

ORIGINS OF DIRECT DEMOCRACY – CONFLICT, INDEPENDENCE, DEMOCRATIC TRANSFORMATION

Theo SCHILLER
professor emeritus

(Philipps University Marburg, Department of Political Science)

Abstract

Direct democracy as a concept and in practice comprises many institutional varieties. It has its origin in differing historical developments and structural conditions which may have influenced these institutional forms and their relations with the environment of political systems at large, particularly of representative democracy. Beyond individual historical cases, more general patterns of emerging direct democracy can explain how the dynamics of a political process have been linked to specific institutional features. In a typological approach the paper identifies three basic models of emergence of direct democracy: deep internal conflict, national independence, and democratic system transformation, and their possible links to some typical profiles of direct democracy design. The paper will compare a number of illustrative cases, basically in European countries, and provide some information on trends of usage in the respective polities.

1. Introduction

In so far as institutions of direct democracy exist, they are part of political system contexts, containing various procedures, such as mandatory referendums, initiatives and various kinds of referendums which will, in total, constitute a specific profile of direct democracy in the country concerned.

Institutional processes of direct democracy can be analysed in various ways. Starting from core institutional definitions, direct democracy research can examine at least three major perspectives: normative, functional and developmental. The ‘normative’ dimension refers to justifications and counter-arguments for direct democracy in theoretical terms of democratic values and general requirements

of political systems, providing judgements and specific preferences on forms or regulations of direct democracy. ‘Functional’ analysis examines the patterns of using the instruments of direct democracy and the functions, effects and impacts of practicing these forms of participation in the context of political systems and the overall structure of society. A ‘developmental’ perspective will concentrate on the question of explaining how institutions of direct democracy have emerged, how their particular features have been shaped, and which factors may influence the further development of these institutions. In the normative and functional fields of analysis we find a rather broad body of discussion. In the developmental perspective many very valuable descriptions of historical developments of direct democracy in individual countries are available.¹ There is, however, still some way to go to find more general explanations for why and in which forms direct democracy has emerged and been institutionalised, and which structural conditions may have been at work as the main factors.² Looking into the emergence and development of direct democracy can explain the relationship between the structural patterns of emergence, the institutional features or profiles of direct democracy, and the overall context of the political system.

2. Emerging direct democracy – an unlikely institution

Direct democracy can basically be defined by a few core institutional features distinct from the mechanisms of representative democracy, namely (1) decision-making by popular vote on political issues, (2) public deliberation of political issues, (3) supplement to representative democracy with enriching and controlling functions, and (4) being based on the democratic principles of popular sovereignty, freedom and political equality.³

We will focus on the question of how such an institution can emerge. Can one main factor be identified, or are there different patterns of emerging direct democracy? Direct democracy has not been institutionalised everywhere in the world but rather selectively. Obviously, major structural barriers, such as social power structures and established political elites, represent barriers to such a development. Thus, it seems more realistic to regard direct democracy as a rather unlikely institution which may only come into being under specific conditions.

Like all institutions, direct democracy has its histories of original emergence. We usually find stories describing how direct democracy started and developed over time in individual countries. Less frequent, however, are approaches which explain in more general terms the emergence of such direct democracy institutions. Often the

¹ E.g. David BUTLER – Austin RANNEY (eds): *Referendums around the world. The growing use of direct democracy*. Washington, D.C., AEI Press, 1994.

² See also David ALTMAN: *Direct democracy worldwide*. Cambridge, Cambridge University Press, 2011.

³ Theo SCHILLER: *Direkte Demokratie. Eine Einführung*. Frankfurt/M. – New York, Campus, 2002.

impression is that direct democracy has been a product of a process of co-evolution with democracy in general, and sometimes it has even been lost over time – in practice and in theory. Whereas the principle of popular sovereignty seems to provide quite logical reasons for establishing popular rights to direct decision-making, very often the principle has not been ‘strong’ enough for such a result. When we start from real political life we often see power structures in which political elites are not inclined to share their decision-making power with the citizens en masse. Popular sovereignty also applies more generally to systems of representative democracy, where elites can claim that their own position is legitimised by the people. The question, then, will be in what ways and under what conditions the unlikely institution of direct democracy can emerge. In order to find more general answers from the large number of heterogeneous historical developments worldwide we may choose a typological approach and look for some basic patterns which can help to understand the major typical conditions and dynamics which make direct democracy more likely to emerge – let’s call them ‘emergence types’.

