

GLOBAL CITIZENS IN CHARGE

How Modern Direct Democracy Can Make
Our Representative Democracies
Truly Representative

Edited by Jung-Ok Lee & Bruno Kaufmann

Coordinated by Korea Democracy Foundation
and Initiative and Referendum Institute Europe



민주화운동기념사업회
Korea Democracy Foundation

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Foreword

The issue of democratizing democracy has emerged as a new and challenging agenda for Korea. For the Korean society, direct democracy as an institutional form is a new topic for active discussion and a new sphere of challenge to seriously take on. However, we Koreans experienced direct democracy through civilian resistance and participation from the April Revolution, 1960, to the June Uprising, 1987.

Like most Asian countries, Korea has yet to institutionalize initiative, a core procedure of direct democracy. Still, referendum, the most important direct-democratic instrument, has not been practiced in Korea while plebiscite [ATP] has been adopted several times. Recall and local referendum have been partially implemented, but we still face steep barriers we must overcome to realize genuine direct democracy. Reaffirming the meaning and possibility of direct democracy in Korea will be a valuable experience that rekindles the spirit of the very foundation which allows the values we now often take for granted.

Korea Democracy Foundation (KDF) strives to contribute to the development of democracy in mutual cooperation with the global citizens who put in their incessant efforts to empower the voices of ordinary people around the world. Since its establishment in 2001, KDF has served to consolidate and facilitate the development of Korean democracy and endeavors to complete unfinished democracy-related tasks and work. Direct democracy, as at times an alternative and at others a constructive assistance to the limits of current representative democracy, is now an issue that requires the attentions of the different voices and thoughts. This report aims to initiate the discussion on demand.

I extend my special gratitude to the Initiative and Referendum Institute Europe whose members at the vanguard of the direct democracy movement have contributed to this report with honest insights and commitments. While I would like to express my sincere respect for all the contributors of the report, I especially thank all those striving for democracy around the world.

December 2009
Fr. HAM Sei-Ung
President, Korea Democracy Foundation

part

ONE

AGENDA FOR DEMOCRACY:
AN INTRODUCTION

1

Global Citizens in Charge

How Modern Direct Democracy Can Make
Our Representative Democracies Truly Representative

Jung-Ok Lee and Bruno Kaufmann

In September 2009, several hundred democracy activists, professionals and experts from across the world gathered in Seoul, Korea for the second Global Forum on Modern Direct Democracy (GMDD). In addition to the World Economic Forum and the World Social Forum, the GMDD has become the annual focal point of all those who are actively involved in “democratizing democracy” across the world. The third round of the Forum will be organized in San Francisco in the beginning of August.

This publication offers you an overview of the deliberations from 2009 GMDD, initiated and co-hosted by the Korea Democracy Foundation and the Initiative and Referendum Institute Europe, and prepares you to join the fast growing global democratization network. It has identified the “democratization of democracy” as a key task ahead in many parts of the world, where basic democratic systems have been introduced and where initial practices and lessons have been learnt.

At the 2009 GMDD, Mike Gravel, a former U.S. Senator and presidential candidate, stressed that, “what we have today in most countries is representative

government, but not yet representative democracy.” And indeed, while the principles of modern representative democracy are more widespread and accepted than ever before, the very practice of democracy (“rule by people”) has yet to be better implemented in many ways. This means that the role of the citizens cannot be restricted to free and fair elections, as acknowledged by the U.N. Secretary-General Ban Ki-Moon in his 2009 “Guidance Note on Democracy.” A modern democracy must include “citizen participation in decision-making,” the Secretary-General underlined.

At the Forum in Seoul, impressive stories were told from across the world, regarding how this “citizen participation in decision-making” is taking place because we fortunately have a greater number of stronger foundations for more practical democracy than just two decades ago. At that time, many of us were still living in the middle of regime change turmoil, replacing autocratic regimes with basic democratic rules. This was also true for Korea, the host country of the 2009 GFMD, as well as many other countries across the globe – especially in South East Asia, Central Europe, and Latin America.

Twenty years ago, the idea of “people power” and “we are the people” was ready to overturn the old regimes in many countries – but, as we all know, this was not true for all. At that time, we learnt that democracy needs our active participation in order to become more of a reality. However, there was and is no blueprint of how non-democratic countries can be transformed into democratic ones and how our democracies can become stronger and more sustainable – or simply put: more democratic.

Modern direct democracy is a vigorously updated version of popular power. By overcoming the limitations of both classical assembly democracy (as in old Athens) and early parliamentary democracy (also known as the Westminster system), under which sovereignty was exercised by small groups of citizens or elected officials, we have to establish democracies for the globalized 21st century. Nowadays, political citizenship implies taking responsibility in many ways: as electors in elections and agenda-setters and decision-makers in popular votes on substantive issues. Migration, globalization and the borderless digitalization of our spheres of communication demonstrate that our predominantly indirect and nation-state-based democracies have to be upgraded – to become more direct and transnational.

This publication represents just a small selection from all the interesting contributions made during the 2009 Global Forum on Modern Direct Democracy. It offers an introduction into, what is called, a super-democracy – which defines a truly representative democracy, featuring both comprehensive set of direct democratic procedures and practices and an outreach beyond the borders of nation-states into transnational democratic territory.

Urs Rellstab, the deputy head of the Swiss business umbrella organization *Economiesuisse*, offers in his contribution the facts and relevance that more citizen participation is beneficial to the economy and also that economic activities can be embedded into a more stable and sustainable societal framework. This is backed-up and complemented by Adam Lupel's article, in which the fellow of the International Peace Institute in New York outlines the opportunities ahead for transnational democracy. Furthermore, this book offers a review of direct democratic developments around the world, with a focus on Asia and special reports from several European countries.

The common lesson of the often cumbersome ways and processes towards more democracy is that we need to be better prepared, informed and educated about the options and limits linked to modern direct democracy. This includes comparative efforts and new tools for an efficient cooperation across the globe. The 2009 Forum provided us with such instrument – the new Universal Typology of Modern Direct Democracy Terms (UTM). This new set of terms, developed by the Initiative and Referendum Institute Europe in close cooperation with official and expert institutions, offers for the first time the possibility to compare direct democratic procedures and practices worldwide.

This publication is the first to adopt the UTM-standard, not necessarily by all the contributors, but by the editors (most often put into [brackets]). The new universal typology makes a clear distinction between legally constituted and citizen-initiated procedures (Initiative, Referendum) and government-initiated mechanisms (Plebiscite). The new UTM-standard was welcomed at the Global Forum as an important step “towards making the global work on direct democracy more comprehensive, comparative and less prone to misunderstanding,” as one participant put it.

Asia was indeed in the focus of the second Global Forum on Modern Direct Democracy. In many countries across the region, the old regimes and martial laws went away in the late 1980s. However, the old habits and people still prevailed and made the real practice of representative democracy a hard goal to achieve. After bitter lessons and many setbacks, there is now a new mood across the region, that every representative democracy also needs strong direct democratic institutions, such as citizens' initiative and constitutional referendum, in order to become truly representative. This was the encouraging and empowering mood of the 2009 Global Forum on Modern Direct Democracy in Seoul.

We sincerely hope that this positive momentum inspires the readers to remain or become active participants in the new global movement to make representative democracy truly representative!

2

Superdemocracy

People Power Updated – More Direct and Transnational

Bruno Kaufmann

There is so much to complain about! Democracy, people power, human rights. But in reality, of course, so little seems to be achieved. Entering into the second decade of the third millenium, many of the systemic injustices and imbalances of the old times are still very much realities, and all these in the context of an increasingly globalized, almost supercapitalistic society.

Millions of people are looking for jobs and a good life far away from their home countries while others have to flee from wars and oppression. Poverty, slavery, dictatorship – all those evils are still very much a part of today's world. Yet there seems to be no real leaders out there to “do and finish the job,” as occupants of the White House tend to say. The incumbent recently received the Nobel Peace Prize – but what has this “most powerful man” really achieved during his tenure?

There is bad news all round. In the Philippines, thirty journalists were massacred in late 2009 as they tried to cover the electoral registration of an opposition candidate. In Honduras, a military coup brought the country and a whole region back into the forgotten years of autocratic rule. And in the world's most populated country, one political party still believes and behaves as the

only political player at hand.

Even in well-established democracies like Switzerland, democratic practice offered major challenges last autumn: in the end of November 2009, 57% of Swiss approved a citizens' initiative banning the construction of minarets in the country. While the proposal violates basic rights established in international law, the outcome of the popular vote has triggered an intense debate on the options and limits of popular sovereignty across the world.

Obviously, we could put all our energy in complaining about all those bad and difficult things. And, indeed, we should invest efforts in fighting those evils. This is important. Yet, with more than 7 billion people in more than 215 countries and territories across the world, and with new generations of citizens coming up continuously, the biggest common task of our times is to create means for freedom and self-determination. Why? Because only under the condition of basic individual freedoms and the rights of collective self-determination, legitimate, stable and sustainable solutions can be identified and agreed on.

Luckily, few do question today – at least in principle – that it is democracy, which offers the best framework for such a free and self-determined solution-finding process. In reality, however, many so-called democratic practices leave many people unfree and frustrated. The reason for this is easy to name and hard to fix. Our democracies are still not democratic enough and the understanding on how to address this problem is still far too weak. So let's look into this issue, which will bring me to the point that we need to develop a superdemocratic approach in order to be able to deal with the global challenges during this second decade of the third millenium.

Democracy – the rule by the people – is not a new idea. We now have at least two classical, pre-modern concepts: the Athenian Direct Democracy and the Westminster Indirect Democracy. Both concepts have hugely influenced the struggle about how exactly democracy should be shaped for our days. However, both concepts of democracy have failed short in accommodating modern concepts of inclusive citizenship, human rights, division of power and shared sovereignty. Additionally, the classical ideas of direct vs. indirect democracy have influenced generations of people to short-cut “democracy” into decision-making systems of

the few. Even worse, proponents of a purely indirect democracy have tried to equalize the modern idea of “representative democracy” with their own concept, leaving many outside the political process between elections.

From “representative government” to “representative democracy”

While the struggle of democratic ideas has shown little progress during most of the 20th century, the political reality has left us with the fact, that we have a “representative government” in most countries of the world of today, but not yet a “representative democracy,” which is a framework under which the decisions made within a political community are mirroring the preferences of its citizens as much as possible. Today we know that purely indirect democracy or “representative government” is far too weak to enable such an efficient mirroring.

Ban Ki-Moon, the United Nations Secretary General, summarizes this 21st century understanding of “representative democracy” by acknowledging in “Guidance Note on Democracy”¹⁾ which was published on the 2009 International Day of Democracy that “full participation in decision-making of the citizens” is necessary to “develop democracy.” The U.N. Secretary General also outlines that “democracy is a reflection of self-determination and must be based on the freely expressed will of the people.” In order to support and promote the democratization of democracy the U.N. has declared the next ten years as the “decade of democratization” and will emphasize especially on “civic education for democracy.”

Another very strong signal was given late last year, when the new “Basic Treaty of the European Union (the so-called Lisbon Treaty)” entered into force on December 1.²⁾ José Manuel Barroso, the President of the European Commission stated proudly, that this treaty founds “a more democratic, open and accountable Union” and “that the citizens will be given the opportunity to influence” the E.U. lawmaking process. As the very first of ten “benefits for European citizens” Barroso quoted the “European citizens initiative.” After all, the new E.U. treaty establishes the notion that within representative democracy indirect and direct forms of citizen participation are equal.

1) www.un.org/democracyfund/Docs/UNSG%20Guidance%20Note%20on%20Democracy.pdf

2) http://europa.eu/lisbon_treaty

It is maybe not by accident, that the most powerful confirmations – that modern representative democracy has to be based both on indirect and direct citizen participation in the agenda-setting and decision-making – had to come from international organizations. While modern forms of direct democratic instruments have been practiced on the local and subnational level in most countries, those reforms have been held back by established elites on the national level for (too) long. As, however, politics has become a truly transnational and sometimes even global affair, the limitations of purely indirect democracy have become too obvious.

The double democratization of democracy

This “new” understanding of what representative democracy is and how it could be made more representative has therefore to be seen in at least two dimensions: Firstly, we have to look into the strengthening of structures for direct citizen participation within existing polities, mainly within nation-states; and secondly we have to address the modern democratization cause beyond nation-states, on the trans-national and global level. When, as it is already the case in Europe, majority of laws originated from transnational bodies, it is time to extend the democratic reach to that as well. This is what I call the superdemocratic imperative of our time – the double democratization of democracy, to become more direct and more transnational.

So let’s have a look into recent developments towards superdemocracy across the globe and then assess and develop some keys on how this development could be strengthened and supported.

Just twenty-five years ago, the world was still a much less democratic place to live in. When for example the Filipino “People Power” had its initial big success in the mid-1980s, most of the world’s more than 200 countries and independent territories still belonged to the unfree world. The cold war drew a dividing line not only across Berlin, but also the whole of Europe and the globe. The time was, however, mature for a new wave of democratization, in many parts of Asia as other parts of the world. Twenty years ago the Berlin wall fell, after months of people power. This was the start of the end of communist Europe. In many parts of Latin America and Asia, military rulers lost their roles and martial

law was ended.

Today, most countries belong to the democratic world. People power has prevailed, but only to some extent. Today, the centre of the debate is not the question about “if” there should be democracy, but “how” such a democracy shall look like be equipped and developed. Beyond free and fair electoral processes, civic participation has become the key to sustainable democratic governance across the globe. In the last twenty years more than a hundred countries have in fact introduced institutional mechanisms of direct citizen participation within the framework of representative democracy. Other countries have experienced lawmaking by citizens for more than a century already. The growing use of initiative rights, popular votes on substantive issues and the mechanism for the recall of elected officials, have profoundly changed political dynamics.

In many parts of Latin America and Africa new forms of “participative budgeting” have been successfully introduced, while across Europe, Asia and North America modern methods of consultation – such as “deliberative polls” – are becoming standard in dealing with complex political challenges. The worldwide evolution of democracy is indeed remarkable. From the Canadian province of British Columbia to the Taiwanese island of Penghu and from Uruguay to Switzerland, citizens have been called to vote on new laws and constitutions. Something close to a participatory revolution has taken place on the local level, putting citizens onto the political centre stage on issues as varied as the budget, moral values and urban planning.

Global Forum on Modern Direct Democracy

While “classical” elections to legislative bodies have already been a major issue in international cooperation and research for decades, challenges and concerns linked to the growing worldwide use of initiatives and referendums, as well as participative budgets and deliberative polls, only became a major issue during the first years of the new millennium. However, international organizations, electoral management bodies, academia and civil society have begun to monitor, research and evaluate the options and limits of modern direct democracy in a more comprehensive and in-depth way than ever before.

The already named U.N. Secretary General’s “Guidance Note on Democracy”

or the new E.U. treaty that is to enter into force are powerful expressions of this. Another one is the establishment of the “World Democracy Forum” – process featuring annual “Global Forum on Modern Direct Democracy.” This new network of (direct) democracy professionals, whose most recent gathering in Seoul, Korea is documented in this volume, aims to intensify the educational efforts around modern direct democracy, to coordinate worldwide research activities and to map the worldwide procedures, practices and debates on the initiative and referendum process. Co-sponsors of the 2009 Global Forum on Modern Direct Democracy process include organizations such as the Korea Democracy Foundation, the Swiss Confederation and the Council of Europe – an organisation representing 47 member states which recently became the first such body in the world to adopt international guidelines for free and fair initiatives and referendums.³⁾

Towards a universal language of modern direct democracy

But the growing number of modern direct democratic procedures and practices offers also a lot of challenges. One initial one to address here is the language used. Here comes why. When citizens in Argentina gather signatures to change the school law of their country, when the people in Taiwan vote on an initiative on whether their country should apply for U.N. membership or when Italians are gathering half a million signatures to put a parliamentary legislative act to a referendum, we normally talk about the use of direct democracy. However, sometimes also votes to recall an elected official as in the Californian governor’s case back in 2003 or a plebiscite that makes the unlimited re-election of a president possible as was in Venezuela, are put under the label of direct democracy.

The growing practical use of and analytical reflection on direct democratic mechanisms makes clear that international efforts must be intensified to create a common understanding and to make available education about the facts and know-hows. We need a systematic language for the various forms of direct democracy and their relations to each other. In other words, we need a “universal language” of modern direct democracy. Such a language needs to focus on a

3) [http://www.venice.coe.int/docs/2007/CDL-AD\(2007\)008-e.asp](http://www.venice.coe.int/docs/2007/CDL-AD(2007)008-e.asp)

differentiation between various procedures as e.g. “top-down” mechanisms (plebiscites) and “bottom-up” ones (popular initiatives and referendums) and may enable the establishment of a common analytical framework to identify and compare tools.

This is the reason why we at the Initiative and Referendum Institute Europe had been asked by national and international organizations to develop the first “Universal Typology of Modern Direct Democratic Terms (UTM-standard).”⁴⁾ The typology covers all procedures of popular votes on substantive issues. This means that popular votes on persons and parties, such as recall procedures, are NOT included. While the basic structure of the present classification is the result of a multi-year development process, the implementation, practical use and operationalization are just about to begin. We welcome feedbacks!⁵⁾

The basic structure of the grammar of modern direct democracy is based on the division of popular vote procedures into three different types: INITIATIVE, REFERENDUM and PLEBISCITE. The INITIATIVE comprises procedures where the author of the ballot proposal is THE SAME as the initiator of the procedure, the REFERENDUM procedures where the author of the ballot proposal is NOT the same as the initiator of the procedure. Finally the PLEBISCITE comprises procedures where the majority of a representative authority is both the author of the ballot proposal and the initiator of the procedure.

Initiative, Referendum and Plebiscite

However, there exist procedures and practices, which do complicate this classification and there are grey zones between the different types.

4) The work to develop the UTM-standard has been led and coordinated by Rolf Büchi, the Initiative and Referendum Institute Educational Secretary and adopted by the IRI Europe Council at the 2009 meeting in February 2009. Rolf is the co-author of the parts in this article dealing with the new typology.

5) Please send feedback to the author of this article (kaufmann@iri-europe.org) or Rolf Büchi (buchi@iri-europe.org). From February 2010 you are also invited to visit the new information platform based on the UTM-standard, the IRI Navigator to Modern Direct Democracy at www.dd-navigator.com.

Popular vote procedures can be considered as political tools, of which different TYPES can be identified: INITIATIVE, REFERENDUM and PLEBISCITE. Just as a hammer or screwdriver exists in different forms, INITIATIVE, REFERENDUM and PLEBISCITE also exist in different forms for different applications. One form of a REFERENDUM is for example a referendum triggered by law, another citizen-initiated referendum. In the following the different forms of popular vote procedures and their characteristics will be described.

We use the term popular vote to designate a vote on a substantive political issue made by the voters, as opposed to a vote made by elected representatives. The term does not indicate of what type the designated procedure is, and no particular definition of direct democracy is implied. On the one hand a typology is needed to avoid confusions in the discussions of direct democracy. Confusions arise when different types of procedures are given the same name, like when the word 'referendum' is used indistinguishably for authority-controlled popular votes and for real referendums. Inversely, a good deal of confusion results if the same procedure is given many different names, for example, if an agenda initiative is also called people's petition, popular initiative and people's proposition.

On the other hand, different countries use different juridical terminologies. Without a typology it is not possible to compare the repertoire of popular vote procedures between countries. The aim of this typology is to classify the really existing procedures in a realistic and not-only-formal way. The words 'initiative' and 'referendum' designate two different types of procedures, whose use is controlled by minorities except for the obligatory referendum, which is determined by law. The word 'plebiscite' is used to designate a third type of procedure: authorities controlled popular votes (plebiscites). The distinction between referendums and authorities-controlled popular votes is crucial; whereas referendums are tools of the people, plebiscites operate as tools of power holders for legitimization and mobilization or for bypassing other representative institutions or for disengaging from tough policies.

Authors, Initiators and Decision-Makers

This classification of popular vote procedures only includes votes on substantive issues, not on people (like recall elections). It distinguishes popular vote procedures according to who is

- 1) the author of the ballot proposal (a group of citizens, a minority of a representative authority, a representative authority);
- 2) the initiator of the procedure (a group of citizens, law, a minority of a representative authority, a representative authority);
- 3) the decision-maker (the whole electorate, a representative authority).

In the following table, the forms of procedure are listed in column 1. The following columns indicate who is the author of the ballot proposal (column 2), who has the right to initiate the procedure (column 3), and who has the right to decide about the outcome of the procedure (column 4). The last column tells us about the TYPE of procedure in question.

Table 2.1. Universal Typology of Modern Direct Democratic Terms (UTM)

| Form | Author of the proposal | Initiator | Decision-maker | Type |
|---|--|---------------------|----------------------------|------------|
| citizens' or popular initiative | a group of citizens | the same group | the whole electorate | INITIATIVE |
| + authorities' counter-proposal | a group of citizens | the same group | the whole electorate | INITIATIVE |
| agenda initiative | a group of citizens | the same group | a representative authority | INITIATIVE |
| authorities' minority initiative | minority of a representative authority | the same minority | the whole electorate | INITIATIVE |
| citizen-initiated or popular referendum | a representative authority | a group of citizens | the whole electorate | REFERENDUM |
| + counter-proposal | a representative authority | a group of citizens | the whole electorate | REFERENDUM |

| Form | Author of the proposal | Initiator | Decision-maker | Type |
|---|----------------------------|--|----------------------------|------------|
| referendum proposal | a representative authority | a group of citizens | a representative authority | REFERENDUM |
| obligatory referendum | a representative authority | law | the whole electorate | REFERENDUM |
| authorities' minority referendum | a representative authority | minority of a representative authority | the whole electorate | REFERENDUM |
| authorities' controlled popular vote / plebiscite | a representative authority | a representative authority | the whole electorate | PLEBISCITE |

Remarks:

- Agenda-initiatives and referendum proposals are addressed to and decided by a representative authority; they may lead to a popular vote, but often they do not. Despite of this, these two forms of procedure are included in our typology.
- Abbreviations

The abbreviation for the form of procedure consists of 3 characters. The first character designates the initiator of the procedure (P = popular/citizens; A = authority; L = law) and the last character indicates the TYPE of procedure (I = INITIATIVE, R = REFERENDUM, P = PLEBISCITE). The middle character specifies the form of procedure (A = agenda, C = citizen, M = minority, O = obligatory, P = proposal, T = top-down). The "+" -sign indicates that the initiative or referendum procedure is combined with a counter-proposal.

| | |
|---|------|
| Popular or citizens' initiative | PCI |
| Citizens' initiative + counter-proposal | PCI+ |
| Agenda initiative | PAI |
| Authorities' minority initiative | AMI |
| Popular or citizen-initiated referendum | PCR |
| Popular referendum + counter-proposal | PCR+ |
| Referendum proposal | PPR |
| Authorities' minority referendum | AMR |
| Obligatory referendum | LOR |
| Authority-triggered popular vote/plebiscite | ATP |

Genuine direct democratic procedures are designed to offer the electorate instruments of agenda-setting and decision-making on substantive issues. However, in political reality, many procedures and especially practices of popular vote processes are partly or totally controlled by elected authorities.

The new “Universal Typology on Modern Direct Democratic Terms” establishes THREE TYPES and TEN FORMS of popular vote procedures.

Type 1. INITIATIVE

The right of a minority, normally a specified number of citizens, to propose to the public the introduction of a new or renewed law. The decision on the proposal is made through a popular vote.

Note that the agenda initiative fits into this type of procedure only with respect to its initial phase. What happens next is decided by a representative authority.

Form 1.1. PCI Citizens' initiative (popular initiative)

The procedure is initiated by a prescribed number of eligible voters. The sponsors of a popular initiative can force a referendum vote on their proposal (assuming that their initiative is formally adopted); they may also withdraw their initiative (if there is a withdrawal clause).

This procedure may operate as a means of innovation and reform: it allows people to step on the gas pedal. In principle, initiatives enable people to get what they want.

Form 1.2. PCI+ Citizens' initiative + authorities' counter-proposal

The authorities have the right to formulate a counter proposal within the framework of a popular initiative process. Both proposals are then decided on at the same time by popular vote. If both proposals are accepted, the decision on whether the original proposal or the parliament's counter-proposal should be implemented can be made by means of a special deciding question.

Form 1.3. PAI Agenda initiative (popular initiative proposal)

The agenda initiative is the right of a specified number of eligible voters to propose to a competent authority the adoption of a law or measure; the addressee of this proposal and request is not the whole electorate but a representative authority. In contrast to the popular initiative, it is this authority which decides what is going to happen to the proposal.

An agenda initiative can be institutionalized in a variety of ways: for example as an agenda initiative without popular vote, as an agenda initiative followed by a consultative or binding plebiscite or as a popular motion ("Volksmotion"). The popular motion can be the equivalent of a parliamentary motion; if adopted, it can also be treated like a popular initiative (this is the case in the canton of Obwalden).

Form 1.4. AMI Authorities' minority initiative

Initiated by a minority of an authority (e.g. one third of the parliament), which can put its own proposal on the agenda and let the people decide on it.

Type 2. REFERENDUM

A direct democracy procedure which includes a popular vote on a substantive issue (ballot proposal) like, for example, a constitutional amendment or a bill; the voters have the right to either accept or reject the ballot proposal.

The procedure is triggered either by law (→ obligatory referendum) or by a specified number of citizens (→ popular referendum) respectively by a minority in an authority (→ authorities' minority referendum).

Form 2.1. PCR Popular or citizen-initiated referendum

The right of a specified number of citizens to initiate a referendum that let the whole electorate decide whether, for example, a particular

law should be enacted or repealed. This procedure acts as a corrective to parliamentary decision-making in representative democracies and as a check on parliament and the government. The people (i.e. all those with the right to vote) have the right to decide in retrospect on decisions made by the legislature. Whereas the popular initiative works like a gas pedal, the popular referendum gives people the possibility to step on the brakes.

Form 2.2. PCR+ Popular referendum + counter-proposal

This procedure combines a popular referendum against a decision by an authority with a referendum on a counter proposal. If both proposals are accepted, the decision between the two can be made by means of a deciding question.

Form 2.3. PPR Referendum proposal

The right of a specified number of eligible voters to propose the calling of a popular vote; the proposal is addressed to a representative authority (usually parliament – local or national) which decides further action.

Form 2.4. LOR Obligatory referendum

A law (usually the constitution) requires that certain issues must be put before the voters for approval or rejection. A conditional obligatory referendum means, that a specified issue must be put to the ballot only under certain conditions (e.g. if more than half but less than four fifth of the parliament accept the proposal). Unconditional referendums are without loophole.

Form 2.5. AMR Authorities' minority referendum

The right of a minority in an authority to put a decision made by the majority in the same authority before the voters for approval or rejection. This procedure enables an authorities' minority to step on the brakes and give the final say to the voters.

Type 3. PLEBISCITE

A public consultation controlled “from above.” It is the “powers that be” (the President, Prime Minister, and Parliament) which decide when and on what subject the people will be asked to give their opinion. Such polls are frequently only consultative i.e. their results are not formally binding on parliament or government. In reality, plebiscites are instruments of power which those in power use in an attempt to reinforce or salvage that power with the help of the people. Their aim is not to implement democracy, but to provide a kind of legitimacy for decisions those in power have already taken.

Form 3.1. ATP Authority-controlled popular vote (plebiscite)

A popular vote procedure whose use lies exclusively within the control of the authorities.

Having established this new typology, we can now have a look into recent practice in order to identify possible next steps to promote superdemocracy as way to make representative democracy truly representative.

Global outlook

In recent times, the worldwide use of direct-democratic instruments was shaped by a series of power challenging popular votes in Asia, Europe and Latin America. Many of those votes were introduced from above and offered examples of plebiscitarian failures; others could not be validated because of big limitations and hurdles in the process. In many countries, however, including Venezuela, Taiwan, Hungary, Ireland and Bolivia, governing presidents and governments were defeated in their endeavour to get a majority for their political proposals. While the Venezuelan President Hugo Chavez first lost and then won a plebiscite to increase his powers, a similar attempt in Honduras produced a military coup in mid-2009. In Taiwan, two popular initiatives in favour of a closer affiliation with the U.N. failed to pass the participation quorum and thus the positive decisions were invalidated. In Hungary, two citizen initiatives against the

government's plan to introduce new health and university fees were successful, provoking a break-up of the social-liberal coalition of Prime Minister Ferenc Gyurcsany.

Other, more experienced countries experienced roller-coaster-style popular voting experiences: Italy where yet another reform package to the electoral law failed to reach the 50% turnout quorum; Switzerland where the citizens approved the abolishment of a "general initiative" right, introduced, by popular vote, as late as 2003. At the North American West Coast, citizens in many states were involved in reforming democracy, after earlier failures to do exactly this, including California, Oregon and British Columbia. And in Europe, the second Irish vote on the new E.U. treaty in October 2009, opened the door to the putting into force of the first quasi E.U.-constitution on December 1, 2009.

Recent developments did bring another wave of important local and subnational experiences with initiatives and referendums. In Germany, for example, the people in Berlin for the very first time could vote on a substantive issue. In the United States, the most recent election cycle was accompanied by hundreds of state-wide measures covering many different issues.

As we are at the end of the first decade of the new millennium, more and more citizens around the world are speaking out, adding their own questions to the political agenda and becoming increasingly involved in the decision-making process on substantive issues. Over the past 25 years participatory democracy has experienced an enormous boom. More than half of all the referendums and plebiscites ever held in history fall into this period. Only very few countries now remain in which there are no forms of direct-democratic participation at national or regional levels.

Nine out of ten countries or territories in the world now have one or more instruments of modern participatory democracy. These include partly the genuine direct-democratic right of initiative and referendum, but – in many countries – also the possibility of removing elected representatives before the end of their mandate (recall) or to hold a plebiscite, which is more an instrument of the rulers and not the citizens.

Unhelpful context, unfriendly design

The trend is clear: direct-democratic instruments are essential parts of today's representative democracy. In many cases, however, as a consequence of unhelpful and unfair background conditions – such as limited freedom of information and lack of free expression of opinion, or impractical direct-democratic procedures – initiatives and referendums are not necessarily seen as a positive complement to representative democracy, but rather as a competitor or even a threat.

For example, if a 50 percent turnout quorum is required before a referendum result can be declared valid, what frequently happens is that the usual “Yes” and “No” campaigns are joined by calls for a boycott. If the boycott action is successful, the “non-voters” will effectively be counted with the “no-voters,” the turnout quorum will not be reached, and the democratic outcome will be perverted (the result of the vote is invalid, even if a clear majority of the actual voters have voted “Yes”).

It can also happen that decidedly undemocratic regimes make use of the plebiscite and attempt to manipulate the opinion-forming and decision-making process by organising a “top-down” popular vote (perhaps bypassing an elected parliament). But problems can also occur when financially very powerful interest groups exploit initiative and referendum laws in the absence of compensating provisions which can help to ensure a free and fair referendum process.

More than 30 nationwide referendums and plebiscites took place worldwide in 2009, bringing the total number of countrywide popular votes to 1516 since 1793, when six million French citizens got the first ever opportunity to vote on their new national constitution. So the idea of bringing in the people on substantive issues is not a new phenomenon; it has made its way around the world.

When, at the end of the 19th century, the constitutional founding-fathers of Australia were faced with the question of how to create a democratic political system for their newly established country, they borrowed ideas from American and Swiss immigrants: they adopted the American bicameral system – which had also been a model for the young Swiss federal state – and they introduced the mandatory constitutional referendum on the Swiss model. Since then,

Australian voters have been able to vote on 49 issues at the national level and on another 29 in the eight federal states.

In demanding the introduction of direct rights of participation in political decision-making in the 1890's, the farmers of the U.S. state of Oregon quoted from a report by the New York journalist John W. Sullivan on the development of direct democracy in Switzerland. Their demand was accepted, with the result that since 1902 no less than 350 popular initiatives have gone to the ballot in referendums in this west coast state. A century after that blossoming in Oregon, the idea of direct democracy as a major component of a modern representative democracy took strong root in other parts of the world.

Table 2.2. Practice worldwide: national popular vote on substantive issues practice across time and space (1793~2009)

| Time | Europe | Asia | Americas | Oceania | Africa | Total | Average |
|------------|--------|------|----------|---------|--------|-------|---------|
| 1793~1900 | 58 | 0 | 3 | 0 | 0 | 61 | 0.6 |
| 1901~1910 | 14 | 0 | 0 | 4 | 0 | 18 | 1.8 |
| 1911~1920 | 21 | 0 | 3 | 5 | 0 | 29 | 2.9 |
| 1921~1930 | 36 | 1 | 2 | 6 | 0 | 45 | 4.5 |
| 1931~1940 | 40 | 0 | 7 | 6 | 0 | 53 | 5.3 |
| 1941~1950 | 36 | 2 | 3 | 11 | 0 | 52 | 5.2 |
| 1951~1960 | 38 | 13 | 3 | 5 | 9 | 68 | 6.8 |
| 1961~1970 | 44 | 22 | 4 | 7 | 19 | 96 | 9.6 |
| 1971~1980 | 116 | 50 | 8 | 14 | 34 | 222 | 22.2 |
| 1981~1990 | 129 | 30 | 12 | 7 | 22 | 200 | 20.0 |
| 1991~2000 | 235 | 24 | 76 | 15 | 35 | 385 | 38.5 |
| 2001~2009 | 157 | 28 | 39 | 20 | 32 | 276 | 30.0 |
| Total | 924 | 170 | 160 | 100 | 151 | 1516 | 7.0 |
| Share in % | 60.9 | 11.8 | 10.5 | 6.6 | 10.2 | 100 | |

The global trend towards the growing introduction of direct-democratic procedures, as well as the practical use of them, challenges both the governmental

and non-governmental actors concerned, as they have to adapt to these developments within the framework of representative democracy. These actors include:

- *Governments and Administrations*, who are involved in the management and administration of direct-democratic procedures, as well as in the ongoing debates on the potential and the limits of direct democracy;
- *Parliaments and Political Parties* are important players in the preparation and passing of legislation and regulations on the initiative and referendum process;
- *The Courts and Members of the Legal Professions* have a central role in many countries in assessing the use of direct-democratic instruments;
- *Think-tanks and Service Providers* act as independent or contractually engaged professional organisations with the task of ensuring that other professional groups are better informed in their dealings with direct-democratic procedures;
- *Academic Researchers and Media Professionals* are key actors when it comes to observing, analyzing, investigating and commenting on direct-democratic events.

As the countries with citizen-triggered popular votes illustrates, civil society groups are often the most highly motivated specialists for taking the development of democratic instruments forward and using them frequently and enthusiastically. The existence of an efficient interface between civil society and the authorities and the quality of the dialogue between them are of the highest importance. There is a growing emergence of civil society groups with a special focus on supporting and fostering the spread of direct-democratic tools worldwide, including some who already have considerable practical experience with them.

Asia-Pacific

Asia is struggling with strengthening of democratic forces after a period of autocratic backlash such as has been seen in Thailand, Malaysia and Bangladesh. After the Olympic hype in China, there is a lot of potential for a democratization of Asian democracy but also very strong forces and interests to hamper such a development. Countries and regions worth keeping a close

eye on include Korea, Taiwan, the Philippines, Thailand and India, where recent electoral processes have been accompanied by proposals and requests to strengthen popular vote opportunities on substantive issues as well.

In Korea, a series of domestic and international challenges and ideas, as the Free Trade Agreement with the issue or the plans to build a cross-country water street system were followed-up by profound request for more participatory democracy. The same happened in Taiwan, where a Free Trade Agreement with China led to signature gathering campaigns trying to trigger a popular vote. In the Philippines and Thailand existing procedures of modern direct democracy like the citizen initiative (PH) and the mandatory constitutional referendum (TH) were ingredients of a democratic reform debate, where in India, several states and many urban areas have introduced new forms of participatory – but not yet direct democracy – in recent years.

The new experiences made at the subnational level may encourage the possibility of a reform process at the federal level as well. Further south-east, several countries in Oceania have a wide range of direct-democratic provisions, including popular initiatives in New Zealand and mandatory constitutional referendums in Australia. However, the most practical experiences have been reported from small island-states such as Palau, Tokelau and New Caledonia, where the status of post-colonial autonomy and independence are issues to be decided by the electorate.

Americas

Across the Pacific Ocean, many U.S. states have seen dozens of citizens' initiatives ("propositions"), which made it to the ballot box along with the recent election cycle in late 2009. As before many groups used initiatives to try to produce spin-off effects for their candidate or their issue. In California, among other issues, planning (California Property Owner and Farmland Protection Act), transportation (funding), high-speed railways, education (funding) and new taxes (on wealth) were at the ballot. Another important issue was the vote on gay marriage, which was deemed legal and allowed by a court decision in spring. In Oregon, voters got the last word on a building law (Measure 49) and a constitutional amendment to fund health care for children. Further north, the

citizens of the Canadian province of British Columbia voted for the second time in four years on a proposed change of their electoral system from the (UK-style) first-past-the-post to a single transferable vote system. And again, the reform vote failed. In Ontario, a similar process to change into a mixed-member proportional system led to a referendum on October 10, 2007. In this historic vote (the first popular vote on a substantive issue in the state since 1921) Ontarians opted for the status quo. The existing first-past-the-post system got 63,3% of the ballots, the turnout reached 53%.

In Latin America, the 1980s were characterized by the return to civilian government after prolonged periods of authoritarian military rule. However, the hopes of many people, that representative democracy would better serve their interests, were disappointed, and discontent with the political parties and representative government grew. This disappointment of broad parts of the population contributed to the emergence of direct democracy in Latin America as it had happened in Switzerland in the second half of the 19th century and in the U.S. around the turn to the 20th century. However, strong popular demands for direct democracy are not widespread, except in Bolivia. In Latin America, most of the new constitutions adopted since the late 1980s included direct democratic rights, but also plebiscites and sometimes the right to recall (e.g. in Bolivia, Columbia, Peru, and Venezuela).

Africa

Across Africa, many countries have inherited some basic principles and forms of direct democracy from their former colonial powers. This is especially true for most former French colonies in Western Africa, where referendums “from above” (French-style plebiscites) are both part of the constitutional arrangements and – more seldom – also of political practice. But there is also another growing practice of instituting referendums, as in South Africa, the Democratic Republic of the Congo, Zambia and Madagascar, which has made a significant contribution to greater democratic stability. In the north of the African continent, strong Islamic leaders have misused the referendum instrument in many ways. In 2007, Egyptian president Hosni Mubarak offered the people just 7 days to discuss and agree on a list of 34 constitutional amendments. Less than 30% of the registered voters took part in the plebiscite. Despite such experiences, which

lie outside a free and fair framework, many Africans forecast a much more frequent use of direct-democratic instruments in the near future: the Eastern African Community – a regional intergovernmental organisation with five member states – plans a transnational referendum, to be held at some time after 2010, on the establishment of a political union in East Africa. An even more extensive direct-democratic event is envisaged by the Pan-African Council and the All-African People's Organisation. They have called for a pan-African popular vote on a union government for 53 states with more than 800 million people.

Europe

The majority of direct-democratic events are, however, still reported from Europe, where most countries today have initiative and referendum processes at least on the local and/or regional levels. At the other end of the spectrum, the 27-member European Union is deeply involved in a development which will bring the citizens onto the political stage also transnationally. As far more than half of all national legislation now has its origin at the European level, a transfer of participatory democratic instruments to the relevant legislative level becomes a key reform necessity. This is not so easy in practice, as the idea of national and popular sovereignty frequently clashes with the need to make Europe more democratic. Nevertheless, the ongoing constitutional debate in Europe has produced many transnational activities which may impress even long-term critics of the European integration process.

Already back in 2004, the E.U. heads of state and government agreed to include the principle of direct democracy in the then-proposed constitutional treaty. While the “constitution” did not pass the referendum test in all member states – the French and Dutch voted against it – the participatory principle survived to become part of the Lisbon Treaty, which will be put into force on December 1, 2009. Article 11.4 of the Lisbon Treaty provides for the right of one million E.U. citizens to propose a new European law or regulation.

This is an agenda initiative right, which to begin with will have no possibility of triggering a pan-European popular vote. But even before any implementing regulation has been drafted, at least 20 transnational European Citizens' Initiatives were launched between 2006 and 2008, addressing issues such as

human rights, energy and European democracy.

A brief assessment of these twenty pilot initiatives shows that the new instrument is being used by many different groups from different sectors of society, including politicians, human rights groups, conservative organizations, economic foundations and broad alliances of non-governmental groups. However, as the concept of the European Citizens' Initiative is still new, and as the culture and practice of initiative is as yet weakly developed in many European countries, several initiatives are still calling their attempt to gather one million signatures a "petition."

Furthermore, the fact that the implementation regulation does not yet exist means that all kinds of ways of collecting signatures are being used, including the simple registration of names online without clear verifiability. At the same time, it is clear that the Internet offers a unique transnational platform for launching and conducting such initiatives. Interestingly, most of the initiatives so far launched understand the need to publish their information in as many European languages as possible.

This dynamic development of transnational direct-democratic practice offers many opportunities, both for academics and political practitioners, to test and assess the first steps towards transnational direct democracy. In the near future, however, it will be essential to carefully establish a democratic infrastructure beyond the raw tool of the initiative. This will include some kind of European electoral management body to assist, test and follow up European Citizens' Initiatives, as well as implementing a comprehensive voter education program across the region.

In the last decade, Europe has made its first steps towards becoming a modern transnational democracy. The integration process offers a prime and unique case study of practical democratization beyond the nation-state – and hence a first view of what is likely to happen around the globe in other contexts as well. This direct democratic experience includes almost 50 countrywide popular votes on European issues in 27 European countries.

With so many popular votes in so many different countries over such a long time, the effects of having popular votes on Europe in Europe have recently

been the subject of extensive research projects – the results of these comparative and empirical studies are highly encouraging. Citizens in charge of important decisions become far better informed than people without such voting opportunities. Moreover, a team at the European University Institute of Florence has shown that referendum votes on Europe in Europe predominantly deal with the subject-matter in hand. “Direct democracy has fostered a high degree of politicisation of integration,” according to political scientists Andrew Glencross and Alexander Trechsel.

Under reasonably well-designed and citizen-friendly circumstances, direct-democratic procedures can deliver precisely what a quasi-transnational polity such as the E.U. most lacks today: an intense dialogue between institutions and citizens, a feeling of ownership of E.U. politics by the voters, and solid legitimacy for the decisions made at E.U. level.

However, all forms of transnational direct democracy must of course be embedded in wider contexts such as basic human and civil rights, the rule of law, regional and possibly overlapping transnational entities, manifold levels of autonomy, as well as the structures for and assistance to deliberative processes beyond national borders. In contrast to the local and national levels, where a broad set of direct-democratic instruments is already known and (mis)used, for the European level it would be good to begin with a starter set of initiative and referendum instruments, including the proposed European Citizens’ Initiative (the agenda initiative) and the mandatory constitutional referendum, as a way of involving the people from the very beginning in a new process of democratisation which should be a next step.

Turning back to the prospects of direct democracy at the national and subnational levels across Europe, an overview of existing direct-democratic procedures shows that three-quarters of the countries are familiar with popular votes triggered by the ruling authorities – so-called plebiscites. Almost half the countries have introduced the democratically more legitimate constitutional referendum: unlike the prevailing plebiscite, it is not the will of the authority majority, but the rule of law, which determines whether the citizens shall have a say. Just one third of countries also practice citizen-initiated referendums which most enhances democracy and power-sharing.

While the availability of direct-democratic procedures in Europe has increased dramatically since 1991, most instruments are weakly designed and include (too) many hurdles for the citizens to surmount in order for an initiative to qualify for the ballot, or for a referendum vote to be validated.

Conclusion: the super-democratic imperative!

Entering the second decade of the third millenium we now need to use the new tools at hand like the *Universal Typology on Modern Direct Democratic Terms* and the growing assessment of the initiative and referendum process worldwide to set out a super-democratic agenda for the years to come. Such a working agenda needs to look into:

- 1) the direct-democratic *provisions*;
- 2) the *opportunities* of participative practice;
- 3) the *infrastructure* for democracy

These working structures should be divided into different levels, offering the chance to both work hand-in-hand on the global level, while not limiting the efforts on the national, regional and local levels.

Globally, the Global Forum network has been established back in 2008 not only to meet and map the World of Modern Direct Democracy, but also to compare and learn from each another.

A key innovation to this work and the preparatory process towards the 2010 Global Forum in San Francisco will be the launch of the IRI Navigator to Modern Direct Democracy in spring, which will be the very first global information- and learning-platform on the internet focused on modern direct democracy. By implementing the “UTM-standard” the Navigator platform will offer a unique opportunity of gathering information and also creating global networks of democracy professionals.

Still the San Francisco Forum will offer yet another big chance to come together, learn more about the developments in the U.S. and shaping our global agenda for the democratization of democracy. In parallel, efforts should continue to bring major international actors and organizations like the U.N. into the

paying field of modern direct democracy. As it has been done in the case of Europe (through the Venice Commission of the Council of Europe) already, there is a need of developing global recommendations and standards of free and fair initiative and referendum processes.

On the continental levels, intensive efforts are underway in Asia to establish a regional think-tank and network of direct democracy professionals, possibly based in Manila, Philippines. The upcoming presidential elections in May will have an important effect on the possibility of developing (direct) democracy in this archipelago country. In other countries like Thailand, Japan, Taiwan, Korea and Indonesia the establishment of nationwide direct-democratic observatories will make sense as a starting point for taking the new forms of democracy more seriously and being able to deal with those early attempts of initiatives and referendums more seriously.

In Europe, the new treaty of the European Union has opened a fascinating avenue towards more direct democracy. The new treaty, which entered into force on December 1, 2009, defines representative democracy as both direct and indirect and established the very first transnational Citizens' Initiative (ECI) – an agenda-setting tool which equalizes the E.U. citizens with the other European institutions like the Parliament and the Council. 2010 will become the year, in which the new procedure will be introduced – and it will need enormous amounts of energy and innovative ideas to make this instrument a truly well-designed and citizens-friendly one. A successful introduction and initial practice of the ECI will make a difference when it comes to transnationalize direct democracy across the world.

Also in the Americas, in Oceania and Africa the work to map, meet and mainstream the tools and use of modern direct democracy will continue in the years to come. In the context of the Navigator to Modern Direct Democracy it will become more convenient to get an overview on procedures and practices and on the actors involved. At the same time as Modern Direct Democracy is developing into new territories across the world, existing systems of intense initiative and referendum practice like in California and Switzerland are about to be updated to modern times as well: in California a comprehensive constitution-revision is on track, and in Switzerland recent popular votes

violating international law and human rights conventions have provoked considerations to better fit the direct democratic process into a globalized world.

There is much to do and still very little resources at hand. So, the efforts to establish a sustainable infrastructure for our common work around direct democracy will have to continue, with the goal to establish a well-working Navigator platform, but also to establish democracy foundations, able to deal with the growing need of assistance, consultancy, research and education.

The label “superdemocracy” can be used to tag all those activities across the globe, focusing on this agenda and the tasks described. It is not too late to bring democracy forward – let’s just start with the work again!

3

Direct Democracy in Economic Crises

Useful Lessons

Urs Rellstab

Since the beginning of the global financial crisis in autumn 2009, the worldwide trade flows have suffered severe disruption. In next to no time, governments have pieced together programs to stimulate the economy. At the same time, we face the threat of a new wave of protectionism. Swiss businesses too have been hard hit by these developments. Some sectors of our export industry have had to face a slump of up to 40%. Moreover, our financial centre has come under pressure. It could be said that, in the midst of this storm, Switzerland's longstanding tradition of direct democracy has stood as steady as a rock.

How is this so? What does direct democracy have to offer when continuing storms are forecast for the world economy? Can there still be any place for decisions made through direct democracy when a financial tsunami is wreaking havoc with the world's real economy? Is it possible for the people to be integrated in the central decisions of a country in times of crisis? What is the view of the business sector of this in a country like Switzerland, where direct democracy plays a big role at the national level? Is it not better during times of crisis for the government to take full charge of matters, adopt decisions, and do one

thing above all – namely to act? And what are the longer-term implications of decisions resulting from direct democracy? These are issues to be addressed in this article.

Low taxes and a flexible labor market

The questions just asked lead us automatically to the fundamental issue that is repeatedly raised in conjunction with direct democracy: are popular votes on substantive issues at a national level not too cumbersome for the good governance of a country? Now, I could make life easy for myself and answer that question by asking you: is there really good governance in all of your countries? Does purely indirect democracy really work? Are you always satisfied with the decisions made by your government and parliament? I can well imagine that your answers to these questions would furnish me with excellent arguments in favor of more direct democracy.

I am an economist, and in economics, satisfaction has a lot to do with a country's key economic indicators. This is a point on which Switzerland scores exceedingly well. Taking the various ratings that measure economic performance, our country is generally in one of the top positions, or it, the very least, manages to be amongst the top ten. Our per-capita gross domestic product is high at 67,000 US dollars. Moreover, the Swiss have a high propensity to save, which amounted to a mean of 13% of their income in 2008. Taking OECD figures, we have a remarkably high participation rate in the labor force for the group of ages 15 ~ 64, namely just short of 80%. Our national debt is low by international comparison. That could turn out to be a powerful advantage for international competitiveness in the coming decade, once the present economic crisis passes by. There are, however, a number of other important points that characterize the economic-policy situation in Switzerland, and some of them have to do with modern direct democracy.

Company taxes are low in Switzerland. That gives our country magnetic powers in attracting companies and their international headquarters. We have a comprehensive system of unemployment insurance. In the present crises, even when the rate of unemployment in Switzerland is expected to climb above the 5% mark in 2010, unemployment insurance is a key factor that has a stabilizing

effect. On average, our pensioners are well provided for. This is thanks to a pension system that is spread over three pillars: redistribution by the state, pension funds and private savings encouraged by fiscal incentives. Internationally, Switzerland is repeatedly praised for this three-pillar model, and it goes without saying that it has become what it is thanks to the outcomes of many popular votes on substantive issues. Switzerland also scores very good marks for its infrastructure and the quality of its universities. The Swiss people are clearly aware that knowledge is tomorrow's resource. With that being the case, proposals to invest in education are rarely turned down in popular votes. One crucial factor for prosperity, however, is the flexibility of the labor market. In Switzerland, it is possible for employees to be dismissed. There is only limited protection against losing a job. The other side to that is that employers are not afraid to recruit additional employees at times when the economy is booming. While on the subject of the labor market, there is a further point that must be mentioned. Our labor market is open and attracts large numbers of workers from other countries. What is really astonishing is that, even in economically slack periods, when protectionism might appear as a short-term cure and when a purely national perspective might seem particularly enticing, the Swiss voters have the habit of confirming this openness.

Now, you might think that this guy came to the wrong global forum. He should do his advertising somewhere else! Of course, I am not advertising on Switzerland's behalf. My aim is to show you what direct democracy can do. In our country, decisions made directly by the citizens establish the central environmental conditions for business and society. As in other countries, the detailed job of governing remains in the hands of the government, and the parliament monitors the government and debates constitutional amendments and laws. However, with the individual decisions resulting from direct democracy, the people share responsibilities in deciding on the general direction of politics. Even if there are issues that are not subject to a popular vote and an explicit expression of the people's views, the government and parliament must always consider whether or not their policy would be accepted by the people if they were really voted on. Another way of putting this is that the people are always implicitly present whenever the government and parliament make decisions. With reference to crises, it is, of course, the case that referendums define the

political direction in such times too. They peg out the limits, and these boundary lines also help ensure the country remains on a steady course. They prevent the political rudder from being thrown wildly to and fro.

Representation of business in direct democracy

I am a member of the executive committee of *Economiesuisse*. *Economiesuisse* is the umbrella organization of Swiss business. Our organization is supported by a very broad base and includes all sectors of the economy. Our members are the trade associations of the individual sectoral organizations. To give you just a few examples of *Economiesuisse* members, there is *Swissmem*, representing the mechanical and electrical engineering sector, as well as the Swiss Bankers' Association and the insurance association representing our financial market. But, along with them, there are also bodies from the watch and textile branches. So we really are the top organization representing business in Switzerland. It is our job to ensure that the general environmental conditions for Swiss companies are as good as possible. We are setting out to make sure that Switzerland as a business location remains a front runner in the international field. Our central concern is economic policy. The way in which business associations are organized varies somewhat from country to country. In the USA, for example, there is no one organization that covers as vast a terrain as *Economiesuisse* does. The representation of business interests is more fragmented. The organization that comes closest to this role is the US Chamber of Commerce. In the United Kingdom, on the other hand, there is the CBI, in India the CII, and in Korea the Korean Chamber of Commerce and Industry.

