

DIRECT DEMOCRACY IN EUROPE: CURRENT DISCUSSIONS

Zoltán Tibor PÁLLINGER

associate professor (Andrássy University, Faculty of International Relations)

1. Introduction

In the last two decades direct democratic practices have spread globally. This development has enriched both scientific and political discourses. This increase is mostly attributed to processes of democratisation, European integration and the growing problems of democratic representation in an increasingly heterogeneous world of politics.¹ The development of Hungary's system of direct democracy fits this pattern because it is closely linked to the country's democratisation and European integration, and the instruments were also used to overcome impasses created by representative politics.² However, in this article emphasis is put not on Hungarian developments (which will be treated in the other articles of this volume) but on the broader discussions in Europe which form the background against which developments and discussions in Hungary can be evaluated.

The proliferation of direct-democratic instruments, however, was not met by adequate conceptual and theoretical progress. The first aim of this article, therefore, is to provide some clarification on the conceptual level. Secondly, an overview of the instruments of direct democracy is provided. Thirdly, the development of direct-democratic instruments is discussed, and fourthly some major points of the current debate are presented. Conclusions will then be drawn. However, the aim of this paper is not to provide definite answers but to raise some important issues for further discussion.

¹ For a comprehensive discussion of the origins of direct democracy see Schiller's article in this volume.

² Zoltán Tibor PÁLLINGER: Citizens' initiative in Hungary: An additional opportunity for power sharing in an extremely majoritarian system. In: Maija SETÄLÄ – Theo SCHILLER (eds): *Citizens' Initiatives in Europe*. Houndsmills and Basingstoke, Palgrave Macmillan, 2012. 113–33.

2. The concept of direct democracy

The modern concept of direct democracy is attached to Rousseau's idea of popular sovereignty.³ The idea itself, however, is much older and can be traced back to the poleis of ancient Greece. In this context 'democracy' (without the attribute 'direct') was conceived as the self rule of free (male) citizens in the Greek poleis. Thus, direct democracy can be seen as the original form of democracy. In the heyday of Athenian democracy in the 5th century BC, a political order was created which offered male citizens the opportunity to participate in political decision-making within the framework of the popular assembly. The most important decisions were taken in the popular assembly, and citizens had the opportunity to assume political offices. Citizens were simultaneously rulers and ruled, though it should be made clear that representation was not envisaged within this institutional setting.⁴ Nowadays this form of democracy is often called 'identitarian democracy'.⁵ However, it was not considered ideal – far from it. (Political) knowledge being the prerequisite for good government, the capability of ordinary people to rule themselves was questioned in the first version of Plato's doctrine on the form of governments on the grounds of the uneven distribution of knowledge.⁶ Irrespective of this opinion the Greek notion of democracy as direct democracy prevailed until the modern age.

The emergence of modern territorial states rendered this understanding atavistic. The sheer impossibility of assembling the whole citizenry permanently to rule the state led to the invention of the principle of representation. The difference between these two forms of government can be illustrated by a well-known quotation from the Federalist Papers (no. 10):

“The two great points of difference between democracy and a republic are: first, the delegation of the government, in the latter to a small number of citizens elected by the rest; secondly, the greater number of citizens, and greater sphere of the country, over which the latter may be extended.”⁷

While the Founding Fathers of the United States clearly distinguished between 'democracy' (conceived as direct democracy) and 'republic' (conceived as representative democracy), this distinction became increasingly blurred in the following decades. 'Republic' was more and more understood as 'democracy'. Robert A. Dahl coined the term 'second transformation of democracy' to describe the process in which representative democracy became the normal case of democracy.⁸

³ Jean-Jacques ROUSSEAU: *Du Contrat Social/Vom Gesellschaftsvertrag. Französisch–Deutsch*. Stuttgart, Reclam Verlag, 2011.

⁴ Andreas KOST: *Direkte Demokratie*. Wiesbaden, VS Verlag für Sozialwissenschaften, 2008.

⁵ Cf. Manfred G. SCHMIDT: *Demokratiethorien. Eine Einführung*. Wiesbaden, VS Verlag für Sozialwissenschaften, 2011.