In general, the transfer of power to voting citizens seems to be more likely when the legitimacy of the power structure is in crisis, or at least undergoes structural weakness, which can also be linked to a change in a legitimate power structure. A gross overview of empirical information on direct democracy origins suggests at least three basic structural patterns with different core dynamics: intense conflict, the formation of independent states, and democratic system transformation.⁴

- (1) The ‘intense conflict’ model refers to major political conflicts between large social groups where the dominant group is challenged by others to transfer or share legitimate political power in a democratic system.
- (2) The ‘formation of independent states’ responds to a crisis in the unity claims of the former larger state and implies for the new entity state sovereignty, identity of the ‘people’ and associated basic social values.
- (3) ‘Democratic system transformation’ is defined by the crisis of an authoritarian system and an overall system transformation to the values and institutions of a democratic system.

We assume that each of these structural-historical types of development may provide opportunities for the emergence of institutions of direct democracy. To be certain, these structural conditions must not always lead to direct democracy, but may increase the likelihood of its emerging. These positive contexts, however, may display rather different structures, may shape different patterns of direct democracy, and may also establish specific relations between direct and representative democracy.

It should be noted that with these models we are focusing on processes of institutionalisation of direct democracy. There are many other historical cases where direct democracy procedures only occur in singular events, such as deciding a basic constitutional question, ratifying a constitution, or deciding on territorial

⁴ First steps for this concept in Theo SCHILLER: The emergence of direct democracy – a typological approach. In: Wilfried MARXER (ed.): *Direct democracy and minorities*. Wiesbaden, Springer VS Verlag für Sozialwissenschaften, 2012. 33–46.

state affiliation or separation. It should also be clear that extreme breakdowns of power structures may lead to outcomes very different from direct democracy, such as revolution, coup d'état or state failure, from which in some cases democratic institutions, including direct democracy, may also originate.

We will now outline these basic models and illustrate them with specific country cases. The models clearly distinguish between internal and external conflicts which are likely to set off rather different dynamics of the process of change and of the resulting structures of democratic systems. We assume that they not only shape the newly emerging profiles of direct democracy but also establish patterns of path dependency for further developments.

2.1. Type I – Internal conflict

The structural background for the conflict model is a deep-rooted and dynamic conflict of social groups over political power. The one group in command of political power is not regarded as representative of the whole society or of the majority of people but as acting for a small dominant class in society. The opposite group identifies itself as the majority and even as the people at large which is considered to be almost homogeneous – united against the ‘ruling class’ in a typical class conflict. Under pre-democratic conditions such a setting would be more likely to lead to a struggle for democracy in general, particularly for universal suffrage, than to demands for direct democracy. In a representative system with universal suffrage, however, this kind of conflict can also emerge, and then direct democracy may be a much more urgent remedy for a redistribution of power. This implies a great tension between the principles and institutions of representative and direct democracy. The legitimacy of the ‘representative’ rulers will be fundamentally challenged, and a strong mobilisation for constitutional reform against the dominant group must be achieved to re-claim popular sovereignty for ‘the people’ and to transfer power to the voting citizens. The introduction of direct democracy may be realised by a new representative majority, by means of a constitutional convention, or by other ways of implementing constitutional change. Against this background, instruments of direct democracy (initiative, referendum) will be designed for and used as strong tools for controlling and correcting representative decision-making, and it is quite likely that they will be frequently used by a wide variety of social groups and interests. The institutional design will tend to be liberal rather than restrictive in order to make the function of political articulation and control easily accessible. In consequence, minorities will find access to the instruments and serve not only their own interests but also the public democratic function of prohibiting any abuse of political power in a representative system.

There are at least two major examples of polities which experienced this type of emerging direct democracy. One of them is Switzerland, which, in the 1860s and '70s, saw a class conflict between capitalist liberals and a ‘populist’ coalition of farmers and workers resulting in the introduction of the popular referendum in some cantons, such as Zurich, and at the national level (1874). The background of a

confessional conflict between Protestant and Catholic groups and cantons was also relevant. Institutional starting points can be dated back to cantonal reforms in the 1830s and to the origin of the Swiss Federation in 1848, when a mandatory referendum on constitutional amendments was established.⁵ The other famous example is the many states in the U.S.A. where, in the late 19th century, the populist movement uniting farmers, the 'middle class' and often Labour fought against the railroad, coal and banking barons in the American West. Countering their regime of corrupted majorities in state parliaments (which also delegated the senators to Washington until 1913) initiative, referendum and recall became the tools of the day, beginning in 1898 in South Dakota, with twenty-two more states following suit up to 1918.⁶