As is the case with all associations representing the business world, it is the responsibility of *Economiesuisse* to stand up for the interests of its members in the political process. Operating on the foundation of liberal principles, the aim is to shape the rules in such a way that entrepreneurial action can go ahead, focused on growth and prosperity, without being hampered by excessive bureaucracy. The fact that Switzerland has a well-developed political system, with a comprehensive tradition of modern direct democracy, means that we have another task to perform as well. We organize campaigns prior to popular votes and we do that whenever initiatives and referendums will have an impact on the economy as a whole or on individual sectors. It is an activity at which we

are highly successful. For the past ten years or so, I have been responsible for Economiesuisse's political campaigning. Over that period, we have organized just short of forty political campaigns, and our success rate has been higher than 90%. In only three cases have the Swiss people decided to vote in a way other than that advocated by business. At this point, I hasten to add that business would never have been able to achieve such successes by itself alone. The decisive factor in most cases is for the government to support the proposals actively and for government representatives to campaign in their favor during their public utterances. The stance taken by the political parties and other protagonists and public figures is, naturally, important too – and it would be wrong to ignore the impact of the nature of the media coverage. In short: these campaigns are not – or not just – a matter of putting across political advertising messages. Campaigning prior to an initiative or referendum must be conceived as something very much broader than that. The first hurdle to be taken is to put together a viable coalition. It is also a matter of coordinating all those who have an active part to play. Quite naturally, money is important, too, but it is not the sole decisive fact as is often claimed.

Since 1848, more than 550 popular votes on substantive issues have been held in Switzerland, taking just the national level. Direct democracy is, however, deeply rooted in the Swiss society, and the Swiss are extremely proud of the rights of the people. Historically, it was the decision of the citizens to take political self-determination into their own hands that was one of the decisive moves in ensuring social cohesion in a small country with four official languages and devoid of mineral resources yet with appreciation of the true value of flourishing foreign trade for internal cohesion and prosperity. The Swiss people will never accept curtailment of their citizens' rights, for example, as a result of a future membership of the European Union.

Direct democracy bring public sensitivities to light

Sovereign power in Switzerland is in the hands of the people, and they have become accomplished decision-makers (with a mean participation of around 50% in national votes). For those in charge of campaigns, the records of past votes on matters concerning the numerous and very varied fields of politics represent a seismograph in which they can place considerable faith. All initiative and

referendum results are available as source material, including those organized in individual communes. Past voting patterns are a good general guide for predicting the outcome of forthcoming referendums. There is probably no other country on earth that has a view as good as Switzerland of its political geography and the political sensitivities of its citizens – and these have remained stable in many areas.

Here is a topical example of this: Right at the heart of the economic crisis, the Swiss electorate voted YES to a further opening of the labor market for workers from abroad. For the fifth time, they said YES to the bilateral approach towards the European Union (with 59.6% in favor for a turnout of 51.44%). What was at stake was a further step in the free movement of people with the European Union and the extension of this arrangement to the latest countries to join the European Union, namely Romania and Bulgaria. *Economiesuisse* took the lead in campaigning in favor, and so it fell within my sphere of responsibility. Let me ask you to pause and consider that example again. At the depth of the economic crisis it was possible for Switzerland to use the popular vote instrument to obtain a decision of opening the labor market further for people from abroad. That might appear paradoxical at first sight, but it can be explained by the fact that we succeeded in placing the decision to be taken in the context of the agreements already accepted between Switzerland and the European Union and also in showing what risks a NO vote by Switzerland would have had for our economy and country.

The sovereign electorate also has its mind made up over matters of financial policy. Opinion surveys repeatedly reveal that the Swiss people, in forming their views on financial and fiscal policy, rely less on experts and more on those in their immediate private surroundings. What that means is that, in tax matters, they consider their neighbors and colleagues at the workplace to be more credible than politicians, experts and business organizations. Being mindful of the *Res Publica*, the Swiss themselves know what is good for finances. Their holistic attitude towards budgets is decisive, because it means always keeping an eye on taxes when contemplating expenditure. A mechanism to prevent over-indebtedness also makes it impossible for the costs to be passed on to the next generation in the form of public debt. This mechanism, which ensures that the state budget remains in balance no matter what phase the economic cycle happens

to be in, was, incidentally, also endorsed by the people with 84.7% of the votes in its favor. That was back in 2001. The budgetary approach to tackle financial and fiscal matters remains unshakable in the crisis-ridden year of 2009, and that across the boundaries between the political parties.

This stance has been repeatedly confirmed in the outcome of votes. Taking 2001, by way of example, a popular initiative to introduce a capital-gains tax was rejected (with just 34.1% voting in its favor). In 2004, by contrast, the people accepted a proposal to increase value-added tax. The electorate was convinced by the reason given for this measure, namely the need for extra money for financing pensions.

Modern direct democracy is making us more competitive

Now, the citizens' decisions mentioned earlier are all ones that business would basically welcome. In most cases, however, they are also the result of a long and painstaking negotiation process, which is an inherent element in Switzerland's consensus democracy. In order to avoid defeats in citizens' referendums or victories for popular initiatives [PCI], which may be widely supported but too radical, solutions and/or counterproposals need to be worked out beforehand that are suitable for securing the backing of as many of the stakeholders as possible. That being so, there is not always a perfect match between politics and the set of policies which business believes would be necessary for a strong and innovative Swiss economy.

This slow political process is also the butt of criticism. As a matter of fact, Swiss politics is not renowned for quick decisions. One of the criticisms is that it requires only 50,000 signatures to call an optional referendum [PCR] at national level to vote on revoking a law that has been adopted; and only 100,000 signatures for a popular initiative [PCI], which in Switzerland is always a proposal to amend the constitution. In the age of Facebook and electronic mass communication, it seems reasonable to assume that it will become easier and easier to collect the necessary number of signatures. Moreover, the Swiss population as a whole has grown considerably since these limits were introduced. Economists also complain that the extensive rights of the people in Switzerland prevent the political framework from being brought into line with current conditions in an

age of acceleration. The ultimate effect of that, they claim, is to erode Switzerland's international competitiveness. This criticism has, however, become quieter in the recent past, as it could not be supported by the facts. Initially, I referred to a few key economic indicators for Switzerland, and, by international comparison, they are pretty good.

If there is anything to be learned from historical experience, I am personally inclined to maintain that it would even be the contrary. Modern direct democracy is making us more competitive. It leads the general public to be better informed and to demand rational decisions. Let me ask you the following question: which are the countries where the population really has to consider the demographic situation and its implications? The answer is: those countries in which the question of pensions and pension systems is decided on through a ballot box. Direct democracy ties the people into political decisions. That not only leads to broader support for politics but also increases the individuals' sense of personal responsibility. The people and the whole community move closer together, as has been shown in empirical studies. These were based on investigations into financial-policy decisions made at the communal or cantonal level. It can be concluded that direct democracy in Switzerland leads to an expenditure policy that is closer to the preferences of the citizens. In addition to this, the national debt is lower, the administration more efficient, and prosperity higher.

However, individual popular votes do still constitute potential threats to business interests. That is also the case in Switzerland. *Economiesuisse* does not pursue a policy of launching initiatives or referendums. Life would sometimes be easier for us if we only had to make the case for our economic interests to parliament and the government. As the umbrella organization of Swiss business however, we have learned to live with direct democracy.

So what are the "lessons and keys"? From my point of view as a representative of business interests and a campaign manager, I should like to share the following thoughts with you:

In purely indirect democracies, governments can only be made to face up to their responsibilities on polling day. In representative democracies including direct democratic procedures, however, it is not all that easy to forget electoral

promises, since these are subject to repeated tests through the ballot box. That serves to strengthen belief and trust in politics.

In modern representative democracies, the players are forced to explain specific policies on a permanent basis. They must be able to present complicated matters in comprehensive terms. That is the only way of ensuring acceptance. Politics cannot be allowed to remain a matter for the experts alone.

It is true that, around the world, the amount of direct democratic procedures and practices are on the increase – at least in constituent members of federations and confederations and at local-government level. Modern Direct Democracy does, however, give rise to many questions for the political protagonists. That is why the pooling of practical experience is very important, and we are always ready to join it.

The new communication technologies are bringing with them the opportunity of making the procedures of modern direct democracy even more attractive.

Direct democracy forces the players to seek compromises and coalitions for limited periods. It constitutes a challenge to traditional power structures.

Let me conclude by stating the following. All in all, modern direct democracy is a massive opportunity for business in the long term, given that business activity can flourish best where the economic interests and opinions of various groups within society do not diverge too radically over the long term. I am not appealing for a harmony of interests, but I do believe that political and economic systems are able to derive benefits from having conflicts of interest fought out regularly at the highest level. Modern Direct Democracy forces that to happen. The permanent states of negotiation between the various interests and the acceptance of the outcomes are, in the final analysis, the decisive factors in the Swiss practice of democracy. That bestows credibility and steadfastness on the government. Credibility and steadfastness are the central factors for a country's government and its internal cohesion, especially at times of economic crisis. They are also the building bricks of economic success.

4

Global Crises and the Future of Transnational Democracy

Adam Lupel

In order to say a few words about the future of transnational democracy and the potential role of modern direct democracy, I'd like to begin with some comments on the recent past. And so allow me to start with a few dates: 1989 (the triumph of democracy), 1999 and 2003 (the rise of global civil society), and 2008 (the challenge of global crisis).

1989: The Triumph of Democracy

The spring of 2009 marked the 20th anniversary of the pro-democracy protests in Tiananmen Square, and November 2009 marked the 20th anniversary of the fall of the Berlin Wall. These are two truly landmark events in the history of democratic movements world-wide – two events whose importance must at least be acknowledged at the start of any discussion of the potential for transnational democracy in the twenty-first century. While the events of Tiananmen Square in the spring of 1989 failed to bring electoral democracy to China, the bloody spectacle of repression there did affect the response of many Eastern European leaders who were determined to avoid violence when they faced off against their own anti-communist movements that autumn. As Timothy Garton Ash puts it, “that Tiananmen Square happened in China is one of the reasons it did not

happen in Europe.”¹⁾ And, indeed, the peaceful fall of the Berlin Wall in November ushered in an extraordinary period culminating the third wave of democratization that by some measures had begun in the 1970’s.²⁾ By the end of the 1990’s, electoral democracies had spread through Eastern Europe, Asia, Africa, and Latin America. In “January 2000, Freedom House counted 120 democracies, the highest number and the greatest percentage (63) in the history of the world,”³⁾ leading some to see liberal democracy as having definitively won the great contest of history, making the very idea of transnational democracy a possibility for the first time.⁴⁾ This of course tells an incomplete story; simply holding elections does not make a government democratic, and we have seen how a number of countries have held elections while maintaining elements of authoritarianism.

1999 & 2003: The Rise of Global Civil Society

Ironically, around the same time that democracy appeared anyway to be spreading around the world, doubts about democracy’s traditional forms also began to grow. Democracy was more widely accepted than ever before. Yet, confronted by the forces of globalization, nationally based democratic institutions appeared to be increasingly over-run. While policy makers at the World Bank and in key capitals of Europe and North America touted the benefits of free trade and deregulated markets throughout the 1990’s, by the end of 1999 protesters had paralyzed the World Trade Organization meeting in Seattle, sounding an altogether different bell about globalization, one that rang a tone of warning, not celebration. Globalization, it was argued, was not spreading democracy as some supposed, but rather posing a mortal threat to it. The Battle of Seattle, as it became known, ushered in a series of transnational protests (e.g., in Genoa, Quebec, New York, etc.) and some argued that if globalization challenged democracy at home, global civil society was the necessary tool for democrats to respond abroad.

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- 1) Timothy Garton Ash, “1989!” *New York Review of Books*, Vol. 56, No. 17, November 5, 2009.
 - 2) Samuel Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman, OK: University of Oklahoma, 1991).
 - 3) Larry Diamond, “A Report Card for Democracy” *Hoover Digest*, No 3 (2000). See also discussion in Archibugi, *The Global Commonwealth of Citizens* (Princeton, NJ: Princeton University Press, 2008), pp. 31~35.
 - 4) Francis Fukuyama, *The End of History and the Last Man*, (New York: Free Press, 1992).

Interestingly enough, it was not globalization that gave rise to the most significant instance of global protest, but the policies of an American president. On February 15, 2003 across North America, Europe, the Middle East, Asia and Australia as many as 30 million people took to city streets to express opposition to the planned invasion of Iraq.⁵⁾ It seemed an extraordinary moment for global civil society, perhaps for the first time living up to its name. The anti-war movement appeared to accomplish in a day what four years of transnational activism against neo-liberal globalization could not. It brought together constituencies from East and West, North and South into a broad-based movement with a common clear objective: stop the U.S.-led drive for war. The next weeks saw what was, in effect, a Pyrrhic victory for global civil society. The protests no doubt contributed to the Bush Administration's defeat in the United Nations Security Council. But in the end they also contributed to the heightened sense that the U.N. and global civil society were impotent next to the hegemonic power of the United States. President Bush made clear that the U.S. would follow its own course regardless of global public opinion. Global civil society seemed to constitute itself and reveal its limits at the same time.

2008: The Challenge of Global Crisis

Since then, with the extended fight in Iraq, the stubborn conflict in Afghanistan, and a weakening U.S. economy, the debate has shifted further: from globalization through empire to multipolarity and the emergence – or reemergence – of new powers punctuated by the events of August 8th, 2008 (8-8-08), as a lame-duck U.S. President watched the official “arrival” of China and Russia to a renewed international prominence, watching, literally, as a spectator at the opening ceremony of the Beijing Olympics, and figuratively, as a hamstrung bystander, while Russia invaded Georgia, a U.S. ally. At the same time, events have proven just how important globalization remains. As we know, an enormous financial crisis with roots in the U.S. housing market rippled across the world in 2008, precipitating an international credit crunch that by many accounts caused a global recession in 2009. They are calling it the Great Recession in the United States. The global economic crisis demonstrates both the challenge global forces have on national and even local institutions and the need for effective

5) Connie Koch, *2/15: The Day the World Said No to War* (Oakland: AK Press, 2003).

transnational responses. This seems to pose a dilemma. If there is no mechanism available to channel the will of the people on a global scale, it seems we would be forced to choose between democratic governance and global governance. But this is, I argue, a false choice.

Popular Sovereignty and Global Governance: The Dilemma

Popular sovereignty represents the main idea of modern democracy: it means simply “the rule of the people.”⁶⁾ Popular sovereignty signifies the general principle that the people broadly defined play a central role in the constitution, steering, and occasional transformation of the laws and institutions that govern their lives. Globalization presents extraordinary challenges to this idea. This is not to argue that globalization is inherently a bad thing, but to recognize that the challenge is to make globalization and democracy compatible. There is no turning back the clock to some isolationist past.

But globalization is in fact a challenge for democracy because it bypasses the authority of the people by leading to the development of governing mechanisms far beyond their reach. It undermines the consensual foundation of democratic authority by limiting the transparency of power. That is to say, it becomes increasingly difficult for the common citizens to understand who’s in charge. As economic production and control become increasingly transnational it becomes more and more difficult to communicate to the public information about who or what is behind the forces that determine or influence their lives. Under such conditions, the national procedures for registering consent or dissent are increasingly limited.⁷⁾

Democracy has become more widely accepted than ever, yet, confronted by global challenges, nationally based democratic institutions appear increasingly insufficient. Not only the challenge of financial crises, but the realities of climate change, the threats of nuclear proliferation, the risks of globalized health pandemics (such as, most recently, H1N1), the corrupting activities of

6) Adam Lupel, *Globalization and Popular Sovereignty: Democracy’s Transnational Dilemma* (London: Routledge, 2009).

7) See Lupel, *Globalization and Popular Sovereignty*.

transnational organized crime, to name just a few, all require responses that outstrip the capacities of even the most powerful nation-state.⁸⁾ However, the problem for democracy again, is that there is currently no process underway that makes democratic global governance a possibility in the immediate future. That perhaps sounds pessimistic, but as may become clear, on these issues I could be accused of being an optimistic pessimist, which is maybe just another way of saying I am an idealistic pragmatist.

The dilemma of having to choose between global governance and democratic governance is a false choice. It is a false choice because we need better global governance, and in the long run effective global governance will have to be perceived as legitimate and thus, some democratic process of legitimation will be necessary. Of course, others would argue that effectiveness itself creates legitimacy. But I would respond that over time effective governance of any kind requires public oversight (to combat corruption or clientelism among other socio-political ills) and public input (to identify the problems most in need of attention). In order for globalization to continue without signifying the demise of democratic self-governance, new forms of democratic politics need to be developed.

Three Views of the Future and the Task Ahead for Modern Direct Democracy

Thus, the task is to develop mechanisms for *transnational* democratic practice. Now, you ask, what are the major opportunities and limitations ahead for establishing such a system? Very briefly, I'd like to present three views on this question – the optimistic, the pessimistic, and the pragmatic.

The optimistic view (opportunities)

The optimistic view is that there are many opportunities. Optimistically, one can say, many recent developments augur well for the development of

8) On the need to strengthen multilateral responses to global crises, see the IPI Blue Papers Series: International Peace Institute, *IPI Blue Papers* Nos. 1~11, Task Forces on Strengthening Multilateral Security Capacity, New York, 2009. Available at www.ipinst.org.

democratic politics beyond the national domain. For one, technological advances in information technology make the transnational communication of political ideas and identities, preferences, and petitions increasingly realistic. Satellite communications and the Internet shorten the distance between like-minded peoples and have the potential to reduce the opportunity costs of becoming politically involved. Such technological advances also increase the capacity for diaspora communities to maintain political networks that transcend the ties of territorially based political institutions; and they present opportunities for the development of transnational mechanisms of modern direct democracy through Internet voting, virtual public spheres, and the like.

Beyond such technological advances, political developments suggest a future when transnational politics will not be uncommon. The rise of interest in regional projects of various kinds around the globe suggests a readiness of national governments to accept that globalization requires cooperation. Meanwhile, the search for effective solutions to pressing problems requires making connections and establishing authorities of various kinds that transcend national borders. Most obviously, the continuing project of the European Union comes to mind. But developments on the African Continent are also significant, not just at the level of the African Union, but also at the sub-continental level, for example, the Economic Community of West African States.

The pessimistic view (limitations)

The pessimistic view is that for every opportunity there are many limitations. Pessimistically one could argue that the technological advances just mentioned are normatively ambivalent. They are tools that may be wielded by anti-democratic tendencies as well as the democratic. As the first decade of the 21st century comes to a close we can see that the end of the Cold War did not result in the end of history with the triumph of liberal democracies the world over. Populism, religious based-politics, authoritarian capitalism, all represent strong anti-democratic tendencies in the world today. Furthermore, while the regional projects we are seeing in development may have the potential for democratization in the future, currently they suffer from well-known democratic deficits. The European Union, again, is the furthest along, but, as struggles over the proposed constitution and the Lisbon Treaty suggest, many still see it as an elite project.

However, the biggest limitation to the potential constitution of transnational democracy is that currently, none of the principal actors in the international arena – not states, not peoples, not capital – can be counted on to recognize an immediate interest in the transnational democratization of power. For example, a new level of regulation and oversight is always antithetical to the libertarian instincts of capital. While capital benefits from international legal agreements guaranteeing property relations and processes of exchange, it tends to oppose regulatory procedures that might restrict labor or trade policies in the name of social interests. States, as the major actors in the international arena, have a strong interest in maintaining their *de jure* sovereignty; sovereign status remains the foundation of state identity and agency in the international arena. This is never given up lightly. And, perhaps most troublesome for the cosmopolitan vision of transnational democracy, while individuals are set to benefit the most from the institutions of transnational democratic law, *peoples* are often the most reactionary forces regarding notions of world community and transnational solidarity. Popular opinion is often more nationalistic and parochial than that of political, social, and economic elites. This was evident in the campaigns to reject the European constitution in France and the Netherlands and in general attitudes about the United Nations in the United States.

The pragmatic view (one step at a time)

The pragmatic view, which I have come to favor, says we need to take things one step at a time. Pragmatically speaking, the great range of challenges the world faces today require that we concentrate on the tasks at hand. Further crises and global challenges require better global governance. Successful global governance requires legitimacy. This will require a process of inclusion, so that the governments and the peoples affected by the purview of governing institutions feel a sense of ownership. To be successful over the long term global governance will have to avoid being perceived as having been imposed from abroad. But how to consider incorporating popular participation or democratic representation into the process of global governance depends upon the form of rule-making structure being addressed. When discussing the potential of transnational democracy at the regional level, such as in the case of the European Union,

efforts may still be focused on a well-defined and relatively centralized authority. However, when considering broader issues of global governance there are multiple centers of often overlapping authority to consider: states, international organizations, private industries, and multilateral arrangements of many kinds, for example. Thus, the proper object of popular participation is more diffused and unclear.

On the occasion of the U.N. International Day of Democracy, one can admit that the United Nations – the closest thing extant to a universal centralized institution for global governance – is not currently a democratically structured organization, even though it is important to recognize the principles of democracy and especially human rights lie at its very core as regulative ideals, pole stars guiding it into the future. To be realistic, at least since the efforts of 2005, it has been clear that a wholesale democratic reform of the global governance system is not in the immediate offing. Thus, the pragmatic view suggests that building legitimate global governance needs to be done on a case by case basis, through clear and well-defined channels of authority. There are precedents to suggest this is a potentially fruitful endeavor. It is widely recognized that popular participation and global civil society played a pivotal role in providing the momentum for the establishment of the International Criminal Court, in the process that led to the Ottawa Convention Banning Landmines, and in the establishment of the U.N. framework on Children and Armed Conflict.⁹⁾

Less than the immediate idealistic overhaul of international institutions or the constitution of new global bodies, the pragmatic view of transnational democracy focuses on the strengthening of popular sovereignty at the local and national levels in communication with regional institutions and networks of a growing transnational civil society in order to find the best responses to the worst problems. Over time, real-world responses to real problems can shift transnational norms affecting elite opinion in key capital cities, making the practical transformation of international institutions more likely.

9) For a series of examples of how civil society can contribute to the establishment of global regulatory frameworks, see James Cocayne, et al., *Beyond Market Forces: Regulating the Global Security Industry* (New York: International Peace Institute, 2009).

Transnational challenges require transnational solutions. The challenges of climate change, financial crisis, nuclear arms, pandemic disease, and extreme poverty, among others, cannot be addressed by a go-it-alone politics. Recognizing the challenges globalization poses for democracy should not force a choice between democratic governance and global governance, but rather encourage the search for innovative, legitimate solutions to the practical problems that are common to all. Thus, the task ahead for Modern Direct Democracy is to develop mechanisms to incorporate democratic deliberation into this process, to register the consent, dissent, fears and aspirations of all affected by the processes of transnational politics, to subject global governance to democratic authority as it is being constituted by actors providing immediate responses to the demands of our time. This is an extraordinary challenge in itself. But how this challenge is met has great consequences for the world in the years to come.

part

TWO

WORLD REVIEW:
REGIONAL ASSESSMENT

5

Nice Ideas, Difficult Realities

Examples of Recent Direct Democracy in Asia

Jau-Yuan Hwang

In December 2005, the Taiwan Foundation for Democracy (TFD) published “Direct Democracy in Asia: A Reference Guide to the Legislation and Practice.”¹⁾ Since its publication, this book has become one of the most authoritative on direct democracy in Asia. However, there have been many new developments in some Asian countries such as Taiwan, Japan and South Korea over the past four years. Timely supplements to this guidebook are thus necessary to keep it updated.

This article is part of the effort to update it. Constrained by the available information at the present moment, we are only able to provide an updated account of the recent developments in Taiwan and Japan as of November 2009. For the other countries in Asia, we expect to complete our entire supplement by 2010.

The main body of this report is divided into two parts: First, we analyze the latest developments in Japan, followed by deliberations on the case of Taiwan. In both sections, we give a brief account of the basic legislative framework of

1) The book is available for free online at http://www.iri-asia.net/?mod=Research&page=Publications_Reports&id=81.

direct democracy in the two countries before presenting the updates since 2006.

Recent Direct Democracy Developments in Japan

1. Overview of the Direct Democracy System in Japan

Due to its peculiar historical circumstances, Japan has developed a unique terminology to name the different referendums at different levels. Most Japanese scholars refer to a countrywide popular vote on a substantive issue as *kokumintouhyou* (国民投票) (“national referendum”), and a local popular vote as *juumintouhyou* (住民投票) (“resident referendum”) instead of *koumintouhyou* (公民投票) (“citizen referendum”). This is because under the Meiji Constitution, the term “citizen (公民)” only refers to male nationals possessing a certain amount of property. Consequently, most Japanese scholars still decline to use the term “citizen” today and prefer to use the first two terms.

Another conceptual feature of the initiative and referendum in Japan is its definition and scope. Most Japanese scholars consider “recall of certain public officials” also a type of modern direct democracy.²⁾ For example, “review” of the Supreme Court Justices by popular votes every ten years has been termed “national review,” but it actually means “national referendum” in Japanese. However, such “review votes” should be regarded as a sort of “recall” rather than any form of modern direct democracy [as outlined in the Universal Typology of Modern Direct Democracy Terms used in this publication]. Despite the above conceptual confusion, the following information about Japanese popular votes will nevertheless include the practice of popular review of the Supreme Court Justices and recall of other public officials.

Up to now, initiative and referendum practices at the national level were all regarding review of the Supreme Court Justices. On the other hand, local popular votes are not uncommon, and the issues they cover are diverse.

2) In addition to Japan, there are other countries categorizing “recall of officials” as a third type of direct democracy (besides referendums and initiatives), such as South Korea.

1.1. National Level

1.1.1. Popular Votes on Substantive Issues

a. Compulsory Referendum [LOR]

(a) Referendums on Constitutional Amendments

According to Article 96 of the Japanese Constitution, amendments to the Constitution shall be initiated by the Diet (Parliament) with a vote by no less than two-thirds of the total number of the members of each House. Then the amendment initiative shall be submitted to the people for approval, which requires a majority of affirmative votes cast in a special referendum held individually or in a referendum held at the same date as national elections. Up to the end of November 2009, no such popular vote on constitutional amendments has ever been held in Japan.

The Japanese Constitution has never been amended since May 3, 1947, when it took effect. Notwithstanding that the compulsory (obligatory) national popular vote on constitutional amendment is set in the Constitution, there was no statute governing the procedures and related matters before the National Referendum Law was enacted May 14, 2007. Even in academia, it was only in the 1990s that constitutional amendments began to receive much attention.

The intention to amend Article 9 of the Japanese Constitution was the trigger to the National Referendum Law. For years, one of the most controversial issues in Japan's Constitution has been Article 9³⁾ which permanently renounces war. The applicable scope of Article 9 has always been in dispute, but it has nevertheless been interpreted as allowing the establishment of self-defense forces. In recent years, as international circumstances have changed, Japan has been increasingly required to exert more responsibilities in the international community, including peacekeeping missions. For example, in December 2003, Japan sent some of its Self-Defense Forces to Iraq to assist in reconstruction projects, as well as some of its navy ships to help refuel U.S. ships involved

3) Article 9 (Chapter2: Renunciation of War) of the Constitution of Japan: "(1) Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as sovereign right of the nation and the threat or use of force as means of settling international disputes. (2) In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized."

in the wars of Iraq and Afghanistan and in patrolling the seas around Somalia to fight pirates. Meanwhile, Japan is interested in playing a more important role for the maintenance of peace in the Asia-Pacific region in the future.⁴⁾ Nevertheless, the deployments of self-defense forces overseas and other international missions have also aroused controversies over their constitutionality.

Many Japanese politicians have long argued for the necessity of amending the constitution to meet the changing international situation, while others opposed it.⁵⁾ No matter on which side one stands, a statute is required to implement the constitutional amendment procedures. After long struggles between the diverging parties, the National Referendum Law was passed in 2007. But in spite of its name, the National Referendum Law does not grant people the rights to really decide on substantive issues. More accurately speaking, the law only applies to referendum votes on constitutional amendments, and does not provide possibilities for popular votes on other important matters.

Some features of the National Referendum Law shall be described. First, the age eligibility to vote is 18 years old, rather than 20 years old like in other national elections. Second, in national referendum campaigns, all government employees, including (school) educators, are prohibited from using resources associated with their status in any campaign for or against national referendums. Third, television and radio commercials shall be banned in the two weeks before voting. Last but not least, the law shall come into force three years after its promulgation, and the panels to examine the Constitution shall not study or submit any amendments during that period. That is to say that there will be no countrywide popular vote on a constitutional amendment before May 18, 2010.

According to the National Referendum Law, a constitutional amendment proposal is only allowed to include one issue, which means that comprehensive reform voting is not allowed. For a proposal to become a bill, a strong, two-thirds majority in each House is required. The constitutional amendment bill shall

4) See <http://www.taipeitimes.com/News/edit/archives/2004/06/10/2003174511> (last visited Oct 31, 2005).

5) According to the survey of the "Daily Newspaper"(Mainichi Shimbun), among 480 newly elected members of the House of Representatives, 306 members supported amendments to the Constitution.

be put to popular vote within 60 to 180 days after its passage as a bill. With a simple majority affirming the bill in the popular vote, the proposal becomes law spontaneously.

(b) Review of the Supreme Court Justices

According to Article 79 of the Constitution, the appointment of the justices of the Supreme Court shall be reviewed by the people at the first general election of the members of the House of Representatives following their appointments, and shall be reviewed again at the first general election of the members of the House of Representatives after a lapse of every ten years. When a majority of voters favors the dismissal of a justice, he or she shall be dismissed. The function of such popular votes is to review the appointments by the Cabinet and to dismiss unqualified justices of the Supreme Court. Meanwhile, it also aims to strengthen the legitimacy of these appointed justices.

b. Optional Referendum [PPR]

No optional referendum at the national level is allowed in Japan under the existing laws.

1.1.2. Initiative [PCI]

No initiative, either direct or indirect, at the national level is allowed in Japan under the existing laws. However, as stated below, at the local level, local residents are allowed to initiate certain local laws (e.g., Local Referendum Law) for popular votes.

1.2. Local Level

There are 47 sub-national political entities in Japan, including one “metropolis” (都, To) (Tokyo), one “circuit” (道, Dō) (Hokkaidō), two urban prefectures (府, Fu) (Osaka and Kyoto), and 43 other prefectures (県, Ken). These political entities are called collectively *Todōfuken* (都道府県) in Japanese.⁶⁾

Each prefecture is divided into several cities (市, *shi*) and counties (郡, *gun*), according to the Local Autonomy Law. The counties are further divided into

6) See http://en.wikipedia.org/wiki/Prefectures_of_Japan (last visited Oct. 31, 2005).

towns (町, *chō* or *machi*) and villages (村, *son* or *mura*). Take Hokkaido as an example – it has 14 sub-prefectures. Each is a branch office (支庁 *shichō*) of the prefecture. These branch offices perform the prefecture-level administrative functions under the supervision of the prefecture governments.⁷⁾

Local referendums in Japan could be divided into five categories based on their legal basis.⁸⁾

1.2.1. Popular Vote for Enactment of Parliamentary Statutes Applicable Only to a Specific Local Entity

According to Article 95 of the Constitution, any special law applicable only to a local public entity may not be enacted by the Diet without the consent of the majority of voters of the local public entity concerned.⁹⁾ This means that the Diet can only *propose* a special law applicable only to a local public entity. Therefore, the draft of such laws must be submitted to a referendum vote which requires acceptance by the majority of voters of the local public entity concerned.

1.2.2. Local Referendum Votes for Dissolution of Local Assemblies or Dismissal of Local Assemblypersons and/or Chief Executive Officers

According to Articles 76, 80 and 81 of the Local Autonomy Law,¹⁰⁾ to dissolve local assemblies or to dismiss individual members of assemblies or the chief executive officers of local public entities, it shall be first proposed by at least one-third of electors, and then approved by a popular vote (called “recall *touhyou*” in Japanese). Such approval requires a majority of the valid votes favoring the dissolution of local assemblies, the dismissal of individual members of assemblies, or the dismissal of chief executive officers of local public entities. Though the votes on dissolution of local assemblies may be seen as referendums on important local policies, the votes on dismissal of local public officers might be better

7) See http://en.wikipedia.org/wiki/Prefectures_of_Japan.

8) See Hong-Ming Chien (錢鴻明), *The Research of the Local Referendum – Focus on the Resident Referendum (jumintouhyou) of Japan*, Master Thesis, Fu-Jen Catholic University (2004) (in Chinese) Shiwu-Ching Tsay (蔡秀卿), *From the theory and practice of national and local referenda examining the legislation of local referenda in Taiwan*, in *The Theory of Local Autonomy* 31-66 (2003) (in Chinese).

9) 補法條.

10) For the content of the Article, see <http://law.e-gov.go.jp/htmldata/S22/S22HO067.html> (in Japanese) (last visited Oct. 31, 2005).

understood as a sort of a “recall” in terms of its effects. Nevertheless, the latter type of vote has been regarded as local referendums in Japan.

As the following three types of local popular votes on substantive issues had not been practiced at all in Japan before 1996, this type of local popular votes had once been considered the most important type of local referendums in that it allows the local inhabitants to decide on issues involving qualifications and suitability of the above-mentioned public officers.

1.2.3. Local Referendum Vote Held on the Basis of Individual Local Referendum Law Passed by Individual Local Assembly

This is the most significant type of popular votes on substantive issues in recent years and it has attracted more and more attention. In 1996, Niigata-ken Maki-machi held the first local referendum vote on the basis of its own local referendum law, which marked a new era in Japan. Thereafter, a number of local votes on the basis of similar local referendum laws have been held all over the nation and have become the spotlight of local autonomy.

Today, more than 30 local governments have enacted laws regarding local popular votes.¹¹⁾ According to Article 74 of Local Autonomy Law, local residents are entitled to initiate such a local referendum law if there is none.

However, the number of this type of local referendum votes has decreased. The lack of a national basic law regulating local popular votes undermines the binding force of such local referendum decision. Local assemblies may veto residents’ decisions arbitrarily, which discourages residents to participate in local referendum votes.¹²⁾

1.2.4. Local Referendum Vote Held on the Basis of the Temporary Law Regarding the Division of Towns (町 *chō* or *machi*) and Villages (村 *son* or *mura*) or the Abolishment of the Police of Autonomous Entities

11) Akio Igarashi, *Local Referendums in Contemporary Japan*, available at http://74.125.153.132/search?q=cache:t01q_wOlvIQJ:www.tfd.org.tw/docs/iri-asia/Igarashi+%2520-%2520Local%2520Referendums%2520in%2520Contemporary%2520Japan.doc+aki+o+igarashi+local&cd=2&hl=zh-TW&ct=clnk&gl=tw.

12) *See id.*

This type of local referendum vote has never been held.

1.2.5. Local De Facto Referendum Vote

This type of local popular vote is based on the consensus of local inhabitants without any statutory or regulatory basis. Thus far, it has never been practiced.

2. *Legislation on Modern Direct Democracy in Japan*

2.1. Constitution¹³⁾

2.1.1. Countrywide Popular Vote

a. Chapter IX: Amendments

Article 96

Amendments to this Constitution shall be initiated by the Diet, through a concurring vote of at least two-thirds of all the members of each House and shall thereupon be submitted to the people for ratification, which shall require the affirmative vote of a majority of all votes cast thereon, at a special referendum vote or at such election as the Diet shall specify.

Amendments when so ratified shall immediately be promulgated by the Emperor in the name of the people, as an integral part of the Constitution.

b. Chapter VI: Judiciary

Article 79

The Supreme Court shall consist of a Chief Justice and such number of justices as may be determined by law; all such justices excepting the Chief Justice shall be appointed by the Cabinet.

2.1.2. Local Popular Vote

a. Chapter VIII: Local Self-Government

13) For its full text, please refer to http://www.kantei.go.jp/foreign/constitution_and_government_of_japan/constitution_e.htm (last visited Nov. 21, 2005).

Article 95

A special law, applicable only to one local public entity, cannot be enacted by the Diet without the consent of the majority of the voters of the local public entity concerned, obtained in accordance with the law.

2.2. Statutes

2.2.1. National Referendum Law

The National Referendum Law enacted in May 2007 specifically deals with the constitutional amendment referendum. It, however, will not be implemented until May 2010.

2.2.2. Local Autonomy Law

Articles 76, 80 and 81 of Local Autonomy Law provide the legal basis for dissolution of local assemblies and dismissal of an individual member of local assemblies and/or the chief executive officers of local public entities.

2.2.3. Local Referendum Law

The Diet has not enacted a Local Referendum Law applicable nationwide. If a local entity intends to hold a local referendum (either proposed by the chief executive officer of the local public entity or members of its assembly, or initiated by its inhabitants), its assembly must first pass a local referendum law applying to the area as the legal basis. In addition to the chief executive officer of the local public entity and members of its assembly, local inhabitants can also be the initiators of such local referendum laws in accordance with Article 74 of Local Autonomy Law.¹⁴⁾ According to Article 74 of Local Autonomy Law, at least one-fifth of electors may endorse (Rensho) a bill for a local referendum law and propose it to the local assembly for legislation. It is, however, subject to the local assembly to decide whether or not to pass such bill for a local referendum law.

14) For the content of the Article, please refer to <http://law.e-gov.go.jp/htmldata/S22/S22HO067.html> (in Japanese) (last visited Oct. 31, 2005).

3. Practice of Direct Democracy in Japan

Although Article 96 of the Japanese Constitution provides for the compulsory referendum [LOR] on the amendments to the Constitution, there has been no such practice held nationwide yet. Only the review of the Supreme Court Justices has been held and put to popular votes regularly along with the general elections. On the other hand, there have been more than 370 local popular votes on substantive issues since 1996.¹⁵⁾ In 1996, Niigata-ken Maki-machi held the first local referendum vote on the basis of its own local autonomy regulation, which marked a new era. Since then, local citizens' decisions in Japan have been vigorously developing across the nation and attracting much more attention.

3.1. National Level

3.1.1. Popular Vote

a. Compulsory Referendum [LOR]: Review of the Supreme Court Justices

Though the review votes have been held on a regular basis, no Justice has ever been dismissed by popular votes thus far. On average, only 10 percent or so of the valid votes were in favor of dismissal of the Justices in question. Many scholars have expressed doubts about the real function of such review and argue for the abolition of this system.

3.2. Local Level

a. Local popular votes on the basis of Article 95 of the Constitution have been held 15 times in 18 autonomous bodies, including cities (市 *shi*) and towns (町 *chō* or *machi*). All were held between 1949 and 1951. The theme of the special law was that the central government should give financial support to local autonomous bodies, e.g. "Hiroshima Peace Memorial City Construction Law," or "Nagasaki International Culture City Construction Law." These laws did not limit the power of local autonomous bodies or increase their burdens, and many scholars argue that these practices might have contradicted the original thesis of Article 95 of Constitution.

15) See *id.*

b. Local popular votes were held on the basis of the local referendum law passed by the local assembly: From February 1, 1979 to 2007, bills proposed to the local assembly by the chief executive officer of the local public entity, by the members of its assembly or by inhabitants based on individual local referendum laws have totaled 170 across Japan.

The issues of these local referendum votes vary from the building of nuclear plants to dam construction and nuclear fuel management; they are all more or less connected to environmental issues. This indicates that the local residents are increasingly paying more attention to environmental problems and they are not satisfied with the way their representatives handle the problems. From early 1980s on, regulations governing the release of information were promulgated by local governments across the country, which further enabled local residents to make important decisions by themselves. This phenomenon has indeed deepened democracy in Japan.

In the early 1980s, there was an increasing interest in spiritual wealth throughout Japanese society. This trend led Japanese people to start focusing more on the exploitation of natural resources. In addition, the end of Cold War and globalization also reduced the authority of the nation-state the national interest was no longer held as a valid excuse for sacrificing local environmental interests. Many small groups sprang up, mainly consisting of women from local communities devoted to environmental problems as well as issues concerning social welfare and education.

These groups tried to defend their communities through local referendum votes. For example, the popular vote held on August 4, 1996, on the establishment of a nuclear plant in the town of Maki became the pioneer example of local referendum decisions. At first, the decision to build a nuclear plant was supported by the local authority. However, residents in the local community felt quite differently about the nuclear plant. They then formed a group and demanded a local vote. After the pro-referendum group won a majority in the town committee election, a bill on local initiative and referendum was passed. But the mayor, who did not want to see the implementation of such a vote, made no attempt to set a date for the referendum vote. The residents of Maki town then asked the mayor to step down. The road to a local decision became smoother when

the mayor resigned from his position and the newly elected mayor soon set the date for the referendum vote. After all these struggles, the first local popular vote on a substantive issue in Japan took place with a turnout of 88.29 percent. The result was against the building of a nuclear plant in Maki. The local direct democratic processes have thus been used by the Japanese as a way to generate public debates and to reach a consensus in local communities as illustrated above.¹⁶⁾

4. Prospects

As mentioned above, the National Referendum Act will only take effect in May 2010. Although amending the Japanese Constitution – especially, Article 9 of the Constitution and the issue of preserving the monarchy system – has been discussed pervasively, the idea has never been put into practice. Whether Japanese people will take action to amend the Constitution after May 2010 promises to be a very lively debate given the fierce and widespread Japanese anti-militarism.

Recent Direct Democracy Developments in Taiwan

1. Overview of the Direct Democracy System in Taiwan

Direct democracy is explicitly prescribed in Article 17 of the Constitution, which provides that people have the right to initiatives and referendums. Such right, however, was not implemented by statute until the end of 2003 when the Referendum Act (hereinafter “Act”) was first enacted. Modern direct democracy at the national and local level is both laid down in the Act. Although the right to initiatives and referendums was not legislated until 2003, 20 issues had earlier been put up for consultative popular votes at the local level before

16) See Akio Igarashi, *Against the National Policy*, in Appendix II of the “*Direct Democracy in Asia: A Reference Guide to the Legislation and Practice*”, Taiwan Foundation for Democracy (TFD), December 2005, available at http://www.iri-asia.net/?mod=Research&page=Publications_Reports.

the enactment of the Act. In total, there have now been 27 direct democracy exercises in Taiwan, 6 at the national level and 21 at the local level.

1.1. National Level

At the national level, there are three types of direct democracy instruments: the compulsory referendum for constitutional amendments [LOR] the optional referendum for laws or important policies [PPR, ATP] and the citizens' initiative for legislative principles or important policies [PCI].

1.1.1. Compulsory Referendum for Constitutional Amendments

The Constitutional Amendment of June 10, 2005 (hereinafter the 2005 Constitutional Amendment), changed the constitution amendment procedures by creating a mechanism of compulsory referendums for any future constitutional amendment. According to the 2005 Constitutional Amendment, the proposal of a constitutional amendment and any change in the national territory must be first ratified by the Legislative Yuan and then put to a popular vote. Either a proposal to amend the Constitution or a proposal to change the national territory shall be proposed by no less than one-fourth of the total members of the Legislative Yuan and adopted by at least three-fourths of the members present at a meeting attended by at least three-fourths of the total members of the Legislative Yuan. Before the date of the popular vote, the adopted proposal shall be publicized for a period of no less than six months.

The proposal for a constitutional amendment or a change in the national territory shall be considered approved only if the number of valid votes in favor exceeds one-half of the total number of electors.

1.1.2. Optional Referendum

The optional referendum is designed for voting on laws and major policies. According to the Act, the citizens [PPR], the Legislative Yuan and the president are all entitled to raise a referendum proposal [ATP]. A proposal can include only one issue.

For citizens to raise a referendum proposal [PPR], the main context of the proposal, a statement of reasons, the original copy and a photocopy of the list

of proposers shall be submitted to the central competent authority, the Executive Yuan. The number of proposers shall be no less than 0.5 percent of the total number of voters in the latest president election. A national Referendum Review Commission (hereinafter "Review Commission") under the Executive Yuan, established by the Act, is authorized to review and examine the referendum issues. The Review Commission shall complete the review within ten days after receiving the proposal. A referendum proposal approved by the Review Commission shall be put to joint signature collection. A proposal which collects signatures numbering no less than the 5 percent of the total number of voters in the latest president election shall be put to a vote.¹⁷⁾

Regarding the government section, the power to raise a referendum proposal is conferred to the legislative branch and the president. It should be noted that in the executive branch, only the president is authorized with such power. All other executive departments are prohibited from proposing popular votes or holding advisory referendums.

The Legislative Yuan can propose an optional referendum on major policies. It has to draft and present a full text of the referendum issue and a statement of reasons, and such a proposal must be approved by a simple majority of the members of the Legislative Yuan. After approval, the proposal shall be submitted to the Central Election Commission for holding a national referendum. If the referendum proposal is defeated, the Legislative Yuan shall not propose a referendum on the same issue within three years.

On the other hand, as provided for in Article 17 of the Act, if the nation is confronted with an external threat that could force a change in the nation's sovereignty, the president may, via a resolution of the Executive Yuan's regular meeting, propose a referendum on a matter crucial to national security. Such a plebiscite is the so-called "defensive referendum."

One month after the proposal has been announced to stand and not later than six months from the said announcement date, the Central Election

17) The population of Taiwan during the referendums discussed here was over 22 million with slightly more than 17 million registered voters. Voter turnout in the 2004 presidential election was just above 80%, for the 2008 legislative election 58.5%, and for the 2008 presidential election 76.3%. About 75% of the citizens are registered voters.

Commission shall conduct the popular vote. It shall determine and make public the ballot date at least 28 days before the ballot date, and the referendum vote may be held on the same day as the national election. The above time limits, however, are not applicable to a “defensive referendum” proposed by the president under Article 17 of the Act. Besides managing the ballot date and other ballot matters, the Central Election Commission, for the purpose of increasing public understanding and deliberation on the voting issues, shall use public funds to sponsor at least five discussions or debates on national wireless television channels.

A referendum vote is deemed accepted if more than half of the total eligible voters vote in the referendum (50 percent turnout threshold) and more than half of the valid ballots cast support the referendum measure. In contrast, a popular vote on a substantive issue is considered to have failed if the number of ballots cast is less than half of the qualified voters in the nation’s latest presidential election or, in case this turnout threshold is met, if the number of valid votes in favor of the referendum proposal is less than half of the total ballots.

If the popular vote is on the reconsideration of a law [PPR], the result of the decision would render the law annulled three days after the announcement of the result. As for the popular vote on a major policy, the competent authority shall do whatever necessary for the implementation of the decision of the popular vote. Whether a proposal is adopted or has failed, no more proposals shall be raised on the same issue targeted by the proposal within three years of the referendum.

1.1.3. Citizens’ Initiatives

The objective of initiatives can be either the creation of a legislative principle or the initiation of a major policy. Qualified initiators can be citizens or the Legislative Yuan.

Citizens can initiate a proposal for the creation of a legislative principle or for the initiation of a major policy. However, only one issue is allowed for each proposal. The procedure for citizens to propose an initiative [PCI] is identical to that for the citizens to propose an optional referendum [PPR]. The number

of initiators must reach or exceed 0.5 percent of the total number of voters in the most recent presidential election. After the Referendums Review Commission reviews the proposal, the initiators must start to collect signatures, the number of which shall be at least 5 percent of the total number of voters in the most recent presidential election. The signature sheet shall be submitted to the Central Election Commission for further review.

The issue of an initiative proposed by the Legislative Yuan can only be regarding the creation of a major policy. The procedure of such initiation is the same as the one for the optional referendum initiated by the Legislative Yuan.

The criteria to determine whether an initiative is adopted is the same as the ones used to determine the result of an optional referendum.

In contrast to the reconsideration of a law which will render the law invalid, the result of an initiative on a law only creates legislative principles. For the full implementation of the result of an initiative, the Executive Yuan shall devise a bill introducing the new law and submit it to the Legislative Yuan based on the result of the initiative on legislative principles. The Legislative Yuan shall finish the review process by the subsequent legislative session. As to the initiative on a major policy, the competent authorities shall do whatever necessary to implement the decision of the public vote.

According to the Act, certain matters are not allowed to be put to a popular vote. These include budgets, taxation, investments, wages, and personnel matters. The Review Commission is authorized to determine whether an issue is a qualified voting issue.

1.2. Local Level

Direct democracy institutions at the local level include both initiatives and referendums. The Act passed in 2003 only provided for initiatives and optional referendums at the local level. Nevertheless, two special statutes, the Act on Sites for Establishment of Low-Level Radioactive Waste Final Disposal Facility passed in 2006 and the Isolated Islands Development Act amended in 2009, provide different conditions for a compulsory referendum [LOR] at the local level.

The issues of initiatives and referendums at the local level must be related to local self-governance. If there is a doubt about whether or not the proposed issue is related to local self-governance, the matter shall be referred to the Review Commission for verification.

1.2.1. Compulsory Referendum

As mentioned above, compulsory referendums at the local level are prescribed in two special acts. Under the current legal framework, two issues shall be submitted to a popular vote at the local level: the site for the establishment of a low-level radioactive waste final disposal facility and the site for the establishment of tourism casinos on isolated islands. Establishing a disposal site for radioactive waste brings great danger to the local people, while introducing gambling by establishing casinos site is morally controversial and will induce various safety problems. Both decisions affect the lives of the local people profoundly. These two types of decisions, therefore, are prescribed to be put to popular vote by law, for they require the consent of the local people. As local compulsory referendums are prescribed in the two individual special laws, some provisions of the Act might be excluded and new rules might be applied to the specifically regulated local compulsory referendums, such as the criteria to determine the referendum result.

According to Article 11 of the Act on Sites for Establishment of Low-Level Radioactive Waste Final Disposal Facility, if a site is recommended as the candidate site for establishment of a low-level radioactive waste final disposal facility either by the site selecting group or the county (local) government, a referendum vote shall be held in the county (city) where the selected disposal site is located within 30 days after the announcement of the location is made.

In Taiwan, casinos are illegal. Nevertheless, the Isolated Islands Development Act, for the purpose of the prosperity of isolated islands, makes an exception which allows tourism casinos to be operated in those isolated islands, including Penghu, Kinmen and Matsu. According to the Article 10-2 of the newly revised Isolated Islands Development Act, if a local government intends to establish a tourism casino, the decision shall be put to a referendum first. Except for the criteria to determine the popular vote result, other provisions in the Act

apply. A referendum vote on establishing a casino in an isolated island is regarded as adopted when the votes in favor exceed half of the total valid votes (a simple majority). However, the turnout votes need not to exceed half of the eligible voters. Namely, even if the voter turnout rate is only 5 percent, the proposal is considered adopted as long as the votes in favor exceed half of the total valid votes. The rationale put forward to establish this exception to the Referendum Act is that a huge percentage of the original habitants of the island who would be eligible voters have long moved out of the island to find work and live on the main island of Taiwan, and furthermore, it may be inconvenient for many of those who emigrated out of the islands but still maintain their household registration there (this registration determines where a person votes in Taiwan) to fly back for the referendum vote. Thus the determination of the result by simple majority without voter turnout threshold was to guarantee that the votes of all of the actual residents of the island could count.

1.2.2. Optional Referendum [PPR]

The issues of the optional referendum include the reconfirmation of laws, regulations for local self-governance, and confirmation of a major policy regarding matters of local self-governance. Only citizens are qualified proposers. The number of proposers must reach or exceed 0.5 percent of the number of voters in the most recent election for special municipal mayor, county magistrate or city mayor. The number of endorsers shall reach or exceed 5 percent of the total number of electors in the most recent election for special municipal mayor, county magistrate or city mayor. The proposal shall be submitted separately to governments of special municipalities, counties and cities.

A referendum proposal is deemed accepted if more than half of the qualified voters in the special municipality or county/city cast a ballot in the referendum and more than half of the valid ballots cast support the referendum measure. If a referendum on the reconfirmation of a self-government statute is passed, the statute would become annulled three days after the public announcement of the result. As for the effect of a popular vote on a major policy, the competent authorities shall do whatever necessary for the implementation of the result.

1.2.3. Citizens' Initiative [PCI]

The procedure of proposing an initiative is identical with that of a popular referendum as mentioned above. Also the criterion to judge the validity of an initiative is the same as the one used to judge a referendum result. However, the effect of an initiative is different from that of a referendum.

Based on the result of an initiative on legislative principles, special municipal government, county government or city government shall devise bills introducing the self-governing statutes and submit those bills to the special municipal council, county council or city council which shall finish the review process by the end of the subsequent session.

