

Theo Schiller (ed.)

Local Direct Democracy in Europe

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TAG GRUNDGESETZ POLITISCHES SYSTEM EUROPÄISCHE UNION WAHLEN

DIRECT DEMOCRACY IN MODERN EUROPE

Theo Schiller (ed.)

Local Direct Democracy in Europe

Direct Democracy in Modern Europe

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The interdisciplinary series will present studies on direct democracy in theory and empirical research in modern Europe on the local, national, and European level. Subjects will include country reports, legal aspects, special referendums, comparative studies, and analyses of policy impacts and the contribution of direct democracy to the development of democratic systems.

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Preface

Direct democracy has attracted growing interest over the last two decades, in practice as well as in academic writing, yet mainly with a focus on the national level of government and much less on the regional and local level of politics. Since citizens have the closest relationship to their everyday environment of local politics it should be rewarding to take a closer look at the opportunities of participating in direct democracy at this level of political life. Therefore, we chose the topic „Direct Democracy in Local Politics in European Countries“ for a conference which I organised in April 2007 at the Institute of Political Science, Philipps University Marburg, Germany, in collaboration with the Initiative and Referendum Institute Europe (IRIE) and the Liechtenstein Institute. I am very grateful to the speakers from all parts of Europe for participating in this conference and elaborating their papers into very informative articles for this publication, including updates on recent developments. I also appreciate the patience of all contributors for a rather time-consuming process of editing and publishing this book.

This international conference had been made possible by generous financial assistance from Fritz-Thyssen-Stiftung, Cologne, which we gratefully acknowledge. In addition, I want to thank Philipps University Marburg and the Ursula-Kuhlmann-Fonds for valuable support.

For organising this meeting we enjoyed the invaluable help of many persons, most notably of Volker Mittendorf, Anna Capretti, Zoe Felder, Philine Sturzenbecher, Benjamin Ewert and Christine Timmermann.

I am also very grateful that the original versions of most papers have received English-language editing by Paul Carline, Edinburgh, who attended the conference and demonstrated his expertise in the subject of direct democracy.

My thanks also go to Frank Schindler, VS Verlag fuer Sozialwissenschaften, Wiesbaden (Germany), for his continuous support of this English language series „Direct Democracy in Modern Europe“.

Hopefully this publication will contribute to disseminate knowledge and cooperation on local direct democracy in Europe and that citizens participating in direct democracy can help to qualify local democracy at large in European countries.

Marburg (Germany), October 2010

Theo Schiller

Local Direct Democracy in Europe – a comparative overview

Theo Schiller

Direct democracy in Europe has developed a growing interest in recent years. This refers to all levels of governmental systems, the national level, the regional states in federal systems and the level of local politics. Since 2009, the Lisbon Treaty even provides the European Citizens' Initiative as an instrument of direct democracy for the level of European Union politics, and many referendums on accession to the European Union and on treaty amendments referred to the European politics level (Szczerbiak 2005; Pichler 2009; Pichler/Kaufmann 2010).

There are many reasons to take a closer look at direct democracy in local politics. Since states regularly have a local level of administration and often self-government, local politics and policies represent an important part of democratic systems with competences very close to the daily lives of citizens. So, communities and municipalities provide an interesting field of civic participation and of entering political life with easier access than regional or national state politics. This also supports systems of democracy at large and surely is regarded almost everywhere as an indispensable basis of democracy. These qualities can develop as far as the state is granting local self-government with meaningful jurisdictions and not only administrative tasks under central control. By 'local politics' we do refer broadly to several forms, with municipalities at the core, but in some states differentiated in districts, wards etc., and also with counties, provinces or the like as a higher level, which may not all possess explicit rights of self-government. For the sake of brevity with 'local politics' we normally mean the level of municipalities.

Dealing with local politics and local democracy also gained relevance since, during the last two or three decades, many reforms of local governance have been discussed and practiced. These included on the one hand expanding infrastructure and welfare services of municipalities and how they can be realized more efficiently, e. g. by professionalising or privatising services. This has been paralleled by an increase of the size of municipal units which often led to conflicts about municipal mergers. On the other hand, many forms of extending political participation and of activating civil society groups have been explored. The broader concepts of participation sometimes also included increased influence of citizens by way of direct elections of mayors, and of direct democracy in the form of initiatives and referendums. Obviously, direct democracy has been recognised as valuable for individual citizens' participation and as a tool for supporting local democracy in general. Thus, time seemed to be right to collect a broader and comparative picture of these recent developments of local direct democracy in European countries.

Section 1 starts with some general theoretical considerations on local direct democracy, gives an overview on relevant literature for the subject, and explains how the country reports in this book have been selected and organised. Section 2 will inform on the historical and political background of main developments of local direct democracy in the respective countries. Section 3 describes the basic forms of initiative and referendum procedures

available and compares regulations and country profiles. Practical usage of the instruments of direct democracy and important factors to explain variations are discussed in section 4. Finally, section 5 will draw some conclusions from comparing these patterns and look at impacts of local initiatives and referendums on structures and qualities of local democracy in general.

1 General considerations and structure of the book

In general, direct democracy may be defined as a procedure which allows citizens to participate directly in decision-making on policy issues in a ballot vote on propositions initiated by citizens or by a governmental authority (variations and details see sec. 3).

During these last decades, in the general debate on direct democracy many pro and con arguments have been brought forward (e.g. Budge 1996; Budge 2006; Leduc 2003; Setälä/Schiller 2009). As one basic point stands out that by initiative and referendum citizens can participate in discussing and deciding on *specific issues* and not only on parties and candidates, and that thereby the democratic principle of political equality may be strengthened. Since many issues are not discussed in general elections citizens need other channels to articulate policy preferences. Opportunities to participate will increase access and motivation to information and expand the competence of citizens. Thus, these instruments support the openness of the political process by introducing agenda and policy alternatives, strengthen the principles of transparency, and provide more chances to enforce accountability and political control of representative decision-making by elites. Counter-arguments stress that in large states citizens cannot be directly present in decision-making publics and therefore must be represented by elected bodies, that many policy subjects are rather remote and abstract for citizens, and that ordinary citizens do not have enough competence, time and information to judge complex matters. In addition, it is contended that campaigns for ballot votes are prone to being emotionalised, and that financially powerful actors or groups can manipulate the outcome of referendums. More general concerns point out that direct democracy undermines intermediary institutions and responsible political actors and, thus, will weaken representative institutions.

These arguments may generally also apply to direct democracy at the local level. Some negative aspects, however, are not convincing here. Firstly, the argument that large state territories can only be governed by representative institutions is not convincing for the local level of politics. Secondly, many issues in the municipality are without doubt very close to citizens, to their needs and interests as well as to their attention. Sometimes they may be less complex than on higher state levels, but even with more complexity citizens on the average will have more opportunities to gain relevant information, criteria to judge and to participate in discussions/deliberations with many fellow citizens to form their opinion and decision. In this way, local direct participation can also contribute to more acceptance, effectiveness and legitimacy of local governance, and serve as an area of learning and experiencing democratic decision-making for democracy at large.

Some general literature and sources

Basic literature on direct democracy in Europe (in English) is not as numerous as one could assume, and shows a natural focus on the national level. The first broad volume with a

world view by Butler and Ranney, eds. (1994) included a chapter on Switzerland and overview chapters on Western and on Eastern European states without the newly independent countries. The real starting point on Western Europe was Gallagher and Uleri, eds. (1996). A third milestone has been Auer and Buetzer, eds. (2001) on the Eastern and Central European countries. In all debates on direct democracy, Switzerland represents the special case as the most developed polity which offers procedures of direct democracy at all levels (Kobach 1993; Kriesi 2005). Basically, these important volumes did cover direct democracy at the local level only to a limited extent, like in Gallagher/Uleri (1996) where only the local experience in the Netherlands has been covered (van Holsteyn 1996). For the Eastern and Central European countries, Auer/Buetzer, eds. (2001) provide two articles on local initiatives and referendums summarizing country reports (Avtonomov 2001, van Holsteyn 2001). For Switzerland, a special study on direct democracy at the city level is provided by Michael Buetzer (2007). Publications on broader reforms of local governance include a least contributions on few individual countries (Reynaert et al. 2005; Delwit et al. 2007). A general overview on direct democracy in Europe (in German) also contains a short summary section on the local level (Walter-Rogg 2008).

A different type of publications has a more documentary nature. Particularly the Initiative and Referendum Institute Europe (IRIE) provided very useful reference publications like „Direct Democracy in Europe“ (Kaufmann/Waters, eds. 2004) which for several countries also contains short information on the regional and the local level. The „Guidebook to Direct Democracy in Switzerland and beyond“ (Kaufmann et al. 2005 and diverse editions) offers basic data on regulations and use of national initiatives and referendums in European countries, but only few special country reports (in 2007, 2008 editions) also provide facts on the municipal level. The International IDEA Handbook on Direct Democracy (2008) providing a world overview concentrates on national instruments of direct democracy.¹

A more general category of literature offers analyses of governance reform and democratic participation in local politics as these developed since the 1980s (e.g. Kersting and Vetter 2003; Denters et al. 2005; Kersting et al. 2009). Some publications in this area include useful accounts of direct-democratic participation in a broader context of democracy trends in a few countries (Reynaert et al., eds. 2005; Delwit et al., eds. 2007). The Council of Europe's reports on local democracy are also worth while to be consulted (CoE 2008).

Countries included in the book

In this volume, 19 countries in Europe inside and outside the European Union have been included. Of 27 member states of the EU 16 countries are contained here: Austria, three Baltic states, Bulgaria, Czech Republic, Denmark, Finland, France, Germany, Italy, Poland, Slovakia, Slovenia, Sweden and the United Kingdom. The countries outside of the EU are close neighbours to the union: Liechtenstein, Norway and Switzerland.² A number of 16 out of 27 EU countries may seem incomplete, but nevertheless it represents a very relevant selection, since in many other states direct democracy at the local level practically does not exist. This applies for instance to Ireland – a country which at the national level is quite prominent with referendums. In other cases like Cyprus, Greece, Luxembourg, Malta, Portugal or Romania, no substantial regulation or practice is available (for some information

¹ Online information and data on direct democracy at the national level are available at www.c2d.ch and www.sudd.ch. There are no cross-national data bases on local direct democracy.

² It would have been impossible to try to cover all 47 member states of the Council of Europe (CoE).

see Kaufmann/Waters 2004). Although the Baltic states have no formal institutions of direct democracy at the local level, we included them in a summary report since Latvia and Lithuania have initiative and referendum practice at the national level, and first developments of direct participation can be observed in municipal politics (and, without local referendum laws, even some cases of initiatives and advisory referendums). Unfortunately, a report on Hungary did not materialize, and for Belgium, the Netherlands (see: van Holsteyn 1996) and Spain no contribution could be organized at this time. Some minimum information on these countries will be mentioned in the text below. Neighbouring countries in the Balkan region like Bosnia-Herzegovina, Croatia, Macedonia, Montenegro or Serbia, have some regulated procedures but developments of local direct democracy have not yet really started.

The country chapters³ focus on three major topics. They provide general information on the historical and structural background of political systems and the development of democracy as well as the institutions, structures and political culture of local politics. They describe the introduction of direct democracy at the national and local level, and present the specific regulations and typical features of local direct democracy. They give accounts of practice and problems of using initiatives and referendums, as well as its impact on policies and political systems, and reflect on future prospects of these instruments. Depending on specific conditions in the countries the chapters vary somewhat as to the weight given to the different aspects. By and large, however, most chapters provide an informative and lively picture on these topics.

The country reports will be ordered here in two parts: the first part presents the states with more complex and active developments, the second part collects the „small beginnings“ of countries with weaker instruments and more restrictive conditions for practicing initiatives and referendums.

2 Basic developments and contexts of democracy

Since the 1990s, direct democracy in local politics has made remarkable progress in European countries. Before dealing more closely with these developments and the current state of affairs we first have a brief look at some historical steps in the century before in the context of democracy in general, in order to identify some factors for the evolving patterns of direct democracy at the local level.

The history of democracy in general is quite diverse in European countries. In some „Western democracies“ long traditions supported stable political systems, like Switzerland, Liechtenstein, the Northern countries or the United Kingdom. In other states democratic systems had been interrupted by periods of dictatorship like Germany, Austria, Italy, Portugal or Spain, or in occupied countries like Belgium, Denmark, France or Netherlands. Eastern and South-Eastern European countries, after former authoritarian rule or occupation, suffered for decades of communist domination and could transform themselves to democracy only after 1989/90.

Switzerland, of course, has a long tradition with institutions of direct democracy at national, cantonal and municipal levels, but she introduced equal voting rights and instru-

³ On the countries covered in this book no individual references to the country chapters are made in the text.

ments of direct democracy much earlier at the federal and cantonal level than at the level of municipalities. Whereas local assemblies in rural communities had an older history, in cities initiatives and referendums were only introduced in the 1880s and 1890s in a time when also the second important national instrument, the popular initiative on constitutional amendments, was adopted in 1891 (Buetzer 2007: 34-43). In Liechtenstein, institutions of direct democracy at the national and local level had been started at the same time under the new constitution of 1921. Developments like these had been rare. First local referendums before World War I are reported from Norway, and a few cases in France and Italy, but these beginnings did not last. Germany's „Weimar Republic“ introduced direct-democratic institutions on the national, regional and local level 1919/20 which *de facto* ended in 1933. After 1945, most countries of Western Europe could restore democratic systems but without much interest in direct democracy. Yet, in this context forms of direct democracy were introduced in Germany at least at the level of most regional states, and in Italy by the national constitution in 1948 (implemented only in 1970). France followed in the late 1950s with the new presidential constitution. In none of these countries, however, direct democracy at the municipal level had been established during this period.⁴

In Eastern Europe after 1989, in the course of the democratic transformation and the struggle for independence several countries introduced direct democracy at the national level as an instrument and symbol of popular sovereignty. Some of them extended initiative and referendum instruments to the municipal level, except all three Baltic states (overview: Avtonomov 2001).

On this historical background, more general factors for adopting direct democracy may be considered. Different governmental systems/institutions do not seem to be strongly influential since few Western European countries with a parliamentary system of government adopted at the national level some sort of initiative and/or referendum measures (Denmark, Ireland, Italy). On the side of presidential (or monarchical) systems which have direct democracy instruments one would hardly conclude that in France or Liechtenstein this was the main factor for the introduction of direct democratic instruments. In Eastern Europe the contexts of institutional systems are similarly mixed. Other models of democracy like consensus or consociational democracy also do not offer explaining factors for direct democracy since the Netherlands with her more elitist political culture did not at all follow the Swiss model.

A more specific factor may be institutional: direct democracy at the national level could support the adoption of corresponding local institutions. Whereas in Western Europe Switzerland and Liechtenstein would fit this pattern, Ireland and Denmark (with minor exceptions) contradict it, and in Italy, France and most German states initiative and referendum in local politics also had been missing for decades. In Eastern Europe, a majority of countries would be consistent with the assumption but Latvia and Lithuania are not. In addition, reverse cases also should not be forgotten since Norway and the Czech Republic even introduced local initiative and referendum without providing these institutions on the national level. Thus, again, no stringent explanation for introducing local direct democracy can be drawn from this factor of institutional similarity.

In Western Europe, finally in the 1980s and 1990s countries like Italy, France, Great Britain and the German states introduced at least some new instruments for more civic participa-

⁴ In Germany, only in the state of Baden-Wuerttemberg (1956).

tion in local politics including institutions of direct democracy. For a long time, the first three countries had a rather centralist administrative tradition which also put some limits to municipal self-government. Since the 1980s, cautious developments towards broader administrative regionalisation and decentralisation provided also a more favourable context for local participation instruments with a still restricted role of initiative and referendum (Kersting/Vetter 2003; Delwit et al. 2005). In Italy, the legitimacy crisis of the state, the breakdown of Christian Democrats and their allies in the early 1990s added some momentum to this process of decentralisation as a precondition for more citizens' participation.