2.2. Type II – National independence

The second model of emerging direct democracy is related to processes of national independence and the formation of new states. To be certain, not all new states introduced direct democracy, although the act of independence and the enactment of a new constitution have quite often been supported by recourse to referendum votes. Here, we focus on countries which, in the course of state formation, introduced direct democracy as an institution. Such a process also involves conflict, but as an 'exit' conflict against a state power from which a territorially concentrated ethnic or cultural group wants to dissociate itself. In this type, the confrontation and mobilisation will be directed rather against a kind of 'external' domination and in favour of self-government. Thus, the concept of new state sovereignty and the principle of popular sovereignty are fundamentally linked. The people of the new independent state are conceived according to the unitary ideal of a homogeneous and integrated people, without relevant internal conflicts. In this kind of polity direct democracy has three interrelated functions: 1) to mobilise the will of the people to 'national' independence, 2) to support social identity and social integration, 3) to protect the basic set of institutions of the independent state. This unitary context is quite distinct from the setting of internal conflict and the concept of protecting the people from minority class domination typical of the conflict model. For the design of direct-democratic instruments we can therefore expect that requirements for initiatives as well as for referendum votes will be regulated in order to secure broadly based manifestations of support for national unity. We may find more government-initiated referendums and mandatory referendums. Direct democracy instruments will tend rather not to invite smaller groups to articulate minority grievances and to determine the outcome of popular votes, but will display more majoritarian and consensus features.

⁵ Hanspeter KRIESI – Alexander H. TRECHSEL: *The politics of Switzerland. Continuity and change in a consensus democracy*. Cambridge, Cambridge University Press, 2008.

⁶ Thomas E. CRONIN: *The politics of initiative, referendum, and recall*. Cambridge, MA, Harvard University Press, 1989.

Historical examples of this independence model can be found at various times and in different regions.⁷ There are at least some early American states of the founding period before confederation. In the early 20th century, after World War I, the Baltic states adopted instruments of direct democracy, as did Liechtenstein, whereas Poland only saw drafts. Ireland, with her road to independence and her constitutions of 1922 and particularly the definitive one of 1937, certainly represents a classic case. In more recent times several Eastern European states gaining independence in 1990–1991 fit into this model: Estonia, Latvia, Lithuania, Slovakia, Slovenia and Macedonia.⁸ In other world regions, after independence from the U.K., Australia introduced and has used, since 1906, the mandatory referendum for constitutional amendments.⁹

Some similarity to independence cases can be found in issues of state affiliation in regions with national minorities where the principle of ‘self-determination’ is implemented by way of referendums.¹⁰ Since these regions did not develop into states, they will not be dealt with here.

2.3. Type III – Democratic transformation

In the third type, the emergence of direct democracy is related to an overall system transformation from an authoritarian regime (dictatorship, totalitarian system) to a system of democracy; in this process the emergences of direct democracy and representative democracy are usually interlinked. Popular sovereignty as the main principle of legitimacy is directed against the former system of domination and its core forces. Basically, a liberated and unified people will form the core of the new democratic polity, but a latent internal conflict may still be around as a ‘shadow’ of the old system and suspected hidden adherents to it. If direct democracy is able to emerge in this transformation process, some ambivalence will remain. Since representative and direct democracy have evolved here in an integrated political process, popular sovereignty will be attributed to both institutions, which will result in institutional

⁷ In regions not included here, moves to national independence have accompanied the end of the colonial empires of Great Britain and France when referendums on the independence of new states were used quite often. These cases, however, were essentially one-off events which rarely included a process of institutionalisation of direct democracy. For lists of these events see BUTLER–RANNEY op. cit. Appendix B.

⁸ We exclude here countries such as Croatia, Bosnia-Herzegovina and Kosovo, where the independence process was linked to major military action.

⁹ Lawrence LEDUC: *The politics of direct democracy: referendums in global perspective*. Toronto, Broadview Press, 2003. 68 ff.

¹⁰ In Europe, a significant number of referendums on the state affiliation of national minorities were held in the aftermath of World War I, when, for purposes of peace-making and the dissolution of Imperial Germany and the Habsburg Empire, ‘national self-determination’ was employed under the tutelage of the League of Nations to settle questions of the independence or state affiliation of certain territories (See list in BUTLER–RANNEY op. cit. Appendix B.). These were individual events without consequences for the institutionalisation of direct democracy.

tensions. Direct democracy may only be granted a supplementary function and a rather weak design, but it may be respected as a kind of ‘life insurance’ for the new democracy, which can be mobilised in the event of a crisis.