2. *Legislation on Modern Direct Democracy in Taiwan*

Legislations on direct democracy include the Constitution and the Referendum Act. Taiwan's current Constitution was adopted by the National Assembly on December 25, 1946, promulgated by the National Government on January 1, 1946, and became effective on December 25, 1947. It was amended seven times, in 1991, 1992, 1994, 1997, 1999, 2000 and 2005. As mentioned above, the Referendum Act was passed on November 27, 2003, and took effect on December 31, 2003.

2.1. Constitution

The original Constitution has 175 articles and is divided into 14 chapters. As of 2009, there were 12 additional articles (Constitutional Amendments) in the Constitution. Of them, there are two Articles and three Additional Articles governing direct democracy. These three Amendments were adopted by the National Assembly on June 10, 2005. The 2005 Amendments abolished the National Assembly and provided for a compulsory referendum procedure for any constitutional amendments in the future. The relevant articles of the Constitution are:

Article 17

The people shall have the right to election, recall, initiative and referendum.

Article 136

The exercise of the rights to initiative and referendum shall be prescribed by law.

The additional articles of the Constitution (Constitutional Amendments) adopted in 2005 which provided for a compulsory referendum [LOR] for any future constitutional amendments have the following relevant articles:

Article 1

- (1) The electors of the free area of the Republic of China shall cast ballots at a referendum within three months of the expiration of a six-month period following the public announcement of a proposal passed by the Legislative Yuan on the amendment of the Constitution or the alteration of the national territory. The provisions of Article 4 and Article 174 of the Constitution shall not apply.
- (2) The provisions of Articles 25 through 34 and Article 135 of the Constitution shall cease to apply.

Article 4

.....

- (5) The territory of the Republic of China,¹⁸⁾ defined by its existing national boundaries, shall not be altered unless initiated upon the proposal of one-fourth of the total members of the Legislative Yuan, passed by at least three-fourths of the members present at a meeting attended by at least three-fourths of the total members of the Legislative Yuan, and sanctioned by electors in the free area of the Republic of China via a referendum held upon expiration of a six-month period of public announcement of the proposal, wherein the number of valid votes in favor exceeds one-half of the total number of electors.

18) The Republic of China is Taiwan's official name, albeit nowadays government agencies tend to use Republic of China (Taiwan) on official papers and communications.

Article 12

Amendment to the Constitution shall be initiated upon the proposal of one-fourth of the total members of the Legislative Yuan, passed by at least three-fourths of the members present at a meeting attended by at least three-fourths of the total members of the Legislative Yuan, and sanctioned by electors in the free area of the Republic of China via a popular vote held upon expiration of a six-month period of public announcement of the proposal, wherein the number of valid votes in favor exceeds one-half of the total number of electors. The provisions of Article 174 of the Constitution shall not apply.

2.2. Statute

2.2.1. Modification of the Referendum Act

As stated earlier, the Referendum Act (“Act”) passed in 2003 is the law designated to govern the matters regarding initiatives and referendums except when there are special regulations in other individual laws, such as the two special laws discussed for casinos on offshore islands and nuclear waste disposal sites. In 2005, not long after it was passed, the constitutionality of two of the Act’s articles, Article 16 and Article 35, was challenged. Article 16 of the Act grants the Legislative Yuan the power to propose a referendum proposal. The applicants challenging Article 16 claimed that granting such power to the legislative branch is in violation of people’s right to referendum and initiative protected by the Constitution. Article 35 of the Act concerns the appointment of the members of the Review Commission. The Review Commission has twenty-one commissioners who are recommended by the political parties in proportion to the political parties’ seats in the Legislative Yuan and then appointed by the President. The applicants claim that granting the political parties the nomination power equals depriving the executive branch the power to make decisions on personnel matters, which is core to the executive branch’s authority, and thus is in violation of the principle of separation of powers. The Grand Justices rendered J.Y. Interpretation No. 645 on July 11, 2008, holding Article 16 constitutional and Article 35 unconstitutional. Article 35 of the Act was then to be made inoperative no later than one year as of the date of issuance of the Interpretation.¹⁹⁾ Article 35 was amended based on the holding of the

19) For the English text of J.Y. Interpretation No. 645, please see http://www.judicial.gov.tw/CONSTITUTIONALCOURT/en/p03_01.asp?expno=645 (last visited 2009/9/15).

J.Y. Interpretation No. 645 on June 17, 2009, which grants the nomination power to the competent authority, the Executive Yuan.

3. *Practice of Direct Democracy in Taiwan*

3.1. Countrywide Popular Votes on Substantive Issues

Taiwan has held six national referendums and twenty-one local referendums so far. At the end of 2003, the Legislative Yuan finally passed the long-awaited Referendum Act, which provides for optional referendums [PPR] and initiatives [PCI] while prohibiting advisory referendums and executive-proposed referendums [ATP], except for the defensive referendums which the President is entitled to propose. All the six national referendums were defeated, as the first threshold – the 50 percent turnout rate – was not reached in all cases.

The six national popular votes were held over three voting days, which means two popular votes were held each day. They were all held on the same day as other major elections, the presidential elections of 2004 and 2008, and the election of the Legislative Yuan of 2008. Finally, except for the first two plebiscites (“defensive referendums”) which were proposed by the President in 2004, the following four cases were proposed by the leaders of the Democratic Progressive Party (DPP), representing the so-called pan-green camp, and those of the Kuomintang (KMT), representing the so-called pan-blue camp. It is fair to say that the national initiative and referendum instrument in Taiwan has been used as essentially a political tool for the two biggest parties, the DPP and the KMT, to gain public support for their positions in a context where the political spectrum has become quasi totally divided between the pan-greens and the pan-blues. A comparison of the turnout rates and votes won by the governing party and the opposition party in both the referendum votes and the elections as well as the arguments between the pan-green and the pan-blue camps follows.

3.1.1. The First and Second National Popular Votes

Considering the numerous restrictions imposed by the Referendum Act, in late January 2004 President Shui-Bian Chen decided to call for a “defensive referendum” as provided for in Article 17 of the Act. He chose two issues: national

defense and a Taiwan-China dialogue mechanism. Other possible issues such as stopping the construction of the fourth nuclear power plant and participation in the WHO – though they have been hotly debated – could not be submitted to a “defensive referendum” under Article 17, although this is what President Chen wanted to do before settling on the national defense and Taiwan-China dialogue issues.

Under Taiwan’s Constitution, the President wields considerable power over matters of national security. It is no secret that Taiwan has long been threatened by China with its massive military forces. Chen regarded this as a clear and present danger facing Taiwan. Therefore he resorted to Article 17 of the Act as the legal basis for the defensive referendums, the first of which was also addressing the KMT-led pan-blue camp blockage in the Legislative Yuan of the Chen administration’s arms procurement bills.

The question of the first proposal was: “The people of Taiwan demand that the Taiwan Strait issue be resolved through peaceful means. If China refuses to withdraw the missiles it has targeted at Taiwan and to openly renounce the use of the force against us, would you agree that the government should acquire more advanced anti-missile weapons to strengthen Taiwan’s self-defense capabilities?” The question of the second proposal was: “Would you agree that our government should engage in negotiations in order to build consensus and for the welfare of the peoples in both vicinities?”

These two popular votes were held on the same day as the presidential election of 2004, which led to sharp criticism by the opposition pan-blue camp as causing conflicts and disputes. Obviously, the DPP used holding the presidential plebiscites at the same time as major elections as a means to attract more votes to itself in these elections by choosing issues that appeal to the public. But the opposition side called on the majority of local governments it controlled to boycott the votes and on its supporters not to cast ballots, thus effectively vetoing the proposals by making it impossible for the pan-green side to see the 50 percent voter threshold reached. The international community, especially the United States, Japan and even France, also did much to discourage voting in the plebiscites by repeatedly voicing concerns over these proposals. President Bush went as far as to repeat the idea that none of the two sides of the Taiwan

Strait should unilaterally alter the so-called *status quo* in the Taiwan Strait, thus equating a free exercise of democracy through popular votes on substantive issues with a threat to peace. These messages from abroad were amply used by the pan-blue controlled media to discourage voters from participating in this democratic exercise.

Both plebiscite votes held on March 20, 2004 were invalidated because their turnouts (45.17 percent for the first proposal and 45.1 percent for the second) did not meet the threshold of 50 percent required by the Act. The boycott of the votes by the pan-blue camp resulted, as has often been the case in other countries, in the fact that it is those who did not vote that made the decision! However, the total number of ballots cast on both questions and the number of “yes” votes thereof were interestingly even larger than that the number of votes for President Chen in the presidential election, which indicates that some supporters of the pan-blue camp also cast referendum ballots.

After the presidential election, the opposition filed two lawsuits to the appellate court to challenge both the validity of Chen’s victory and the entire presidential election. After six months or so of cumbersome court procedures and a vote recount, both cases were dismissed on their merit by two different panels of judges of the appellate court, whose decisions were later upheld by the Supreme Court.

In both cases, the losing opposition party attacked the legitimacy of the said plebiscites as well. In the first lawsuit regarding the validity of Chen’s election, the appellate court did express some doubt about the lawfulness of holding the “defensive referendums” on the same day as the presidential election, but determined this issue irrelevant to Chen’s victory. On the contrary, the judges hearing the second lawsuit regarding the validity of the entire election ruled in favor of the defendant, the Central Election Commission, and affirmatively held that holding of the “defensive referendums” on the same day as the presidential election was completely lawful. The appellate court’s decision on the second case was also upheld by the Supreme Court six months later.

Taiwan’s first experiences with national popular votes on substantive issues were indeed mixed, mainly due to the fierce competition between the ruling and opposition parties over the presidential election of 2004.

3.1.2. The Third and Fourth Countrywide Popular Votes

In contrast to the first two popular votes which were about national security and proposed by the President, the third and fourth votes held on January 12, 2008 were about creating new laws and proposed by citizens [PCI].

The question of the third proposal was: “Do you agree that we shall enact the Act Governing the Properties Obtained by Political Parties Illegally which requests the KMT to return its properties to the people based on the following principle: Except for member fees and political contributions, all the KMT’s properties shall be regarded as properties illegally obtained and be returned to the people. If such properties no longer physically exist, the KMT shall return them in cash equaling to the value of such properties” (hereinafter “Referendum Proposal No. 3”). This referendum was originally proposed by the then DPP chairman You Si-Kun. The question of the fourth popular vote was: “Do you agree that we shall enact an act which designates an investigation committee within the Legislative Yuan to investigate the responsibilities of the state’s leader and her/his staffs who injure the state’s interest tremendously?” (hereinafter “Referendum Proposal No. 4”). Referendum Proposal No. 4 was raised by Wang Chien-Hsuan, one of the main leaders in the pan-blue camp.

The third and fourth popular votes in Taiwan could be seen as a “duel” between the two competing parties, the DPP and the KMT. When President Chen proposed the first two plebiscites in 2004, the main opposition party, the KMT, challenged their legitimacy as a way to fight back. This time, facing an initiative on a law adverse to itself, the KMT, instead of challenging the legitimacy of the popular vote, proposed another initiative on a law targeting President Chen. In the end, Chen’s government’s integrity was severely challenged in the final two years of his second term.

These two initiatives were held on January 12, 2008, the same day as the 7th legislature’s election. The turnout rate of Proposal No. 3 was 26.34 percent the turnout rate of the anti-corruption initiative was 26.08 percent.²⁰⁾ Both numbers fell far behind the turnout rate of the first national votes and of the

20) http://www.cec.gov.tw/files/20080115163801_0970115-9.pdf (last visited on 2009/9/15).

7th legislature election.²¹⁾ The two initiative proposals were both dismissed.

Some figures offer more information on these two votes: 91.5 percent of the valid ballots cast in Referendum Proposal No. 3 were in favor of the proposal, and 58.2 percent in favor of Referendum Proposal No. 4. As a comparison, the DPP won 36.9 percent of the party vote and the KMT 51.2 percent.

Taiwan's second direct democratic experiences were not successful mainly due to the fact that the process was manipulated by the political parties. Although the two issues were of primary concern to the people, a majority of them still refused to voice their opinions through the ballot.

3.1.3. The Fifth and Sixth Countrywide Popular Votes

The fifth and sixth national popular votes took place soon after the third and fourth votes were put to vote. Before the 12th presidential election in March 2009, the DPP raised the issue of joining the U.N. and made this a major campaign platform. Taiwan, or the Republic of China (ROC) for the KMT, long insisted on a one-China policy under the KMT regime that purported to represent the ROC as the sole legitimate representative of both sides of the Taiwan Strait. This was played out well during the Cold War, with the ROC calling itself the Free China in all its major propaganda campaigns. But beginning in the 1960s, it started losing one diplomatic ally after another, and eventually all the major powers and most countries switched diplomatic relations to the People's Republic of China (or PRC) and supported representation of the PRC in the U.N. The ROC eventually withdrew from the U.N. after the PRC became a member of it in 1971. Since then, Taiwan has been trying to join the U.N., whether under KMT or DPP governments. Their claims and strategies, however, differ profoundly. In 2008, the DPP proposed that Taiwan shall participate in the U.N. as a new member and in the name of "Taiwan" as "Taiwan" has never been a member of the U.N. On the other hand, the KMT, still asserting itself as the only legitimate representative of China, proposed that Taiwan (ROC) shall "return back" to the U.N. Neither effort, however, was successful.

21) The 7th legislature election was the first time the single-member and two-vote system was practiced in Taiwan. The turnout rate for the district legislature vote was 58.5%; the party vote 58.3%. *See id.*

The DPP, for the purpose of promoting the idea of joining the U.N. in the name of “Taiwan” and demonstrating the Taiwanese people’s determination on this intention, launched a citizens’ initiative [PCI] on this matter. The question was: “In 1971, the People’s Republic of China joined the United Nations, replacing the Republic of China and causing Taiwan to become an orphan in the world. To strongly express the will of the people of Taiwan to enhance Taiwan’s international status and participation in international affairs, you agree that the government should apply for U.N. membership under the name “Taiwan?”” (hereinafter “Referendum Proposal No. 5”). The KMT, in response to this, raised another initiative, Referendum Proposal No. 6, the question of which was “Do you agree that our nation should apply to return to the United Nations and join other international organizations based on pragmatic, flexible strategies with respect to the name [under which we apply to and participate in them]? That is: Do you approve of applying to return to the United Nations and to join other international organizations under the name ‘Republic of China,’ or ‘Taiwan,’ or other name that is conducive to success and preserves our nation’s dignity?”

The two initiative votes were held on the same day as the 2008 presidential election which the KMT won. The turnout for Referendum Proposal No. 5 was 35.8% and for Referendum Proposal No. 6 35.7%,²²⁾ both higher than in the last two initiatives. Hence the two popular votes were both dismissed according to law. Moreover, the turnout rate was only about half of that of the presidential election (76.3 percent).²³⁾ The ballots cast in favor of the two proposals were 94 percent and 87.3 percent, respectively.²⁴⁾

From the perspective of the turnout rate, the last national vote practices were a failure. However, the turnout rate, though failing the legal criteria, was higher than for the decisions in January of the same year, and the “yes” vote percentages were rather high. It cannot be denied that having a seat in international organizations and the U.N. is a strong aspiration of the Taiwanese people. Nevertheless, the people of Taiwan again saw the popular votes as tools of competing political parties and did not submit to such political manipulations.

22) http://www.cec.gov.tw/files/20080328161121_0973100123.pdf (last visited on 2009/9/15).

23) http://www.cec.gov.tw/files/20080328160306_rpt06-1.pdf (last visited on 2009/9/15).

24) *See id.*

3.2. Local Popular Votes on Substantive Issues

That the call for popular votes on substantive issues has been more about the legal status of Taiwan since the 1940s is a fact. However, the social and democracy movements of the 1980s brought about new issues for popular votes: as we have seen in Japan, environmental problems, particularly at the local level, have been a major concern. The trend of local initiative and referendum votes on environmental issues began in Houching, Kaohsiung. Local initiative and referendum practices in Taiwan have mostly not been intertwined with political powers and conflicts, and they cover more comprehensive issues that are more closely related to the people's true concerns and daily life.

3.2.1. The First Local Vote at Houching in 1990

Houching is located in Kaohsiung, a southern city in Taiwan. There was a petroleum refinery of the state-owned China Petroleum Company (CPC) on the seashore of Houching. This refinery caused much dissatisfaction among residents in Houching due to the air and groundwater pollution that it caused. When the government's plan to construct the CPC's fifth naphtha cracker plant in the area was publicized, the residents began a campaign to oppose the plan. They formed the "Anti-fifth Naphtha Cracker Plant Committee" in 1987. The CPC then started to communicate with the community in order to soften the residents' hostility against the construction and strengthened its pollution mitigation project at the same time. On April 11, 1990, the committee decided to hold a referendum on this issue. With the help of the district offices, the referendum vote took place on May 6, 1990. More than 66 percent of the residents voted, with a majority opposing the plant. Although the government regarded this vote as merely consultative and not legally binding, it began to negotiate with the residents and eventually won their acceptance of the plant with promises of substantial spending on pollution mitigation projects.

Despite the fact that this popular vote was organized by private citizens' organizations, the government's attitude and assistance were the important factors in the success of this direct democratic decision. In addition, the flawless procedure, which in turn gained the public confidence in the result of referendum decisions, also made this direct democracy practice a great precedent for subsequent environmental movements.²⁵⁾

3.2.2. Local Votes on the Fourth Nuclear Power Plant

The following local referendum votes were held on the construction of Taiwan's fourth nuclear power plant. The first one was held on May 22, 1994, by the local government of Kungliao Township, a political division under the Taipei County. The state-owned Taiwan Power Company planned to build the fourth nuclear power plant in Kungliao. The local government and residents all opposed the construction plan because of safety concerns. Finally, the local government decided to hold a referendum despite the opposition of the central government and the absence of an initiative and referendum law. Only the residents of Kungliao participated in this referendum. In order to raise the turnout rate, the local government hired dozens of buses to transport residents living in the remote rural areas to the ballot sites. The turnout rate was 58.4 percent and the majority was against the construction.²⁶⁾

Three more popular votes followed on the same issue in 1994, 1996, and 1998. They were held by the local governments, the Taipei County together with the Taipei City, and the Ilan County governments, respectively. The Taipei County and Taipei City governments used these referendum decisions to put pressure on the central government. However, the central government did not accept the results of the popular votes, citing the lack of relevant laws for such local decision-making by the people.

3.2.3. Local Votes on Economic Issues

The main theme of local referendums in Taiwan has been the opposition against construction of industrial plants. In addition, several local referendums focused on the economic development issues. These referendums were often organized by either the local governments or the residents. In some cases, the local governments used the mechanism to challenge the central government's policies. The local governments proposed popular votes in order to overcome

25) See Jiunn-rong Yeh(葉俊榮), *The First Referendum in Taiwan: An Observation Report on the "Survey" of Houching Anti-Fifth Naphtha Cracker Plant* (台灣第一件公民投票：後勁反五輕「民意調查」), 6 National Policy Quarterly 136-141 (June 1990).

26) For further information, please see <http://www.education.ntu.edu.tw/school/civics/doc/%E5%85%AC%E6%B0%91%E6%8A%95%E7%A5%A8/1994%E6%A0%B8%E5%9B%9B%E5%85%AC%E6%8A%95.doc> (last visited Nov. 5, 2005).

the fierce opposition by the residents living around the construction site in other cases. The latter type clearly carries the risk of misusing or abusing the instruments of direct democracy.

The Hsichih tunnel case is a good illustration of the plebiscite type. When the township leaders of Hsichih foresaw that there would be a strong protest from residents around the construction site of the planned tunnel, they, taking advantage of the fact that the number of town residents living away from the construction site and that those in favor of the tunnel construction outnumbered those against it, called for a vote to produce a predictable result that would definitely support the tunnel plan. This was an example of using the popular vote procedure to support, rather than to check, economic development.²⁷⁾

3.2.4. Initiatives on Small-Size Classes in Kaohsiung City

Local (consultative) votes before the enactment of the Act were primarily connected with environmental and economic issues. This phenomenon was closely related to economic development progress and raised environmental awareness in Taiwan. In 2008, five years after the Act was passed, a new category concerning education emerged in local initiatives and referendums. The 2008 local citizens' initiative [PCI] in Kaohsiung was the first local referendum to be held after the enactment of the Act, and thus was the first legally binding one. It is also noteworthy that this was the first popular vote truly initiated by the people rather than political parties or governments.

Taiwan's current education laws require that all citizens shall receive a compulsory nine-year education, six years in elementary school and three in junior high school. Due to the high population density and lack of sufficient educational resources, class size in Taiwan's obligatory education system is rather large, averaging some 37 students per class.²⁸⁾ Reducing the class size to improve the teaching quality has long been an important goal for the local citizens. To achieve this goal, the Kaohsiung City Teacher's Association launched a citizens' initiative on reducing the class size in Kaohsiung City to 31 in the 2007 school

27) See Jiunn-rong Yeh(葉俊榮), *Referendum Practice in Taiwan* (公民投票在台灣的實踐), in *Referendum and Taiwan's Future* (公民投票與台灣前途), at 125-147 (Lung-chu Chen (陳隆志) ed., 1999).

28) <http://english.moe.gov.tw/public/Attachment/67318395871.xls>.

year, and 25 students in the 2010 school year. The proposal was submitted to the Kaohsiung City Election Commission, the local competent authority prescribed in the Act, on June 19, 2006. Nevertheless, the review took almost two years, which was in apparent violation of the Act. The proposers protested that the city government delayed the review on purpose to obstruct the initiative.²⁹⁾

The initiative was finally put to vote on November 15, 2008. The Kaohsiung City government was severely criticized by the proposers because it did not properly promote the popular vote and even tried to lower the turnout by decreasing ballot sites.³⁰⁾ The turnout was 5.4 percent, with 91.2 percent of ballots in favor of the initiative,³¹⁾ and the initiative was therefore rejected.

Despite a surprisingly low turnout in the first binding local popular vote ever held in Taiwan, the citizens still demonstrated their ability to initiate a popular vote while displaying that the variety of initiative and referendum issues was expanding as well.

3.2.5. Referendum on Establishing Tourism Casinos in Penghu [LOR]

The Legislative Yuan, though encountering many opposing voices and criticisms from NGOs and religious groups, added the tourism casino article (Article 10-2) into the Article 10-2 of the Isolated Islands Development Act on January 23, 2009. The article grants the local government of an isolated island the power to establish tourism casinos with its residents' consent.

Penghu, a beautiful tourist island located southwest to the mainland of Taiwan, was the best place for casinos in the legislators' minds when they passed the amendment. Without a surprise, the Penghu County government quickly planned to build a casino and put the issue to a compulsory referendum [LOR] on September 26, 2009. The turnout was 42.2 percent, with 56.4 percent of the ballots against the establishment of casinos in Penghu. This referendum was therefore vetoed through well-organized citizen activism, including a variety of Buddhist groups in a country where the majority of the population practices one form or another of Buddhism. According to the law, the issue of casinos

29) <http://www.cooloud.org.tw/node/28213>.

30) <http://www.cta.chc.edu.tw/program/epaper/view/212>.

31) <http://kh.cec.gov.tw/files/Z081119184823/12.pdf>.

in Penghu cannot be put to a popular vote again for the following three years. This referendum vote was initiated by the county government, and its defeat by the citizens represents a first in Taiwan. It was also the first where a simple majority was needed to win, which goes to say that lower thresholds do allow for the real empowerment of citizens through the instruments of direct democracy.

4. Prospects of Direct Democracy in Taiwan

4.1. A National Initiative on the Referendum Act?

Although Taiwan has had several direct democracy experiences, the Referendum Act itself remains a direct democracy unfriendly law. Its extraordinary high threshold for initiative signatures, its politically biased review mechanism for initiatives, its provision for the defensive referendums (plebiscites) proposed by the President, its double majority requirement for approval of referendum issues (particularly the requirement of an absolute majority of the total eligible voters), all show that it is a law enacted by a legislature that is afraid of the true democratic empowerment of its people. There is now a strong call for launching a citizens' initiative for a popular vote on the Referendum Act itself, as advocated by many civic groups.

4.2. A Popular Vote on Taiwan's Sovereignty?

The call for a referendum on Taiwan's status can be dated back to the 1940s. Political activist Liao Wen-yi first promoted the idea of holding a popular vote on Taiwan's sovereignty when Japan was defeated and gave up its control over Taiwan to the Allied Powers after the WWII. Since the late 1980s, the then-opposition DPP has called for a popular vote on the same issue. Further discussions of this issue require a brief look back at Taiwan's history.

Since the 16th century, Taiwan (Formosa) has been governed by six foreign regimes: Spain, Holland, Koxinga's Ming-Cheng Kingdom, Qing China, Japan and the ROC (KMT) regimes. In 1894, Qing China ceded Taiwan to Japan in perpetuity in the Treaty of Shimonoseki. In August 1945, Japan was defeated by the Allied Powers. On October 25, 1945, the ROC government took control

of Taiwan from Japan on behalf of the Allied Powers pursuant to General Order No. 1 issued by General Douglas MacArthur, the Supreme Commander of the Pacific War Region during WWII.

In 1949, the KMT-led ROC government was overthrown by the Chinese Communist Party, which established the PRC government in China on October 1, 1949. The KMT-led ROC government then retreated to Taiwan, but the KMT regime continued to call itself the ROC and claimed to represent China, including Taiwan. In 1952, Japan renounced all claims, title and sovereignty over Taiwan, without designating the beneficiary of the island in the San Francisco Peace Treaty. Since then, many have argued that the legal status of Taiwan remained undetermined and should be determined by the people of Taiwan through a referendum under the U.N. or other international supervision.

On the other hand, some argue that the title of Taiwan belongs to China in that Japan accepted, in its surrender, the terms of Potsdam Declaration and Cairo Declaration, which demanded Japan to return Taiwan to the ROC. Though the Cairo Declaration was signed by the leader of the United States, United Kingdom, and China in 1943 without participation of Japan, it is alleged that it shall be binding on Japan. Supporters of this position, including the PRC government, flatly rejected any possibility of holding popular votes on the sovereignty issue of Taiwan.

Although there has been a “two-China” phenomenon across the Taiwan Straits since 1949, both the ROC and PRC governments claimed to represent the same one China. For more than fifty years, China (PRC) has been claiming Taiwan as its renegade province.³²⁾ On the other side, Taiwan began its democratization in the mid-1980s after the longest Martial Law era of modern history that was imposed on the Taiwanese by the KMT/ROC regime from 1947

32) The PRC has not had jurisdiction over Taiwan for even a single day of its history. Yet this “renegade province” claim has now become the refrain of the mainstream world press (particularly AP, AFP, and Reuters) which has unconsciously become the mouthpiece of the PRC. Most references in the press to the Taiwan Strait situation begins with “Taiwan and China split in 1949...,” and then continues with the “renegade province” absurdity which is obviously incorrect. Prior to the 1945-49 tutelage of Taiwan by the Republic of China ordered by the Allied Powers, Taiwan had been a colony of Japan for some 50 years. The ROC government was forced upon it through military occupation and Martial Law.

to 1987. Taiwan has since then been developing its own national identity, gradually and steadily. In 2000, the then-opposition party, the DPP, won the presidential election, which made many take the possibility of a sovereignty vote more seriously.

However, under the combined political pressure of the United States and the military threat of China, the DPP has backed down from his previous rhetoric on pushing for Taiwan's independence. Instead of promoting a sovereignty or independence vote, many DPP leaders are now advocating the idea of a "defensive referendum." They argue that Taiwan is already an independent state and no longer needs any vote for independence. Nevertheless, they argue, based on the principle of and right to self-determination under international law, the people of Taiwan have the right to decide, through a plebiscite or a citizens' initiated popular vote, whether they want to be unified with China or not.

For years, talks about the sovereignty referendum vote have floated in the air all around Taiwan. However, given the external constraints (e.g. U.S. hostility) and domestic divisions, it does not seem possible that such a popular vote can be held in the near future. Moreover, since the KMT regained the governing power after the 2008 presidential election, such a decision on Taiwan's sovereignty becomes more unlikely because of President Ma's attitude toward the PRC as well as his and his party's unification objective, which is mostly based on the racial nationalism that has always been at the core of the KMT's ideology.

4.3. A Popular Vote on ECFA between Taiwan and China?

Soon after the KMT took power in May 2008, it began to adopt several measures to foster the cross-Straight communications, such as direct flights, opening the channel for Chinese tourists, etc. In November 2008, Chen Yun-Lin, the director of the Association for Relations across the Taiwan Strait, was invited to Taiwan to sign some mutual agreements in Taiwan. The Economic Cooperation Framework Agreement (hereinafter "ECFA") is the next important agreement to be negotiated between the authorities across the Taiwan Strait. The purpose of the ECFA is to further foster the economic integration between the two sides, which is quite controversial in Taiwan. The opposition party, the DPP, believes

that the ECFA will harm Taiwan's sovereignty and requires it to be submitted to a referendum. A citizens' initiative proposal launched by the DPP was sent for this purpose to the competent authority in July 20, 2009, and the Review Committee rendered its decision on August 17, 2009, overruling the proposal. The Review Committee found the content of the proposal unclear and on a not-yet-happening fact, and thus rejected it.³³⁾ The DPP was not satisfied with the decision and filed an administrative appeal against it. The result is still awaited.

4.4. A Local Referendum on Sites for Low-Level Radioactive Waste Final Disposal Facility in Ta-Jen Township, Taitung County?

According to Article 11 of the Act on Sites for Establishment of Low-Level Radioactive Waste Final Disposal Facility, after a site is selected for the establishment of a low-level radioactive waste final disposal facility (hereinafter "disposal facility site"), the decision shall be put to a popular vote by the local residents. The Taiwan Power Company picked up Ta-Jen Township in Taitung County as the disposal facility site in March 2009. According to the government agenda, the referendum will be held by June 2010. As part of its strategy, the state-owned company will offer millions of Taiwan dollars to each resident of the township as compensation, children included! The environmental movement is already up in arms against this tactic designed for the government not to lose the compulsory referendum. But as Ta-Jen is a township whose population consists mostly of poor indigenous people, and this population has been seriously depleted as many have long ago moved out to big cities like Taipei to find work or study, the battle of the environmentalists will prove harder than in the case of Penghu. In the end, "Dollar Direct Democracy" may very well be born in Taiwan.

33) <http://www.libertytimes.com.tw/2009/new/aug/28/today-t1.htm>.

6

The Crisis of Representative Democracy

People Power in Latin America*

David Altman

A proper architecture of direct democracy requires basic freedoms and “plain” democracy to be granted. Nowadays many countries in the continent do not provide a fertile ground for direct democracy to flourish. Unless representative democracy blossoms again, direct democracy will continue – in gross lines – to mobilize populations from above (by the use of plebiscites, [ATP]) with the only purpose of providing leaders the legitimization they need to retain power. It is highly unlikely that Latin American direct democracy would prosper if democracy is in itself under siege in many countries of the region.

Before jumping into the waters of direct democracy, I will first briefly refer to the state of representative democracy, as I think it is urgently required. The second part of the paper properly addresses the advancement and weaknesses of direct democracy in the region. Finally, I provide an overview on what it is likely to be seen in the near future in this realm.

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Introduction

Though the advances of Latin American representative democracy are undeniably positive, in contrast with the 1970s and 1980s, current news in this regard is hardly positive – it is actually completely the contrary. While a few years ago (not so many, as a matter of fact), democracy seemed to be the “*only game in town*,” that thought seems more a mirage now than a proper assessment of the region we did then. Freedom is going backwards in many countries in the region, most notably in those countries where populist leaders have taken power – even when they assumed office through clean and fair elections. I am not only talking about Venezuela, where freedom of expression has been strongly damaged very recently by the Chavez closure of more than 30 mass media – which was simply based on the argument that they were “brain washing” (sic) the Venezuelan people – among other violations of liberties nor Cuba, the only clear dictatorship left in the continent; I am talking about other countries such as Ecuador, Bolivia, or Nicaragua, where democracy is trembling, even at the most formal institutional levels (courts, legislatures, etc.).

Also, even beyond these institutions, democracy also shows severe weaknesses in countries where the most basic of the rule of law does not reign over the whole territory of each polity. In this regard, particularly in Mexico, Colombia and Guatemala, drug dealers, and paramilitary forces are the sovereigns of the vast regions of these countries.

The recent military coup d'état in Honduras, with the open support of the legislature and the judiciary and triggered by the undoubtedly un-constitutional presidential measure of calling for a plebiscite [ATP] to make a constituent assembly, had accounted for most of the news from this part of the world. Such is the seriousness of the problem that even the Organization of American States seems futile in triggering a minimum consensus on what road to take. Despite all efforts of the Costa Rican President Arias, no solution has yet been found. So democracy is not doing so well these days.

In terms of direct democracy, the situation is also not as good. Coldly seen, mechanisms of direct democracy have done not much more than helping leaders bypass the delicate equation of checks and balances any liberal democracy needs to sustain in order to survive. Particularly, direct democracy from above helps

leaders escape from the constitutional limits of presidential reelection (successfully in the case of Chavez in Venezuela, and Correa in Ecuador; in Colombia, Uribe tried by the senate is stopping the measure; and recently in Nicaragua, Ortega remarked that he will help a plebiscite with that objective – similar to what Zelaya of Honduras tried but could not put into practice).

As it is evident, presidential reelection has become a hot topic in the region. Note that for people coming from countries with parliamentary regimes, this reelection debate is not a concern. In parliamentary regimes, first ministers could be reelected as many times as their parliamentary support allows, and are constantly checked by those majorities. In a presidential regime, a president could sustain his or her office regardless of congressional support and with significant legislative and executive prerogatives. This is why all presidential regimes limit, in one way or another, presidential reelection.

With very few exceptions, prospects for direct democracy in the region are quite poor. Unless representative democracy blossoms again, direct democracy will continue – in gross lines – to mobilize populations from above with the only purpose of providing some leaders the legitimization they need to retain power. Yet, there are some countries where freedom exists and democracy works, despite all the chronic problems of embedded poverty, relative low rates of growth, and so on – so that characterizes this part of the world. These countries include not only “the three typical suspects” of Chile, Costa Rica, and Uruguay, but also the giant Brazil, probably Panama, and just partially Argentina. With the sole exception of Uruguay, even in these countries the prospects of direct democracy are still slim.

Mechanisms of Direct democracy

I define an MDD (mechanism of direct democracy [= popular votes on substantive issues]) as a publicly recognized institution where citizens decide or emit their opinion on issues – other than through legislative and executive elections – directly at the ballot box, through universal and secret suffrage. Two big clusters of MDDs are evident: those from “above” [ATP, AMR, AMI] and those that are “citizen-initiated” through signature gathering [PCI, PCI+, PAI, PCR, PCR+, PPR]. The first category is comprised of two major and different

MDDs: *consultative* and *facultative plebiscites* [ATP]. A *consultative plebiscite* occurs when the executive or legislative branch of government consults the opinion of the citizens regarding a matter with no legal consequence, i.e., it is not legally binding. A *facultative plebiscite* is, by far, the most frequently used mechanism of direct democracy in several regions of the world, especially Latin America, Africa, and the Commonwealth of Independent States. Also, different “citizen-initiated” MDDs exist. A *popular initiative* is a proposed law, statute, or constitutional amendment supported by a group of citizens that offers an alternative to the status quo [PCI]. Unlike a popular initiative, a *facultative referendum* allows citizens to reject (veto) an adopted law [PPR]. Finally, there is a third category: *mandatory referendums* [LOR] (in Latin America, they are most often called *mandatory plebiscites*). Thus, a “mandatory plebiscite” does not depend on the wishes of an individual, because they are determined by law, and most of the time, by the constitution of a country. Usually, this type of institution accompanies constitutional reforms.

It is important to differentiate between MDDs [popular votes on substantive issues] and other institutions of deliberation or political leverage. Thus, I leave aside all the institutional products of the newly fashionable decentralization wave, even when citizens have the right to directly influence politics such as in the Bolivian *Organizaciones Territoriales de Base* or the new experiments at the Colombian municipalities. Neither mechanism of participatory budgeting utilized in several cities in Latin America (such as Porto Alegre, Rosario, and Montevideo) counts as an MDD in this typology.¹ Needless to say, no informal mobilization of people – for example the *Piqueteros* in Argentina or the *Movimento dos Trabalhadores Rurais Sem Terra* in Brazil – are considered here. Also, by definition this typology does not include what are usually called *Legislative Popular Initiatives* (LPI [AMI]). An LPI exists when the citizenry forces the legislature to consider a proposed action or a bill (though the legislature will not necessarily accept it), which represents control over the agenda rather than a tool for political change. Given that there is no vote whatsoever, legislative popular initiatives are not considered in this research.

1) For participatory budgeting, see Goldfrank (2002; 2006).

Uses of MDDs in Latin America²⁾

In the last 30 years of democratic history in the continent (since those transitions in the Dominican Republic and Ecuador in the late seventies), Latin Americans have participated in direct voting in more than a hundred times (always speaking in the national orbit). While some countries are characterized by frequent and recurrent users of MDDs, MDDs in other countries are just emerging, and in some, no MDD was carried forth whatsoever. Of the 19 countries in the continent, only 6 have not had direct experience of voting since the late 1970s (Cuba, Dominican Republic, El Salvador, Honduras, Mexico, Nicaragua and Paraguay). The rest of the countries have had at least one experience of MDD. However, only 4 countries in the region have experienced some form of citizen-initiated MDDs at the national level (Bolivia, Colombia, Uruguay and Venezuela).

While the spirit of popular initiative is incorporated in most Latin American constitutions, in most countries, it is no more than a simple declaration of principles (i.e., it is not regulated), and it is binding only in Colombia, Costa Rica, Paraguay, Uruguay and Venezuela (Breuer, 2009). In most of these countries, the initiatives may not be engaged in tax or budget matters. In these countries, the signatures required ranges from 5% of the census in Colombia and Costa Rica, and up to 10% in Uruguay. But in some countries, this mechanism is filtered by another institution (the Congress in most cases) that decides whether or not to proceed with the measure (Brazil, Guatemala, Nicaragua, and Peru). Referendums also present important variations. Although they have been used only in Uruguay, there are constitutional provisions in Colombia, Costa Rica, and Venezuela. (In other countries, it is just mentioned, but the Constitution does not develop further in terms of their implementation, and are not articulated by any law). The signature requirements range from 5% of the electorate in Costa Rica up to 25% in Uruguay. There are also requirements in terms of the availability of time in order to gather signatures. The quorum is similar to popular initiatives.

2) I do not include Haiti, Trinidad and Tobago, or Belize.

Table 6.1 shows the use of MDDs in Latin America over the past 30 years. The table spells out how different types of MDDs were used across countries. Within this universe, those from “above” constitute 85% of the cases (54% is optional referendums, 21% advisory referendums, and 25% constitutional referendums [LOR]). Only 15% of cases were initiated by citizens, as previously defined (44% of these responded to referendums [PPR, PCI]; popular initiatives just as much; and 12% to consultation initiatives). See also Figure 6.1 below. Indeed, of this 15% about 81% are concentrated in one country: Uruguay, which undoubtedly has the longest experience with direct democracy in the region, with experience dating back to the early twentieth century (see Altman, 2008).

Table 6.1 also provides information on when the vote was made, the number of issues that were in dispute, and how many were approved. For example, the first MDD shown in this table was conducted in Argentina under the administration of Raúl Alfonsín in November 1984, and, as we noted, sought the support of citizens of Argentina on the Beagle negotiations with Chile. The vote was on a single issue and was approved, and consequently, the corresponding cells contain 1 and 1, respectively. In the same column (consultative plebiscites), we found cases such as that of Ecuador in 1995, a comprehensive questionnaire of eight MDDs where none was approved (therefore, 8 and 0, respectively).

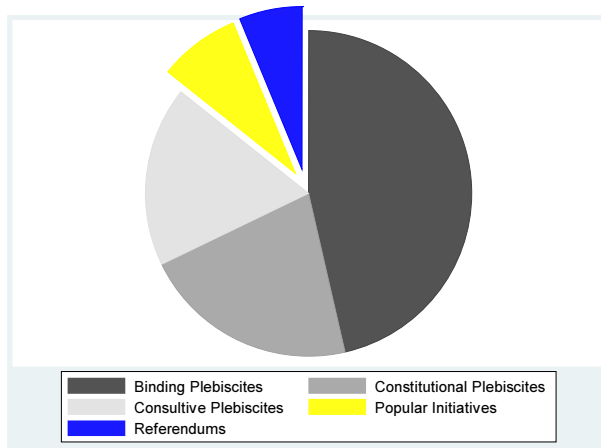


Figure 6.1. Types of MDDs in Latin America since 1978

Table 6.1. MDDs in Latin America since 1978

| | Constitutional Plebiscites [ATP] | | Consultative Plebiscites [ATP] | | Binding Plebiscites [LOR] | | Popular Initiatives [PCI] | | Referendums [PPR] | | Events | Apró | Apró Rate | | |
|-------|----------------------------------|-----|--------------------------------|-----|---------------------------|-------|---------------------------|--------------|-------------------|-----|----------------|-------|-----------|--------|-------|
| | Is. | Ap. | Is. | Ap. | Is. | Ap. | Is. | Ap. | Is. | Ap. | | | | Date | |
| ARG | | | 1 | 1 | (25-11-1984) | | | | | | | 1 | 1 | 100.0% | |
| BOL | 2 | 2 | (25-01-2009) | | | 5 | 5 | (18-07-2004) | 1 | 0 | (02-07-2006) | | | | |
| | | | | | | 1 | 1 | (10-08-2008) | | | | 4 | 9 | 88.9% | |
| BRA | | | | | | 2 | 2 | (21-04-1993) | | | | | | | |
| | | | | | | 1 | 0 | (23-10-2005) | | | | 2 | 3 | 66.7% | |
| CHI | 1 | 1 | (11-09-1980) | | | 1 | 1 | (04-01-1978) | | | | | | | |
| | | | | | | 1 | 0 | (05-10-1988) | | | | 4 | 4 | 75.0% | |
| COL | | | | | | 15 | 0 | (25-10-2003) | 1 | 1 | (27-05-1990)* | | | | |
| | | | | | | 1 | 1 | (09-12-1990) | 1 | 1 | (26-10-1997)** | 4 | 18 | 36.7% | |
| CRI | | | | | | 1 | 1 | (08-10-2007) | | | | 1 | 1 | 100.0% | |
| ECU | 1 | 1 | (15-01-1978) | | | 3 | 0 | (26-11-1995) | | | | | | | |
| | | | | | | 7 | 6 | (28-08-1994) | | | | 9 | 39 | 66.7% | |
| | | | | | | 8 | 0 | (26-11-1995) | | | | | | | |
| | | | | | | 3 | 3 | (26-11-2006) | | | | | | | |
| GUA | 1 | 1 | (30-01-1994) | | | | | | | | | | | | |
| | | | | | | | | | | | | 2 | 5 | 20.0% | |
| | | | | | | | | | | | | | | | |
| PAN | 1 | 0 | (15-11-1992) | | | 1 | 1 | (24-04-1983) | | | | | | | |
| | | | | | | | | | | | | 4 | 4 | 50.0% | |
| | | | | | | | | | | | | | | | |
| PER | | | | | | 1 | 1 | (31-10-1993) | | | | | | | |
| | | | | | | 1 | 0 | (30-10-2005) | | | | 2 | 2 | 50.0% | |
| | | | | | | | | | | | | | | | |
| URY | 1 | 0 | (30-11-1980) | | | | | | 1 | 1 | (26-11-1989) | | | | |
| | | | | | | | | | 2 | 1 | (27-11-1994) | | | | |
| | | | | | | | | | 1 | 1 | (31-10-2004) | | | | |
| | | | | | | | | | 1 | 0 | (20-09-1998) | | | | |
| | | | | | | | | | 1 | 0 | (25-10-2009) | | | | |
| | | | | | | | | | 1 | 1 | (18-02-2001) | 16 | 18 | 38.9% | |
| | | | | | | | | | 1 | 1 | (05-08-2002) | | | | |
| | | | | | | | | | 1 | 1 | (07-12-2008) | | | | |
| VEN | 1 | 1 | (15-12-1999) | | | 2 | 2 | (25-04-1999) | 1 | 0 | (15-08-004)** | | | | |
| | | | | | | 1 | 1 | (03-12-2000) | | | | 6 | 8 | 62.5% | |
| | | | | | | | | | | | | | | | |
| Total | 24 | 11 | 45.8% | 20 | 10 | 50.0% | 52 | 31 | 59.6% | 9 | 5 | 55.6% | 7 | 3 | 42.9% |
| | | | | | | | | | | | | 55 | 112 | 60 | 53.6% |

Source: Author's Database, C2D-Research and Documentation Centre on Direct Democracy (<http://www.c2d.ch/>); Keesing's Records of World Events (<http://keesings-gvpi.net/>).

* Consultative popular initiative;

** Chávez's recall is included as a popular initiative. Nor Cuba, El Salvador, Honduras, Mexico, Nicaragua, Paraguay, Dominican Republic.

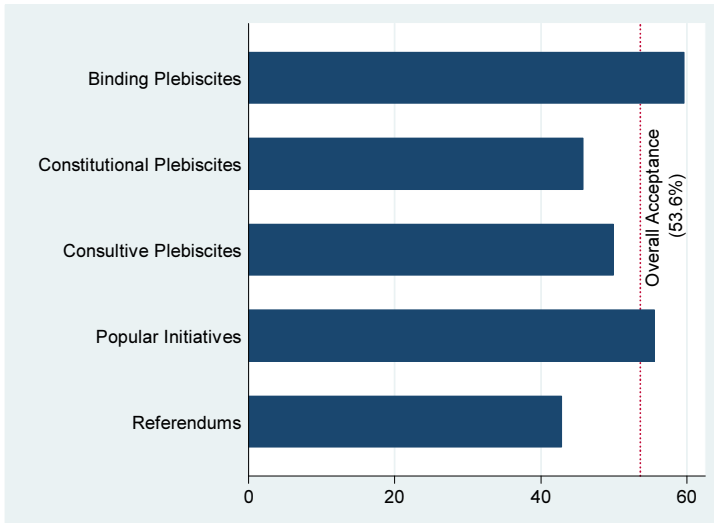


Figure 6.2. Acceptance Rate of MDDs in Latin America since 1978

Figure 6.2 summarizes the acceptance rates according to the type of MDD. It is interesting to note that among the different types of MDDs, rates of approval are not as different as one might anticipate, and they average between 40-60%. To estimate the approval rates more accurately, we calculated the average for the two major families of MDD, those from above and those initiated by the public. The average of the former is 54.2%, the latter about 50%. There is virtually no difference.

The slim difference indicates that perhaps they are not as terribly manipulated as part of the literature suggests. In fact if Lijphart had been right when he argued that “when governments control the referendum, they will use it only when they expect to win,” (1984: 204) it is logical to expect governments winning much more than the previously presented figures (Altman, 2005). This is just a sign of how complicated the game of direct democracy can be when just over 50% of MDDs from above are approved.

In fact, there are two countries that stand out at the aggregate level in the number of use of MDD in Latin America: Ecuador and Uruguay. However, as someone starts to generalize on how and when they were used, it is easy

to observe the enormous differences that both countries exhibit. This perspective highlights the view that direct democracy in Ecuador has been basically a tool of the powerful (see the large concentration of events in the advisory plebiscites and optional columns) and in Uruguay these columns are empty. In fact, most of the MDD have been the result of citizen demands, especially fired from the union movement and political opposition. In other words, Ecuador leads the continent in the use plebiscitarian mechanisms and Uruguay in terms of citizen-initiated MDDs.

MDD [popular vote on substantive issues] in Latin America

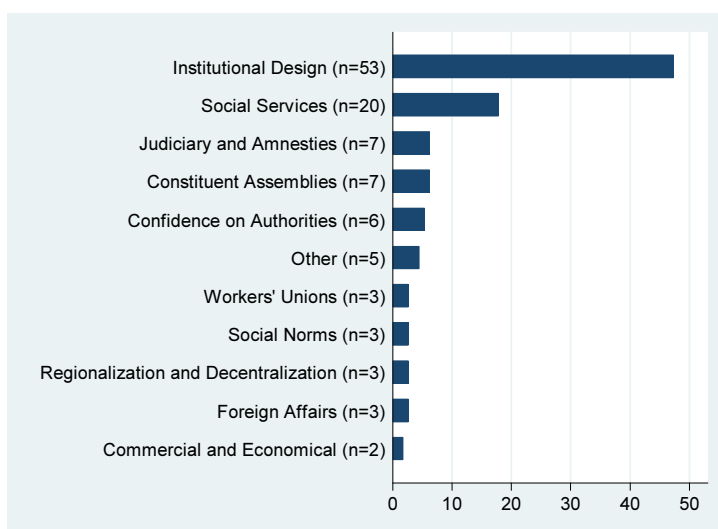


Figure 6.3. Issues of MDDs in Latin America since 1978

Unlike what happens elsewhere, rarely do the subjects of MDDs deviate from institutional design or contingent politics (whether it is the conformations of Constituent Assemblies or some kind of a vote of confidence in the mandates of authorities). This great family theme is almost 2/3 of the MDDs in the reviewed period. As it can be seen in Figure 6.3, almost 50% of MDDs were related to reforms of institutional re-designs (topics ranging from the extension of mandates and presidential re-election – Venezuela 2008 – and type of presidential election – Uruguay 1996 – and legal status of parties in congress – Ecuador 1997 – et

cetera). Also, within this group that constitutes almost two thirds of all MDD, a subgroup of votes excel as they seek the formation of Constituent Assembly (Colombia 1990, Ecuador 1997, 2007, Venezuela 1999).³⁾ Finally, within this group, there are those votes which constitute one form or another vote of (dis)trust in the authorities previously elected (Chile 1988, Ecuador 1997, Venezuela 2004, Bolivia 2008).

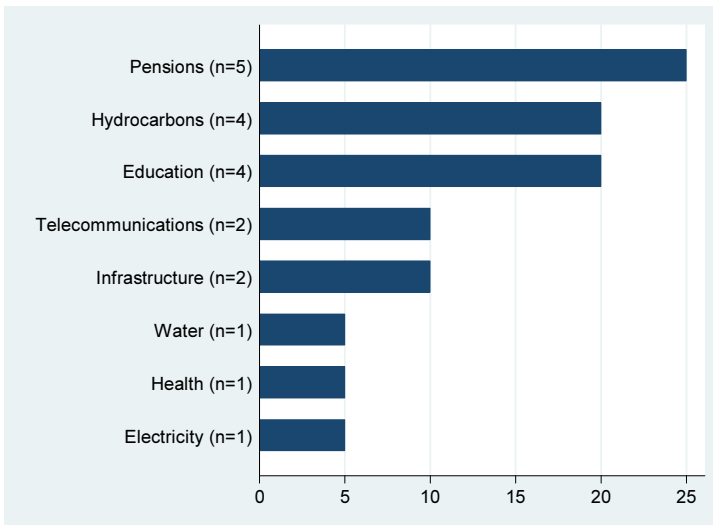


Figure 6.4. Breakdown “basic services”

While the rest of the MDDs form a sort of thematic potpourri, there stands out the presence of votes related to some basic services that were traditionally provided by the state (pensions, education and hydrocarbons, which represent 20~25% of this subgroup), which are also accompanied by votes on diverse fields such as telecommunications, infrastructure, water, electricity, and health (see Figure 6.4). Notably, 9 of these 20 MDDs were conducted in Uruguay, and the rest in Ecuador, Colombia, Bolivia, and Panama. In Uruguay, most of these MDDs were fired by unions of public enterprises in order to curb a possible process of privatization or outsourcing of these companies, or by one of the most important lobbies in the country: ONAJPU (National Organization Retirees and

3) See also Breuer (2007; 2008).

Pensioners), which for practical purposes, consists of approximately 28% of the national electorate. Indeed, in these opportunities, the mobilizing force of the main opposition's coalition (Frente Amplio)⁴ had a leading role in the vast majority of popular initiatives and referendums against laws.

In Costa Rica there was a crucial authorities' plebiscite [ATP] in terms of checking the popular support for a free trade agreement between these small countries and the U.S., among other small states of Central America. This is the best example of how direct democracy is used in order to bridge deep cleavages between state powers (executive v. legislative). In this opportunity, the presidential position of going with the FTA prevailed, though by a slim margin. In Brazil, despite its immense experience with other types of citizen involvement in public affairs – such as the world-famous experience of participatory budgeting in Porto Alegre – the limited experience with direct democracy still is restricted to a couple of legislative plebiscites and nothing more. The last experience with direct democracy dates back to 2005. In Chile, there were just a couple of experiences at the municipal level, but no national leader is even considering it (all the contrary) for the country itself. Chile is heading to national elections in December 2009 and one candidate, Marco Enriquez Ominami, a splinter of the official coalition that has been governing the country since the transition back in 1990, seems to be fond of integrating the recall into the municipal architecture of the country. Yet, as his popularity grows, this appeal for important institutional changes are losing terrain as he is pointing more to the conservative median voter of the country.