In Germany the situation was also rather complex. First, the breakdown and democratic transformation of the GDR in 1989/90 opened the way in the new East German states to introduce direct democracy at state and municipal level at the same time. Secondly, in the West the state of Schleswig-Holstein in the late 1980s suffered a serious legitimacy crisis from the „Barschel affair“, and the resulting new constitution of 1990 introduced direct democracy instruments at state and local levels. An important third factor has to be added: administrative reforms for municipalities in most West German states which strengthened executive power by direct election of mayors and tried to balance this by introducing initiative and referendum. Administrative reforms at the local level are not only relevant in these countries. Several other states developed policies of merging municipalities since the 1980s and used referendums (often consultative) on this subject, e.g. in Denmark, Finland, Norway and Sweden.

For these new developments in Western Europe (for an overview on local governance reforms: Kersting et al. 2009) a more general background trend should not be forgotten: emerging new groups in party systems in the 1980s, particularly the Greens in many countries have been advocating participatory democracy. This also applies to D'66 in the Netherlands, the Radical Party in Italy, or Liberal Democrats in the U.K. which supported post-materialist values in general public discourse.

These new tendencies in Eastern and Western Europe, since the 1990s, have also been reflected by recommendations of institutions on a trans-national level. The Council of Europe, by his Committee of Ministers responsible for Local Government, adopted a resolution on local referendums in 1993. This was elaborated further by a recommendation to member states in 1996 which defined basic instruments and features, identified main areas of regulation and suggested to lay down a legal framework for referendums and popular initiatives at local level.⁵ These elements of direct democracy were also integrated in broader concepts of local citizens' participation, for instance by the Congress of Local and Regional Authorities of the Council of Europe.⁶

The following sections will show that these general developments did not result in uniform rules or practices of local direct democracy in European countries. In the countries which adopted initiatives and/or referendums at the local level, the forms of procedures and the usage of them vary quite substantially. Bulgaria, France and Slovakia, for example, display very little activity, whereas in Poland and in several German states a much more

⁵ *Council of Europe*, Committee of Ministers: Resolution No. 2, 15/16 Sept. 1993; *Council of Europe*, Committee of Ministers: Recommendation No. R (96) 2, to Member States on Referendums and Popular Initiatives at Local Level, 15 February 1996. (<https://wcd.coe.int>)

⁶ Council of Europe (CoE), Congress of Local and Regional Authorities: Resolution 91(2000) on responsible citizenship and participation in public life; CoE, Congress of Local and Regional Authorities: Recommendation 182 (2005) on public participation in local affairs and elections (<https://wcd.coe.int>). See also: CoE/European Commission for Democracy through Law – Venice Commission (2007): Code of Good Practice on Referendums.

frequent usage can be observed – not to speak of Switzerland with her long tradition. We will now look at the different forms of direct democracy and other factors which may influence these variations of practice in the countries to be compared.

3 Forms of local direct democracy

Procedures of local initiative and referendums procedures are normally regulated by the same authorities as other forms of local political participation like electoral rules, most often by the state legislature. In one-tier states the national legislature will be in charge of „municipal acts“ or the like. Within federations, the regional states regularly have the jurisdiction to set the rules of municipal self-government, like in Austria, Germany and Switzerland. In countries where the powers of regions have only developed recently, like France or Italy, the situation seems to remain more ambivalent. In fact, France as well as Italy still regulate affairs of municipal self-government by national legislation. In Italy, however, the laws of 1990 and 2000 decentralised decisions on local participation by giving some regulating powers to regions and allowing municipalities to permit in their statutes consultative referendums at the request of an adequate number of citizens.

Local direct democracy is likely to display the same basic forms which are well known on the national and regional states level. Starting from our basic definition of direct democracy (above, sec. 1), there are two standard types distinguished by the main actors initiating a procedure which may lead to a ballot vote: one initiated by a group of citizens, the other one initiated by governmental authorities. Procedures⁷ initiated by a *governmental authority* have a „direct-democratic“ quality by giving citizens the opportunity to a ballot vote on the authorities' proposal or draft decision. The full scale type of a *citizens' initiative* contains more „direct“ elements of participation since a group of citizens initiates a proposition which can be adopted by the governmental authority in charge, or otherwise a ballot vote will be conducted. In a modified type citizens request a *popular referendum* in order to reject or accept a new political decision (e.g. a new legislative act) by governmental authorities, in Switzerland called ‚facultative referendum‘. In a second modified but incomplete type citizens can present a proposal which has to be considered and decided by a governmental authority, without a ballot vote (‚*agenda initiative*‘). Another modified version allows citizens to request a ballot vote on their proposal but the authority can decide by discretion whether she will call it or not.⁸

In a *mandatory referendum*, as a third basic type, it is regulated by law that on specific subjects (e.g. constitutional amendments) a referendum has to be called whether the proposal originates from governmental authorities or from citizens.

The *recall* of elected office-holders or legislative representatives sometimes is also included in the concept of direct democracy. In the strict sense this procedure belongs to the institutions of representative democracy by withdrawing an elected mandate. Yet, for pragmatic reasons we follow some countries and authors who include it in the term ‚direct democracy‘ since it gives citizens an additional instrument of political control and the choice to withdraw their trust. In local politics it may mainly refer to recall members of the

⁷ See also the typology proposed by Buechi (in this volume), Appendix 2.

⁸ For this procedure no established typological term seems to exist. A suggestion may be ‚motion for a referendum‘ or ‚to ask for/to propose a referendum‘.

local councils and directly elected mayors. In some cases citizens can initiate the procedure (with a signature quorum), in others they only have the ballot vote when other actors are entitled to take the initiative.

These basic procedures of direct democracy need regulations of many aspects unless governmental authorities are entitled to call referendums and set rules on an ad-hoc basis.

- First, specific subjects may be excluded from initiative or referendum.
- Secondly, for citizens' initiatives regulations refer to the form of a proposal, the number of signatures required for an initiative, time and other criteria allowed for collecting them, and specific institutional interactions. In addition, for government-initiated referendums the authorities entitled to make the call (executive, legislature) and procedural requirements have to be defined.
- Thirdly, rules define the procedural steps and requirements of a ballot vote, like eligibility to vote, date and circumstances of voting, and criteria for the validity of the vote if more than a majority of votes cast is required, e.g. approval or turnout quorums or double majorities in different territorial units.
- Fourthly, whether a ballot vote shall have a binding or only an advisory (consultative) quality.

On the national and regional state level we encounter a wide variety of such regulations in Europe and the world (International IDEA 2008; Kaufmann et al. 2005-2010). At the municipal level rather similar forms can be expected but we also may find some variations typical for this level of politics. It can be assumed that regulations of direct democracy for the local level will show at least some similarity to features at the respective higher state levels. If direct democracy does not exist on higher state levels, quite often no or rather weak forms of local direct democracy may be found.

Main forms in local affairs:

Mandatory referendums are very rare in local politics. Whereas on the national level constitutional amendments sometimes require mandatory referendums, at the local level this is unlikely since political and administrative institutions are regularly legislated by the national or regional state. The territorial unity of a municipality stands out, however, as a basic issue, including separation of a municipality or amalgamation with other units and, thus, restructuring of territory sometimes needs a mandatory referendum. Examples are the Czech Republic where a mandatory referendum is required for the separation, and Italy for the merger of municipalities. In Sweden, for mergers of municipalities no mandatory referendum in a formal sense is in place but in practice a referendum is *de facto* regarded as mandatory. In the area of public finance, in Liechtenstein and in many Swiss municipalities referendums have to be called if public expenditures or borrowings surmount a specified (relatively large) share of the budget.

Government-initiated referendums have a long tradition in France where on the national level the president can call a referendum on important issues. When referendums were introduced at the municipal level (1971, on municipal mergers) this pattern prevailed with one important difference: referendums here can be called by the mayor as well as by the local council. An initiative right has been added only recently. The mayor or the majority of a local council can also call a referendum in Austria, whereas only the council majority has

this power in Finland, Norway, Poland, Slovakia (on specific subject matters), in the Czech Republic, Slovenia and Sweden as well as in a number of German states. In several jurisdictions the referendum vote has only an advisory status, like in Finland, Norway, and Sweden.

The *citizens' initiative* in the full scale form (track to ballot vote) is available in several countries. The case of the Czech Republic is interesting since this country does not offer any direct democracy on the national level. We also find the instrument in Bulgaria, France, Germany, Liechtenstein, Norway, Slovakia, Slovenia and, of course, in Switzerland. In Germany, the regional states which regulate municipal laws also provide the citizens' initiative („Buergerbegehren“). While up to 1990 this was only available in Baden-Wuerttemberg, during the 1990s all other states also introduced the instrument (finally the city state of Berlin for the city district level in 2005).

Italy, with her citizen-initiated abrogative referendum at the national level since 1970, developed direct democracy forms at the level of regions and municipalities during the 1990s. The type introduced for local politics is an initiative for a consultative referendum (by municipal statute), whereas some municipalities used the option to put on their statutes a referendum requested by the citizens to abrogate a decision by representative authorities.

In Bulgaria the procedure for citizens' initiatives had been very restrictive until a reform in 2009 made it more moderate. A resulting ballot vote, however, still is only binding if initiated by 50 percent of registered voters, otherwise it is only advisory.

Agenda initiatives represent an ‚incomplete form‘ of initiative by which a proposal can be submitted to a defined governmental authority and put on their agenda, most often to the local council who has the power to decide. There are, in fact, two sub-types: in one, the authority considers and definitely decides on the proposed subject matter; in the other form, the authority also has the discrete power to choose whether a referendum shall or shall not be held on the proposal. One case for the first form is Austria (cf. Marxer/Pallinger). A major example for the second type is Finland where 5 percent of the electorate can ask the local council to decide whether to call an advisory referendum on their proposal or not.

Popular referendums on a proposal or decision of a public authority can be requested by citizens in Switzerland and Liechtenstein; in Bulgaria, German states and Poland the same rules are applied as for citizens' initiatives, plus a time limit for the request following the authority's decision. In Italy, some regions provide for citizens to demand consultative referendums, and in some cases for abrogative referendums (like on the national level) by which citizens can request a ballot vote to abrogate (delete) an existing piece of legislation or regulation.

The *recall* of elected representatives can apply to members of a local council and/or to a directly elected executive office-holder like the mayor. In Poland, a popular vote to recall the council can be initiated by citizens, since 2004 also to recall the mayor. In Austria, a recall of the mayor can only be started by a majority of the local council, in several German states by a qualified majority, followed by the popular vote. In Slovakia, both ways are possible.

*Regulations and Profiles*⁹

Restrictions or exclusions of subject matters are much more common in local affairs than at the national level. The narrowest definition was introduced in 2001 in the United Kingdom where citizens' initiatives are allowed only on the question whether the mayor shall be directly elected. Other countries define special policy areas where referendums are allowed, e.g. Norway for alcoholic licences or for choosing school language. In many countries taxation and budgets are excluded or at least restricted as subjects of initiative and referendum, as well as affairs of administrative staff (e. g. Bulgaria, Germany, parts of Italy). Zoning/city planning, as a very important area of local policies, is excluded in a majority of German states. Sometimes, rather general terms for included subjects have been used, e.g. „matters of importance to the commune“ like in Poland for optional referendums until 2003.

Initiatives – signature requirements:

The number of signatures required for launching a citizens initiative represents a most important hurdle, can vary significantly and create a liberal or restrictive design. Since an *agenda initiative* does not lead to a ballot vote the requirements are usually lower than for a full-scale citizens' initiative, but nevertheless variation ranges from 2 percent for a petition in Finland, 0.5 - 5 percent in Germany, 5 percent in Bulgaria or up to 20 percent in Austria. For a *full-scale citizens' initiative* it should be realised that Switzerland shows a split picture: municipalities in the German-speaking cantons have low signature requirements, mostly around 5 percent of registered voters, whereas in the cantons of Roman tradition the quorum is much higher, mostly 15 to 20 percent. Slovenia requires 5 percent of the electorate, Liechtenstein 16.7 percent, France 20 percent, Norway 25 percent of registered voters. Bulgaria reduced her requirements from 25 to 10 percent in 2009. In German states signature requirements average around 10 percent and range from ca. 5 to 15 percent; in some states a degressive scale starts at 10 percent in small municipalities and decreases to 3 percent in large cities, e.g. in Bavaria or North Rhine-Westphalia. Similarly, in the Czech Republic 30 percent of the electorate are required in towns up to 3.000 residents, decreasing to 6 percent in cities with more than 200.000 residents. Thus, the overall tendency seems to lean towards rather restrictive signature requirements of 10 percent or more.

Validity requirements of ballot votes:

Ballot votes can vary in the quality of their results. The first question is whether a vote is regarded as valid. In some countries, referendum votes are valid when a majority of votes cast has been reached. In other states additional validity requirements must be met. There can be a *turnout quorum*, e. g. in France, Italy, Slovakia or in Bulgaria (until 2009: 50 percent; since 2009: same turnout as in last council election) or in the Czech Republic (25 percent, since 2004 increased to 50 percent!). A different version is an *approval quorum*, like in Germany where in most states a majority of votes cast must also include about 15 to 25 percent of all registered voters. Poland requires a majority of 2/3 in a mandatory referendum on „self taxation“ of municipalities. That means that we see a rather high ratio of countries which require turnout quorums.

⁹ For details cf. Appendix Table.

Binding/advisory: Even if a ballot vote is valid the result may be binding or only advisory (consultative). In Finland and Sweden, all referendums (called by the local council) are only advisory and not decisive; the same is true for Norway in referendums on school language. In Italy, municipal statutes can only permit consultative referendums to be initiated by citizens. In few countries, a ballot vote is only advisory up to a certain share of votes, and binding if the positive vote exceeds that level (Bulgaria). In Poland, the result of a recall referendum is binding if the voter turnout reached 60 percent of the turnout in the last respective election. Other countries attribute a binding character to their referendums.

Country profiles:

The quality of design of local direct democracy procedures depends not only on one regulation element but rather on their combination which are can be summarized by country profiles with weak or strong features. We regard low signature quorums, low validity requirements and the binding quality of a ballot vote as strong features since they invite citizens’ activities, whilst high quorums for signatures and ballot validity and an advisory quality are seen as weak features restraining citizens from acting (Table 1). For even more complex profiles, the exclusion or admission of subject matters would have to be added to a full picture.

Table 1: Procedures of direct democracy: country profiles

REQUIREMENTS	BALLOT VOTE: Binding	BALLOT VOTE: Advisory
Liberal (~ 5 %)	STRONG Switzerland (German-speaking cantons) Germany (few states) Slovenia	Italy
Medium (~ 10 %)	Czech Republic Germany (majority of states) Poland	Sweden (2010, new)
Restrictive (~ 15 or more %)	France Liechtenstein Slovakia Switzerland (Roman cantons)	Bulgaria (Denmark, mainly referendum) Norway Finland WEAK

Only three countries show a strong profile, four belong to a medium category, and several countries have either restrictive regulations or have an altogether weak profile. We can assume that strong profiles invite more practice and relevant influence, whilst weak profiles of regulation also lead to rare practical usage or little influence for citizens. But some other factors like system context or political culture, issues and size of municipalities may also contribute to practice and impact.

Some more items of regulation may be relevant which can not be presented in detail here. One question is which institution is in charge of a check of admissibility of an initiative or a referendum call. A second one refers to rules for voter information related to a ballot vote. For the process of a citizens' initiative it will be interesting whether or not councils or mayors have the possibility to present a counter-proposal to the citizens' proposition. An important factor can also be legal matters and the role of courts in the procedure.

4 Practice

The patterns of practicing local direct democracy vary in many respects, particularly in which procedures are most prominent, how frequently they are used, which issues are dealt with, and how citizens participate in the processes.