⁶ PLATON: *Der Staat*. Stuttgart, Reclam Verlag, 1982.

⁷ Alexander HAMILTON – James MADISON – John JAY: *The Federalist Papers*. Boston, IndyPublish.com, 2007.

⁸ Robert A. DAHL: *Democracy and its Critics*. New Haven & London, Yale University Press, 1989.

(Representative) democracy became regarded as incompatible with direct democracy. Destutt de Tracy, a French thinker, whose critique of Montesquieu strongly influenced Thomas Jefferson, even went so far as to maintain that direct democracy could only be suitable for small, under-developed states. Only representative democracy made the expansion of democracy over large territories possible, and only representative democracy made the long-term survival of these territorial states possible.⁹

The growing complexity of modern societies has actually led to a situation nowadays where every state disposes of some kind of popular assembly (parliament). Therefore the basic power structure in modern states is to be seen as representative.¹⁰ However, representative democracies also exhibit weak points, such as alienation between elites and masses, citizen passivity and absenteeism, or lack of responsibility on the part of the political elite. Direct democracy seems intuitively to offer a remedy for these issues. This insight gave rise to the perception that direct and representative democracy are not mutually exclusive, but rather complementary:

“In the practical context which faces participants in democracy building and democratic institutional design, the alleged choice between these two opposing positions is not only restricting and unhelpful—it is fundamentally false. Direct democracy mechanisms and mechanisms of representative democracy can complement and enrich each other rather than being seen as opposed.”¹¹

Starting from this assumption, the International Institute for Democracy and Electoral Assistance (IDEA) defines direct democracy as ‘a legal arrangement which gives citizens the right to be directly involved in the political decision-making process’.¹² This means specifically that citizens are allowed to raise issues on the political agenda or decide some factual issues by vote, without the mediation of a parliamentary actor. Although the usage of direct democratic instruments quadrupled during the 20th century, they have not supplanted representative instruments anywhere, but only complemented them.¹³ Even in Switzerland, the country with the most extensive usage of direct democracy on the national level, only seven percent of all possible cases are decided by popular vote. Which in turn means that this political system is also basically functioning in a representative manner.¹⁴

⁹ Destutt de TRACY: *Commentaire sur «L'esprit des lois» de Montesquieu; Quels sont les moyens de fonder la morale d'un peuple? : mémoire sur cette question / Antoine Destutt de TRACY: Observations inédites de Condorcet sur le vingt-neuvième livre du même ouvrage.* Paris, T. Desoer, 1819.

¹⁰ Theo SCHILLER: *Direkte Demokratie – Eine Einführung.* Frankfurt a. M., Campus Verlag, 2002.

¹¹ INTERNATIONAL INSTITUTE FOR DEMOCRACY AND ELECTORAL ASSISTANCE: *Direct Democracy: The International IDEA Handbook.* Stockholm, International IDEA, 2008.

¹² Ibid.

¹³ David ALTMAN: *Direct Democracy Worldwide.* Cambridge, Cambridge University Press, 2011.

¹⁴ Wolf LINDER: *Schweizerische Demokratie. Institutionen, Prozesse, Perspektiven.* Bern, Paul Haupt Verlag, 2005.

3. Instruments of direct democracy

Having clarified the relationship between direct and representative democracy, it is at this stage necessary to provide an overview of the instruments of direct democracy because contemporary discussion is characterised by inconsistency even at the level of basic definitions. The term ‘referendum’, for example, is often used synonymously with ‘popular vote’. However, in numerous publications it carries the meaning of a special kind of direct democratic instrument. In the following section an overview of some of the most important definitions of direct democratic instruments will be given, and a synoptic typology will be presented.