Citizen-initiated mechanisms of direct democracy have been scarce in the region in the last 10 years, and besides Uruguay, there were only two cases of this type in the region: the Venezuelan presidential recall in 2004, and Bolivian autonomic initiatives in 2006. In this Bolivian case, that popular initiative triggered a series of non-recognized popular initiatives have allowed nationalistic and quite conservative groups to attempt changing the political architecture of the country. Citizen-initiated Mechanisms of direct democracy [like PCI and PPR] are almost inexistent in the region with the exception of the tiny Uruguay. And even in this country with the population of 3.5 million, it faces problems.

4) The Frente Amplio became the executive party in March 2005.

With the mentioned exceptions, all uses of direct democracy have been plebiscitarian (i.e. coming from the authorities), and most of the time they had the simple objective of institutional changes for increasing or retaining power. In this regard, direct democracy has been mainly used against the basic, normative ideal of empowering people. In any case, important lessons can be drawn from these miscellaneous experiences; experiences that generate a fertile background for checking important implications of theory on practical issues.

Most Recent Development: Popular Votes on Substantive Issues in Uruguay 2009

Uruguay is still the only country where citizen-initiated mechanisms of direct democracy are substantially used in the more classic way of a weapon of the citizens; a place, where paradoxically, the executive power does not have the capability of calling for a popular vote whatsoever. Indeed, this last October 2009, concurrently with the national elections, Uruguayans voted on two MDDs. One was a constitutional reform [LOR] (triggered by 2/5 of the legislature) on the extension of voting rights for the quite large Uruguayan Diaspora in the world (an estimated 20% of citizens are living overseas in countries as diverse as Argentina, Spain, USA, Australia, Israel, Sweden, etc.), and the other was a popular initiative (actually used as a facultative referendum [PPR]) to abolish the Expiration Law approved in 1986. Despite the fact that both failed, they provided important clues about their use, in a country that is used to vote in this way.

a) Popular Initiative [PCI] on the Nullification of Expiration Law of 1986

As soon as the new democratic government took office in 1985, a whole debate on what to do with human rights violators during the military regime gained headlines, and Uruguayans were plunged into one of the country's most polarized and emotionally charged moments since the reinstallation of democracy. With the approval of the *Ley de Caducidad Punitiva del Estado* (Law 15.848) on December 22, 1986, direct democracy from below became a critical player in Uruguayan politics. The law was supported by all Colorados (then, the executive party) and most Blancos, and established that the State inhibit itself from applying its sanctioning faculty to the crimes committed during the dictatorship in connection to political repression (1973-1985). Immediately after the law was

approved, a non-partisan pro-referendum commission started a campaign to promote a referendum against this law (the first of its kind in Uruguay), as it was a constitutionally established right. The Frente Amplio was the first (but not the only) political group supporting the campaign and mobilizing its huge popular machinery towards this aim. Within the traditional parties, only a small number of legislators supported the measure. When almost 29% of the electorate supported the referendum request, the Electoral Court set the date of the referendum for April 16, 1989. The popular vote was unsuccessful for the organizers, but it managed to gather 41.3% of the vote. This referendum is maybe one of the most emblematic cases of the tension that might arise between popular sovereignty on the one hand, and fundamental principles on the other; for this particular case, a tension between justice and peace in the words.

In general lines, the new government of the Frente Amplio interpreted that the scope of the *Ley de Caducidad* was only limited to violations of human rights committed by the military government after the coup of June 1973, within the national territory. This interpretation opened the possibility of legal action against some members of the armed forces in connection with crimes committed before the coup or beyond borders even though they have been committed between 1973 and 1985. Thus, many cases rejected earlier saw the “green light” by the Executive and were re-opened.⁵⁾ Actually, by mid 2005, based on Article 4 of the Expiration Act (“The Executive Power shall promptly order investigations to ascertain the facts”), the government ordered the excavations in search for corpses in several military compounds.

Some minoritarian groups within the Frente Amplio did not support the way the executive was dealing with the topic – they were expecting a more purist action. These groups claimed that the Expiration Act must be declared void and pushed the coalition toward that direction. Facing a strong opposition of a pragmatic President and his team, they nonetheless started a signature-gathering for a constitutional reform. Once citizens’ signatures were validated

5) See, for instance, the executive decree on the Gelman’s case to the Judiciary at: http://www.presidencia.gub.uy/_Web/resoluciones/2005/12/D%20430_12%2012%202005_00001.pdf.

In regard of the assassination of Zelmar Michelini and Gutierrez Ruiz, see: http://www.presidencia.gub.uy/_web/resoluciones/2009/04/D2738.pdf.

by the Electoral authorities, the popular initiative was on the road to be held concurrently with the national elections of October 2009. On Sunday 25 of October, the popular initiative for the void of Expiration Act received 1,090,859 votes within a voting universe of 2,303,336 votes (47.36%).



Figure 6.5. Ballots used in the Uruguayan Referendum against Law 15,848

b) Voting Rights for the Uruguayan Diaspora

On March 4, 2005, just three days after the inauguration of the brand new government of the leftist party, Frente Amplio, the Executive Power sent a bill to the General Assembly regulating the right to vote for Uruguayans living overseas. The Executive bill clearly claimed that “it should be clarified that the possibility of voting abroad is clearly an issue of legal status and therefore it does not require any constitutional reform.”⁶⁾ After entering the bill to the legislature, Deputy Jaime Trobo of the major opposition force, the National Party, expressed that he would support the idea of Uruguayans abroad choosing from two to three representatives of “Department 20”⁷⁾ in the House of Representatives,

6) At least four projects in this regard were presented in the legislature since the reinstatement of Democracy in 1985. None was approved.

<http://www.parlamento.gub.uy/htmlstat/sesiones/pdfs/camara/20071002d0054.pdf>.

7) Uruguay is divided into 19 sub-national units called “departments.” Department 20 is a metaphor referring to those Uruguayans living abroad.

as in Italy, but not the president and mayors. Gustavo Penadés, from the sector of Trobo, claimed that “Yes to the participation of Uruguayans living abroad, yes to their representation in Parliament, but the implementation of postal vote raises serious doubts and mistrust.”⁸⁾

After two years in the correspondent legislative committee of the Chamber of Deputies, two reports were addressed to the whole chamber for its deliberation (one from the majority, the other from the minority) and showed profound differences in regard to the topic (August 22, 2007). On October 2, 2007, the bill was finally put to a vote in the Chamber of Deputies, and despite it gathered a large support (52 out of 62 present in the Chamber of 99), the bill was derailed because it needed a qualified quorum.

Yet, sometimes when the legislative arena does not work in synchronization with political interest, parties redirect their bully game to the citizens’ arena. As the relationship with the Diaspora has been an entrenched topic in the leftist coalition, legislators of the governing party decided to activate Article 331 (b) for a constitutional reform on this topic by citizen’s final decision. In order for this measure to pass, 52 votes of the General Assembly (2/5 of the complete legislature) were required. The governing coalition had, at that moment, 69 representatives and senators altogether, which was much more than the minimum required. On April 1, 2009, the legislators of the governing party, Frente Amplio, did so.⁹⁾ In this way, Frente Amplio’s legislators opened a direct vote forcing Uruguayans living in the country to decide on a constitutional reform in order to allow those living abroad to have voting rights. Specifically, the plebiscite aimed to an addendum to the Constitutional Article #77, specifying that Uruguayans eligible to vote are entitled to vote by postal mail in elections, plebiscites or referendums from any country in “which they reside or are found.”

Although overseas voting (which is a subtype of the well-known absentee ballot) did not produce highly emotive debates and demonstrations, there was an important theoretical and practical discussion regarding its implementation. The debate transited through two axes: while the first one referred to the

8) <http://www.larepublica.com.uy/politica/170322-herrerismo-promueve-voto-desde-el-exterior-menos-para-presidente>.

9) <http://www.elpais.com.uy/090401/pnacio-408297/nacional/en-octubre-habra-otro-plebiscito>.

normative aspect of the topic, the second dimension was in regard to the technical execution of overseas voting.

Once the Frente Amplio succeeded in gathering 2/5 of legislators for the plebiscite in April 2009, the debate acquired another pace, much faster and clearer, and with the evident objective of convincing the broad citizenry to support the measure. As expected, both supporters and detractors of this proposal in Uruguay cross-fired each other touching on both dimensions mentioned above. The opposition said the vote by postal mail “does not provide enough guarantees” and that, in any case, it would be far safer voting at consulates. Furthermore, Colorado lawmakers emphasized that Uruguayans abroad will not suffer “the consequences” of government they choose and many are steeped in local reality.¹⁰⁾ It seemed that the road was open for a concurrent and milder *counter-proposal* on the topic triggered by a legislative minority.

The minority sector of the largest opposition party, Larranaga’s *National Alliance*, derailed an initiative of their copartisan faction, Lacalle’s *National Unity* (UNA), to include a second ballot in the October popular vote on voting rights for Uruguayan Diaspora. The aim of Lacalle and his fellow partisan was to add an intermediate option between the maximalist official stand and the no-vote. *National Unity*’s proposal was about citizens abroad choosing only two representatives in the House of Representatives with “the same legal status as other representatives. But (they are) not allowed to participate in other elections.” The new text was sponsored by the signatures of the legislators of the UNA, sector that began negotiations with the National Alliance, the Colorado Party, and the Independent Party. Both the *Colorado* and *Independientes* supported the idea, but Larrañaga and his group did not support the constitutional reform, and without that endorsement, it was impossible to reach the required 52 legislators’ signatures.¹¹⁾

On October 25, 2009, Uruguayans decided the voting rights faith of

10) <http://www.elpais.com.uy/090402/pnacio-408541/politica/en-octubre-se-plebiscitara-el-voto-desde-el-exterior>.

11) <http://www.larepublica.com.uy/politica/271538-blancos-no-apoyan-el-voto-epistolar>.



I vote Yes for the project of Constitutional Reform that allows the postal voting from overseas and entitles the Electoral Court (Authorities) to regulate these procedures. October 25, 2009.

Figure 6.6. Ballot paper used on October 25, 2009 (Overseas Voting)

Uruguayans living abroad. With the popular votes being endorsed by a slim 37.7% of the national electorate, it failed.

c. Public Opinion

During the preceding months before the elections of October, opinion polls indicated that each of the popular votes would have different fates. While the legislative plebiscite for a constitutional reform on overseas voting rights seemed highly likely to be approved, the popular initiative on the Expiration Act never reached the support of at least half of the population. In any case, indifferent or confused citizens accounted for a relatively significant proportion of the electorate, and consequently, were crucial in determining which side of each vote would win. Table 6.2 below summarizes the opinion polls before the election.

Table 6.2. Uruguayan Public Opinion in regard to both popular votes of October 2009

| Source | Fieldwork | Against Expiration Act | | | Overseas Voting | | |
|-----------------------------|------------------|------------------------|---------|----------------------------------|-----------------|---------|----------------------------------|
| | | In Favor | Against | Does not know / does not respond | In Favor | Against | Does not know / does not respond |
| Cifra ¹²⁾ | Sep 6 ~ 14(2008) | 40 | 31 | 28 | | | |
| Cifra ¹³⁾ | Feb 28 ~ Mar 4 | 42 | 27 | 31 | | | |
| Factum ¹⁴⁾ | Mar | 46 | 30 | 24 | | | |
| Interconsult ¹⁵⁾ | Mar 12 ~ 16 | | | | 45 | 49 | 6 |
| Factum ¹⁶⁾ | Apr 24 | 46 | 30 | 24 | | | |
| Cifra ¹⁷⁾ | May 8 ~ 11 | 44 | 32 | 24 | | | |
| Factum ¹⁸⁾ | Junio | 47 | 32 | 21 | 58 | 38 | 4 |
| Cifra ¹⁹⁾ | Jul 25 ~ 29 | 47 | 37 | 16 | 50 | 46 | 4 |
| Factum ²⁰⁾ | Jul | 46 | 34 | 20 | 56 | 36 | 8 |
| Equipos Mori ²¹⁾ | Aug | 44 | 32 | 24 | 54 | 36 | 10 |
| Cifra ²²⁾ | Aug 29 ~ Sep 1 | 44 | 37 | 19 | 52 | 45 | 3 |
| Factum ²³⁾ | Sep 18 | 48 | 34 | 18 | 56 | 38 | 6 |
| Cifra ²⁴⁾ | Sep 26 ~ 28 | 42 | | | 51 | | |
| Interconsult ²⁵⁾ | Oct 19 | 47 | 40 | 13 | 49 | 43 | 9 |
| Cifra ²⁶⁾ | Oct 16 ~ 18 | 46 | 37 | 17 | 48 | 46 | 6 |
| Grupo Radar ²⁷⁾ | Oct 10 ~ 18 | 42 | 35 | 23 | 43 | 35 | 22 |

12) <http://www.cifra.com.uy/novedades.php?idNoticia=45>13) <http://www.cifra.com.uy/novedades.php?idNoticia=57>14) <http://www.factum.edu.uy/estpol/elec2009/ele09003.html>15) <http://www.interconsult.com.uy/unoticias09/052009f/052009.HTM>16) <http://www.larepublica.com.uy/politica/361334-factum-46-a-favor-de-derogar-la-ley>17) <http://www.cifra.com.uy/novedades.php?idNoticia=77>18) <http://www.larepublica.com.uy/politica/375701-factum-46-vota-anulacion>19) <http://www.cifra.com.uy/novedades.php?idNoticia=90>20) <http://www.larepublica.com.uy/politica/375701-factum-46-vota-anulacion>21) http://www.montevideo.com.uy/notelecciones_90303_1.html22) <http://www.cifra.com.uy/novedades.php?idNoticia=94>23) <http://www.larepublica.com.uy/politica/381138-un-48-contrainpunidad-y-56-por-el-voto-epistolario>24) <http://www.cifra.com.uy/novedades.php?idNoticia=97>25) http://www.montevideo.com.uy/notnoticias_94649_1.html26) <http://www.cifra.com.uy/novedades.php?idNoticia=101>27) http://www.montevideo.com.uy/notnoticias_94827_1.html

The campaigns become exponentially intense in the weeks before the vote but always subordinated to the presidential election. Figure 6.7 shows the pattern of the supportive side of the legislative *plebiscite* [LOR] and the popular initiative [PCI]. While the overseas voting had a moment of glory, it shows a marked inverted U-shape - product of the smart campaign carried out by the advocates of the territorial voting. On the other hand, the support for the popular initiative was during the whole campaign much stable, and never reaching a majority. In this case, the 95% confidence interval shows an almost horizontal shape.

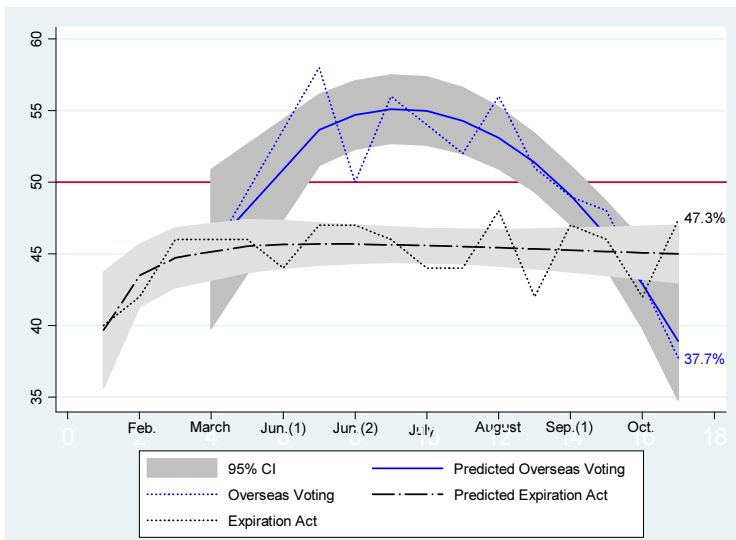


Figure 6.7. Evolution of public opinion in regard to the popular votes in Uruguay 2009

Parties are crucial institutions of opinion in Uruguay and former research shows that when Uruguayans go to the polls to vote on a popular initiative, their vote choice is primarily the result of their party loyalty (Altman, 2002). If this is correct, no matter how crucial the vote may be, citizens will follow partisan advice. This fact is amplified when the popular initiative is held concurrently with general elections, which, by their own nature, tend to “presidentialize” citizens’ decisions.

Also, another possible reason for the defeat of the popular votes is likely to have been the proposal of maximalists views on both topics: i) declaring the

Expiration Act void, instead of its derogation, ii) allowing postal voting instead of consulate voting, and for all elections instead of some of them. Although the proposals would have been, from a purist perspective, the correct thing to do, it is not necessarily the best, in political terms.

References

- Altman, David. 2005. "Democracia Directa en el Continente Americano: ¿Auto-Legitimación Gubernamental o Censura Ciudadana?" *Política y Gobierno* XII (2): pp.203-232.
- Breuer, Anita. 2007. "Institutions of Direct Democracy and Accountability in Latin America's Presidential Democracies," *Democratization* 14 (4): pp.554-579.
- Breuer, Anita. 2008. "Policymaking by Referendum in Presidential Systems: Evidence from the Bolivian and the Colombian Cases," *Latin American Politics & Society* 50 (4): pp.59-89.
- Breuer, Anita. 2009. "The Use of Government-Initiated Referendums in Latin America: Towards a Theory of Referendum Causes," *Revista de Ciencia Política* 29 (1): pp.23-55.
- Goldfrank, Benjamin. 2002. "The Fragile Flower of Local Democracy: A Case Study of Decentralization/Participation in Montevideo," *Politics & Society* 30 (1): pp.51-83.
- Goldfrank, Benjamin. 2006. "Los procesos de "presupuesto participativo" en América Latina: éxito, fracaso y cambio," *Revista de Ciencia Política* XXVI (2): pp.3-28.
- Kaufman, Edy. 1979. *Uruguay in Transition: From Civilian to Military Rule*. New Brunswick, N.J.: Transaction Books.
- Lijphart, Arend. 1984. *Democracies: Patter of Majoritarian and Consensus Government in Twenty-One Countries*. New Haven and London: Yale University Press.

7

Initiative Blues

The North American Experience with Initiatives and Referendums

Joe Mathews

If you ask how far the institutions of citizen's initiative and referendum have spread, the answer depends upon what level of government you are discussing.

On the federal level, North America is a desert of modern direct democracy. The national governments of the continent's three largest countries – Canada, Mexico and the United States – have not used the process in the last decade. But on the state level, the procedures and practices of direct democracy and related institutions are showing growing strength. And on the local level, where decisions of land use and education are made, North America is a hotbed of initiative and referendum.

Federal Roadblocks

The U.S. Constitution has no provisions for direct democracy. The document's Framers specifically rejected democratic systems in favor of a guarantee of republican and representative government. Mexico's constitution does not permit direct democracy, either.

There have been efforts in both countries to advance direct democracy at the federal level. But these attempts have precious little momentum. Former U.S. Senator Mike Gravel (D-Alaska) has made some progress. He has formed an organization to add a national initiative, but his proposals have received little scrutiny in the mainstream media, and they have not been entertained by federal government agencies.

Canada has had three national popular votes on substantive issues in its history. The last took place in 1992, an authorities-controlled popular vote [ATP] on the Charlottetown Accord, an attempt to resolve jurisdictional disputes between that country's federal government and its provinces. Before that, the last popular vote, on conscription, was held in 1942.

Canada, because of its experience, may offer the most promising ground for the growth of federal direct democracy. A vast and lightly populated country with two different official languages, the True North may find it easier to resolve complex questions on the ballot.

Mexico also offers some promise. The country is still in the early stages of transformation from a one-party dictatorship to a multi-party democracy. The rapid growth of direct democracy in cities and leading Mexican states also suggests that federal initiative and referendum could be in that country's future.

The Rapid Growth of State and Provincial Direct Democracy

The use of the initiative in the United States, particularly in its western states, is well-known. But Canada and Mexico in recent years have seen a rapid development of direct democracy tools.

Before this decade, the best-known subnational popular votes in Canada were two divisive decisions in the province of Quebec: 1980 and 1995 votes on questions related to how sovereign the province, with its French-speaking majority inside an English-speaking country, might be. Students of history also have long noted that, just as American states adopted the initiative and referendum in the early 20th century, four western Canadian provinces – Alberta, British Columbia, Manitoba, and Saskatchewan – did the same. Since then, the initiative and referendum had been used in every province except Newfoundland,

most commonly on subjects related to the use and regulation of alcohol, a very important issue for those who live through long, cold Canadian winters.

The initiative spread in Canada a century ago because of the interest among Progressives in political reform that would expand voting rights. Now, at the beginning of the second decade in the 21st century, a similar impulse has renewed modern direct democracy.

Advocates are using the initiative and referendum in the provinces in an attempt to remake the Canadian voting system. Canada, like the United States, has long lived under the traditional British method of “first past the post” voting. But frustration has grown, particularly after Liberals in British Columbia lost the popular vote but won the majority in 2001. Reformers have advocated new systems, including Mixed Member Proportional voting that combines some “first past the post” voting (that is, electing representatives in single-member districts by plurality votes) with members chosen from party lists according to the proportion of the vote their party earns. Another system being offered – Single Transferable Vote – elects multiple representatives in larger districts using ranked-choice voting.

With elites opposing these new voting systems, reformers turned to the public and, in many provinces, citizens’ assemblies or committees for support. A referendum to establish Single Transferable Vote in British Columbia reached the ballot in 2005, but the issue failed to get the required 60 percent of the votes for passage. A second popular vote [ATP] on the measure in May 2009 also failed. Prince Edward Island turned down a Mixed Member Proportional voting system in 2005. And in 2007, Ontario, in the first popular vote on a substantive issue in the province in 80 years, also turned down the proposal. As these results show, new voting systems have not been adopted. But the process of direct democracy has been revived by the pursuit of these systems.

In Mexico, use of direct democratic systems has been more improvisational, with provincial and district governments often calling votes without specific procedures in place. Despite the lack of democratic norms, 23 of the country’s 31 states have constitutions or election laws with some element of direct democracy. That said, the direct democratic procedures in these cases are rarely

citizen-directed. In Mexico, popular votes on substantive issues usually involve questions that the government submits to the voters as plebiscites [ATP]. Still, given Mexico's recent history, this is progress.

Perhaps the most ambitious Mexican use of direct democracy came in July 2008, with a simultaneous popular vote organized in nine states and Mexico City. It was a non-binding measure asking the public to register its views on two issues related to the privatization of *Petroleos Mexicanos*, the national oil company, that were being debated in the federal Congress. Those questions were:

- *Presently, the production, transportation, storage and refining of oil resources are exclusive activities of the state. Do you agree or not that private companies can participate in these activities?* ·
- *In general, do you agree or not that the initiatives being discussed in Congress on energy reform should be approved?*

Nearly two million Mexicans participated in the vote. Voters answered both questions overwhelmingly in the negative, thereby destroying momentum for privatization.

Controversy in the United States

Direct democracy is a feature of politics at the state level in 27 of the 50 U.S. states. The citizen's initiative [PCI] is particularly popular. The decade of 2000 ~ 2009 saw 367 initiatives qualify for statewide ballots, narrowly missing the record of 379 initiatives in the decade of the 1990s, according to figures compiled by the Initiative & Referendum Institute at the University of Southern California.

In spite of – perhaps, because of – its frequent use, the initiative remains a controversial topic. The frequent use of the citizen's initiative in California and other western states – Oregon, Nevada, and Arizona – has been blamed, with some reasons, for fiscal problems and political stalemates in the region. California remains a global example of how not to practice direct democracy. The state's system produces the most inflexible initiative system in the world. Measures passed by the people cannot be amended or altered except by another popular vote. The public, by enacting expensive new programs by initiative while keeping

taxes low, has helped put California on the precipice of bankruptcy.

That being said, there are aggressive efforts under way to reform the initiative process and curb abuses (including fraud in signature gathering) in several states, notably Arizona, Nevada, Colorado and Ohio. In California, a collection of Bay Area businesses is sponsoring ballot initiatives to call a constitutional convention, in part with the goal of reforming direct democracy in the state.

The Citizens in Charge Foundation, begun by longtime direct democracy advocate and practitioner Paul Jacob, is aggressively organizing across the country to protect and expand the citizen's initiative and referendum. A number of states – most notably Connecticut and New York – have begun efforts to adopt the initiative and referendum.

Robust Local Direct Democracy

Mexico City, North America's largest metropolis, held its first formal popular vote in 2002 on the question of whether to add second decks to two city highways. It was not an auspicious beginning. Only a tiny percentage of registered voters showed up, and in an early tally of results, the number of people who left their ballots blank outnumbered those who voted either yes or no.

Since then, popular votes on substantive issues have become a common part of Mexico City politics. The 2008 vote on oil was organized by Mexico City and then spread to nine other states. A 2007 citizen decision on environmental issues also drew large crowds of voters. These votes were more open than other Mexican elections. All residents, including children, were asked to participate. Among the questions in the 2007 ATP were the following:

- *Should the government continue building second decks (as an alternative to reduce car congestion) to Mexico City's freeways?*
- *What characteristics must the new subway line have?*
- *Should hybrid and electric cars be subject to a special regulation?*
- *How can public transportation be reformed and upgraded?*
- *Should the government invest more in unmotorized movement corridors (specifically designed for bikes)?*

A 2007 report on Mexican direct democracy, from the Swiss University of Zurich institute C2D, concluded that polling showed that more Mexicans were participating in popular votes on substantive issues than traditional elections. “As a result of this development, Mexico has a population better informed on political issues,” the report said.

Both Canada and Mexico lag the U.S. in the number of local ballot measures. Each year, there are thousands of referenda, initiative and recalls on municipal, county and school board ballots across the country. In many school districts, the annual budget is put to a vote of the people. In many cities, planning and land use decisions are increasingly made by voters, not elected or appointed officials.

A Tool for Integration?

North America has lagged behind Europe in integration of its economies and governments. After the establishment of the North America Free Trade Agreement, there has been a substantial backlash in the United States, among labor groups on the left and nativists on the right, against such integration. Political discourse on the right is still dominated by conspiracy theories about supposedly secret agreement to establish a continent-wide currency or government.

While the short-term prospects for integration of the U.S. and its two large neighbors are poor, the three countries face common issues of environment, economy and migration. In future decades, it is possible to imagine controversies and continent-wide issues that would need to be addressed democratically.

The strong tradition of direct democracy in all three countries offers some hope that the initiative and referendum could one day emerge as important tools. Perhaps transnational votes could open the door to the same kind of robust system of initiative and referendum at the federal level that Mexicans, Canadians and Americans enjoy in their home provinces, states, towns and cities.

Special Feature on California

– the Need for a More Direct Representative Democracy

Few Californians are aware of the European Citizen's initiative. They should be. California is struggling to figure out how to fix its direct democracy, a major culprit in its budget troubles. Europeans are launching a debate on how best to structure the process for their own continent-wide initiative. In their search for best practices, Europe and California are on parallel tracks.

To be sure, Europe's citizen initiative and California's ballot initiative are hardly the same. But both places share a common concern: the problems of scale. In California, a nation-state of more than 38 million people spread over 424,000 square kilometers, the constitution requires the gathering of hundreds of thousands of signatures to qualify an initiative for the ballot. Given the fact that only three in four signatures collected are valid, the number of signatures that must be gathered for each initiative is one million – the exact same number envisioned by the Lisbon Treaty for the new citizen's initiative.

The hard, logistical fact is that the gathering of so many signatures over a great geographic space requires considerable money and organization. In California, obtaining the signatures requires the employment of professional petition circulators, who are paid \$2 per signature and more. This high cost reflects more than the scale of the project, however. Complying with the restrictions and regulations of the process is a costly endeavor. As the European Commission's own green paper on the citizen's initiative notes, "Whilst a high threshold would indeed ensure that the initiative is sufficiently representative, it would nevertheless make the procedure more burdensome. On the other hand a low threshold would render the initiative more accessible, but less representative." California faces the same quandary. In the U.S. constitutional system, where courts have made clear that rights of free expression include the right to donate as one wishes to political causes, the high cost of qualifying initiatives has largely limited the process to wealthy individuals and interest groups.

The following paper offers an account of the California initiative process and solutions for addressing its peculiar deficiencies. The lessons of California,

for direct democracy professionals in Europe and elsewhere, have little to do with the specifics of distribution requirements or initiative registration. California's failure shows the necessity of flexible systems of initiative and referendum that are integrated with the legislative and executive institutions of government. Because California does not have such an integrated system, our proud state stands on the brink.

The following story explains the reason for this:

Darrell Steinberg had to decide whether to betray himself. In February 2009, Steinberg led the California State Senate as its president pro tem. But he was locked in negotiations that made him feel like a hostage. The country's economic recession had caused a historic collapse in state tax revenues. California faced a budget deficit in the tens of millions. The state had no cash in its main accounts and had already raided hundreds of special funds scattered around the treasury to pay its bills. The world's credit markets were so damaged that the borrowing short-term cash was prohibitively expensive. By late February, California would be out of cash. The state controller was preparing to pay bills with IOUs.

Steinberg desperately wanted to balance the budget. But every political option was blocked, many of them by previous citizen's ballot initiatives. The Democratic majority was willing to raise taxes, but the minority Republicans, using the leverage of voter-approved requirement of a two-thirds vote to raise taxes, were balking. As negotiators searched for money, Republicans suggested diverting tax dollars from two popular programs, early childhood services and mental health. These programs were rare birds. Each was established by a ballot initiative (Prop 10 in 1998 for early childhood; Prop 63 in 2004 for mental health). And neither was the sort of "something for nothing" measure – a spending mandate without dedicated funds – so common to the California ballot. To the contrary, each initiative had identified a new, dedicated source of tax revenue (tobacco taxes for early childhood; an income tax surcharge on millionaires for mental health) to fund its programs. Having been established by voters, each program existed outside the normal budget process. And because they were running a big surplus, they were tempting targets for lawmakers short on cash. In negotiations, legislative leaders debated taking roughly half of those surpluses: \$1.6 billion over five years from early childhood and more than \$500 million

over two years from mental health.

This was dangerous territory for Steinberg personally. Not only were such programs a top priority for his party and its donor base, but Steinberg himself had been the author of Prop 63, the initiative that established the tax for mental health. Unable to get such a tax through the Assembly when he chaired the budget committee there, the legislator had, like any interest group, taken his case to the people, and scored a victory. Prop 63 was the signature achievement of his career. It had given him statewide notoriety, and was one reason why he was leading the state Senate.

Steinberg thus faced the choice: do his job or undo his record. The Republican legislative leaders were willing to put up enough votes for a budget that included temporary tax increases. This act of GOP responsibility was also a political risk, a violation of anti-tax orthodoxy in a party that had grown smaller and more conservative. As part of their price for the tax increase, the Republicans demanded Steinberg take his own risk. Steinberg also saw that if he did not go along, the outcome would be perverse: the state would be cutting basic health programs even as it allowed these two initiative-protected programs to maintain surpluses. Reluctantly, he agreed to take money from his own program, as well as from early childhood.

“We were faced with a \$41 billion deficit and a political system where it’s next to impossible to raise taxes through the legislative process,” Steinberg would later say. “But I had a different responsibility, a responsibility as leader in the legislature to set an example. As we were asking others, including Republicans, to violate their own orthodoxy, I couldn’t say you can look at everything except what’s important to me. I didn’t like it, but I had to support it.”¹⁾

A deal was reached, but that was not the end of the story. In every other state in the union, the legislative agreement to take the funds would have closed the matter. In California, that was not enough. Steinberg might be the leader of the majority in the upper house of the legislature. He might be the author of the program he had reluctantly agreed to raid. An initiative simply could not be changed by elected leaders or its author, but only by another vote of

1) Darrell Steinberg interview, April 9, 2009.

the people. The initiative process existed in a world of its own, beyond checks and balances. So the best the legislature could do was draw up two ballot measures – Propositions 1D and Proposition 1E – to get voter approval before the money could be used to balance the budget.

It was not enough for Steinberg to betray himself; he would have to get permission first.

In May 2009, Californians would cast ballots on Propositions 1D and 1E – plus four other compromise measures that came out of the same desperate negotiations to change the budget before the state ran out of cash. The six measures did not exist because a majority of legislators wanted them on the ballot. To the contrary, lawmakers would have been happy to enact the deal themselves without having to ask voters. The measures were all there because California's system had forced lawmakers' hands.

Prop 1A was a compromise, forced upon the Democratic majority by the handful of Republicans who agreed to vote for the deal and reach the two-thirds threshold, to raise taxes temporarily in exchange for establishment of a rainy day fund. Prop 1F, a populist measure to tie legislative pay to budget timing, was another Republican demand enacted only because of the two-thirds leverage. Prop 1B resulted from a deal with the teachers unions, using the leverage that an earlier citizen's initiative on education provided them, that permitted short-term budget cuts in exchange for a change in funding formulas to boost education spending over the long term. Prop 1C, which sought to borrow against future lottery proceeds, had to go on the ballot because it altered the 1984 ballot initiative that created the lottery.

Voters were themselves responsible for the existence of these ballot measures, but Californians went to the polls grudgingly, blaming the legislature for sticking them with the responsibility of choosing. Surveys showed that significant blocs of voters – one-third of those surveyed by Field in April 2009 and 50 percent of Republicans in the poll – were opposing all measures on the ballot at least in part because they thought the legislature should not have been bothering voters with these questions – despite the constitutional requirement that voters be bothered.

This mood prevailed. Five of the six measures were defeated, with only Prop 1F, the populist blast at legislative pay, winning.

The failed special election was one more casualty of the cycle of contempt produced by the initiative process. The public distrusts the legislature and their elected officials. So voters, preferring to trust themselves, make major policy decisions via ballot initiative. These decisions, because of the requirement that initiatives not be changed by legislators alone, further tie the hands of lawmakers. The frustrated lawmakers find it difficult to solve pressing problems, further fueling the public frustration that produces more initiatives and more hand-tying. This vicious cycle produces anger, ballot box budgeting, and poor governance.

This system also defies accountability. Who is really responsible for the problems of lawmaking and budgeting in California? Lawmakers, with good reason, can blame the voters who have reduced their ability to come up with solutions. Voters, with good reason, can blame the lawmakers, who after all have high-paying jobs and plenty of time to balance budgets but never seem able to do so.

The question is debated endlessly. The fact that there is no clear answer is precisely the problem. The legislature and the voters each legislate. They are part of the same branch of government. But these two halves of the branch are not linked together in any meaningful way. California's system puts lawmakers and voters on entirely separate tracks – even though they are shaping the same laws and the same constitution. The legislative branch is unaccountable precisely because it is divided in this way.

There is no data to suggest that our legislators are lesser beings than those who haunt statehouses and Congresses and Parliament the world over. And California is not the only place with direct democracy. Twenty-four states have some forms of initiative at the state level. All fifty states offer direct democracy at the local level. And more than a hundred of the world's countries permit direct democracy at the state or local level.²⁾ Switzerland, the only country with a federal system of direct democracy (a system that inspired the Progressives who adopted initiative and referendum in California), is among the world's best governed, least corrupt, and most peaceful nations.

2) Darrell Steinberg interview, April 9, 2009.

What makes California different? It is the design of the state's system of direct democracy, and in particular, its initiative process.

Specifically, California has the most powerful – and, thus, the most inflexible – initiative in the world. The legislature has no constitutional power to stop an initiative from reaching the ballot, nor does the governor or any member of the executive branch. Judicial authorities can block initiatives with constitutional infirmities, but precedent sets a high standard for doing so. In all twenty-three other states with the initiative process, legislatures may change a law enacted by initiative. Sometimes, there is a brief waiting period before lawmakers can act – two years – or maybe a supermajority is required to make a change. California is the only place in the world where a statute enacted by initiative can only be undone with another popular vote (unless the original initiative permits legislative amendment).³⁾

Initiatives to amend the constitution present a similar problem. An initiative constitutional amendment requires only a simple majority of voters to pass. But to amend or revise the constitution, the legislature must muster a two-thirds vote – and the approval of the voters.

These incentives give California's direct democracy the strongest pro-initiative bias of any such systems in the world. The other tools of direct democracy have fallen into disuse. The recall is uncommon; the 2003 recall of Governor Gray Davis was the first and only recall of a statewide elected official. The referendum is rarely used; fewer than seventy have been filed in a near century of California direct democracy, and only fifty have qualified for the ballot.⁴⁾ By contrast, more than a hundred ballot initiatives a year are now filed with the state attorney general's office. This makes sense: why bother with a referendum (reversing a law of the legislature) or a recall of a legislator when

3) *Democracy by Initiative: Shaping California's Fourth Branch of Government*, 10. David Altman, Address to the Global Forum on Modern Direct Democracy in Aarau, Switzerland, October 1, 2008. In recent years, more initiative sponsors in California have included language permitting legislative amendments of statutory initiatives, usually via supermajorities. Between 1990 and 2006, 33 of the 42 initiative statutes to qualify for the ballot permitted some form of amendment.

4) California Secretary of State records, including this list of referenda at <http://www.sos.ca.gov/elections/referenda.htm>.

an initiative permits you to write a law or constitutional amendment that the legislature will never be able to change on its own?

Such an inflexible system has many consequences. Budget priorities can be locked in easily, and they persist even when revenues diminish or when the priorities of a majority of Californians change. Civil rights may be taken away by the slimmest of majorities in the California system, while revising those restrictions often requires legislative supermajorities. Effectively, voters can set in cement laws and constitutional amendments that will govern the state long after they are dead or moved away, even if new majorities would like something different.

Such a direct democracy is not worthy of the name. It is not very direct. And it sure is not democratic. Put simply, initiatives provide voters not with direct engagement with their government, but with a way to circumvent their state government and frustrate future majorities.

Since the 1911 special election that gave California its strange direct democracy, reformers have been trying to fix its defects. There is no shortage of ideas.

Restrictions on the process. Since 1920, when the legislature tried and failed to eliminate the initiative and referendum, state elites have been trying to impose limits on initiatives. Some reforms would limit the issues subject to initiative. Others would raise the number of signatures required to qualify an initiative.

Removing money from the process. In California, good government groups have sought to impose limits on donations to initiative campaigns. They also have sought to ban or put restrictions on paid petition circulators, who gather overwhelming majority of signatures on initiative petitions.

Open up the process. Among the suggestions are to eliminate time limits for signature gathering, thus giving volunteer petition circulators plenty of time to collect the hundreds of thousands of signatures required for the ballot. In recent years, there have been efforts to permit signature gathering and petition circulation over the Internet.

Providing better information. Recent reports by the Center for Governmental Studies and by the 2002 State Commission recommended upgrades to the information the state provides to voters about initiatives. CGS urged that restrictions be adopted on the lengths of measures – roughly a third of initiatives in the past decade have been more than 5,000 words – too long and confusing for many voters.

Each of these approaches, particularly those requiring more information for voters, has merits and can improve the process slightly. But they all have drawbacks. Imposing new restrictions on the process could add to the costs of qualifying measures and running campaigns, thus making the initiative process even more of a rich person's game.

Many of the ideas for removing money from the process have been tried and struck down by federal and state courts as unconstitutional restrictions on political expression. On the other side, opening up the process and making the sponsorship of initiatives cheaper might produce more initiatives – and in California's system, that means more whips and chains that restrict the ability of elected leaders to govern effectively.

The big problem with these reforms is more fundamental. None of them address the divide in California's legislative branch, the inflexibility of the initiative process, and the problems of accountability that result.

Reckoning with these structural challenges requires a full redesign not only of the initiative process but also of the relationship between the legislature and direct democracy. Lawmakers and voters are now at odds, with each half of the legislative branch frustrated and hamstrung by the other. That divide must be bridged, so that the legislature better serves direct democracy, and direct democracy better serves the legislature.

Legislative reform and initiative reform cannot be considered separately. They are two sides of the same coin. Lawmakers and voters should be partners in lawmaking, not antagonists who are free to work around each other. This requires two related sets of reforms. Not only must the initiative system be redesigned to bring the legislature into the process, as many commentators suggest, the legislature must also be changed to bring the voters into the process.

Successful reform in this area should not restrict voters or lawmakers. It should seek to free them, and give them more power and discretion – but in ways that allow them to engage in constructive conversation with each other.

The goal is nothing less than a more direct and more democratic direct democracy. Lawmakers must have more ability to balance priorities, budget, and legislate as best they see fit. At the same time, voters need to have greater freedom to pass judgment on the products of this greater legislative freedom. Ideally, the two sides of the legislative branch could be integrated in a way that allows the legislature and voters to do what they do best. The legislature, using its time, staff and expertise, should have the unquestioned authority to legislate. Voters must have unquestioned authority to check the legislature, sending back laws and budgets they do not like for more work.

Fashioning reform requires reckoning with a hard political fact. Any new limits on the initiative process are poisonous. Yes, surveys show widespread public dissatisfaction with aspects of the process. Surveys consistently show that more than three in four California voters support retaining the process. Abolition is not an option, nor should it be. A well-designed system of initiative and referendum would provide a useful check on representative government.

What would such a system look like?

Initiatives, as proposed laws and constitutional amendments, must adhere to the same rules as legislation. Initiative proponents would submit their language to nonpartisan staffers inside the Capitol at the legislative counsel's office, which would produce the actual legislative language of any measure that circulates. This would tend to prevent drafting errors and unintended consequences and produce clearer initiatives.

Most importantly, initiatives would no longer be immune from legislative amendment. Any initiative that passes would be subject to amendment or elimination by the legislature. There should no longer be two classes of laws – one passed by the legislature and subject to amendment, the other passed by the voters and essentially protected from amendment.

Such a change would put California in line with its neighbors. Every other state permits legislative changes to initiatives, either through a majority vote,

a supermajority vote or by majority vote after a waiting period. As a compromise, lawmakers might have to wait for one legislative session, which is two years, after an initiative passes, out of respect for the will of the voters.

This is not a radical change. Responsible initiative sponsors in California have often included provisions permitting the legislature to make amendments. 33 out of the 42 initiatives approved by voters between 1990 and 2006 included some provision permitting legislative change.⁵⁾ And Prop 9, the 1974 Political Reform Act, which was one of the first initiatives to include the language of permitting legislative amendment without a vote of the people, has been amended more than two hundred times.

Establish higher standards for constitutional amendments that give voters and lawmakers complimentary powers to add to or subtract from the document. Currently, an amendment may be added with a simple majority vote of the people. But the constitution cannot be amended by the legislature or substantially revised without a two-thirds vote and another vote of the people. This dynamic – making it harder to add than to edit or revise the document – is one reason why California’s constitution has grown so long.

To reverse that trend, new rules should make it more difficult to add to the constitution – and easier to revise or edit things out. Voters and lawmakers should have similar powers in this area along two tracks.

The first track would permit the constitution to be amended or revised by a majority vote of the people – or a majority vote of the legislature, followed by a vote of the people – but only if the proposal showed sustained support over two election cycles. In the case of an amendment or revision offered via initiative, the proposed change would have to win a majority vote in two consecutive elections. If the legislature is the body introducing the change, the amendment or revision would have to win majority votes in two consecutive legislative sessions with the people also approving by majority vote.

If faster constitutional action is required, a second track would permit quick passage but with a higher voting standard. To alter the constitution in just one cycle, two-thirds of voters would have to approve in the case of the initiative,

5) *Democracy by Initiative: Shaping California’s Fourth Branch of Government*, 10.

or two-thirds of the legislature (followed by a vote of the people) if lawmakers offer the change.

Any initiative that would impose supermajority requirements must pass by the same supermajority to take effect. For example, if a measure were to require a 60 percent vote of the legislature to raise taxes, the measure itself would have to receive 60 percent support at the polls. This would be an important check on supermajorities; Prop 13, which included the current two-thirds requirement for tax increases, was approved in 1978 with a big majority but with less than two-thirds of the vote.

Make all ballot initiatives and bond measures live within the legislative budget. To control the epidemic of something for nothing, every spending measure placed before voters needs to pay for itself, either with new revenue or offsetting spending cuts.

Permit the legislature to enact each initiative or place a counter-proposal next to the initiative on the ballot. Under the current system, the legislature holds hearings on each initiative, but there is no formal mechanism for negotiations between initiative sponsors and lawmakers. There should be. Sponsors who qualify an initiative should be guaranteed an up or down vote on the measure. In addition, lawmakers should be able to offer amendments that the initiative sponsor may accept or reject.

If the initiative sponsor decides to take the measure to the ballot anyway, the legislature should have the right to place a counter-proposal on the ballot, on the very same page as the initiative, via majority vote. Currently, lawmakers sometimes put a measure elsewhere on the ballot that is meant to counter an initiative, but not on the same page and only with a two-thirds vote. As a result, it is often unclear to voters that they are reckoning with two competing proposals, one from the legislature and the other from an initiative sponsor.

Most countries that permit citizen's initiatives offer legislative counter-proposals. Switzerland, which inspired California's direct democracy, requires just such a counter-proposal for every initiative. Sometimes, the counter-proposal is constructive and seeks to meet the sponsor's goal by a different method. Sometimes, the counter-proposal is a harsh rebuttal by the legislature. Whatever

the case, Swiss ballots place a third question next to the initiative and the counter-proposal: If both measures were to win, which would you prefer? This permits voters who support the goal of both the initiative and the counter-proposal to express a preference. This third question also permits voters who oppose a concept to choose the measure that they see as less threatening.

California should adopt this three-question set up – initiative, counter-proposal, and preference between the two – not only because it provides more influence for lawmakers but also because it provides considerably more choice and power for voters. Under the current system, voters have a simple, binary choice on initiatives: yes or no. Under the three-question system, voters have eight voting options on one question, instead of just the two permitted under the current system. Consider:

1. Yes on initiative, yes on counter, prefer initiative if both pass
2. Yes on initiative, yes on counter, prefer counter if both pass
3. Yes on initiative, no on counter, prefer initiative if both pass
4. Yes on initiative, no on counter, prefer counter (an unlikely result obviously)
5. No on initiative, yes on counter, prefer initiative (unlikely)
6. No on initiative, yes on counter, prefer counter if both pass
7. No on initiative, no on counter, prefer initiative if both pass
8. No on initiative, no on counter, prefer counter if both pass

In a three-question initiative system, campaigns would produce more informed voters. How? Under the current system, voters must consider the initiative in isolation, without any point of comparison. Feelings about the issue often drive debate, and the details of the measure get little scrutiny. But in a three-question system, a campaign is likely to be comparative, focusing attention and debate on the contents of the two measures. The central question of such a race would be: what is different between these two measures? Such comparative campaigns would produce scrutiny of the legislative details and help voters make more informed choices. Information is power.

Make it easier for voters to overturn the legislature through a more referendum-based direct democracy. Reform to the initiative process must enhance lawmakers' power by ensuring that the legislature is the undisputed

headquarters of writing and drafting new laws. By retaining the power to amend initiatives, legislators would find no part of the law off-limits.

But voters need additional power to check the legislature. That power could be found in an oft-neglected tool of California's direct democracy: the referendum.

A referendum is a ballot measure that does not propose a law but, instead, permits voters to block an act of the legislature. The California state constitution, as we have seen, is biased in favor of the initiative. It is just as easy to qualify initiative, in terms of signatures, as it is to qualify a referendum. And it is usually less expensive to qualify an initiative, because the time limit for qualifying an initiative is two months longer – 150 days – than the 90-day limit for a referendum. Signature gatherers can charge ballot measure sponsors more money for signatures when they know time is short.

In addition, the constitution makes it possible for initiatives to be introduced on almost any subject matter. The referendum power, however, is limited, to certain legislative subjects and to measures passed in the normal course of business. Tax and appropriation bills and legislation passed under “urgency,” or emergency, provisions are exempt from referendum. As a result, fewer than 75 referenda have filed for the ballot in California since 1911. In the same century, more than 1,100 initiatives have been filed and more than 300 have qualified for the ballot. This initiative-centered direct democracy is unique to California and other western states. In the rest of the world, the referendum, or reversal of legislative action, not the initiative, is by far the most common type of ballot measure.

To balance the enhanced power of lawmakers to amend initiatives, voters need more power to block them via referendum. This could be accomplished in several ways. The signature gathering standards for a referendum might be lowered substantially, perhaps to 1 percent of the number of votes cast in the most recent gubernatorial election. With such standard, enough signatures to qualify a referendum could be gathered in a matter of weeks. Under a system that provides for quick referenda, urgency and some tax and spending bills could be made subject to voter reversals as well.

Such a reform would not reduce the number of ballot measures or the ability of the people to decide big questions. If anything, it might give people more

measures and more choices. But the goal would be to make most California ballot measures referenda – verdicts on the product of the legislature – instead of initiatives. In short, California’s direct democratic system would be referendum-based, not initiative-based.

Such a system, by its very nature, would be more integrated with the legislative process. When Californians vote on initiatives now, they are voting on proposed laws and amendments that have not been vetted in the legislature. This may be democratic, but it is not a direct judgment on the government. It is an end run around that government. When they vote on referenda, they are passing judgment on the legislature. That is a direct communication between the people and their elected officials.

How might such a system work in practice? Ideally, lawmakers and voters would be partners, with the legislature making suggestions and the public saying yes or no. It is likely that controversial legislation would be presented to the people multiple times before it wins approval. This process would not be without rancor. But it would channel that rancor into democratic verdicts, as voters and lawmakers bat proposals back and forth until consensus emerges.

This system would offer more power and choice to voters. It also would provide more power and autonomy for elected representatives in legislation. And there would be more direct interplay between voters and legislators, via counter proposals and more frequent referenda.

Legislators would be more accountable for their work, since, under a referendum-based system, they frequently would have to convince voters to accept their deals and compromises. Much of the money and scrutiny that initiatives currently attract would be redirected to the legislature, the source of referenda upon which voters would pass judgment. Voters would have to pay more attention to the legislature; they would be voting not on initiative abstractions but on legislative deals, with all their trade-offs.

With these reforms, California’s system of initiative and referendum would be worthy of the name, direct democracy.

8

Modern Direct Democracy in Europe

Dynamic Development on All Levels

Theo Schiller

Europe represents a long and impressive history of democratic development, together with the United States of America. It has been very much the seed-bed of democratic ideas and theory, and quite a few historical developments in European countries stand out as milestones of democratic achievements. The ancient Athenian 'polis' is being remembered worldwide as the reference model of democratic self-government. The French revolution of 1789 brought the principle of popular sovereignty to real life for a short period of time, marking the modern times of legitimacy. The British development of the rule of parliament in several steps of reform finally led to general suffrage in the 1920s. And Switzerland introduced the institution of direct democracy during the 19th century and thereby contributed a new pattern of governmental structures to the modern times of democracy.¹⁾ These developments have been accompanied by a bulk of theoretical works on political legitimacy of political orders, particularly since the age of enlightenment of the 18th century. Jean-Jacques Rousseau surely

1) Developments and institutions of direct democracy in Switzerland are not covered in this paper since they are being dealt with in more detail in other contributions of this publication.

formulated the most important and influential theory of popular sovereignty in a republic of free citizens who would govern themselves by their own 'general will.' This rise of modern democracy, however, led in the first place to the establishment of representative institutions and a representative notion of democracy, whereas direct democracy remained, outside of Switzerland, in a rather weak and secondary position, which in some countries was hardly known.

Today's Europe is a large continent – not by size, but by the number of countries – containing 35 countries, of which 27 are members of the European Union (E.U.). After the end of World War I the continent could enjoy democratic constitutions with general suffrage only for a short period of time, and then suffered from totalitarian dictatorships, a horrible Second World War and the confrontation of the Cold War. Since 1945, most West European countries enjoyed a period of rather stable systems of democratic government which provided a positive environment for more participation. Eastern Europe, however, remained under undemocratic conditions and did not have the chance for independent developments.

Direct Democracy in Europe originated roughly from four historical backgrounds:

- (1) In a few states, from the first transformation to democratic republics in 1919/1920, e.g. in Germany's "Weimar Republic" or in Austria where it would last only until 1933/34.
- (2) In some states, from the second transformation from fascist dictatorships or occupation to democracy after 1945, like in creating new constitutions in France, Italy (with instruments of direct democracy not then implemented), or several regional states ('Laender') before the Federal Republic of Germany was founded in 1949.
- (3) In many states, from European integration after 1958, beginning in practice only with the accessions of new member states in the early 1970s.
- (4) In many states, from the democratic transformation after communism 1990 ff., like in two Baltic states, Croatia, Hungary, Macedonia and Slovenia, and in the former GDR parts of Germany. Here, the principle of popular sovereignty received new strength not only from the people's will for freedom and self-government but also from seeking state

independence from the earlier Soviet Union or the federation of Yugoslavia.

