international research (Kern and Hooghe 2018; Vatter et al. 2019, 173f.) into participation reveals two main findings:

- The lower overall participation, the greater the difference in voter turnout between higher and lower socio-economic groups; and
- The more demanding the form of participation, the greater the difference in voter turnout between higher and lower socio-economic groups.

In Switzerland, both factors appear together. First, especially if participation is rather low, as in the example given in Table 4.5, the choir of Swiss
Table 4.5  Typical profile of a popular vote

<table>
<thead>
<tr>
<th></th>
<th>Difference from overall voter turnout [%]</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Gender</strong></td>
<td></td>
</tr>
<tr>
<td>Women</td>
<td>-2</td>
</tr>
<tr>
<td>Men</td>
<td>2</td>
</tr>
<tr>
<td><strong>Age</strong></td>
<td></td>
</tr>
<tr>
<td>18–29</td>
<td>-18</td>
</tr>
<tr>
<td>30–39</td>
<td>-10</td>
</tr>
<tr>
<td>40–40</td>
<td>-7</td>
</tr>
<tr>
<td>50–59</td>
<td>0</td>
</tr>
<tr>
<td>60–69</td>
<td>9</td>
</tr>
<tr>
<td>70+</td>
<td>21</td>
</tr>
<tr>
<td><strong>Monthly income</strong></td>
<td></td>
</tr>
<tr>
<td>–3250 CHF</td>
<td>-6</td>
</tr>
<tr>
<td>3251–4749 CHF</td>
<td>-4</td>
</tr>
<tr>
<td>4750–6629 CHF</td>
<td>7</td>
</tr>
<tr>
<td>6630 CHF–</td>
<td>11</td>
</tr>
<tr>
<td><strong>Education</strong></td>
<td></td>
</tr>
<tr>
<td>Basic education only</td>
<td>-16</td>
</tr>
<tr>
<td>Professional education</td>
<td>-1</td>
</tr>
<tr>
<td>College/maturity</td>
<td>-2</td>
</tr>
<tr>
<td>(Technical) University</td>
<td>11</td>
</tr>
<tr>
<td><strong>Politically interested</strong></td>
<td></td>
</tr>
<tr>
<td>very</td>
<td>-25</td>
</tr>
<tr>
<td>rather</td>
<td>11</td>
</tr>
<tr>
<td>rather not</td>
<td>11</td>
</tr>
<tr>
<td>not at all</td>
<td>29</td>
</tr>
<tr>
<td><strong>Left-right self-assessment (0–10)</strong></td>
<td></td>
</tr>
<tr>
<td>far left (0–2)</td>
<td>-33</td>
</tr>
<tr>
<td>left (3–4)</td>
<td>10</td>
</tr>
<tr>
<td>centre (5)</td>
<td>3</td>
</tr>
<tr>
<td>right (6–7)</td>
<td>4</td>
</tr>
<tr>
<td>far right (8–10)</td>
<td>19</td>
</tr>
</tbody>
</table>
direct democracy sings in upper or middle-class tones. Post-vote analyses reveal that in such cases workers and lower-level employees participate less than high-level employees and independent professionals by a factor of up to three. As in other countries, well-educated people with higher income are more likely to vote than their less educated or working-class counterparts. Second, direct democracy is demanding. One should not underestimate the general capacity of ordinary citizens to understand the questions they are voting upon. But besides their personal motivation and political interest, also their capacity to understand the issue at stake varies. If the issues of a vote are complex, some citizens feel unable to cope with it. In a sort of self-censure, they refrain from voting. The second issue in Table 4.5 for instance, the referendum against a new law on enterprise taxes, was difficult to understand because it involved many technicalities. And we notice that people with lower revenue and education participated considerably less, even though the other issue voted that day was considered to be easy to decide: to restrict gun ownership or not.

Source: Milic et al. (2019, 45f.)

Besides education and income, there are other socio-demographic characteristics that influence political participation: younger, female, unmarried and divorced citizens participate less. Moreover, some political characteristics make a difference: people with no party affinity and with no trust in the authorities participate considerably less, and the most important single factor that determines participation is political interest (Heidelberger 2018).

From a normative perspective, however, the most important defect of direct democracy lies in the unequal participation of the social classes. Direct democracy, if its procedures and issues become too complex, turns out to be a ‘middle-class democracy’. To avoid this, direct democracy must be simple in its procedures and in the formulation of issues on the ballot.

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8See Schattschneider’s (1960, 35) earlier criticism of Dahl: ‘The flaw in the pluralist heaven is that the heavenly chorus sings with a strong upper-class accent’ (also Lutz 2006, 114ff.).
4.5 THE PEOPLE BETWEEN KNOWLEDGE, TRUST AND PROPAGANDA

This section addresses further key questions about direct democracy: do citizens understand the issues they vote upon? What are their motives when saying yes or no to a proposal? What is the role of the political elites and their campaigns? And is it true that, given enough money and propaganda, any votation can be won? When discussing these questions, we can draw upon a fast-growing number of scholarly studies of voting behaviour in Switzerland.9

4.5.1 Example of a Vote: Should There Be Tougher Restrictions on Refugees Seeking Asylum in Switzerland?

Immigration policy has been one of the most controversial issues of Swiss politics for over 50 years. Back in the 1980s, the number of refugees seeking asylum in Switzerland grew drastically from about 3000 per year (1980) to more than 37,000 (1990), and federal and cantonal resources became strained. Many refugees had to wait several years for a decision on whether they were awarded refugee status. A negative decision meant expulsion, which was considered to be inhuman by many Swiss, who even tried to hide or protect refugees facing repatriation. On the other hand, there was a growing reluctance among a part of the population to allow too many refugees to stay in Switzerland, in addition to the more than one million other foreigners. In 1985, the federal parliament revised the asylum law. It sought to process the growing number of demands for asylum more rapidly and to undertake expulsions more efficiently. The revision of the law was a compromise: right-wing and xenophobe forces were against encouraging a ‘growing mass of refugees’, who for them were mostly ‘false asylum seekers’ coming for economic reasons and not because of political persecution. They proposed severe measures to keep refugees out of the country and a simplification of the legal procedure. Refugee organisations, the Greens and the political left, on the other hand, were opposed to changes in the existing liberal law and its procedure, which offered refugees many ways (and the time) for appealing against negative decisions. Parliament finally chose a middle way, restraining the procedure for asylum, but leaving doors open to refugees according to the standards of

9 For an excellent overview, see Milic et al. (2015).
international law and the humanitarian tradition of Switzerland. The revised law was not to the taste of Swiss refugee organisations, which, together with the Greens and parts of the left, successfully launched a referendum challenge that was voted on 5 April 1987. The challenge failed: 1,180,082 citizens voted for the revised law, 572,330 against, giving it a majority of 67.3% (see Box 4.2). It was not the first of several referenda on Swiss refugee policy, and others followed, illustrating the salience of the issue up until today.

Box 4.2 Tougher Restrictions on Refugees: Cleavages, Motives, Interests and Voting Behaviour

A) Cleavages

According to the VOX post-vote survey (no. 32, July 1987), voting behaviour firstly mirrored the strong divide between the right and the left, each mobilised by the slogans of political parties. For instance, voters with affinity to the Swiss People’s Party (90% yes), the Radicals and Liberals (88%) and Christian-Democrats (70%) massively supported the law. On the other hand, voters with affinity to the Social-Democrats (41%), Greens (37%) and small left-wing parties (9%) were clearly opposed to asylum restrictions. The ratio between voters of the political right and left was about 2:1. Note, however, that voters with no party affinity constitute a good majority of all voters. In the vote of April 1987, they supported the project with 72%. On questions such as this one where the traditional division between right and left is decisive, the left has a chance to win only if it can sway voters with no party affinity.

Besides the right-left divide, the VOX survey also revealed a social divide. There was higher support for tougher restrictions among lower social strata. Education, particularly, had a strong effect: the higher the level of education, the more liberal the attitude towards refugees. Citizens with only basic education massively supported the law (88% yes), whereas voters with university degrees rejected it (41% yes).
B) Motives and Interests

Between 1970 and 2019, the Swiss voted 34 times on questions to do with migration and/or asylum (Swissvotes 2019). With 25% of non-Swiss among the resident population today, questions of integration and social conflict have persisted among the most salient and controversial political issues (Fischer et al. 2002; Schneider and Holzer 2002; Linder 1991). In the many votations on migration and refugees, one can observe a constant pattern composed of three main groups, each with different motives and interests:

- **Categorical opponents of (growing) immigration**: protagonists of restrictions on immigration and asylum seekers share a variety of motives that range from feeling the necessity to set limits on the proportion of the foreign population, through wishing to protect traditional Swiss values, to fear of overpopulation and loss of Swiss identity. Unskilled Swiss workers feel disadvantaged by growing immigration of unqualified workforce, while taxpayers are reluctant to accept refugees who cannot be integrated into the labour market.

- **Categorical defenders of liberal immigration**: protagonists of free access for asylum seekers are mainly acting according to humanitarian and egalitarian beliefs, but they may have different reasons: congruence with political ideologies of the left and the Greens, or the fact that better educated people have been less exposed to the negative effects of immigration.

- **Pragmatists**: whereas the attitudes of categorical opponents and defenders rarely change and lead to a stable voting behaviour, pragmatists are more flexible. More than defending social values, the voting behaviour of pragmatists depends on utilitarian considerations. In the vote on workforce immigration, pragmatists can embrace the position of Liberals because as professionals they take advantage of foreign workers or new consumers. In questions of refugee policy such as the referendum of 1987, however, they vote with the opponents of immigration because asylum seekers imply public expenditure with no immediate benefit. A pragmatic attitude is to be expected especially among occasional voters with no party affinity.
The referendum case of restrictions on asylum seekers gives us some first insights into voters’ behaviour. First, we notice that the rationality of voting has different roots: social background and corresponding experience, moral values or political beliefs can be important for some groups of voters, while others behave in more pragmatic ways. Political scientists, for a long time, have led a debate on whether political behaviour depends on individually defined self-interest or shared social values. Evidence from other studies on direct democracy (e.g. Vatter 1994; Vatter and Heidelberger 2014, Mueller et al. 2016) confirms what is illustrated in our case: both models of behaviour, self-interest and shared social values up to solidarity, do exist. Second, voters’ behaviour is influenced by the voting campaign: to a large degree, they follow the recommendations and slogans of political parties or other actors, but they may and do change their mind based on the different arguments (Colombo 2018, 799). This brings us to the next point: the campaign.

4.5.2 Shaping Opinions in a Voting Campaign: The Actors

Citizens cast their votes individually and secretly, but they make up their minds during public discussions. Votations are preceded by intense political campaigns. Different actors provide information, try to convince, praise or denounce, to mobilise and attempt to lead voters to approve or reject. Even the most complex issues must in the end result in a simple yes or no. Therefore, especially at the end of a campaign, the issue has to be treated as a simple message. Let us first consider the actors involved in a voting campaign, and then, in Sect. 4.5.3, evaluate their impact on voting behaviour.

Citizens and their predispositions: In the political asylum case, many people would have had first-hand experience with the question on the ballot. They might have had a job where their colleagues or customers were foreigners. Many may have liked foreigners and refugees because they were good customers or willing and cheap workers doing jobs the Swiss had refused. But even if people liked foreigners for these reasons, they may have said that there were already too many of them in Switzerland. They may have felt like strangers themselves because their colleagues at work all come from Portugal, Bosnia, Turkey or Germany. They may have feared that their children would learn less in school because the majority of their classmates were foreigners speaking perhaps seven different languages but only rudimentary German, French or Italian. In this case, people have firm
attitudes based on first-hand experience. If a popular vote on the issue comes up, they feel able to decide the question on the basis of their own, personal experience. The voting campaign may mobilise voters and confirm their own preference for a yes or no, but it does not change their minds because they are pre-dispositioned.

Yet there are other issues more difficult to decide. Tax reforms, for instance, may be complex affairs. In some cases, even specialists are not able to predict their consequences. Voters cannot infer from their first-hand experience if the proposed reform will improve or worsen their own or the general situation. They must rely on the information and recommendations of campaign actors they trust. In this case, the campaign becomes very important because the issue is not pre-dispositioned. Good arguments, recommendations by political parties, clues and catchy propaganda slogans are able to influence voters in shaping their opinion. The campaign, in such cases, may have a decisive effect on the outcome of the vote.

The Federal Council: The executive plays an important role. It decides the date and issues of each ballot. The Federal Council provides the official information on the proposals at stake. In a booklet sent to every voter, it describes each proposition, gives an account on the arguments of parliament and repeats the official recommendation for the vote. Part of the booklet is reserved for the position of the opponents. This and the generally sober account of the issue at stake may be two reasons why voters pay much attention to the Federal Council’s booklet; it is one of the prime sources of information they consult when voting. The Federal Council also takes part in the campaign by promoting and defending the position of the parliamentary majority.

Political parties: Parties engage strongly during a campaign. Popular votations are an opportunity to highlight themselves, reflecting on concrete issue against the background of their basic ideologies and programmes, and pointing out the presumed interests of their voters and their affinity to interest groups. Thus, in their slogans and recommendations, parties often emphasise basic cleavages such as left vs. right, urban vs. rural, or ecology vs. economy on which they are permanently positioned to attract and keep their clientele. The ways political parties engage in the campaign have fundamentally changed over time. In earlier periods, local and cantonal party assemblies were at the centre of opinion-shaping and mobilisation. Today, parties mostly rely on the media and the web. Their politicians take part in public debates, organise rallies, try to have their
positions published in print, use social networks, seek face-to-face communication in shopping areas, without however forgetting about some of the old instruments of political propaganda: posters and newspaper ads.

**Pressure groups:** Vested interests of industry, employers’ organisations and trade unions, social movements and other non-governmental organisations become active if one of their core issues is at stake. Their means of campaigning vary to a great deal. Some of them, like trade unions or social movements, primarily try to mobilise their own members through their personal networks. Others, such as business associations, also launch public propaganda campaigns, sometimes spending big money.

**The media:** Radio, television and print media strongly engage in the campaign. They explain and comment on the issue, provide platforms to politicians and political parties, give background information and undertake fact-checking. Not only do they investigate people’s opinions and air the views of government and its opponents, they also present their own thoughts on the issue. There is a public TV and radio service in each linguistic region, bound to observe a balance between pro- and contra-sides. In earlier times a great number of newspapers were affiliated to specific parties and therefore represented their views. These newspapers have largely disappeared. Today, the press has become as commercial as almost any other product—yet its positions are not ‘neutral’; instead they reflect the preference of editors or what is presumed to be the preferences of their readers. Since the 2000s, websites, blogs, e-mail lists and online multimedia have become new elements of voting campaigns (see also below, Sect. 4.6.3).

**Producers of propaganda:** Marketing and Public Relations (PR) agencies are not independent actors in the process but offer their service to any actor willing to pay. This may be the organisation of an entire campaign for one side, or simple voting propaganda defined as information whose only objective is to forge the majority desired by those who pay for it. By its very nature, propaganda need not tell the whole truth about an issue, and sometimes it has little to do with the issue and nothing with the truth. Political advertisement in newspapers and on posters, propaganda flyers and pamphlets are dominated by slogans, photographs, images or cartoons. Their message is aimed at mobilising good or bad feelings, emotions and cues about the controversial issue. Campaigning has become highly professional, and short-term propaganda is not its only means. Today, actors with big interest and big money sometimes hire marketing agencies to launch long-term PR campaigns. The first example dates back
to the 1970s when, following a major scandal, the Social-Democrats launched a popular initiative for tougher restrictions on banks. To counter this proposition, one of the big Swiss banks began a PR campaign, regularly taking out entire pages in newspapers to describe banking activities and their importance to Switzerland’s economy. Just occasionally there was a mention of the popular initiative. By 1984, the banks had succeeded in positively changing their image. In the last months of the campaign on the initiative, the banks even deemed it unnecessary to run a propaganda campaign on their own since their earlier PR-efforts had achieved its objective. The initiative failed (73% no).