Historical examples in Europe are Germany, Austria and Liechtenstein after the breakdown of the old regimes at the end of World War I, 1919–1921. In a later period from 1945 onwards, after the fascist dictatorships, Austria, Germany (regional states only) and Italy are topical. France saw the first steps in the process of reorganisation after occupation in 1946, followed by ambivalent steps during de Gaulle’s reforms 1958–1962. In the 1970s, by contrast, democratic transformations in Greece, Spain and Portugal introduced no or only weak instruments of direct democracy. In the years after 1989–1990, a third group of countries in Eastern Europe, including East Germany, changed from communist rule to democratic systems. Hungary, Poland, Bulgaria and Romania are cases where democratic transformation was not linked with national independence (the Czech Republic did not adopt any direct democracy measures at the national level).¹¹

In summarising these basic emergence types some major differences stand out. In the conflict model, the focus is on an internal conflict which is to be overcome by democratic reform. In the independence model an internal conflict around identity and loyalty in a polity is transformed into an exit process and an external conflict. In the system transformation model the oppressive system seems to have been banished to the past, but latent structures of conflict with old forces still have to be dealt with.

Relations between direct and representative democracy are also different. In the conflict model, the former structures of representative democracy were the target of reform, aimed at control mechanisms and a new quality of democracy. In the independence model, change focuses on having one’s ‘own’ representation and self-government in a sovereign state and not so much on the pure quality of democracy. In the system transformation model, representative and direct democracy originate from a process of co-evolution and may be perceived, at least in an early period, to represent cooperative rather than competing institutions; later, representative elites are likely to claim the principle of popular sovereignty for their own power structures.

Unitarian concepts of ‘the people’ play a most prominent role in the independence model, based on cultural, ethnic or ‘national’ identity. In the system transformation type a concept of ‘democratic unity’ of the people which may integrate different groups in a society will prevail. In the conflict model a unity concept will include a broad majority of citizens against a dominating class. In whatever way unity may be perceived, the question will arise as to how enduring such unity concepts might be. Difficulties can emerge, particularly in the case of the independence model if, despite the claim of cultural unity, minorities were also originally present in the newly separated state or have developed over time.

¹¹ In other world regions, transformation processes in many countries of Latin America would be interesting in this category.

In relation to our three basic types, one must be aware that in addition to the ‘pure’ models mixed types may also exist, based on specific compromises and paths of reform in a longer developmental process. This paper will focus on the basic models, with only passing references to other types. The basic types have been the product of specific historical circumstances and structural conditions, and thus they cannot be reproduced deliberately. If they occur again in similar circumstances they may also produce results close to the model. Where they exist they are likely to exert a long-term influence on the patterns of institutions, power distribution and political culture, as all power relations originating from crisis-born constitutions will do. Over time, however, new structural factors and contingent forces of society may develop which can influence the form of the institutions as they originally emerged. Nevertheless, some kind of path dependency may be rather likely.

3. Emergence types and direct democracy profiles

For the basic emergence types several major reference cases have been mentioned. This section will focus on possible links between the models and the profiles of related direct democracy institutions and how they can be explained. We will look at main elements of the institutions, such as priorities on specific subjects, the instruments which have been chosen – mandatory referendums, government-initiated referendums, citizens’ initiatives and popular referendums – and key procedural regulations.¹²

For the ‘conflict’ type, Switzerland and American states have been named as example cases. Switzerland took a first step towards direct democracy at the national level in 1848 by including in the constitution of the new federation a mandatory referendum on constitutional amendments (and an initiative right for a total revision of the constitution), thereby protecting the rights of the cantons. The main conflict-driven development was the introduction of the popular (‘facultative’) referendum in 1874 regulated by very liberal requirements (low signature quorum and validity of ballot vote by simple majority). The citizens’ initiative, introduced in 1891, also needs only a small number of signatures, but is restricted to constitutional amendments

¹² Basic information on direct democracy regulations in various countries is available in overview publications: General: Bruno KAUFMANN – M. Dane WATERS (eds): *Direct Democracy in Europe. A comprehensive reference guide to the initiative and referendum process in Europe*. Durham, N.C., Carolina Academic Press., 2004; Bruno KAUFMANN – Rolf BÜCHI – Nadja BRAUN: *Guidebook to direct democracy in Switzerland and beyond*. Amsterdam–Marburg, Initiative and Referendum Institute (IRI) Europe, 2005–2010.; KRIESI–TRECHSEL op. cit.; USA: CRONIN op. cit.; M. Dane WATERS: *Initiative and Referendum Almanac*. Durham, N. C.: Carolina Academic Press, 2003.; Eastern and Central Europe: Andreas AUER – Michael BÜTZER (eds): *Direct Democracy: the Eastern and Central European experience*. Aldershot, Ashgate, 2001.; Online-Information: www.c2d.ch. On European countries with initiative instruments: Maija SETÄLA – Theo SCHILLER (eds): *Citizens’ initiatives in Europe. Procedures and consequences of agenda-setting by citizens*. Houndsmills, Basingstoke, Palgrave Macmillan, 2012.