The pattern of Direct Democracy in Europe represents a colourful mosaic at different levels of government and various basic forms of direct democracy. We will look at four levels of political systems: the national level (I), regional states within federations (II), local politics (III), and the level of the European Union (IV). Some countries display direct democracy on several or only one of these levels, and, of course, we will also find some countries which developed no or almost no elements of direct democracy. Overall, there is not a European model of direct democracy, but a variety of forms that seems to be typical in European countries.

We can distinguish four basic forms of direct democracy which vary according to who can initiate the procedure and, particularly, what power resides with the citizens:

- the *mandatory* referendum [LOR], which has to be conducted on specific pre-defined subjects or situations
- the *government-initiated* popular vote on substantive issues [ATP] which is called by a governmental authority at will
- the *citizens' initiative* [PCI] by which a certain number of citizens can present a specific proposition, and a concluding popular vote if authorities would not accept the proposal
- the *agenda initiative* [PAI] which allows a number of citizens to put an issue on the agenda of a legislature which then can be decided freely.

There are also some variations of these basic types. Particularly important will be the distinction between two sub-types of the citizens' initiative: In one sub-type, citizens initiate a proposition (e.g. a new piece of legislation) which will go to a popular vote if the legislature would not accept it [PAI]. The other sub-type gives citizens the right to oppose a new law of the legislature by initiating a referendum vote on it (citizen-demanded referendum) [PCR]. As can be seen in the following sections, some of these basic forms and sub-types of direct democracy are quite typical for certain countries and their "country profiles."

1. National level of government-types of direct democracy and country profiles

At the national level of government we can structure our overview by using the four basic types of direct democracy which shape the country profile of the states with most activities (Table. 8.1).

Table 8.1. Main forms of direct democracy in Europe (national level, main examples)

| Mandatory referendum | Government - initiated referendum |
|--|--|
| Ireland (constitutional amendments) Denmark (partly mandatory) | France (by president) Austria (by parliament) Other countries (ad-hoc legislation) |
| Citizens' Initiative | Agenda Initiative |
| Italy (referendum abrogativo) Hungary, Latvia, Lithuania, Slovakia, Slovenia (cit.- demanded referendum) | Austria Poland, Portugal, Romania, Spain |

- (1) *Mandatory referendum* [LOR]: This form is typical for *Ireland* where it applies to every constitutional amendment. It originated from the constitutions of 1922 and definitely 1937 which intended to integrate society after severe conflict over the road to complete independence from Great Britain. This form also applies to most European treaty issues since they are regarded as constitutional amendments (cf. below IV). In Denmark, obligatory referendum votes are required on supranational subjects – mainly European treaty amendments – if a 5/6-majority is not reached in Parliament. For some treaty amendments, however, referendums have been called even in the case of unanimity, which means referendums received a quasi-mandatory character. In addition, amendments affecting electoral law also are mandatory.
- (2) *Government-initiated referendum* [ATP]: This form is shaping the direct democracy profile of *France*. Here, only the directly elected president can call popular votes on substantive issues and appeal to the people for acceptance or rejection of major decisions and his presumed position above party and social conflict (used a few times). The form of popular votes

on substantive issues called by governmental authorities is also legally pre-regulated in Austria where parliament can act as the initiator so far, this happened only in one referendum which rejected a nuclear power station.

Several other countries used this form by ad-hoc legislation of parliament, like Britain, Norway, Portugal, Spain or Sweden.

This type of direct democracy has the main feature of citizens only being able to respond to the question from “above.” Therefore, the term “plebiscite” is often used, and surely justified in those cases where the holders of power seek mainly general support or even acclamation.

- (3) *Citizens’ Initiative* [PCI, PCR]: This type is available in several European countries and in some variations. The country with the highest usage is *Italy* in the form of ‘referendum abrogativo’ [PCR] by which citizens can initiate a referendum to delete an existing law or a part thereof. Since the procedure (included in the constitution of 1948) has been implemented in 1970, it has been used in some 60 cases. Important issues have been the divorce law (1974), labour and social policy issues (1980s), election laws and government reform issues (early 1990s) and media regulation (1995 and later).

Other countries providing citizens’ initiative are Hungary, Latvia, Lithuania and Slovakia [PCI]. In Non-E.U. states, Croatia and Macedonia also offer this instrument. Slovenia provides a citizen-demanded referendum by which a new piece of legislation of parliament can be rejected [PCR] (called ‘facultative referendum’ in Switzerland).

This type has the great advantage that citizens can initiate the content of a proposition and the track to a referendum – they articulate needs and demands “from below.” Thus, they can place a political issue on the agenda of public deliberation and open the option for a decisive vote for all citizens who want to participate. Problems arise from high procedural requirements in several countries: (a) high signature quorums in Latvia, Lithuania and Slovakia lead to only a few cases, (b) a high turnout quorum, like 50% of registered voters required in Italy, means that in some 60 referendums only a few ballot votes had a valid result, (c) also known is an approval quorum for a valid vote, by which a majority of votes cast must, in addition, include a certain share of all registered voters

like 25% or even 50%.

- (4) *Agenda Initiative* [AMI] offers to citizens only a procedure to present a proposal, very similar to a petition. The decision, however, is fully in the hands of the legislative (or other designated authority). This form is known in Austria (and used frequently), and also e.g. in Poland, Portugal, Romania or Spain, where it is rarely practiced.

Several countries do not provide any pre-regulated instruments of direct democracy at the national level. These include Belgium, Czech Republic, Finland, Germany, Greece, Netherlands, Norway and Sweden. Nevertheless, by ad-hoc legislation a popular vote on substantive issues might be called by governmental authorities, and this option has been used by some countries on special occasions.

Constitution-making and constitutional amendments

Constitutional policies are a specific kind of subject which in many countries have been granted high relevance by conducting legitimizing referendums. Countries like Ireland or Switzerland generally require mandatory referendums for constitutional amendments [LOR], and Ireland's constitution of 1937 itself was ratified by referendum. Yet, whether or not to use mechanisms of direct democracy for constitutional decisions has in other examples been influenced by tradition or political will. For instance, Estonia, between 1932 and 1936 decided four basic issues of its constitution by referendums. The citizens of Greece voted in referendums for the return of the king in 1920, for the republic in 1924, for the restoration of monarchy in 1935, and again for a republican state in 1974, after the military dictatorship. Italy decided on the constitutional question of monarchy or republic before 1948 also by popular vote. France held three basic constitutional referendums: 1945/46 and de Gaulle as president urged a [ATP] referendum in 1958 on a new "presidential" constitution and in 1962 on the direct election of the president. In the Spanish transformation process after Franco's authoritarian regime, a reform law comprising basic democratic principles received broad support in a popular vote in 1976. This legitimized the road to a new constitution, and the final draft of the constitution again was supported by a broad majority in the popular vote of December 1978. During the post-communist transformation period in Eastern Europe, in addition to popular votes on independence, [LOR] referendums on a new democratic

constitution have been held in Estonia in June 1992 and in Lithuania in December 1992. Latvia, however, who like Lithuania also introduced direct democratic measures in the new constitution, did not hold a referendum for ratification of the constitution. In Poland, after preliminary changes of her constitution in the early 1990s, only in May 1997 was a popular vote held on the new constitution. Other countries in Eastern Europe like the Czech Republic, Hungary or Slovakia did not ratify their new basic laws by referendum. On the level of regional states, in East Germany after the GDR, some but not all of the five states ratified their state constitutions by referendum during the early 1990s. So, during these periods of democratic transformation, popular sovereignty in the form of direct democracy has not always but rather often been called upon for re-claiming and strengthening the basic principles of democracy. Parallel with other practices, this may foster the idea of direct democracy in a wider European context.

2. Regional states in federal systems

Even if direct democracy does not exist at the national level, the regional states in federal systems may also serve as relevant areas for citizens' participation in direct political decision-making. They can provide important experience with this kind of political process, as well as starting points and background for national developments. It should also be mentioned that population of such regional states can be, in fact, very large – sometimes much larger than that of small nation states.

In Germany, by now all regional states provide the citizens' initiative [PCI]. Introduced as anti-dictatorial institutions in the context of democratic transformation after 1945, the regulations were improved during the 1990s. They have also been adopted in the regional states of the former GDR where three of five states also ratified their constitutions by referendum [LOR]. Requirements for an initiative vary. For example, 20% signatures of all registered voters are required in Hesse, 10% in Bavaria, 8% in North Rhine-Westphalia, 5% in Hamburg and some 4% in Brandenburg – Bavaria and Hamburg being the two states with the highest number of initiatives, mostly on school and environmental issues and state institutions.

In Italian regions, forms of direct democracy are also developing but not practiced much yet. The same holds for some autonomous regions in Spain, where, for instance, Catalonia used popular votes to strengthen its degree of autonomy. Similarly, referendum votes may be used for legitimizing decisions leading to state devolution, like in the Scottish and Welsh case in the United Kingdom. Even the German constitution requires a mandatory referendum [LOR] for any change of the territorial structure of the regional states within the federation – the ballot to be held in the territories affected. A different dimension can be seen in France who tried to solve violent conflicts on status problems of Corsica by popular vote [ATP] but was not very successful.

3. Local level

Local self-government and citizen participation in local politics is in high esteem worldwide as an important contribution to democracy in general. Since local politics offers opportunities to the citizens to be much closer involved in communication and decision-making, it is also a very inviting environment for participating in forms of direct democracy. For a bottom-up concept of democracy this seems to be self-evident. Several countries in Europe show, indeed, interesting developments.

Most advancement has occurred in Germany, where the citizens' initiative [PCI] was introduced mainly during the 1990s in the municipal laws of all regional and city states (finally at the district level of the City of Berlin in 2005). Requirements often are rather high (ca. 10% signature quorum and 25% approval quorum of registered voters for valid votes). Until 2007, some 4,500 initiatives and some 2,200 ensuing popular vote on substantive issues have taken place, with frequent activities in Bavaria, Hamburg, Hessen, and Berlin. Many subjects of local politics are dealt with, like street or airport planning, social infrastructure, education and cultural services, environmental and energy issues, transportation services, etc.

In Italy, local initiatives and referendums begin to be used, along with the same developments at the regional level. Regulations are rather similar to the national level which means a high turnout quorum required for valid referendum votes.

Several other countries with none or little practice of direct democracy on the national level, in fact, show some activity on the level of local politics. In the Czech Republic, for instance, several initiatives on city planning have been conducted. In Norway, local authorities call consultative popular votes [ATP, AMR], mostly on school and language issues. In Poland, many popular votes have been held on the recall of municipal councils and mayors, and lately more on planning and fiscal subjects. France has recently introduced the option for local popular votes on substantive issues, again in the top-down tradition of the national level, to be called by municipal councils.

It seems somewhat strange that Denmark and Ireland, which are known for frequent use of [LOR] referendums on European subjects, have no regulations and practice of local referendums.

Initiatives and referendums at the local level are not only relevant for local politics. They also provide important opportunities for active participation of citizens and thereby strengthen experience, motivation and competence for participating at other levels of politics and government as well. So, local direct democracy can contribute to the development of a more lively democracy at all levels.

4. Context of European integration

A fourth level of political life developed in Europe since the 1950s by integrating a growing number of member states into the European Communities, and, since 1992, into the European Union. This process implied new dimensions of supranational integration and created problems for national sovereignty. Therefore, accession to the European polity became an issue of legitimation for representative actors like parliaments and governments of potential member states before joining in. Sharing power and sovereignty with other member states and the European institutions activated the (latent) constitution-making power of the people: in a number of cases this led to popular votes on accession.

4.1. Accession to the Union

Joining the European Community/European Union means changing the constitution of a member state, and in many countries, the people – as the sovereign – had to confirm this by referendum (in most cases initiated by governmental authorities [ATP]). But surprisingly enough we see a mixed picture.

No referendum had been held in the six founding members of the European Economic Community 1957 – Belgium, Federal Republic of Germany, France, Italy, Luxembourg and Netherlands. The first extension of the community saw referendum votes in 1972 in Ireland and Denmark and in the United Kingdom on whether it should stay in 1975 also in France on whether these countries should be accepted as members. However, no popular vote was taken on accession in Greece, Portugal and Spain in the early and mid-1980s. Later, the situation changed almost completely: referendums were held in Austria, Finland and Sweden in 1994 in all eight East European states plus Malta in 2003 but *not* in Cyprus, Bulgaria and Romania (Table 8.2). Thus, holding accession referendums to legitimize a transfer of sovereignty to the supranational body of the European Union seems by now to have acquired the status of a rule.

In addition, we can speak of a specific kind of ‘accession’ involved in taking or rejecting membership in partial regimes of the European Union, for which the European Monetary Union (EMU) is a particular case in point. Separate referendums on joining the EMU have been held in Denmark (2000) and Sweden (2003) which both failed. It seems clear in these countries that a new move to accede to the Monetary Union can only be realised by calling a new referendum. To minimize the risk of a second failure, governments obviously act very cautiously and, so far, did not take this step. A similarly complex situation developed in the United Kingdom where governments promised to the people that a decision to join to the Monetary Union would need legitimizing by the people in a referendum vote. Up to now, this point has not been reached, and hesitation will most likely endure. Interestingly, however, the world financial crisis of fall 2008 moved the government of Iceland to the decision to prepare an accession to the European Union including EMU and announce a popular vote [LOR] for approval.

Table 8.2. E.C./E.U.: Referendums on Accession

| E.C./E.U. accession – No referendums | | E.C./E.U. accession referendums | |
|--------------------------------------|------|-------------------------------------|------|
| Belgium | 1957 | Denmark | 1972 |
| France | | (EMU-Euro) | 2000 |
| Germany | | Ireland | 1972 |
| Italy | | France (accept new members) | 1972 |
| Luxembourg | | United Kingdom (confirm) | 1975 |
| Netherlands | | | |
| Greece | 1981 | Austria | 1994 |
| Portugal | 1986 | Finland | 1994 |
| Spain | 1986 | Sweden | 1994 |
| | | (EMU-Euro) | 2003 |
| Cyprus | 2003 | Czech Republic, | 2003 |
| Bulgaria | 2007 | Estonia, Hungary, Latvia, | |
| Romania | 2007 | Lithuania, Malta, Poland, | |
| | | Slovakia, Slovenia | |
| | | <i>Non-members (access./coop.):</i> | |
| | | Liechtenstein (2) | |
| | | Norway (2) | |
| | | Switzerland (8) | |

4.2. Treaty amendments

The second dimension of E.U. referendums relate to major treaty amendments which also imply constitutional relevance and have, in some countries, been given special reference to legitimizing transfers of sovereignty by popular vote (Table 8.3):

Popular votes are mandatory in Ireland (7 referendums) and (partly mandatory) in Denmark (4 referendums). These related to the Single European Act (1986/87), the treaties of Maastricht, Amsterdam, Nice and the Reform Treaty of 2005, followed by the Treaty of Lisbon. In a first vote, Denmark rejected the Maastricht treaty and held a second, positive popular vote (1992/93), while Ireland also needed two referendum votes to accept the Treaty of Nice (2001/02) and the Lisbon Treaty (2008/09). In both cases, the special needs and fears of small member states had not been given sufficient attention, and some additional privileges and clarifications had to be negotiated to make a positive vote possible.

Table 8.3. E.C./E.U. - Referendums on Treaty Amendments

| | Single European Act | Maastricht | Amsterdam | Nice | Reform Treaty | Lisbon Treaty |
|-------------|---------------------------------------|--------------|-----------|--------------|------------------|------------------|
| Denmark | 1986 | 1992 1993 | 1998 | | | |
| Ireland | 1987 | 1992 | 1998 | 2001 2002 | | 2008 2009 |
| France | | 1992 | | | 2005 | |
| Italy | 1989 (reform process/ consult.) | | | | | |
| Luxembourg | | | | | 2005 | |
| Netherlands | | | | | 2005 | |
| Spain | | | | | 2005 | |

Government-initiated popular votes [ATP] have been called in five countries: Italy held a consultative vote on the Single European Act in 1989. The president of France called referendums on the Maastricht Treaty (1992) and the Reform Treaty (2005), on which the latter, Luxembourg, Netherlands and Spain did the same. Major consequences resulted from the 2005 referendums, since in France and the Netherlands a majority of citizens rejected the treaty, whereas Luxembourg and Spain voted in favour. New treaty negotiations leading to the Treaty of Lisbon have been interpreted as so minor that it seemed legitimate not to call new referendums in France and the Netherlands. The story tells that the form of government-initiated popular votes [ATP] seems to provide some space for political manoeuvring: several governments who also had announced referendums on the Reform Treaty of 2005 did not implement this any more when the Lisbon Treaty was to be ratified. In sum, we see a heterogeneous picture. In several countries, treaty amendments have been regarded as transfer of sovereignty to the supranational European Union, but in the majority of member states, governments may have different rules for amendments or do not regard these transfers serious enough to call in the people as the master of their constitution for ratification.

Three popular votes on European matters were also held in Non-E.U. countries, like in Liechtenstein (2), Norway (2), and Switzerland (8). Most referendums asking for accession to European Communities (including European Economic Space) had not been successful. Other popular votes dealt with bi-lateral treaties on specific areas of co-operation and have been approved. It seems ironic that Switzerland, still a non-member state, held more popular votes [of both PCI, PCR, and LOR-types] on E.C./E.U. matters than any of the member states.

Referendums on accession to the European Union, and even more so those on amendments to the European treaties, have an immediate function in the states where they were conducted. Yet, for the other countries, they also can serve an indirect function by reminding all political actors that Europe should live up to democratic principles as much as possible. The political institutions of the European Union have a structural democratic deficit anyway, since the Council of Ministers still owns more legislative powers than the European parliament and is supported only by indirect legitimacy of national elections. Therefore, in addition to the direct elections of the European Parliament, any influence of direct democracy should be welcome for improving the fragile basis of democratic legitimacy of the Union.

What were the results from these experiences? Referendums on accession to the E.U. affirm the principle of popular sovereignty, but, in most cases, they remain singular events. Nevertheless, they affirm the political will of the citizens of member states to participate in the supranational community of the European Union and document a popular basis for claims to Union performance and Union democracy. More intense experience building on the cumulation of several referendums on treaty amendments only occurred in Ireland and Denmark. For several countries, the Constitutional Reform Treaty (2005) and the Lisbon Treaty carried a new intensity of sovereignty transfer problems. This may support a growing sensibility of political elites for democratic principles and for the wants of citizens to participate more actively in European politics.

On the level of the European Union itself, an important innovation is under way: introducing the European Citizens' Initiative (ECI) in the Lisbon Treaty (art. 11.4) that is being enforced by December 1, 2009. Although only an agenda

initiative [AMI], this would be the first transnational instrument of direct democracy. By an ECI, one million citizens in an adequate number of member states may “invite” the European Commission to present draft legislation on a proposed subject. An implementation law is still needed which will define the adequate number of member states, regulate details of the procedure and provide necessary resource mechanisms like internet platforms, etc.. In practice it will not be easy to use this instrument across national borders and language barriers. But it can provide a new channel for many civil society groups with some organisational resources to stimulate European politics. Two main merits of this instrument can be assumed: The political issues articulated via ECI must be presented and discussed in public and thereby will contribute to the development of a public sphere on European policies which is still missing. And the initiators of propositions have to present truly European, transnational issues and have to act in a cross-border and transnational way if they want to gain any chance of success. This would really mean an outstanding contribution to a more democratic European Union.

Challenges and Prospects

In Europe, we have experienced quite dynamic developments of direct democracy since the 1990s in countries transformed from communism, in some Western European states and at the European level. Various factors on different levels have developed into positive directions. At the local level in several countries, instruments of direct democracy have been introduced or improved and increasingly used. In a few federated countries, similar changes took place at the level of regional states. Such local and regional initiatives and referendums can make a substantial contribution to consolidating and qualifying the overall democratic systems. On the national level, citizens’ initiative procedures and cultures have only developed in some countries and with less impact – introducing citizens’ initiatives in a majority of European member states and beyond remains a major challenge. At the level of the European Union since the 1990s, direct democracy played an increasing role in accession referendums and, in a smaller number of member states, in popular votes on amendments of European treaties. This also supports the participatory claim of citizens and basic democratic values. The introduction of the European Citizens’ Initiative can also open new doors for the participation of citizens and civil society groups. All these developments

may reinforce some synergetic effects. The best prospects would be to foster institutions of direct democracy at all four levels of the political systems in as many countries as possible. Since so many counter-forces are at work against democracy in the age of a global economy, the quality of future democracy will very much depend on more and better participation.

Further readings:

- Auer, Andreas and Buetzer, Michael (eds.): *Direct Democracy. The Eastern and Central European Experience*, Aldershot: Ashgate 2001.
- Berg, Carsten et al.: *Initiative for Europe Handbook 2008: the Guide to Transnational Democracy*, Brussels: Initiative and Referendum Institute Europe 2008.
- Gallagher, Michael and Uleri, Pier Vincenzo (eds.): *The Referendum Experience in Europe*, Basingstoke and London: Macmillan 1996.
- International IDEA: *Direct Democracy: The International IDEA Handbook*, Stockholm 2008.
- Kaufmann, Bruno et al.: *Guidebook to Direct Democracy in Switzerland and Beyond*, Marburg: Initiative and Referendum Institute Europe 2008.
- Leduc, Lawrence: *The Politics of Direct Democracy: Referendums in Global Perspective*, Peterborough, Ont. And Orchard Park, N. Y.: Broadview Press 2003.
- Pallinger, Zoltán Tobor et al. (eds.): *Direct Democracy in Europe. Developments and Prospects*, Wiesbaden: VS Verlag fuer Sozialwissenschaften 2007.
- Pichler, Johannes W. (ed.): *Direct Democracy in the European Union*, Wien/Graz: NWV Neuer Wissenschaftlicher Verlag 2009.
- Schiller, Theo: *Direkte Demokratie. Eine Einführung* (Direct Democracy. An Introduction), Frankfurt/New York: Campus 2002.
- Setälä, Maija and Schiller, Theo (eds.): *Referendums and Representative Democracy. Responsiveness, Accountability and Deliberation*, London/New York: Routledge 2009.

part

THREE

COUNTRY BRIEFINGS:
MIXED PICTURES

9

Korea

Challenges toward Direct Democratization

Seung-Soo Ha

1. Participatory Democracy and the Korean Society

1.1. Limitations of Representative and Participatory Democracy

The Korean Constitution declares ‘the sovereignty of the people’ as a founding principle of the nation. The Clauses 1 and 2 of Article 1 stipulate respectively that ‘the Republic of Korea is a democratic republic’ and that ‘the sovereignty of the Republic of Korea resides in the people, all state authority emanating from the people.’

Regarding the principle of popular sovereignty, what matters is how to actualize it, and the right to vote¹⁾ is stated in the Constitution as the means of doing so. In other words, the Constitution basically adopts representative democracy as a medium through which the principle of popular sovereignty is realized. It means that, notwithstanding all state authority emanating from the people, the election system concretely makes such realization possible. Article 72 prescribes the national “referendum” [ATP], and yet Korean citizens are not

1) Articles 24 of the Constitution stipulate, “All citizens have the right to vote under conditions prescribed by law.”

guaranteed the right to propose it²⁾ since the President alone can propose it. Therefore, it is hard to regard the countrywide popular vote stipulated under Article 72 as a system of participatory democracy. The right to petition (Article 26) also merely allows requesting and entreating, and thus it would be difficult to put more positive meaning to the petition. In this light, there is no other way than to regard representative democracy as the foundation of the Korean Constitution.

Such a tendency in the Korean Constitution can be viewed as making it a considerably passive device for realizing the principle of popular sovereignty. The reason is that, according to the Constitution as it is now, those entitled to the routine process of political decision-making are limited to a handful of elected political elites.

1.2. Trend of Participatory Democracy in Korea

The Korean society underwent a prolonged period of authoritarian rule. Consequently, the core task of the democratization movement was to at least make representative democracy work properly. The effort can clearly be seen in 'the struggle for direct presidential election' – the central rallying point of the 1987 June democratization movement.

In the course of its democratization since 1987, Korea, too, has started to witness the growth of civil society. Numerous NGOs (Non-Governmental Organizations) were formed, exerting a great influence on the society. The growth of civil society signals that, rather than being satisfied with only electing their representatives, citizens have begun participating in a broad swath of social issues. When local autonomy, which had been interrupted by the 1961 military coup d'état, was reinstated in 1991, civil society started to grow in local communities, too. In the 1990s, however, the level of the systems that could secure citizens' participation was very low. Except for elections, there was no system of direct participation to have the citizens' voices heard. Even with the

2) Article 72 of the Constitution prescribes that the President may submit important policies relating to diplomacy, national defense, unification, and other matters relating to national destiny to a national popular vote if he deems it necessary. Apart from this, Article 130 prescribes the proposed amendments to the Constitution to be submitted to a national popular vote.

revival of local autonomy, not a single system of citizens' direct participation was introduced.

Amid the lack of institutional guarantees, however, citizens continued their efforts to participate in and influence the decision making process of the state or local self-government. At times, they utilized media and resorted to other measures such as petition drives and actions of pressuring the government or council members. They also routinely monitored the activities of the government or council. The residents themselves tested "a self-managed civic referendum" while a proper popular vote procedure had not been institutionalized yet. These attempts were made to have their influence reflected in the process of making policy decisions via ways of participation that were not formally guaranteed.

However, the late 1990s started to witness changes in the system. The Freedom of Information Act, which took effect in 1998, signified that citizens are institutionally granted means of obtaining information. Since participation is impossible without access to information, the introduction of the public information disclosure system proved to be an important base for expanding civil participation.

At the same time, systems of residents' direct participation were gradually brought to the realm of local autonomy. In March 2000, citizens' initiative for audit and residents' initiative (request for the enactment, amendment, or abolition of ordinances [PCI, PPR]) were included in the Local Autonomy Act. Referendum, residents' lawsuit and recall were introduced and enforced in July 2004, January 2006, and May 2007, respectively. Participatory budgeting was also introduced through local government ordinances.

Nevertheless, these changes in the systems were limited mainly to the domain of local autonomy, with no sharp change in national systems. National petition for audit is the only system introduced under Article 6 of the Establishment and Management of Anti-Corruption & Civil Rights Commission Act.³⁾

3) National petition for audit is a system that permits a citizen aged 19 or older to petition, with 300 or more signatures collected, the Board of Audit and Inspection for an audit when the public interest is gravely harmed by a public agency's unlawful management of affairs or corruptions.

1.3. Residents' Participation Systems⁴⁾ Currently Introduced in Local Autonomy

On a formal basis, the residents' participation systems introduced in the Korean local autonomy appeared to be diverse, as citizens' initiative for audit, residents' initiative, referendum, recall, and participatory budgeting have already been brought to the local autonomy.

Table 9.1. Residents' Participation Systems Currently Introduced in Korea

| Residents' Participation Systems | Enforcement Date | Legal Basis |
|----------------------------------|------------------|--|
| Citizens' initiative for Audit | 2000. 3. | Local Autonomy Act, Article 16 |
| Residents' Initiative | 2000. 3. | Local Autonomy Act, Article 15 |
| Referendum | 2004. 7. | Referendum Act |
| Residents' Lawsuit | 2006. 1. | Local Autonomy Act, Article 17 |
| Recall | 2007. 7. | Recall Act |
| Participatory Budgeting | 2004. 3. | First introduced in the ordinances → legal basis provided in Local Finance Act, Article 39 |

The concept of each system is briefly explained in the following.

First of all, 'citizens' initiative for audit' is a system that allows residents to petition by collecting their signatures for an audit of an issue considered to have violated laws or markedly harmed the public interest.

'Residents' initiative' enables citizens' participation in the legislation process of local government ordinances. This is the system that allows citizens – when they petition with a required number of collected signatures – to propose to a local council an agenda of enacting, amending, or abolishing ordinances of the local government concerned.

'Referendum' is a system that permits residents to determine important policy

4) The residents' participation system allows residents to directly express their opinions on or participate in their local government's decision-making.

agendas of a local government by popular vote. In principle, the residents should be the initiators of calling a 'referendum.' However, in Korea, a local government head, a local council, and even a central government agency are allowed to lead the process of proposing a popular vote in the form of an authority-triggered vote [ATP].

'Residents' lawsuit' is a system that allows residents to file a suit against a local government's unlawful financial and accounting activities, in order to prevent or correct such activities.

'Recall' enables residents to propose a special election on dismissing an elected local public official by collecting a required number of signatures, and to remove the official before the expiration of his/her term by a majority vote.

'Participatory budgeting' refers to a system that allows residents to participate in and voice their opinions on a local government's budget planning.

Among the systems mentioned above, 'residents' initiative' is significant in that it grants citizens the right to establish agendas. 'Referendum,' if proposed by residents, is also significant in terms of guaranteeing the decision-making right of the residents.

On the other hand, 'recall' carries great significance as a system of regulating power with consequential means of dismissing elected public officials. 'Citizens' initiative for audit' and 'residents' lawsuit' can be viewed as systems forcefully meant to oversee and check local administration.

'Participatory budgeting' is regarded as a considerably positive participatory system, since it intends to guarantee residents' participation in the process prior to finalizing a local government's budget.

Although 'citizens' initiative for audit' is a system which entitles residents to call for an audit, it is less satisfactory as a participatory system than the other systems in that the party in charge of executing an actual audit is a high-level administrative agency.

Therefore, this study intends to examine the current conditions of participatory democracy in Korea, focusing on the residents' initiative,

referendum, residents' lawsuit, recall, and participatory budgeting. Throughout the study, the details and the current implementation of each system will be reviewed.

It was pointed out earlier that residents' direct participatory systems in Korea take on a variety of forms. However, the introduction of such systems alone does not warrant the revitalization of participatory democracy. The extent to which these systems have helped foster citizens' participation and how they have been utilized in practice will be the more crucial factors in galvanizing and developing participatory democracy. Based on the assessment of the systems, the future task of developing participatory democracy will be discussed in the end of the study.

2. Current Conditions of Korea's Participatory Democracy

2.1. Citizens' Initiative

2.1.1. Significance

Residents' initiative has its legal basis on the Local Autonomy Act, Article 15. Under the article, a resident aged 19 or older can petition for the enactment, amendment, or abolishment of local government ordinances by collecting a required number of signatures from residents. Modeled after the Japanese system of initiative specified in the Japanese Local Autonomy Law, it allows residents themselves, rather than their elected representatives, to propose draft ordinances.

2.1.2. Requirements

Residents' initiative requires collecting at least a certain number of signatures from residents aged 19 or older. The number of signatures is to be set within a certain range by local government ordinances. For example, the number of signatures for provinces and large cities with the population of 500,000 or greater is stipulated to range from 1/100 to 1/70 of residents aged 19 or older, whereas the number of signatures for other local governments ranges from 1/50 to 1/20.

A number of issues are excluded as objects of residents' initiative. They are issues (1) in violation of laws, (2) concerning the imposition, collection, and exemption of local taxes, rental fees, and apportionment, and (3) concerning the establishment and modification of administrative agencies or the installation of public facilities. Critics, however, view the scope of exclusion as being rather broadly defined. In particular, the limits placed on residents' initiative in relation to the ordinances concerning 'the establishment and modification of administrative agencies or the installation of public facilities' are pointed out as a problem, since those issues tend to have a considerable impact on the daily lives of residents or the affairs of their local government.

2.1.3. Current State of Implementation

Residents' initiative was first introduced in the year 2000. According to the Ministry of Public Administration and Security, a total of 158 cases were processed by the end of 2008. Among them, 18 cases were passed as drafted, another 18 cases were passed as amended, and 17 cases were rejected. 12 cases were dismissed, 4 cases were withdrawn, and 8 cases were abandoned. The number of cases marked as 'in progress' amounted to 81.

As the data indicates, quite a few cases of residents' initiative have been conducted. Some problems, however, started to surface. The total of 24 cases that were dismissed, withdrawn, or abandoned, had not been even adequately deliberated in the local councils. Particularly, the abandoned cases were, more often than not, bills that were deferred without being deliberated in local councils until automatically discarded immediately with the expiration of the local council term. Some of the cases, that were classified to be 'in progress' by the Ministry of Public Administration and Security at the time of the survey, were passed later, but it is inferred that many were abandoned without adequate deliberations as local council terms expired. A review of the 119 resident-initiated cases from June 2002 to June 2006 shows that 26 were automatically discarded because of term expiration.

It is a serious problem when draft ordinances, submitted by residents with collected signature, are not even deliberated.

A look at the details of resident-proposed ordinances shows most of them

are specifically related to the daily lives of citizens. More than 60% of the entire resident-initiated cases deal with school meal ordinances.

Table 9.2. Summary of Resident-Initiated Cases

| Issues | Cases (%) |
|---------------------------------------|------------|
| School meals | 98(62.0) |
| Housing and water supplies facilities | 12(7.6) |
| Citizen participation | 9(5.7) |
| Urban planning | 17((10.8) |
| Nurture | 11(7.0) |
| Expenses for council operations | 2(1.3) |
| Miscellaneous | 9(5.7) |
| Total | 158(100.0) |

That ‘School Meal Ordinances’ are the most frequently proposed residents’ initiatives is closely linked with the vigor of citizens’ campaigns for the enactment of ordinances. The campaigns for resident-initiated school meal ordinances, originating from Jeollanam-do, spread widely through the School Meals Network, a national citizens’ organization network. A sudden increase in residents’ initiatives from 2003 can be attributed to the nationwide expansion of ‘the Campaign for the Enactment of School Meal Ordinances.’

As for school meal ordinances, 40, 19, and 31 requests were made in 2003, 2004, and 2005, respectively. Each of these figures accounts for 81.6%, 65.5%, and 75.6% of the total requests made in each respective year. The main purpose of proposing ‘school meal ordinances’ was to provide domestically-grown or eco-friendly agricultural products for school meals and have the local governments subsidize the outlay. As a result of the campaigns for the enactment of school meal ordinances, a lot of local governments, in practice, enacted ‘School Meal Ordinances.’ Moreover, these campaigns were also instrumental in amending related national laws, after the enactment of local ordinances.

As discussed earlier, the successful cases of enacting ordinances that corralled huge support from citizens are closely related to their lives. Initiative was, in

many cases, led by residents participating with the collaboration of the local citizens' organizations and progressive parties, rather than by those representing economic interests of a particular group. The Campaign for the Enactment of School Meal Ordinances, especially, was a successful case where local citizens' organizations and progressive parties cooperated for the same cause.

Thus, residents' initiative has great significance as a system of participatory democracy that guarantees the citizens a process of institutionalizing their policy alternatives.

The most important effect of residents' initiative is that citizens are able to experience utilizing participatory democracy in the process. Experiencing the process of transforming one's life issues – hitherto neglected in existing politics – into political agendas will serve as a lively learning ground for democracy.

2.2. Popular vote on a substantive issue

2.2.1. Significance of Referendum and Legislation Process

The popular vote on a substantive issue is the system that allows residents to decide important policies of a local government by direct vote. It was in March 1994 when the groundwork for the system was first laid out in Korea. Under Article 13, Clause 1 of the Local Autonomy Act, “the head of a local government can refer to a referendum its important decisions that impose excessive burden on or gravely affect residents.” Clause 2 states “a separate law shall be enacted to lay down matters concerning the targets, petitioners, and petition requirements of referendum and other voting procedures.” It was not until 10 years later that the Referendum Act was enacted.

Even without the related law in place, however, popular polls were conducted. Under the leadership of local government heads, issues regarding the consolidation of local governments and the installation of public facilities in the interested areas were put to resident referendums. For example, the incorporation of Ganghwa-gun into Incheon-si (1994) and the consolidation of Yeosu-shi and Yeochoen-gun (1997) were both decided by a popular vote. There are also cases where local government heads put to a popular vote issues concerning the installation or transfer of public facilities. Referendums were

held to decide on the installation of crematories and cable cars.

On the other hand, some referendums took place triggered by a citizens' initiative. Those popular votes, although not legally binding, helped citizens exercise considerable political influence by voicing out their opinions on issues related to their lives and local communities. The representative cases are: the referendum held in Goyang-si, Gyeonggi-do, in March 2000 on the prospective construction of a 55-story residential and commercial complex; and the one held in Buan-gun, Jeollabuk-do, on February 14, 2004 on the inducement of medium to low-grade radioactive waste disposal centers.

The popular vote held in Goyang-si, Gyeonggi-do was a self-managed resident referendum to decide whether to approve a 55-story residential and commercial complex that had been planned by the Goyang-si municipal government. When Goyang-si tried to go ahead with the construction of the complex despite neighboring residents' protest, people took the initiative to hold a referendum. At the time, 4,523 families participated in the ballot. The voter turnout stood at 43.3%. With 88.08% of the votes opposing the city's plan, the construction was eventually shelved.

On the other hand, the vote in Buan-gun, Jeollabuk-do, was initiated because the headman of Buan-gun arbitrarily had petitioned to set up a 'medium to low-grade radioactive waste disposal center' (radioactive waste disposal center, for short). Faced with popular resistance to the head's high-handed decision, the central government brought in police force to forcibly crack down on the opposition. As a result, 350 people were injured and 31 arrested. In the course of the confrontation, the holding of a popular vote emerged as a way of resolving the issue, but the central government and the head of Buan-gun rejected the suggestion. Buan residents thus held a self-managed "civic referendum" in February 14, 2004 in collaboration with various NGOs. Seventy-two percent of the total registered voters participated in the referendum vote, and more than 91% of the participating voters expressed their opposition. The decision did not carry any legal binding force, and yet the government could no longer press ahead its construction plan once Buan residents expressly voiced their opinions.

As mentioned above, various popular votes on substantive issues were carried out during the absence of the Referendum Act. However, a lot of problems surfaced as there were no legal stipulations on the targets, procedures, and effect – among other things – of such votes. The enactment of a related law that was put forward with the inception of the Roh Moo-Hyun administration passed in the National Assembly on December 29, 2003, and went into effect as the Referendum Act in July 2004. However, a lot of NGOs criticized the referendum legislation to a great extent. They argued the law was quite unsatisfactory in inducing popular participation. What they found particularly problematic was that the law made it excessively hard to trigger a popular vote and that central government-demanded plebiscite – ATP – defeats the main purpose of the referendum system.

2.2.2. Two Types of Popular Votes on Substantive Issues

Popular votes on substantive issues are direct democratic features of a modern representative democracy and aim to enhance democracy in, and the accountability of, local government as well as promoting residents' welfare by way of their direct participation in the decision-makings of the local government that impose excessive burden on or gravely affect residents.

Two types of popular votes are prescribed in the current Referendum Act: local-autonomy-initiated and central-government-demanded votes.

Local-autonomy-initiated popular votes, which deal with issues under the authority of a local government, can be proposed by the concerned area's residents [PCI] as well as by a local government head and a local council [ATP]. Under Article 24 of the Referendum Act, the result of such referendum vote exerts legally binding force on the concerned local government head and local council. That is, they have an obligation to take administrative or financial measures in accordance with the conditions confirmed by the referendum results.

Central-government-demanded plebiscite concerns national policies. This type of popular vote can be held only at the request of the central government. But its results are not legally binding, but acknowledged only for consultative purposes.

As discussed above, there are a lot of substantive differences between the two types of popular vote in terms of issues, procedures, and effect. Among other things, central-government-demanded plebiscite can hardly be regarded as a system of modern direct democracy: only the central government alone has the right to demand this type of vote. In this case, the process can easily be used only as means to justify government policies, while it can hardly serve effectively to garner the public opinions on national policies. If the central government decides not to hold a referendum vote, there is no way for residents to push for one. A case in point is an incident in 2007. There was a demand among residents in Jeju Special Self-Governing Province for a popular vote on the establishment of a naval base, but it did not materialize due to the rejection of the central government.

Of the two types of popular votes on substantive issues, therefore, only local-autonomy-initiated vote should be seen as a true system of participatory democracy. More strictly speaking, referendum votes initiated by residents, rather than arbitrarily demanded by a local government head or a local council, is considered a system consistent with the intent and purpose of participatory democracy.

2.2.3. Targets of Popular Votes

Central-government-demanded popular votes [ATP] are conducted in order to hear the public opinions on the formulation of national policy issues.

Local-autonomy-initiated popular votes [PCI, ATP] can be held with respect to important decision-makings of local government that impose excessive burden on, or significantly affect residents. Ordinances of each local government stipulate the subjects of popular vote. However, excluded from referendum votes are rather broadly defined issues listed below:

- a. Issues that are in violation of laws or on trial.
- b. Issues falling under the authority or affairs of the state or other local government.
- c. Issues that concern the budget, accounting, contracts, and asset management of local government, the imposition or reduction and exemption of various public charges including local taxes, rental fees, handling charges, and

apportionment.

- d. Issues that concern the establishment and alternation of administrative agencies, and the status and remuneration of public service personnel.
- e. Issues concerning the installation of public facilities in which the representatives of residents are entitled by other laws to directly participate in – except for the case where a local council demands a vote.
- f. Issues (including those identical in purpose) on which a vote has been held less than 2 years prior in time.

2.2.4. Process of Initiating a Popular Vote Procedure

The initiating process of popular vote is very important, and who the initiator and/or author of the proposal is in the process is equally important.

Under the current Referendum Act, local-autonomy-initiated popular votes can be proposed through 3 different channels. First, a local government head can hold a referendum vote by virtue of his authority with the approval of its local council. In this case, a majority of local council members should be present and a majority of those present should consent. Second, a local council can petition its local government head for a popular vote. In this case, a majority of local council members should be present and more than $\frac{2}{3}$ of those present should consent. Third, residents can petition their local government head for a referendum vote with collected signatures. This process requires residents to collect signatures, which should exceed the number set by the ordinances of the local government and range between $\frac{1}{20}$ and $\frac{1}{5}$ of the total eligible voters (19 or older) in the area.

In the case of central-government-demanded vote, the head of a central government agency proposes a popular vote to a local government head, who then decides whether to hold a poll after hearing the opinions from its local council.

2.2.5. Popular Vote Examples

Since the introduction of initiative and referendum, there have been three cases of popular votes held as stipulated in the Referendum Act. These votes concerned the alteration of Jeju-do's administrative structure (held July 27, 2005),

the consolidation of Cheongju-si and Cheongwon-gun of Chungcheongbuk-do (September 29, 2005), and the bidding for medium to low-grade radioactive waste disposal centers by 4 local governments (November 2, 2005).

These popular votes were all held at the request of central government agencies [ATP]. In contrast, even after 5 years since the Referendum Act took effect, not a vote initiated by the people [PCI] has taken place. The following is an examination of the three popular votes that have already been carried out.

a. Referendum Vote on Alteration of Jeju-do Administrative Structure

The vote on the alteration of Jeju-do administrative structure was the first since the Referendum Act had went into effect. The original Jeju administrative area comprised of a province government (known as Jeju-do), and 4 basic local governments (Jeju-si, Bukjeju-gun, Seogwipo-si, and Namjeju-gun). When Jeju-do and the central government spearheaded the campaign to abolish basic local governments, the issue was referred to a popular vote.

Instead of deriving a simple division of ‘yes’ or ‘no,’ the voters were asked of their preference on the two measures of reorganizing Jeju-do’s local administrative structure: the ‘innovation plan’ and the ‘gradual reform plan.’

The ‘innovation plan’ was designed to simplify Jeju-do into a single government called Jeju Special Self-Governing Province, while scrapping the existing 4 basic local governments (Jeju-si, Bukjeju-gun, Seogwipo-si, and Namjeju-gun). Under this plan, the autonomy structure of Jeju-do would transform from the two-tier system of provincial and basic local governments, to a single-tier system. And two integrated cities (Jeju-si and Bukjeju-gun, Seogwipo-si and Namjeju-gun) would be placed under the umbrella of the single provincial government. The “gradual reform plan,” on the other hand, is designed to coordinate the internal functions of the existing two-tier system.

After much controversy, the popular vote took place. The voter turnout amounted to 36.76%. Of the four basic local governments, Seogwipo-si and Namjeju-gun favored the ‘gradual reform plan’ by a majority vote, while in Jeju-si and Bukjeju-gun, the number of votes for the ‘innovation plan’ was greater than

for its countermeasure. Overall, 57% voted for the 'innovation plan,' and 43.0% for the 'gradual reform plan.'

Table 9.3. Jeju-do Referendum Results (July 27, 2005)

| Classification | Favoring Innovation Plan | Favoring Gradual Reform Plan | Voter Turnout |
|----------------|--------------------------|------------------------------|---------------|
| Seogwipo-si | 43.6% | 56.4 | 34.2% |
| Namjeju-gun | 45.1% | 54.9 | 40.1% |
| Jeju-si | 64.5% | 35.5% | 34.6% |
| Bukjeju-gun | 57.2% | 42.8% | 42.2% |
| Total(Jeju-do) | 57.0 | 43.0 | 36.7% |

Source: Jeju-do Election Commission

Based on the results of this referendum vote, the administrative structure of Jeju-do was reorganized into a single provincial government called Jeju Special Self-Governing Province as of July 1, 2006, abolishing the existing 4 basic local governments.

The popular vote, however, stirred up considerable discord in Jeju-do. And the rift among the people continues even up to now. Discontent runs high particularly in the former areas of Seogwipo-si and Namjeju-gun. Such development is due in part to the enforcement of administrative restructuring despite the widespread opposition on the part of the two areas that have been relatively neglected within Jeju-do. In addition, issues have been raised regarding the fairness of the referendum process. One of the contested issues was the manner in which the question was formulated. The residents were asked to choose one plan over the other. For that matter, there has been skepticism over whether the wording of the 'innovation plan' and the 'gradual reform plan' was politically neutral.

b. Popular Vote on Consolidation of Cheongju-si and Cheongwon-gun of Chungcheongbuk-do

It has been continually suggested that Cheongju-si and Cheongwon-gun of Chungcheongbuk-do be consolidated on the grounds that they belong to a same living sphere. In fact, the administrative districts of Chungcheongbuk-do were

arranged in the way that Cheongwon-gun surrounds Cheongju-si. On September 29, 2005, the referendum vote was eventually held to decide on the consolidation of the two areas.

Cheongju-si's voter turnout was 35.5%, and Cheongwon-gun, 44.2%. With Cheongju-si and Cheongwon-gun combined, the average turnout was reported to be 36.7%. The result shows that the consolidation was opposed by 53.5% of the Cheongwon-gun voters and favored by 91.3% of their Cheongju-si counterparts. Despite the approval prevailing in Cheongju-si, the consolidation was shelved as the majority of the votes in Cheongwon-gun were against the measure.

Table 9.4. Cheongju/Cheongwon Voting Results

| Classification | Voter Turnout | For and Against (%) | |
|----------------|---------------|---------------------|------|
| Cheongju-si | 35.5 | For | 91.3 |
| | | Against | 8.7 |
| Cheongwon-gun | 42.2 | For | 46.5 |
| | | Against | 53.5 |

c. Popular Vote on the Inducement for Medium to Low-Grade Radioactive Waste Disposal Center

The construction of a radioactive waste disposal center, for which the central government had pushed since 1986, had repeatedly been shelved due to local residents' opposition. As the construction plan was disapproved by a self-managed "civic referendum" in Buan-gun, Jeollabuk-do in 2004, the central government started to put forward new procedures. With a plan to build radioactive waste disposal centers and nuclear fuel intermediate storage facilities separately, they pledged to provide more than 300 billion won in subsidies for the local government selected to host a disposal site and relocate the Korea Hydro & Nuclear Power Co. headquarters. In order to bolster these support measures, the government enacted the 'Special Act for Supporting Areas Inducing Medium to Low-Grade Radioactive Waste Disposal Center' on March 31, 2005.

On June 16, 2005, the government announced new procedures designed to select candidate sites for a disposal center. According to the procedures, the

government assesses the suitability of each proposed site for housing the facility when a local government head wishing to win the project submits a bid with the consent of its local council. Only when an area is evaluated as suitable does the Minister of Commerce, Industry, and Energy demand a referendum vote of the concerned local government. Then, the local government head decides whether to propose a vote after hearing the local council's opinions. Subsequent to simultaneous resident votes held in candidate areas before November 2005, the area with the highest approval rate is to be selected as the final site.

Numerous local governments pondered over the idea of bidding, and four (Gunsan-si of Jeollabuk-do, Pohang-si, Gyeongju-si, and Yeongdeok-gun of Gyeongsangbuk-do) eventually submitted bids to host the proposed waste disposal center.

And on November 2, 2005, popular votes were held simultaneously in the four areas. The results of votes are shown in <Table 9.5>.

Table 9.5. Results of Popular Votes on Medium to Low-Grade Radioactive Waste Disposal Centers

| Area | Classification | No. of Registered Voters | No. of Votes | Dissenting Votes (%) | Consenting Votes (%) |
|-----------|----------------|--------------------------|--------------|----------------------|----------------------|
| Gunsan | Absentee | 77,581 | 65,336 | 5,438(8.5%) | 58,367(91.5%) |
| | General | 119,399 | 72,856 | 15,805(21.8%) | 56,785(78.2%) |
| | Total | 196,980 | 138,192 | 21,243(15.6%) | 115,152(84.4%) |
| Pohang | Absentee | 82,637 | 63,851 | 16,937(27.3%) | 45,169(72.7%) |
| | General | 292,060 | 114,735 | 40,368(35.3%) | 73,955(64.7%) |
| | Total | 374,697 | 178,586 | 57,305(32.5%) | 119,124(67.5%) |
| Gyeongju | Absentee | 79,599 | 70,521 | 4,138(6.0%) | 65,093(94.0%) |
| | General | 129,008 | 77,115 | 11,208(14.6%) | 65,579(85.4%) |
| | Total | 208,607 | 147,636 | 15,346(10.5%) | 130,672(89.5%) |
| Yeongdeok | Absentee | 10,319 | 9,523 | 707(7.6%) | 8,634(92.4%) |
| | General | 27,217 | 20,584 | 5,475(26.8%) | 14,987(73.2%) |
| | Total | 37,536 | 30,107 | 6,182(20.7%) | 23,621(79.3%) |

Source: National Election Commission

After the votes, the central government announced that the candidate site Gyeongju-si had received the highest approval rate.

The central government took a positive view of the popular votes, citing the closure of a national project that had remained rudderless for years. However, these decisions revealed a lot of problems.

First, residents were reduced to playing a passive role as the central government monopolized the initiative over the entire process of the votes. The date and methods were all determined by the central government, and local governments had no choice but to follow the rules set by the central government.

Second, as a result of conducting the popular votes in a way that fueled competition, overheated competition among the bidding local governments made it impossible to engage in reasonable discussions. This was the consequence of the central government's plan that they would construct a disposal center in the one with the highest approval rate, simultaneously holding a popular vote in the four areas, offering more than 300 billion-won subsidies, and promising the relocation of the Korea Hydro & Nuclear Power Co. headquarters. In each area a lot of illegal activities were committed in hopes of raising the approval rate. In the some areas, the atmosphere generated was so intense that people with dissenting views were even kept from expressing their opinion.

Third, it was revealed that the fairness in the process was hard to uphold under the current Referendum Act. As it happened, only the organizations favoring the plan garnered budgetary support from their local government. In the case of Gyeongju-si, a budget of over 1.2 billion won was allocated to the supportive organizations. The mayor of Gyeongju-si, in fact, appealed for popular support by shaving his head bald. There were cases in which even public servants, rather than remaining neutral, collaborated with the side in favor of the plan. Attempts were made to forcibly increase the absentee voting rate in order to boost the voter turnout and the approval rate. As a result, the absentee voting rate reached 20 times as much as in regular elections. It became a problem when some of the absentee ballots were cast regardless of the absentee voters' will.

2.2.6. Continuation of Self-managed “Civic Referendums” Even After the Enactment of Referendum Act

Among the popular votes conducted after the Referendum Act was legislated, not a single case was a votes triggered by a citizens’ initiative [PCI]. That was because the Act itself made it extremely hard for citizens to successfully qualify such an initiative.

Above all, a popular vote cannot be requested regarding the issues beyond the limits of a local government’s authority. As discussed earlier, there also exists a broad spectrum of issues remaining under its authority that are excluded from a popular vote. The number of signatures required to hold a popular vote is prohibitively high. These problems are thus rendering the Referendum Act unworkable for residents. Even with the referendum legislation, self-managed “civic referendums” have been conducted in an effort to voice the public opinions regardless of the Act.