*Pollsters:* When the *Schweizerische Volkspartei* (SVP)’s popular initiative ‘against mass immigration’ was narrowly accepted in February 2014, everybody was very surprised because the country’s leading—and in fact largely monopolistic—polling firm, gfs.bern, had predicted a clear ‘no’. The same had happened five years before, with the SVP’s anti-minaret initiative (e.g. Kovic 2014). The company subsequently lost the public contract for post-vote analyses, ending the VOX-series which had begun in 1977. The new post-vote analyses are called VOTO.10 More generally, the last decade has seen a number of new kids on the polling block, notably companies using online-only, opt-in surveys or betting markets.

### 4.5.3 Are Voters Capable to Decide on High Policy? Theory and Swiss Experience

Democratic theory is profoundly divided on whether ordinary citizens are capable of rationally deciding political issues. On the one hand, adherents of elitist, liberal or representative models of democracy argue that the mass citizenry is not qualified to decide about high politics. Therefore, their influence should be restricted to electing those who decide for them. Sartori (1987, 120), the Italian theorist, went so far as to say that direct democracy ‘would quickly and disastrously founder on the reefs of cognitive incompetence’ (see also Budge 1996, 69). Adherents of the model of participatory or radical democracy, on the other hand, argue that direct-democratic choice is not only desirable from a normative point of view but also feasible. It is not necessary that all citizens decide all questions fully informed and on a systematic appreciation of all arguments. If capacities and motivation are lacking, they can resort to simplifying strategies. Using

10 See https://www.voto.swiss/voto/ [1.5.2020].
shortcuts and cues, they can delegate the search for information to others and accept recommendations by authorities they trust to be competent (Lupia and McCubbins 1998; Kriesi 2005, 9).

This notion of simplifying strategies is important and needs some explanation. Just as in daily life, when we are at the limits of our knowledge, we begin to rely on trust. To drive a car safely we need some instructions on how to handle it, but we need not know how the engine works. Nobody knows precisely how all the complex components of a nuclear power plant operate. It is designed, built and run by specialists who each trust in the professional knowledge of others. In politics, we can make similar observations. MPs specialise in some preferred policy areas, and an expert on social policy, for example, may rely on the advice of colleagues when it comes to fiscal policy. She then decides based on cues or heuristics.

The same mechanism, substituting trust for knowledge, works with voters. They rely on recommendations from other people who are supposed to know more about the tax or nuclear issues at stake. In fact, relying on the expertise of trusted professionals may even be more rational than trying to fully understand an issue oneself. So we should not blame voters for knowing too little about the subject of a vote; substituting trust in heuristics and cues from others for one’s own knowledge is not behaviour specific to direct democracy.

Thus, since Swiss direct democracy, after more than a century, has not ‘disastrously foundered on the reefs of cognitive incompetence’, we may reject Sartori’s proposition and concentrate on another question: to which degree do voters rely on a systematic appreciation of arguments or on cues, using simplifying strategies?

Kriesi’s (2005) extensive study on direct democracy, using VOX survey data from 148 votes between 1981 and 1999, provides interesting empirical evidence and insights. First of all, voters’ capacity should not be underestimated. In their majority, voters decide based on a systematic evaluation of pro and contra arguments. As expected, these are mainly the well informed, motivated and politically interested voters. Moreover, voters decide on arguments if they have strong preferences for an issue, based on personal knowledge (cf. also Colombo 2018). In contrast, heuristic voting is prevalent among voters with weak opinions, ambivalent towards or ignorant of the issue at stake. But the study also shows that differences between systematic and heuristic voting are not absolute: Systematic voting strongly relies on arguments provided by the political elites, many of which do not differ very much from heuristics and cues. Furthermore,
voters seem to make intelligent use of heuristics; they do not take them mechanically but look at the context and actors who provide them. Cues as such do not work—they need to be credible. In sum, the study comes to the conclusion that voters do not exhibit the ‘rational ignorance’ advanced by elitist theory, and that heuristic voting in general does not lead to irrational choices (see also Steenbergen and Colombo 2018). These findings, though, depend on one essential other factor: the campaign and the quality of arguments offered by the political elites.

4.5.4 The Role of Political Parties and Their Campaign

Political parties play a crucial role for the outcome of the vote. In the ideal referendum case, when all of them support the project unanimously, success is practically guaranteed, and this is not surprising. The compromise proposed anticipates possible opposition and presents a Pareto-optimal solution in which nobody is losing compared to the status quo ante. Interest groups also back the proposition. Therefore, opposition in the campaign is weak and cannot convincingly propose a more attractive solution.

This ideal situation is relatively rare. More frequently, some groups feel as losers and the political elites are split: one or more of the four governmental parties defects and plays the game of an issue-specific opposition. This may happen already during parliamentary proceedings, or later by decision of the party rank-and-file, which not always back the position of their parliamentary delegation. In all these cases the risk of defeat for the government increases considerably. In earlier times the centre-right coalition, as a natural majority after all, was able to win two out of three votations against left-wing opposition (Papadopoulos 1994, 137). With the Swiss People’s Party seeking a stronger right-wing profile by way of issue-specific opposition, the centre-right coalition is often split, putting government projects at risk. If two parties leave the grand coalition, a defeat of the governmental project is highly probable.

Many votations are located somewhere between these highly predictable extremes of government success or failure. If the outcome is predicted to be tight, two factors play an important role: the composition of the party coalitions of government and opposition and their campaigning (Kriesi 2005, 82–3). This is astonishing, as campaign money comes largely from interest groups. Yet to make propaganda trustworthy, it must be embedded in the campaign strategies of parties. Moreover, the intensity of
campaigns itself—and the amount of money spent for propaganda—varies a lot, depending on the closeness of the vote as expected by the elites (see also Hermann 2012, 16).

In all these cases, the outcome of a popular vote is characterised by high uncertainty. The outcome of campaigns, as tennis matches between two equally strong players, cannot be predicted from the past. Actors adapt and learn from past failure. Models of scientific research are able to analyse outcomes ex post, but they cannot predict the outcome of upcoming votations—which may even be beneficial for direct democracy. The main conclusions, however, are the following: political elites, their coalitions and campaign efforts play an important role for the outcome of a popular vote. Even so, they do not control direct democracy. The government coalition sometimes loses, and opposition success sometimes comes as a big surprise. The government and political parties have learned to live with it.

4.5.5 Can Money Buy Votes?

After a votation, the losing side often complains that the other side has won because it had more money to spend on propaganda. Indeed, it happens that the antipodes in a votation have vastly different resources at hand: the propaganda budget of one side may exceed that of its opponents by a factor of 20. The question whether money and propaganda can buy votes is therefore of practical importance. In an early study on the subject, Hertig (1983) found a strong statistical correlation between success and propaganda in all 41 federal votations between 1977 and 1981. An even stronger correlation was found in 20 cases where the propaganda effort was very lopsided; that is, when the propaganda of one side dominated the other by a ratio of at least three to one. Predominant ‘yes’-propaganda won in 12 out of 13 cases, whereas predominant ‘no’-propaganda was successful in all seven cases.

These statistical correlations, however, do not provide proof that votes can be bought. It is possible that some votations would also have been won without money being spent on propaganda, or that one-sided propaganda expenditure results from existing one-sided preferences. But the study gave rise to a public debate. How much money should be allowed to be spent by a single actor on a campaign, and to which degree is it tolerable that one side may spend a lot more than the other? Swiss law guarantees voters a constitutional right for fair conditions to express their undistorted preferences. Critics have argued that fair conditions of voting
have become an illusion because of the influence of powerful private actors and unequal, largely opaque campaign budgets. Bourgeois parties, the main beneficiaries of campaign money, have been hostile to any idea of regulating political propaganda as it exists in US states such as California and Colorado (Cronin 1989, 99–113).

The Hertig study was not the last word on the question. Further studies showed that the effect of propaganda was not the same for all issues: it was weaker on pre-dispositioned issues and when voters were confronted with ‘simple’ questions such as abortion or speed limits, which they can evaluate against the background of their own experience. Non-dispositioned issues and complex questions, however, are like empty labels on which propaganda can inscribe its clues because voters cannot decide on the basis of their personal experience (Hirter 1989; Longchamp 1991).

Kriesi (2009, 83–106; see also Chap. 5) also demonstrates that there is no simple equation between propaganda and success. As already mentioned, the amount of propaganda money spent will depend on the expectations of the outcome. If a tight outcome is expected, more money is spent, and in these cases money may indeed be the deciding factor. In other situations, propaganda is of less influence. Moreover, campaign money does not play the same role for the government and the opposition camps. In the hands of the latter, it is worth more. In the end, according to Kriesi, truth is in the middle: money buys votes neither ever nor never, but sometimes it can be decisive.

4.6 Conclusions

4.6.1 Semi-direct Democracy: An Exceptional System

The Swiss system is at odds with mainstream political thought. It contradicts theories of representative democracy that consider the people’s capacity too limited for rational direct policy choices. The Swiss case provides evidence that intensive political participation beyond the occasional election of MPs is possible and, as a complement to the parliamentary process, can play an important role. It shows that a substantial share of the

11 At the time of writing (end of 2019), a left-wing popular initiative on ‘more transparency’ is pending in parliament. In the cantons of Fribourg and Schwyz, similar initiatives were accepted some years ago, and Geneva, Neuchâtel and Ticino already require their parties to make certain donations public.
population is willing to discuss and express their political preferences regarding even the most complex issues. And if there are shortcomings in the system of semi-direct democracy, Switzerland has neither suffered anarchy, as some have feared from the nineteenth century up to our days, nor has it experienced the political revolutions others had dreamed of.

Direct democracy and the complexity of modern society are not mutually exclusive. On the contrary, direct democracy is an important device for social learning processes which make people politically aware and able to deal with political complexity. The federation, the cantons and the communes fulfil their responsibilities and functions just as well as political authorities in other countries—optimists might even say they do a better job under the constant watch of their citizens.

Moreover, direct democracy has changed the entire political system. Use of the referendum was an important factor that has led to the institutional system of Konkordanz or consensus democracy (Neidhart 1970). Chapter 5 describes this historical process in which the referendum became an institutional constraint that induced cooperation among all major political parties and led to negotiated legislation and mutual adjustment among interest groups. In other words, power-sharing is an institutional arrangement to reduce the risks of defeat of government policies by referendum. These indirect effects of the referendum on the legislation process have become as important as the direct impact on specific policies.

### 4.6.2 Direct Democracy Between Integration and Polarisation

Does direct democracy polarise or integrate the people? There are good arguments for both views. On the one hand, direct popular choice amounts to the final word in a political conflict. For a certain time, all quarrels have ended. As a verdict, the popular vote is respected by the authorities and losers alike. The Federal Council, if defeated, would never say that the people’s decision was wrong. On the other hand, the campaign before a vote heats up conflict. The articulation of social and economic antagonisms, sometimes in polemic and populist ways, are a reliable means of mobilising the voters.

An empirical study on direct democracy between 1874 and 2006 gives evidence on whether political parties tried to mobilise or attenuate the basic cleavages in Switzerland in every one of the 537 votations, and how the cleavages were perceived by the participating citizenry (Linder et al. 2008). It reveals that in a historical perspective, two of the
cleavages—dealing with religion and language—have cooled out during the twentieth century also amongst citizens. Quite astonishingly, however, we observe a rising polarisation of the citizenry along the cleavages of urban-rural and labour-capital sides in the final four decades. Is this conclusive proof that power-sharing by the political elites is in vain?

Against this inference speaks the fact that the evolution of cleavages is itself dependent on the conflict-laden modernisation of economy and society. Institutional politics can only fuel or attenuate them. In Switzerland’s semi-direct democracy, the political elites are forced to seek compromises and thus generally attenuate basic societal cleavages. Popular votations, however, are the arena of issue-specific opposition, and political parties use this arena not only for attenuation but also for fuelling basic cleavages. Thus, parliamentary and direct democracy represent two different arenas. This does not mean a clear distinction of a parliamentary theatre of integration and a direct-democratic domain of polarisation. But political parties, in regularly bringing up cleavages and using them to position themselves in their campaigns, string up the underlying conflict rather than attenuate it.

Thus, the role of direct democracy for societal conflict is ambiguous. On the one hand, we find integration. The vanishing of religious and linguistic cleavages is evident, and it corresponds with the fact that political parties are trying to bridge these divides not only ahead of popular votes but also in seeking electoral gains throughout the country. On the other hand, in Swiss society there is evidence of deepening cleavages between rural and urban areas as well as between capital and labour. On many issues, the salience of these basic societal conflicts is regularly emphasised.

Over the last two decades, the Swiss People’s Party launched a series of popular initiatives on supposedly unresolved immigration problems. Two of them, the prohibition of constructing minarets (2009) and ‘against mass immigration’ (2014), even succeeded against all odds. Uneasy feelings towards Muslim practices and fear of Islamic fundamentalism as well as job market related worries, respectively, are part of the explanation. The 300,000 Muslims—some 35% of which are Swiss citizens—and foreign residents more generally, however, had reasons to feel discriminated against. As in other cases, it was also controversial whether or not the minaret initiative violated constitutional or international law.

The risk of direct democracy is therefore twofold. One, the popular initiative can be exploited for electoral purposes, which is nothing new. But it makes a difference whether this is done by a marginal or a
governmental party. In the latter case, it is detrimental for the functioning of the governmental coalition. Two, initiatives can be discriminating against minorities, especially if they become part of a permanent electoral campaign and cannot themselves vote (Christmann and Danaci 2012). Thus, in dealing with social conflict in direct democracy, the political elites have a great responsibility for the quality of campaigns, which corresponds with the findings of Kriesi mentioned above. Direct democracy, in the twentieth century, was able to deal with salient conflicts thanks to political parties that renounced populism and sought broadly acceptable solutions. The hope is that this will last into the twenty-first century as well (see however Papadopoulos 2009).

4.6.3 Digitalisation: Opportunity, Risk—Or Both?

Digitalisation has profoundly changed political processes. Politicians use personalised websites and social media as a most effective device to mobilise voters and bring their intents and messages immediately to the public, and this not only before elections. Citizens, in turn, use Twitter, Facebook or Instagram as swift, cheap and reliable communication channels open to all. These tools permit even groups lacking financial resources to articulate and debate their claims without intermediaries, to mobilise supporters in great number and to address politicians in a direct, public way. Finally, a great number of independent online newspapers present alternative issues, viewpoints and opinions—even those you would not normally find in the mainstream media.

No wonder that enthusiasts have celebrated digitalisation as a democratic revolution. And in a way, it really is one. But meanwhile it has become clear that this disruption is not always beneficial for democracy. Online interaction, rather than stimulating mutual respect and understanding, can lead to growing polarisation (Bail et al. 2018). It can also involve automated bots and anonymous, even malicious trolls which deliberately undermine deliberative standards. Tech giants such as Apple, Alphabet, Facebook or Twitter as well as parties and campaigners increasingly rely on algorithms to display targeted news and ads. This accelerates processes of individualisation, fosters so called ‘eco chambers’ of like-minded users and creates diffidence in the polity: if the virtual is the new real, the real must be fake.