The frequency of using the procedures of direct democracy varies rather strongly between countries. Obviously, Switzerland (cantons of German tradition) ranks at the top, whilst Bulgaria, France, Slovakia or the U.K. show very low levels of activity. In the middle ranks we see several states of Germany, Norway, Poland and Sweden, and somewhat behind the Czech Republic and Finland. In few countries we can see at least an increase from a rather low level of usage, e. g. in Italy. Such a ranking only counts absolute figures of initiative and referendum cases and can only give a raw impression. A more sophisticated measure would have to take into account at least the time in which instruments have been used, the size of the population and the number of municipalities, but this cannot be done at this stage of research.

Countries differ substantially in which main types of procedures are available and used. Mandatory referendums exist only in few countries, and thus, frequency is rather low outside Switzerland. Referendums initiated by governmental authorities, particularly by municipal councils, can be practiced in more countries, but only few of them used it quite often (Finland, Norway). Citizens' initiatives have the highest frequency, but with significant variations between countries (see below). The popular referendum which is less often available sometimes works with the same or closely related rules, but the overall usage is rather small. Agenda initiatives, only existent in few countries, are not well documented at all, and they seem to be used not very frequently. The recall, finally, is a rare instrument and has its highest numbers of usage in Poland.

In order to understand the variations of citizens' initiatives we may at first assume that liberal regulations support frequent use of direct democratic procedures. This explanation surely holds for German-speaking Switzerland, but low requirements do not lead to the same effect in Slovenia. Rather restrictive requirements in Bulgaria, the Czech Republic, France, Liechtenstein and Slovakia are, in most cases, coherent with low activities there, and the same is true of Italy with mixed regulations (liberal requirements but advisory votes only). Great Britain with her strongly restricted subject matter also shows a rather weak usage (overall 36 cases 2001-07). An interesting test case is provided by Germany where regional states vary significantly in their profile while most context factors remain the same. Some states with low requirements like Bavaria and city districts in Hamburg and Berlin display rather high rates of activity. The majority of states have a medium or restrictive profile (10 percent or more signature quorum, 25 percent approval quorum) which corresponds to weak activity levels. In an interesting cross-border comparison on four

countries in the region of Lake Constance Marxer and Pallinger (in this volume) demonstrate clearly that Swiss frequency rates are far above Austria, Germany and Liechtenstein which again reflects the regulation profiles.

Countries with an overall „weak design“ (restrictive plus advisory votes) show a frequency level at about medium, like the Scandinavian countries. Here, referendums have quite often been initiated by local councils and concentrate much on specific issues (see below).

A second field of comparison will be how frequent *specific issues* have been the subject of direct democracy procedures. Main issue areas are related to administrative, economic, social, environmental and cultural matters.

In many countries amalgamations or separations of municipalities are ranking very high as a subject of initiatives and referendums. We find this where mandatory referendums have to be held on these topics (Czech Republic, Italy), but also in countries with other forms like Finland, Norway and Sweden (de facto informally mandatory), Slovakia and the new Eastern states of Germany. The frequency of merger issues can be explained in the context of major administrative reforms for the municipal level, either in a process of re-organising the local government sector after system transformation in the East European countries, or in a strategy of strengthening administrative capacities of municipalities in many West European countries (cf. Kersting/Vetter 2003: 333 ff. – summary).

Other issues come in a wide variety in some countries, and in other countries a focus on a small number of topics prevails. In Switzerland, the range of subject, including finance referendums, is so widely dispersed that it cannot be summarised here. Norway, on the other hand, apart from the merger issues, displays a rather narrow focus on school language, school districts and alcohol licenses. In Finland a broader variety of local infrastructure has been the topics of consultative referendums. Traffic and environmental issues have been major subjects in the Czech Republic (several on nuclear waste issues) and in Sweden, in some cases also in Italy. In German states, particularly in those with a high frequency of citizens' initiatives, issues of social infrastructure like education and health services, public utilities, business projects and traffic projects represent a somewhat equal share of subjects.

Participation of citizens in ballot voting is a third field of comparative observation. A complete base of comparable data is, however, not easily available, and could not be derived from the country reports in this volume. In most countries, the type of direct-democratic procedure, the size of municipalities and the issues at stake seem to significantly influence participation rates, but also other factor can be relevant, e.g. whether or not ballot voting is done at the same day as general elections, or whether an incidental polarisation of political parties is intervening in a vote. Therefore, we can mention here only examples of some countries and their average turnouts. In the Czech Republic, in towns of up to 2,000 residents voting turnout most often reached 45-80 percent of the electorate. In Germany, average turnout is about 50 percent and also strongly correlated with the size of municipalities (60-25 percent), with the highest rates in small towns; in addition, participation also varies according to issues. In Norway, in the period up to 1999, overall turnout rates varied slightly between 45 and 58 percent. Swedish local referendums show a high average turnout of some 64 percent, most often in the range of 60-75 percent. An impressing effect of combined voting days can be seen in the example of Switzerland. At voting weekends with national, cantonal and local ballots, city ballots received an average turnout

of 45 percent, whereas only 32 percent have been reached when the vote was set only for city ballots or for city and canton ballots (Buetzer, in this volume).

Although turnout rates in many countries are rather high they should be interpreted cautiously with respect to context information we do not have available. They would gain additional relevance if compared to turnout in general elections of local councils and mayors, particularly in a period of time when electoral turnout shows a tendency to decrease. As far as turnout rates in ballot voting is somewhat lower than electoral turnout (as in a few countries mentioned above) this may mainly reflect the difference between single issue voting and general party voting. A second aspect would be to have additional information about the social structures of voters. This might also shed some light on qualitative dimensions of issue voting like the sources and level of information of voting citizens, party orientation etc.

In addition to countries included in the book, practice in some other states may also be mentioned briefly. *Belgium* is one case which allowed local (consultative) referendums since the 19th century, newly regulated in 1995, but with strong restrictions (40 percent turnout quorum) so that it has been used only in rare cases, mainly since 1995 (Verhulst 2004: 37; Verhulst/Nijeboer 2007: 20 f.; Walter-Rogg 2008: 259). *Luxemburg* introduced in 1988 a consultative local referendum which can be requested by at least 20 percent of voters, but not more than 5 ballot votes took place until 2003 (Groff 2004). In the *Netherlands*, apart from some forerunners since 1912, local referendum instruments were only adopted in the 1990s by municipal by-laws, particularly in larger cities. Of more than one hundred consultative referendums, about half dealt with municipal mergers, some others with construction planning, traffic issues and others (Nijeboer 2004: 96-97; Van Holsteyn 1996: 129 ff.; Van Holsteyn 2001; Verhulst/Nijeboer 2007: 66). In *Spain*, only a very small number of local referendums could be held, due to strongly restrictive regulations which include that a local referendum even needs to be allowed by the national cabinet. In *Hungary*, between 1999 and 2006 some 120 local referendums took place, of which, again, almost half were mandatory referendums on municipal mergers or separations; business or waste disposal projects also represent frequent subjects. The number of referendums initiated by citizens has been rather small (Soos 2003: 253f.; Smith 2007: 69 ff.). In sum, in this group of countries Hungary and Netherlands represent substantial rates of activity, whilst very little usage can be identified in the others.

5 Conclusions – political impact and quality of local direct democracy

In conclusion, we briefly look at some impacts of local direct democracy and its contribution to local democracy in general. We will first summarize procedures and practice and some main factors of explanation. Impacts may be found particularly in the interactions with local party systems and civil society. Effects on public debates and the political public space will be of interest for qualitative aspects of democracy. Mechanisms of direct agenda setting and political control may also have some impact on political elites with respect to political accountability and their openness to more responsive politics.

Procedures and practice – a summary

Procedures of local initiatives and referendums are, in the overall picture, very diverse, and in many countries not very attractive. Subject matters admitted to the procedures are strongly limited in some countries, the profiles of requirement are restrictive in the majority of countries, and referendum votes are consultative only, i.e. a weak status, for instance in the Scandinavian states. In sum, in most European countries the requirements to access these forms of political participation and to exert decisive influence are strongly restrained to a too high degree. Most citizen-friendly rules can be found in Slovenia, Switzerland (German-speaking cantons), and few German states like Bavaria and Hamburg, while North Rhine-Westphalia and most recently Thuringia come in second.

The main evolution of the institutions of local direct democracy took place since the early 1990s. Only in some countries, after introduction of initiative and referendums instruments additional steps towards more citizen-friendly regulations have been taken, e.g. Bulgaria (2009), in few German states, and most recently in Sweden (constitution amended as of January 2011). In other countries, however, more restrictive regulations have been adopted, for instance in the form of higher validity requirements for ballot votes in Slovakia (2001) and in the Czech Republic (2004). So, there is no overall tendency to liberalize procedures of local direct democracy.

The patterns of usage are very much in line with restrictions of procedures: in a majority of countries initiatives and referendums are practiced in rather small numbers. The restriction factor can also be seen very clearly in Switzerland and in Germany where rules and frequency of usage correspond quite obviously. In Switzerland the municipalities in cantons of German-speaking tradition have low barriers and high usage rates, whereas in the French-speaking part restrictions are high and the frequency of usage of initiatives is low. In Germany, in some states mentioned above (e.g. Bavaria, Hamburg) we find liberal requirement profiles and the highest frequency patterns, but the majority of states with restrictive profiles rank very low in frequency. One deviant case is Slovenia where a signature quorum of only 5 percent did not invite many initiatives which seems to be influenced by deficiencies of a participatory culture.

In terms of issues dealt with in local procedures of direct democracy the outstanding item found is mergers or separations of municipalities. These were either started in the context of administrative re-organisation during the East European transformation of political and state systems, or they were part of modernising administrative reforms in many West European countries. Whereas quite a number of municipalities had been affected by such decisions one should also realise that in an individual municipality these will not be a recurring issue but a rather unique topic of decision-making and participation. Thus, future usage of direct-democratic instruments can only be expected in the field of other policy issues like educational and social infrastructure, utilities, environment, traffic and business topics.

Different rules and practices in context

Regulations and practice of local direct democracy procedures in the countries compared show remarkably different patterns, indeed. To understand them we need to take the historical context of origins and other more general frameworks into account. A long tradition and practice of direct democracy at national, cantonal and local levels in Switzerland, and partly in Liechtenstein, provided a well-established environment for extensive use of local

popular rights. In the East European countries, however, the process of system transformation since 1989/91 has been very complex in terms of economic, social, administrative and institutional re-structuring. This implied many restrictions to local democracy in general since the degree of local autonomy or local self-government has been, in a centralist tradition, limited with respect to local competences, financing mechanisms and other administrative strings set by central authorities. This can surely be illustrated by the Baltic countries which do not have any institutions of local direct democracy although Latvia and Lithuania provide them at the national level. In several other East European countries structural limitations of local governance at least represent a context for restrictive procedures of local direct democracy. Yet, also in some Western countries like France, Great Britain and Italy the historical background of centralist administrative structures can be identified as a source of very limited institutions of local direct democracy. A somewhat more autonomy-friendly situation exists in Germany where federalism and municipal decentralisation have been a heritage of the times before 1933 and of the democratic transformation after Nazi dictatorship.

In a number of West European countries, during the 1980s and 1990s a complex mixture of efficiency and financial problems motivated strategies of local administrative modernisation in the line of „new public management“ (Kersting/Vetter 2003). Forming larger municipal units and strengthening of local executives (e.g. by direct election of mayors which means a development towards a presidential system) have, in some cases, been accompanied by providing additional if limited popular rights. Somehow intended as a participatory compensation for a concentration of power, in most cases direct democracy instruments could not live up to this function since they only were given a weak design, for instance in the Scandinavian countries, in Britain, the Benelux, and in several German states. So, only limited areas like privatisation decisions, service deficiencies and business projects have become, to a significant degree, subjects of citizens' initiatives and referendums in countries with more liberal regulation profiles. These issues, however, are closely linked to the main period of administrative reforms and may not easily be continued.

Contributions to democracy

Direct democracy as part of the system of local democracy can have various impacts. It can represent competition as well as cooperation with representative institutions and their main actors, and it may serve correcting, supplementary and qualifying functions in the democratic polity. Developments in local party systems surely are a main field of interaction with institutions of direct democracy. In the East European transformation countries national and local party systems have been rather unstable since 1990. In Poland, this seems to be reflected by the relatively large number of initiatives to recall local councils. In other countries, restrictive regulations including narrow definitions of admitted subjects prohibited similar activities, except perhaps in the Czech Republic which saw quite a range of issues in local initiatives. Sometimes initiatives and referendums were used for local electoral purposes and party mobilisation, in part with polarising effects. In many West European countries, local party systems, even more so than at the national or regional level, displayed tendencies of differentiation by green parties and other political groups, some of which also used direct democracy instruments during their mobilising phase. Yet, these developments were also supported by other factors like social differentiation, raising levels of education and changes in local electoral laws.

Civil society and single issue groups can also have gained from initiative and referendum instruments since they provide additional institutional opportunities for non-party groups. It is less clear, however, whether or not such groups have used the opportunities. Although not much explicit research on such effects is available some indications suggest that in Eastern Europe civil society traditions are missing and develop rather slowly, partly using direct democracy measures. In Western Europe, civil society is often said to be much more mobilised and prone to use different forms of participation including direct democracy procedures without becoming a political party. Thus, supportive effects on participative political cultures seem to be still uneven between East and West and may develop, possibly converge, only over a longer period of time.

Direct democracy as an institution also invites general expectations with respect to the quality of local democracy. It provides additional channels to political decision-making and thereby supports the principle of political equality and of a more open political power structure. A basic feature of these procedures of direct participation is transparency of political decision-making which implies access to information and to better understanding of issues, values and interests involved in a specific policy decision, particularly since the process has its main focus on specific issues. This may also enhance deliberative qualities of public debates and campaigns on initiatives and referendums. A higher level of information of citizens has often been observed, although to a limited degree, since in campaigns also simplifications and emotions play a role in mobilising voters for a ballot vote. Unfortunately, research on campaign and media patterns at the local level is rather limited but there is some evidence of the specific intensity of the local public space (Mittendorf 2009).

On a more general level, direct democracy as an institution is expected to provide strong instruments of political control and thereby support the accountability and responsiveness of political elites (Setälä/Schiller 2009). This kind of impact is likely to develop in political systems with rather high frequency of initiative or referendum usage and a related political culture, like in most of Switzerland. In Bavaria, after 1995, a number of cities with many citizens' initiatives may be on a path of developing such an institutional culture. A somewhat surprising variant of responsiveness can be found in Scandinavian countries where weak regulatory profiles prevail; but popular majorities in consultative referendums have very often been accepted and implemented by local governments, e.g. in merger and traffic issues in Sweden (less often in Finland). In contrast, in several countries political elites rather try to restrain the use of initiatives and referendums by restrictive rules of subject exclusion and validity requirements as well as administrative and juridical harassment of proponents. Thus, conditions for pushing representative elites towards more responsive and accountable behaviour have been evolving at least in some European countries.

As an overall assessment we must realise that many countries in Europe are still left without instruments of local direct democracy, or that formally available procedures are regulated in such a restrictive way that they cannot be successfully used in practice. It seems that the recommendations of the Council of Europe mentioned above remain still unheard to a significant degree. Thus, important opportunities for strengthening democracy at the local level and for using the institutions of direct democracy in an area of political life so close to the citizens have not yet fully been realised. Yet, in some parts of Europe direct democracy at the level of local politics has provided encouraging experience in the last two decades.