In August 2007, residents of Gangjeong-maeul, Seogwipo-si, Jeju-do, a village under the grip of conflict over the issue of bidding to host a naval base, held an independent “civic referendum.” Its result showed that, out of the 725 votes, 36 were for the plan, 680 against it, and 9 nullified – nearly 94% of the residents were opposed to it. Of course, this vote was held independently of the Referendum Act and has absolutely no legally binding power. And thus the government is continuing its effort to build a naval base in the village.

In March 2009, there was a self-managed “civic referendum” held by residents of Byeollae-myeon, Namyangju-si in Gyeonggi-do concerning the issue of constructing an incinerator waste landfill site. With the participation of 2,609 voters, it was found, overwhelming 2,150 residents had rejected the construction of a landfill site, 284 favored the plan, and 175 votes nullified. As with the Gangjeong-maeul case, this popular vote was conducted independently of the Act. Meanwhile, instead of acknowledging the outcome, the Namyangju municipal government announced its intention to push ahead with the construction.

2.3. Residents' Lawsuit

2.3.1. Significance and Introduction Process of Residents' Lawsuit

Filed by residents who petitioned for a citizens' initiative for audit, residents' lawsuit refers to the lawsuit brought against financial accounting violations and negligence (idleness, failure to perform a duty) committed by a local government in order to prevent or rectify those actions, or recoup incurred damages.

Although such residents' lawsuit system has been implemented since January 2006, from a far earlier time, NGOs and academics had demanded its introduction. Around the year 2000, NGOs tried to introduce a system named 'taxpayers' lawsuit' that permits a citizen to file a lawsuit against the government's unlawful budget mismanagement. Such endeavor helped introduce the residents' lawsuit system.

The lawsuit system brought in Korea is based mainly on the Japanese residents' lawsuit system, modeled after America's taxpayers' suit.⁵⁾

Residents' lawsuit has significance as a system aimed at advocating the interest of all residents, not at protecting that of a specific group concerned.

2.3.2. Procedures of Residents' Lawsuit

The first step in filing a lawsuit is to present a citizens' initiative for audit. The legal ground for audit petition is provided in Article 15 of the Local Autonomy Act. Presenting a citizens' initiative for audit requires a minimum number of signatures from residents aged 19 or older as prescribed by a local government ordinance but which does not exceed 500 for provinces, 300 for cities with the population of 500,000 or more, and 200 for other local governments.

Any resident who regards the matter presented via an audit petition as unresolved can file a resident lawsuit. It can be filed by any one of those petitioners.

5) America's taxpayers' lawsuit is originated from the Local Autonomy Law of Britain. The system was not originally recognized by a statute law. Rather it started as the eligibility of plaintiff in an administrative lawsuit was expanded through the interpretation of legal precedents, and later developed into written law.

However, the issues of residents' lawsuit are limited to actions related to a local government's financial accounting. A lawsuit cannot be brought against issues having no bearing on its financial accounting.

2.3.3. Current Implementation of Residents' Lawsuit

Residents' lawsuit, albeit institutionalized, is not frequently utilized. Above all, it is very hard for residents to prove the unlawfulness of an activity concerning financial accounting. Procedures of filing a lawsuit are not simple, either. Resident audit petition, a prerequisite for a resident' lawsuit, should be presented with the collection of signatures from 200~500 residents, but it is not an easy matter to take such an action in a local community where social networks are entrenched.

Residents' lawsuit, thus far, has often been utilized in the course of activities carried out by NGOs, equipped with certain expertise or capability of enlisting help from experts.

The residents' lawsuit hitherto conducted in Korea can be roughly classified into three types. One type concerns lawsuits filed against budget waste in implementing local government policies. Another is related to operation expenses of a local government head or local council members, which have been widely abused for entertainment and gift purchases. The third deals with raises in local council members' salaries – excessive increases recently made by council members of many local governments ignoring procedures and standards.

2.4. Recall

2.4.1. Significance and Introduction Process

Recall is a system that enables residents to remove an elected public official by popular vote before the expiration of the term of office. While the popular vote system discussed earlier is aimed to have residents vote on policy decisions, recall vote is held to decide on the removal of an elected public official. In Korea, there had long been demand for introducing recall, but it wasn't until May 24, 2006 that the Recall Act was enacted. It went into effect as of May 23, 2007.

It can be said that recall, along with residents' lawsuit, was institutionalized

thanks to civil society's vigorous legislation movements. Popular demand for introducing recall, which had persisted for a long time, started to gain momentum when residents of Goyang-si, Gyeonggi-do launched a campaign against unregulated construction of 'love hotels' in residential areas. Later in June 2003, local NGOs led a campaign aimed at the enactment of 'Gwangju Metropolitan City Public Official Recall Ordinance' by means of residents' initiative. Subsequently, the ordinance passed at the Gwangju metropolitan city council in 2004. However, the ordinance was eventually ruled by the Supreme Court as null and void in a decision on a lawsuit filed by the local government for the affirmation of nullity, on the grounds that a legal basis for introducing recall did not exist in the higher law.

The actions of civil society, nevertheless, started to affect the political circles. For example, the 'Special Act for Decentralization,' enacted in January 2004, prescribes the introduction of recall. In August 2005, a national aggregate of 450 NGOs, called for the legislation needed to establish recall by launching the 'Campaign Headquarter for the Enactment of Recall.' The Recall Act finally passed through the National Assembly in May 2006. It went into effect in July 2007.

As such, recall is distinctive in having been introduced by civil society's powerful legislative movements.

2.4.2. Details of Recall

a. Targets

Among elected public officials, the recall system is applied to local government heads and local council members. It is not applicable to appointed local council members, superintendents of education, and board of education members.

b. Signature Requirements

Petition for a recall vote on a head of province requires signatures of 10% or more of the residents with the right to petition for recall in the area concerned. Fifteen percent or more of signatures are needed to petition for recall of basic local government heads (mayor, magistrate, district chief executive). In addition, with 20% or more of signatures, petition for recall of local council members can be made.

c. Implementation of Recall Vote

Once the area's election commission announces a recall vote proposal after the signature requirements are satisfied, an elected public official sought to be recalled is prohibited from exercising his power until the vote result is declared.

The final decision on recall is made by resident vote. With the voter turnout of 1/3 or more of the residents with the right to vote on recall and the approval of a majority or more of those participating voters, the public official concerned is to be removed from his or her office.

d. Grounds for Recall

Either when the Recall Act was enacted, or after it came into effect, the issue that sparked the most controversy was the grounds for recall. Under the current law, no special limitations are prescribed on recall grounds. In other words, recall can be demanded based on any matter. Therefore, citizens are entitled to petition for a recall vote on any ground-issues related to corruption, incompetence, arbitrariness, and unethical behavior of elected local public officials. The reason for such absence of limitation is that recall is not a judicial, but a political process.

As a reference, Japan, which has a legal system similar to that of Korea, also puts no limitation on grounds for recall. In Japan, cases of recall have been implemented on the grounds of policy making-decisions, including the construction of nuclear power plants, the US military housing construction and the suspension of municipal hospital operation. In many states in the US, where recall is embedded, there is no limitation on what constitutes grounds for recall.

On March 26, 2009, the Constitutional Court of Korea, in relation to the issue, ruled the Recall Act as constitutional, stating, "Not putting limitation on grounds for petition of recall is intended to establish recall basically as a political process, which makes it possible to remove from office not only public officials who violated laws but also those who failed policies or who are incompetent or corrupted, so that responsible politics or administration will be realized."

In order to properly understand the recall system in the Korean context, it is necessary to examine the characteristics of the Korean local autonomy. Currently, the local autonomy systems in Korea take on a strong mayor-council form, where a local government head exerts considerable power. Under this form of local government, its head is given a wide range of power over matters such as appointing public officials, proposing ordinances, administering the budget, and city planning, and thus, it is necessary to check the self-righteousness and arbitrariness of political leadership. Because of this, NGOs organizations remain opposed to a view suggesting that grounds for recall be limited to violation of law or corrupt actions.

2.4.3. Current Implementation of Recall

From the introduction of recall until June 2009, there were 24 cases of attempting to resort to the system. In reality, however, only two cases proceeded to recall vote by presenting the requisite number of voter signatures. Such a result is due to the vast number of signatures required for a recall vote petition.

The first recall vote was held in Hanam-si, Gyeonggi-do. The Hanam case began with the citizens' angry reactions against the mayor and some city council members, whom they felt had ignored – in an authoritative and high-handed manner – their opposing views expressed on the construction of a large crematorium. They led a petition drive to collect signatures aimed for the recall of the mayor and 3 council members – not for a popular vote on the construction of a crematorium itself. In Hanam-si, in fact, a recall vote was held after the signature requirement for a recall petition was met. As a result, they could not have the mayor and one of the three council members recalled due to the voter turnout failing to reach 1/3. On the other hand, the remaining two council members were recalled.

Second, residents of Jeju Special Self-Governing Province have been seeking to unseat their governor since May 2009. The key reason for the recall is that he neglected the democratic process of gathering public opinions, while single-mindedly promoting a plan to establish a naval base on Gangjeong-maeul in Seogwipo-si. As of June 2009, approximately 77,000 residents signed the petition for the recall of the governor, exceeding 10% of the total eligible residents

of the region. But the voter turnout failed to reach 1/3 in recall vote (August 26, 2009).

Since the recall system was adopted in Korea, only two cases were followed through with a popular vote. It does not mean, however, the rest of the efforts for recall proved futile. A case in point is a campaign in Gwangjin-gu, Seoul, that demanded recall of a city council member arrested on bribery charges. As a demand for recall prevailed among citizens, the council member eventually resigned voluntarily. The case demonstrates that a certain level of popular consensus built in a recall process within a community can impose considerable political pressure.

2.5. Participatory Budgeting

Participatory budgeting is a participatory system more prevalent than those discussed before, for it allows citizens to partake in the annual budgeting process. Moreover, it is not a follow-up system of correction, but a participatory mechanism wherein they have their voice heard in the preliminary process.

Participatory budgeting was put in place in linking up with citizens' social movement. Around the year 2000, various NGOs of Korea led campaigns to monitor local governments' budget planning and execution. In the process, numerous cases of budget mismanagement were found. However, there were fundamental limits to such monitoring, since the process, in which one took an issue with problems detected after the execution of budget, precluded the possibility of having a budget properly used from the beginning.

In 2003, embracing the proposal of Participatory Autonomy 21, a local civic group, the district chief executive of Buk-gu, Gwangju Metropolitan City put participatory budgeting into practice, and went on to have the related ordinance enacted. Then the system started to spread to Dong-gu and Buk-gu, Wulsan Metropolitan City; Daedeok-gu, Daejeon Metropolitan City; Ansan-si, Gyeonggi-do; Suncheon-si, Jeonnam; and Cheongju-si, Chungbuk.

As of June 2009, 90 local governments across the nation put the participatory budgeting ordinance in place, despite the fact that its enactment was not compulsory.

As such, citizens' movements played a decisive role in introducing the participatory budgeting ordinance. And they are also greatly influencing the process of formulating and implementing the system in each area. Their influence can be felt in places where the system, run in collaboration with civil society, is working well.

3. Tasks of Developing Korea's Participatory Democracy

3.1. Overall Evaluation of Korea's Participatory Democracy

3.1.1. Active Role of Civil Society

Since democratization, participatory democracy of Korea has been making progress with a variety of systems introduced. In the process, civil society has been playing an active role, demanding creation of systems ensuring civil participation and putting forth concrete policy alternatives. The adoption of residents' lawsuit and recall particularly owed a lot to civil society's vigorous legislative campaigns. Even before the systems were institutionalized, it had been making tremendous efforts to bolster citizens' participation, for instance, by holding self-managed "civic referendums." Nowadays, it continues its efforts in order to make the systems stabilize and work effectively.

In contrast to the active role undertaken by civil society, Korea's central government has been rather unenthusiastic about developing a participatory system. At the time of reinstating local autonomy, it adopted an attitude so passive toward popular participation so as to introduce no resident participatory systems. It maintained the same passivity in the process of legislating various systems as well. As a result, the recall legislation was postponed and the Referendum Act was crafted less from the perspective of grassroots participation than from that of central regulation.

In a sense, it can be said Korea's participatory democracy has been gradually gaining ground amidst conflicts between civil society demanding the expansion of participatory democracy, and the central government trying to suppress and avoid it to the utmost.

Despite the progress, it is true that Korea's participatory democracy is much flawed in an institutional or operational aspect.

3.1.2. Institutional Problems of Systems

The institutional problems of these systems lie in their formality that discourages citizens' substantial participation and in their excessively complicated requirements and procedures.

First, popular vote has virtually become a system existing only in name. From the time of its enactment, there were concerns that the Referendum Act would not become a law guaranteeing civil participation and that it would only serve as remission for the government's arbitrary policy implementations. The development after the enforcement of the Act in July 2004 proves such concerns to have become a reality. As a matter of fact, for the past five years, there has not been a single case of popular vote held at the request of residents. The reasons for this lack of practice are that central government-demanded popular vote cannot be requested by residents; the targets of local government-initiated popular vote too are overly limited; and the number of signatures required to petition for a popular vote is too high.

As popular vote has become an inactive system, conflicts over policy decisions are intensifying without ways to resolve them. It may be necessary to hold a popular vote following rational debates just in case opposing views on policies are pitted against each other, but such a solution is infeasible under the current popular vote system. With policy conflicts deepening, cases of recall campaign have been reported. For instance, Jeju residents' campaign for recall of their governor on the construction of a naval base is a representative case where conflicts gradually escalated as the central government refused to hold a recall vote on the issue, citing the project's connection to national security. If a popular vote had been held, the governor might not necessarily have been subject to recall.⁶⁾

The ineffectuality of a popular vote certainly is an immense loss for both citizens and the central government. For the former, it amounts to the loss

6) Since it was a national project, it could only be submitted to central-government-demanded plebiscite, which cannot be proposed by residents. Therefore, those opposed to the construction of a naval base had no choice but to go for recall, a system that residents can request.

of the right to utilize an important participatory system; for the latter, it means losing an important means of properly resolving conflicts over policy decisions.

Second, residents' lawsuit has some flaws in the structural arrangement, although the use of the system has been moderately on the rise since its adoption. Without revamping the system, one can hardly avoid difficulties in its utilization. One of the problems is the procedure in which petition for an audit, requiring the collection of 200-500 signatures, precedes all other steps. In the course of a signature-collecting drive, residents can be subject to an act of enticement or coercion. And collecting signatures may turn out to be difficult when a whistle-blower or a handful of public-minded people raise issues. Consequently, civil society has been voicing out its demand for the improvement of the system, so that it will allow residents' lawsuits to be filed free of the audit petition process, or enable even a single resident to petition for an audit. To point out other problems with the current system, its litigation structure is discouragingly complicated, and the period within which a lawsuit can be filed is too short – two years from the day the affairs concerned are administered or concluded. These problems need improvement in order to put residents' lawsuit, a legal system for public interest, to much use.

Third, recall, too, has various problems in its implementation. One of the prominent problems is that the eligibility of recall vote being limited to people who have resided since December 31 of the previous year in the district of the local government concerned. Because city residents tend to move frequently, a considerable number of their signatures may be declared null and void because of this eligibility stipulation. Therefore, it would be desirable to give the right to vote to anyone who has a residence in the area at the time of signature collection. Another problem is that ballot counting will not happen when voter turnout stands less than 1/3. It is, therefore, necessary to lower the minimum voting rate requirement.

Fourth, residents' initiative, despite its relatively frequent use, is revealed to have a fundamental problem. If a local council does not deliberate ordinance proposals carefully, or rejects them on grounds deemed unreasonable, it will leave no recourse for residents interested in the proposals. Light treatment of ordinance proposals backed by signatures collected from many people is a serious problem.

3.1.3. Problems in Implementation

Impediments in implementing the systems are, among other things, the central and local government's negative attitude toward participatory democracy and the lack of citizens' participation.

Government agencies' negative attitude contributes to reducing the effectiveness of even the existing systems. The central government has been consistently unresponsive to the demand for a popular vote made by local residents regarding a national project subject only to central-government-demanded plebiscite [ATP]. The similar passivity can be found in the attitude of a local government or council. Crucial to participatory budgeting, implemented on a local level via ordinances, is the will of local political leadership. However, they tend to regard the expansion of people's participation as an encroachment or abridgment of their authority.

Lack of citizens' interest and participation also poses a problem. Citizens still show a dismally low interest in local autonomy even though local participation systems have been adopted. Voter turnout of local elections barely reaches 50% – for instance, 51.6% in 2006. Such a low rate is a telltale sign of popular apathy. For this reason, grassroots participation systems are often utilized under the leadership of civic groups that have already been organized.

3.2. Tasks for the Development of Participatory Democracy

3.2.1. Task of Overhauling Systems

As discussed earlier, the current systems have a lot of flaws despite various changes brought to Korea such as the recent adoption of new participatory systems. And some participatory democracy systems, including residents' initiative, have yet to be administered on a national level. In order to further advance participatory democracy in the future, therefore, a lot of institutional issues have to be resolved.

a. Improvement of Citizens' Participation System in Local Autonomy

Above all, there is a need for a drastic overhaul of citizens' participation systems in local autonomy. The popular vote process, in particular, needs to be thoroughly revamped. To make it work properly as a participatory democracy

system, it should be revised in the following ways.

First, central-government-demanded plebiscites are all too likely to be abused as a means of justifying government policies. The reason is that all aspects of the process – whether to hold it, where to hold it, and whether to reflect vote results – are prescribed to be left at the discretion of ministers of the central government. Under these circumstances, the central government tends to administer a popular vote to its advantage, which will hardly result in a fair one. Fundamentally, the current practice of empowering a central government agency to demand a popular vote is unnecessary. Even if there is a need for consultative referendum on national projects in order to seek public opinion, it will be desirable to hold one at the request of residents. For these reasons, abolishing the central-government-demanded plebiscite system is desirable. If there is a need to get public opinion on national projects, the government can allow holding a popular vote based on a citizens' initiative [PCI].

Second, the initiative signature requirement needs to be eased. Currently, citizens must collect signatures, the number of which is prescribed by the ordinance ranging between 1/5 and 1/20 of the total eligible voters. The instrument cannot be utilized if the required number is too high. The experience with the system for the past 5 years is a testimony to such a problem. Therefore, the number should drop drastically from the current level. It will be better to adjust the number to 3% for a provincial government, and 5% for a basic local government, respectively, with 50,000 signatures set as the upper limit.

Third, it is also necessary to revamp the practice of putting an excessive limit on matters to be referred to a popular vote. In principle, voting should be allowed for all issues. It is necessary to make it mandatory to hold a popular vote on a project requiring a huge financial outlay.

Fourth, there is a need to concurrently conduct an election of public officials and a popular vote. The Referendum Act prohibits conducting a signature collecting drive, proposing and holding a popular vote within 60 days of the election. However, such prohibition is viewed rather unnecessary, since a popular vote is aimed to find out whether the public favor or oppose a certain policy. Concurrent holding of an election and a popular vote – as practiced in the US –

may prove more desirable in order to shore up voter turnout and reduce expenses.

It is also necessary to rectify the aforementioned problems of civil participatory systems on a local level.

First, residents' initiative should become a system implemented under the substantive leadership of residents, and cease to be merely a channel for proposing agendas. In case a local council does not complete its deliberation on a draft ordinance proposed via initiative or rejects it, residents should be allowed to demand a popular vote on the proposed ordinance. These changes will bring the system closer to the purpose of participatory democracy.

Second, as for recall, it would be better to complement the system while watching its implementation a little more. Concerns have been continuously raised over possible abuse of the system, but, at the same time, there exists criticism that the current system is too onerous for residents to utilize. There is one provision, mentioned previously, that needs immediate revision. That is, limiting the eligibility of the people petitioning for a recall vote to those who have resided since December 31 of the previous year in the district of the local government concerned is problematic. Anyone who resides in the area at the time of collecting signatures should be entitled to sign a petition for a recall vote.

Third, residents' lawsuit also needs an improvement. Above all, the closely related citizens' initiative for audit system should first be revamped, so that, as in Japan, even one person can petition for an audit. It is equally important to simplify the overly complicated current system. Among the types of residents' lawsuit, the 'lawsuit by which residents are allowed to claim damages or demand return of excessive profits against a person who has caused damage to a local government' has a structural problem: it is a two-phase lawsuit. Under the current law, residents cannot file a suit directly against a local government head, a public servant, or other party concerned who has caused damage to the local government. Instead, a lawsuit can be filed against the local government. The second phase occurs after the resident plaintiff wins the lawsuit. The local government files a damage suit against the defendant who inflicted damage to it. This two-phase procedure is modeled after the related prescription of the Japanese Local Autonomy Law. Such a complicated procedure not only

discourages residents from utilizing the system, but also leads to increasing administrative burden. Therefore, this aspect of the system needs to be improved.

Fourth, the ordinance of each local government should be amended in a way that helps foster civil participation in the participatory budgeting system. The ordinances that do not adequately permit the formation of a structure inducing grassroots participation nor open the system to all residents are incompatible with the purpose of the system, thus needing improvement.

In addition to these structural improvements, the revitalization of citizens' participation necessitates experimenting with a variety of systems. In this sense, the details of the 'Resident Participation Basic Ordinance' enacted by some local governments (Cheongju-si of Chungcheongbuk-do and Ansan-si of Gyeonggi-do) for the last few years are noteworthy. Included in the ordinance is a provision prescribing the public invitation of a local government's various committee members. In the past, civilian experts or residents were mobilized to participate in a local government's various committees along with public servants, but such committees were criticized for functioning perfunctorily. As a way of fixing the problem, public invitation is recommended. Its purpose is to revitalize committees by requesting the participation of people enthusiastic about committee activities. The ordinance also prescribes the adoption of 'petition for policy debates.' Under this system, residents can petition for public hearings or forums on policy issues by collecting a required number of signatures. The proper implementation of this system will help stimulate debates on polarizing issues between residents and the local government, or between residents.

And there is a need to consider the introduction of deliberative democracy systems, including citizen forum, citizen jury, consensus conference, and deliberative polling. Utilizing a variety of participatory decision-making methods will certainly contribute to boosting citizens' participation.

b. Expansion of Participatory Democracy at the National Level

Expanding participatory democracy is not just a matter of local autonomy. Expanding the systems of participatory democracy and galvanizing grassroots participation can also be the demands of the current times – an era in which the problems of representative or party-based democracy are intensifying.

In fact, such demands are overflowing these days. At the time when Korea and US pushed for adopting the FTA, there was an eruption of popular demand for a national popular vote. The rationale behind the demand was that the issue should be put to a national vote since it gravely affects the people's lives. But the government did not embrace the popular demand for a popular vote. Due to the lack of an institutional mechanism that makes it possible to hold a national popular vote when people call for one, such a demand cannot be reflected in the national policy decision-making. A need for institutionalizing national initiative is raised when the National Assembly does not legislate laws the people want. In 2004, when former President Roh Moo-Hyun had to face the impeachment motion made by the opposition party National Assembly members, people opposed to the impeachment and voiced out their demand for a national recall of National Assembly members with the aim of removing them during their term of office.

As such, citizens' demand for participatory democracy is getting stronger. Therefore, it is necessary to establish new nationwide participatory systems such as national initiative, national popular vote proposed by the former and national recall.

These issues also need to be reflected in the process of amending the Constitution – an issue currently under discussion. It is because the current Constitution is considered an obstacle to introducing new systems of participatory democracy. The Constitution basically has representative democracy as its mainstay, not including a provision on which the establishment of participatory democracy will be based. For this reason, demands for bringing new systems of participatory democracy continuously encounter the counter-argument that 'going against the principle of representative democracy is unconstitutional.' For instance, since it is the majority opinion of Constitutional scholars that 'recall of a national assembly member without the Constitution amended runs counter to the principle of popular sovereignty and representative system,' there are difficulties in establishing participatory democracy systems.

In addition, systems found working effectively in local autonomy need to be experimented on a national level.

3.2.2. Roles of Government and NGOs in Promoting Participatory Democracy

On the whole, Korea's bureaucrats and politicians still take a dim view of the expansion of participatory democracy on both national and local level. Most of the participatory democracy systems that are incorporated into the Korean context reflect the efforts of citizens' advocacy groups or academics.

Bureaucrats and politicians have been trying to reduce participatory democracy to only a perfunctory system and even debilitate the related systems already adopted. A case in point is the enactment of the Referendum Act, a piece of legislation having little bearing with grassroots participation. Moreover, National Assembly members are proposing bills aimed at weakening recall.

It is true that all aspects of participatory democracy do not always function positively. All systems of democracy are double-edged swords. The very basis of democracy, however, is made up of confidence in citizens' judgment, without which representative democracy would be unsustainable. The absence of conviction that citizens will make a rational choice of their representatives would be a direct contradiction of the system. In other words, from the assumption that people are prone to insensible and flawed judgments, it can be inferred that representatives 'unfit to serve,' whose election resulted from the people's faulty judgment, are making decisions for them. Therefore, democracy cannot but rely on trust in citizens.

It is for this reason that there should be a continued interest within the political establishment in enhancing citizens' participation even as representative democracy is struck by crisis and faced with limits. When they adopt new systems, reinforce the existing ones, and put energy into enlisting citizens' interest with a more positive understanding of participatory democracy, democracy in Korea will be able to take one step forward.

Needless to say, the role of NGOs is still important. As they have done so far, they need to keep up their efforts of improving the legal systems so as to broaden the scope of participatory democracy, of educating citizens about the meaning and importance of participatory democracy, and of organizing civil participation. On a local level, local citizens' groups have to strive to steer the enactment or amendment of local government ordinances toward ensuring

residents' participation. They also need to lend support for residents to make a proper use of participatory systems.

In order to have the Constitution and laws revised in a way that makes participatory democracy more accessible to grassroots, local and national NGOs should work together. The legislation of recall, for example, is ascribed to their collaboration. Therefore, NGOs should forge cooperation beyond the boundaries of geography and the sphere of thematic areas in order to bring together citizens' voice in the process of amending the Constitution and help adequately overhaul national laws.

10

Japan

A New Public in the Making

Yasuyoshi Hayashi

Introduction: Direct democracy in expansion

Modern direct democracy, as a complement to indirect democracy, within representative democracy enables citizens to participate directly, rather than through elected representatives, and have their will reflected in the decision making of a community they belong to. While it often refers to direct participation in national politics, in its wider sense, decision making in municipalities is also included. It sometimes refers to systems of countrywide popular initiative and referendums. This article offers an outline of direct democracy in this sense in Japan. This short essay focuses on one idea which gives foundation to direct reflection of citizens' will in a society, including direct democracy. The idea of a "new public," born out of citizens' activities symbolized by Machizukuri in the 1990s in Japan, asserts that citizens are the creators of the "public." It is from this viewpoint that the idea, the basis of the Japanese-type direct democracy, is examined. The idea of "new public," thus, is a redefinition by citizens, of the dominant Japanese concept of the "public."

1. *“New Public”: The idea and the background of its emergence*

1.1. Citizens create “public”: How the idea was born

“New public,” an expression unique to Japan and born out of a particular time background, has a universality leading to Public. In everyday life of people, instances of “small public” are born continuously out of hopes and wishes they hold.

For instance, until the first half of the twentieth century, the desires of handicapped people and senior citizens needing care to live on their own remained very personal. The first step was made towards a welfare care system when these recipients of help and personal supporters around them chose to open up their private sphere and asked the society to share the burden. This was when the “small public” was born. “Small public,” born out of the citizens’ will and action to “open private and become public,” then gave birth to a horizontal connection between citizens. Chains of will and action thus generate an “expansive public,” hence the “new public.” This idea spread between the 1980s and 90s from care recipients and care workers for citizens to concerned experts as well as citizens and self governing bodies in many areas.

1.2. Concept of Japanese-type “public”

Because it means the creation of a “public” by citizens, “new public” is a redefinition of the Japanese concept of “public” by the hands of citizens. Let me explain.

In the modern state of Japan which surfaced in the late nineteenth century, the “public” was monopolized by the state. In this essay, let us call this type of “public” that was defined by the state as the “Japanese-type public.” In this Japanese-type public, the state comes at the top of the “public,” while citizens are defined as “private” – most distant from the “public.” Here, “public” exists in a vertical, top-down relationship.

After the Second World War, Japan adopted the New Constitution¹⁾ which came into effect in 1947, and became a modern parliamentary democracy equipped with institutional frameworks such as popular sovereignty, respect for basic human rights (sexual equality, female suffrage, etc.), renunciation of war, etc. Nevertheless, even under the New Constitution, monopoly of the “public” by the state remained unchanged. For instance, the public interest corporation system then was one that tied foundations and corporations to a vertically-split administrative bureaucracy and supervised them. Moreover, to establish a juridical person, the amount of a few million yen had to be prepared as a fund, and the procedure for establishment took two to three years. This contradiction within the national system still continues to invisibly constrain the formation of a civil society in Japan.

2. *Outline of direct democracy in Japan*

The following is the existing systems of referendums which constitute the core of direct democracy in Japan:

2.1. Countrywide popular votes on constitutional and statutory issues

- (1) National referendum for ratification of amendments to the Constitution (Constitution article 96-1)
- (2) Popular vote for enactment of a special law applicable solely to one local public body (Constitution article 95)
- (3) National vote of reviewing the appointment of Supreme Court judges (Constitution article 79-2)
- (4) Popular vote for establishing councils on merger (Law concerning particular cases of merger of cities, towns and villages. article 4-14, 5-21)

1) Based on the principle of popular sovereignty, the new constitution adopts the symbolic emperor system. Advocating respect for basic human rights on the basis of the dignity of individuals, the constitution secures various constitutional rights of people. It also provides national administrative systems such as the National Diet, cabinet, judiciary and local autonomy, as well as the fundamental national order. The constitution is also characterized by its renunciation of war and non-maintenance of war potential.

- (5) Vote of the electorate concerning a petition demanding dissolution of the assembly (Local Autonomy Law article 76-3)
- (6) Vote of the electorate concerning a petition demanding recall of members of the assembly (Local Autonomy Law. article 80-3)
- (7) Vote of the electorate concerning a petition demanding recall of chiefs (Local Autonomy Law. article 81-2)

2.2. Local popular votes based on the Local Autonomy Law Article 14

The Local Autonomy Law authorizes self governing bodies to legislate ordinances on their own.

Between 1979 and 2002, the number of ordinances which provide the confirmation of residents' will by popular votes on important issues and which were put to consideration by the legislature, amounted to 223. Enactment of ordinances in this manner has spread nationwide in recent years. Opinions are split on whether the referendums should be binding (local chiefs and assemblies are obliged to comply with the results), or non-binding and consultative (they are merely obliged to respect the results).

Moreover, out of the number of citizens' initiatives made by residents, only a small portion – less than 20% – were passed by assemblies. This shows a conflict between the two different ideas of the “public” underlying parliamentary (indirect) democracy and direct democracy in the form of popular votes on substantive issues.

3. *Expression and materialization of residents' will through citizen activities: Formation and transformation of the citizen sector*

Insufficiency of the existing direct democratic system is apparent. Recognizing this, citizens, municipalities and experts are working on improving the system.

In immediate circles in everyday life, problems and issues that need to be solved and improved arise almost interminably. Citizens' activities of a “small

public” have tackled these problems free from the constraint of the Japanese-type public. These activities, over nearly a half-century up until the start of the 21st century, have nurtured the citizen sector in width and density.

3.1. Formation and transformation of the Japanese-type citizen sector

In the modern history of Japan, the citizen sector originates from political movements including the anti-war movement which started after the defeat of 1945. Labor movements played a central role in the 1950s, and the following decade of the 1960s was characterized by anti-pollution and anti-urban development campaigns.

As early as the end of this decade, activities of community development emerged in the fields unrelated with the administration. Time moved on to the 1970s, in which citizen activities became popular to materialize new policies and new systems they proposed.

3.1.1. Emergence of Machizukuri

Citizens called these activities “Machizukuri.” Machizukuri consisted of a wide range of activities in which, additional to the activists of the movements mentioned above, citizens with ordinary lives in towns started from their own will free activities of “small public” that any group or individual could start at any time within a community.

From the 1990s and then on, self-governing bodies came to precede the government in preparing legal systems, one instance being the adoption of Machizukuri ordinances incorporating citizen participation as one of their policies responding to citizen activities.

In the 1990s, the method of “Machizukuri workshop” encouraging dialog-oriented argument and collaboration became an effective tool to promote participation of citizens and local authorities as well as collaboration between them. With the introduction of this new tool, Machizukuri spread across the country in an explosive way.

3.1.2. Realization of the NPO Law by citizens: Birth of the NPO sector and challenges it faces

At the end of the 1990s, after a five-year-long movement joined by people from a wide range of fields, the bill of the NPO Law submitted by a group of members of Parliament passed the diet, thus bringing into existence the NPO juridical person system needed to enhance citizen activities.

The Law opened a new world of NPOs, the major supporters of the “small public,” and a succession of citizen organizations became recognized as NPOs – their number amounting to 35,000 in a decade after the Law took effect. Activities of NPOs, rich in creativity, have successfully provided services responding to diverse issues arising in the society, and their presence was rapidly recognized. NPOs certainly opened a big world of a “new public.”

3.2. Widening social differences and the challenges of community revitalization

In the new century, the global economy has been shaking community economies. Due to the market-style policy taken by the government since the end of the former century and the decade-long economic depression and widening social differences witnessed in the first years of this century, the image of Japan as an ever-growing advanced country has changed enormously. An overriding fear of poverty is threatening a number of people.

Besides individual poverty, decaying local communities and local economies, deteriorating welfare and Medicare systems, and the state finance facing bankruptcy magnify a multi-layered crisis.

3.3. Citizens’ challenge to “New public” as seen in several instances

How has Machizukuri tackled such structural issues with the formation of social systems confronting the global economy, invention of anti-poverty measures (positions for minors and youths, empowerment, safety nets, etc.), and revitalization of decayed communities?

Let us take a look at several cases and examine the wills of people observed.

3.3.1. Fighting against shocks caused by the global economy

Activities fighting aftermath of the 2007 downfall of the global economy are expanding. Typical instances are gaining momentum. These instances include ①efforts to tackle problems of the homeless and poor, ②programs to provide positions in the society to which minors and youths can belong, a proposal of a society knit closely and not exclusive, and ③a movement to secure children's right to play, evolving to complete ratification of the Convention on the Rights of the Child which was adopted by the UN in 1989 and conditionally ratified by Japan in 1994.

3.3.2. Creating local economic systems

In order to establish local economic systems to face the global economy, since the late 1990s, ④NPO banks, fundraising associations, grassroots funds, and other organizations have been working to create a monetary circulation system suitable for local economies.

3.3.3. Converting wastes into resources

Widening efforts since the 1990s to convert wastes into resources include ⑤renovation of decrepit buildings and ⑥NGO projects turning used commodities into international resources, which serve as undertakings connected to global environment issues.

3.3.4. Community economies run by rural producers

Many rural producers are now ⑦controlling the processing as well as distribution stages themselves and creating sites and networks for communication with urban areas. This is an example testifying to the growing community economies.

3.3.5. Community economies run by co-ops

Community economies run by cooperatives (co-ops) also attract our attention. Beyond the boundary of consumer movement, ⑧co-ops in urban areas are engaged in a variety of projects, which include working together with producers on production scenes, running workers collectives and welfare juridical persons,

giving aid to citizen activities using grassroots funds, establishing NPO banks and systems to save multiple debtors, etc. Through these projects, co-ops are realizing a world of citizens independently from the global economy.

3.3.6. Community revitalization through grassroots exchange in art

“The Triennial Art Festivals of the Earth” have been held in Niigata prefecture since 10 years ago. In this case, a huge expansion of rural and mountainous regions that resulted from cooperation of local authorities was chosen as the site. Artists from around the world settle here, become friendly with residents, work and welcome spectators. These festivals help enhance grassroots exchange in art as well as revitalizing the community. In recent years, other two cities, having expanded the city area as a result of merger, are going to apply this community revitalization method as well as nurture a sense of community in the new city area.

3.3.7. Volunteer activities in development

Change and development of volunteer activities are proved in some instances. Funabashi Alley Club and Komazawa Water Tower Club, both located in Setagaya city in Tokyo, have clearly stated their purposes and, making good use of the local townscape ordinance, engaged in the preservation of good and old landmarks. With aid from Machizukuri Center and other institutions and also through the formation of networks with neighboring areas, both groups have made unique and significant achievements.

These recent examples cited above represent activities encompassing diverse fields which may lead to solutions for bigger social and economic problems. They are the result of the accumulated actions to tackle differing problems that different areas pose. Innumerable instances of the “small public” widespread in the society will be connected together to form an “expansive public,” which then will develop into a “new public.”

It may be said that they stand for a form of direct democracy as actions of citizens, if not an institution.

Conclusion: Placing “New public” at the core of the systems by its supporters

In the new century, there is growing momentum to create as well as to run the future of both citizens and communities by citizens themselves, reflecting the expanding popular will to shoulder a “new public.” While our immediate goal in Japan is to further consolidate the existing direct democracy secured by local ordinances through this expansion, our fundamental goal is to build on this accumulated solidity and to “place new public at the core of the systems.” This, needless to say, means the realization of a conversion from “public,” a manifestation of state power, to “public,” an embodiment of popular sovereignty. This conversion will provide an authentic foundation upon which direct democracy rests.

11

Finland

No Easy Democratization

Rolf Büchi

Finland is one of the five Nordic countries. It became independent in 1917 and shares a long border with Russia (1,269 km), which is also the eastern border of the European Union. The country counts 5.3 million inhabitants and comparatively few immigrants (143,000).

Only plebiscites

There have been 2 popular votes on the national level: in 1931 on prohibition and in 1994 on the accession to the E.U.

There were 52 popular votes on the local level: 47 on municipal mergers, 2 on road construction, 1 on a change of province, 1 on annexation of municipal territory, and 1 on the construction of a waste incineration plant.

All these popular votes had the form of an authority-triggered popular vote (plebiscite, [ATP]); only the national parliament (*eduskunta*) or the local parliaments (*valtuusto*) can decide to call a popular vote.

Strictly speaking, Finland does not have a modern direct democracy (citizens' initiatives [PCI] and citizen-initiated referendums [PCR]). However, there is a

right to agenda-initiative [AMI] on the local level. At least 5% of the municipal electorate can request the call for a popular vote on a specified issue for which the municipality is responsible. The local council has to decide without delay whether an advisory popular vote will be organized. In the overwhelming majority of cases, agenda-initiatives are turned down by the local authorities. Consequently, the instrument has been devalued and is considered as ineffective by the citizens.

Avoiding direct democracy

In the 1930s, after the first experience of a national plebiscite, the Finnish parliament developed three guiding principles for the use of popular votes: 1) Parliament alone may decide to call a plebiscite. 2) The subject matter must be simple enough so that people can understand it. 3) A popular vote is held only as a last resort. In fact these are guidelines for avoiding popular votes.

The authority-triggered popular vote [ATP] was introduced into the constitution in 1987 and carried over into the new constitution of 2000. Neither 1987 nor 2000 represented a break from traditional thinking; there was no new beginning but only the continuation of public consultation as it had been practiced before. All in all, the prevailing attitude towards direct democracy has been quite stable over time and rather hostile, especially among the establishment and the mainstream media. Direct and indirect democracy have been seen as incompatible opposites by both powerholders and the media.

In the 1990s, with a growing crisis of (indirect) representative democracy also in Finland, the number of those regarding direct and indirect democracy as complementary has grown. Even official reports start to speak of the necessity to complement representative government with new ways of citizen participation. This change is clearly visible, but until now it has been more rhetorical than effective in practice. Old attitudes still prevail.

Currently, a reassessment of the constitution of 2000 is taking place and reflections on the “development of direct democracy” in Finland are made. An outcome of these reflections is a proposal to introduce the right to agenda-initiative [AMI] also on the national level.

How to break the cycle?

Finland is an example of an indirect democracy which excludes the majority of the people from decision-making. It thereby produces passive citizenship and dependency on leadership which take root in the character of the people, in their thoughts and actions. It creates a mindset that says, “politics is not for us – it is something out there, handled top-down by politicians who we elect but do not choose,” and also, “there is no alternative – our system is better than others. Direct democracy is not only impossible; it is also bad.”

In my view, the introduction of the right to agenda-initiative would leave things essentially as they are, at least until the rise of a strong democracy movement, which will ask for real direct democracy (like, for example, *Mehr Demokratie* in Germany). Only with the help of such a movement can the cycle between indirect democracy and passive citizenship be broken.

12

Bulgaria

The First Law on Direct Democracy

Atanas Slavov

The Constitution of the Republic of Bulgaria, adopted in 1991, proclaims the popular sovereignty as one of its founding principles: *“The entire power of the State shall derive from the people. The people shall exercise this power directly and through the bodies established by this Constitution”* (Art. 1). However, the direct democratic dimension of the exercise of state power has not yet been completely implemented in the Bulgarian political and constitutional context. Moreover, the legislative framework of direct democracy and civic participation in Bulgaria has been rather a restrictive one. For the period of 18 years, there has been no countrywide popular vote conducted on a substantive issue, and only few valid local votes were held. This was mainly due to the poor legislative framework requiring high turn-out quorum (of 50%) for both the national and local popular votes, as well as the limited opportunity for popular initiative (according to the 1996 Referendum Law).

To get a better quality of democratic process and more vibrant civic community, this status quo had to be changed. The initiatives of numerous civic organizations aimed at drafting a new enabling legislation for direct democracy

and civic participation were canalized by the Balkan Assist Association.¹⁾ The result of these endeavors was the draft of *Law on Direct Participation of Citizens in the Government*, which was introduced in the Parliament in the beginning of 2008.²⁾ It took a year and a half and many discussions, working groups and advocacy campaigns to influence the MPs to be in favor of the new law. Although some important concepts were adopted, others were rejected due to constraints of the political situation.

At the end of May 2009, the Parliament finally adopted the new *Law on Direct Participation of Citizens in the State Power and the Local Self-governance*.³⁾ The new law is important in several ways. Firstly, it is a legislative act of a constitutional nature. It regulates the procedures of implementing the fundamental constitutional principle of people's sovereignty through the means of referenda, civic initiatives and community meetings. It also proposes significant changes in the model of direct democracy by allowing popular initiative for both national and local referenda, to formulate and determine the questions to be answered. Secondly, the process of adopting the law was initiated by active civic organizations, and the law itself was drafted mainly by legal and constitutional experts working in the civic sector. Thus, the law itself shows the capacity and the expertise in the third sector, which is another important argument in favor of civic participation procedures. Thirdly, the final adoption of the law with some significant changes to the initial proposal is a litmus test for the relations between the government and the civil society and the degree of transparency and accountability of the processes of decision-making. Hence, the process of adopting the law is indicative of the implementation of the Constitution and its fundamental values and principles (i.e. rule of law, popular sovereignty and

1) Balkan Assist Association is a Bulgarian non-profit public-benefit organization established in 2000 with the main objective to stimulate and support citizen participation at the local and regional level. Members of the association are individuals and organizations of knowledge and experience and with serious contribution to the democratic development processes in Bulgaria and in South Eastern Europe. Balkan Assist works in close cooperation with SDC and the Government of the Canton of Bern, Initiative and Referendum Institute Europe, national and regional associations of Bulgarian municipalities, and a wide range of civic organizations to foster the ideas of direct democracy in Bulgaria.

2) During the mandate of the 40th National Assembly (June 2005 ~ June 2009).

3) The law was adopted on 29/05/2009, published officially in the *State Gazette*, Vol. 44 (12/06/2009).

direct democracy) into the social reality as well as of the predominantly top-down process of social and political change in the country.

Before presenting the main concepts, direct democracy instruments and procedures laid down in the new law, it is useful to briefly outline the history of initiating the law on behalf of the civic sector. The second is to present the main phases of the parliamentary legislative process and the political arguments “pro” and “contra.” The third is to present the main concepts and procedures as were adopted. The last is to discuss the future amendments in the law in order to bring it closer to the original initiative and implementing the good practices on referenda and initiatives.

How the process started

The initiative on behalf of civic organizations to adopt the new law was a continuation of the one which started during the mandate of the 39th National Assembly (2001-2005), but failed due to the lack of support on behalf of the parliamentary majority. The process of drafting the new law began in 2006 when Balkan Assist Association made a joint with constitutional and legal experts, other civic organizations, the associations of the Bulgarian municipalities, the organizations of the public servants in the municipalities⁴⁾ and some MPs members of the Legal Affairs Committee in the Parliament. The process continued with a series of public meetings, discussions and round tables on the new principles and procedures which should be laid down into the new law. Such public events were organized in the major regional centers Plovdiv, Stara Zagora, Veliko Tarnovo, Bourgas, et cetera. The initiative gained support by a large number of civic organizations, and different ideas and proposals were discussed. During this interaction, the main principles, legal institutes and procedures were crystallized. The working group on the draft law reached a consensus on the following basic concepts to be included in law:

1. *Procedures allowing popular initiative on behalf of 50,000 citizens to initiate optional countrywide popular votes on substantive issues [PCI];*
2. *Procedures allowing popular initiative on behalf of 100,000 citizens to*

4) National Association of Municipalities in the Republic of Bulgaria, National Association of the Municipal Secretaries, several regional associations of municipalities.

initiate mandatory countrywide popular votes on substantive issues (the Parliament is obliged to call the vote with the question proposed by the citizens) [PCI];

3. *The law to be adopted without a requirement of a turn-out quorum which often leads to the invalidity of popular votes on substantive issues (the turnout quorum in the 1996 Law set at 50% of the voters);*
4. *Liberalizing the procedures for holding the local popular votes (broadening the scope, lowering the requirements for the popular initiative, no turn-out quorum);*
5. *Ensuring procedures for agenda initiatives [AMI] on a national and local level to initiate the adoption of important political and legal decisions and acts.*

All of these main principles and procedures were laid down in the draft law proposed by the civic organizations.

Furthermore, in July 2007, the draft law was publicly presented by the working group and the process of gaining more public and political support continued. The advocacy campaign was successful in reaching more civic organizations and broadening the support for the draft law among the different parliamentary groups. However, during this process of negotiation, some important changes occurred. First, the required number of citizens initiating countrywide popular votes on substantive issues was increased to 150,000 (in this case, the Parliament reserves its discretionary power to decide on the holding of the vote). Second, the number of citizens initiating a mandatory vote was significantly increased to 300,000 (in both cases, it was 3 times higher than the initial proposals) [PCI].

With these changes, on February 7, 2008, the draft law was entered into the Parliament by a group of MPs, most of them belonging to the parliamentary majority. This was the beginning of the formal legislative initiative within the required constitutional procedure.⁵⁾

5) The leading role in the parliamentary legislative procedure belonged to Dr. Yanaki Stoilov, the chairman (2005-2009) of the parliamentary Legal Affairs Committee.

The draft bill lost in the parliamentary legislative procedure

After the formal beginning of the legislative procedure, the first reading and passing (in principle) of the draft bill during the plenary session followed on July 3, 2008. It gained wide support on behalf of the major political parties, both among the governing coalition (excluding the Turkish minority DPS/MRF) and the centrist-right opposition. Formally, the politicians showed their openness and sensitivity to the principles and procedures of modern direct democracy. However, even at this early stage some of the major divisions between the supporters of the law and the opposing group were obvious. The main arguments were divided in principle regarding the levels of social and institutional trust. During the following debates, some of the opponents of the law started to use emotional rhetoric associating direct democracy with mob rule, if the main questions of the public policy were left to be decided by the citizens themselves through the mandatory referenda. This rhetoric dominated during the next stages of the legislative process – the second reading in the Legal Affairs Committee and the second voting in the plenary session. The debate was focused on the provisions allowing popular initiative and the binding popular initiative for national referenda and the lack of turn-out quorum requirement. In order to reach consensus among the competing parties, some of the key provisions of the law were significantly changed:

1. *The number of citizens required to initiate countrywide votes was increased from 150,000 to 200,000;*
2. *The required number of citizens to initiate mandatory countrywide popular votes on substantive issues was sharply increased to 600,000;*
3. *The turn-out quorum of 30% was introduced.*

Thus, the original draft bill proposed and supported by a wide range of civic organizations was significantly changed, and it almost lost its reforming force concerning the Bulgarian political system. According to the constitutional experts, the adoption of the law with such restrictive provisions may result in the failure of its implementation in the future. (For instance, the requirement for signatures is too high to be reached within the time limits set in the law as well as within the Bulgarian political context where apathy prevails over participation).

The real struggle of the proponents of the law with the defenders of the status quo may be illuminated by presenting the arguments “*contra*” and their false premises. In these arguments, two notions were predominant: 1. The constitutionality of the law was challenged, on the grounds that direct democracy and the enabling procedures for popular votes undermine the institutions of representative democracy. This argument could be simplified to the false dichotomy *direct v. representative democracy*.

People who relied on this argument just failed to read Article 1 of the Constitution. 2. The second argument claimed that the low level of social trust in the Bulgarian society – among the citizens themselves and between the citizens and the political elites – may lead to the arbitrary use of initiatives and referendums threatening the constitutional order or the fundamental and minority rights. This group of people failed to read the law which does not provide for *constitutional popular votes*, which means that the chapter on fundamental rights in the Constitution cannot be challenged by popular vote. Moreover, the law provides remedies against questions that might violate the Constitution or the laws on both procedural and substantive grounds. In addition, it should be emphasized that there is no legal or constitutional procedure that cannot be abused or misinterpreted. Consequently, this second argument is equally applicable to the institutions and procedures of representative democracy as well.

The overall debate was generally based on different political visions of how democracy could be strengthened in the Bulgarian society in a period of political crisis – by either empowering citizens or having stronger public representative institutions. As it has been pointed above, this is a false dichotomy. The correct answer to the present day political challenges is based on both suggestions; in principle, there is no contradiction between direct and representative democracy, if both are exercised under the Constitution and the rule of law.

New law, new opportunities

At the end of the parliamentary mandate of May 29, 2009, the new law, after hours of critical debate, was finally adopted. It is important to note that the second reading and the final voting of the law was extended for over five

months, because of the rivalry opposition it faced in the Parliament (mainly on behalf of the coalition partner DPS). The main provisions on the national and the local citizens' initiative and referendum right were changed in a way to reflect the ideas of DPS, opposing the law. According to the new law, comparing it to the initial proposals made by the civic organizations, the number of citizens who may initiate the countrywide votes was significantly increased. Many organizations expressed their justified concerns that such provisions cannot be effectively applied and that in practice, the right of the citizens to call countrywide votes on substantive issues remains very limited or even absent under the new legal regime. Furthermore, as one of the key problems, the turn-out quorum was reintroduced, which instead of liberalizing the requirements, it worsened them by providing the turn-out quorum equal to the turnout activity of the preceding parliamentary elections (which is usually around 50%). There is no doubt that such provisions contradict the established good practices of direct democracy in Europe and do not reflect the recommendations of the Council of Europe.⁶⁾ Such a requirement also unreasonably links popular votes on substantive issues and party/person elections which serve different purposes in the constitutional democracy.

A brief account of the new moments in the law will help in evaluating the new regime of direct democracy and civic participation in Bulgaria.

► Citizens' initiative requiring a popular vote

The new law provides for popular initiative for countrywide popular votes on substantive issues. This is a real breakthrough compared to the former law. The citizens may initiate a popular vote process by collecting and submitting to the Parliament at least 200,000 signatures supporting the initiative proposal. The signatures should be collected for a period of 3 months. In charge of organizing the campaign for collecting signatures and communicating with the institutions is the initiative committee consisting of 5~15 members. The Parliament reviews the popular initiative and *may* decide to call the proposed popular vote. In this case, the Parliament has discretionary power to decide whether or not in favor of the initiative.

6) European Commission for Democracy through Law (Venice Commission), Code of Good Practices on Referendums, Strasbourg, 19 March 2007.

There are several exclusions and limitations to the holding of national referenda:

1. Questions falling into the competence of the Grand National Assembly;
2. Some of the constitutive and controlling competences of the National Assembly (electing of the Prime Minister or the Council of Ministers; deciding on the elections for a President of the Republic; deciding on the declaration of war and conclusion of peace; hearings on the annual reports of the Supreme Court of Cassation, the Supreme Administrative Court and the Prosecutor General; impeachment of the President of the Republic, etc.);
3. Questions on the tax amounts and social security payments;
4. Questions of the state budget;
5. The rules on the internal organization and proceedings of the Parliament.