Swiss politicians were, for a long time, fascinated by electronic voting, for elections as well as for votations in direct democracy. Their hope was
to boost participation and rely on a new channel of communication: e-communication which voters use in their daily life. Some 20 years ago, several cantons began to introduce e-voting on an experimental base, allowing part of the citizenry to cast their vote using computers or smartphones. The results, after 15 years of experience in 15 cantons in more than 300 votations, were mixed. A comparison of two groups, one using e-voting, the other conventional voting (in person or via post), showed no difference in voting behaviour. Thus a ‘digital divide’ which many feared did not occur. But neither was voting turnout higher, nor did e-voting attract new groups of voters. E-voting also proved more complicated for voters than conventional forms of voting (Germann and Serdült 2017).12

When the federal government decided to extend e-voting to the federal level, opposition arose from an unexpected side, namely from digitalisation experts. They showed that existing e-voting software could not completely exclude the risk of being hacked. While irregularities at a single conventional polling station are usually negligible, they warned of a systemic risk in e-voting which could lead to the distortion of an entire election or votation. The Federal Council was unwilling to accept this risk and stopped the whole e-voting project in 2019.13

But how about collecting signatures for a popular initiative or a referendum, in which digital tools can play their strengths of quick and massive mobilisation? In contrast to e-voting, we do not have systematic evidence on the effects of e-collecting (Bisaz and Serdült 2017). Few experiences of private actors such as wecollect.ch show that e-collecting is promising: in several cases, they succeeded in collecting in shorter time a greater part of the required signatures for a referendum (50,000) or a popular initiative (100,000) than actors on the street. In its present form, e-collecting platforms, on request, mail an official form which the voter has to print, sign by hand and then mail back (postage is covered).

This is an acceleration, but does not use all possibilities of digitalisation: using an app or electronic signature, the voter could just click a ‘like’ or ‘dislike’ button to sign a referendum or popular initiative. Examples from US-States and the Netherlands show that in this way the required number of signatures can be collected in no time. As a consequence, authorities

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12 Results which correspond to earlier experiences in other countries, see Oostveen & van den Besselaar (2009).
13 See https://www.bk.admin.ch/bk/de/home/dokumentation/medienmitteilungen.msg-id-75615.html [27.10.2019].
think about restricting or even banning e-collecting (Nuspliger 2018).
The same could happen in Switzerland’s semi-direct democracy. If parliament passes a law for higher gasoline prices, for instance, any well-known platform for used cars could easily play a key role. Since some platforms are visited 50,000 times a day, they could collect the 50,000 ‘dislikes’ almost instantly, which makes the existing time limit of 100 days completely obsolete. At the same time, the decision to sign up to a referendum by a simple ‘dislike’ button resembles more an emotional reaction than a deliberative weighing up of the pros and cons of a collective decision.

In sum, digitalisation seems to play an ambiguous role especially for direct democracy. Its many advantages of mobilisation and extension of participative opinion-formation stand in contrast to an uncontrollable concentration of power in the hands of internet giants and a loss of quality deliberation. While optimists still ask: how can we use the innovations of digitalisation for democracy? pessimists worry: how can we protect democracy from being undermined by the digital disruption?'

4.6.4 The Political Culture of Direct Democracy: Particularities and Limits

Some Swiss may criticise their politicians, parliament, the courts, the Federal Council, federalism or power-sharing. There is one thing, however, which almost nobody would criticise: the political rights of citizens and the institutions of direct democracy. In surveys, direct democracy regularly shows up as the most precious element of political institutions, and only few interviewees agree with the idea of restricting it in favour of more parliamentary power. The fear that some of the people’s political rights may be lost if Switzerland joins the EU is one of the most important obstacles for those few who are advocating membership. For many Swiss, ‘democracy’ simply means ‘direct democracy’, and some even find it difficult to accept decisions of parliament or the Federal Council as truly democratic.

Against the background of the high esteem for such ‘self-rule’, one would expect the Swiss to be particularly participative in economic and social life. An unbiased outside observer, however, would probably be astonished that the values of direct democracy have not had more impact on Swiss society beyond politics. He would find no evidence that Swiss schools are more participative than those in the Netherlands or Italy. Moreover, our observer might be stunned to realise that workers and
employees in Switzerland have fewer formal rights of codetermination at the workplace than their colleagues in Germany or Sweden, despite the fact that Swiss employers and unions have been practising social partnership for over 80 years, since 1937.

We may conclude that direct political participation has had little influence on Swiss economic and social life. Rather it is conceived as the specific Swiss culture of institutional democracy. With such a perspective, we can better understand the popularity of people’s political rights. They are valued as embodying the self-rule of citizens and ensuring control over the political elite. At the same time, direct democracy is considered to be one of the most important particularities distinguishing Switzerland from other countries.

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Direct Democracy: Chances and Challenges

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Direct Democracy: Chances and Challenges*

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Abstract
This paper discusses several problems of direct popular decisions that are often overlooked in political and scientific debates. In the first part, we consider problems related to the functioning of direct democracy. As a political system, it only makes sense if there exists a continuous process and not if only occasional single questions are brought to a referendum. Then, the relation between direct democracy and the rule of unanimity is discussed, a subject of special relevance to the European Union, before we consider the role of quorums. In the second part, some areas are considered in which conflicts might arise. Results of initiatives might be incompatible with individual human rights or might endanger fiscal sustainability, and referenda might impede economic reforms. All these problems, however, do not justify a general rejection of direct popular rights. Thus, we conclude by listing several points that should be observed to safeguard the well-functioning of direct democracy.

Keywords
Direct Democracy, Referendum, Initiative, Human Rights, Economic Reforms, Fiscal Sustainability

1. Introduction

In recent decades since the fall of the iron curtain, direct popular rights have been extended in many countries. There is the expectation that this process will continue. On 21 December 1996, the Economist wrote: “The coming century could see, at last, the full flowering of the idea of democracy… The machinery by which this is done is the referendum, a vote of the whole people. If democracy means rule by the people, democracy by referendum is a great deal closer to the original idea than the every-few-years voting which is all that most countries have.”


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The extension of direct popular rights holds, for example, for East European countries, but also for the German Länder. During the negotiations on Germany’s Grand Coalition at the end of 2013, it briefly looked as if the introduction of direct popular rights to Germany might be possible even on the national level. The two smaller of the three participating parties, the Social Democrats (SPD) and the Christian Social Union (CSU) seemed to favor this. But ultimately the largest party, the Christian Democratic Union (CDU) prevailed with its rejecting stance. The supporters of direct democracy on the federal level must therefore await another legislative period, maybe even longer. The question, of course, is: does it make any difference at all whether the citizens have direct rights in the political process?

What would Switzerland look like, for example, if it had no direct popular rights (on the federal level)? Take just a few major decisions as examples. The most important one might be the women’s right to vote. They would have had active and passive voting rights on the federal level since 1958, at the latest, rather than only in 1971. A second one is participation in the integration of Europe: Switzerland would have been a member of the European Economic Area and possibly also of the European Union; in both cases, there would have been unlimited free movement of persons between Switzerland and EU member countries in the future. A third one is energy policy. There would probably also be more nuclear power plants; in 1990, the initiative for a ten-year moratorium was accepted with the effect, among other things, that for a while no further nuclear power plants were proposed and later, the processing of the proposals submitted shortly before the Fukushima disaster was suspended.

But economically, too, some things would be different. Switzerland would have a Value Added Tax of at least 10 per cent; on 12 June 1977, a draft law was rejected that planned the transformation of the Sales Tax into a VAT, but also stipulated a maximum tax rate of 10 per cent. If Switzerland had joined the European Union, the rate of the value added tax would even be at least 15 per cent; today it is 8 per cent. Starting in 2015, the toll way permit sticker presently costing 40 CHF should have increased to 100 CHF; the voters rejected a federal draft law to this effect on November 24, 2013. Finally, today women would not receive their full pensions from the first column of the old age pension system, Age and Survivors’ Insurance (AHV) at the age of 64 today, but only at 65; the planned age-increase on 16 May 2004 was clearly rejected. There are many other examples in which the people decided differently than the government and parliament recommended, sometimes even in cases where, as for example when deciding about joining the European Economic Area on December 6, 1992, the parliament’s decision had an overwhelming majority.

Without direct democracy, Switzerland would thus look markedly different. Vice versa, Germany, too, would be in a different situation today, if there were such rights on the federal level (or if they had existed in recent decades). There is a high probability that Germany would not be a member of the Euro zone, and it is questionable whether without Germany the Euro would have been introduced at all. If one can give any measure of belief to surveys, Germany would also already have had a legal minimum wage for quite some time and not only since 2015. If the parties had not suggested it themselves, an initiative would likely have introduced this. The child-care subsidy, on the other hand, would probably have had no chance in a referendum. There are likely additional examples of the German government and parliament making decisions against a clear majority of the population that would not have survived a referendum.

Thus, independent of the political evaluation, direct democracy makes a difference. It should also not be overlooked that direct democracy is very popular among the Swiss population, and that—at least presently—Switzerland’s economic and political situation is very positive compared to most other Western democracies. Traditionally, its unemployment rate is very low. The main reason for this might be the flexible labor market, but direct popular rights did at least not impede it. Compared to other industrial countries, its tax share is

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1In the first half of 2001, i.e. two years after the introduction of the Euro as currency but before the change of cash, surveys indicated still a clear majority against the introduction of the Euro. This changed due to expensive image campaigns; in December 2001 there was for the first time a majority in favor of the Euro (see Forschungsgruppe Wahlen, 2002). But in 2015, there was again a majority of Euro-sceptics among the German population. See: Umfrage: Die Deutschen sind mehrheitlich Euro-Skeptiker, Deutsche Wirtschafts Nachrichten 4 May 2015. http://deutsche-wirtschafts-nachrichten.de/2015/05/04/umfrage-die-deutschen-sind-mehrheitlich-euro-skeptiker/ (12/04/16).

2It might be objected that the low Swiss unemployment rate is mainly because residence permits for foreign workers will not be prolonged once they lose their job. This is correct for the crisis of the seventies when Switzerland’s economy was hit much stronger than most others were and, nevertheless, there was hardly an increase of unemployment. This argument is, however, not valid for the period after 1990 when most foreign workers (and their families) had unlimited residential permits which were not conditional on having a job. As a result, unemployment rose considerably after 1990. The decline later on and the low rate during the last fifteen years can, therefore, not be traced back to the policy on foreigners.
The debt brake introduced in 2001 at the federal level led to a decline of public debt (in absolute terms) since 2005; public debt did not even increase during the economic and financial crisis, and at the end of 2013, with 34.6 per cent in relation to GDP, it was again below the level of 1992 of 38 per cent. Taking all evidence that is well documented in the literature and discussed below in Section 3.2 together, direct popular rights might have had a positive impact on the sustainability of Switzerland’s public finances not only at the federal but also at the cantonal level.

Of course, whenever we try to evaluate the impact of direct popular rights on economic or political developments we have to be very cautious in order not to draw any premature conclusions from single examples. On 9 February 2014, a majority of 50.3 per cent of the Swiss voters agreed to a limitation of the free movement of European Union citizens to Switzerland. Parts of the international press as well as many contributions in the internet interpreted this as a strong indication of hostility of the Swiss population against foreigners. However, it is overlooked that Swiss voters not only agreed to this free movement on 21 May 2000, but also to its extension to Bulgaria and Romania on 9 February 2009. Beyond that, on 26 November 2006, they accepted making an “enlargement contribution” of 1 billion CHF in the form of concrete projects in the ten new EU member states. The EU had demanded this as compensation for the eastward expansion of the European common market, to which Switzerland has free access. It is not clear which EU member state would also have been willing to make such a contribution.

Looking at the German discussion on direct democracy from a Swiss perspective, it is conspicuous that hopes and fears are tied to its introduction that can hardly be justified. For example, direct democracy can reduce people’s frustration with politics, but not eliminate it. There is frustration with politics in Switzerland as well: for example, if one is (almost) regularly in the minority when referenda are held, then one’s enthusiasm for this system is probably limited. On the other hand, the claim “When the citizens themselves decide, then the monologue replaces the dialog between voters and elected officials”, is simply wrong, as the Maastricht Treaty, for example, shows. When the German parliament, the Bundestag, voted on this issue, there was hardly any public discussion in Germany, in particular not between voters and elected officials; in contrast, in Denmark an intense discussion preceded the referendum of 2 June 1992.

It is also often argued that Adolf Hitler came into power with the aid of direct democracy, although research has long since disproved this. The two referenda that were carried out during the Weimar Republic can hardly be made responsible for what happened with Adolf Hitler’s appointment as Reichskanzler on 30 January 1933 or with the agreement of all the bourgeois parties to the Enabling Act of 23 March 1933, when these parties provided support for doing away with democracy. In addition, when Theodor Heuss argued on 1 April 1947 in the Landtag (state parliament) of Württemberg-Baden that the Reichstag election of 5 March 1933 was understood as a plebiscite for Hitler, this can hardly be understood as anything but a distortion of historical facts with which he wanted to cover up his own failure at that time.

Despite the experience of Switzerland and the United States, in Germany it is still assumed that citizens would behave irresponsibly if they were permitted to vote on questions with fiscal consequences. This is why everywhere in Germany where direct democracy is possible, there is a (variably strong) “fiscal reservation” prohibiting popular votes with financial consequences. Of course, such votes can create problems. On the other hand, precisely the experience of Switzerland shows that votes on financial questions can contribute to the sustainability of public finances.

Finally, the discussion of direct democracy is not always conducted entirely honestly in Germany. It is hard to
shake off the impression that these rights are often demanded when one is certain that such a demand cannot be successful or when it does not affect one’s own political area. For example, Bavaria’s former State Premier, Edmund Stoiber, called for a referendum on the European constitution as early as 2005. Yet not only had he earlier resisted to an extension of direct popular rights in “his” Bavaria, but he had also helped to restrict the existing ones. In 2000, his government ensured that the Bavarian constitutional court (which was essentially controlled by his party, the CSU) rejected as unconstitutional a more citizen-friendly arrangement of the extremely restrictive regulations on referenda in the Free State of Bavaria. The CSU had already earlier made direct democracy more difficult, in 1968 by reducing the registration period for referenda from four to two weeks. Edmund Stoiber’s aim in calling for a referendum about the European Constitution was quite obviously the opportunistic use of direct popular rights to achieve a specific goal, and not a general effort for more direct say for citizens. After all, he was also a full member of the Joint Constitutional Commission of the Bundestag and Bundesrat (lower and upper houses of the German parliament respectively) that, after Germany’s reunification, discussed adjustments of West Germany’s constitutional document, the Basic Law (Grundgesetz), in which the CDU/CSU in particular prevented the introduction of direct popular rights on the federal level.

But in Switzerland, too, neither direct popular rights nor their discussion are completely without problems. Thus, quite recently in particular, initiatives were to be voted on that conflicted with individual human rights. On 8 February 2004, an initiative to introduce “lifelong custody for extremely dangerous sexual and violent criminals who cannot be therapeutized” was approved that stands in contradiction to the European Human Rights Convention (EHRC), since for the most part it excludes any possibilities of reviewing the detention of such perpetrators. In addition, although the Justice Minister at that time, Christoph Blocher, supported the objective of this initiative, he was unable to suggest to the parliament a law fully respecting this new article of the constitution and in conformity with the EHRC. On 1 June 2008, a citizens’ initiative “For democratic naturalization” was rejected; its adherents had designed it to make it possible to hold referenda on the ballot box on naturalization after the federal court twice ruled on 9 July 2003 (BGE 129 I 217 and BGE 129 I 232) that they were unconstitutional because they did not fulfill the claim to a legal hearing and thus contradicted Article 9 of the Federal Constitution, which forbids arbitrary measures. The “Deportation Initiative” passed on 28 November 2010, which stipulated that foreigners convicted of a crime were to be automatically deported without regard to the commensurability of punishment to the crime, received a similar treatment. Here, too, it is hardly possible to implement the mandated change to the constitution without coming into conflict with the EHRC. Finally, we can mention the “minaret initiative”, clearly accepted on 29 November 2009, which stipulated that in the future in Switzerland, mosques can be built only without a minaret. Of course, jurists disagree whether that touches the religious freedom guaranteed by the EHRC.