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Appendix

Local direct democracy instruments in Europe

	Mandatory Referendum	Government-initiated Referendum	Popular Referendum (cit.-requested ref.)	Citizens' Initiative	Agenda Initiative	Recall
Austria		Mayor, Municipal Council			Sign. quorum: 20% of electorate	Recall of mayor: Ref. called by Munic. Council
Bulgaria			Same procedure as citizens' initiative	25% of reg. voters (since 2009: 1/10) Result: Advisory (binding if initiated by 50% of reg. voters) Valid. req.: same turnout as in last council election	5% of electorate (propose referendum to munic. council) (since 2009: Petition by 50 citizens)	
Czech Republic	Separation of Municipalities Valid. req.: Yes vote by 50% of electorate	Munic. Council (since 2004)		30% (up to 30.000 residents) - sliding - 6% (more than 200.000 res.) Valid. req.: turnout 25% (since 2008): turnout quo. 35% + approval quorum 25% of electorate		
Finland		Munic. Council Result: advisory		5% of electorate Propose referendum to munic. council	Petition by 2% of electorate	
France		Mayor, Municipal Council Valid. requir.: Turnout: 50%		20% of electorate (since 1995) Valid. req.: Turnout 50%	Citizens' petition right (since 2003)	
Germany		Munic. Council (12 of 16 states) Valid. req.: Mostly approval by 25% of electorate	(same rules as Citiz. Initiative; time limit)	Sign. quorum Average 10% of electorate Range: 5%-15% Valid. req.: mostly approval by 25% of electorate	Residents' proposal: 0-2%, often 5% (partly maxim. absol. number for larger municipalities)	Recall of mayor: Refer. to be called by municipal council (qualif. majority)

Italy	Merger of municipalities, Change of region Val. Req.: Turnout 50%		Ref. abrogativo (according to regional statute) Valid. req.: Turnout 50%	(if permitted by regional or municipal statute) Referendum (consultative) (e.g. Milano: 1.5%)	E.g. Milano: 5,000 citizens	
Liechtenstein	Expenditure of more than 35% of budget		1/6 of electorate	1/6 of electorate		
Norway		Municipal Council (referendum e.g. on school language) Result: advisory		1/3 of electorate (referendum e.g. on school language) Result: advisory		
Poland	„Self-taxation“ (init. by munic. council or citizens) Valid. req.: Qualified majority (2/3 of votes cast)	Munic. Council: Referendum on „important matters“, (after 2003): broader interpretation (Const. Court) Valid. Req.: 30% turnout	Restrictions like government-initiat. referend. Sign. quorum: 10% of electorate Valid. Req.: 30% turnout		By municipal statute in some cities (various req.s)	Recall of municipal council: 10% of electorate. Since 2002: direct election and recall of mayors. Result: binding if 60% turnout of voters in last election of respective office
Slovakia		Local Assembly (on territorial changes, mergers, dissolutions)		Sign. quorum: 30% of electorate Valid. req.: turnout 50%		Local assembly Or 30% of electorate
Slovenia		Munic. Council		Sign. quorum: 5% of electorate		
Sweden	(de facto on mergers)	Munic. Council Result: consultative		10% of electorate (constitution amended as of January 2011)		
Switzerland	Many municipalities: spec. share of budget		2.5-20% of electorate, often low absolute number	2.5-20% of electorate, often low absolute number	„Motion“ (individual citizen)	
United Kingdom				5% only on direct election of mayor, since 2001		

I. Emerging Patterns

The uneasy balance between participation and representation: local direct democracy in the Czech Republic¹

Michael L. Smith

History and overview of direct democracy legislation in the Czech Republic

All democracies, especially new ones, face the fundamental question of how much and what kinds of citizen participation to allow in politics, such as through local referendums. While too little participation could lead to an apathetic citizenry unable to act against the abuses of government, too much participation by an „interested and overbearing majority“ (Hamilton, Madison and Jay 2003: 46), in the absence of legal protections, could lead to the suppression of minority voices. In the example of the United States, the federalist solution to the question of balancing citizens' voice was to advocate representative government with a system of checks and balances and only limited opportunities for citizen participation. Understanding that the power of government also needs its own checks, the Progressive movement, the civil rights movement, and contemporary proponents of direct democracy have also sought to expand, with some success, the opportunities for citizen participation in local and statewide politics.

Of course, political context shapes the way such debates unfold in different democracies. Given the heritage of communist rule, based on the principle of the vanguard of the working class, many post-communist constitutions echoed the Madisonian concern to „unequivocally take precautions against any kind of privileged access of any group, class or party to power“ (Elster, Offe and Preuss 1998: 93). In the Czech Republic, this meant upholding the constitutional principle of parliamentary sovereignty – with no provisions for direct democracy at the national level – and the belief that the Parliament represents the interests of a homogeneous and unified ‚Czech nation.‘ The communist heritage of forced political participation, as well as the importance placed on technocratic expertise, has also created very difficult conditions for civil society and grassroots political participation to develop (Greskovits 1998; Howard 2003).

This tension between parliamentary sovereignty and direct democracy in the Czech lands can be observed in the constitutional crisis of the post-1989 Czech and Slovak Federal Republic. On December 10, 1990, President Václav Havel presented two bills to the Federal Assembly that he believed would resolve the question of the relationship between the Czech and Slovak Republics. His solution emphasized the use of democratic mechanisms for deciding the issue, which he hoped would lead to an outcome in favor of an „authentic federation“ (Žák 1995). The first bill related to the establishment of the Constitutional

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Court, whereas the second was a „constitutional bill on the referendum as an institution that would be capable of realizing the true will of citizens in the case of unsolvable disagreements between different political organs. That will, expressed by means of a referendum, should have the greatest decision-making and unconditionally binding legal authority for everyone“ (Havel 1990).

After a number of amendments to Havel’s referendum bill, the *Constitutional Law 327/1991 on the Referendum* went into effect on July 18, 1991. The brief one-and-a-half page law stated that if either the Czech or Slovak Republic wanted to secede from Czechoslovakia, it could do so only by referendum. The law involved all of the major political institutions: the President could call a referendum if the Federal Assembly proposed it, which it could do as long as the Czech and Slovak National Councils (i.e. the two national parliaments of the federal state) were in favor of such a referendum. Not too long after the law was passed, various political parties and civic movements sought to propose referendum questions on the future of the country, such as the civic petition *Initiative for a Common State*, which contained over a million signatures demanding a referendum on the question of federation (Lástič 2005). But since each political party had its own stance on the issue, no agreement was ever reached between all of the relevant political actors. Ironically, the *Law on the Referendum* was never used to solve the constitutional crisis. Since the leading Czech and Slovak parliamentary parties, represented by Václav Klaus and Vladimír Mečiar, reached a *political agreement* between the republics to split the country – as opposed to *one side* desiring to secede, which, according to the above law, would require a referendum – the politicians succeeded in ‚solving‘ the constitutional crisis without involving citizen participation at all. The political agreement can easily be interpreted as Mečiar’s and Klaus’ attempt to avoid a referendum, as they knew very well public opinion was in favor of a continued federal state. For obvious reasons, that law is now obsolete.

Unlike some other post-communist countries, the Czech Republic has never had a general law on national referendums. The only national referendum to have taken place – the referendum on EU membership, which took place in mid-June 2003 – was made possible by a special law solely for that purpose. While there have been a number of legislative bills on the subject, the right-wing Civic Democratic Party (ODS) has seen direct democracy as a threat to parliamentary sovereignty. For example, in 1996, a bill on national referendums submitted by communist MPs was easily struck down by the ODS-led governing coalition. In 1999, Social Democrats proposed a bill that would have enabled legislative referendums on such issues as NATO and EU membership, but the bill was also dismissed by political parties wanting either stronger or weaker legislation. The same year, the Christian Democrats proposed their own bill, which would have enabled civic initiatives at the national level, but the bill failed by six votes due mainly to opposition by the Civic Democrats. In fact, that same bill failed to reach a constitutional majority (three-fifths of the lower house of Parliament) in twelve different parliamentary votes. Since political parties with the exact same ideas on national referendums have never held a constitutional majority in parliament, the prospects for such a law are small.

Nonetheless, Czech legislation does enable local referendums that are binding on local government. The legislation was passed during the Civic Forum period when the political desire for more local autonomy and democratization was quite large and when political parties were still relatively undeveloped, particularly at the local level. Similar to a bill passed by the Slovak National Council, in 1990 the Czech National Council passed the *Law*

on *Municipalities* (later amended in 2000), which established referendum rules for cases in which residents would want to divide or merge municipalities. However, unlike Slovakia, the Czechs also passed a general law on local referendums – the *1992 Law on Local Elections and Referendums* (comprehensively re-written in 2004) – which provided regulations for citizen-initiated referendums on all other themes. Surprisingly, *no referendum according to the main 1992 law even took place until the year 2000*. Therefore, we will begin our analysis with the cases of municipal separation and agglomeration according to the 1990 law on municipalities.

Local referendums on municipal separation

The 1990 *Law on Municipalities*, which came into effect at the time of the 1990 local elections, stipulated that a municipality can separate into two only on the basis of a local referendum. Each of the subsequent municipalities must have at least 300 permanent residents, its own land register, and represent a single territorial unit. For the referendum outcome to be valid, at least half of all residents in the locality concerned have to vote in favor of separation. The Ministry of the Interior then decides whether or not all the legal conditions have been fulfilled for the separation to take place. Because referendums are required for municipal separation, the growth in the number of municipalities in the Czech Republic is the best measure for the number of these referendums. In 1991, after the law took effect, there were 5,768 municipalities in the country. An additional 329 municipalities were created in 1992, which by law had to be by local referendum. Table 1 provides detailed data on municipal separation and agglomeration from January 1993 to January 2007. While it is not possible to confirm that all of these changes took place by referendum, we can presume from the law that most indeed did.

Table 1: Changes in Local Self-Administration in the Czech Republic
(Changes taking effect as of January 1 of each year)

Year	Cases of municipal separation	Cases of merged municipalities	Cases of municipal districts becoming own municipalities
1993	104	4	3
1994	37	2	2
1995	7	5	22
1996	3	2	14
1997	1	0	1
1998	8	0	16
1999	4	2	8
2000	7	0	10
2001	8	1	11
2002	0	4	6
2003	0	5	7
2004	0	0	2
2005	0	1	1
2006	2	0	0
2007	2	1	4
Totals	182	27	107

Source: Czech Statistical Office, own calculations

As can be observed from the data, from 1993 to the present there has been a significant deceleration in changes in local self-administration. Due to the ease with which many municipalities were created in the early 1990s, territorial self-administration became very fragmented, leading to increased coordination and cooperation between municipalities, such as through unions and interest associations (Vajdová, Čermák and Illner, 2006). As a result of fragmentation, over half of all Czech municipalities have less than 499 residents, and nearly 80 percent of municipalities have 1000 residents or less. During the time of territorial administrative reform in the late 1990s, the Ministry of the Interior seized the opportunity to prevent further municipal fragmentation – that is, more communities declaring independence through referendums – by revising the referendum clauses of the amended *Law on Municipalities*, which went into effect in 2001. That law still required referendums for municipal separation, but increased the population requirement of the subsequent municipalities from 300 to 1000 residents. As can be observed in Table 1, the legal change was rather unnecessary since relatively few municipalities were being established in the mid to late 1990s. Nonetheless, the amendment proved to be effective in the sense that very few new municipalities have been established since that time and almost no municipal districts have been able to become independent municipalities. As could be expected, in 1999-2000 there was a rush by small villages that were administratively part of larger towns to call referendums on independence, realizing that they would never have another chance in the future (there were at least 13 such referendums in 2000, leading to eight new municipalities in 2001).

Therefore, the year 2000 marked a significant turning point in local referendums on municipal separation. Since then, there have been only one or two referendums on municipal separation per year. In addition, referendum attempts at separation have become increasingly politicized. While campaigns for municipal separation in the early 1990s were rooted in the desire for self-administration, cases in the late 1990s and early 2000s seem to be largely based on the desire for more state revenues or other forms of economic gain. For example, community leaders in Držovice, which successfully broke away from the city of Prostějov in 2004, organized a referendum campaign on the basis of the persistent practice of disinvestment by the city in their community. Similarly, residents in Zavadilka, which is a part of České Budějovice, threatened the city that they would call a referendum on independence because they are angered by the growth of housing developments in their neighborhood.² Similarly, large cities have attempted to convince neighboring villages to be annexed, which would provide cities with larger tax revenues (due to the system of tax transfers that favors larger municipalities) in exchange for promising better services to the village, like new bus lines. Recent high-profile cases include the referendum in the village of Chrást about whether to join Plzeň, and the attempt by the city of Jihlava to annex the village of Malý Beranov. However, most of those attempts have failed due to the lack of voter approval.

² MF DNES, „Lidé ze Zavadilky zvažují odtržení od města (People from Zavadilka are considering seceding from the city“), April 29, 2005.

Citizen-initiated and council-initiated local referendums

The referendums on municipal separation discussed so far were based on the *1990 Law on Municipalities*. As mentioned earlier, despite the fact that the *Law on Local Elections and Referendums* was passed in 1992 (and went into effect in 1993), no referendum took place on the basis of that law until 2000. While one factor in the lack of citizen-initiated referendums in the 1990s could be due to the weakness of Czech civil society (Howard 2003), an alternative explanation has focused on the problems and ambiguities in the referendum law that gave local councils near complete license to reject referendum proposals as they saw fit (Smith 2007a, 2007b).

The 1992 law provided basic regulations for citizen-initiated referendums and stipulated that a turnout quorum of 25 percent is necessary for a referendum vote to be valid. The law specifically outlawed referendums relating to municipal budgets and fees, as well as any issue that is not in the original competency of the local government (i.e. activities that local governments perform for the state, such as the administration of social benefits). The law also established signature collection requirements according to population size, which are still valid up to the present time:

Up to 3,000 residents	30 percent of residents qualified to vote
3,001 - 20,000 residents	20 percent of residents qualified to vote
20,001 - 200,000 residents	10 percent of residents qualified to vote
Over 200,000 residents	6 percent of residents qualified to vote

After a sufficient number of signatures are collected, the referendum proposers have to also submit a referendum proposal, which contains the official referendum question, its justification, an explanation of how the referendum will be financed, a proposed referendum date, and so on. The local council then votes on whether the referendum should take place, and if so, designates a date.

The poorly drafted law did not anticipate a wide range of issues that would later be subject to controversy, such as whether referendums can be held at the same time as elections, how referendum proposers can appeal decisions by a local council, how the referendum question should be phrased, or whether more than one referendum can be held at the same time. Referendum campaigns thus became a political battleground over legal interpretations, since very few cases went to court that would lead to rulings that would specify the law in more detail. Through much of the history of the law, civic groups, proposers and politicians often had strikingly different interpretations of how to apply it, leading to misunderstandings, abuse and even allegations of corruption. Finally in 2000, after several years of conflict, environmental activists and lawyers in the city of Tábor finally applied enough public pressure on the local council to call a referendum relating to whether to build a road through a botanical garden in the city center. That became the first local referendum in the country on an issue other than municipal separation, and had a binding outcome (turnout was 37%) in favor of preventing the road construction project. A number of activists involved in the case later advised residents in other cities how to organize referendum campaigns. Since then, citizen-initiated referendums have become a mainstay of Czech local politics.

Nonetheless, political intervention and manipulation of the referendum process has continued to be a problem. For example, in a referendum campaign that was initiated by environmental activists in the village of Velký Malahov in 2001, the activists sought to propose a question on whether to prevent the village from allowing a German poultry manufacturer to locate a large poultry farm (for nearly 1,800,000 chickens) in the locality. At issue was not only the possible pollution and odors from the farm, but also the claim that the German firm was known for its poor treatment of animals.³ The environmental groups succeeded in collecting the signatures of a third of local residents, and the local council ultimately approved the referendum proposal, which contained two questions: whether voters agreed with the construction of a large chicken farm in the municipality; and whether the local government should do everything possible to prevent the development of the farm. The second question was particularly important, since the outcomes of referendums have the specific characteristic of providing binding instructions to the local council about how it should act concerning the given issue. However, in early 2002 the mayor of the village unexpectedly decided to omit the second question from the ballot and changed the wording of the first question. The referendum was ultimately carried out in February 2002 with the newly fabricated question. Since one of the leading activists of the campaign was also a legal expert, the activists were able to take the mayor to court for committing a criminal offense. The Regional Court in Plzeň later declared the referendum invalid, and the local council reached a legal settlement with the referendum proposers: in exchange for dropping the criminal charges, the village would only approve of a smaller farm for 600,000 chickens, which would also maintain better environmental conditions for them. Thus the referendum, instead of resolving the controversial issue, became instead a site of political contestation that produced its own set of problems that would have to be solved by the checks and balances of legal recourse and negotiation.