► Citizens' initiative triggering a countrywide popular vote

In the case where the popular vote process is initiated and supported by 500,000 citizens signing the initiative, it becomes binding for the Parliament. Then the Parliament is obliged to call the vote with the question proposed by the citizens. The Parliament should not change the meaning of the question in any way, though it may correct some inaccuracies and clarify the question. The signatures should be collected within 3 months.

► Citizens' initiative requiring local popular votes

The new law also provided better regimes for local popular votes. The requirement of signatures supporting an initiative has been significantly lowered. According to the new rules, local votes may be initiated by not less than 1/20 of the citizens (5%) who permanently live within the municipality, the municipal district, or the township. The process is organized by an initiative committee consisting of 3-7 members. The initiative and the supporting signatures should be submitted to the Municipal Council within the period of 3 months. The Council decides on the proposal.

The law excludes certain questions to be decided on local referenda:

1. Budgetary questions;

2. The local tax amounts;
3. The rules on the internal organization and procedures of the Municipal Council.

► Citizens' initiative triggering local popular votes

When the local initiative is supported by at least 1/10 (10%) of the citizens who permanently live within the municipality, it becomes binding for the Municipal Council – the Council is obliged to call the popular vote.

► Turn-out quorums

Unfortunately, the turn-out quorum was reintroduced in the new law. It provides that the turn-out quorum for national referendum should be equal to the turn-out quorum of the preceding parliamentary elections. If the turn-out quorum is less than the required, but more than 20% of the voters, the referendum proposal should be considered as a legitimate civic agenda initiative [AMI] and will be discussed in the Parliament.

Similarly, the turn-out quorum for local referenda should be equal to the turn-out quorum of the preceding local elections for the Municipal Council.

► Countrywide agenda initiatives

The law creates a new opportunity for the citizens on the national level to present the state institutions (the Parliament and the executive branch) with different proposals, including legislative proposals. By collecting signatures within the country's territory, citizens may initiate and propose different alternatives for solving problems with national significance. To open the agenda initiative procedure, a decision of an assembly of 50 citizens is needed. The assembly elects the initiative committee – consisting of 3~7 members – which is responsible for further organization. The committee starts with collecting signatures supporting the proposal. The maximum period for collecting signatures is 3 months. There should be at least 50 signatures collected. After submitting the initiative to the institutions, they should consider it within the period of 3 months and make a decision on the proposed activities. The institutions have discretionary power to decide on the proposal.

► Local agenda initiative

Similarly, the law provides for a local initiative. It begins with the decision of citizen's assembly of at least 50, which elects the initiative committee (3-5 members). An important requirement is that the citizens taking part in and signing the initiative should have permanent residence in the territory of the municipality. The period for collecting signatures is 2 months. The institutions should consider and decide on the initiative in 1 month after receiving the proposal.

Assessment

Although the new law provides in principle some new opportunities for direct democracy and civic participation in Bulgaria, it was not welcomed enthusiastically by the civic organizations which initiated the process. This is due to the significant changes which were introduced during the phases of its adoption. Most of the civic organizations agree that the provisions – setting very high requirements for popular initiative and high turn-out quorums – cannot be sufficiently implemented in practice. However, this situation strengthens the commitment of the Balkan Assist Association and its partners to lead the process to a positive end. After the beginning of a new parliamentary term with new centrist-right majority, Balkan Assist and the Civic Participation Forum⁷⁾ initiated a meeting with the President of the National Assembly as well as with the leading parliamentary committees. At the end of November, a draft bill on amending the law will be introduced on behalf of the civic sector. The bill is drafted and consulted widely within the civic sector and reflects the original ideas of the law. The proposed amendments will be in four main directions:

1. *Lowering the required signatures for popular initiative to 150,000.*
2. *Lowering the required signatures for binding popular initiative to 300,000.*
3. *Increasing the period for collecting signatures to 5 months.*
4. *Abolishing the requirement for turn-out quorum.*

⁷⁾ Civic Participation Forum, founded 2009, unites 50 non-profit organizations nation-wide, committed to the ideas of direct democracy and civic participation.

For the process of addressing the Parliament with the new proposals, the procedure of national agenda initiative, as provided in the law, will be used. Formally, the bill will also be proposed by MPs who are supportive of the ideas of modern direct democracy. Thus, a synergetic effect of the proposals may be achieved.

Balkan Assist Association and its partners will continue to influence the institutions and public opinion in Bulgaria in favor of the ideas of direct democracy and civic participation. However, full implementation of the principles and procedures of modern direct democracy is bound to face challenges ahead in a country which barely meets the criteria of being considered a consolidated democratic nation.

13

Hungary

Direct Democracy in an Antagonistic Society

Pál Réti

In Hungary, far reaching changes came about in domestic politics, as a result of the “Social Referendum” – the citizens’ initiative [PCI] – held in March 2008. The government suffered crushing defeat, the ruling socialist-liberal coalition fell apart, and the Socialist Party could only stay in power through the outside support of the Free Democrats, the former coalition partner. A few months later the prime minister resigned, a new government was formed, and the Socialist Party’s popularity hit bottom. One year later, the election of the members of the European Parliament brought an overwhelming (56 percent) victory to the main opposition party, Fidesz. The right extremist party, Jobbik, received 15 percent of the vote – three times more than an extreme right party ever received in Hungary since 1990. The Socialists received 17 percent, the Liberals just 2 percent, and as a consequence, their party was disintegrated and has no chances to get any mandates in the next parliamentary elections, due early next year.

The impact of this popular vote exceeded that of similar votes held since the fall of Communism, i.e. in the last 20 years. Nevertheless, the March 2008 vote cannot be considered as the clear triumph of modern direct democracy. It was initiated and organized not by a grass root movement or a civil organization, but by the main opposition party – with the aim to overthrow the

government. At the same time the whole process showed that direct democracy was still not a well functioning organic part of the Hungarian constitutional framework: it was not obvious which question could be put on the ballot and which could not, what were the roles of the different institutions, etc.

These and similar issues led to an extensive academic debate about the institutional aspects of the initiative and referendum process in Hungary. Basic questions have been raised:

- In case the people decide otherwise, can they overwrite the program of the democratically elected government? According to the academic mainstream the Hungarian constitution is based almost exclusively on indirect democracy – according to this line the institutions of direct democracy are playing a secondary role. The government’s program has been approved by the majority vote in the Parliament; however, the result of the 2008 popular vote questioned the very base of that program, namely the reform of the healthcare and the social security system.
- How far can the Constitutional Court go in interpreting the issues that are raised in a citizen’s initiative? In Hungary, budgetary issues can not be a subject of a popular vote process; however, the 2008 decision included topics that could be interpreted as fiscal issues. For example, voters were asked: “Should doctors charge a visit fee from their patients? (In a way, the question was justified, as the social security tax paid in a monthly base by employees and self-employers should cover visit fee as well. However, the government – as a part of a health reform – introduced an extra visit fee.) The Constitutional Court decided that the vote’s question related to the visit fee was not unconstitutional since the budget was not addressing this issue specifically.
- What exactly is a popular vote: an expression of people’s will or just another means of party politics?
- How can parliamentary democracy co-exist with the institution of the popular vote on substantive issues?

Popular votes on substantive issues in Hungary

The heart of the matter is that the law on national and local initiative and

referendum process was one of the earliest system-changing laws in Hungary. It was adopted by the last Communist-dominated parliament in June 1989, months before the adoption of the Constitution of the new Republic and almost a year before the date of the first free election. To institutionalize direct democracy was a major demand of the democratic opposition, besides urging to introduce laws on the right to free gathering, freedom of speech and the right to strike. Changes in the constitution, however, resulted in strong parliamentary power, leaving not much space to direct democracy. Later the Constitutional Court tried to mend this weakness, in a way reconciling the Constitution with the Initiative and Referendum Law. This left yet many questions unanswered, including the following: If the people object certain measures of the government – as proven through their votes in a referendum – how can they enforce their will in the Parliament?

Table 13.1. Countrywide popular votes on substantive issues in Hungary since 1989

| Date | Issue | Yes | No | Participation |
|----------------|---|---------|----|---------------|
| | | Percent | | |
| 1989, Nov 26 | Indirect election of the President, through Parliament | 51 | 49 | 58 |
| | Disbanding local organizations of the Communist Party | 95 | 5 | 58 |
| | Disclosing assets of the Communist Party | 95 | 5 | 58 |
| | Disbanding Workers' Guard, military wing of the Communist Party | 95 | 5 | 58 |
| 1990, July 29 | Direct election of the President* | 86 | 14 | 14 |
| 1997, Nov 16 | NATO accession | 85 | 15 | 49 |
| 2003, April 12 | E.U. accession | 84 | 16 | 46 |
| 2004, Dec 5 | Rejecting hospital-privatization* | 65 | 35 | 37 |
| | Giving Hungarian citizenship to ethnic Hungarians living outside Hungary* | 52 | 48 | 37 |
| 2008, March 9 | Rejecting hospital visit fee | 84 | 16 | 51 |
| | Rejecting tuition | 82 | 18 | 51 |
| | Rejecting doctor visit fee | 82 | 18 | 51 |

* Invalid because it did not fulfill the turnout-quorum requirement

Looking at this issue from another perspective, the history of initiatives, referendums and plebiscites in Hungary indicates that the public had no illusion concerning the success of enforcing their will through institutions of direct democracy. In the first 14 years of democratic environment, only two popular votes¹⁾ were held (excluding the failed attempt of the old guard in 1990, to introduce direct election of the president). Just four months before the NATO-referendum in 1997, the parliament changed the rules of decision-making: the number of required signatures for a binding referendum was raised from 100,000 to 200,000, and the quorum was lowered from a minimum of 50 percent of the eligible voters (+1) to 25 percent (+1) providing identical votes. At first sight this lowering of the quorum indicated a step in favor of direct democracy, but in fact it was enacted in order to avoid a possible setback for the government at the forthcoming NATO referendum. It has sent the wrong signal to the citizens that popular votes are nothing more than another policy instrument in the hands of those in power. The government's calculation proved to be right. Were the old rules still in force, both the 1997 NATO vote and the 2003 E.U.-vote would have been invalid.

The first citizen-initiated vote [PCI] in Hungary after 1990 was held in 2004 on the topics of rejecting hospital-privatization and giving Hungarian citizenship to ethnic Hungarians living outside Hungary. Again the campaign became a battlefield of the parliamentary parties: the socialist-liberal coalition parties promoted a "no" vote, the opposition parties "yes" vote, for both questions. As a result, most people voted according to party preferences.²⁾ Still, many potential voters stayed home and the popular vote turned out to be invalid in both issues. Notwithstanding, the second topic – giving Hungarian citizenship to ethnic Hungarians outside Hungary – generated an unprecedented emotional discussion. The pressure for increasing the leeway for direct democracy increased after this referendum vote (see Table 13.2). But the real breakthrough came as a result of the political crises in 2006 as the citizens became frustrated that

1) Both the NATO- and the E.U.-accession votings were binding on parliament. Using the terms of Guidebook to Direct Democracy (IRI, 2008), they were somewhere between plebiscite and referendum, [or according to the new "Universal Typology of Modern Direct Democratic Terms" (UTM), they are de facto LOR].

2) Karácsony Gergely: *A pártok szava és a nép zsebe* (The Word of the Parties and the Pocket of the People) in *A népakarat dilemmái*, Budapest, 2009.

the government was not ready to resign, despite its admitted failed policy. The government survived, thanks to the Socialist Party's majority in the Parliament. The Socialist MPs were ready to support the government – despite the obvious mistakes of Prime Minister Ferenc Gyurcsány – when it came to crucial votes, being aware that the downfall of the government would endanger their careers, too (most had no other civil profession to pursue). There was also a political consideration behind the more intense pressure to hold popular votes on substantive issues more frequently: Fidesz, the major opposition party, realized that using direct democracy as an instrument could help overthrowing the government.

Table 13.2. Number of Citizens' Initiative Issues Presented to the National Election Commission

| Year | Number |
|----------------------|--------|
| 1989-2001(average) | 2,3 |
| 2002 | 18 |
| 2003 | 25 |
| 2004 | 9 |
| 2005 | 28 |
| 2006 | 48 |
| 2007 | 385 |
| 2008 | 251 |
| 2009(first 8 months) | 184 |

Preceding the 2008 popular vote

In the fall of 2006 Hungary entered a phase of serious political crisis, after Prime Minister Ferenc Gyurcsány's secret speech presented four month earlier to a selected audience of the Socialist Party was leaked out. In his speech that was timed a month after the Socialists' victory in the parliamentary election, Gyurcsány acknowledged that he and his government were telling lies "day and night," "screwed up" everything, and that unlimited government spending pushed the country to the edge of bankruptcy. The leak had grave consequences. The

people felt they had been deceived. Earlier they had accepted that belt-tightening measures – announced after the 2006 election – were necessary for the success of the reforms. The “lie speech” fatally undermined the government’s credibility. Furious protesters marched through the streets of Budapest, cars were destroyed, and the TV headquarters were occupied for a short period. These were events that the city had not seen for 50 years (the turmoil coincided with the anniversary of the 1956 revolution). The protests did not bring any result – Gyurcsány kept his office. As the top opposition party could not force the government to resign through mass demonstrations, its leader, Viktor Orbán, decided to initiate a “social referendum.”

Outcome of the 2008 decision and its consequences

Like in 2004, the popular vote campaign in 2008 was a struggle between the government parties (promoting the “no” vote to all questions) and the opposition parties (of course, siding for the “yes” votes). But this time the “yes” votes had a significant majority that could not be explained simply by the voters’ party-affiliations. This time people ignored the interests of their respective parties and voted for what they thought was sensible: not to pay for services which have been funded already by taxpayers’ money, including hospital treatments, medical check-ups, and higher education.

The Prime Minister and the government tried to lessen the significance of the popular decision. “What will come after March 9?” – the Prime Minister asked himself (March 9 was the day of the referendum). “Of course, March 10,” he responded, amusing himself. But things turned out differently. The defeat of the government was devastating (see Table 13.1). The consequences were far reaching. Health care reform was withdrawn, other reform plans of the government evaporated, the ruling coalition collapsed and a few months later Gyurcsány resigned both as prime minister and as party chairman.

Initiative and referendum debate

“To wield power directly, is an exceptional act of the sovereignty of the people, but in these exceptional cases it is above the representative form of democracy.”³⁾

3) Constitutional Court decision 52/1997.

For two decades direct democracy had not been among the frequently debated issues in Hungarian politics. The 2008 popular vote, however, shed new light upon the strengths and weaknesses of this institution. Already in the first phase of the process, during the elaboration of the questions, it turned out that the two relevant independent institutions – the National Election Commission and the Constitutional Court – interpreted the popular vote rules in different ways: the Commission in a more rigid way, the Court more permissively. The high turnout in 2008 was also a new phenomenon: more people voted than ever in a referendum/plebiscite vote in Hungary. But the most important factor was certainly that this popular vote led directly to the downfall of the government – an unprecedented event in the history of the Hungarian democracy.

These events generated an intensive debate about the status and relationship of direct and indirect democracy in the Hungarian political system. There are four major aspects of this debate.⁴⁾

1. Manipulation: Those who ask the question are the ones giving the answer?
Conflicting questions – an illustration

Manipulation is a well known problem in the literature of direct democracy. In Hungary, it became an issue in connection with the first popular vote in 1989, when three basic issues of the democratic opposition, put on the ballot, were already fulfilled by the last Communist government. The “four yes” campaign – according to the opponents of these proposals – was a sheer manipulation serving only the interest of the initiating parties that wanted to get better results at the next parliamentary election.

In 2008 the suspicion of the manipulation had been raised in connection with the formulation of the questions. Analyzing the seven questions put forward by the main opposition party Fidesz, László Kálmán, a professor of linguistics, came to the conclusion that simply the linguistic formulation of the proposal may have a decisive impact on the voters’ attitudes. The questions suggest giving a “yes” to all the questions. As an illustration, he put forward his own proposal, essentially in identical format with those of the opposition party, but in this

4) See the academic debate in detail in: *A népakarat dilemmái*. Szerkesztette Enyedi Zsolt, Budapest 2009. [The Dilemmas of People’s Will, edited by Zsolt Enyedi]

case the “yes” answer means having the opposite attitude towards the issue.

Table 13.3. Popular vote proposal by Fidesz and by Professor László Kálmán

| Fidesz (Leading opposition party) | László Kálmán (Professor of linguistics) |
|---|--|
| Do you agree that... | |
| ...public health care institutions should stay in the ownership of the – central or local – government? | ...local governments should decide freely about methods of their health care duties? |
| ...drugs could be sold only in pharmacies in the future? | ...some non-prescription drugs could be sold in other outlets, not just in pharmacies? |

An opinion poll some months later proved that Kálmán was right. The majority of the people answered “yes” on both questions despite the fact that the two answers excluded each other. The result implies that Hungarians want the health care institutions to stay in government ownership, and, at the same time, they do not. All depends on how the questions are asked.

2. Will of the people or will of the parties?

In one important aspect the 2008 vote was not a surprise. The outcome followed basically the party lines similarly to the 2004 decision. The results of all popular votes since 1990 coincided with the will of the parties leading the opinion polls at the time. It means that the people mostly follow their parties instead of developing their own particular views in issues brought to the referendum.⁵⁾ It obviously raises the question: is there an essential difference in practice between direct and indirect democracy?

3. Referendum on budgetary issues – fiscal illusion

The most controversial aspect of the “social referendum” was the contents of the proposal. The National Election Commission at first rejected the proposal aiming to abolish fees for government health care and higher education services, referring to the law which excludes budgetary issues from being addressed by

5) Karácsony

direct democracy. The Constitutional Court decided diametrically the opposite way, saying that the state budget for the given year (2007) does not rule over those fees, and it was a government proposal to introduce them the following year.

Those who debated the Court's decision raised the problem of "fiscal illusion,"⁶⁾ meaning that people think about public money very differently than about their own and look at it practically as an inexhaustible resource. To ask simply whether you want to pay or not is misleading if the proposal does not deal with the consequences of the answer⁷⁾ (e.g. "Would you like free hospital treatments, even if it means raising taxes or lowering the level of services?").

4. Referendum vs. People's representation

The Hungarian Constitutional Court brought up certain rules to harmonize direct democracy laws with the constitution and to force parliament to respect the results of popular votes on substantive issues. For example, in 1997, the Court gave primacy to the citizen's initiative [PCI] in case there was a government proposal on the same issue [PCI+] at the same time.

But two constitutional rules are still in contradiction with each other. One says that after a valid binding popular vote the parliament is obliged to fulfill the citizen's will. According to the other rule, members of the parliament are free to make decisions without any influence. All that means is that only the parliament as a whole has obligations stemming from a binding referendum but individual members of the House do not. More generally, on the one hand, there are relatively strong direct democracy laws in Hungary (e.g. the country is among the few in Europe where the citizen's initiated binding popular vote exists⁸⁾). On the other hand, only the parliament has the right to bring laws, meaning that even direct democracy works indirectly, through the parliament. Even if the citizen's will is binding to the parliament, the latter can deliberate how to fulfill it or practically not to fulfill it. This can be a permanent source of conflicts.

6) http://en.wikipedia.org/wiki/Fiscal_Illusion.

7) Kis János: A népszavazás a köztársaság alkotmányában [Referendum in the Constitution of the Republic], in: A népakarat dilemmái, Budapest, 2009.

8) Guidebook to Direct Democracy, IRI 2008.

Lessons of Experience

Thanks to recent popular votes, direct democracy has been practically built into the Hungarian constitutional order which is by nature not direct-democracy-friendly. However, it can not be said that popular votes enhanced the quality of democracy in this country. Direct democracy is not yet an alternative, nor even a supplement, of partisan politics, but an organic part of it. The parties set the questions and people vote mostly according to their party affiliation.

part

FOUR

DIRECT DEMOCRACY FORUM:
HARD WORK AHEAD

Forum

The Global Forum on Modern Direct Democracy

Bruno Kaufmann

The premiere Global Forum on Modern Direct Democracy (GFMDDD) took place in Aarau, Switzerland in October 2008. It brought together practitioners, activists and professionals from across the globe and featured a world tour of direct-democracy hotspots. Special thematic forums and public events covered educational issues, developments in North America, Latin America, and Asia, as well as the importance of initiatives and referendums in the European integration process. Following the 2009 Forum held in Seoul, Korea, the 2010 Forum is scheduled to take place in San Francisco, USA and the 2011 in Santiago, Chile.

In recent years, many states around the world have introduced direct-democratic procedures and plebiscites. In Europe, there has been a massive increase in the use of popular rights since 1989. Within the framework of the European Union, consideration is being given to the first ever implementation of a transnational instrument of direct democracy – the so-called “European Citizens’ Initiative” which is in fact an agenda initiative. Since 1990, initiative and referendum as well as plebiscite procedures have been introduced in nearly all the countries of Latin America. In Asia, there, too, is a growing tendency towards introducing direct democracy which entitles citizens to take part in decision-making on substantive political issues.

As a result, there is a growing focus – not only within politics but also in the fields of administration, academia, media and civil society – on the qualitative aspects of modern democracy, and questions are being asked about the potentials and limits of modern direct democracy both from legal and practical standpoints. The GFMD is hosted by IRI, a special think-tank on citizens' rights, together with many of its partners including the Korea Democracy Foundation. It is designed to gather professionals from politics, government, academia, civil society, business and media.

This global process explores the grounds for a worldwide network and aims to achieve various goals, which include:

- preparing a global inventory of the procedures and praxis of citizens' rights;
- launching a public debate on the potentials and the limits of direct democracy within the process of European integration – presenting ideas and proposals for a global curriculum and agenda in the fields of education and research;
- exploring the foundations and next steps for the establishment of a World Democracy Forum, a new permanent meeting place for the development of global modern direct democracy.

Review: The 2009 Forum in Seoul



Figure 14.1. Banner of 2009 Global Forum on Modern Direct Democracy

The 2009 Global Forum on Modern Direct Democracy in Seoul, which took place in September 2009 and gathered citizens from 23 countries, focused on the key question of how direct democracy can make our economies more sustainable and secure. The Forum brought to the global stage the Asian experience of popular vote procedures on substantive issues.

In Asia, there have been an increasing number of attempts to use modern direct democracy on the local level, but the institutionalization of procedures is still unsatisfactory. The Forum enabled Asia to get more acquainted with experiences from across the world and also gave the world an opportunity to know more about the development in Asia, especially in Korea.

The 2009 GFMD was the stage of lively discussions and global communication that opened the door to the unique features of Korea. Furthermore, the Forum established the following global working groups.

WG I on Education and Infrastructure



Figure 14.2. Education and Infrastructure Forum

As the number and use of direct democracy procedures grow, so do the possibilities for confusions, misunderstandings and bad conducts. Thus, we are in urgent need of a more coordinated system for the proper use of terminology in the field of modern direct democracy, as well as educational strategies and tools for bringing forward the understanding and culture of participation. Modern

democracy is also dependent on a dedicated infrastructure of its own. This includes support structures for participation, checks and balances on the process, and clear and fair rules of conduct. This working group explores and maps key forms of educational tools, as well as the administrative and infrastructural conducts across the globe, and offers a presentation to a new global platform in the making – the IRI Navigator to Direct Democracy.

The Navigator to Direct Democracy – an information platform and e-learning tool for direct democracy in the making presented by IRI Europe – discusses:

- What the prospects and possibilities are for bringing experiences with education and infrastructure for (direct) democracy in different parts of the world together and making it possible for them to interact and support each other;
- And if feasible, delineate concrete project(s) and cooperation based on the exchanges at the Forum and workshop.

Co-facilitators: Rolf Büchi (IRI-Europe), Ramon Casiple (Institute for Political and Electoral Reform), Il-Joon Chung (Korea University), and Bruno Kaufmann (IRI-Europe)

Read more about the next steps of this working group on p.241.

WG II on Local Direct Democracy



Figure 14.3. Local DD Forum

Local self-government is vital for a system of democracy and to offer opportunities for citizens to participate in local affairs. The workshop reflects potential contributions of direct democracy to democratic and social developments in the context of local democracy. It presents information from represented countries about (1) available forms of direct democracy – such as citizens’ initiatives, or referendums called by local authorities, (2) the range of subjects allowed for or excluded from direct participation, and (3) procedural requirements (signature quorums, validity of votes, etc.). Practical usage of procedures, results and impacts on social and political issues should lead us to patterns of best practice. Examples of how direct democracy contributes to major local developments are discussed. Also included are considerations on improving or deteriorating conditions and successful paths to introduce and develop local direct democracy. Experiences from different regions of the world provide additional inspiration.

Co-facilitators: Theo Schiller (Philipps University Marburg) and Abdi Suryaningati (Yappika –the Indonesian Civil Society Alliance for Democracy)

Read more about the findings and plans of this working group on p.245.

WG III on Direct Democracy Activism



Figure 14.4. Gardiner reporting on Activist Forum discussions
(photo by Jordan Cibura)

Activists are the key to all democratization processes. Across the globe, a growing number of citizen activist groups have been and are involved in the making of more participatory and direct democratic structures and practices. What are the experiences? What lessons have been learnt? And which good ideas could be tried out in other locations? This working group offers an insight into activist strategies and experiences in Europe, America and Asia and will try to establish some basic understandings on how democracy can be used to make democracy more democratic.

Co-facilitators: Angelika Gardiner (Mehr Demokratie) and Chul-Young Shin (iCOOP Korea)

Read more about the main lessons of international direct democratic activism on p.257.

WG IV on Transnational Direct Democracy

Globalizing economy and many political issues obviously challenge traditional forms and understandings of representative democracy. Beyond nation-states, the limitations of purely indirect democratic institutions have become very clear. In other words, there is a need to review and re-launch the basic ideas of modern direct democracy also on the transnational level. But which tools could and should be introduced at this level? And which are the key options and limitations



Figure 14.5. Hollander, Hunpayon, Werayasobprasong facilitating Transnational DD Forum (photo by Jordan Cibura)

of such procedures in large contexts, such as, for example, continents? This working group encourages us to assess the opportunities of today for more and wider participation in the future and offers concrete examples from the European Union and other regional organizations around the world.

Co-facilitators: Saskia Hollander (Radboud University) and Surasavadee Hunpayon (Thammasat University)

Read more about the issue of transnational direct democracy in the contributions of Adam Lupel (p.43) and Saskia Hollander (p.261)

More on 2009 GFMD

2009 Global Forum on Modern Direct Democracy
9/14~16, Seoul/Korea

| Date/Time | Events | Location |
|------------------|--|---|
| 9/14 (Monday) | <p>Day 1. OPENING CEREMONY AND PLENARY SESSION</p> <p>Opening Ceremony (Chair: Prof. Jung-Ok Lee)</p> <p>09:00 Registration</p> <p>09:15 Introduction Video on the 2008 Briefing Tour in Europe and the Global Forum on Direct Democracy in Aarau/ Switzerland</p> <p>09:30 Welcoming Address</p> <ul style="list-style-type: none"> ▶ Fr. HAM Sei-Ung (President/ KDF) <p>Congratulatory Address</p> <ul style="list-style-type: none"> ▶ Yoon-soo Kim (President/ Chonnam University) <p>09:50 Introduction Statement: “Superdemocracy – a Global Task” by Bruno Kaufmann (President/ IRI-Europe)</p> <p>10:00 World Tour to Modern Direct Democracy – Regional Assessments & Outlooks</p> <ul style="list-style-type: none"> ▶ Asia: Ramon Casiple (Director/ Institute for Political and Electoral Reform(IPER) in the Philippines) ▶ Europe: Theo Schiller (Professor/ Marburg University in Germany) ▶ Latin America: David Altman (Professor/ Universidad Católica in Santiago de Chile) ▶ North America: Joe Mathews (Senior Fellow/ New America Foundation) | <p>Seoul Press Center 20th Floor</p> |

| Date/Time | Events | Location |
|-----------|---|----------|
| 10:30 | Opening Keynote Address: “Modern Direct Democracy in times of financial turmoil – lessons and keys towards sustainability” by Urs Rellstab (Deputy Head/ Economiesuisse) | |
| 10:50 | Q & A | |
| 11:15 | Into New Territory: “Why Korea could pave the way towards a better democracy across the globe” by Mike Gravel (former US Senator, Chairman/The Democracy Foundation) | |
| 11:30 | Greetings from Venice Commission: “The Venice Commission and the Code of Good Practice on Referendums as an International Standard” addressed by Boowhan Han (Lawyer, Substitute Member/Venice Commission for Democracy through Law) | |
| 11:40 | The Global Forum Process: Introduction to the Korea Forum Note and Action Plan and the four thematic workshops by Jung-Ok Lee (Chairperson, Committee for International Cooperation, Korea Democracy Foundation) and Bruno Kaufmann. | |
| 12:00 | End of opening ceremony | |
| 13:00 | Lunch | |
| | | |
| | Plenary Session (Chair: Bruno Kaufmann) | Hiwon |
| 15:00 | Roundtable on the Options and Limits of Modern (Direct) Democracy across the World: Short movie, Brief stories, reports and updates from across the world | Village |
| 16:00 | Q&A | |
| 16:30 | The Democracy of Asia’s Emerging Democracies ▸ Working program proposal for Asia by Raj Liberhan (Director/ India Habitat Center, IRI-Asia) | |
| 16:45 | Direct and Participatory Democracy in Korea ▸ Presentation by Seung-Soo Ha (Professor/ Jeju National University Department of Law) | |
| 17:00 | End of 1 st day session | |

| Date/Time | Events | Location |
|---------------------|--|------------------|
| 9/15 (Tuesday) | Day 2. U.N. INTERNATIONAL DAY OF DEMOCRACY | Hiwon Village |
| 09:30 | Introduction of the Thematic Workshops and Participants by Bruno Kaufmann | |
| 10:00 | Thematic Workshops – Session 1 a) Education & Infrastructure Forum b) Local DD Forum c) Activist Forum d) Transnational Democracy Forum | |
| 12:00 | Lunch | |
| 13:30 | Thematic Workshops – Session 2 | |
| 18:00 | Public Event on the International Day of Democracy with brief statements, cultural elements and live videolink to Sarajevo (Omnibus Tour) | |
| 9/16 (Wednesday) | Day 3. CONCLUDING PLENARY (Chair: Bruno Kaufmann) | Hiwon Village |
| 09:00 | Reports from the thematic forums & discussions | |
| 10:30 | Coffee Break | |
| 11:00 | Concluding Plenary Keynote: “Popular Sovereignty & Globalization” by Adam Lupel (Editor/International Peace Institute) | |
| 11:30 | Into the Future of Modern Direct Democracy – Plans and Priorities ▶ “Bringing American Initiative & Referendum Process Forward”: on the Way from Korea to California, by Robert Stern (President/ Center for Governmental Studies) | |
| 12:00 | Towards the 2010 Global Forum on Modern Direct Democracy ▶ Conclusion note & Action plan ▶ Greetings by the sponsors: In-won Choue (President/ Kyung Hee University) | |
| 12:30 | End of concluding plenary | |
| 13:00 | Lunch | |



Figure 14.8. Lee facilitating the opening ceremony



Figure 14.9. Kaufmann delivering introduction statement



Figure 14.10. Regional assessment of DD
(from left to right: Mathews, Casiple, Lee, Schiller)



Figure 14.11. Reifstab's opening keynote address



Figure 14.12. Outside the venue
(Hiwon Village)



Figure 14.13. Participating in discussions (photo by Jordan Cibura)
(from left to right: Hayashi, Zuesongdham, Schiller)



Figure 14.14. Reporting on DD from across the world
(left to right: Réti, Slavov, Kaufmann, Büchi)



Figure 14.15. Ha introducing Korean case of DD



Figure 14.16. Lupel delivering concluding keynote
(photo by Jordan Cibura)



Figure 14.17. 2009 GFMD participants at the Korea DMZ Peace-Life Valley

Outlook: The 2010 Forum in San Francisco

Main Theme: “Constitution Making and Direct Democracy”

Date: August 1~4, 2010

Special features:

- *Briefing Tour of American Citizen Lawmaking (July 29 ~ 31)*
- *U.S. Forum on Initiative and Referendum (July 31 ~ August 1)*
- *U.S.-Swiss Comparative Academic Forum (August 3)*
- *Global Working Group Meetings (August 3)*

Concept Note:

Around the world, direct democracy provides the only avenue for citizens to adopt new constitutions or amend the old ones. At the same time, those constitutions govern direct democracy.

In 2010, Californians will vote on ballot initiatives that decides whether to permit calling a special convention to rewrite the constitution of the largest state in the U.S. If approved by the voters, it will be the third such convention in California’s history – and the first since 1879. Among the parts of the constitution likely to have the most changes are the rules that govern direct democracy.

In San Francisco, exactly a century after a local lawyer convinced Californians to adopt the most robust direct democracy in the Americas, we meet to answer two questions: What are the best ways to use direct democracy for the making and remaking of constitutions? And what systems and structures of direct democracy belong to those constitutions?

In San Francisco, where the Golden Gate Bridge marks the intersection of the continent and the ocean, academics, journalists and political leaders will gather to discuss another intersection – that between constitutions and direct democracy.

The 2010 Global Forum on Modern Direct Democracy seeks to reflect on the factors that have limited the growth of direct democracy in North American (and indeed, in so many places around the world) states, provinces and local governments. What are the available paths to building direct democracy into federal constitutions around the globe?

Do not miss the opportunity to join this annual global meeting of direct democracy professionals from across the world. After Aarau, Switzerland in 2008 and Seoul, Korea in 2009, this is the third Global Forum on Modern Direct Democracy jointly hosted by the Initiative and Referendum Institute Europe, the Korea Democracy Foundation, and the Center for Governmental Studies in Los Angeles. Other supporting organizations include Citizens in Charge Foundation, Institute for Government Studies, New America Foundation, Initiative and Referendum Institute (U.S.), Initiative and Referendum Institute Asia, C2D (academic forum), Zocalo Public Square (events) and many others.

Possible keynote speakers:

- *Arnold Schwarzenegger, Governor of California*
- *Gavin Newsom, Mayor of San Francisco*
- *Paul Jacobs, President of Citizens in Charge Foundation*

For more information, visit <http://www.worlddemocracyforum.info/>.

15

Education

Navigating around Popular Votes on Substantive Issues

Rolf Büchi and Bruno Kaufmann

At the 2009 Global Forum on Modern Direct Democracy in Seoul, educators, administrators and activists from several countries discussed a variety of initiatives to educate more broadly the foundations, developments, options and limits of initiative and referendum procedures and practices around the world.

In many countries, initial efforts have focused on informing of the available popular rights – for example, on the website of the Electoral Commission of New Zealand – or the procedures to be considered such as the voter education schemes in the Philippines. In some countries, like the United Kingdom, pilot educational materials have been produced to contribute to a broader understanding of how direct democracy can work. However, all those efforts are still very much in the beginning, and there is little cooperation and networking on the specifics of modern direct democratic education and infrastructure.

Based on this assessment, the ad-hoc working group in Seoul agreed to establish a more comprehensive and sustainable working plan, linked to a new online platform and community tool to be developed in the framework of the new global information and learning website, the IRI Navigator to Modern Direct Democracy (www.dd-navigator.com). This navigator will offer a world map

featuring procedures and practices of modern direct democracy, based on a universal typology of popular vote procedures developed by IRI-Europe and its partners.

Typology of popular vote procedures

It is necessary to design a typology to bring order upon the existing chaos of different popular vote procedures. It is a classification of popular vote procedures into different types and forms based on the common characteristics. Such a typology is a prerequisite to make the large number of direct democracy procedures all over the world comparable and well-defined. On the one hand, a typology is needed to avoid confusions in the discussions of direct democracy. Confusions arise when different types of procedures are designated the same name, like when the word “referendum” is used indistinguishably for authorities’ controlled popular votes and real referendums. Inversely, a good deal of confusion results if the same procedure is given many different names; for example, confusion will be caused if an agenda initiative is also called people’s petition, popular initiative, and people’s proposition. On the other hand, different countries use different juridical terminologies. Without a typology, it is not possible to compare the repertoire of popular vote procedures among countries. The IRI Typology distinguishes between 3 types of popular vote procedures that deal with decisions regarding substantive political issues – INITIATIVE, REFERENDUM, and PLEBISCITE – and contains 10 different forms of procedures.

World map

The idea of the *World Map of DD* is simple and straightforward: Move the cursor on the world map to any place, and, by clicking, you get reliable information on the status of DD at that particular place, tools (procedures) available (on all levels), a list of popular votes that have taken place (if any), current votes, actions and actors, and, in the future, also a quality assessment of the available DD tools. Obviously, the task of collecting and maintenance of all the necessary data is not easy, and how far it can go depends on the available resources.

Guide

The *Guide to DD* is perceived as a playful e-learning tool that facilitates the acquisition of knowledge of direct democracy by interested people, anytime and anywhere. We are still working on a prototype version of the *Guide to DD*. Its main aim is to transmit basic knowledge and to deepen the understanding on modern DD based on the study of various real world examples. Throughout the *Guide to DD*, direct democracy is considered from global, comparative and historical perspectives and the nature of its process is emphasized. While the primary target group is those interested in knowing more about direct democracy, with more special knowledge, the *Guide to DD* can and shall be customized for many different target groups.

The global working group on education and infrastructure

While there will be many opportunities to become involved in the making of the *World Map & Guide*, we would like to invite the readers of this publication to join the new global working group dedicated to educational efforts and the development of DD-related infrastructure. By the 2010 Global Forum, we will map the issues put forward, structure the network and cooperation, and propose a working plan for the next five years.

16

Local

A Global Outlook on Participation

Theo Schiller*

Local self-government is vital for a system of democracy and for opportunities for citizens to participate in local affairs. The workshop intended to reflect on potential contributions of direct democracy to democratic and social development in the context of local democracy. We exchanged information from countries represented about the overall context of democracy and main challenges to democratic development, available forms of direct democracy like citizens' initiatives [PCI, PPR] or referendums called by local authorities [ATP], and procedural requirements like admissible subjects, signature quorums, validity of votes, etc. Problems of the practical usage of procedures were also discussed in order to identify examples of best practices and conditions of direct democracy supportive of local development. Finally, we collected some ideas on how to learn from the experience of various countries and improve the conditions for developing local direct democracy and democratic participation at large.

At the workshop deliberations (1) experts participated from India, Indonesia and Thailand as well as from Austria, Germany and Switzerland. Some more general information and considerations on other countries are added in a separate section (2).

* Substantial contributions by *Abdi Suryaningati* of the Civil Society Alliance for Democracy (Jakarta, Indonesia) in co-moderating the workshop are gratefully acknowledged.

1. *Workshop Deliberations*

1.1. Definition of direct democracy

Local democracy can be regarded as a vital part of any democratic system. This level of participation provides opportunities to articulate those needs and preferences which are closest to personal life and the values and environment of social community. At this level it is possible to participate in the way of personal interaction, to join interest and civil society groups, and to deal directly with issues of local relevance. Local activities can, therefore, also serve as an important experience for political participation at more general levels. Thus, the relevance of local democracy for overall democratic development cannot be over-estimated.

- There is broad agreement that direct democracy should not be understood in a narrow way but integrated in a broad vision of democracy. Direct democracy should be seen in close connection with representative democracy and its development; it serves as a complement or supplement to representative democracy.
- Democracy in general means different ways of the people's "choice," consisting of the representative system (political parties) and in addition of broad opportunities for participation in various formal and informal ways. Within such a broad framework of participatory democracy direct democracy provides formal institutions for participating in decision-making on political issues.
- Direct democracy must open a democratic system for more participation, and for more transparent and accountable public policy-making. Participatory democracy including direct democracy should secure popular legitimation and popular control over political decision makers.
- Direct democracy contains various forms of procedures like agenda initiatives [AMI], full citizens' initiatives leading to a popular vote [PCI, PPR], consultative and binding popular votes [LOR, ATP], etc. Not only one, but several of these forms should be available in a local democratic system, and requirements must really allow citizens to use these procedures and express their political will.

1.2. Local democracy – country assets and challenges

In looking at the experience of different countries it is important to see the broad picture of local politics and local democracy. What is the status of local self-government? How do local elections of representatives work? How is the overall development of local participation? In the Asian and European countries represented the situations are very different:

India:

Substantial devolution of powers to the village level has taken place over some time. Also, elections of local leaders exist at all levels of local government. Formal processes which allow citizens to participate in local decision-making, e.g. in the way of formal “consultations,” are, however, missing. On the other hand, many activities of influencing local decision-making in *informal* ways can be observed which means that elements of participatory democracy are present. Formal procedures of citizens’ initiative or referendum, however, have not yet been established. In sum, some developments towards participatory democracy are under way but there is still a long way to go.

Indonesia:

This country also presents a mixed situation. Direct elections of local leaders have been institutionalised at all levels of sub-national politics like province, district and village. A legal base for direct democracy does, however, not exist in the constitution. For a broader picture of democratic participation it is important to look at the patterns of social groups, and there exists a very fragmented civil society of economic groups and religious groups. So, quite often some groups dominate in a locality while other groups are unorganised and not represented adequately. Some interesting developments, however, can be found in some districts where forms of public participation in budgeting are practiced. In some other districts people’s forums are invited to submit proposals for public policies and to monitor implementation. But these forms of participation are not yet distributed broadly. For the future of local democracy some main developments would be needed: More autonomy should be granted to the district level. In terms of the overall structure of political parties the party machines are dominant at the national level whereas parties at the local levels are very

weak. There should be more autonomous and broader party groups at the local level to strengthen representative democracy and at the same time open more opportunities for participatory democracy which could lead away from the patterns of clientelism around powerful local leaders.

Thailand:

The broader situation of participation is basically not positive, not even in terms of representative democracy. Political parties are not rooted locally, and the process of political decision-making is very much centralised, with the consequence that people do not feel represented. Some beginnings can be observed, however, since there is some more participation in decision-making since 1997, and more people are aware of their rights to participate.

For direct democracy, recently (since 2007) three constitutional provisions are available:

- An option to recall municipal leaders, for which a signature quorum of 50% of registered voters is required, and a valid ballot vote needs 75% of votes cast are in favour.
- An initiative right to present proposals to legislative authorities (agenda initiative [AMI]) with the requirement of signatures of 50% of registered voters.
- A popular vote called by authorities [ATP] (the implementation law still missing).

This means that these formal procedures are combined with very restrictive requirements which are extremely difficult to meet.

Changes wanted for democratic improvements in local politics in Thailand will be the election of local leaders (so far they are appointed) and an adequate devolution of power to the local level. Thus, it will be a long journey for participatory and direct democracy to develop.

Austria, Germany and Switzerland:

Some short comparative information on these European countries provided

a contrasting picture, based on well-established local autonomy and direct elections of mayors and local assemblies. As is well known, Switzerland has the most elaborate system of direct democracy at the national, the cantonal, and also at the municipal level with very few restrictions on admissible subjects and low requirements for initiatives. In Austria, an agenda initiative [AMI] is possible and much used at the national level, whereas at the local level only consultative popular votes can be called. In Germany, since 1990 procedures of initiative and referendum have been established throughout the 16 regional states (before that time only in the state of Baden-Wuerttemberg). For a citizens' initiative [PCI], signatures of 10% of registered voters are required in a majority of states; in some states the requirement is lowered down to 3% in large cities. For a valid ballot vote, however, often an approval quorum of 25% of all registered voters is needed. There are also some restrictions on admissible subjects, particularly on financial aspects. In practice, it is quite clear that low requirements make frequent usage possible, like in Bavaria, Hamburg, and recently in Berlin. Until 2007, some 4,500 citizens' initiatives and some 2,200 popular votes on substantive issues have taken place in German municipalities. A culture of political participation seems to support more frequent usage in West Germany and less in the Eastern parts.

1.3. Goals for the future:

Despite major differences between the countries reported here, many aspects have been discussed which may apply more or less to the other countries as well.

More general goals are that participation in the broad democratic sense should be strengthened, particularly for underprivileged groups and in rural areas where the level of education is lower than in urban areas. Marginalized groups should gain equal access to use all democratic ways of participation including direct democratic procedures. An important goal will be to support the ideal of well-informed citizens and provide adequate education opportunities since the complicated policy decisions of our times need qualified information and communication.

Several goals refer to the improvement of institutional conditions:

If a constitution provides participation rights, particularly mechanisms of direct democracy (like the referendum in Thailand), it should be self-evident that this must be implemented.

As an instrument of popular control the recent introduction in Thailand of a recall mechanism for local leaders seems also attractive for other countries since this was also advocated by participants from Indonesia. The issue of establishing independent election committees at the local level has also been raised from an Indonesian view; this would also be a prerequisite for procedures of local direct democracy. The right to vote in local elections and in local popular votes on substantive issues should not be restricted to citizens but include local residents who are non-citizens. In local politics basic decisions are taken on immediate living conditions of all residents, and this will become ever more important in societies with growing mobility for economic and other reasons. This applies also, as an unsolved problem, to Switzerland and Germany: in the latter country, local voting rights for non-citizens are granted to citizens of E.U. member states but not to non-E.U. citizens which would require a constitutional amendment.

In broader terms of democratic development, the need for more political organisation and activation of civil society has been mentioned. In several Asian countries there seems to be an urgent need of well-rooted local political parties which can articulate and represent popular needs independent from national party structures. There was strong support from many sides for local consultation processes open for representing “the voice of the population” for basic social needs like schools, education for all, medical services, and legal services. Citizens and residents who are non-citizens as well as the young generation should be allowed and able to articulate themselves and vote in such mechanisms.

An important dimension of the political process and local participation is linked to local self-government in general: local fiscal autonomy, which very often is missing, would be the basis for local responsibility. Thus, it would serve as a strong factor of political motivation and support the right of the people to have access to relevant local decision-making.

1.4. Strategies and designs

There will not be the one strategy to improve democracy at large or introduce direct democracy. To realize the aspirations and goals in various countries means to consider the heterogeneous conditions in the different societies and polities – which cannot be tried here. Some general aspects came up, however, which seem to be relevant for more than one of the countries involved.

First, some *preconditions* for institutionalising a framework and making use of direct democracy can be identified:

- Direct democracy as an institution must be integrated in a meaningful environment of overall democratic governance offering different ways of political participation at all levels of government.
- The principles of free and fair elections must be guaranteed and apply to representative as well as direct democracy. This implies the establishment of independent elections committees, the right to nominate independent candidates, and the opportunity to freely present independent proposals.
- For the local level, decentralized powers are necessary to make participation relevant, and this must include also more fiscal responsibility.
- Education and good public information are important preconditions for citizens to understand the relevance of public affairs, and this will support a participative culture which in turn can be reinforced by decision-making in forms of direct democracy.
- It will also be required that propositions presented for an initiative or referendum must be compatible with human rights for which some early control mechanism may be set up.

Several main goals for institutionalising direct democracy and for creating a productive design have been supported from different backgrounds: In many countries, the constitutional basis for direct democracy is still deficient, so constitutions should include the basic institutions, and implement laws which establish a well-designed legal framework for initiatives and referendums.

Criteria for admissible subjects should not be narrowly defined but rather broad, and include:

- allocation of local budget,
- taxation system,
- provision of basic social services,
- support forms of economic co-operation,
- measures for developing the cultural community.

The most important goal for designing these instruments will be to make participation in direct democracy substantial and a relevant experience to all people, particularly to the lower and middle groups of societies. The right to initiate policy proposals should be available to minorities and marginalized groups, and therefore only low procedural requirements should apply.

It should be considered who decides on the design and the procedural regulation. Whereas very often jurisdiction for municipal direct democracy lies with national legislatures or those of regional states, the power to regulate the procedures of local direct democracy may also reside with the municipal self-government.

2. *Further Considerations on Other Countries*

Since only a limited number of countries from the Asian region have been present at the workshop, some additional information and consideration on other states and areas may be added.

The Asian countries in which direct democracy at the local level has made important steps of development should be mentioned. The first one is the host country of the conference, *Korea* herself, where over the last two decades instruments like local popular votes on substantive issues and, more recently, a citizens' initiative and a procedure for recall have been introduced. To learn more about the regulations of these procedures, their usage and restrictions, and the practical problems, readers are referred to the thorough analysis by Dr. Seung-Soo Ha in this book. The second country is *Japan* where also local popular votes on substantive issues on various subjects and local votes on the recall of assemblies, assembly members or chiefs have been regulated by the Local Autonomy Law, and also other forms of self-organized participation and

the “public” could develop. Dr. Yasuyoshi Hayashi provided an informative overview also in this book. It may be added from more general sources that many municipalities in Japan called popular votes on nuclear power and nuclear waste issues in their areas. *Taiwan* is the third country in which many municipalities have organized local popular votes, not only on subjects of local self-government but also on matters of national planning which affect their territory or environment. Taiwanese experts will have to be consulted on these developments.

In *European countries*, we find a rather heterogeneous picture of direct democracy at the national level (see my overview: *Direct Democracy in Europe*, in this publication), and the same hold true for the level of local politics. On the one hand, there are countries where many referendum votes take place at the level of national government, like Ireland or Denmark, which have no initiatives or referendums in local politics. On the other hand, in states like Czech Republic or Norway which are without relevant national popular votes on substantive issues, some activities of direct democracy can be observed at the municipal level. Generally speaking, states which are rather hesitant to provide their citizens with instruments of direct democracy seem to take a first step by introducing popular votes called by authorities of local government (mayor, assembly), whereas states with more open attitudes towards citizen participation would rather include the initiative right. So, Norway or Finland mainly use the top-down popular vote, and similarly France opened the local referendum vote door, close to her national model of authority’s triggered popular vote (president). In Germany where, since 1990 up to 2005, local direct democracy has been introduced in all regional states, the citizens’ initiative has been the main instrument while in some states a referendum vote called by the local council (assembly) can also be held. Initiatives are still restricted in some states by rather high signature quorums (often 10% or more of registered voters) and high approval quorums (often 25% of registered voters) which must be included in a voting majority. In Italy (with national and regional powers of regulation) the local citizens’ initiative also corresponds to the national instrument, with rather low signature quorums required on the one hand, but with a high turn-out quorum (up to 50% of registered voters) on the other.

In some states instruments of local direct democracy are still very close to representative institutions. For instance, the United Kingdom recently offered an initiative to decide whether the mayor should be elected directly or indirectly by the local council (which had not been used very often so far). In Poland, a citizens' initiative can demand the recall of local councils (and recently also mayors), and for about one decade this has been the instrument used most often. Minor versions of recall mechanisms exist in other countries – for example, in Germany where the recall of the directly elected mayors can only be initiated by a qualified majority of the local council and then taken to a referendum vote.

There is also a wide range of subjects admitted to local initiatives and referendums. Germany again is rather restrictive by excluding tax matters and restraining expensive projects, and excluding local zoning plans in many regional states. By contrast, financial matters are admitted in all Swiss municipalities; in many of the municipalities, referendum votes on very expensive projects or on substantial loans are even mandatory. The majority of countries, however, regulates financial matters in a rather narrow way and may not allow in popular votes more than a limited form of local tax matters like in Poland.

In other subject areas which are often allowed and used, mergers or separations of municipal territories have a top position in popular votes (sometimes even mandatory) and in initiatives, as can be observed for instance in Hungary, Poland or Sweden. Quite frequent are also issues around child care facilities and schools, and other social and cultural services. Streets, traffic noise and environmental issues relating to business projects can also be found rather often. Public transport, public utilities and their rates quite often are dealt with in initiatives but not always are these subjects legally admitted. It would be too ambitious to go into more detail here on these issue distribution in the various countries. Hopefully, I was able to give a first impression of some tendencies and the range of subjects.

As has been mentioned in passing, many of these developments in local direct democracy began rather recently. This applies, of course, for the East European countries which only gained their democratic freedoms twenty years ago. Yet, it is also true for Germany, Great Britain and France where these measures

also have been introduced in about the same time period. In Italy, initiative regulations by national legislation and the regions started somewhat earlier but only gained momentum since the 1990s. The Netherlands and Sweden also provided more room for local participation in that period. The latest formal innovation has been achieved in Bulgaria with a new law of June 2009 which offers direct instruments of participation at the national level and in local self-government. In many countries, other forms of participatory democracy have lately been tried and developed, like participatory budgeting in Spain and other areas. It seems that a growing need for more participative ways of governance may have been realized by political elites and local administrators, as well as by citizens and civil society. Not only formal institutions of local direct democracy have become more frequently available and used in practice in many European countries, but a tendency towards a more active and participatory political culture seems to be under way. One of the sources for that may be the growth and differentiation of civil society which also gained much from increased levels of education and new patterns of media access. In the same vein, existing or expanding channels of democratic deliberation and decision-making may in turn enhance the opportunity structure of civil society. This looks like an optimistic model for self-sustaining growth of a better democracy. This must not be confined to European, other Western or highly developed Asian societies. Communication and learning relationships between continents and cultures can be helpful to make productive steps ahead—and against the strong factor of decay of democracy.