Behind these initiatives stood the right-wing bourgeois Swiss People’s Party (Schweizerische Volkspartei, SVP), which in the past has used xenophobic slogans to win several elections and referendum campaigns. This has led to some very negative reactions abroad not only in connection with the mass immigration initiative of 9 February 2014, but also as early as in 2007. This party and in particular its de facto leader of many years, former Bundesrat member Christoph Blocher, take the position that the results of referenda should take priority over international law, for: “It cannot be that ‘higher law’ or ‘international law’ can casually limit or overrule the democratically determined right of our own citizens.” On the other hand, some reactions (abroad) to the referendum of 9 February were also exaggerated: against the background of an enormously voluminous immigration to Switzerland in recent years, the mere fact that a narrow majority has called for reintroducing immigration quotas does not justify accusing the Swiss in general of xenophobia. After all, until a few years ago, Switzerland worked with such contingents, and this did not prevent Switzerland from becoming in this period the European state (mini-states excluded) with the highest percentage of foreigners. Outside the European Union, probably all states characterized by sizable immigration work with such contingents, not at least the United

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13On this, see Schmack-Reschke (1997) and Bundestagsdrucksache 12/6000.
15On this, see for example: Schweiz als schwarzes Schaf: Wie nie zuvor berichten ausländische Medien über den Wahlkampf–fast nur negativ, NZZ am Sonntag of 14 October 2007, p. 13, and: Endlich, die Schweiz holt auf, DIE ZEIT No. 43 of 18 October 2007, p. 11.
States, Canada, and Australia.

Thus, a political system with extensive direct political rights can be very successful, but popular political decisions can also involve substantial problems. Radical defenders of direct popular rights often do not see these problems or argue extremely naively (and/or ideologically), a behavior that, however, can also be found by resolute opponents of direct democracy. Moreover, there is relatively little discussion of these problems in the scientific literature. In the following, some of these will be presented and discussed. At issue will be, first, direct democracy’s mode of operation (Section 2) and, second, the actual or supposed fields of conflict that result from direct popular rights (Section 3). Then the paper addresses some frequently presented points of criticism, which are hardly convincing, and concludes with a list of important points resulting from our discussion that must be considered if a direct democratic system is to function sensibly (Section 4).  

2. On the Functioning of Direct Democracy

First it should be made clear that a direct democracy can well function as a political system only, if it is designed as a permanent process, rather than if merely individual questions are “picked out” to be presented to the citizens for decisions (Section 2.1). Then there is the question, important in particular for the realm of the European Union, of how direct democracy relates to the unanimity rule (Section 2.2). Section 2.3 discusses the role of quorums. Here, “direct democracy” is always to be understood as a “semi-direct system” in which the representative democracy is supplemented by direct popular rights. A purely direct system, as still can be found today in many Swiss local communities and in the two cantons Appenzell-Innerrhoden and Glarus, where laws are decided by the whole citizenry, is not discussed here and is irrelevant for the problems that have arisen, for example in connection with the European Union.

In discussions, it is not always clear what is understood by “direct democracy”. For example, in Germany, a discussion was carried out in 2009 under this rubric (once again) about the direct election of the Federal President. Of course, this can be discussed, though probably more speaks against than for it. But quite apart from that: a direct election of the Federal President has as little to do with direct democracy as does the direct election of mayors or district administrators; both cases have to do with the election of representatives, even if this election is not carried out indirectly via a parliament. Direct democracy is a political system where citizens decide themselves about factual issues, be it constitutional rules, laws, or large (investment) projects. Not for nothing does the institute at the University of Dresden that deals with questions of direct democracy call itself “DeutschesInstitutfür Sachunmittelbare Demokratie” (German institute for factual issue democracy). It focuses on direct decisions of issues, not on direct elections of persons.

In Germany, the politically relevant direct popular rights are termed Volksbegehren (petition) and Volksentscheid (popular decision). The petition allows citizens to submit a concern, for example in a draft statute, to a parliament. To be submitted, a given number of signatures must be collected within a given period of time, whereby the form of the collection can also be stipulated. If the parliament does not take this interest into account (or not to a sufficient degree), a vote, a popular decision, can be brought about. It can be possible for a parliamentary decision to reverse this popular decision.

In Switzerland, we distinguish, first, between the initiative and the referendum. The initiative essentially corresponds to the German procedure. A new article of the Constitution or, on the cantonal level, a new law can be suggested. On the federal level, 100,000 eligible citizens must sign an initiative to reach the stage of voting. A referendum, in distinction, is a vote on a suggestion made by the government and/or parliament. For changes to the constitution and on certain international agreements, as well as on joining international organizations, it is mandatory; for new laws or changes of an already existing law, it is optional. To establish that such a referendum will take place, again on the federal level, 50,000 signatures have to be collected. That is about 1 percent of the eligible voters. On the cantonal and local level, citizens also vote on fiscal proposals if they exceed certain amounts. Some cantons have only an optional fiscal referendum, others only a mandatory one, while other cantons know both kinds of referenda.

In total, we can distinguish four different kinds of popular votes on issues.

17See also the shorter discussion of some of these topics in German in Kirchgässner (2010).
18Accordingly, the United States do have direct democracy only at the state and local levels but not at the federal level despite that the president is (half-) directly elected by the citizens.
19There are also some possibilities for referenda, in particular at the local level, but their scope is—at least compared to Switzerland—extremely limited.
i) **Controlling referenda**: Here, laws, constitutional amendments, and budgetary projects (“fiscal referendum”) passed by the parliament must be presented to the citizens for a vote before they can become legally binding. Such referenda can be mandatory or optional; in the latter case, they must be carried out if a certain number of citizens so demands. These referenda aim to rule out that the governing bodies can resolve laws or budgetary projects against the will of the (majority of the) citizens. They help to prevent a cartel of those governing against the citizens.

ii) **Initiatives concerning laws or constitutional changes**: Here, the initiative comes from the people: those in the government are forced to pass (changes of) laws and take measures that they would not pass or take on their own. Such laws can serve, for example, to limit powers or privileges of the government and administrative authorities that the parliamentarians create for themselves.

iii) **Plebiscitary referenda** (plebiscites): Here, the government and/or the parliament decide on its own accord to submit certain draft laws to the people, in order to gain special legitimation for them.

iv) **Consultative referenda**: Here, the governing persons ask the population about their opinion on an important matter, the result is, however, not binding.

In Germany, the discussion orbits primarily around initiatives. However, along with them, controlling referenda are at least as important for empowering citizens to make their interests prevail; both are effective means for enforcing the government to legislate corresponding to the people’s wishes. In the following, we will therefore examine these two kinds of popular vote. Less important, but not entirely uninteresting, are also consultative referenda, because when their result contradicts what the government and/or parliament wants, they can exert substantial pressure to respect the result.

### 2.1. Direct Democracy as a Permanent Process

As the examples above show, politicians (but not they alone) occasionally call for popular votes in (almost) purely representative systems when they expect this to help prevail their goals. These are plebiscites scheduled ad hoc. They have little to do with a general avowal of the introduction of direct popular rights. The motivation can be one’s desire for a negative decision when one does not want to take responsibility for it, or one’s hope that the referendum will provide additional legitimation for one’s own action. As, besides others, two French examples show, the latter can turn out differently than desired. President Charles de Gaulle resigned on 28 April 1969, the day after he had lost a referendum he had himself organized for a law to create regions and to revamp the Senate. And President Jacques Chirac, too, failed in his attempt to give the European Constitution additional legitimation through a referendum. In both cases, the voting citizens were less concerned with the problem being voted on than with using this means to vent their displeasure over the policies of the French President.\(^{20}\) The possibility of such reactions can always be expected in plebiscites that are seldom held. Direct popular rights are thereby drained of their actual function and in a certain way misused, both by the governing persons who schedule the plebiscite and by the citizens who use this as a means of protest, mostly without connection to the question to be decided on. When referenda and votes on initiatives are carried out regularly, such behavior cannot be completely ruled out, but is much less probable.

However, the results can contradict what one wants or considers economically sensible not only in individually arranged plebiscites, but also in “normal” referenda. In recent decades, this has been the case in Switzerland especially concerning the deregulation and privatization of activities traditionally regarded as tasks for the state. Many economists called for such measures, whereby the European Union was the driving institutional force in Western Europe. But the great economic and financial crisis that began in 2008 was not the first sign to indicate that deregulations of markets and especially privatizations are a much more difficult endeavor than was imagined in the 1970s and 1980s. In addition, not everything is squared away after privatization. Rather, in many cases elaborate regulating mechanisms are needed to finally achieve a satisfactory result.\(^{21}\) In Switzerland, lack of trust that this could be achieved has led to the failure of several privatizations planned in politics. For example, in the canton Basel-Town, the privatization of garbage incineration was rejected on 19 November 1995, even though there was a clear majority in favor of it in parliament.\(^ {22}\) Another “privatization refusal” came on 10 June 2001 in Zurich, when 51.4 percent of the voters rejected transforming the electric works of the canton.

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\(^{21}\)On this, see also Pommerehne (1990) and Schneider (1998).

ton Zurich into a stock company and with that its privatization. Apparently, the (politically active) population does not want to relinquish control of certain matters, or they do not automatically trust that the quality of the services offered (with which surveys show they are currently satisfied) will be maintained should there be a privatization. The Swiss population is not the only one sharing this view, as the referendum about re-purchasing the energy nets of Hamburg on September 23, 2013 shows. A small majority of the people supported this re-purchase, despite that not only the SPD with its absolute majority but also the opposition parties CDU and FDP opposed it. Finally, as Bös (1989) for example has elucidated, a tension between efficiency and quality arises, and the essential arguments for privatization are often more political (or ideological) than economic in nature, as became very obvious, for example, in the Swiss discussion about the cantonal monopolies for natural damage insurance.

Not only privatizations have failed; with the rejection of the electricity market law of 22 September 2002 in Switzerland, the voters rejected an important deregulation plan as well. Here, just like with the failed privatizations, not only the majority of the political representatives, but also the majority of economists favored this change. At least prima facie, it is an odd result that voters want to see the field of tasks allocated to the state further expanded than corresponds to the ideas of the (majority of the) politicians representing them. This is at least surprising for political economists, because one of the assumptions in the economic theory of politics or of bureaucracy is that politicians and bureaucrats have an interest in expanding the activities of the state more than is in the interests of their voters.

Apparently, citizens trust that, in this regard, their political influence on public enterprises is more to their advantage than it would be with private incorporations. Being citizens in a direct democracy, we have to respect such voter decisions. To the degree that we as economists are convinced that a (purely) private-economy solution would be more efficient in such cases, and to the degree that we also advocated it, the question arises for us: why do voters, for whom our theory usually assumes that they have rational expectations, so obviously have a different conviction from ours and from the politicians we advise? As Stigler (1979) has emphasized, one should be careful about attributing this (ad hoc) to the voters’ lack of information or their distorted information on the “true” costs and benefits of such political measures.

In this sense, Brunetti (1997) and Borner (2005) are not wrong in their criticism of direct democracy, though we need not draw the same conclusions. In any case, we should not judge direct democracy by the outcomes of individual decisions, but by the expected average quality of all decisions altogether. Moreover, what should be used for comparison are the actual situations in representative democracies, not some ideals. In such comparisons, much speaks for direct democracy, as Kirchgässner, Feld, & Savioz (1999) have elaborated. Comparisons between actual situations and imagined ideal situations have no validity.

### 2.2. Direct Democracy and the Unanimity Rule

Many areas in the European Union, in particular constitutional questions, are subject to the unanimity rule. The great advantage of this rule is that it fulfills the Pareto criterion: no one can be put in a worse position against his will through another’s decision. The rule gives every decision-maker a veto.

As the number of participants increases, however, the unanimity rule becomes ever more problematic. The problem is not only that the “normal” costs of finding agreement increase, but above all that there is an associated danger of strategic behavior: if someone is aware that he or she is absolutely required for a positive decision, then he or she has the possibility to “exploit” those who would especially benefit from the acceptance of a solution. Thus, this result cannot be attributed to a simple right-left schema of “less” versus “more” state. On this, see: SP stimmte wirtschaftsfürdernder als SVP: Vox-Analyse zu den Abstimmungen of 22 September, Neue Zürcher Zeitung No. 265 of 14 November 2002, p. 13. – Developments in California may have played a role in this rejection, though the situations are not comparable. For the situation in California, see for example Crow (2002).
proposal. As where unanimity is required, everyone is in this strategically favorable situation; the costs of finding agreement greatly increase when this rule is applied in the ongoing political process. This is true all the more, the larger the group taking part in a vote. A situation thereby arises in which decisions become ever more difficult, people engage in blockade politics, or there is a bottleneck impeding reforms.28

Wicksell (1896: p. 117) has already pointed out this problem. Although he argued on the basis of his theoretical conception for the principle of unanimity, he saw the problems involved in its practical application and therefore suggested for votes a “qualified majority, for example of three-quarters, five-sixths, or even nine-tenths of the ballots cast” depending on the kind of issue.

When the number of participants is small, this problem can be solved by logrolling, in which one agrees to support someone else’s project, even if it is not advantageous for oneself, if the other supports the project important to oneself in return. Such logrolling can be advantageous for all. In any case, it is the only way to bring about unanimous decisions in a group with divergent interests.29

Logrolling presupposes binding agreements among the participants. This becomes all the more difficult the larger the group is, also because then the aforementioned strategic motives become stronger. If voters decide, binding agreements are not possible; they are free to decide as they choose. This is revealed repeatedly at elections when party executive committees make agreements to mutually support each other’s candidates, but the voting population does not adhere to the agreements. For this reason, logrolling in balloting is not possible; one can at most attempt implicit logrolling by creating certain “packages”. As Switzerland’s experience shows, this is very difficult and often fails. Thus, the unanimity rule makes no sense in referenda; instead, it effects a total blockade and thus cements the status quo.

If one wants to make changes possible at all, direct democracy and the principle of unanimity are thus incompatible; one has to decide which of them one wants. If one insists on both, one has to face the accusation that one consciously wants to bring about a blockade. If that is the case, one ought to admit it openly, rather than abusing direct popular rights in this way.

For the European Union, this means that, if one does not want to perpetuate today’s constitutional reality, referenda as a general mechanism should be seriously considered only if the unanimity rule does not apply. Even Switzerland does not demand that, to effect changes in the constitution, not all cantons must agree, but only that both, the majority of voters and the majority of cantons, agree. It is rare that all cantons agree on a revision of the constitution in a mandatory referendum. In the United States, where a constitutional change requires “only” three-quarters of all the states, there have been only 27 constitutional amendments since the Constitution was ratified in 1789, although here no referendum are required. As long as changes to the European “constitution” require the agreement of all member states, it is thus extremely problematic to generally plan on referenda.30 But it is doubtful whether the member states are willing (and in particular Germany) to eschew their veto right on these fundamental decisions. As long as this willingness is lacking, direct democracy will never be able to play more than a very subordinate role on the European level. It is necessarily restricted to (a kind of) the initiative.