Given the ambiguities and problems of the law, it was later amended in the form of the 2004 *Law on Local Referendums*. A revised law was also necessary given the dissolution of the District Offices in 2002 and the new conceptualization of municipal responsibilities as described in the 2000 *Law on Municipalities* (Koudelka, 2001). The new 2004 referendum law made a number of significant changes, such as clearer legal provisions for conflicts of interpretation over a referendum proposal, which had the effect of creating a stronger position for referendum campaigners than was the case previously. In fact, Stanislav Gross, the Minister of the Interior (who a year later became Prime Minister of the Social Democrat-led government), argued that one of the most important reasons for revising the law was to solve the problem of „when a municipal council or another body of a municipality refuses to respect the results of a referendum.“⁴ However, Gross also used the revised law to

³ For discussions of the case, see Ekomonitor, „Starosta Velkého Malahova se prý snaží zmanipulovat referendum (Mayor of Velky Malahov is attempting to manipulate the referendum),“ February 19, 2002; Press Release of the NGO Děti Země (Children of the Earth), „Mnohaletý spor o drůbežárny na Domažlicku končí! (The multi-year conflict about the poultry farm in the Domažlice district has ended!)“, January 16, 2003. The website of the local NGO leading the campaign – Brůdek, the Civic Association against the Large Capacity Poultry Farm – is no longer accessible, which used to be at <http://www.volny.cz/nedrubezarnam/index.htm>.

⁴ 22nd Meeting of the Chamber of Deputies, October 14, 2003. In my own assessment, this justification is rather strange, and may indicate Gross' own misunderstanding of the issues. Up to that time, there were no cases in which local governments would not respect the results of referendums. The more significant problem was that local governments would try to prevent referendums from taking place. The amendments in the law also improve the legal protections for campaigners if local governments unjustifiably refuse to call a referendum.

change the turnout requirement from 25 percent to 50 percent, which was amenable to both the Social Democrats and the Civic Democrats – the two largest parliamentary parties – neither of which have been particularly supportive of local direct democracy. Other notable changes in the new law included the provision that local councils could now initiate their own referendums,⁵ that citizens do not need to provide their ID number on the signature list, and that referendums can take place alongside municipal elections (Nahodil and Říčka, 2004). Table 2 compares the key differences between the old and new local referendum laws.

Table 2: Comparison of the Old and New Local Referendum Laws in the Czech Republic

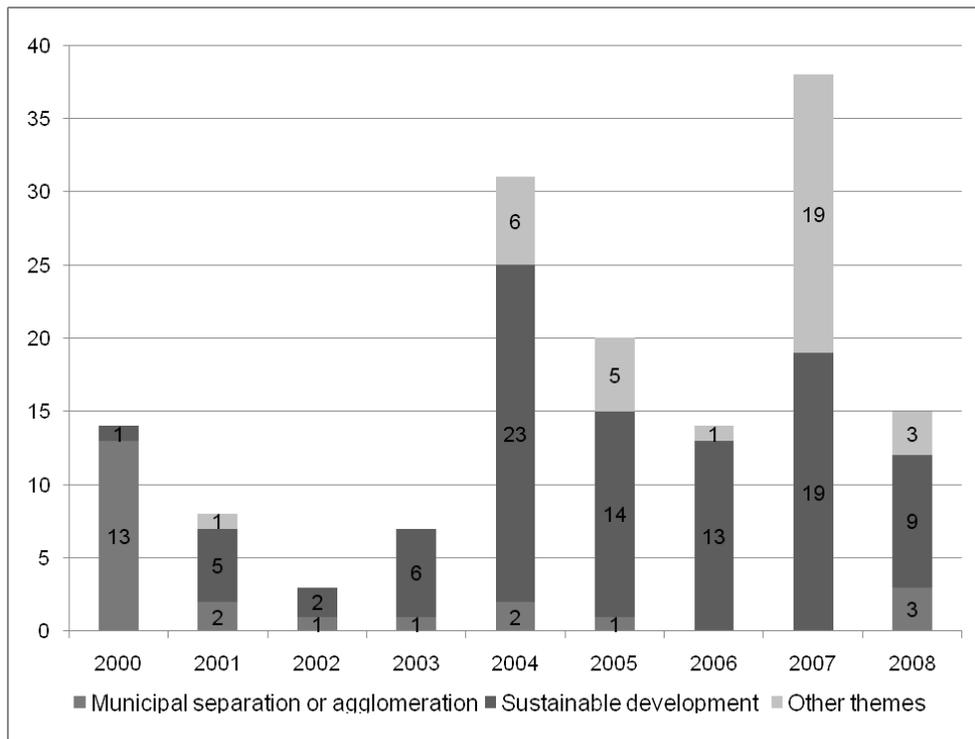
Law No. 298/1992 Coll. (old law)	Law no. 22/2004 Coll. (new law)
The referendum turnout has to be at least 25 percent (of registered voters) for the result to be valid.	The referendum turnout has to be at least 50 percent (of registered voters) for the result to be valid.
Ambiguous as to whether local referendums can take place at the same time as elections (e.g. elections to the local council).	The law clearly states that local referendums can take place with local elections, and can even last for two days .
Referendums on municipal ordinances are possible.	Referendums cannot change or cancel municipal ordinances. However, referendums can be about the land-use plan of the municipality.
A referendum can be declared only on the basis of a sufficient number of collected signatures.	A referendum can be declared on the basis of the local council's own initiative.
Problematic legal safeguards: Any citizen can submit a legal complaint to the Regional Court that in the course of the referendum a law was broken that could have influenced the result or proclamation of the referendum. (This led to a number of complex, excessive and burdensome legal battles)	Broader legal safeguards: The preparatory committee (the proposer and his/her substitutes) can submit legal complaints in two instances: 1) if it appears that the local council refused to declare a referendum when it should have been declared; 2) if the way the referendum vote was carried out is deemed invalid.
Referendum proposals have to contain an estimate of the costs of achieving the expressed referendum outcome.	Referendum proposals have to contain an estimate of the costs of carrying out the referendum .
Whoever signs a petition list more than once for the purpose of a referendum can be fined 1000 CZK.	Whoever signs a petition list more than once for the purpose of a referendum can be fined 3000 CZK.
Anyone who wants to sign a petition list has to enter his/her ID number	Anyone who wants to sign a petition list has to enter his/her date of birth .
Signatures cannot be collected in state administration buildings.	Signatures cannot be collected in buildings of the state administration or in the municipal office .
Law does not mention whether more than one referendum can take place at the same time.	The law makes it possible for more than one referendum to take place at the same time.

These legal changes have had a significant impact on local referendum politics. Despite the increase in the voter turnout requirement from 25 percent to 50 percent, there has been a significant increase in the number of local referendums *since* the new law went into effect (Graph 1). There are perhaps three major reasons for this surprising trend. First, the possi-

⁵ Since the law took effect, approximately half of Czech local referendums have been initiated by local councils.

bility for local councils to also initiate referendums – i.e. without the need for citizens to collect signatures and submit a referendum proposal – significantly increased referendum use, particularly with regard to wind power plant cases. Second, the greater consistency, comprehensiveness and safeguards of the law have likely acted as an enabling condition for civic and political actors to experiment with direct democracy, despite the increased turnout threshold, from 25 percent to 50 percent. Lastly, the timing of potentially salient issues also matters. As discussed below, in 2004 many villages held referendums on the problem of nuclear waste storage, since at that time the national government was considering developing a storage facility in the localities concerned.

Graph 1: Number and theme of local referendums in the Czech Republic, 2000-2008



Source: own data and calculations

One of the most distinctive features of Czech local referendums is the sheer number that deal with environmental and developmental issues, which I categorized in Graph 1 as sustainable development. That term is intended to reflect the fact that the great majority of the campaigns sought to prevent a particular form of local development, in large part for environmental reasons. From 2000-2008, 91 of the 151 referendums that were held dealt with the environment in some way: referendums relating to mining or quarry development (10 cases), nuclear waste disposal (24 cases), whether to allow the development of factories or industrial zones (10 cases), transportation issues (11 cases), wind power plants (21 cases),

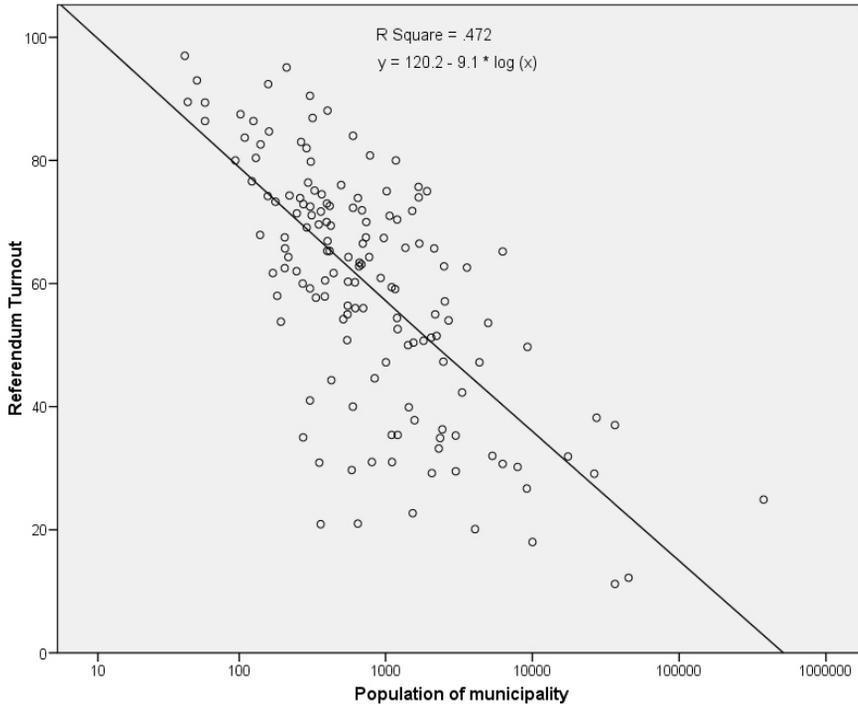
and other development-related issues (15 cases). Many development-related issues, such as road construction or public transport, are also discursively framed within referendum campaigns as environmental, and are indeed led mostly by environmental NGOs. The number of cases dealing with sustainable development is strikingly similar to the Hungarian experience, where landfills, factories and sewage were common themes in referendum campaigns (Smith 2009). However, unlike the Hungarian experience, in the Czech Republic there have been only four referendums related to public schools (compared to 14 such cases in Hungary in the years 2002-2003 alone), which are arguably one of the most important responsibilities of local government.

For example, most of the referendums that took place in 2003 and 2004 concerned nuclear waste disposal. Over the last decade, the Czech government has increased its efforts to find a site for the nuclear waste produced from the controversial Temelín nuclear power plant. In 2003, the government publicized six possible locations for the site. In response, environmental NGOs, particularly *Hnutí DUHA* (the Czech branch of Friends of the Earth) and *CALLA*, met with mayors and local residents from villages around those areas to organize local referendums against the future establishment of a nuclear waste site in their communities. In all of those cases, local residents voted between 80-99 percent against nuclear waste storage, with voter turnout ranging from 51-95 percent. By law, the outcomes of these referendums are binding on the local government in its negotiations over any proposed nuclear waste site. Not surprisingly, state authorities have continued to identify suitable sites for the nuclear waste, but have been generally met with local referendums by the municipalities concerned.

In terms of the „other“ cases in Graph 1, the most prominent set of cases concern referendums on the controversial U.S.-led anti-missile defense system that planned to be located in the Central Bohemia region. Even though local governments have relatively little power to sway the Czech government's positive stance towards the anti-missile radar system, that has not prevented the emergence of 19 referendums, mostly initiated by local councils, as a way citizens living near the proposed radar can protest against it. The referendums can be binding on local government in terms of the (albeit limited) authority than they have in the issue, and have been a major public relations strategy to draw international attention to the local opposition to the radar. All of those referendums took place in 2007, and all but three were binding on local government. On average, 95% of voters across the municipalities voted against the proposed radar.

Another key feature of Czech local referendums relates to the size of the municipality: 78% of the 151 local referendums have taken place in municipalities with populations of less than 2,000. Municipal size is also strongly correlated to turnout, and thus also to the legal validity of the referendum (Graph 2). In fact, the only city with a population above 10,000 to have a binding referendum was the Tábor case mentioned above. While it may be commonsense that a campaign's chance of success is inversely correlated to population size, this has not stopped citizens and other actors from continuing to promote referendum campaigns in cities, as the Brno case study below will indicate.

Graph 2: Impact of municipal size on referendum turnout (n = 151).



Source: own data and calculations

In interpreting graph 2, it is important to note that the graph depicts an L-shaped logarithmic relation between population and turnout. The x-axis has been modified to a logarithmic scale so that the strong association between the variables – with population accounting for 47 percent of the variation in referendum turnout – is easier to observe. The data is important to keep in mind when we consider the consequences of high turnout quorums for validity. High quorums make it *de facto* impossible for residents in large cities to make effective use of the local referendum law, as their chances of a binding referendum are very small in the given legal conditions. That fact can be demonstrated through an analysis of the probability of referendum validity on the basis of population size, controlling for other referendum-related variables (Smith 2007a). While it is not the case that local referendums in large cities cannot have positive consequences, it does mean that they are unlikely to be valid.

It should be noted that because of the awareness that a 50% turnout threshold is nearly impossible for citizen-initiated referendums to achieve in large cities, in 2008 the Czech parliament passed Amendment no. 169/2008 Coll., which reduced the turnout quorum for local referendums from 50% to 35% and stated that a local referendum is valid if: 1) turnout is at least 35%; 2) a majority of voters vote in favor of the given issue; and 3) the number of voters in favor of the issue is at least 25% of all of the registered voters in the munic-

ipality.⁶ The amendment was a success for the Czech Green Party, which wanted a lower turnout quorum after the high profile referendum in Brno (discussed below) ended in failure due to the inability of reaching the 50% quorum.

The above analysis has described Czech legislation on local direct democracy and empirical trends in referendum use. While that data has its uses, it does not tell us much about the „old questions“ that have continued to inspire academic research on direct democracy around the world (Matsusaka 2003; Lupia and Matsusaka 2004). Do voters have sufficient time and resources to make informed decisions about referendum questions? Who organizes referendum campaigns, and whose interests do campaigns serve? What electoral and policy consequences do referendum campaigns have? While it is impossible in the space of this chapter to answer all of those questions, an exemplary case study can be used to illustrate some of the major trends and potential consequences of civic initiatives in the Czech Republic.

For this purpose, I selected as a case study the civic initiative in Brno that was mentioned earlier, which I was able to monitor first-hand as the campaign transpired in 2004. The case has been by far the largest local referendum in the Czech Republic (Brno has nearly 400,000 residents), and thus involved a more elaborate campaign than can be found in smaller communities. The data sources used for addressing the questions above include media reports, city documents, interviews with four of the leading activists in the campaign, and an exit poll I conducted with a team of students during the referendum itself. The exit poll was useful for gaining information about the party preferences of the referendum voters and their sources of information about the campaign.⁷ The following section will analyze the dynamics of the referendum campaign, and will argue that the campaign produced a rich informational environment, was broadly supported by civil society, and had none of the problems of corporate financing common in some Western countries. The last section will then draw out the electoral and policy implications of the campaign, the effects of which can be felt to the present day.