Practical note: Support for common activities in developing direct democracy

As the conference has shown, the exchange of information and experience across borders is most valuable. To extend this opportunity, **a website and a blog** will be established in framework of the new “Navigator to Modern Direct Democracy” in the spring of 2010 so that everybody can exchange information and ideas, document best practices, find literature and experts, and communicate about strategies.

17

Activist

Learning through Network

Angelika Gardiner

At the 2009 Global Forum on Modern Direct Democracy, a workshop on DD activism was held. Participants came from Korea, Mongolia, Indonesia, Hungary, Japan and Germany. The focus of the Activist Forum was on the more practical aspects of direct democracy.

In the beginning, speakers from five Korean popular initiatives talked about their experiences with participatory democracy on a local level. Despite their very different topics – participatory budgeting, childcare organization, school meal ordinances, recall movement and anti-nuclear waste disposal movement – they all had to face practically the same problems as every other citizens' campaign elsewhere. Therefore, it was considered worthwhile to share experiences across the globe. They might help other activist groups to overcome the inevitable obstacles in the process from popular initiative to successful popular vote.

Especially, the speakers from Hamburg, Germany, who launched over a dozen campaigns during the last twelve years, had a few useful hints. For example:

- **Authorities try every trick in the book to prevent the activist groups from being successful.** To win a popular vote apparently requires certain similar characteristics in activist groups. Most important is this: There is no success without having a vision, determination and endurance. And if you truly believe in your cause, never give up. Otherwise, the opposing authorities will have won.
- **It is very important to formulate the law or question** you want to put in front of the citizens as carefully as possible. Later, if courts decide what you want to achieve is unconstitutional, all your efforts will have been in vain. Campaign slogans must be clear and easy to understand – otherwise, you waste too much time trying to explain to people what it is all about. Messages should have a positive note!
- **You want to get the necessary majority of signatures.** Therefore, it would be a mistake to lean too strongly towards the political left or right. Usually, you find the majority in the middle of the road. So if the left supports your initiative – make sure you have supporters on the right as well. If trade unions are on your side, try to find friendly employers, too. If one religious group sides with you, approach others for support as well.
- **Nothing is for free, so money is an important issue.** But never let yourself become dependent on just a few big sponsors. Fundraising should address an audience as wide as possible. If many people each contribute small sums, they will feel more like they are a part of the movement and they will more easily be ready to help out when the going gets tough (which it inevitably will).
- **Not to have a big pile of campaign money enhances creativity:** If leaflets, posters and video-clips look too glossy, people will become suspicious and ask immediately: where does the money come from? If the material looks too home-spun, people will not take the initiative seriously enough. To find the right balance takes a lot of creativity!
- **It is easy to have good ideas – it is not so easy to put them into action.** Do not discourage supporters who come up with unusual campaign ideas, but do not waste, either, too much effort, time and money on suggestions that are very difficult to organize or appeal only to a small number of people.

- **High visibility at all times is better than a few big demonstrations.** Wherever they go or drive, people should stumble over your messages. Do not sneer at old-fashioned posters on street corners – there still is no better way to make your campaign known! And do not overestimate the Internet – there are still a lot of people out there who use computers only to make a date or find out what is on in the movies.
- **Nothing drives people away faster than endless discussions on details** which better are sorted out in small working groups. Time limit must be set for every meeting and kept at all times. This way, meetings become more efficient and motivating.
- **It is not enough to write a new press release every few weeks.** Talk to the journalists frequently, keep in contact with them, and offer them exclusive interviews or photo-shootings. Create news! Pro and con discussions on TV-shows are a good way to get the viewers interested. Nothing attracts the public and the media more than successful campaign activities.
- **Never forget the fun element in a campaign:** Actions that seem to be a little bit crazy attract the media and new followers. To keep volunteers' motivation strong over a long period of time, it is wise to organize a barbecue party or some other group event every now and then. This way, volunteers get to know each other better, become more dedicated to the cause, and often come up with new campaign ideas.

It was generally agreed that, wherever possible, there should be a non-partisan institution that watches over the implementation and regulations of direct democracy. Mehr Demokratie in Germany is such an example. The main task of German NGO Mehr Demokratie is to improve and introduce instruments that make indirect and direct democracy more democratic – e.g. electoral reforms, information rights, and user-friendly popular votes on substantive issues that are binding for the government.

Before the upcoming 2010 Global Forum on Modern Direct Democracy takes place in San Francisco, the activist working group will try to set up an online community platform under the new Navigator to Direct Democracy, which will be launched in early 2010.

18

Assessment

The Prospects for Transnational Direct Democracy

Saskia Hollander

Introduction

Whereas in the last two decades democracy as such was believed to have faced a global “triumph” (Fukuyama 1989), today the democratic functioning of many deeply-rooted representative political systems is being challenged. After the first transformation from the undemocratic aristocracies and monarchies to Athenian city-states, and the following transfer from the latter into national-level representative democracies, the traditional nation-states are now facing a third democratic renewal (Dahl 1989; 1994). Within the current transformation, national democracies increasingly lose political, economic, and cultural autonomy due to the growing importance and authority of international and transnational governance structures, which are said not only to have an effect on their administrative effectiveness and territorial sovereignty, but also on vital democratic representative procedures (Habermas 2001; Dahl 1989; 1994).

Due to the process of globalization – understood here as the “variety of processes that together increase the scale, speed, and effectiveness of social interactions across political, economic, cultural and geographic borders” (Lupel 2009: p. 5) – many political and economic issues have gained transnational

characteristics and, therefore, can no longer be tackled on the national level alone. Decision – and policy – making processes on a growing number of crucial issues are shifted to new transnational layers of political authority, where they are excluded from national public control (Scharpf 1999; Stiglitz 2003). In this context, national polities are faced with a trade-off: in order to assure output effectiveness, national governments feel the pressure to cooperate within the international and transnational order, but this, at the same time, seriously decreases the capacity for national citizenries to participate within the political process. This “democratic dilemma” (Dahl 1994) challenges the current functioning, as well as our understanding, of representative political systems. Yet, democratic losses on the national level are not being compensated at the transnational level, as international organizations, such as the IMF and the World Bank, are believed to suffer from lacking democratic institutions, weak accountability, and modest abilities for equal interest representation (Zweifel 2006).

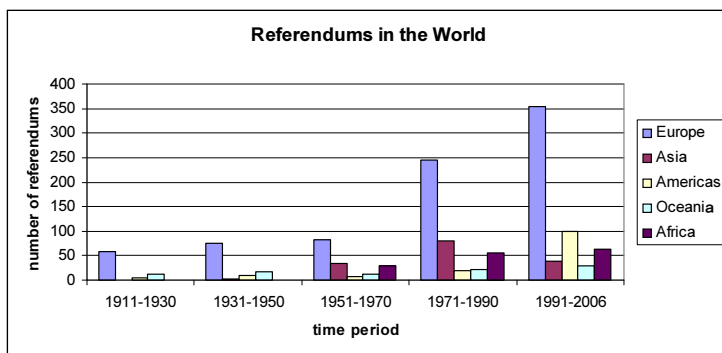
In this context, it has been put forward that modern democracy might require a new institutional framework. Hence, the central question that will be addressed in this contribution is how our representative democratic political systems can be revitalised in the context of these transnational challenges. Whereas different approaches towards transnational democracy can be distinguished, it is increasingly recognized that the representative framework alone cannot close democratic gaps, and popular rhetoric claims that the incorporation of direct forms of democracy will provide the panacea for contemporary democratic ills (i.e. LeDuc 2002; Barber 2003). In the following sections, prospects for such democratic restructuring of transnational democracy will be outlined.

Transnational democracy: New concept, old framework?

In the light of such democratic revitalization, an increasing number of representative democratic systems are already experimenting with the implementation of alternative democratic institutions such as referendum and citizens’ initiative. In fact, as Scarrow argues, there is evidence of a clear “move away from conventional, electorally oriented, political behaviour towards unconventional, direct-action activities outside the electoral arena” (Scarrow 1999: p. 345). In addition, aside from the actual implementation and use of direct democratic institutions, ever since the 1990s, the issue of direct citizen

participation has been the subject of political debate in a large number of Western European democracies (Kersting 2007: p.33).

Based on data provided by Kaufmann (2007: p.151), *Figure 18.1* provides an overview of the frequency of the usage of popular votes on substantive issues in the world. Yet, despite the overall increase in democratic practices during the last decade, modern direct democracy still stands at its beginning. Indeed, it seems that the alleged democratic rapture is clearly a European phenomenon¹⁾ as the remarkable boost is not as striking in other non-European parts of the world. Even in Europe though, direct democratic instruments remain to be tools in the hands of the political elites, as most popular votes held in the last century were either prescribed for in the country’s constitutions [LOR], or initiated by the president, government or (members of) parliament (Council of Europe 2005) [ATP]. In addition, the popular initiative –the right of citizens to initiate a popular vote [PCI] –is far less common. Citizens of only 7 countries²⁾ have a right to call a binding popular vote on certain issues (Council of Europe 2005). In addition, other problems remain, for example, with regard to information provisions, the signature gathering, and cross-country differences in terms of regulations for implementation.



Source: Kaufmann 2007: p. 151

Figure 18.1. Comparative Frequency of Popular Vote Usage on Substantive Issues

1) A small notification in this respect is that Switzerland –with a vivid direct democratic tradition – is part of this analysis, due to which the outcome might be biased. However, even without taking Switzerland into account, the increase is remarkably higher in Europe than in other parts of the world.

2) Hungary, Italy, Latvia, Lithuania, Poland, Slovakia and Slovenia

Theorizing transnational democracy

On a theoretical level, political theorists seek to understand this new democratic reality and reconstruct the practice of representative democracy within the context of the transnational order. Scholars point to the tension between the international global market structure and the nationally rooted system of democratic rule and decision-making, due to the fact that citizens no longer have the ability to influence vital democratic decisions (McGrew 2004). As these decisions are increasingly made on the transnational level, where they are absent from public scrutiny and control, essential democratic conditions are ever more being challenged (Lupel 2009). In this respect, the growing literature on transnationalism distinguishes four basic approaches to grasp the concept of transnational democracy, i.e. *liberal internationalism*, *radical pluralist democracy*, *deliberative democracy* and *cosmopolitan democracy* (Kaufmann 2007).

For *liberal internationalism*, the essence of transnational democracy is the cooperation between states within the international cooperation framework based on the rule of law (McGrew 2004). To democratize the global governance system, liberal internationalists maintain that it is sufficient to increase transparency and accountability within this international framework. *Radical pluralist democracy* claims that this might not be sufficient. Rather, it emphasizes the guaranteeing of more equal interest representation on the transnational level and proposes a global democratic governance structure within which there is scope for direct democratic procedures and self-governance (McGrew 2004). Following Habermas' (2001) model of discursive theory, *deliberative democracy* goes further and points to a necessary creation of a transnational public sphere in which political legitimacy is guaranteed through processes of deliberation rather than representation. Finally, *cosmopolitan democracy* puts special emphasis on the institutional framework necessary to democratize the global order. Interestingly, in contrast to other accounts, cosmopolitan democrats do not perceive globalization as a fundamental threat to democracy, but rather, they perceive global and national democracy as something mutually reinforcing that provide an opportunity for "deepening and extending democracy across nations, regions, and global networks" (Held 1996: p. 353).

Transnationalism and the idea of modern direct democracy

Nevertheless, given the world-wide increase in the usage of direct democratic institutions, it is striking that within the approaches discussed above, mechanisms of modern direct democracy only play a marginal role. The relevant question becomes how these accounts provide scope for direct democratic institutions to enhance democratic legitimacy both within and between national borders. Whereas both radical pluralist democracy and deliberative democracy claim that participatory democratic institutions are necessary to guarantee citizens' inclusion, most scope for direct democracy is accounted for by the cosmopolitan model of democracy. One interesting aspect of the cosmopolitan model is the focus on networks of regional cooperation and the specific role for direct democracy in order to strengthen their legitimacy (Held 1996: p. 358). One explanation for this rather paradoxical interconnection between globalization and regional cooperation is sought in the advantages that are believed to come from enhanced economic and political cooperation, in order to become a competitive actor on the global market and increase legitimacy for the globalization project as such (Hveem 2005). In the next paragraph, special emphasis is put on the process of European integration, which is considered as a testing case for the development of modern direct democracy beyond national borders (Kaufmann 2007: p. 149).

Direct Democracy in the European Union

European integration and the global challenge

The European Union (E.U.) provides an unambiguous example of extensive regional cooperation and is perceived by cosmopolitan democrats as a part of the solution for transnational democratic deficits. As Hug (2002: p. 10) argues: "the European integration process can be seen to some degree as a countervailing effort to a loss of decision-making powers by the nation-states." Paradoxically, however, the E.U. institutions are believed to suffer from severe democratic deficits, as they lack proper democratic procedures and stand in an unambiguous relationship with national polities (McGrew 2004; Schmidt 2005). As Beck and Grande (2007: p. 76) argue: "The transfer of sovereign rights to the supranational

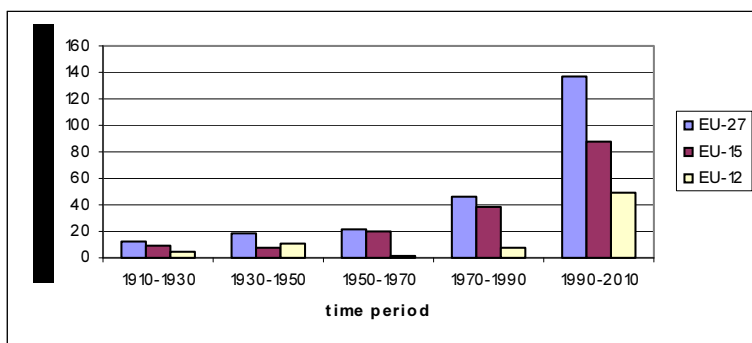
level deprived democratically elected national parliaments of some of their powers without ensuring that the supranational institutions acquired adequate democratic legitimacy.”

In fact, after a long period of ongoing economic and political integration and the characterization of national citizenries by a so-called “permissive consensus,” many E.U. member states are now dealing with a “post-Maastricht blues,” as exposed by growing levels of public dissatisfaction with E.U. democracy (Netjes and van Kersbergen 2005). This era of discontent specifically came above the surface with the Irish “no” to the Nice Treaty in June 2001. As a reaction, six months later, an E.U.-summit was held in Laeken, during which the need to enhance transparency and participation in the E.U. was the subject of serious debate. This summit was followed by a European Convention, to create a “treaty establishing a Constitution for Europe” (TCE), consisting of innovative proposals to deepen the democratic functioning within the E.U. and which, both with respect to its content and the process of its ratification, triggered a clear direct democratic enthusiasm (Kaufmann 2007: p. 143).

In the debate on the vitalization of E.U.-democracy, two main positions can be identified (Beck and Grande 2007). One is based on the model of parliamentary democracy and incorporates the idea that the E.U. can be democratized when the powers of either the European Parliament (E.P.) (i.e. Maurer 2002) or national parliaments (i.e. Smith 1996) are strengthened. In this respect, referendums on E.U.-issues are promoted in order to supplement parliamentary control and make up for the democratic losses that result from parliaments’ lack of involvement in E.U.-politics and their decreasing power to hold national governments accountable (WRR 2007). The other strand of thought maintains that increasing the powers of representative institutions will not be sufficient and that Europe needs a post-national, post-parliamentary democratic system (i.e. Kohler-Koch 1998). Accordingly, Beck and Grande (2007) argue that Europe’s democratic deficit can only be eliminated when citizens are provided with the opportunity to participate directly in the political process – for example, through pan – European referendums and the European citizens’ initiatives (Beck and Grande 2007).

Countrywide popular votes on the E.U. within the E.U.

As shown in *Figure 18.2*, it can be stated that the number of political issues put to referendum vote has indeed increased considerably during the 20th century. In this respect, there seems to be a clear cut-off point between the periods of 1970~1990 and 1990~2010, since the number of issues put to a popular vote in the E.U.-27 has tripled from 46 to 137. However, if we only look at the 15 “old” member states, the picture is more moderate,³⁾ and, in fact, the profound increase in referendum usage appears to be due mainly to the increased frequency of referendum votes in the 12 “new” member states.



Source: www.c2d.ch

Figure 18.2. Popular Vote Usage on Substantive Issues in the E.U.

Interestingly, at least in the last two decades, many popular votes have been dedicated to European issues. In fact, only 6 E.U. member states – Belgium, Bulgaria, Cyprus, Germany, Greece and Portugal – have *not* held such a vote on Europe. *Table 18.1* provides an overview of the nature of the voting issues in the period between 1910 and 2010. As shown in the first column, most popular votes on substantive issues in this period – i.e. 43% – dealt with issues of institutional reform. Of course, this is partly due to the fact that in many countries constitutional amendments have to be approved by the people directly [LOR]. Yet, the second most salient subject indeed seems to be issues related to European

3) In fact, even more moderate when not taking ‘outlier’ Italy into account which has been characterized by a vivid direct democratic tradition since the 1970s, and especially during the 1990s and the first decade of 21st century, more than half of the referendums were held in Italy.

integration, with which 15% of all European popular votes on substantive issues in this period dealt.⁴⁾ This is quite striking, taking into account the fact that “Europe” only became a salient issue after the 1970s. In the last decade, in fact, the proportion of E.U.-related votes was visibly higher.

Table 18.1. Nature of Popular Vote Issues in E.U.-27

| Issue ↓ | I 1910~2010 | II 1910~1930 | III 1930~1950 | IV 1950~1970 | V 1970~1990 | VI 1990~2010 |
|----------------|----------------|-----------------|------------------|-----------------|----------------|-----------------|
| Economics | 14 | 8 | 5 | 14 | 7 | 18 |
| Institutions | 43 | 38 | 85 | 62 | 35 | 38 |
| Foreign policy | 5 | 23 | 5 | 10 | 2 | 3 |
| Ethics | 12 | 23 | 5 | 0 | 17 | 12 |
| Law & Order | 6 | 8 | 0 | 0 | 13 | 4 |
| Environment | 4 | 0 | 0 | 4 | 11 | 3 |
| E.U. | 15 | 0 | 0 | 0 | 15 | 21 |
| Other | 1 | 0 | 0 | 10 | 0 | 1 |

Over time, a range of E.U.-related issues has been subject to the national popular vote. *Table 18.2* provides an overview of all E.U.-related votes from 1970 to 2010. As it can be seen, of the 35 referendum votes on Europe, most were held on countries’ E.U.-Membership (16) and on E.U.-Treaties (15). The one popular vote within the “other-category” marks the only Italian E.U.-vote and dealt with the call to the Parliament to make preparations for the drafting of an E.U. Constitution. Interestingly, turnout during E.U.-related popular voting on issues is rather high. Whereas the turnout in the last European parliamentary elections in 2009 lay around 43% (European Parliament 2009), the average turnout for E.U.-related initiative and referendum votes lies around 66%. In addition, many member states have constitutional provisions for the holding of popular votes on Europe, especially when it comes to E.U.-membership or Treaty-ratification, and consequently, 17 of the 35 E.U.-related popular votes

4) However, if we take Italy out of the analysis, the percentage of referendum votes related to E.U.-issues would have been even higher (around 50% in fact), since, in the period between 1970~2010, only one of the total of 66 Italian referendums was E.U.-related.

were, in fact, mandatory. Interestingly, the outcomes of the decisions were generally positive, as the outcome of 28 of the 35 popular votes was a “yes.”

Table 18.2. Number of popular votes dedicated to specific E.U.-issue

| Issue | Number | Country (Year, Turnout, Mandatory, Outcome) | |
|--------------|--------|---|------------------------------------|
| Membership | 15 | Austria (1994, 82, ?, Yes) | Latvia (2003, 73, Yes, Yes) |
| | | Czech Republic (2003, 55, Yes, Yes) | Lithuania (2003, 63, Yes, Yes) |
| | | Denmark (1972, 90, Yes, Yes) | Malta (2003, 91, ?, Yes) |
| | | Estonia (2003, 64, Yes, Yes) | Poland (2003, 59, ?, Yes) |
| | | Finland (1994, ?, ?, Yes) | Slovakia (2003, 52, ?, Yes) |
| | | Hungary (2003, 46, Yes, Yes) | Slovenia (2003, 60, ?, Yes) |
| | | Ireland (1972, 71, Yes, Yes) | Sweden (1994, 83, ?, Yes) |
| | | | United Kingdom (1974, 64, No, Yes) |
| | | | |
| Treaty | 16 | Denmark (1986, 75, No, Yes) | Ireland (2002, 49, Yes, Yes) |
| | | Denmark (1992, 83, Yes, No) | Ireland (2008, 53, Yes, No) |
| | | Denmark (1993, 86, ?, Yes) | Ireland (2009, 59, Yes, Yes) |
| | | Denmark (1998, 76, Yes, Yes) | France (1992, 70, ?, Yes) |
| | | Ireland (1987, 44, Yes, Yes) | France (2005, 69, ?, No) |
| | | Ireland (1992, 57, Yes, Yes) | Luxembourg (2005, 90, ?, Yes) |
| | | Ireland (1998, 56, Yes, Yes) | Netherlands (2005, 63, No, No) |
| | | Ireland (2001, 35, Yes, No) | Spain (2005, 42, ?, Yes) |
| Euro | 2 | Denmark (2000, 88, Yes, No) | Sweden (2003, ?, ?, No) |
| Enlarge-ment | 1 | France (1972, 60, ?, Yes) | |
| Other | 1 | Italy (1989, 81, No, Yes) | |

Source: www.c2d.ch

Pan-European direct democracy

Whereas the usage of national popular votes on European issues could well enhance accountability and transparency, some scholars claim that this would not be sufficient, as they face the risk of becoming blunt mechanisms in the hands of the political elites. As such, these scholars claim to extend the principle of direct democracy to the European level. One of those instruments is considered to be the pan-European popular vote on substantive issues. As Beck and Grande (2007: p. 78) argue: “Whoever genuinely wishes to democratize Europe cannot

avoid recommending their introduction. This would not only close the gap between institutions and citizens but would also improve the control of European politics.” In addition, the authors point to the community-building function of such European-wide referendums and the possibility that they can democratize and strengthen Europe bottom-up (Beck and Grande 2007: p. 78).

However, such a European-wide popular vote instrument seems to be – at least at the moment – rather surrealistic. Nevertheless, some attempts on the European level are made to integrate direct democratic principles into the E.U. governance framework. Article 11.4 of the “Treaty of Lisbon” – which comes into effect on December 1, 2009 – introduces the European Citizens’ Initiative (ECI), according to which “not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.”⁵⁾ Yet, the ECI is an agenda-setting instrument [AMI] and can be considered as an attempt to overcome current limitations of indirect democracy by providing a new venue for citizens’ participation and inclusion in the decision-making process and enhancing the scope for public scrutiny and control.

Nevertheless, whereas the European Commission has stressed that the ECI could diminish the E.U.’s democratic deficit and bring European institutions closer to the E.U. citizens, special regulations for the ECI’s implementation have yet to be agreed upon. However, the fact that the Commission’s enthusiasm for the ECI was shared by the EP, which has adopted a resolution on the implementation of the ECI, and the fact that already seven ECIs have been successfully initiated (Kaufmann 2007: p. 158), concerns are expressed about the practical implementation in terms of tools of signature gathering, coordination, funding, the political effects of the ECI’s outcome, and the remaining uncertainty in this respect. What seems yet to be necessary is a universal framework of implementation principles in order to guarantee that same procedures and regulations are used across Europe.⁶⁾ Yet, as a final stage of

5) Source: http://europa.eu/lisbon_treaty/full_text/index_en.htm.

6) For example such as is proposed by the Venice Commission, “The Venice Commission and the Code of Good practice on Referendums as an International Standard.”

the implementation process, the Commission has launched a round of public consultation on November 11, 2009 in order to establish such a framework on how the ECI should work in practice.

Conclusions

In the light of global challenges, questions are raised about how to democratize current representative political systems, and how to incorporate mechanisms of modern direct democracy in order to overcome democratic losses within the transnational governance order. In this respect, the cosmopolitan model extensively proposed by Held (1996) and McGrew (2004) is most far-reaching and emphasizes the prospect for revitalizing transnational democracy through regional cooperation networks such as the E.U. At the same time, scholars point to the democratic deficit that the Europe faces itself, in terms of limited scope of national publics to participate in the political process and lacking compensating democratic institutions on a European level. Still, Europe is now believed to face a reformation and has become a test-case for direct democratic mechanisms as shown by increased usage of national referendums on E.U.-issues and pan-European direct democratic proposals such as the ECI.

By way of conclusion, some aspects for further debate and research should be pointed out in this respect. On the conceptual level there is a need to further extend and theorize the idea of transnational democracy and find ways to place the concept of modern direct democracy within this new conceptual framework. This, most importantly, requires a universal definition of direct democracy within which it is recognized that direct democracy as such should not be seen as an end, but as a means to fulfil citizens' needs in an era of increasing transnational pressures. In addition, in this sense, direct democratic institutions should not be perceived as replacement of, but rather, as supplements to representative democracy. On the practical level, special emphasis has to be put on how to incorporate this direct democratic idea within the multiple layers of the transnational governance order and how the influence of citizens can be extended, either through supporting networks of transnational civil society capable of dealing with multiple layers of political authority or by promoting alternative

participatory mechanisms. In this respect, the E.U. has made a serious attempt by introducing the ECI, but at the same time, some practical problems remain apparent – for example, the establishment of universal guidelines and the guaranteeing of suitable levels of inclusion and representation.

Nevertheless, at the end of the first decade of the 21st century, the empowerment of citizens through enhancing mechanisms for modern direct democracy within the transnational democratic order no longer seems to be impossible. In fact, in many parts of the world the necessity to democratize our democracies in the light of current global challenges is felt more than ever, and lessons are continually shared and learned through debate, platforms and specific political programmes of direct democratic conduct, placing the model of representative democracy at vibrant crossroads.

References

- Barber, B. (2003) *Strong Democracy: Participatory Politics for a New Age, Twentieth Anniversary Edition*. California: University of California Press.
- Beck, U. and E. Grande (2007) “Cosmopolitanism: Europe’s Way Out of Crisis,” *European Journal of Social Theory*, vol. 10, no. 1, pp. 67~85.
- Council of Europe (2005) “Referendums in Europe: An Analysis of the Legal Rules in European States,” Report adopted by the Council for Democratic Elections, at its 14th meeting (Venice, 20 October 2005) and the Venice Commission at its 64th plenary session (Venice, 21~22 October 2005).
- Dahl, R. A. (1989) *Democracy and its Critics*. New Haven: Yale University Press.
- Dahl, R. A. (1994) “A Democratic Dilemma: System Effectiveness versus Citizen Participation,” *Political Science Quarterly*, vol. 109, no. 1, pp. 23~34.
- Dryzek, J.S. (1990) *Discursive Democracy*. Cambridge: Cambridge University Press.
- European Parliament (2009) “Election Results,”
http://www.europarl.europa.eu/parliament/archive/elections2009/en/index_en.html
- Fukuyama, F. (1989) “The End of History,” *The National Interest*, pp. 3~18.
- Habermas, J. (2001) *The Postnational Constellation*, trans. Max Pensky. Cambridge, MA: MIT Press.
- Held, D. (1996) *Models of Democracy*. Cambridge: Polity Press.

- Hug, S. (2002) *Voices of Europe: Citizens, Referendums, and European Integration*. Oxford: Rowman & Littlefield publishers, Inc.
- Hveem, H. (2005) "Explaining the Regional Phenomenon in an Era of Globalization," chapter 20 in: Stubbs, R. and G.R.D. Underhill (eds.) (2000) *Political Economy and the Changing Global Order*. Canada: OUP.
- Kaufmann, B. (2007) "Prospects for Transnational Direct Democracy – Exploring the New European Approach to Citizens' Power beyond the Nation-State," pp. 143~162 in: Pállinger, Z.T., B. Kaufmann, W. Marxer and T. Schiller (eds.) *Direct Democracy in Europe*. Wiesbaden: VS Verlag für Sozialwissenschaften.
- Kersting, N. (2007) "Assessing Local Referendums and Innovative Participatory Instruments," in: Delwot, P., J.B. Pilet, H. Reynaert and K. Steyvers (eds) (2007) *Towards DIY-Politics: Participatory and Direct Democracy at the Local Level in Europe*. Brugge: Vanden Broele Publishers.
- LeDuc, L. (2002) "Referendums and Initiatives: The Politics of Direct Democracy," pp. 70~88 in: LeDuc, L., R.G. Niemi and P. Norris (eds.) (2002) *Comparing Democracies 2: New Challenges in the Study of Elections and Voting*. London: SAGE Publications.
- Lupel, A. (2009) *Globalization and Popular Sovereignty: Democracy's Transnational Dilemma*. New York: Routledge.
- Maurer, A. (2002) *Parlamentarische Demokratie in der Europäischen Union: Der Beitrag des Europäischen Parlaments und der nationalen Parlamente*. Baden-Baden: Nomos.
- McGrew, T. (2004) "Transnational Democracy: Theories and Prospects," Discussion Paper Series, *Center for Globalisation, Europeanisation and Democracy: Democratising Processes Beyond the Nation State*, available at: <http://www2.ihis.aau.dk/ged/Mcgrew.pdf>
- Netjes, C.E. and K. van Kersbergen (2005) "Interests, Identity and Political Allegiance in the European Union," paper presented at Euroscepticism Conference, Amsterdam, July 2005
- Scarrow, S. (1999) "Parties and the Expansion of Direct Participation Opportunities: Who Benefits?" *Party Politics*, vol. 5, pp. 341~62.
- Scharpf, F. W. (1999) *Governing in Europe: Effective and Democratic*. Oxford: Oxford University Press.
- Schmidt, V.A. (2005) "The Role of Public Discourse in European Social Democratic Reform Projects," *European Integration Online Papers*, vol. 9, <http://econpapers.repec.org/article/erpeioxx/p0134.htm>

- Stiglitz, J.E. (2003) "Democratizing the International Monetary Fund and the World Bank: Governance and Accountability," *Governance*, vol. 16, no. 1, pp. 111~139.
- Smith, E. (1996) *National Parliaments as Cornerstones of European integration*. Den Haag/London.
- WRR (2007) *Europa in Nederland*, Rapporten aan de regering nr. 78, Amsterdam: Amsterdam University Press.
- Zweifel, T.D. (2006) *International Organizations and Accountability: Accountability, Politics and Power*. Boulder, Colorado: Lynne Rienner Publishers.

19

Standard

Recommendations from the Council of Europe

Boowhan Han

Venice Commission

There have been many names for European organizations such as the European Commission, the Council of the European Union, the European Council, the Council of Europe, the European Union, the European Community, etc. It causes some confusion to the others outside of Europe. Nowadays, the European Union, which is an economic and political union consisting of 27 member states that are committed to regional integration, and the Council of Europe, which is the oldest organisation working towards European integration, are the two main organizations in Europe.

The Council of Europe is based on three pillars: democracy, human rights and the rule of law.¹⁾ The issue of democracy – representative or direct – is therefore crucial for this organisation. This led to the creation of the Venice Commission, which the official name is “European Commission for Democracy through Law.” This commission is the Council of Europe’s advisory body that handles constitutional matters that are understood broadly, including electoral matters and constitutional justice.

1) See in particular Article 1 of the Statute of the Council of Europe.

But the Venice Commission is not an exclusive European organisation, since it is open to non-European countries (9 have acceded up so far). Korea was one of the first non-European states to accede to the Venice Commission in 2006 after years of fruitful cooperation.

After the fall of the Soviet Union, the Eastern European countries wanted to build new democracies and the Venice Commission has been assisting such countries' democratic transition by defining tracks to be followed, in order to ensure coherence. This leads to the definition of European standards, which may be called the European constitutional heritage. Adopted standards by the Venice Commission are the results of independent, impartial study and research by eminent academics, lawyers and wise politicians. The standards apply not only to new democracies but also old democracies in Europe and it could be further applied to all democratic countries in the world. Improvements are possible and necessary everywhere.

The Code of Good Practice in Electoral Matters²⁾ and the Code of Good Practice on Referendums [popular votes on substantive issues],³⁾ on which this contribution will focus, are among those standards.

The Code of Good Practice on Referendums

The Code of Good Practice on Referendums is divided into three parts – referendums and Europe's electoral heritage, conditions for implementing these principles, and specific rules.

In its first part, dedicated to referendums and Europe's electoral heritage, the Code defines the fundamental norms of the European electoral heritage, as they have to be applied to referendums. These norms are universal, equal, free and secret suffrage. Whereas everyone may agree with these principles at first glance, it is different when one looks more in detail at what they should actually mean in order to be really effective. The best example is free suffrage: it includes not only freedom of voters to express their wishes, but also freedom of voters to form an opinion; in turn, freedom of voters to form an opinion includes

2) CDL-AD(2002)023rev.

3) CDL-AD(2007)008rev.

the neutrality of authorities and, in particular, of public media – which is not yet common practice.⁴⁾ Equal opportunity has a specific meaning for referendums: instead of being applicable to parties and candidates for elections, it concerns supporters and opponents of the project. Therefore, it is advisable that, in public radio and television broadcasts for referendum campaigns, equality be ensured between the proposal's supporters and opponents. Equality between the proposal's supporters and opponents is also advisable in terms of public subsidies and other forms of backing.

Clear questioning is a crucial aspect of voters' freedom to form an opinion. The question must not be misleading; it must not suggest an answer, particularly by mentioning presumed consequences of approving or rejecting the proposal; voters must be able to answer the questions asked solely by yes, no or a blank vote; and it must not ask an open question necessitating a more detailed answer. Lastly, electors must be informed of the impact of their votes, and thus of the effects of the referendum (Is it legally binding or consultative? Does a positive outcome lead to the adoption or repeal of a measure, or is it just one stage in a longer procedure?).⁵⁾

The second part of the Code defines the framework conditions necessary for the organisation of popular votes on substantive issues conform to the principles mentioned above. These are:

- Respect for human rights, in particular freedom of expression and of the press, freedom of movement inside the country, freedom of assembly and freedom of association for political purposes, including freedom to set up political parties.⁶⁾
- Organisation of elections by an impartial body.⁷⁾
- An effective system of appeal.⁸⁾
- Stability of legislation must be ensured in order to avoid any manipulation.

4) CDL-AD(2007)008, I.3.1.

5) CDL-AD(2007)008, I.3.1 and par. 12 ff of the explanatory memorandum.

6) CDL-AD(2007)008, II.1.

7) CDL-AD(2007)008, II.3.1 and par. 21 of the explanatory memorandum.

8) CDL-AD(2007)008, II.3.3.

The third part of the Code of Good Practice on Referendums focuses on specific rules applicable to initiatives and referendums and not to elections.

Whereas the need for an electoral process to scrupulously respect a detailed set of rules is never contested, there may be a trend towards admitting the result of a referendum without checking whether the process complies with the legal system as a whole, especially with the procedural rules. However, in a state based on the rule of law, the holding, procedure and effects of a referendum should be in accordance with the law, like any other activity.⁹⁾ This implies also that the substance of texts put to the vote must conform to the superior national law and international law.¹⁰⁾

The Code also puts emphasis on the necessity to ensure procedural validity of texts submitted to a referendum, through the principles of unity of form, unity of content, and unity of hierarchical level.¹¹⁾

More detailed provisions are dedicated to initiatives and referendums held at the request of a section of the electorate (optional referendums [PPR]) and to popular initiatives [PCI].¹²⁾ For example, the Code states that all signatures should be checked (with the original and not only a copy) and payment for the collection of signatures is not suitable.

In order to avoid having to declare a vote totally invalid, a popular initiative – or a popular referendum – should be declared partially invalid where it is possible to modify the proposed text, without distorting it, so that it complies with the law.

When the popular vote is legally binding, the authorities must respect the people's decision. The guidelines provide, for instance, that for a certain period of time (a few years at the most) a text rejected in an initiative or referendum vote may not be adopted by a procedure without a new popular vote. A similar rule applies to the revision of a provision approved in a referendum vote. It is also advisable for constitutional rules relating to initiatives and referendums

9) CDL-AD(2007)008, III.1.

10) CDL-AD(2007)008, III.3 and par. 32 ff of the explanatory memorandum.

11) CDL-AD(2007)008, III.2.

12) See CDL-AD(2007)008, III.4.

to be applied to a (possibly optional) popular vote.¹³⁾

The Code considers that quorums are not suitable. This is particularly true for turn-out quorums, which encourage opponents to abstain in order to prevent the quorum to be reached.¹⁴⁾

Finally, the effects of popular votes on substantive issues (legally-binding or consultative) must be clearly specified in the Constitution or by law.¹⁵⁾

Korean Laws on Popular Votes on Substantive Issues

In Korea, there are 2 Acts relating to initiatives and referendums.

The National Referendum Act provides compulsory popular vote for the amendment of Constitutional [LOR] and optional referendum votes for important national policies submitted by the President [ATP]. The Act also provides voting age, conditions for nationality, electoral registers, restrictions on campaign methods, voting and ballot counting procedures and appeal procedure.

The Local Referendum Act provides that questions submitted to the popular vote are important local policies that give heavy burden or serious impact to the local people and the national policies concerning abolishment, division or annexation of local government, change of jurisdiction, establishment of important facilities, etc.

The referendum can be held by the popular initiative [PCI], by the decision of local assembly or the chief of local government [ATP]. Central government can demand vote from the local government concerning the abovementioned national policies.

The Act also provides the voting age, conditions for nationality, campaign methods and other procedures.

There are some insufficiencies to the Code of Good Practice on Referendums and in Electoral Matters. **The National Referendum Act** provides some

13) CDL-AD(2007)008, III.5 and par. 41 ff of the explanatory memorandum.

14) CDL-AD(2007)008, III.7.

15) CDL-AD(2007)008, III.8.a.

restrictions on campaign methods (although it is rather more lenient than the restrictions provided in **The Election of Public Official Act**, which is the basic electoral law and one of the most restrictive acts concerning campaign methods in democratic countries). **The National Referendum Act** prohibits false or distorted propaganda via broadcast or publication that could harm the fairness of the popular vote process. **The Local Referendum Act** prohibits false propaganda to influence the result of a popular vote. These clauses could violate the Codes.

But, in a broader sense, Korean initiative and referendum acts are generally in conformity with the Code of Good Practice on Referendums. The people's rights of universal, equal, free and secret suffrage are well guaranteed. The Central and local election committees which are the institutions historically trusted by the people are responsible for the administration of the referendums. The bitter experience of the election fraud in the 1960 presidential election that eventually toppled the government with student uprising have made the following elections comparatively free and fair although some elections were marred by money.

However, those clauses of heavy restrictions in **The Election of Public Official Act** and **The National Referendum Act** should be revised.

Conclusion

The Venice Commission, through the Code of Good Practice in Electoral Matters, defined the standards on democracy and elections in a systematic way. The same need was felt in the field of initiatives and referendums, where practice was less developed and the risk for abuses was stronger. This led to the drafting of the Code of Good Practice on Referendums, which includes provisions similar to those applicable to elections, as well as provisions which apply specifically to popular votes on substantive issues. In that way, problems that are often forgotten are settled.

The Code of Good Practice on Referendums has to be disseminated, explained and applied. This is the role for all of us, of all citizens interested in modern direct democracy.

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Yasuyoshi Hayashi is the President of NPO C's (NPO "Coalition for Legislation to Support Citizens' Organizations"(C's)) which is the organization that gave big support to a citizens' movement for the enactment of a Japanese NPO law, which was realized in 1998. He also chairs Japan Hope Institute which has been promoting exchange of citizens, municipalities and researchers between Japan and Korea. Hayashi is an expert in urban planning who founded the Institute of Planning Technology Inc. (PIPT) in 1969 and headed the institute until 2007. He has also worked with the government in urban planning, and received Ishikawa Prize of City Planning Institute of Japan for "a series of researches on and activities for NPOs and community development." He has also engaged in numerous publications such as *An Encyclopedia of Community Development* (Maruzen Publishing, 2008).

Saskia Hollander is a Ph.D. student at the Radboud University Nijmegen where she participated in the interdisciplinary NWO-funded research project "Repertoires of Democracy." Her research departs from the notion that the transformation challenges that come with the process of European integration generate a situation in which popular rhetoric increasingly calls for a new and alternative democracy where an increasing number of European democracies experiment with an implementation of direct democratic institutions to guarantee the legitimacy of their representative systems. Hollander questions whether this had indeed led to a shift from the pure representative repertoire towards a direct democratic repertoire, and what mechanisms exactly underlie this phenomenon.

Jau-Yuan Hwang is a Professor of Law at National Taiwan University (NTU) College of Law. After graduating from NTU and a brief stint of two-year private practice in Taipei, he advanced his scholarship in the U.S. In 1991 and 1995, he earned his LL.M. and S.J.D., respectively, from Harvard Law School. He began his teaching career at NTU in August 1995. Since then, he has been teaching constitutional and international law. From June 2001 to July 2007, he once served as a member of the Central Election Commission. He has argued before Taiwan's Constitutional Court on several cases and has been consulted by the Presidential Office, Executive Yuan, Ministry of Foreign Affairs, Mainland Affairs Council, and other governmental agencies on various legal and policy issues. He has published extensively on issues of judicial review, equal protection, and the legal status of Taiwan, among others, in both Chinese and English. His publications include more than seventy articles and a famous casebook on Taiwan's Constitutional Law (co-edited). In 2006, he edited the book of *Direct Democracy in Asia*, published by the Taiwan Foundation for Democracy.

Bruno Kaufmann has worked with democracy, conflict and development issues since the mid-1980s as a trained political scientist, conflict researcher, and journalist. After a term with the Swiss Development NGO "Berne Declaration," he became the coordinator of a European citizens' network preparing a "transnational constitution with direct-democratic rights." Ten years later Kaufmann became the first director of the Initiative & Referendum Institute Europe, a non-partisan institute for research and education with headquarters in Marburg. Kaufmann has served as an expert for numerous national governments and international organizations including the European Union, the German Parliament, the Council of Europe, International IDEA, and UNDP, and democracy-supporting organizations across Asia such as Korea Democracy Foundation, Taiwan Foundation for Democracy, and the Asian Network for Free and Fair Elections. As a journalist, Kaufmann worked at the Swiss Broadcasting Company, the daily Tagesanzeiger newspaper and the weekly Die Weltwoche before joining the special editorial team for international reform issues at Die Zeit in Hamburg in 1998. Since 2001, he has covered European and international affairs for the Swiss Broadcasting Company and has been a columnist on publications such as *Nordis*, *Open Democracy*, *Gazette* and *European Voice*. Kaufmann has authored and edited numerous books on modern direct democracy

including the *Guidebook to Direct Democracy*, which has been published in nine languages and the *Initiative for Europe* – handbook series on the emergence of European citizens' initiative.

Jung-Ok Lee is a Professor of Sociology at the Catholic University of Daegu in Korea. She is the incumbent chairperson of the Committee for International Cooperation Team of the Korea Democracy Foundation and Asia Regional Exchange for New Alternatives. Lee is also involved in regional and international networks including IRI-Asia, Community of Democracy NGO Forum and UNESCO-AP Center for International Understanding. She was invited as a visiting scholar at Waseda University in Japan and Harvard University in the United States. She has authored and edited several books and articles such as *Hope and Realities of Global Democracy Promotion*, *Globalization of Democracy – Hope and Realities of Democracy Promotion in Asia*, *Voices through Ballot*, etc. She has organized various global forums on democracy such as Seoul Democracy Forum and 2009 Global Forum on Modern Direct Democracy.

Adam Lupel is currently an editor at the International Peace Institute (IPI) at United Nations Plaza in New York City. He is responsible for directing the editing, production, and dissemination of all IPI books, policy reports, and related publications. He also maintains an active research agenda on issues of popular sovereignty, globalization, and the international politics of genocide. Prior to joining IPI, he served as the managing editor of *Constellations International Journal of Critical and Democratic Theory*, and taught classes in modern and contemporary political theory at the New School's Eugene Lang College in New York City. Lupel received his Ph.D. in Political Theory from the New School for Social Research. He also has an M.A. in Liberal Studies from the New School, and a B.A. in International Relations with a concentration in Latin America from Boston University. He is the author of *Globalization and Popular Sovereignty: Democracy's Transnational Dilemma* (London: Routledge, 2009) and the co-editor of *Peace Operations and Organized Crime, Special Issue, International Peacekeeping 16, no.1* (February 2009). His work has appeared previously in *Constellations*, *Critical Sociology*, *Globalizations*, and *Polity*, and the *International Encyclopedia of the Social Sciences*.

Joe Mathews is a Los Angeles-based journalist and an Irvine senior fellow at the New America Foundation, a non-profit, non-partisan think tank based in Washington DC. He is the author of *The People's Machine: Arnold Schwarzenegger and the Rise of Blockbuster Democracy* (New York: Public Affairs Books, 2006), an account of the governor's transition into politics and his use of ballot measures to govern. He is currently at work on "\$30 Every Thursday: The Campaign That Inspired Today's Bailouts," a history of the 1938 California initiative campaign known as "Ham and Eggs." Before joining New America in 2008, Mathews, a fourth-generation Californian, has been a reporter for eight years at the Los Angeles Times, where he covered Compton, education, state politics, and the 2008 presidential campaign. Previously, he was the U.S. Justice Department reporter for the Wall Street Journal's Washington DC bureau, and served as a city desk reporter at the Baltimore Sun. He maintains a blog on direct democracy, *Blockbuster Democracy*, on the New America website. (http://www.newamerica.net/blog/blockbuster_democracy)

Urs Rellstab is the Deputy Head of the Executive Board of Economiesuisse, which is an influential business federation in Switzerland. Rellstab is responsible for corporate communications, lobbying and political campaigns. In the past ten years, he has organized 39 national political campaigns. The most important ones concerned Switzerland's relations with the European Union and tax issues. Given the high success rate of the campaigning of Economiesuisse, Rellstab is one of the experts of the field in Switzerland. Before joining Economiesuisse, Urs Rellstab worked as editor-in-chief for a regional daily newspaper. While preparing for his Ph.D., he spent a year at Duke University in Durham, North Carolina, USA. His main area of interest was strategic decision-making and its theoretical foundation in economic theory.

Pál Réti is a journalist who has worked as a business reporter, editor, and research fellow. After joining HVG, the leading Hungarian newsmagazine, as an editor in 1989, he worked as the paper's Washington correspondent in 2002~2005 and as the editor in chief in 2005~2009. Before joining the HVG, Réti worked as the senior research fellow at the Institute for Industrial Economics based in Budapest, and as the reporter and editor of the Figyelő (business weekly),

Ötlet (weekly newsmagazine), and Világgazdaság (business daily). He has a doctoral degree in Economics from the Corvinus University of Budapest.

Theo Schiller is a director of Centre for Citizens' Participation and Direct Democracy at Philipps University Marburg since 1996. The centre provides the only complete database for local initiatives and referendums in Germany (<http://www.forschungsstelle-direkte-demokratie.de>). His research focuses on German and European politics, comparative politics, and democracy. Schiller is the council chair of Initiative and Referendum Institute Europe, and a member of the advisory council of More Democracy (German NGO for direct democracy). He worked as a Professor of Political Science in Philipps University from 1974 to 2007, and as the vice president from 1997 to 2001. Schiller is the author of *Direct Democracy – an Introduction* (Frankfurt-M. 2002, in German), and is the co-author of various publications including *Direct Democracy. The International IDEA Handbook* (Stockholm, 2008).

Atanas Slavov has a Doctoral Degree in Constitutional Law and a Masters Degree in Law, both from Sofia University, Bulgaria. Slavov also lectures classes on Constitutional Justice in the E.U. at Sofia University and on Sociology of Politics at Plovdiv University. He has specialized in the areas of constitutionalism and liberal political theory in the United States, Germany and Italy. As a constitutional scholar and on behalf of Balkan Assist Association, he took part in the process of drafting and consulting the new law on referendums and civic participation.

About the Coordinating Organizations

Korea Democracy Foundation (KDF)

KDF was established to “contribute to the development of democracy by carrying out projects to memorialize the democratization movement and inherit its spirit” in accordance with the Korea Democracy Foundation Act (Act 6495) passed into legislation on June 28, 2001.

KDF carries out support projects and arranges events to develop democracy movement, such as the establishment and operation of the Korean Democracy Memorial Hall. It also collects, digitizes, manages, and researches documents for the historical organization of the democratization movement as well as the democratization movement artifacts preservation, management, and publication.

Construction of the Korean Democracy Memorial Hall

The Korean Democracy Memorial Hall is a location to look back at the past when hardships were tread upon and dreams were achieved. It is also a place filled with the passion to fulfill dreams not yet achieved, a site for learning to expand democracy and planting its roots, and a point of solidarity where many nations and peoples from around the globe can strive for democracy together.

Memorial Projects

Memorializing the democratization movement is necessary for the sake of passing on the precious experiences and assets of the democratization movement to future generations, to refine all challenges and achievements for democracy into the pride of the people. This kind of pride is the basic power that will continuously deepen and expand our society's democracy.

International Cooperation Efforts

We work together with all those around the world working to develop democracy, expand human rights and spread peace. We are expanding diverse collaboration activities for Korean, Asian and world democracy and meeting more global citizens who are still suffering.

Democratic Citizen Education

The strengthening of democratic citizens' capability to promote democracy through a change of consciousness and practice is the heart of democracy development. We are building a democratic citizen education center which helps to create a vision of democratic citizens, develop programs, and offer various opportunities to citizens.

Academic Research Projects

Through researching the democratization movement we will inherit and develop its spirit, study the present state of democracy, and strengthen a research database of Korean democracy. We intend to contribute to the development of domestic and overseas democracy research through international cooperation, exchange in democracy research and internationalizing the Korean democratization movement experience.

Archives

We will create an archive consisting of the collection, organization and preservation of records and memories of the democratization movement, including a viewing room and online archives able to be accessed by the public. We are making a democracy information center that provides open content and basic historic information on the democratization movement.

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Initiative and Referendum Institute Europe (IRI Europe)

The Initiative and Referendum Institute Europe (IRI Europe), founded in 2001, is the first and transnational think-tank to research and educate on all aspects of participative and direct democracy by mapping existing procedures and practices, networking transnationally with all relevant actors and by mainstreaming key elements of a fully-developed modern direct democracy.

As modern direct democracy has become much more common in Europe and worldwide, IRI Europe conducts research activities, offers educational programmes and is involved in analytical and consultation work.

IRI Europe is a non-partisan, non profit-making association with headquarters in Marburg/Germany and brings together some of the best experts on and practitioners of the initiative and referendum process across Europe and the world. IRI Europe is part of the emerging global network of IRI-think tanks, which also includes the US-based Initiative & Referendum Institute and IRI Asia.

When IRI Europe was established in 2001, it became evident that Europe needs competence center for all issues linked to the introduction, development and practice of modern direct democracy. Founded by individuals and organizations from the political, administrative, academic and civil society, IRI Europe took an early role in the emerging European constitutional process.

Since these early days, our assistance and support for a proper transnational polity in Europe with direct democratic rights have played a key role in the institutes activities. IRI was instrumental in facilitating an informal working group on direct democracy during the constitutional convention (2002~2003) and followed up this work on a European Citizen Initiative procedure with research, consultation and publication activities.

Another key activity of the early years was a comprehensive assessment on which procedures and practices are available across Europe and worldwide. Based on this work, the institute launched in 2005 a comprehensive educational programme including guidebooks, handbooks, study trips and country programmes.

In 2006, the IRI Headquarters moved from Amsterdam/Netherlands to Marburg/Germany, which contributed to strengthened links with the research community. In 2007, IRI also opened project and administrative offices in Brussels/Belgium and Bülach/Switzerland.

The Initiative and Referendum Institute has its Headquarters in Marburg/Germany and is a government registered association under German law. However, the organisation and working methods of the institute are strictly transnational and decentralized.

This means that key collaborators of the institute are living all across Europe, that Board meetings are mainly hold electronically and that all staff is combining its work with IRI with other professional assignments as journalist, professors, politicians or other field experts.

The main decision-making body of the institute is the Council, which meets at least once a year in persona and does stake out the operations and strategies of the institute. Advisers and contributors from across the world are supporting and assisting the institute in it's work – based on a transnational network-method.

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