2.3. The Role of Quorums

To increase the legitimacy of referenda, there is often a demand that referenda be valid only when the participation of a specific minimum quorum is reached. In most cases, 50 percent are demanded. Corresponding rules are found, for example, in Italy and in Hamburg, and Wittmann (1998: p. 233), for example, calls for it for Switzerland. The aim is to prevent “coincidental” majorities organized by a small but highly motivated segment of the population from bringing about decisions against the will of the parliament, which is elected by and represents the whole population. This would mean that popular decisions would be politically officially acknowledged only if a correspondingly large proportion of those eligible to vote-more than 25 percent, in any case-support the measure in question.31

32This leads to a situation that is like a complement to the tragedy of the commons. In the latter case, there is too much activity because everyone can act without the agreement of others who are affected by his acts; in the former, now too little activity (or none at all) is carried out, because the agreement of all is always required. On this, see also Buchanan & Yoon (2000) and, from a political science perspective, Héretier (1999).

33On logrolling, see for example Mueller (2003: p. 104ff.). Coalition agreements are a typical example for this.

34In Feld & Kirchgässner (2004), we suggested that changes to the European Union Constitution should be resolved in mandatory referenda with a simple majority of the population, but with a two-thirds majority of all member states. However, it might also be reasonable to demand two-third-majorities of both, the population and the member countries, in order to minimize the chances of the small as well as the large members to exploit the other group.
One might initially suspect that such an arrangement would lead to greater voter participation, since the “moral” arguments that motivate citizens to cast a ballot are strengthened when a low turnout brings the danger that a proposal desired by the people cannot be implemented. Actually, the opposite is the case. With a quorum of 50 percent participation, it is always rational for an opponent of the suggestion not to take part in the voting, because in the extreme case this participation quorum can be achieved only if more than half of the eligible voters are in favor of the proposal. In that case, the measure would be accepted in any case. Therefore, it is simpler to defeat a measure through insufficient participation than by fielding a majority of nay votes. Since the agreement of 50 percent of all eligible voters is very improbable in most cases, such an arrangement means it is possible that, in many cases, a (clear) majority favors a proposal, but cannot clear the 50 percent hurdle.\(^{31}\)

The negative consequences of this arrangement were revealed in the Weimar Republic,\(^{32}\) but they also clearly emerged in Italy on 18 April 1999 when a change in election law was voted on. Although 91.7 percent—the overwhelming majority of the votes cast were for this change, it was not implemented, because turnout, at 49.6 percent, was just below the necessary 50 percent mark.

Beyond that, the argument behind this suggestion is itself dubious. First, whether a high level of voter participation is always a good sign is controversial. Low turnout does not necessarily cast doubt on the legitimacy of a political decision made by a people. Second, it must be considered that participation in elections for representatives is often also very low. In Switzerland in the last two decades, for example, it was below 50 percent even in the elections to the Nationalrat, the lower chamber of the national parliament. It is completely unclear what legitimates a narrow decision by a parliament elected by only a little more than 40 percent of the voters as a clear decision by the people, while a decision that barely fails to reach the participation threshold of 50 percent can be overruled.

If one wants to implement a quorum at all, then it should be a quorum of approval. It is conceivable, for example, that a decision be valid only if at least 25 percent of all those eligible agree to it.\(^{33}\) In this case, both adherents and opponents of the proposal would have an incentive to take part. Of course, the quorum should not be set so high that it de facto requires a higher rate of participation than the elections do. It would be hard to find a justification for such a high quorum.

Along with quorums of approval or participation, the quorums for numbers of signatures on petitions are also relevant. In Switzerland today, they are relatively low. On the federal level, 100,000 signatures are needed for an initiative and 50,000 for a referendum. This is a little more than 2 and 1 percent of the eligible voters, respectively. The signatures must be collected within 100 days for a referendum and within 18 months for an initiative. In the German Länder (states), the rules are much more restrictive: in Bavaria, for example, 25,000 eligible voters must sign a petition. Then, within 14 days, 10 percent of the eligible voters must sign the petition before it can be presented (after parliamentary consultation) for a vote.\(^{34}\)

Such restrictive regulations more or less annul popular rights. Thus, it is no wonder that there have been no more than 20 popular petitions and only 19 referenda in Bavaria since 1945.\(^{35}\) In this context, a study by Matsusaka (1995) is interesting. He shows for the American states that the right to an initiative has a (statistically) significant effect only if the required number of signatures on the petition is lower than 10 percent of the eligible voters.\(^{36}\) The regulations valid in Bavaria today, for example, just like the 50 percent participation rule in Hamburg, restrict the formally existing popular rights to the degree that they are almost ineffective.\(^{37}\)

### 3. Potential Areas of Conflict in Direct Democracy

The fears expressed in connection with direct popular rights are in part strategic, because these rights effect an unwanted partial shift of power from the elected representatives of the parliamentarian system back to the sovereign people, but some are indeed to be taken seriously. This is especially the case for possible conflicts with international law, as sometimes actually do arise in Switzerland (Section 3.1). But arguments can also be found for the fiscal reservation (Section 3.2). In both cases, however, the fears relate primarily to initiatives, but have

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31. Lower participation quotas create the same incentive for strategic nonparticipation, though to a lesser degree.
32. On this, see Kirchgässner, Feld, & Savioz (1999: p. 145ff.).
33. This is the case, for example, in Bavaria for changes to the constitution.
35. See ibid.
36. On this, see also Gerber (1999).
37. The same applies even more to arrangements like those until now in Hamburg, which allow the parliament and government to ignore referenda.
hardly anything to do with referenda. On the other hand, a problem of referenda might be that they hamper political reforms if not even make them impossible (Section 3.3). These fears will be examined in the following.

3.1. Direct Democracy and Human Rights

The modern state in the Western tradition is characterized by two principles that stand in tension with each other: democracy and the rule of law. An (extremely extensive) direct democracy can lead to a situation in which the electorate makes arbitrary decisions that unambiguously contradict elementary human and/or civil rights as they are today widely or even generally accepted in the Western world and as are found in the United Nations Declaration of Human Rights. Besides the Preventive Custody and Deportation initiatives mentioned above the naturalization decisions of 4 December 1997 in Pratteln and of 12 March 2000 in Emmen can also serve as examples. In these decisions, naturalization was denied at the ballot box to people of Turkish or Yugoslav descent, respectively, despite clear recommendations of the naturalization commissions. However, this can also happen in a purely representative democracy, as the retention (or reactivation) of the death penalty in the United States shows. On the other hand, as the German example shows, an extremely broadly extended constitutional jurisdiction can lead to a situation in which the parliament, even with an overwhelming majority, can no longer make certain decisions such as are made in other states (under the rule of law), even if they in no way contradict generally recognized human rights. This is found, for example, by the degree to which the German Constitutional Court constrains the legislature even in questions of taxation.

Behind these examples stand two different constitutional traditions, a “liberal” tradition and a “democratic” one, which not only can invoke different “founding fathers” from the Period of Enlightenment, but which can also be very well illustrated in the contrasting development in Germany (Prussia) and Switzerland in the 19th century. Even if many people sympathized with the French Revolution and its ideal of equality, the strength of the princely houses meant that the democratic principle had no chance of even partial realization in Germany at the beginning of the 19th century. In accordance with the monarchist principle, the decisive power laid with the princely houses until the November Revolution in 1918 at the end of World War I. Nonetheless, in this period, in particular in consequence of the Stein-Hardenberg Reforms carried out in Prussia, an administrative state under the rule of law developed that limited the powers of the monarchy in that the actions of the rulers, but in particular of their administrations, were constrained by constitutions promulgated in the first decades of the century. Citizens had the possibility to sue in court against the administrations’ transgressions of these limits. It is true that jurisdiction was still exercised in the name of the chieftains, “but jurisprudence had nonetheless wrested its independence from the administration. Justice was carried out by civil servants subject solely to the law.”

In Switzerland, in contrast, when the radical governments replaced the liberal ones in the 1830s and 1840s, the democratic principle dominated over the liberal one: the “free” Swiss resolved to attend to their political matters themselves. This does not necessarily imply the introduction of direct democracy: around 1840, there were cantonal assemblies in seven cantons and semi-direct democracy in six, but eleven cantons had a purely representative system, while Neuenburg was a constitutional monarchy. The new federal constitution of 1848

38On this, see also D’Atena (1999). Of course, democracy requires a certain set of rules so that decisions can be made and enforced at all. Legal provisions are needed for this. However, this alters nothing about the fundamental field of tension between the two principles.


40Hayek (1967: p. 11) names as intellectual predecessors of the liberal tradition David Hume, Adam Smith, Alexis de Tocqueville, Immanuel Kant, Wilhelm von Humboldt, and James Madison, among others; as representatives of the democratic tradition, he names Voltaire, Jean Jacques Rousseau, and Marquis de Condorcet. For a characterization of the two approaches, see for example Schnabel (1964: p. 128ff.).

41On the “monarchist” principle and its application in the various constitutions in Germany, see also Schnabel (1964: p. 111ff.).

42The idea of the rule of law that emerged in the 18th century has three components: “the bourgeoisie’s hope for a free development of the market, without patronizing state control... the desire to be freed of absolutist fetters in matters of religion and education, and the claim to political participation by the third estate, even if this last component was much more weakly developed in Germany than in France or England” (Stolleis, 1990: p. 267). On the individual reforms, see Nipperdey (1983: p. 31ff.).


44On this, see Andrey (1983: p. 267) and Schaffner (1998).

45AI, AR, GL, NW, OW, UR, and SZ had cantonal assemblies, BL, GR, LU, SG, VS, and ZG were semi-direct democracies, and AG, BE, BS, FR, GE, SH, SO, TG, TI, and ZH had representative democracies. See Andrey (1983: p. 267).
had only a few components of direct democracy; the most important popular rights existing today on the federal level—the optional legislative referendum and the people’s initiative for partial revision of the constitution—were not adopted in the constitution until 1874 (in the framework of the first total revision) and in 1891. Next to these democratic rights, the rule of law was accorded less importance: in particular where there was a cantonal assembly, i.e., where every (male) citizen could bring his interests into the political process, it made little sense to sue in court against political decisions. To this day, this conviction is widespread in the Swiss population, and it is revealed, for example in the resistance to introducing a constitutional jurisdiction on the federal level.

The fundamental tension between the principle of the rule of law and the principle of democracy can be pragmatically regulated, but it is not really solvable. Whatever the arguments used to legitimate certain norms, ultimately there is only positive law, i.e., there must be a (human) instance that posits every law, and this includes the fundamental constitutional law. This is particularly true of the secular state. In modern societies, this is done with the aid of democratic procedures, whereby different procedures and quorums can be applied in different areas. For example, it can be set up that specific components of the constitution—in the sense of a so-called eternity paragraph—may not be altered, not even with the majority that is entitled to change the constitution. This can be used to secure the essential human and civil rights, in particular. The constitutional court then has the task of protecting these rights and thereby represents the principle of the rule of law, also against the democratically legitimated legislative body. But this cannot prevent a new constitution from being enacted, likewise in a democratic way that curtails democratic participation rights and/or civil freedom rights, as happened for example a few years ago in Liechtenstein (in fact by applying a direct-democratic procedure).

Disregarding for now this problem of competence-competence, the question arises of the scope for action to be granted to the constitutional court. The institutional solutions in Germany and in Switzerland can be regarded as “corner solutions”: whereas the constitutional court in Germany, once appealed to, has a very broad scope for decision, in Switzerland its scope is narrower. The broad scope in Germany has two (institutional) causes: first, certain groups can appeal to the court, even if the issue in question does not affect them. In particular, the (parliamentary) opposition has this right. Since the times of Chancellor Konrad Adenauer, the opposition, if it lost in the Bundestag (Germany’s parliament), often tried to have the parliamentary majority’s decision annulled and its own position at least partially established. Second, the court has the competence over the abstract control of norms, i.e., it can decide whether a law is unconstitutional, even if so far no one’s constitutional rights have yet been impaired by its application. At the same time, in its statement of the reasons for its judgment, it can set far-reaching instructions for the legal regulation that is to be resolved. In certain cases, the parliament is thus neutralized as legislative branch to a large degree.

The Swiss alternative to this consists not only in that constitutional jurisdiction exists only rudimentarily on the federal level. In addition, only those directly affected can file suit, and the federal court, to the degree that it has jurisdiction in the first place, is entitled solely to concrete control of norms: when it is called upon, it can determine whether the plaintiff’s constitutional rights have been curtailed. This can also require the suspension of certain legal regulations. This happened, for example, when the federal court decided that ballot-box decisions on naturalization violate the constitution’s ban on arbitrariness and are therefore impermissible, because the decisions required no justifications and thus could not be juridical contested. In its statement on its ruling, the decisions required no justifications and thus could not be juridical contested. In its statement on its ruling, the federal court (following its usual tradition) consciously avoided elucidating how naturalization decisions are to be correctly carried out. For example, it remained open whether local councils are permitted to make naturalization decisions. In the concrete situation, this was widely considered disadvantageous, because the cantons and local communities in question were unsure how they should behave in the future. But it enabled them to develop various institutions. For example, it is possible to decree that a proposal to reject a
turalization must be justified in a local council meeting and that this meeting must vote openly. Such “experi-
menting” with various models would not be possible if the federal court had directed, for example, that a local
council meeting be not permitted to vote on naturalizations.

One can ask about the degree to which restrictions of individual freedom rights are actually a relevant pro-
blem with referenda or whether these are merely purely theoretical considerations that play no role in practice.
Several empirical studies on this investigate the degree to which popular rights have led to limitations or expan-
sions of individual freedom rights. The results are mixed and depend strongly on the judgment as to which initi-
atives and/or referenda limit popular rights. Thus, the studies provide no basis for clearly answering this ques-
tion. On the other hand, the examples mentioned above show that the question of the compatibility of direct po-
itical and individual freedom rights has recently gained importance in Switzerland. In particular, the question
arises of how the right to carry out initiatives affects the rights of minorities. The papers in Vatter (2011) inves-
tigate this for religious minorities and show that it largely depends on whether the electorate perceives them as
“insider” or “outsider” groups, whereby the example of the Jewish minority shows that this perception can
change over time. For outsider groups, the danger is large that referenda result in outcomes unfavorable for their
legitimate interests.

This does not speak against these popular rights, however, but probably against how these questions are
treated in Switzerland. One could (and probably also should) solve this problem by introducing a right of the
constitutional court to review initiatives, in order to prevent them of being incompatible with individual human
rights when brought to a vote. As the German example in the 1970s and the most recent development in the
United States show, there can, however, be massive limitations of individual freedom rights in purely repre-
sentative systems, as well. This danger is not limited to direct democracies.

These thoughts suggest that the “optimal” competence area of the constitutional court may lie between the
German and the Swiss arrangements. While the constitutional court in Germany may have too much power,
Switzerland has a deficit in this area. Today, the Supreme Court in Lausanne can act as a constitutional court
only for the cantonal level. It could make sense to extend this competence to the review of federal laws. To pre-
vent a development like Germany’s one might, however, as up to now, permit only the concrete control of
norms.