Voter information and responsiveness in the local referendum in Brno

Brno, the second largest Czech city, lies at an important transport crossroad between Poland and Vienna (North-South) and Prague and Bratislava (West-East). Due to the importance of modernizing the rail infrastructure around Brno in order to accommodate faster

⁶ In my view, the 35% turnout quorum would have been sufficient in increasing the overall use of local referendums and their chances of success. While it is possible to understand why lawmakers wanted to impose the condition relating to the 25% of the voting population, such a condition would hardly ever be the decisive factor in whether a referendum is valid or not. This is because of how turnout quorums affect rational voting behavior: the presence of a quorum provides an incentive for opponents of a referendum to boycott it if they think that the turnout may not exceed the given threshold. Since some opponents may boycott, the Yes/No differential will tend to be lopsided in favor of the proponents (compared to a hypothetical situation without any quorums). The larger the quorum, the greater incentive there is to boycott. To my knowledge, there has never been a Czech local referendum to achieve 35% turnout but not have support of 25% of registered voters.

⁷ The exit poll was conducted by enlisting sixteen student volunteers, who worked in pairs outside a diverse set of polling stations around the city. I briefly trained the volunteers beforehand on poll taking, and then monitored them during the referendum. 665 respondents completed the exit poll (there were roughly 79,000 voters), with a response rate of about 75 percent. In terms of how respondents stated how they voted, the exit poll predicted the outcome of the referendum to within 1.5 percent.

and longer trains and increased commerce, the City of Brno had developed plans to relocate and modernize the city's main train station as well as the entire train corridor criss-crossing the city. To the city government, the old train station, built in 1850, lacked the capacity and layout to accommodate the city's needs; since the train station was right next to the city center, it would be difficult to expand. The city wanted to fund the enormous cost of moving the train station about 800 meters away from the city center through budget cuts, loans and EU structural funds. They also argued that the land where the current train station stands could be redeveloped into a number of modern office complexes and luxury apartment buildings, which would expand the city center and increase city revenues. In opposition to these plans, in December 2003 a group of activists and local Green Party politicians demonstrated at a city council meeting in order to bring public attention to the city's plans. Those activists and politicians ultimately created, in early 2004, the Train Station in the Center Coalition (hereafter TSCC), which became the main proposer of the local referendum on the issue.

TSCC involved a number of local environmental and civic actors, particularly the Green Party, Hnutí Duha (the Rainbow Movement – the Czech branch of Friends of the Earth), Nesehnutí (a cultural-ecological action group) and Děti Země (Children of the Earth, the same NGO that led the Plzeň referendum campaign). In spring 2004, the main priority of TSCC was to disseminate information to the public, precisely because the city refused to do so itself. They accused the city of withholding information about the project in three main ways. First, they accused city planners of refusing to disclose technical information about the train station move; second, they criticized the city government for initiating a „massive persuasion campaign,“ organized by an advertising agency, which presented only one side of the issue.⁸ Third, the activists also accused the leading political party in the city, the Civic Democrats (ODS), of preventing other viewpoints on the train station from being published in the city government-owned newspaper *Haló Brno*, which is widely disseminated for free to residents' mailboxes. To TSCC, the desire for a local referendum and the need for public information and engagement on the issue went hand-in-hand:

„Making public concealed documents about the costs of modernizing the train station is a necessary precondition for initiating a fair public discussion about the issue... A local referendum is not only a means for dealing with a disagreement. The information campaign that would precede it is an opportunity to engage in discussion with citizens. A city council member who believes that moving the train station is the right decision will have a unique opportunity to put forward to citizens all the materials and arguments that would defend his position.“⁹

TSCC's referendum campaign did not simply focus on the reasons why the train station should remain in the center, which might be expected of environmental activists wanting to maintain easy and affordable access to public transport. Rather, their campaign, particularly in the first half of 2004, focused more on the problem of government disclosure and transparency, believing that citizens would oppose moving the train station if they had more information about it. Dozens of press releases issued by TSCC attacked the city council for the way it treated citizens, such as a reference to the city's information booth where „in-

⁸ Press release, Train Station in the Center Coalition, April 8, 2004.

⁹ Press release, Train Station in the Center Coalition, March 12, 2004.

stead of detailed and balanced information, citizens receive only one-sided memos and general phrases".¹⁰

TSCC's argument that citizens should have the information and the right to decide the issue themselves, together with their intended image of standing up for ordinary citizens, enabled them to collect the roughly 19,000 signatures (6 percent of 318,000 residents) necessary within a short three-month period with the help of only unpaid volunteers. The grassroots nature of the campaign can be evidenced in terms of TSCC's entire budget for 2004. As can be observed in Table 3, the total budget for the signature petition and referendum campaign was less than 8000 EUR, nearly half of which was spent on the publication of the newspaper *Referendové noviny* to inform residents about the referendum. There are no wage expenditures because all people involved in the campaign were either volunteers or were paid from the civic associations they normally work for. Revenues for the campaign came from grants from the Partnership Foundation (the main Czech nonprofit foundation supporting environmental groups) and individual donations.

Table 3: The Budget of the proponents of the Brno referendum in 2004.
Budget in EUR (25 CZK = 1 EUR)

	Revenues	Expenditures
Petition campaign – spring 2004		
Grant from the Partnership Foundation	1 000	
Gifts from firms and individuals	1 300	
Stand/tent for the collection of signatures		148
Copies, telephone, printing, internet, etc.		1 352
Event „Concert for the 1 st Brno referendum“		800
Campaign for the referendum – autumn 2004		
Grant from the Partnership Foundation	4 460	
Grant from firms and individuals	1 184	
Event „Forum of Candidates“		240
Copies, telephone, printing, internet, etc.		1 944
Referendum Newspaper <i>Referendové noviny</i>		3 460
Total Revenues and Expenditures	7 944	7 944

Source: Train Station in the Center Coalition¹¹

In the face of a popular local movement, city council members opposed to the referendum did whatever they could to foil it. While TSCC requested in the referendum proposal that the referendum take place at the same time as the regional elections in November 2004 (i.e. in order to boost turnout), Civic Democratic politicians pushed the city council to hold the referendum on October 9, which gave TSCC only 32 days left to organize the campaign and publicize the referendum. Having the referendum early and on a Saturday was also an anti-referendum strategy, as many Czechs abandon their city apartments and go to their country cottages during pleasant autumn weekends. In addition, the city council also decided that the referendum should last only eight hours, while normal elections last twelve. To make matters worse, the city intentionally did not provide residents with any voter pamphlets about the referendum question or the referendum date. Unfortunately, the current

¹⁰ Press release, Train Station in the Center Coalition, May 21, 2004.

¹¹ Budget accessed October 26, 2008 at <http://www.nadrazivcentru.cz/050412-roz pocet-koalice-za-rok-2004.html>.

local referendum law does not contain any provisions on these issues, thus enabling the city to create antagonistic conditions for the campaign. The ODS mayor of Brno and other politicians also publicly recommended that residents not vote (i.e. boycott) the referendum altogether.

In the days leading up to the referendum, TSCC responded to these conditions with an impressive array of mobilization strategies. Since the city did not mail voter pamphlets to residents, TSCC decided to put their own flyers advertising the referendum in all of the mailboxes around the city that they could.¹² They organized a number of demonstrations and public hearings about the train station which frequently drew packed audiences (see Illustration 1). Ten days before the referendum, a small group of activists scaled a building on the city's main Liberty Square, draping a large banner reading „The City Hall is Thwarting the Referendum,“ also advertising the referendum date (see Illustration 2). They also sought to encourage people to vote by illegally putting up posters around the city and organizing a „Concert for the First Brno Referendum.“ Given the political conditions and the size of the city, it is remarkable that 24.9 percent of the registered voters turned out, with 67,440 voters (85 percent) voting YES to keep the train station in the center. In TSCC's press release after the referendum, they announced that the number of YES voters „markedly exceeded the number of voters in the last local elections who voted for the political parties in favor of moving the train station.“ The ODS mayor responded by suggesting that the 75 percent of voters who stayed at home all boycotted the referendum, indicating that the YES voters were in a clear minority in the city.

It is not surprising that voters' views and backgrounds expressed in the exit poll reflected many of the elements of citizen engagement that were encouraged in the campaign (Graph 3). In terms of informational sources, 64 percent of respondents said that they heard about the referendum from TV, 56 percent from friends and family, 54 percent from local newspapers, and 44 percent from the radio. Two-thirds of all voters received the flyer that TSCC distributed. In all, 51 percent of voters utilized at least three different kinds of informational sources in learning about the referendum, and 30 percent of voters utilized at least five different kinds of sources. Informational use was evenly distributed among both YES and NO voters. While this data is quite crude, it does suggest that many voters, regardless of how they voted, came to the referendum well informed about what it was they were being asked to decide. It is highly improbable that citizens would have been nearly as well-informed about the train station project had there been only a council-initiated referendum, or no referendum at all.

¹² They actually succeeded in distributing the flyers at no cost, since copy centers supportive of the campaign were willing to print the flyers for free, with unpaid volunteers distributing them across the city (interview).

Illustration 1: A Public hearing about the train station controversy, September 2004

Activists from the Train Station in the Center Coalition, including the Director of the Czech branch of Friends of the Earth, can be seen in the background. As an indication of their organizational capacity, the activists prepared protest posters that could easily be captured by the TV cameras on the left.



Source: Train Station in the Center Coalition
Accessed from: <http://www.nadrazivcentru.cz/>

TSCC's campaign of focusing on transparency in government filtered into the reasons why voters voted YES. Selecting from multiple options, the two most popular reasons for voting YES were that moving the train station would cost too much (73 percent), and that they did not like the manner in which the city leadership decided on the issue (70 percent). Both of those options reflected TSCC's criticism of the city's lack of disclosure, which in turn translated into residents' opposition to the city's plans. Despite the fact that the campaign was organized almost entirely by environmental activists and NGOs, only a minority of YES voters voiced the environmental concern that people would travel less often by train if the station were to move (18 percent), or the personal concern of being inconvenienced by the train station move (37 percent). In sum, the initiative convinced voters of the importance of government transparency and responsibility: transparency in the city's decision-making about the train station, responsibility in its use of public finances for it.

Illustration 2: Direct action in direct democracy

Activists climb a building in Freedom Square, Brno. The sign reads „The City Hall is Thwarting the REFERENDUM, Saturday, October 9, 8am-4pm“.

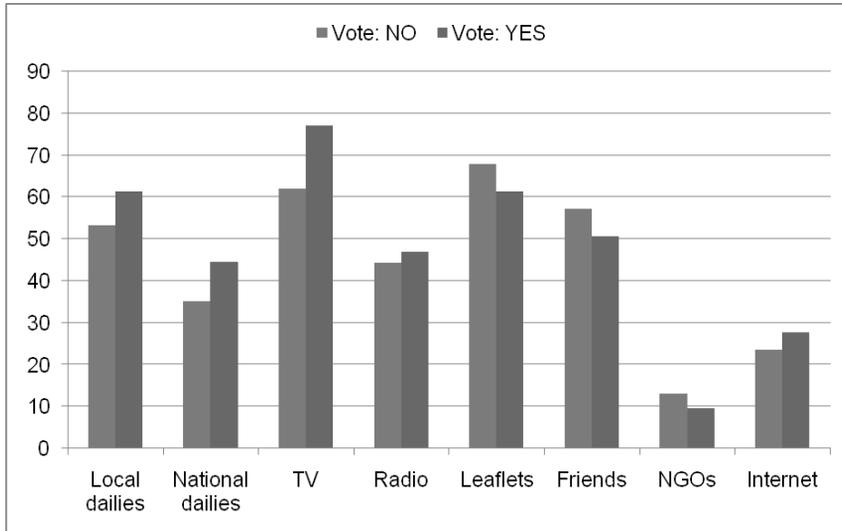


Source: Train Station in the Center Coalition.
Accessed from: <http://www.nadrazivcentru.cz>

In summary, this case study illustrates how referendum campaigns can create rich informational environments, even when campaigners have modest financial resources and political leaders seek to boycott the referendum. Three years after the referendum, TSCC's campaign is still attracting public and media attention as they seek to act as a watchdog in the planning procedures relating to the train station move. Given that the plans remain unpopular with residents, politicians and activists are once again voicing the view that perhaps a new referendum should be held on the issue.¹³

¹³ MF Dnes, „O poloze nádraží musí být další referendum (There must be another referendum on the location of the train station),“ September 30, 2007.

Graph 3: Voters' self-reported sources of information about the 2004 local referendum in Brno (in %). N = 662. A YES vote is a vote in support of keeping the train station in the center of Brno, whereas a NO vote is in support of the city's plans.



Source: own data – Brno exit poll

Electoral and policy consequences of the Brno referendum

Even though the referendum was not legally valid, the referendum campaign had larger consequences than anyone had anticipated, particularly in terms of electoral consequences. Specifically, the Brno referendum influenced the upcoming regional elections and helped transform the composition of the city government after the 2006 local elections, bringing with it an entirely new approach to the train station issue.

Since the referendum took place only a month before the regional elections,¹⁴ the referendum was the main issue on the lips of voters and politicians alike. In the run-up to the elections, the Liberal Party and the Green Party, both of which were small non-parliamentary parties at the time, agreed to run in the regional elections on a joint political ticket in the South Moravia region (which Brno is the capital of), calling themselves „Green for Moravia.“ Green for Moravia was the leading political coalition strongly advocating keeping the train station in the Brno center; while they had a broad political platform, the political context ensured that they were seen as a one-issue ticket. Also, the main political candidates for the coalition were all outspoken politicians and activists involved in organizing and promoting the referendum campaign.

¹⁴ That is, elections to the regional councils. The Czech Republic has 13 regions plus the Capital of Prague, which also shares characteristics of a region. Each of the regions has its own regional council, which in turn selects a Governor (Hejtman) from its own members. The main responsibilities of regional governments include regional development, the administration of hospitals, road works, and other infrastructure of a regional nature.

In terms of the expectations of the referendum activists, Green for Moravia was a great success. The makeshift coalition received 5.1 percent of the vote (8.7 percent in Brno alone), enabling them to send three politicians to the regional council; it was also the only non-parliamentary party to receive mandates in the election. Perhaps more importantly, the Civic Democrats (ODS), the main proponents of the train station move, lost the election to the Christian Democrats (29.23 percent to 30.77 percent, respectively), which also entailed that ODS lost the position of Governor. In fact, the South Moravia Region was the only one of the 13 Czech regions where ODS failed to win the election and secure the governorship. It is quite likely that had there not been a referendum campaign, ODS would have succeeded in winning the regional elections in South Moravia, as elsewhere in the country.

At the regional level, the impact of the Brno referendum went beyond the mere election. Members of TSCC often voiced the concern that all citizens in the South Moravia region should have the right to participate in a referendum on the train station, as the project would affect commuters as well, and not only residents of Brno. On the basis of that reasoning, Social Democratic politicians supportive of the Brno referendum drafted a parliamentary Bill on Regional Referendums,¹⁵ which gained the support of all parties in the South Moravian regional council except for ODS. The Christian Democratic governor of South Moravia then submitted the bill to Parliament. It appeared at first to have the backing of the majority of Christian Democrats, Social Democrats and Communist MPs. The bill envisioned a turnout quorum of 25 percent for a referendum to be valid.¹⁶ The proposed referendum would likely have been used in a wide range of regional development and transportation-related issues. However, the South Moravian regional council began to have second thoughts about what the turnout threshold should be, and began to prefer a 50 percent instead of a 25 percent threshold. As a result, in March 2006, just before the final vote on the bill on the floor of the Chamber of Deputies (the lower house), the governor of the region unexpectedly withdrew the bill from consideration on the grounds that the drafted bill no longer represented the interests of the regional council.¹⁷ Even though the legislative bill was dropped from that point on, and has not been revisited in Parliament since, the fact that the bill got that far reflects the emergence of political support for direct democracy elicited by the Brno referendum campaign.