and requires a double majority (in the national vote plus a majority of cantons) for a valid vote. In the United States, the first states to introduce initiative and referendum after 1898 (South Dakota, Oregon, Colorado, California, Arizona and others) also set the standards with very liberal requirements (signatures for initiatives around five percent of the turnout at the most recent state governor's election; for popular referendums in part even lower percentages, and simple majorities). Overall, these reference countries show a basically liberal profile of direct democracy instruments which provide easy access for various groups to initiatives and the chance to achieve a majority vote at the ballot. In both Swiss and American jurisdictions tensions and competition between representative and direct democracy institutions have been salient, and popular rights have sometimes been used rather frequently. In the long-term evolution, however, no major restrictive tendencies have developed in Switzerland or the U.S. (except for the growing cost of paid signature collection in American practice). The institutional patterns seem to have been self-sustaining, even if the original structures of deep conflict may have modified over time and the functions of direct-democratic instruments may also have changed.

In later periods and other countries, some more cases of internal conflict leading to a deep crisis of legitimacy of representative systems evolved. In the German state of Schleswig-Holstein, in the late 1980s, the 'Barschel affair' (a prime minister using criminal methods in electoral campaigning) resulted in a major political crisis and a new state constitution which included (there for the first time) the introduction of direct democracy instruments with a rather liberal profile. A second case occurred recently in Iceland during the financial crisis of 2008–2009, when bank failures and soaring international obligations to compensate customers led not only to the collapse of the government but also to the very first use – by the president – of an already existing but unused referendum instrument and an intense discussion on introducing new instruments of direct democracy.¹³ Since the weaknesses in the structural conditions leading to crisis pressure on economic and political systems have become more apparent over the past decade for many countries in Europe and elsewhere, we may well see more dynamics of the internal conflict type in the future.

Countries of the second type, the independence model, usually took the first direct-democratic steps with referendums on independence and on ratifying the new constitution, stressing the link between national and popular sovereignty and basic unitary values. In Europe, one classic case is Ireland with her extended process of gaining self-government (1922–1937).¹⁴ Other relevant cases are to be found in

¹³ Meike STOMMER: Icesave, Finanzkrise und Demokratie: der Fall Island(s). In: Lars. P. FELD et al. (eds): *Jahrbuch für direkte Demokratie 2010*. Baden-Baden, Nomos Verlag, 2011. 237–254.; Bill KISSANE: From people's veto to instrument of elite consensus: the referendum experience in Ireland. In: Maija SETÄLÄ – Theo SCHILLER (eds): *Referendums and representative democracy*. London–New York, Routledge, 2009. 17–33.

¹⁴ Michael GALLAGHER: Ireland: the referendum as a conservative device? In: Michael GALLAGHER – Pier Vincenzo ULERI (eds): *The referendum experience in Europe*. Basingstoke–London, Macmillan, 1996. 86–105.

Eastern Europe, after 1990, when countries such as Estonia, Latvia and Lithuania dissociated from the Soviet Union,¹⁵ and Croatia, Macedonia and Slovenia separating from the former Yugoslavia (later, Montenegro left ‘Serbia and Montenegro’); the separation of the Czech Republic and Slovakia is a somewhat different story. Direct democracy institutions in most of these countries display a rather restrictive profile. A mandatory referendum on constitutional amendments was instituted in Ireland as the single instrument (a complicated procedure of government-initiated referendum has never been used).¹⁶ Similarly, referendums are mandatory for amendments on core articles of the constitution in Estonia (the only instrument there), Latvia and Lithuania. The latter country in addition provides for the popular referendum; Latvia and Lithuania also have the citizens’ initiative – with both states requiring rather high signature quorums (10–11.5 percent) and high approval quorums for a valid ballot vote (50 percent of the registered voters in Lithuania, and in Latvia a turnout quorum of 50 percent of the number of voters at the last parliamentary election for a ballot on an initiative on statutory law).¹⁷ Macedonia and Slovakia also established such high quorum rules. Thus, the overall picture shows restrictive requirements for procedures to be launched by citizens. One case, however, looks clearly different: Slovenia, the obvious example of an independence type, provides for a popular referendum which requires only 40,000 signatures, i.e. about 2.5 percent of the electorate, plus a simple majority vote. Overall, these profiles, except for that of Slovenia, differ greatly from the conflict type cases.