3.2. The Fiscal Reservation

There are fears that the direct participation of voters on decisions on factual issues could lead them to making
decisions without taking the financial consequences into account, for example simultaneously voting for addi-
tional public expenditure and a reduction of taxes, which could result in problems for the public budgets. This
cannot be ruled out a priori, and it provides the argument for the fiscal reservation that the Weimar constitution
already knew and that is valid today in all German Länder: budget-relevant decisions are reserved to the parlia-
ment and may not be the object of a referendum. But since there are only a few political decisions that have
absolutely no fiscal effects, this means a massive limitation of direct popular rights.

Is this reservation justified? Is this theoretically existing possibility relevant in practice? A comparison be-
tween Switzerland and Germany provides an initial answer. In Switzerland, where there is no such reservation,
so far no canton has declared a budget emergency and asked for additional funds from the other cantons and/or
from the federal government. In Germany, both Bremen and Saarland did this in 1992, and their suit before the
Federal Constitutional Court was successful. The Land of Berlin also tried it in 2006, but was turned down.
Bremen, Saarland, and Berlin have meanwhile demanded additional aid and, together with Schleswig-Holstein,
have received it in the framework of Federalism Reform II. Apparently, in the past massive financial difficul-
ties arose in some German Länder despite the existing fiscal reservation. In Switzerland, where no such reserva-
tion exists, nothing comparable has appeared.

The situation in Switzerland looks comparatively good on the federal level, as well. After federal debt mar-

31On this, see the overview in Kirchgässner (2009a).
32Because Switzerland has signed the European Convention for Human Rights, it has put itself under the control of the European Court of
Human Rights. Correspondingly, this court executes part of the constitutional control missing in Switzerland. Thus, even those who are
highly skeptical with respect to a national constitutional jurisdiction have to ask themselves whether—in such a situation—it would not be
preferable to have “own” judges to decide about human rights’ matters and not to leave this to “foreign” judges.
33On this, see for example Krafczyk (2005).
34It can be doubted that this is sufficient to achieve the goal of the reform: to be able to present a balanced budget by the year 2020. On this,
see Kirchgässner (2009b: p. 76ff.).
kedly rose in the period of weak growth from the beginning of the 1990s to the middle of the last decade. On 2 December 2001 84.7 percent of the voters agreed to the introduction of a debt brake into the federal constitution. After a transitional period in which the structural deficit was reduced, which was eased of course by favorable economic development, the debt brake went into full effect on 1 January 2007. This led to a reduction of debt starting in 2005. At the end of 2011, as mentioned above, federal debt in relation to gross domestic product was again below the level of 1992. Even in 2009, the year of the most severe recession in the recent financial and economic crisis, it was possible to reduce public debt, even though a total of three stimulus packages were decided on. The extraordinary situation would have allowed raising government expenditure beyond the limit prescribed by the debt brake, but this proved to be unnecessary.

A fundamental reason why the situation in Switzerland’s cantons is different from the one in the German Länder, for example, although some cantons, in particular Geneva and Basel-Town are deep in debt, lies in the canton’s tax sovereignty: if problems arise, the cantons can increase their tax revenue. Since the citizens know that they may have to pay for the public expenditure with their taxes, they are reserved accordingly. The German Länder have no such tax competence. Accordingly, it may be that their voters also have fewer inhibitions against voting for expenditure.

It is also interesting to take a look at the situation in the United States. As Matsusaka (1995, 2000) has shown, direct democracy in U.S. states before World War II tended to lead to an expansion of state activity, while after the war it tended to lead to a reduction of state activity. An important negative example is certainly the financial starvation of the state of California due to Proposition 13. Apparently, the effects can be quite different, and it depends crucially on the respective institutions whether expanding direct popular rights to include decisions with fiscal effects tends to foster or impair public finances.

The German discussion of the fiscal reservation, however, generally covers only part of the relation between direct popular rights and financial solidity. It reduces direct democracy at least implicitly to the instrument of the initiative (“Volksbegehren” and “Volksempfehlung”), which may be understandable from the German perspective, because these are the main instruments available, but which brackets away some essential aspects. To grasp the effects of direct popular rights on public finances, one must consider the entire set of instruments.

The most important direct-democratic instrument of fiscal policy is the fiscal referendum: all expenditure that are not mandated by law and that exceed a specified sum must be presented to the electorate for agreement. At issue here are primarily larger investment projects. The limits can differ depending on whether non-recurring or new recurrent expenditure is under consideration; in the latter case, the limits are generally markedly lower. The referendum can be mandatory or optional; in the latter case, first signatures have to be collected. With the exception of Vaud, all cantons have a fiscal referendum: 13 cantons and half-cantons have both a mandatory and an optional referendum, five cantons have only a mandatory referendum, and seven cantons have only an optional one. The fiscal referendum is able to reduce public expenditure, but not to increase them; a fiscal reservation is therefore superfluous with this instrument. On the federal level, the fiscal referendum has been discussed several times, but the parliament has never given it a majority. Of course, considering that large investment projects have less importance in comparison with the overall budget, the fiscal referendum is also less important; it would be relevant primarily for large transportation infrastructure projects and military expenditure.

The canton St. Gallen can serve as an example. It demands a mandatory referendum for non-recurring expenditure above 15 million CHF and for recurrent expenditure exceeding 1.5 million CHF, if existing laws do not already cover them. Considering that the cantonal budget exceeds 4 billion CHF, these are relatively small sums. The optional referendum can be held on non-recurring expenditure exceeding 3 million CHF and on recurring expenditure exceeding 300,000 CHF. To do so, 4,000 signatures have to be collected within 100 days. With 312,600 eligible voters, these are not high hurdles.

The second important instrument is the (optional) referendum on statutory laws: new laws or revisions of laws must be presented to the voters for approval if they so desire. This instrument, too, tends to hold expenditure down, rather than increase them, when the voters reject laws passed by the legislature that have financial consequences. Empirical studies show that—ceteris paribus—a draft law is all the more likely to be rejected the more

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55On the period of Swiss weak growth, see Kirchgässner (2005).
56Thus, Feld & Kirchgässner (2008), for example, show that in the Swiss cantons, more extensive direct popular rights—ceteris paribus—lead to significantly lower per-capita cantonal debts.
57On this, see Feld & Kirchgässner (2001).
58For a more detailed description of the institutions and the situation in St. Gallen canton, see for example Schönenberger (1975) and Kirchgässner (2009a).
expensive it is.\footnote{On this, see \textit{Kirchgässner & Schulz (2005)}.} Of course, it is also possible that the people reject a proposition intended to save money. So it occasionally also happens that a successful referendum makes solid fiscal policy more difficult.

The mandatory constitutional referendum does also hardly cause any problems; the same arguments hold for it as for the optional referendum on laws. After all, these are proposals of the government and the parliament for whose fiscal discipline those bodies are already responsible. Thus, here too, a fiscal reservation is not up for debate. Beyond that, in many cases changes to the constitution are not expensive, because the arrangements that lay down the fiscal consequences are mainly fixed in place in the accompanying laws.

Things are a bit different with the initiative. On the federal level, we have only the constitutional initiative; on the cantonal level, we also have the initiative for new or revisions of laws. If the latter initiates new projects, expenditure increases can indeed occur and place the desired budget discipline into question. Since the chances of initiatives on the federal level, first, are very low and, second, often relate to financially neutral projects, this danger is relatively low here. In addition, because of the lack of a fiscal referendum on the federal level in Switzerland, initiatives are occasionally used to block expenditure approved by the parliament, for example purchasing new fighter jets. Prohibiting such initiatives because of their financial consequences would be downright counterproductive for the sustainability of public finances.

To the degree that referenda on laws could endanger the sustainability of public finances, this can be countered with debt breaks. This can be done on the federal as well as on the sub-federal governmental levels, in Germany the Länder and local communities, as in several Swiss cantons.\footnote{A detailed description of the arrangements introduced up to the year 2000 is found in \textit{Stauffer (2001)}. More recent overviews are found in \textit{Yerly (2013)} or \textit{Waldmeier & Mäder (2015)}.} This should make more sense than to generally exclude decisions with financial consequences from the realm of direct popular rights. As empirical results show, cantons with debt limits have significantly lower deficits and debt than cantons that lack such instruments.\footnote{On this, see \textit{Feld & Kirchgässner (2008)}.} In Germany, too, in the framework of Federalism Reform II, debt limits for the federal government as well as the Länder were laid down in its constitution; they have used the arrangement on the federal level in Switzerland as a role model. To the degree that it can be assumed that these new fiscal institutions actually become effective, there is no longer any reason for any kind of fiscal reservation in the German Länder.\footnote{On the German debt limit, see for example \textit{Kemmler (2009)} and \textit{Kirchgässner (2014)}.}

Whether the debt breaks of the German Länder are able to achieve their fiscal sustainability is, however, highly questionable. In order to ensure this, their incentives to come into a budget emergency in order to receive fiscal assistance from the other Länder and/or the federal government with the help of the constitutional court have to be as small as possible. This should ensure that they have a strong interest in the sustainability of their finances. The first condition requires a credible no-bailout rule; the second requires that the Länder have power over their own revenues and taxes. Neither is given for the individual Länder; if they find themselves in a difficult situation, for example if the population rejects laws that lead to savings. The problem then lies, of course, not with the direct popular rights, but on the problematic design of the debt brake. Switzerland shows that suitable shaping of the debt limits makes it possible to counter dangers to the financial solidity also of subordinate levels of organization without thereby having to limit the direct popular rights that could lead to such dangers. As the comparison between Germany and Switzerland shows, financial solidity is much more endangered in the German system with its much narrower popular rights than it is in Switzerland’s direct democracy.

Direct popular rights in the form of the fiscal referendum could have a supporting effect on fiscal sustainability, but they are not a necessary precondition. Entirely independent of such rights, debt limits can be useful institutions for securing sustainable fiscal policy. This is true not only of the federal level in Germany, but also for the European Fiscal Pact, which is to introduce debt limits in the member states of the European Union. It is thus possible to counter threats to the financial solidity also of subordinate levels of governmental levels without therefore having to limit the direct popular rights that can lead to such dangers. It is advisable to install such limits, quite independently of the extent of direct popular rights.

### 3.3. Direct Democracy and Political Reforms

As was just elucidated, the optional referendum on laws not only can mean that a law entailing expenditure is

\footnote{In addition, the investments are not treated separately, but must be funded with the current budget. For smaller Länder, in particular, this can result in substantial problems during investment peaks.}
not promulgated; it can also block necessary reforms. Those who want to limit direct popular rights in Switzerland make this accusation repeatedly. For example, Borner writes: “The decisive effect of the optional referendums is that this mechanism makes it much more difficult for the government and the parliament to make any major change in the institutional framework. …Comprehensive political or economic changes are the exception in Switzerland.”\(^{64}\) Wittmann (1998) expresses himself quite similarly, if even more dramatically. He demands: “Switzerland must abandon direct democracy and turn to parliamentary democracy like other countries” (p. 233), since in his opinion “…direct democracy in general and the referendum in particular will ruin the Swiss economy in the long run by preventing market economy reforms. Direct democracy is on the way to endangering and destroying Switzerland” (p. 206f.)

It can hardly be denied that the referendum has delayed important decisions. For example, on 1 February 1959, the majority of male voters for the last time rejected women’s suffrage on the federal level; women did not receive the vote until 7 February 1971. Things were even more questionable on the cantonal level. While most cantons introduced cantonal women’s suffrage starting in February 1971 if they did not already have it, the two cantons Appenzell continued to refuse it. In Appenzell Outer Rohdes, it was not introduced in the cantonal assembly until 1989, and the Inner Rohdes assembly still rejected it in 1990. Only a decision by the federal court in the same year that forced this last canton, too, to introduce women’s suffrage secured equal political rights for women on all levels.

In the political discussion of recent times, however, what played a role was less this anachronism than certain economic policy decisions as, for example the rejection of joining the European Economic Area (EEA) on 6 December 1992, the rejection of the reform of the labor law on 1 December 1996, and the rejection of free movement of persons with EU countries on 9 February 2014. The rejection of EEA membership, in particular, had negative economic consequences for Switzerland; the policy of bilateral agreements that has been pursued since then and that were strikingly confirmed in the popular vote of 8 February 2009 were able to compensate this to a large degree, but not completely. The decision of 9 February 2014 calls this into question again. Thus, the question whether Switzerland’s direct democracy is not a hindrance for further economic development is justified.

Of course, it is very problematic to want to decide such questions based on the outcome of a single vote or even a few votes. In purely representative systems, too, there are individual decisions that entail negative economic consequences. The relevant question is whether on average direct democracy leads to “better” decisions than an actual, purely representative system, whereby the standards for “better” and “worse” would have to be decided first. Regarding reforms, in recent years Switzerland can definitely bear comparison with the larger neighboring states: reform deadlock is at least as serious in Germany, France, and Italy as in Switzerland.\(^{65}\) For example, starting in the nineties Switzerland has carried out a reform of its federalism that came into effect on January 1, 2008. It is much more far-reaching than all the reforms that have been seriously considered in Germany,\(^{66}\) although the German problems have long been known: as early as 1988, Scharpf pointed out the “joint decision trap” to which German politics is exposed. The problem of reform deadlock can thus not be reduced to a question of purely representative versus semi-direct democracy.

On the other hand, the referendum produces a “status quo bias”, i.e., under otherwise equal conditions, an advantage for the status quo in a vote. Kirchgässner & Schulz (2005) have shown that, in a voting campaign, a Swiss franc spent against a proposal has almost twice the effect of a franc spent supporting it. This corresponds to the results of Gerber (1999) for the United States. It shows that it is easier for interest groups to mobilize people against a proposal than for it.\(^{67}\)

But this bias produced by the referendum is balanced by the accelerating effect of the initiative. It makes it possible to put problems that the parties (so far) ignore on the political agenda. For example, as early as 1979, the Swiss people were able to vote on a moratorium on nuclear energy at a time when all the parties represented in Germany’s Bundestag stood almost united in favor of this form of energy. In Germany, it was necessary to found a new party especially devoted to this issue, while in Switzerland “only” an initiative was needed to bring this problem into serious political discussion.

\(^{65}\)On the necessity of reforms in Germany, see for example the contributions in Zimmermann (2006).
\(^{66}\)On the problems of German federalism, see for example Kirchgässner (2007a); on reform in Switzerland, see for example Schaltegger & Frey (2003) and Kirchgässner (2006).
\(^{67}\)Similar results for Switzerland, but referring to individual referenda, can be found in Hertig (1982), Gruner & Hertig (1983), and Longchamp (1991).
The direct democracy in Switzerland has both a brake and a gas pedal. One could argue that the problem is that the brake is more powerful or too powerful. This may be the case at least for economic policy reforms. After all, such a reform is hardly demanded and made to prevail through an initiative, but several reforms have failed in the recent past due to the referendum. However, even if one takes this view, the question arises whether it does not nonetheless make sense to grant the status quo a certain priority.

This is assumedly undisputed for constitutional issues (and thereby for the mandatory referendum on constitutional changes in Switzerland). After all, for this, all countries demand higher quorums than a simple majority; in Germany, both the Bundestag (lower house of parliament) and the Bundesrat (upper house of parliament) must approve the change with at least a two-thirds majority each. This is a much higher hurdle than in Switzerland, where a constitutional initiative requires only the majority of the votes cast (Volksmehr) and majorities in a majority of the cantons (Ständemehr). It is no coincidence that the Swiss Federal Constitution is changed much more frequently than the constitutions of Germany or even the United States. So one could even argue that the retarding component in Switzerland is too weak on constitutional questions.

Things look a little different when it comes to the optional referendum on laws. Here one can argue that the status quo should not have an advantage over new proposals. But this argument, too, is problematic. For one thing, precisely the business world often demands that politics be steady and predictable. The status quo bias steadies policy. Apparently, there is a tension in politics between its predictability and openness for new solutions. How this can be optimally solved is not a priori given. A certain bias toward the status quo, if it is not too strong, can definitely be advantageous.