While the impact of the Brno referendum on the 2004 regional elections and the legislative bill on regional referendums was significant, its impact on the 2006 municipal elections was even greater. TSCC, which during 2005 and 2006 engaged in intensive negotiations with the city about possible modifications to the city's plans for the train corridor, began to point out in the media that the local elections could be a way for citizens to once again reject the train station move by giving electoral support to the parties wanting to keep the train station's current location. It is not surprising that the Green Party, which was one of the most visible political actors behind TSCC, doubled its electoral support from 2002 to 2006, reaching 13.4 percent of the vote. While ODS maintained its position as the city's leading party (33.1 percent), the reconfiguration of voter preferences in favor of more pro-referendum parties meant that ODS was unable – for the first time in 16 years – to forge a majority center-right coalition to run city hall.

¹⁵ Pravo, „Bortel chce referendum (Bortel wants a referendum),“ October 6, 2004.

¹⁶ Legislative bill 1166/2005, „Bill of the Regional Council of the South Moravia Region for a Law on Regional Referendums.“

¹⁷ Parliamentary proceedings 1166/2005, second reading.

The party preferences expressed by voters in the 2004 exit poll anticipated some of the electoral shifts that were to take place. While 27.4 percent of YES voters said they voted for ODS in 2002, only 19 percent said that they would do so in the subsequent elections, with many of their supporters apparently undecided. The Green Party, on the other hand, not only had a disproportionate number of its voters turn out in the referendum, but also witnessed growing political support among the YES voters. In the long run, the Greens' participation in the referendum campaign not only brought them tremendous visibility at the local and national level, but also a degree of credibility as a political force.

After the 2006 election, the Green Party entered into a political coalition with the Social Democrats, the Christian Democrats and the fringe party Brno 2006, which together constituted a majority in the city council and were thus able to establish a city board led by the Social Democrats, with the Green Party receiving two seats on the 11-seat board. The coalition agreement included a clause that it would revoke the previous city hall's plans to move the train station, and would instead establish a working group with broad political representation that would evaluate the different options for modernizing the train corridor. As a result of the governing coalition, the main coordinator of TSCC (who was also a leading environmental activist in the country), Martin Ander, became Deputy Mayor of Brno for strategic development. Having challenged the city's transportation programs for so long, he now represented those programs, seeking to use the position to promote the modernization of the Brno train station at its current location in the center of the city.

While the 2006 municipal elections were a success for the Green Party – just as the 2006 parliamentary elections brought the Greens into Parliament for the first time – the subsequent policy development concerning the Brno train station has been somewhat less successful. Despite an analysis by the working group comparing the two different variants for the train station, the main developer of the project continued to support the plans and timeline for moving the station, and only took some ideas from the analysis in order to make modest improvements to the original plans.¹⁸ In early September 2007, the Social Democratic mayor agreed not to block the train station move, in part due to fear of losing the opportunity to gain funding from the European Union. Later that month, Martin Ander, realizing that he could not use his position to make radical changes to the city's stance in favor of the train station move, stepped down from his post overseeing the city's transportation policy, though he has remained Deputy Mayor.¹⁹

Conclusion

While the electoral consequences of the Brno referendum and subsequent policy developments were dramatic for the political careers of the referendum proponents, such consequences were not unprecedented. After the local referendum in the city of Tábor in 2000 (mentioned above) a number of the referendum proponents decided to use the political capital they had gained by running in the subsequent local elections under the banner of the

¹⁸ ČTK, „Přesun nádraží v Brně je zřejmě definitivní; souhlasí i ČSSD (The train station move is apparently definitive; even the Social Democrats agree to it),“ September 7, 2007.

¹⁹ Press Release of the Green Party, „Náměstek Ander odstupuje z funkce v projektu přestavby železničního uzlu Brno (Deputy Mayor Ander resigns from his function in the project on the reconstruction of the train corridor)“ July 18, 2007.

pro-green Tábor 2002 Movement. In the 2002 local elections, that party won 21 percent of the vote and 6 out of 27 seats on the city council, making it the second largest party in the city. The party replicated that success four years later, winning 7 seats in the city council with 23 percent support, enabling it to enter into a coalition agreement with ODS to run city hall.

Given the frequent use of local referendums as a means of solving environmental problems, it is not surprising that support for direct democracy is one of the main objectives of the current program of the Czech Green Party. Referendum proponents also constitute one of the core groups of party cadres for the Greens. The main coordinator of TSCC, for example, is currently a Member of the Board of the Green Party, which is the executive body for the entire party at the national level. Similarly, one of the main advocates for a local and national referendum on the Temelín nuclear power plant was for some time a Deputy Chairwoman of the party and was also Minister of Education for most of 2007. Lastly, one of the leading lawyers on local referendum law – who was a major actor in the Tábor referendum and who also provided legal advice to a number of other local referendum campaigns across the country – was promoted by the Greens to be Deputy Minister of Justice in the Czech government, responsible for legislative development.

Indeed, the transformation of referendum proponents into local, regional and national politicians may have played a role in the 2008 amendment to the local referendum law that reduced the turnout quorum to 35%. In a parliamentary hearing in June 2007, Martin Bursík, the Chairman of the Green Party and a Deputy Prime Minister, reported that „we as a government want to improve access to the referendum device, to make it more utilizable in the sense that a binding referendum will require only one third of voters to turn out, but that it would also be necessary that a quarter of all registered voters vote in favor of the given question.”²⁰ The bill was passed unanimously in the Chamber of Deputies in April 2008, and was signed by President Klaus the following month. Currently, a number of members of Parliament are pushing for a constitutional amendment allowing national referendums, as well as the direct election of the President. While referendum supporters will still have to overcome numerous obstacles before achieving referendum success, there does seem to be a political consensus that legal conditions should be improved so that local, and perhaps national, direct democracy in the Czech Republic has a chance to flourish.

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Local direct democracy in Germany – varieties in a federal state

Theo Schiller

Germany is not well known in the world of direct democracy since after 1945 there is (almost) no regulation or practice of initiative and referendum on the national level. There had been, however, historical forerunners in the first republic after 1919 (the „Weimar Republic“). In addition, Germany is organised as a federal state, and on the level of regional states (*laender*)¹ direct democracy is available. German unification with the accession of the East German *laender* also had an impact on this kind of institutions. On the level of municipalities, major extensions of initiative and referendum have also taken place after 1990. This article will show that contemporary Germany developed an impressive mosaic of direct democracy in local politics which made several thousands of initiatives and referendums possible.

We start with an overview on the historical background and the milestones of evolving direct democracy. The second section will inform on the basic forms and variations of initiative and referendum at the local level in the German states. Section three presents the main regulations of these instruments in more detail. Practice of local direct democracy will be analysed in section four, and section five concludes with remarks on major findings and impacts of initiatives and referendums on German local democracy.

1 Historical background and recent developments

Germany had her first democratic revolution at the end of World War I 1918/19 when the constitutional monarchy was replaced by the „Weimar Republic“, supported by Social Democrats, the catholic Centre Party and the centre-left German Democrats. The new constitution combined a parliamentary system with a directly elected president, supplemented by various instruments of direct democracy. The president could call a referendum on parliament’s budget or financial laws, one third of the members of parliament could initiate a referendum to reject a bill before enactment, if supported by 5 percent of registered voters, and 10 percent of registered voters could start a citizens’ initiative leading to a valid ballot vote if 50 percent of registered voters would turn out. Only the citizens’ initiative had been frequently used but not more than two of them went to a ballot vote, and both did not reach the turnout quorum for a valid result: the first one (with a left-wing background) on expropriation of princes (1926) reached a turnout of 39.6 percent, the second (with an extreme right-wing background) against the Young Plan on reparation payments had only a turnout of 14.9 percent. Many of the states also provided in their constitutions measures of direct

¹ The terms ‚state‘, ‚regional state‘ and *land* or *laender* in German will be used as equivalents.

democracy in rather similar forms (Schiffers 1971). In addition, they regulated initiative and referendum instruments for the level of municipal politics which allowed and often had been used for a recall of local councils². Thus, there is a traditional background of direct democracy for later developments. After 1933, however, Nazi dictatorship destroyed democratic institutions of any kind. When the Nazi regime used plebiscites three times for acclamation purposes (1934, 1936, 1938) this had a long term impact to discredit the concept of direct democracy for the time coming after the end of World War II (historical chapters in Heussner/Jung 2009).

The reconstruction of democracy in Germany after the end of the Nazi dictatorship 1945 developed, in the Western part of the country, on two levels: the *laender* 1945-1948, and the Federal Republic of Germany founded 1949. The majority of the *laender* integrated forms of direct democracy in their constitutions, whereas the constitution of the new federal state did not adopt these instruments, except a mandatory referendum for re-arrangements of territories in art. 29 of the Basic Law (on debates on these issues for state constitutions and the federal 'basic law' cf. Jung 1994). Since then, political elites stressed the principle of representative democracy for the national level (Federal Republic) against any inclusion of elements of direct democracy. At the level of regional states, initiative and referendum instruments have been regulated rather restrictively, and rarely used. With regard to the level of municipal administration and politics the *laender* did surprisingly not provide instruments of local direct democracy in their municipal laws. As the only exception, Baden-Wuerttemberg, made initiative and referendum available at the municipal level since 1956.

As a general development, Chancellor Brandt's slogan „to dare more democracy“ was widely shared and, in the 1970s and 1980s, social movements and civil society groups have been very active in protest and informal participation. This resulted in a growing public opinion for a more participative democracy, and support for direct democracy increased significantly from about 40 percent up to more than 70 percent. The growth of the Green party was but one indicator for a changing political climate towards more direct participation.

The turning point has been marked by the year 1990. Since that time most *laender* adopted or improved their regulations of direct democracy on the state level, and all states introduced direct democracy instruments at the municipal level. The first state to undertake these innovations was Schleswig-Holstein in 1990, where the breakdown of legitimacy from a major political scandal („Barschel affair“) had prompted a new constitution including initiative and referendum at the state level and in a new municipal act. The second major development had been, of course, the peaceful revolution in the GDR and her accession to the Federal Republic of Germany in 1989/90. The popular movement „we are the people“ gave a strong background to integrate direct democracy into the constitutions and also the new laws of the municipalities of the „new *laender*“ Brandenburg, Mecklenburg-West-Pomerania, Saxony, Saxony-Anhalt and Thuringia (1990-94). West Germany's „old *laender*“, between 1993 and 1998, finally also made the move towards introducing initiative and referendum instruments at the municipal level and, in addition, in some states to improve their rules of direct democracy at the state level. The context of this innovation has been quite different from the other developments and was related to administrative reforms

² We use the term 'council' for municipal parliaments etc. which in German have various names like *Gemeinderat*, *Gemeindevertretung*, *Stadtrat*, *Stadtverordnetenversammlung* and the like; at level of county („Landkreis“): *Kreistag*.

which combined a stronger executive with neo-liberal concepts of 'new public management', competition and privatization (Wollmann 2003; Kersting et al. 2009: 35-75). Most West German states introduced, in the early 1990s, the direct election of mayors (already existing in Bavaria and Baden-Wuerttemberg) in order to strengthen the effectiveness of municipal administrations. In order to balance the power gains of the executive direct democracy instruments have been conceded as a kind of compensation.

A fascinating route had been taken in two states where direct democracy on the level of state legislation could be used to push for initiative and referendums instruments in the municipalities. In Bavaria, 1995, a citizens' initiative at the state level for amending the state Municipal Act achieved a success at the referendum ballot and did even override the counter-proposal of the Christian Social Union/CSU, the governing majority in the Bavarian Parliament. In Hamburg where direct democracy at the state level had only been included into the constitution in 1996, a citizens' initiative proposing the same rights for the level of city districts was also successful in 1998. Finally, in 2005, the city state of Berlin (West-East merger in 1990) also adopted direct democracy instruments for her city districts (reports on all German states in Kost 2005).

In summing up these developments after 1990, three factors can explain the opening for initiatives and referendums at the local level. In Schleswig-Holstein a legitimacy crisis of the re-representative system of democracy induced steps to bridge the gap between political elites and democratic citizens. In East Germany, the system transformation towards democracy worked as a general context for more direct participation of citizens. Finally, in the Western parts direct democracy was meant to open more channels for participation and better balance the administrative reforms for municipal governments.

2 Instruments of Local Direct Democracy available

In the Federal Republic of Germany, municipal affairs are regulated by the regional states (*laender*). In German local government, direct democracy comes in several basic forms for which the terminology needs clarification.³

As the most usual form we find procedures *initiated by citizens* under the name of „Buergerbegehren“, leading to a ballot vote („Buergerentscheid“). In fact, two variations are contained: One is the standard Citizens' Initiative by which citizens present a new proposal to the municipal council (local parliament, „Gemeinderat“, „Stadtrat“); if not accepted by the council a ballot vote will follow. In the second version *under the same terms and procedure* citizens can request a referendum vote on a decision taken by the municipal council (in international terminology often called „popular referendum“, in Switzerland „facultative referendum“). Both versions of citizen-initiated referendums are, by now, available in all German *laender* including the districts of the city states.

As an additional form, local councils (not mayors) can call referendums on municipal affairs, also under the name of „Buergerentscheid“ (for clarification we prefer the term „Ratsreferendum“ or „council referendum“). This form is available in ten states: in Baden-Wuerttemberg, Bavaria, Berlin, Brandenburg, Bremen, Mecklenburg-West-Pomerania, Schleswig-Holstein, Saxony and Saxony-Anhalt, also in North Rhine-Westphalia since

³ Of the municipal laws in 16 states three examples may suffice here. *Bayerische Gemeindeordnung*, *Thueringer Kommunalordnung*, *Bezirksverwaltungsgesetz der Freien und Hansestadt Hamburg*.

2007. In Brandenburg it is restricted to mergers of municipalities. In Hamburg there is only the option of a counter-proposal for a ballot vote on an initiative proposal.

The form of mandatory referendums is not existent in Germany at the local level.

Direct democracy instruments are available for different forms of local entities. Mainly, these measures are provided for municipalities which vary in size from small towns (ca. 1.000 residents) to large cities with one million residents or more like Cologne or Munich. The average size of municipalities also vary substantially between the *laender*. Another kind of local entity are ‚Landkreise‘ (comparable to ‚counties‘) for which most of the non-city-states also make initiative and referendum available (not Baden-Wuerttemberg, Hesse, Thuringia); city states Berlin, Bremen and Hamburg only have districts with multiple functions. Since there are only few cases of practice in ‚landkreisen‘, they will not be covered in this paper. Still another category are districts as part of municipalities, for which in some states direct democracy instruments are also available.

Whereas the concept of direct democracy is mainly focussing on procedures for political issues, sometimes direct elections of office holders, like mayors, and recall procedures are also included. In Germany, recalls cannot be initiated by citizens, but if the local council votes for recalling a mayor (mostly by qualified majority) the decision must be approved in a popular vote. This was established as a consequence of introducing direct elections of mayors, mostly during the 1990s.

Whereas instruments and institutional settings are quite comparable in the majority of states, for some *laender* a special context has to be kept in mind. The city states Berlin, Bremen and Hamburg established a specific structure of city districts with a special relationship between state functions and the functions of ‚communal‘ administration and politics. There is a higher degree of central administration, particularly in city planning, which also can reduce the influence of decisions taken by district councils and by way of popular referendums which are possible in districts as well.

3 Local initiatives and referendums: regulations in 16 *laender*.

As mentioned above, municipal affairs including the instruments of direct democracy are regulated by the regional states with the consequence of significant variations of direct democracy institutions in the German states. The overall picture of the regulation profiles in Germany is not a mainly liberal one but shows a rather restrictive tendency. We will find, however, quite interesting variations within the 16 *laender*.