The aforementioned IDEA uses a threefold typology, differentiating between referendums, initiatives and recalls. Whereas the first term refers to procedures by which citizens can vote on public policy proposals originating from elsewhere, i.e. outside the body of citizens (for example, parliament or government), the second refers to procedures by which citizens can set the political agenda by originating a public policy proposal themselves. The third term, ‘recall’, is used to describe procedures by which citizens request and vote on the early termination of the tenure of one of the members of government.¹⁵

The Marburg based think tank Initiative & Referendum Institute Europe (IRI Europe) also puts forward a threefold typology, differentiating between initiatives, referendums and plebiscites. The first denominates certain types of popular vote procedures by which a minority has the right to propose to the public the introduction of a new or renewed law. The decision on the proposal is taken through a popular vote. The second term describes popular vote procedures by which voters have the right to decide a substantial issue (ballot proposal). They have the right either to accept or reject the ballot proposal. The third instrument denotes a popular vote procedure by which representative authorities decide when and on what subjects the people will be asked to give their opinion.¹⁶

In contrast to the two abovementioned typologies, Gallagher and Uleri differentiate between decision-controlling referendums, which are not initiated by the proposer of a certain policy, and decision-promoting referendums, which are initiated by the political actor itself who has put forward the policy proposal.¹⁷

Setälä and Schiller go even further by proposing a sixfold typology, comprising 1) mandatory referendums, which are pre-regulated by law; 2) optional referendums, initiated by government authorities; 3) ad hoc referendums, initiated by government authorities but not pre-regulated by law; and popular initiatives, comprising 4) citizen-initiated referendums (full-scale initiatives) and 5) agenda-initiatives; and finally 6) abrogative or rejective referendums, by which either a parliamentary minority or

¹⁵ INTERNATIONAL INSTITUTE FOR DEMOCRACY AND ELECTORAL ASSISTANCE op. cit., ibid.

¹⁶ Bruno KAUFMANN – Rolf BÜCHI – Nadja BRAUN: *Guidebook to Direct Democracy in Switzerland and beyond*. Marburg, Initiative & Referendum Institute, 2010.

¹⁷ Michael GALLAGHER – Pier Vincenzo ULERI (eds): *The referendum experience in Europe*. Basingstoke and London, Macmillan, 1996.

citizen can initiate a referendum on law that has been enacted or passed but is not yet in force.¹⁸

An even more sophisticated typology is put forward by David Altman. For Altman direct-democracy has two directions of impact: proactive and reactive. The proactive instruments aim at the future and try to democratise politics, whereas the reactive instruments aim at supporting elites. Furthermore direct-democratic instruments can be required by constitution (or law) and can be initiated top-down (plebiscite) or bottom-up by citizens (initiative and referendum). Finally, direct democratic instruments are binding or non-binding. For Altman there are twelve possible combinations of the abovementioned dimensions, from which seven correspond to empirically observable procedures: 1) mandatory plebiscite (pre-regulated, binding, proactive); 2) consultative plebiscite (top-down, non-binding, proactive); 3) facultative plebiscite (top-down, binding, proactive); 4) legislative counterproposals (top-down, binding, reactive); 5) consultative initiative (bottom-up, non-binding, proactive); 6) popular initiative (bottom-up, binding, proactive); 7) facultative referendum (bottom-up, binding, proactive).¹⁹

The typologies presented above clearly show that there is no common understanding concerning direct-democratic instruments. Another problem is that the more comprehensive the typologies, the less comprehensible they are. Therefore, in this paper a simpler typology is suggested (and used below), which is based on the Swiss experience.

First and foremost, the term 'referendum' is used in this context to denominate a specific instrument of direct democracy (see below) and does not describe the act of a popular vote itself. Basically, two forms of direct-democratic instruments can be distinguished: popular initiatives and referendums. While popular initiatives circumvent parliaments by proposing and deciding on bills which stem directly from the people, referendums serve to put an ex post control on decisions parliament has already taken. Popular initiatives can be binding or non-binding; in the latter case they are called 'agenda initiatives'. In the case of binding popular initiatives, parliaments may have the right to propose a legislative counter-proposal to the original initiative. Referendums can be mandatory or facultative.²⁰

While mandatory referendums are foreseen by law, popular initiatives and facultative referendum are normally started by collecting a certain number of signatures. If they are valid, they have to be put on a popular ballot, often after having to pass a parliamentary procedure. The decision is valid if they can gain a majority in the popular vote. Sometimes there are also participation and approval requirements (quora) which have to be met. Finally, there may also be other control mechanisms

¹⁸ SETÄLÄ–SCHILLER (eds.) (2012) op. cit.