One further complication should be mentioned at this point: the Eastern European countries of the independence model have also undergone a transformation process from communist rule to a democratic system and, thus, may also share aspects of the transformation model.

Countries of the transformation type display a more heterogeneous pattern. The basic dynamics in this setting are the democratic mobilisation of people and the claim of popular sovereignty against an authoritarian system which will be transformed into a purely historical fact. Since the confrontation has been an internal one some ambivalences are likely to remain. The main apprehension refers to a danger that the old forces could attempt to restore their domination, but also some parts of society might be afraid that democratising groups want to go too far in the reform of political and social power relations. Thus, direct democracy instruments may gain a role in guaranteeing the constitution and some control functions, but at the same time may be regarded as somewhat dangerous. The institutional profile will tend rather towards restrictive provisions and reflect ambivalence and mistrust towards the shadows of history.

¹⁵ There was also an historical background in the Baltic states from the years after 1919.

¹⁶ Details: KISSANE (2009) *op. cit.*; Bill KISSANE: Is the Irish referendum a majoritarian device? In: MARXER (ed.) *op. cit.* 145–154.

¹⁷ Daunis AUERS: An electoral tactic? Citizens’ Initiatives in Post-Soviet Latvia. In: SETĀLA–SCHILLER (eds.) *op. cit.* 53–70.; Algis KRUPAVICIUS: Citizens’ initiatives in Lithuania: initiative institutions and their political impact in a new democracy. In: SETĀLA–SCHILLER (eds.) *op. cit.* 134–151.

Examples can be found in the transformation period after World War I, when the German Weimar Republic introduced a national citizens' initiative with a 10 percent signature quorum and a 50 percent turnout quorum for a valid ballot vote (and some other instruments). In 1920, republican Austria introduced only the mandatory referendum for a total revision of the constitution and the referendum to be called by parliament. Later, in 1929, an agenda initiative (*'Volksbegehren'*) was added which is still in force today.¹⁸ After 1945, a majority of West German states established an initiative right with the extremely high signature quorum of 16.7–20 percent of registered voters, with the exception of Bavaria (quorum 10 percent); Bavaria and Hesse also added a mandatory referendum on constitutional amendments. There, the fear of misuse by forces associated with the former Nazi regime can clearly be seen.¹⁹ In the case of Italy, hesitation had a dual face, including fear of Communist misuse: the 1948 constitution already provided an initiative right, but an implementation law was delayed until 1970, and although the *'referendum abrogativo'* can be liberally initiated by a signature quorum of roughly one percent, a valid ballot vote requires a 50 percent turnout of registered voters.²⁰ Later transformative developments in the 1970s did not produce any direct democracy institutions (e.g. Greece), or provided very weak instruments, such as the agenda initiatives in Portugal and Spain.

In Central and Eastern Europe after 1989–1990, of the 'pure' transformation countries (without an independence issue) only Hungary introduced some direct democracy, with a low signature quorum but with tight restrictions on admissible subjects and tough requirements for the validity of a ballot vote (originally a 50 percent turnout quorum).²¹ Bulgaria introduced even more restrictive requirements, whilst Poland and Romania chose the rather weak instrument of an agenda initiative, and the Czech Republic established none of these institutions at all at the national level. In Germany, the transformation of the German Democratic Republic and unification with the Federal Republic obviously represents a very special case in which, nevertheless, direct democracy was established with rather restrictive profiles in four out of five new federal states.²² Thus, the overall picture shows marked

¹⁸ Anton PELINKA – Sylvia GREIDERER: Austria: the referendum as an instrument of internationalisation. In: GALLAGHER–ULERI (eds.) op. cit. 20–32.; Karim GIESE: The Austrian agenda initiative: an instrument dominated by opposition parties. In: SETÄLÄ–SCHILLER (eds.) op. cit. 175–192.

¹⁹ Otmar JUNG: *Grundgesetz und Volksentscheid. Die Entscheidungen des Parlamentarischen Rats gegen Formen direkter Demokratie*. Opladen, Westdeutscher Verlag, 1994.; Theo SCHILLER: Citizens' initiatives in Germany – varieties in regional states. In: SETÄLÄ–SCHILLER (eds.) op. cit. 89–112. Henceforth abbreviated: SCHILLER (2012b) op. cit.