However, the decisive question from the standpoint of the theory of democracy is not whether the status quo has an advantage, but which system elicits solutions that come closer to the population’s preferences. In this respect, the direct-democratic system has unambiguous advantages. If reforms actually take longer in this system than in purely representative systems, from the perspective of the theory of democracy these are the costs of giving better consideration to the population’s preferences. Moreover, it is completely open whether this entails economic disadvantages. Studies carried out for the individual states of the United States and for the Swiss cantons show the opposite: more powerfully structured direct popular rights lead—ceteris paribus—to better economic outcomes. One could object that these studies refer solely to the level of the individual states and cantons and that this does not show whether these results can be transferred to the national level. But there are good arguments that it can, even if this is occasionally cast into doubt. In any case, however, Switzerland’s development in recent years, as compared with the neighboring states, does not lead to the conclusion that direct democracy entails substantial economic disadvantages over the long run.

4. Concluding Remarks

Even if the discussion of the advantages and disadvantages of direct popular rights has clearly become more objective than it once was, it is still much polarized, in particular in Germany. Strict advocates, who in Germany can be found in particular in the proximity of the citizens’ action group “Mehr Demokratie e. V.” (More Democracy) and the “Initiative and Referendum Institute Europe”, now located in Marburg, stand against convinced opponents who either completely oppose such rights on the federal level or want to limit it to the mandatory referendum on international treaties or to the mandatory constitutional referendum. The opponents explicitly reject introducing the instrument that grants citizens the greatest possibilities to control the government and the parliament, the optional referendum, even though they concede that up to now the experiences with referenda in the Länder and local communities tend to be positive. For example, Hufschlag (1999: p. 266, 269) twice explicitly calls the experience gathered in Länder with referenda “encouraging”, while he thinks referenda on the federal level are “neither necessary nor advisable” (p. 305). Of course, these authors also doubt that the experience gained on the cantonal or individual (American) state level can be transferred to the federal level.

68Empirical studies of this can be found, for example, in Pommerehne (1978) and Gerber (1999).

69This is true despite Switzerland’s weak growth in the 1990s and in the first half of this decade. On this, see Kirchgassner (2005). On the question of the degree to which direct democracy obstructs reforms, see also Kirchgassner (2008).


73Strict opponents of direct democracy also exist outside of Germany, of course, for example Haskel (2001) in the United States and Wittmann (1998, 2001) in Switzerland.
Those with this rejecting stance repeatedly point out the allegedly negative experiences in the Weimar Republic that were already mentioned above and that played a role, though a subordinate one, in the discussions in Germany’s Parliamentary Council and in the Joint Constitutional Commission, but they deal astonishingly little with the concrete experiences of other countries. The tendency is to argue formally that this would have been “to bid farewell to a system of majoritarian-parliamentarian nature” or that it would weaken German federalism or that this would merely increase the influence of organized special interest groups and/or parties. Finally, they assert that a system of popular legislating is incapable of compromise, since one can vote only yes or no, while the parliamentarian procedures are open for compromise solutions.

This argumentation overlooks that many European countries carry out referenda on the national level, even if not to a very great degree, without fundamentally changing the nature of their political systems. Switzerland with its consociational system is rather an exception, after all. On the other hand, Germany is today already relatively close to the consociational model. Apart from Grant Coalitions, in recent decades, the federal government rarely had a majority in the Bundesrat (the upper house of its parliament). Thus, crucial questions could often be decided only in cooperation between the government and the parliamentary opposition, although of course the latter did not have to assume responsibility for such decisions. This is the reason for the political joint decision trap described by Scharpf (1988).

Second, these authors also overlook that direct democracy has contributed to strengthening federalism in Switzerland, in that the citizens have often rejected proposals that would have entailed a centralization and/or a shift of expenditure away from the cantons. Third, Switzerland’s experience shows that direct popular rights tend to weaken the parties, because themes can be placed on the political agenda bypassing the parties, which impairs their monopoly over this field. That parties often try to exploit initiatives for their own purposes does not contradict this. It is also true that a suitable organization is generally needed to begin a campaign for an initiative. But this is relativized by the fact that sometimes even very small, independent groups occasionally have success with their interests.

Regarding the influence of special interest groups, no empirical evidence is presented for this assertion; it is pure speculation. Nor has there been any empirical study of this. However, purely theoretically considered, interest groups tend to have a stronger position in the purely parliamentarian system than in semi-direct democracy, because in the former they need to persuade “only” the representatives of the governing coalition in the relevant parliamentary commission and not, as in the case of a referendum, a majority of voters. As already mentioned above, the latter is not easy, and quite often economic special interest groups fail to do so, despite the use of substantial fiscal means.

Finally, the argument of incapacity for compromise is valid at best for the initiative, but is not relevant for the referendum, in which only the compromise negotiated in the parliament is voted on. After all, in the various readings of a draft law in parliament, the parliamentarians also vote only either yes or no; so there is no reason why, after the completion of the parliamentary process, the voters should not also vote yes or no in a kind of fourth reading. Switzerland’s experience thereby shows that the constraint to find a compromise in parliament is much stronger under the threat of a possible referendum than in a purely parliamentarian system: resolutions that find the agreement of only a narrow majority in parliament have a high probability of failing in the referendum. As for the initiative, this argument holds for California, where the people present initiatives without the parliament being able to take a position on them. In Switzerland and in the German Länder, the parliament always has the possibility to present a counter-proposal. The same possibilities for compromise thus exist here as in the purely parliamentarian system. In the final vote, of course, one must always choose either yes or no, whether in the semi-direct democracy or the purely parliamentarian system.

Despite all the problems that can be connected with direct popular rights, it turns out that many of the arguments advanced against it are not convincing. On the other hand, one should neither idealize direct democracy,

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7On the experiences in the Weimar Republic, see FN 2 above; on the discussion in the Parliamentary Council, see Jung (1994); and on the discussion in the Joint Constitutional Commission, see Hufschlag (1999: p. 279 ff.).
8Jung (2001: p. 294); see also Badura (1993: p. 120) and the discussion in Paterna (1995: p. 135 ff.).
10See for example Hufschlag (1999: p. 282 ff.).
11On the problem of consociational democracy, see also Kirchgässner (2013b).
12See, as an example, the aforementioned initiative “Lifelong detention for extremely dangerous perpetrators of sexual and violent crime who cannot be therapized”, which was launched by two women and, to many people’s surprise, achieved a majority of the popular and of the cantonal votes on 8 February 2004.
nor overestimate its positive effects. One should also be reserved about the future role of the electronic media for direct democracy. Some people envision a vitalization, because in the future it will become ever simpler to ask ever more citizens, even on short notice, about their political opinion. Technology gives us the means to carry out referenda in ever-larger states with ever-shorter preparation time and with ever-lower costs.\footnote{On such ideas, see Toffler (1980) and Budge (1996).} For example, it is conceivable that in the future the citizens will take part in referenda from home with the aid of their PCs. One could be tempted to use this as a means of combating the often-lamented voting fatigue and disenchchantment with politics.

Such a purely technocratic perspective forgets that the social discourse that precedes each referendum and in which the citizens take in and assimilate relevant information is essential for the success of a direct democracy. Since available time is scarce, such a discourse can be carried out only about important issues; the number of referenda that can sensibly be carried out in a given time period finds a natural limit. A referendum mechanism in which the population is (almost) constantly asked its opinion and in which the answers to these questions is decisive would almost inevitably lead to a situation in which the voters would tend to decide rather randomly. Then there is the danger that those who lost in the decisions might acknowledge their legality, but no longer their legitimacy. In the long run, this would undermine the population’s acceptance of direct democracy.

It is quite apparent: direct democracy in not without problems. This is true of the way it is practiced in Switzerland, but also of all the other variants: certain problems are system-immanent. But every other political system has its problems as well, including purely representative democracy. If, as Winston Churchill put it, democracy is the worst form of government except for all the others that have been tried, then perhaps direct democracy is the worst form of democracy, except for all the others. After all, the desire, notable today in many countries, that citizens should have a greater direct say in the political process is often fueled by deficits in the representative system.

This does imply neither that every arrangement of direct democracy makes sense, nor that one ought to schedule referenda arbitrarily. For direct democracy to function well, attention should be paid to the following:

1) Direct democracy is to be understood as a system in which the citizens (can) make use of their due rights of their own accord. This is to be embedded in a process in which an intensive societal discussion process can precede the referendum, so that the voters can be sufficiently informed. In this process, the government and parliament should also be able to contribute “counter-proposals” to initiatives. In contrast, occasionally scheduled referenda in which the government, from above, “generously” permits citizens to share in deciding individual questions, make little sense. They are often exploited for other concerns, and the public discourse might revolve around problems quite different from the pressing question.

2) Direct democracy must be institutionally structured in such a way that it is manageable, on the one hand, and does not lead to blockades, on the other. Therefore, participation quorums should not be instituted; where one thinks quorums make sense, they should be quorums of agreement. In addition, unanimity is hardly compatible with direct popular rights. This is especially true for the European Union. If constitutional questions should be presented to the citizens in the future, the unanimity principle should be replaced by a system of qualified majorities of both the population and the member countries.

3) Conflicts with individual human rights or with international law that can arise by initiatives should be avoided, if possible, or, if they arise, should be regulated by a sensibly structured constitutional jurisdiction. It is frustrating for participants and reduces people’s readiness to engage in politics when supporters of an initiative engage themselves for an issue, gain the agreement of the voters, and then must learn that their interest cannot be implemented because of conflicts with international human law. This can be avoided by arranging that proposals be examined for their constitutionality at an early stage, thus offering the possibility of formulating initiatives in such a way that they do not conflict with international law.

If all this is taken into consideration, the problems connected with direct popular rights can hardly outweigh their advantages. One need not fear that reforms will fail because of it, and a fiscal reservation is superfluous, though sensible rules to prevent going into excessive debt should be introduced at all governmental levels.

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Direct democracy or pure democracy is a form of democracy in which people decide on policy initiatives directly. This differs from the majority of currently established democracies, which are representative democracies. The theory and practice of direct democracy and participation as its common characteristic was the core of work of many theorists, philosophers, politicians, and social critics, among whom the most important is Jean Jacques Rousseau, John Stuart Mill, and G.D.H. Cole[1]
In a representative democracy people vote for representatives who then enact policy initiatives. In direct democracy, people decide on policies without any intermediary. Depending on the particular system in use, direct democracy might entail passing executive decisions, the use of sortition, making laws, directly electing or dismissing officials, and conducting trials. Two leading forms of direct democracy are participatory democracy and deliberative democracy.

Semi-direct democracies, in which representatives administer day-to-day governance, but the citizens remain the sovereign, allow for three forms of popular action: referendum (plebiscite), initiative, and recall. The first two forms—referendums and initiatives—are examples of direct legislation. As of 2019, thirty countries allowed for referendums initiated by the population on the national level.

A compulsory referendum subjects the legislation drafted by political elites to a binding popular vote. This is the most common form of direct legislation. A popular referendum empowers citizens to make a petition that calls existing legislation to a vote by the citizens. Institutions specify the timeframe for a valid petition and the number of signatures required, and may require signatures from diverse communities to protect minority interests. This form of direct democracy effectively grants the voting public a veto on laws adopted by the elected legislature, as in Switzerland.

A citizen-initiated referendum (also called an initiative) empowers members of the general public to propose, by petition, specific statutory measures or constitutional reforms to the government and, as with other referendums, the vote may be binding or simply advisory. Initiatives may be direct or indirect: with the direct initiative, a successful proposition is placed directly on the ballot to be subject to vote (as exemplified by California’s system). With an indirect initiative, a successful proposition is first presented to the legislature for their consideration; however, if no acceptable action is taken after a designated period of time, the proposition moves to direct popular vote. Constitutional amendments in Switzerland, Liechtenstein or Uruguay go through such a form of indirect initiative.

A deliberative referendum is a referendum that increases public deliberation through purposeful institutional design.

Power of recall gives the public the power to remove elected officials from office before the end of their designated standard term of office.

**History**

**Antiquity**

The earliest known direct democracy is said to be the Athenian democracy in the 5th century BC. The main bodies in the Athenian democracy were the assembly, composed of male citizens; the boulê, composed of 500 citizens; and the law courts, composed of a massive number of jurors chosen by lot, with no judges. There were only about 30,000 male citizens, but several thousand of them were politically active in each year and many of them quite regularly for years on end. The Athenian democracy was direct not only in the sense that decisions were made by the assembled people, but also in the sense that the people through the assembly, boulê, and law courts controlled the entire political process, and a large proportion of citizens were involved constantly in public affairs. Most modern democracies, being representative, not direct, do not resemble the Athenian system.

Also relevant to the history of direct democracy is the history of Ancient Rome, specifically the Roman Republic, traditionally beginning around 509 BC. Rome displayed many aspects of democracy, both direct and indirect, from the era of Roman monarchy all the way to the collapse of the Roman Empire. While the Roman senate was the main body with true historical staying authority, lasting from the Roman kingdom until
after the collapse of the Western Roman Empire, it did not embody a democratic approach, being made up – during the late republic – of former elected officials,[12] providing advice rather than creating law.[13] The democratic aspect was in the Roman popular assemblies, where the people organised into centuriae or tribes – depending on the assembly – and cast votes on various matters, including elections and laws, proposed before them by their elected magistrates.[14] Some classicists have argued the Roman republic deserves the label of democracy, with universal suffrage for adult male citizens, popular sovereignty, and transparent deliberation of public affairs.[15] Many historians mark the end of the Republic with the lex Titia, passed on 27 November 43 BC, which eliminated many oversight provisions.[11]

Modern Era

Modern-era citizen-lawmaking occurs in the cantons of Switzerland from the 13th century. In 1847 the Swiss added the "statute referendum" to their national constitution. They soon discovered that merely having the power to veto Parliament's laws was not enough. In 1891 they added the "constitutional amendment initiative". Swiss politics since 1891 have given the world a valuable experience-base with the national-level constitutional amendment initiative.[16] In the past 120 years, more than 240 initiatives have been put to referendums. The populace has proven itself conservative, approving only about 10% of these initiatives; in addition, they have often opted for a version of the initiative rewritten by the government. (See "Direct democracy in Switzerland" below.)[5][6][7][8]

Modern Direct Democracy also occurs within the Crow Nation, a Native American Tribe in the United States of America. The tribe is organized around a General Council formed of all voting-age members. The General Council has the power to create legally-binding decisions through referendums. The General Council was first enshrined in the 1948 Crow Constitution and was upheld and re-instated with the 2002 Constitution.[17]

Some of the issues surrounding the related notion of a direct democracy using the Internet and other communications technologies are dealt with in the article on e-democracy and below under the heading Electronic direct democracy. More concisely, the concept of open-source governance applies principles of the free software movement to the governance of people, allowing the entire populace to participate in government directly, as much or as little as they please.[18]

Direct democracy is the basis of anarchist and left-libertarian political thought.[19][20][21] Direct democracy has been championed by anarchist thinkers since its inception, and direct democracy as a political theory has been largely influenced by anarchism.[22][23]

Examples

Early Athens

Athenian democracy developed in the Greek city-state of Athens, comprising the city of Athens and the surrounding territory of Attica, around 600 BC. Athens was one of the first known democracies. Other Greek cities set up democracies, and even though most followed an Athenian model, none were as powerful, stable, or well-documented as that of Athens. In the direct democracy of Athens, the citizens did not nominate representatives to vote on legislation and executive bills on their behalf (as in the United States) but instead voted as individuals. The public opinion of voters was influenced by the political satire of the comic poets in the theatres.[24]

Solon (594 BC), Cleisthenes (508–507 BCE), and Ephialtes (462 BC) all contributed to the development of Athenian democracy. Historians differ on which of them was responsible for which institution, and which of them most represented a truly democratic movement. It is most usual to date Athenian democracy from
Cleisthenes since Solon's constitution fell and was replaced by the tyranny of Peisistratus, whereas Ephialtes revised Cleisthenes' constitution relatively peacefully. Hipparchus, the brother of the tyrant Hippias, was killed by Harmodius and Aristogeiton, who were subsequently honored by the Athenians for their alleged restoration of Athenian freedom.