¹⁹ DAVID ALTMAN: *Direct democracy worldwide*. Cambridge, Cambridge University Press, 2011.

²⁰ Within the confines of the suggested typology, direct democracy is seen as the resolution of factual questions by popular vote. The decision-aspect of direct democracy lies at the core of this typology; therefore, consultative instruments and recalls are not counted as direct-democratic instruments.

(courts, vetos from other institutions) which may have a bearing on the validity of the popular votes.

Lastly, regarding their impact, it can be noted that direct-democratic instruments which are triggered by a political majority and decided with a simple majority of votes tend to display majoritarian traits, whereas direct-democratic instruments which are triggered by a political minority and decided by qualified majorities (minority veto) tend rather to be consensual.²¹ Furthermore, it can be seen that direct-democratic instruments, once introduced, often generate a dynamic of their own, which leads to the further democratisation of democracy itself. It would be interesting to examine the practice of American states and cantons, which act as laboratories for enhancing and refining direct-democratic instruments.²²

4. Development of direct democracy

According to IRI Europe, between 1793 and 2010 there were 1538 popular votes held worldwide on a national level: 934 (61%) in Europe, 172 (11%) in Asia, 165 (11%) in the Americas, 152 (10%) in Africa, and just 102 (7%) in Oceania. During this period, 569 nationwide votes were held in Switzerland, which amounts to 61% of all European votes and 37% of votes worldwide. The frequency of use of the popular vote has accelerated in recent decades: more than 44% (683) of all votes were held in the last twenty years. However, it should be noted that these numbers only represent the national level. The numbers on the regional level are even more impressive. It is therefore safe to conclude that the phenomenon of direct democracy is of growing importance, and Europe plays an important role within this development.²³ This also holds true for Central and Eastern Europe, where direct democracy is also quite common. All of the new EU member states dispose of some kind of direct-democratic instruments which were also in use during the last twenty years (see Table 1).

²¹ Wilfried MARXER – Zoltán Tibor PÁLLINGER: Systemkontext und Systemeffekte: Direkte Demokratie der Schweiz und Liechtensteins im Vergleich. In: *BEITRÄGE*, Liechtenstein-Institut, Nr. 33, 2006.

²² These innovations range from measures to provide financial support for initiative committees to the introduction of citizens' counterproposals to citizens' initiatives, etc. An overview of these developments would merit an article of its own. Unfortunately, this cannot be done within the framework of this article.

²³ KAUFMANN–BÜCHI–BRAUN op. cit., ibid.

Table 1: Prevalence of direct-democratic instruments in new Central and Eastern European EU member states

Country	Referendum	Citizens' Initiative	Agenda Initiative	Used during the last 20 years
Bulgaria	√	-	-	√
Czech Republic	√	-	-	√
Croatia	√	√	-	√
Estonia	√	-	-	√
Hungary	√	√	√	√
Latvia	√	√	√	√
Lithuania	√	√	√	√
Poland	√	√	√	√
Romania	√	-	√	√
Slovakia	√	-	√	√
Slovenia	√	√	√	√

Source: IDEA: Direct Democracy, *ibid.*

5. Theoretical issues

This chapter will start with a short overview of the standard arguments for and against direct democracy. The possibilities, how direct and representative democracy can be linked on a theoretical level, will be examined. Then the question of how direct and representative democracy (can) interact in practice will be analysed.

Direct democracy is often seen as a corrective to the shortcomings of representative democracy. Direct-democratic instruments enable citizens to articulate preferences in a more differentiated way than would be possible solely through the institution of periodic elections. Furthermore, the threat of removing the power to decide policy questions from parliament subjects representatives to better control. The elites have to take into account the possibility that their decisions might be overturned by popular vote. Ultimately, the extension of possibilities for political participation is seen as one of the major advantages of direct democracy. Giving people the possibility to participate in public affairs strengthens their attachment to the political system, and in turn diminishes alienation. In addition, participation tends to enhance the legitimacy of political decisions. People debating public policy alternatives tend to be better informed than passive citizens. Finally, direct democracy is said to improve both the quality and performance of public policy.²⁴