²⁰ Pier Vincenzo ULERI: Italy: referendums and initiatives from the origins to the crisis of a democratic regime. In: GALLAGHER–ULERI (eds.) op. cit. 106–25.; Pier Vincenzo ULERI: Institutions of citizens' political participation in Italy: crooked forms, hindered institutionalization. In: SETÄLÄ–SCHILLER (eds.) op. cit. 71–88.

²¹ Zoltán Tibor PÁLLINGER: Citizens' initiative in Hungary: an additional opportunity for power sharing in an extremely majoritarian system. In: SETÄLÄ–SCHILLER (eds.) op. cit. 113–133.

²² SCHILLER (2012b) op. cit.

hesitancy towards direct democracy, with easier initiative access in some cases but high hurdles for valid ballot votes.

In comparing these country types we find a rather strong effect of the emergence models for the resulting direct democracy profiles. The few available cases with an internal conflict background produce liberal profiles, whereas countries of the independence type display, in most cases, rather restrictive institutional profiles. Transformation countries, insofar as they adopted direct democracy at all, tend to have restrictive requirements or weak instruments.

4. Practice and development paths

The usage of direct democracy instruments does in many ways also reflect the original emergence types and the regulation profiles ensuing from them. Some illustrations may suffice here.

For the few countries with an ‘internal conflict’ background and liberal regulations including initiative procedures, Switzerland and the states of the U.S. represent typical patterns. A broad range of issues has been dealt with in initiatives and referendums, including social, environmental and moral issues, as well as financial matters. In Switzerland, issues of international policies and military affairs have also been covered.²³ The instrument of popular (legislative) referendum makes it possible to exert a strong popular control function over representative legislation, and particularly the initiative instrument allows new issues and proposals to be put on the political agenda and thus contributes substantially to an innovative function in democratic decision-making. One recent example has been Iceland, where severe political conflict resulted from the financial crisis of 2008–2009. The failure of major banks led to a landslide defeat of governing parties and breakdown of political trust. In consequence, international treaties on the compensation of two affected countries were clearly defeated in ensuing referendums, and an intense process of amending the constitution with institutions of direct democracy has been started which, however, did not produce clear results by 2013.²⁴

Countries with a national independence background are more numerous. In Europe, the most clear-cut case is Ireland, whereas several other countries have more mixed historical backgrounds of direct democracy origin. In Ireland, mandatory referendums on constitutional amendments are concentrating on two issue areas: national sovereignty and basic social values. European Community membership and any major transfer of powers to the supranational level of the EU have been the subject of many mandatory referendums. Also, since important social values of a Catholic background are part of the constitution, any changes have the quality of constitutional amendments and so have been subject to mandatory referendums on

²³ KAUFMANN–BÜCHI–BRAUN op. cit.; KRIESI–TRECHSEL op. cit.; WATERS op. cit.

²⁴ STOMMER op. cit.

moral issues (divorce, abortion). Protecting national sovereignty and securing the stability of established social values by majoritarian legitimation represent the core functions of direct democracy there.²⁵

In several Eastern European countries, after 1990, a mixture of two structural background factors has been at work: national independence and economic plus democratic transformation (Estonia, Latvia, Lithuania, Slovakia, Slovenia, also Croatia and Macedonia). For most of them, independence and transfer of sovereignty again became issues of referendums on accession to the European Union in 2004. Otherwise, direct democracy institutions with their rather restrictive regulations did not invite many activities, such as initiatives, mainly on issues of social hardship resulting from economic transformation. In consequence of restrictive regulations almost no positive results could be achieved.²⁶ In countries with relatively large minorities, initiatives tried to re-mobilise nationalist identities of the independence period (against the Russian population in Latvia, Albanians in Macedonia) but were defeated by small margins.²⁷

Countries with a background of democratic system transformation, in so far as they developed institutions of direct democracy, displayed rather heterogeneous patterns. Austria and Germany, after 1918, introduced rather narrow or restrictive instruments which had only rarely been used, and the same applied to German states after 1945. Italy had included referendums in her constitution of 1948, but delayed implementing the instruments until 1970. Since that time the liberal signature requirements for the *referendum abrogativo* in practice allowed some 70 ballot votes (on social, economic, cultural and institutional issues) but most often valid results have been prevented by a turnout requirement of 50 percent of registered voters.²⁸

In Eastern and Central Europe, after 1989–1990, a few countries underwent economic and democratic transformation processes without relation to national independence. Poland, following a negotiated reform process, finally introduced an agenda initiative as a weak instrument.²⁹ Only Hungary made initiative and referendum instruments available, as an early reform concession in an environmental conflict. The first use of referendums in late 1989 pushed the break-up of the old regime, but after that only a few instances of citizens' initiatives relating to social consequences of economic transformation (pensions, health care, education) came to bear, some with successful ballot votes.³⁰ Bulgaria and Romania, with very restrictive instruments of direct democracy, did not see any use of ballot votes; only recently

²⁵ KISSANE (2009) op. cit.