The greatest and longest-lasting democratic leader was Pericles; after his death, Athenian democracy was twice briefly interrupted by an oligarchic revolution towards the end of the Peloponnesian War. It was modified somewhat after it was restored under Euclides; the most detailed accounts are of this 4th-century modification rather than of the Periclean system. It was suppressed by the Macedonians in 322 BC. The Athenian institutions were later revived, but the extent to which they were a real democracy is debatable.[25]

Switzerland

The pure form of direct democracy exists only in the Swiss cantons of Appenzell Innerrhoden and Glarus.[26] The Swiss Confederation is a semi-direct democracy (representative democracy with strong instruments of direct democracy).[26] The nature of direct democracy in Switzerland is fundamentally complemented by its federal governmental structures (in German also called the Subsidiaritätsprinzip).[5][6][7][8]

Most western countries have representative systems.[26] Switzerland is a rare example of a country with instruments of direct democracy (at the levels of the municipalities, cantons, and federal state). Citizens have more power than in a representative democracy. On any political level citizens can propose changes to the constitution (popular initiative), or ask for an optional referendum to be held on any law voted by the federal, cantonal parliament and/or municipal legislative body.[27]

The list for mandatory or optional referendums on each political level are generally much longer in Switzerland than in any other country; for example, any amendment to the constitution must automatically be voted on by the Swiss electorate and cantons, on cantonal/communal levels often any financial decision of a certain substantial amount decreed by legislative and/or executive bodies as well.[27]

Swiss citizens vote regularly on any kind of issue on every political level, such as financial approvals of a schoolhouse or the building of a new street, or the change of the policy regarding sexual work, or on constitutional changes, or on the foreign policy of Switzerland, four times a year.[28] Between January 1995 and June 2005, Swiss citizens voted 31 times, on 103 federal questions besides many more cantonal and municipal questions.[29] During the same period, French citizens participated in only two referendums.[26]

In Switzerland, simple majorities are sufficient at the municipal and cantonal level, at the federal level double majorities are required on constitutional issues.[16]

A double majority requires approval by a majority of individuals voting, and also by a majority of cantons. Thus, in Switzerland, a citizen-proposed amendment to the federal constitution (i.e. popular initiative) cannot be passed at the federal level if a majority of the people approve but a majority of the cantons disapprove.[16] For referendums or propositions in general terms (like the principle of a general revision of the Constitution), a majority of those voting is sufficient (Swiss Constitution, 2005).
In 1890, when the provisions for Swiss national citizen lawmaking were being debated by civil society and government, the Swiss adopted the idea of double majorities from the United States Congress, in which House votes were to represent the people and Senate votes were to represent the states. According to its supporters, this "legitimacy-rich" approach to national citizen lawmaking has been very successful. Kris Kobach claims that Switzerland has had tandem successes both socially and economically which are matched by only a few other nations. Kobach states at the end of his book, “Too often, observers deem Switzerland an oddity among political systems. It is more appropriate to regard it as a pioneer.” Finally, the Swiss political system, including its direct democratic devices in a multi-level governance context, becomes increasingly interesting for scholars of European Union integration.

United States

In the New England region of the United States, towns in states such as Vermont decide local affairs through the direct democratic process of the town meeting. This is the oldest form of direct democracy in the United States, and predates the founding of the country by at least a century.

Direct democracy was not what the framers of the United States Constitution envisioned for the nation. They saw a danger in tyranny of the majority. As a result, they advocated a representative democracy in the form of a constitutional republic over a direct democracy. For example, James Madison, in Federalist No. 10, advocates a constitutional republic over direct democracy precisely to protect the individual from the will of the majority. He says,

Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation and involves the spirit of party and faction in the necessary and ordinary operations of the government.

[A] pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit no cure for the mischiefs of faction. A common passion or interest will be felt by a majority, and there is nothing to check the inducements to sacrifice the weaker party. Hence it is, that democracies have ever been found incompatible with personal security or the rights of property; and have, in general, been as short in their lives as they have been violent in their deaths.

John Witherspoon, one of the signers of the Declaration of Independence, said: "Pure democracy cannot subsist long nor be carried far into the departments of state – it is very subject to caprice and the madness of popular rage." Alexander Hamilton said, "That a pure democracy, if it were practicable, would be the most perfect government. Experience has proved that no position is more false than this. The ancient democracies in which the people themselves deliberated never possessed one good feature of government. Their very character was tyranny; their figure, deformity."

Despite the framers' intentions at the beginning of the republic, ballot measures and their corresponding referendums have been widely used at the state and sub-state level. There is much state and federal case law, from the early 1900s to the 1990s, that protects the people's right to each of these direct democracy governance components (Magleby, 1984, and Zimmerman, 1999). The first United States Supreme Court ruling in favor of
the citizen lawmaking was in Pacific States Telephone and Telegraph Company v. Oregon, 223 U.S. 118 in 1912 (Zimmerman, December 1999). President Theodore Roosevelt, in his "Charter of Democracy" speech to the 1912 Ohio constitutional convention, stated: "I believe in the Initiative and Referendum, which should be used not to destroy representative government, but to correct it whenever it becomes misrepresentative."[34]

In various states, referendums through which the people rule include:

- **Referrals** by the legislature to the people of "proposed constitutional amendments" (constitutionally used in 49 states, excepting only Delaware – Initiative & Referendum Institute, 2004).
- **Referrals** by the legislature to the people of "proposed statute laws" (constitutionally used in all 50 states – Initiative & Referendum Institute, 2004).
- **Constitutional amendment initiative** is a constitutionally-defined petition process of "proposed constitutional law", which, if successful, results in its provisions being written directly into the state's constitution. Since constitutional law cannot be altered by state legislatures, this direct democracy component gives the people an automatic superiority and sovereignty over representative government (Magelby, 1984). It is utilized at the state level in nineteen states: Arizona, Arkansas, California, Colorado, Florida, Illinois, Louisiana, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Oregon and South Dakota (Cronin, 1989). Among these states, there are three main types of the constitutional amendment initiative, with different degrees of involvement of the state legislature distinguishing between the types (Zimmerman, December 1999).
- **Statute law initiative** is a constitutionally-defined, citizen-initiated petition process of "proposed statute law", which, if successful, results in law being written directly into the state's statutes. The statute initiative is used at the state level in twenty-one states: Alaska, Arizona, Arkansas, California, Colorado, Idaho, Maine, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Utah, Washington and Wyoming (Cronin, 1989). Note that, in Utah, there is no constitutional provision for citizen lawmaking. All of Utah's I&R law is in the state statutes (Zimmerman, December 1999). In most states, there is no special protection for citizen-made statutes; the legislature can begin to amend them immediately.
- **Statute law referendum** is a constitutionally-defined, citizen-initiated petition process of the "proposed veto of all or part of a legislature-made law", which, if successful, repeals the standing law. It is used at the state level in twenty-four states: Alaska, Arizona, Arkansas, California, Colorado, Idaho, Kentucky, Maine, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Utah, Washington and Wyoming (Cronin, 1989).
- **The recall election** is a citizen-initiated process which, if successful, removes an elected official from office and replaces him or her. The first recall device in the United States was adopted in Los Angeles in 1903. Typically, the process involves the collection of citizen petitions for the recall of an elected official; if a sufficient number of valid signatures are collected and verified, a recall election is triggered. In U.S. history, there have been three gubernatorial recall elections in U.S. history (two of which resulted in the recall of the governor) and 38 recall elections for state legislators (55% of which succeeded).

Nineteen states and the District of Columbia have a recall function for state officials. Additional states have recall functions for local jurisdictions. Some states require specific grounds for a recall petition campaign.[35]

- **Statute law affirmation** is available in Nevada. It allows the voters to collect signatures to place on the ballot a question asking the state citizens to affirm a standing state law. Should the law get affirmed by a majority of state citizens, the state legislature will be barred from ever amending the law, and it can be amended or repealed only if approved by a majority of state citizens in a direct vote.[36]
In Syrian Kurdistan, in the cantons of Rojava, a new model of polity is exercised by the Kurdish freedom movement, that of Democratic confederalism. This model has been developed by Abdullah Öcalan, the leader of the Kurdistan Workers' Party, on the basis of the Kurdish revolutionary experience and traditions, and of the theory of Communalism developed by Murray Bookchin. At the opposite of the Nation-State model of sovereignty, Democratic confederalism rests on the principle of radical self-government, where political decisions are taken in popular assemblies at the level of the commune, which will send delegates to the confederate level of the district and the canton. This bottom-up political structure coexists with the democratic self-administration, as organized in the Charter of the Social Contract adopted by the cantons of Rojava in 2014. These two structures constitute a situation characterized as one of dual power by David Graeber, though a peculiar one as they are both formed by the same movement.

Compared to other experiences categorized as ones of direct democracy such as Occupy Wall Street, the Rojava experiment presents only several elements of direct democracy, namely the organization of the self-governing communes in popular assemblies where everybody can participate, the confederation of these communes through imperative and recallable mandates, the rotation of charges (often biannually) and the absence of centralized power. In theory, Öcalan describes the principle of Democratic Confederalism as follows: "In contrast to a centralist and bureaucratic understanding of administration and exercise of power, confederalism poses a type of political self-administration where all groups of the society and all cultural identities can express themselves in local meetings, general conventions and councils."

In practice, Rojava is organized on a system of "Four-Level Councils": the Commune, the Neighborhood, the District, and the People's Council of West Kurdistan. Each level nominates delegates for the next level with imperative mandates as well as recallable mandates.

As democratic autonomy rests on the equal political engagement of members of the community, the Kurdish women's movement aims at changing the historical exclusion of women from the public sphere as well as at educating women, creating space where they can participate and produce their own decisions. This commitment to women's liberation is instantiated in the principle of dual leadership and 40 percent quota and in the many political spaces created for women's education as well as their political and economic emancipation. Women are therefore fully included in the project of direct democracy. In order to contribute to their political emancipation, Kurdish women created a new science, Jineologî or "women's science", in order to give women access to knowledge, the very foundation of power in society. Moreover, political emancipation is not seen as sufficient to ensure women's liberation if it does not rest on the possibility of women for self-defense. Therefore, Kurdish women created the Women's Protection Units (YPJ) which forms, along with the People's Protection Units (YPG), the Kurdish armed forces.

The Rojava cantons are governed through a combination of district and civil councils. District councils consist of 300 members as well as two elected co-presidents- one man and one woman. District councils decide and carry out administrative and economic duties such as garbage collection, land distribution, and cooperative enterprises.

### Crow Nation of Montana

Governing over the Crow Indian Reservation in Montana, the Crow General Council has been the legally recognized government of the tribe since 1948. The General Council is formed out of all voting-age members of the Tribe. Council members meet biannually to nominate members to various sub-councils. The General Council also has the power to pass legally binding referendums through a 2/3rds vote. The 2002 Constitution somewhat reduced the powers of the General Council through the creation of a distinct Legislative Branch.
Under the 1948 Constitution, the General Council created and passed laws. Under the adopted 2002 Constitution, a distinct, elected Legislative Branch creates and passes laws, although the General Council can overturn these or pass its own laws through its referendum and initiative power.[17]

**Denmark**

In 2016, the Danish parliament passed a law that created an online citizens' initiative system (borgerforslag) whereby eligible voters can propose bills. Proposals which gain the support of 50000 voters within 180 days are referred to Parliament for debate.

**Democratic reform trilemma**

Democratic theorists have identified a trilemma due to the presence of three desirable characteristics of an ideal system of direct democracy, which are challenging to deliver all at once. These three characteristics are *participation* – widespread participation in the decision making process by the people affected; *deliberation* – a rational discussion where all major points of view are weighted according to evidence; and *equality* – all members of the population on whose behalf decisions are taken have an equal chance of having their views taken into account. Empirical evidence from dozens of studies suggests deliberation leads to better decision making.[46][47][48] The most popularly disputed form of direct popular participation is the referendum on constitutional matters.[49]

For the system to respect the principle of political equality, either everyone needs to be involved or there needs to be a representative random sample of people chosen to take part in the discussion. In the definition used by scholars such as James Fishkin, deliberative democracy is a form of direct democracy which satisfies the requirement for deliberation and equality but does not make provision to involve everyone who wants to be included in the discussion. Participatory democracy, by Fishkin's definition, allows inclusive participation and deliberation, but at a cost of sacrificing equality, because if widespread participation is allowed, sufficient resources rarely will be available to compensate people who sacrifice their time to participate in the deliberation. Therefore, participants tend to be those with a strong interest in the issue to be decided and often will not therefore be representative of the overall population.[50] Fishkin instead argues that random sampling should be used to select a small, but still representative, number of people from the general public.[9][46]

Fishkin concedes it is possible to imagine a system that transcends the trilemma, but it would require very radical reforms if such a system were to be integrated into mainstream politics.

**Electronic direct democracy**

**Relation to other movements**

Anarchists have advocated forms of direct democracy as an alternative to the centralized state and capitalism; however, others (such as individualist anarchists) have criticized direct democracy and democracy in general for ignoring the rights of the minority, and instead have advocated a form of consensus decision-making. Libertarian Marxists, however, fully support direct democracy in the form of the proletarian republic and see majority rule and citizen participation as virtues. Libertarian socialists such as anarcho-communists and anarcho-syndicalists advocate direct democracy. The Young Communist League USA in particular refers to representative democracy as "bourgeois democracy", implying that they see direct democracy as "true democracy".[51]

**In schools**
Democratic schools modeled on Summerhill School resolve conflicts and make school policy decisions through full school meetings in which the votes of students and staff are weighted equally.[52]

Contemporary movements

See also

- Anarcho-communism
- Cherán
- e-democracy
- Libertarian municipalism
- Libertarian socialism
- Liquid democracy
- Participatory budgeting
- Participatory economics
- Populism
- Proxy voting, esp. delegated voting
- Semi-direct democracy
- Social democracy
- Sociocracy
- Soviet democracy
- Third International Theory
- Workers' councils
- Criticism of democracy

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33. Zagarri 2010, p. 97

34. Watts 2010, p. 75


36. Statute affirmation (https://ballotpedia.org/Statute_affirmation), Ballotpedia


46. Ross 2011, Chapter 3

47. Stokes 1998

48. Even Susan Strokes in her critical essay Pathologies of Deliberation concedes that a majority of academics in the field agree with this view.


50. Fishkin suggests they may even have been directly mobilized by interest groups or be largely composed of people who have fallen for political propaganda and so have inflamed and distorted opinions.

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Further reading

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- Orr Akiva e-books, Free download: Politics without politicians – Big Business, Big Government or Direct Democracy.

**External links**

- [Direct democracy](https://curlie.org/Society/Politics/Democracy/Direct_Democracy/) at Curlie
- [United Kingdom Direct Democracy Party](https://5dd.uk)


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