Opponents point out that direct democracy tends to weaken representative organs

²⁴ Cf. Wilfried MARXER: „Wir sind das Volk“: Direkte Demokratie – Verfahren, Verbreitung, Wirkung. In: *BEITRÄGE*, Liechtenstein-Institut, Nr. 24, 2004.

and processes. Furthermore, direct democracy is accused of overemphasising majority rule, which in turn could lead to tyranny of the majority. Moreover, elitist democratic theories do not trust the ability of ordinary people to rule themselves. Ballot campaigns can amplify confrontational patterns of politics and open the doors for demagogues, thereby fostering the irrationality and inconsistency of political decisions. Direct democratic decision-making is said – by its opponents – to be more prone to lobbying by special interest groups than representative democracy.²⁵

In order to realise direct democracy's positive potential, the decision-making process has to be linked to the deliberative processes.²⁶ This in turn presupposes – as participatory theories point out – that people are able to participate meaningfully in public affairs. They should especially be able to form and express preferences, exchange arguments, and be capable of political learning. Participatory theories go exactly along the line of this argument, by stressing the fact that people's preferences are formed by socialisation and through political participation. Preferences, therefore, are not immutable, but may rather be altered. Theories of deliberative democracy push the argument even further, by arguing that deliberative processes – like public discussions based on mutual respect and rational discourse – are essential for democracy because they can help to transform and aggregate individual preferences into common preferences. Furthermore, based on a shared common rationality, through rational discourses the problem of tyranny of the majority might be mitigated.²⁷ So, on a theoretical level it is not impossible to link together deliberation (public discourse) and responsiveness through accountability. Responsiveness (as one of the key features of direct democracy) means that decision-makers have to consider public opinion, and therefore have to justify their decisions vis-à-vis the public (accountability). Finally, direct democracy serves – from a system's theory perspective – as a means to help differentiate the expression of people's preferences.

In order to evaluate the impact of direct democracy on representative democracy in practice the interaction between these two systems has to be understood. Following Setälä, four key questions can be identified in this context:²⁸

1. Do direct democratic instruments foster responsiveness?
2. How do referendum campaigns affect deliberative processes?
3. How does direct democracy interact with parliamentary processes?
4. How can minorities be protected?

It is difficult to answer these questions in a general way. What emerges as the

²⁵ Ibid.

²⁶ Maija SETÄLÄ: Introduction. In: Maija SETÄLÄ – Theo SCHILLER (eds): *Referendums and representative democracy. Responsiveness, accountability and deliberation*. London–New York, Routledge, 2009. 1–14.

²⁷ Ian BUDGE: Deliberative democracy versus direct democracy – Plus political parties! In: Michael SAWARD (ed.): *Democratic innovation. Deliberation, representation and association*. London–New York, Routledge, 2000. 195–212.

²⁸ SETÄLÄ: op. cit., ibid.

determining factor regarding the effects of direct democracy on the representative system is the practical design of the direct-democratic instruments.²⁹ However, regarding the first question, it seems clear that popular initiatives and referendums do foster responsiveness in systems in which they are regularly used.³⁰ Even agenda initiatives (and consultative referendums), which do not change the distribution of institutional power in the legislative process, do – contrary to the expectations of rational choice theories – display normally legislative impacts. It can thus be argued that although ‘softer’ forms of power are involved in agenda initiatives, that is, powers which only influence the political agenda, they can generate legislative impact. The impact of agenda initiatives seems to suggest that democratic politics is not just about institutional power, but that political agenda setting and discourses also matter.³¹

Regarding the second question, it can be stated that the answers are inconclusive. Political learning and the alignment of interests can occur in accordance with the framing of political campaigns, which in turn is dependent on the embedment of the direct-democratic instrument into the representative system, and especially dependent on the frequency of use of the direct-democratic instruments.³²