²⁶ AUERS op. cit.; KRUPAVICIUS op. cit.; ERIC LÁSTIC: If it works, fine, if not, so what? Initiatives in Slovakia. In: SETÄLÄ–SCHILLER (eds.) op. cit. 152–74.

²⁷ JONATHAN WHEATLEY: The disruptive potential of direct democracy in deeply divided societies. In: MARXER (ed.) op. cit. 64–73.

²⁸ ULERI (2012) op. cit.

²⁹ ANNA RYTEL-WARZOCHA: Popular initiatives in Poland: Citizens' empowerment or keeping up appearances? In: SETÄLÄ–SCHILLER (eds.) op. cit. 212–127.

³⁰ PÄLLINGER op. cit. 215–216.

Bulgaria introduced slightly less restrictive regulations³¹ and had a first (invalid) vote on a nuclear energy plant in 2013.

5. Reform developments – how unlikely?

It could be assumed that over longer time periods the direct democracy profiles may show some development away from the original emergence models, possibly towards an average pattern of regulation. In reality, however, the original patterns have been surprisingly stable. In the Swiss and American cases almost no structural changes in the institutional designs can be identified, and the same applies to Ireland, Liechtenstein, Italy and France. For Eastern European countries of the independence and/or transformation type, the time for possible change has been rather short anyway, and the basic profiles have, in fact, endured. Modifications of the requirements for valid ballot votes were enacted in only a few countries, such as Hungary, for the exceptional purpose of ensuring the validity of Western integration referendums (NATO, EU accession).³²

So, in sum, we generally find either high stability of regulations or a clear path dependency for any modifications. In countries of the conflict model the liberal profiles of direct democracy gave citizens the right to participate in decision-making, which they obviously defend with persistence. In the independence and transformation countries, representative elites respect in principle the limited instruments provided to the people, but have a very strong interest in not extending these rights much further. From the original historical processes which brought their political systems into being, the elites inherited a more legitimate position and are less exposed to popular suspicion than under the conflict model and so they can claim more legitimacy for representative mechanisms. With the increasing distance from the political events of emerging democratic systems and institutions of direct democracy, the representative elites can gain an established status of ‘normality’, and will also be less willing to share power with popular actors and the decision-making power of citizens at large. Thus, in the long run it becomes even more unlikely that instruments of direct democracy will be reformed towards less restrictive regulations. In fact, in some cases procedural requirements have even been made more restrictive. One example is Hungary, where in 2011 the turnout quorum for a valid ballot vote has, again, been increased from 25 to 50 percent of registered voters.³³ In Slovenia there is currently (2012–2013) also much pressure towards more restrictive rules, particularly under conditions of the fiscal crisis. Reform tendencies towards more liberal features of direct democracy only seem to develop under new conditions of growing tensions between elites and social groups and the search for

³¹ Iva TARALEZHKOVA: Towards a law on local direct democracy in Bulgaria. In: Theo SCHILLER (ed.): *Local direct democracy in Europe*. Wiesbaden: Springer VS Verlag für Sozialwissenschaften, 2011. 184–92.

³² PÄLLINGER op. cit. 114, 119–121.

³³ Ibid. 114.

a new balance of institutional power.³⁴ One such rare example has been Bulgaria, where in 2009 the procedure of a citizens' initiative was introduced on the national level, which requires, however, 500,000 signatures and, for a valid ballot vote, a turnout as high as the turnout at the last parliamentary election.³⁵ So, in general we can conclude that the original emergence types of direct democracy represent rather persistent patterns and will have a strong influence on future path dependencies. New parties and new patterns in civil society groups may be factors for developments of democratic innovation.

³⁴ Of the German states in the transformation period from 1945 to the early 1950s, Baden-Wuerttemberg, Hesse, Rhineland-Palatinate and Sarre have kept their very restrictive requirements until now. Only following the new transformation process in East Germany after 1990, a reform process in West Germany led to more liberal profiles in North Rhine-Westphalia, Berlin and Bremen, whereas Schleswig-Holstein and Hamburg introduced direct democracy for the first time – SCHILLER (2012b) *op. cit.*

³⁵ TARALEZHKOVA *op. cit.* 190–191.