Regarding the third question, there are well-established institutional mechanisms to adopt direct-democratic instruments in the representative system. The embedding of direct-democratic procedures requires the clarification of the rules of procedure and participation, which should ensure that the functioning of the overall political system is not hampered by the existence of non-congruent instruments. These rules of procedure define which issues can be subject to initiative and referendum, and define the formal admission criteria. Furthermore, they specify who is allowed to launch an initiative or referendum, regulate relations with the representative organs, and define how decisions are made. Finally, they designate which institutions may be required to carry out checks and deal with complaints and appeals. Table 2 presents an overview of the (formal) institutional possibilities for embedding direct-democratic instruments into the representative system.³³

²⁹ Wilfried MARXER – Zoltán Tibor PÁLLINGER: Stabilizing or destabilizing? Direct-democratic instruments in different political systems. In: SETÄLÄ–SCHILLER (eds.) (2009) op. cit. 34–55.

³⁰ See Gabriela RÖHNER: Die Wirksamkeit von Volksinitiativen im Bund. 1848–2010. Zürich, Schulthess, 2012; John G. MATSUSAKA: Fiscal Effects of the Voter Initiative in the First Half of the Twentieth Century. *Journal of Law and Economics*, vol. XLIII, October 2002, 619–650.; Gebhard KIRCHGÄSSNER – Lars P. FELD – Marcel R. SAVIOZ: *Direkte Demokratie. Modern, erfolgreich, entwicklungs- und exportfähig*. Basel, Genf, München, Helbing & Lichtenhahn, 1999.

³¹ SETÄLÄ op. cit., *ibid*.

³² SETÄLÄ op. cit., *ibid*.; Hanspeter KRIESI: The role of the political elite in Swiss direct-democratic votes. In: Zoltán Tibor PÁLLINGER et al. (eds): *Direct Democracy in Europe. Development and Prospects*. Wiesbaden, VS Verlag für Sozialwissenschaften, 2007. 82–93.; Simon HUG – Tobias SCHULZ: Referendums and Ratification of the EU Constitution. In: PÁLLINGER et al. (eds.) op. cit. 174–188.

³³ Wilfried MARXER – Zoltán Tibor PÁLLINGER: System contexts and system effects of direct democracy – direct democracy in Liechtenstein and Switzerland compared. In: PÁLLINGER et al. (eds.) op. cit. 12–29.

Table 2: Formal embedding of direct-democratic instruments into the representative system

Instrument	Example
Procedural guarantees	Possibility of appeal to independent courts
Triggering	Who has the right to trigger Initial signature quorum
Restriction of issues	Protected areas of the constitution Independent institutions
Formal requirements of admissibility	Principle of the unity of the subject matter
Interaction with representative organs	Parliamentary debate on the proposal Voting recommendation Response Counter proposal
Decision rules	Majority requirements Validity quorums
Entry into force	Automatic Approval of other state organs required
Protection of fundamental rights	National Law International Law

Source: Wilfried Marxer and Zoltán Tibor Pállinger: System contexts, ibid.

Although there are well-established institutional mechanisms to adopt direct-democratic instruments in the representative system on a theoretical and institutional level, the successful operation is also dependent on informal factors and the political culture. It is essential to intertwine the direct-democratic and representative processes of decision-making procedurally in order to foster dialogue between elite and people. If this is not done, then direct democracy only becomes an ‘irritation’³⁴ (in the sense of Luhmann) to the representative system. Furthermore, it should be noted that the impact of direct-democratic instruments also heavily depends on the frequency of their use:

“The effectiveness of direct-democratic instruments does not only depend on the way they are defined by law, but also on the frequency of their use: First there are states where direct democracy is an exceptional procedure, where direct-democratic instruments normally mean plebiscites [...] that are employed on a very infrequent basis, often with years between applications, and do not have an intrinsic impact on the political system. Second, in other states, direct-democratic instruments exist as a constitutionally guaranteed option for decision-making and are used regularly, but not necessarily frequently. Direct-democratic instruments represent a complementary procedure to representative democracy and tend to have

³⁴ Renate MAYNTZ – Fritz W. SCHARPF: Politische Steuerung – Heute? *Zeitschrift für Soziologie*, Jg. 34, H. 3, 2005. 236–243.

only a modest influence on the development of the political system. Third, there are countries in which direct democracy is applied as a routine procedure, as popular rights are constitutionally prescribed, have fully developed procedural mechanisms, and form an integral component of the political system. Clearly, it is in such countries that direct democracy has the profoundest effect on the political system.”³⁵

Taking the case of Switzerland, it can be seen that the intertwining of direct and representative democracy, the frequency of use, and the political culture coincide. Institutional embedding is supplemented by more informal mechanisms. For example, the administration (Section of Political Rights at the Federal Chancellery) provides *ex ante* professional support to the citizens even before they have drafted an initiative. Afterwards – if an initiative has been declared valid – the government has to adopt a message in which the pros and cons, the financial impact and also the compatibility of the proposed bill with the constitution and international law are discussed. This message also contains a recommendation for the attention of the citizens, by which they are informed whether the government recommends the approbation or the refusal. Then the message is debated by parliament, which in turn adopts the definitive recommendation for the attention of the citizens. It may also put forward a counter-proposal, which is put on ballot at the same time as the initial proposal. Citizens have the possibility to vote in favour of both. If both proposals are accepted, citizens can decide which should be adopted (tie-break decision).

The example of Switzerland also throws light on the importance of the availability of objective, unbiased information on the ballot proposal during the campaign. It is the parties and the civic actors who campaign for or against the proposal according to their self-interests. In Switzerland, objective, unbiased information on the ballot proposal is offered in the ballot pamphlet (‘Bundesbüchlein’)³⁶ issued by the Swiss Government. In this pamphlet the ballot proposal and the key points of the governmental message (including the recommendations of the government and parliament) are presented, and the proponents also have the opportunity to present their arguments. Although the impartiality of this pamphlet is questioned from time to time, the majority of citizens participating in popular votes considers this publication as an important and reliable source of information.³⁷

The interplay between direct and representative democracy in Switzerland is also illustrated by the fact that although only about 10% of all popular initiatives are successful, in the strict sense of the word, at the popular ballot, which means that they are able to gather a majority of the citizens’ votes and a majority of the cantons, more than 50% of the initiatives have some effect in the ensuing legislation. This can be interpreted in the sense that there is an ongoing more or less formal ‘dialogue’ between citizens and elite. This causes the latter to take into consideration alternatives from

³⁵ MARXER–PÄLLINGER (2009) op. cit., *ibid*.

³⁶ In California, also a polity which uses direct democracy extensively, unbiased information is delivered – similarly to Switzerland – in a ballot pamphlet issued by the Legislative Analyst.

³⁷ GFS.BERN: *Neuerungen und Konstanz in der Mediennutzung, im Regierungsvertrauen und in den Werthaltungen. Vox-Berichterstattung für die Legislatur 2003–2007*. Bern, gfs.bern, 2008.

outside parliamentary discourses. In most cases the measures adopted by parliament are less radical and more acceptable to the majority and, on the whole, the system's responsiveness is increased through this deliberative element.³⁸

Regarding the fourth and final question, about the relationship between direct democracy and the protection of minorities, the results are ambivalent: neither the apprehension that countries using direct-democratic procedures would violate minority rights more frequently than those using representative procedures, nor the claim – based on the Swiss example – that direct democracy would generally be minority friendly, can be sustained. A more differentiated approach has to be chosen.³⁹

The impact of direct democracy on minorities is dependent on several factors: first, the institutional embedding of direct-democratic instruments into the representative system has to be considered. If there are fully fledged mechanisms for legal protection (e.g. constitutional courts) – as, for example, in California – negative results of popular votes can be remediated ex post. Furthermore, the politico-administrative culture also has a heavy bearing on the practical effect of negative popular votes. As again the example of California can demonstrate, discriminating popular votes, especially those aimed at banning children of illegal immigrants from schools, are often simply not implemented by government authorities.⁴⁰ Second, the type of ballot proposals also has to be taken into consideration. Generally, only proposals which aim at expanding minority rights are negatively affected. Regarding the cutback of minority rights, no difference between direct and representative democracy can be discerned.⁴¹ Third, the type of minority also has to be examined. The interests of minority groups which are able to organise their interests, and 'ingroups', which are accepted by the majority, are generally not negatively affected. On the other hand, minorities which are only able to organise their interests poorly, and 'outgroups' not accepted by the majority, tend to be negatively affected by popular votes.⁴²

Regarding the experiences of his home country, Swiss political scientist Adrian Vatter reduces the impacts of direct democracy on minorities to a common denominator: 'Popular votes on questions concerning the rights of minorities during the last 160 years can be seen as a cascade of delaying, refusing and exacerbating decisions.'⁴³ Clearly, direct democracy has its limits – as does any other form of government – and the scope of the applicability of direct-democratic instruments

³⁸ ROHNER op. cit., ibid.

³⁹ Adrian VATTER: Synthese: religiöse Minderheiten im direktdemokratischen System der Schweiz. In: Adrian VATTER (ed.): *Vom Schächt- zum Minarettverbot. Religiöse Minderheiten in der direkten Demokratie*. Zürich, Verlag Neue Zürcher Zeitung, 2011. 264–290.

⁴⁰ MARXER–PÁLLINGER (2009) op. cit., ibid.

⁴¹ VATTER op. cit., ibid.

⁴² Ibid.

⁴³ Ibid.

has to be discussed.⁴⁴ There is a broad range between the Swiss concept of the universal applicability of direct-democracy on (almost) every political question, and the Hungarian model, where the scope of direct democracy is drawn much more restrictively.

As sobering as the above conclusion may be, it should be put into a comprehensive perspective. Direct democracy in general enhances the responsivity of the political system, and brings elite decisions closer to the preferences of the median voter. The more negative this may be in the case of discriminative popular votes, the more positively it has to be regarded in reference to political day-to-day business. Furthermore, the intensity of negative popular votes is always dependent on the – politico-administrative – implementation. Finally, it also has to be considered that dynamic learning processes occur within the framework of direct democracy. In 1959, for example, Swiss citizens rejected the introduction of women's suffrage; in 1972, however, they agreed to introduce it. Which of the two decisions should be weighted more? The negative one, or the positive one, which resulted from a collective learning process? Regarding this question, it can be concluded that there are definitely adequate institutional mechanisms for protecting minority rights in direct democracy. Constitutional guarantees, constitutional courts, and human and minority rights conventions provide a solid base for preventing the negative effects of direct democracy on minorities, if they are properly instituted and functioning. In addition, the discursive effect of direct-democratic campaigns may induce changes of political preferences. All in all, direct democracy yields no more inferior results than representative democracy, and also has a higher potential for deliberation and collective learning.

5. Conclusion

These considerations have shown that the phenomenon of direct democracy is of growing importance in the present world of politics. Contrary to anterior notions, direct and representative democracy are not to be regarded as polar opposites, but as mutually complementing instruments which may contribute to the enhancement of the quality of democracy. In such a perspective direct democracy can offer opportunities to overcome some of the shortcomings of representative democracy. However, it is important to note that generalisations on the effect of direct democracy are very hard to make: being case sensitive, the effects of the usage of direct-democratic instruments are largely dependent on the individual institutional design.

In order to realise its positive potentials, direct democracy has to be attuned to the representative system, and direct-democratic and representative processes have to be intertwined as well. Interaction is crucial to fostering deliberation and collective

⁴⁴ Anna CHRISTMANN: *Die Grenzen direkter Demokratie. Volksentscheide im Spannungsverhältnis von Demokratie und Rechtsstaat*. Baden-Baden, Nomos Verlag, 2012.

learning processes. The success of direct democracy can be facilitated if states take a positive stance on this question by providing professional support for citizens considering starting popular initiatives.

Finally, the limits of direct democracy should also be discussed. Like any other form of democracy, direct democracy is also prone to the perils of tyranny of the majority. Therefore, legal mechanisms for safeguarding minority rights have to complement the institutions of direct democracy.

Having said that, it must not be forgotten that direct democracy has great potential for democratising politics. Regarding the complexity of modern societies, direct democracy provides for better and more differentiated opportunities for expressing individual and collective interests than purely representative systems. This possibility, and the inherently discursive character of direct democracy, may help our societies to come closer to the democratic ideal of the active and self-determined citizen.