Subjects excluded

The exclusion of subjects from direct democracy procedures has important consequences. First, the budget and taxes are excluded from citizens' initiatives in principle in all states (except in Bavaria). This still gives room for decisions with financial consequences but many difficulties and uncertainties can turn up when the financial volume seems to be rather substantial. In this context a special requirement for any initiative submission is very important: initiators have to provide a ‚financial statement‘, i.e. an estimation of costs and a recommendation how to finance them (again except in Bavaria).

A second excluded subject area is zoning, city-planning etc. This very important part of municipal policies is only admissible in Bavaria, Berlin, Bremen, Hamburg, Hesse and Saxony.

Other excluded subjects comprise administrative organisation of the municipality, legal status of mayors and administrative staff, utility rates, budgets of local enterprises, etc.

Time limits

For referendums requested by citizens (popular referendums) against decisions taken by a council a time limit has to be observed which in some states is rather short (6 weeks), in others more generous (2-3 months).

Requirements for popular support

For the procedure of a citizens' initiative (identical in the version of a popular referendum) the most significant requirements are the quorum of signatures for qualifying the initiative or referendum request, and for a valid ballot vote an approval or turnout quorum, in addition to a majority of votes cast. When an initiative submits the proposal and required signatures the admissibility will be decided by the municipal council (in two states a supervisory authority is in charge). A ballot vote which achieved validity has a binding character (for a certain period of time, ca. 2 or 3 years).

The signature and validity quorums vary substantially between the municipal acts of the *laender*, as documented in Tables 1 and 2. This makes Germany an interesting case for comparing effects of these procedural variations. In few *laender* some changes have been made since the 1990s to make requirements less restrictive. This has to be taken into account for any interpretation of rules and outcomes.

Table 2 documents the requirements for citizens' initiatives not only for the municipal level, but also for citizens' initiatives at the state level⁴. This illustrates that many *laender* provide identical or very similar regulations for the two levels of government. Yet, it also shows that some states use rather different requirements for the two levels. For instance, Brandenburg and Schleswig-Holstein require only 4 or 5 percent signatures for an initiative at the state level but 10 percent for a local citizens' initiative.

For the level of municipalities about half of the states require a signature quorum of 10 percent and an approval quorum for a valid ballot vote of 25 percent of registered voters. This adds up to a rather restrictive „average“ requirement profile which, indeed, characterizes the standard and general „mood“ in many parts of Germany that direct participation of citizens should be restrained and kept „under control“. We find, however, some interesting minority profiles in both directions. Some are even more restrictive than average, requiring 15 percent signatures (in smaller municipalities), and Rhineland-Palatinate and Sarre setting even an approval quorum of 30 percent of registered voters for a valid ballot vote (until 2005 also Baden-Wuerttemberg). On the other side, the city states of Berlin and Hamburg have much lower requirements for their districts: 3-2 percent for initiatives and no approval quorum in Hamburg or a 15 percent turnout quorum in Berlin.

Several states offer a very important modification: a degressive signature quorum for initiatives in larger cities which brings the quorum down to 5 percent or even 3 percent in

⁴ The terms for citizens' initiatives used in German are different: „Volksbegehren“ and „Volksentscheid“ at the state level (people's initiative, people's referendum), „Buergerbegehren“ and „Buergerentscheid“ (citizens' initiative/referendum) at the local level.

several cases (Bavaria, Baden-Wuerttemberg, North Rhine-Westphalia or Saxony-Anhalt). Bavaria and Thuringia also use a degressive concept in their approval quorum at 20-10 percent of the electorate. Thuringia moved, in 2009, from a very restrictive model (signatures 17-13 percent, approval 25-20 percent) to a quite liberal profile with a signature quorum of 6-7 percent and a degressive approval quorum of 20-10 percent.

Table 1: Liberal, medium and restrictive requirement profiles

<i>Land</i>	Signature quorum % of registered voters	Validity quorum approval in % of registered voters
Berlin	3	15 (turnout)
Hamburg	3-2	Majority only
Bremen	5	20
Thuringia	6-7	20-10
Bavaria	10-3	20-10
North Rhine-Westphalia	10-3	20
Mecklenburg West-Pomerania	10-4.2	25
Baden-Wuerttemberg	10-5	25
Schleswig-Holstein	10	20
Brandenburg	10	25
Hesse	10	25
Lower Saxony	10	25
Saxony	15 (5)	25
Saxony-Anhalt	15-6	25
Rhineland-Palatinate	15-6	30
Sarre	15-5	30

For details see table 2.

As Table 2 indicates several states modified their requirements during the last years, at both state and municipal level. Particularly reforms in Berlin, Bremen and Thuringia stand out with substantial improvements for citizen-friendly regulations. Despite this tendency, however, requirement profiles of a majority of states are still rather restrictive. Influenced by the Association of Municipalities (dominated by mayors) the state governments and parliaments are still very cautious to really open this channel to civic participation in the interest of administrative efficiency. In particular this applies to the restriction of admissible subjects and citizens' intervention in financial responsibility of representative actors.

According to these requirements a review whether an individual initiative can be admitted takes place after the signatures have been submitted. In most states municipal councils themselves are in charge of the review, in few states the supervising authority. We will see that this will in practice be an important threshold.

Table 2: Requirements for Initiative / Referendum (state / local) (2010) – ranked by percentage of signature quorums (column 2)

Land (regional state)	Citizens' Initiative (state level)	Referendum (state level)	Local I/R instruments	Citizens' Initiative (local)	Referendum (local)
	Signature quorum in %	Validity quorum approval in %	Introduction/ latest reform year	Signature quorum in %	Validity quorum approval in %
<i>Brandenburg</i>	<i>ca. 4</i>	<i>25</i>	<i>1993</i>	<i>10*</i>	<i>25</i>
<i>Hamburg</i>	<i>5</i>	<i>No quorum/20</i>	<i>1998</i>	<i>3-2**</i>	<i>no quorum</i>
<i>Bremen (Bremerhaven)</i>	<i>5</i>	<i>20</i>	<i>1947/2009</i>	<i>5 (10)</i>	<i>20 (30)</i>
<i>Schleswig-Holstein</i>	<i>5</i>	<i>25</i>	<i>1990 / 2004</i>	<i>10*</i>	<i>20</i>
<i>Berlin</i>	<i>7</i>	<i>25</i>	<i>2005</i>	<i>3</i>	<i>15 (turnout)</i>
<i>North Rhine- Westphalia</i>	<i>8</i>	<i>15</i>	<i>1994 / 2000</i>	<i>10-3**</i>	<i>20</i>
<i>Bavaria</i>	<i>10</i>	<i>no quorum</i>	<i>1995 / 1999</i>	<i>10-3**</i>	<i>20-10**</i>
<i>Lower Saxony</i>	<i>10</i>	<i>25</i>	<i>1996</i>	<i>10</i>	<i>25</i>
<i>Thuringia</i>	<i>10/8</i>	<i>25</i>	<i>1993 / 2009</i>	<i>6-7**</i>	<i>20-10**</i>
<i>Rhineland-Palatinate</i>	<i>ca. 10</i>	<i>25 (turnout q.)</i>	<i>1994</i>	<i>15-8,8**</i>	<i>30</i>
<i>Mecklenburg- West-Pomerania.</i>	<i>ca. 10</i>	<i>33</i>	<i>1994</i>	<i>10-4,2**</i>	<i>25</i>
<i>Saxony-Anhalt</i>	<i>11</i>	<i>25</i>	<i>1993</i>	<i>15-5**</i>	<i>30</i>
<i>Saxony</i>	<i>ca. 12,5</i>	<i>No quorum</i>	<i>1993</i>	<i>15 (5)***</i>	<i>25</i>
<i>Baden-Wuerttemberg</i>	<i>16,7</i>	<i>33</i>	<i>1956 / 2005</i>	<i>10-5**</i>	<i>25</i>
<i>Hesse</i>	<i>20</i>	<i>no quorum</i>	<i>1993</i>	<i>10*</i>	<i>25</i>
<i>Sarre</i>	<i>20</i>	<i>50</i>	<i>1997</i>	<i>15-12,4**</i>	<i>25</i>

Initiative: signatures required as a percentage of registered voters.

Referendums: majority of votes cast, representing X percent of registered voters.

Sources: Forschungsstelle für Bürgerbeteiligung und direkte Demokratie, Universität Marburg in co-operation with Mehr Demokratie e.V.; First Report on Citizens' Initiatives in Germany 1956-2007, Mehr Demokratie and Forschungsstelle Universität Marburg (2008); Mehr Demokratie (2010): Volksbegehrens-Bericht 2009.

* major difference to state level.

** Percentage required, degressive with population of municipality.

*** Municipal bye-law can reduce quorum to five percent.

4 Practice

Any account of local initiatives and referendums should keep in mind that the instruments have only been introduced in most German states between 1990 and 1998; only Baden-Wuerttemberg provided the instruments since 1956, and Berlin introduced them for city districts not before 2005.

First, we look at the frequency of initiative and referendum procedures and compare the states. Second, an overview of the distribution of issues will follow. Third, the procedural steps and the results will be analysed. The final section will deal with the patterns of politi-

cal participation in local direct democracy (for overviews on practice cf. Schiller 2007; Gabriel/Walter-Rogg 2007)⁵.

Frequency of usage

The overall number of citizens' initiatives and referendums (I/R)⁶ in German municipalities arrived at 5,534 at the end of 2009. Citizens' Initiatives („Buergerbegehren“) counted for 4,829 cases, resulting in 2,055 ballot votes; referendums have been called by local councils („Ratsreferendum“) in 546 ballots/cases.⁷ Initiatives are much more frequent and represent around 90 percent, council referendums 10 percent of all cases. Within the category of citizens' initiatives⁸, the form requesting a referendum on a council's decision represents about three quarters of cases (this distinction will not be carried through in this report).

Table 3: Municipal initiatives and referendums in Germany (1956-2007)⁹

	Cases	Ballot votes
Citizens' Initiatives („Buergerbegehren“)	4,829	2,055
Referendums (by council) ¹⁰	546	546
<i>Total</i>	<i>5,534</i>	<i>2,601</i>

Source: Forschungsstelle, Database. For more details by state: see Appendix-Table 1.

Whereas these absolute numbers seem to be rather high, the size of the German population (about 80 million) and the number of municipalities (some 12,000)¹¹ have also to be taken into account. How these cases are distributed between the states (*laender*) is documented in Table 4. Bavaria saw the outstanding amount of 2,193 I/R cases (or 39 percent), of which 2,052 have been initiatives. The other highly populated states rank much lower: Baden-

⁵ Sources for all empirical data in this chapter: Forschungsstelle fuer Buergerbeteiligung und direkte Demokratie [Research Centre for Civic Participation and Direct Democracy], Philipps-Universität Marburg: *Datenbank Buergerbegehren* [Data Base on Citizens' Initiatives] which documents all citizens' initiatives and referendums in Germany. Abbreviated reference: Forschungsstelle/Database. More details: cf. References/Sources.

I am particularly grateful to Volker Mittendorf for developing and coordinating the database since the 1990s.

An earlier summary report has been published in 2008: *Erster Buergerbegehrensbericht Deutschland 1956-2007* (2008). English version available: *First Report on Citizens' Initiatives in Germany* (2008). Data up to 2005 in Schiller (2007). All data up to 2009 are directly derived from Forschungsstelle/Database.

⁶ I/R will in some instances be used for abbreviation.

⁷ Referendums formally called by a municipal council but in fact serving as a counter-proposal to a citizens' initiative or a similar function are not included in the referendum figures. Differences to data published in former years mainly refer to Baden-Wuerttemberg and Bavaria according to their rather frequent cases.

⁸ Reminder: Initiatives comprise (1) citizens' initiatives presenting a new proposal and (2) citizens' request or demand for a referendum on a decision taken by the local council – in German both included in the term „Buergerbegehren“. In international terminology form (2) is often called „popular referendum“ (or „facultative referendum“ in Switzerland).

⁹ Figures in tables 3 and 4 include the period 1956-1989, when Baden-Wuerttemberg had been the only regional state with local instruments of direct democracy; in this period 112 referendums called by council, 161 citizens' initiatives (resulting in 68 ballot votes), cf. Wehling (1991: 125 ff./128 for data until 1988).

¹⁰ Only possible in 10 „laender“.

¹¹ Including *Landkreise* (counties) and co-operative forms of municipalities (in few states) the figure would be more than 13,000.

Wuerttemberg with 521 initiatives and 148 referendums (since 1956!), North Rhine-Westphalia (NRW) with 593 initiatives and 20 referendums.

Although absolute figures of initiative and referendum cases are high in some *laender* like Bavaria, Table 4 indicates clearly that the number of municipalities and their average population make a difference: the districts of Hamburg have the highest frequency, followed by Bremen, Berlin, North Rhine-Westphalia, Bavaria and Hesse. Population size of municipalities in its effect on the frequency of initiatives and referendums can also be seen in Table 5: In municipalities with less than 10,000 residents I/R cases are significantly less frequent than in cities with a population of more than 100,000. This can be explained by the concentration of population which may result in high rates of problems and policy issues. Yet, restrictive requirements in several states are likely to offset or reduce such size effects (subject exclusions, high signature quorums etc.).

Table 4: Municipalities, initiatives and referendums in Germany (1956-2009)

Laender	Population Mio. 2010	Municipalities /total 2010	Initiatives	Referendums	I/R cases per municipality
<i>Large</i>					
North Rhine-Westphalia	17,9	396	593	20	1.5
Bavaria	12,5	2,056	2,052	76	1.0
Baden-Wuerttemberg	10,7	1,102	521	148	0.6*
<i>Medium</i>					
Lower Saxony	7,9	1,024	212	2	0.21
Hesse	6,1	426	311	n.a.	0.73
Saxony (E)**	4,2	488	196	53	0.51
Rhineland-Palatinate	4,0	2,306	138	1	0.06
<i>Small</i>					
Schleswig-Holstein	2,8	1,116	269	23	0.26
Brandenburg (E)	2,5	419	100	100	0.48
Saxony-Anhalt (E)	2,4	836	130	96	0.27
Thuringia (E)	2,3	951	88	n.a.	0.09*
Mecklenbg-West-Pomerania (E)	1,7	817	80	27	0.13
Sarre	1,0	52	14	n.a.	0.27
<i>City States</i>		(districts)			
Berlin	3,4	12	31	0	2.58*
Hamburg	1,8	7	88	0	12.6
Bremen	0,7	2	6	0	3.0
Total		12,010	4,829	546	

Sources: Forschungsstelle, Database; Schiller 2007. My additions and calculations.

State populations as of 2008; Statistical Offices of Federal Republic of Germany and Laender.

* If calculated per year, the rate of Baden-Wuerttemberg (54 years of I/R) would be much lower. In Berlin, I/R instruments only exist since 2005. In Thuringia, requirements had been much more restrictive until 2009.

** (E) = East Germany.

The case of Bavaria strongly suggests that a broader definition of subjects allowed for more initiatives and the degressive signature requirement for larger cities will increase the frequency of initiatives.

In general, the overall number of I/R cases is still very low. In most *laender* the majority of municipalities (up to 80 or 90 percent), so far, did not experience any initiative or referendum. A higher number of initiatives and referendums (10-20 cases) have only taken place in a rather small number of municipalities, e.g. Munich, Augsburg, Regensburg, Passau (all in Bavaria), Karlsruhe, Wuppertal, Bielefeld, Düsseldorf, Dresden (Mittendorf 2009).

Table 5: Size of municipality and I/R frequency (1956 -2009)

Size	Municipalities share in %	I/R cases total	I/R cases, share in %
- 10,000	84.8	2,993	54.1
10,000 – 50,000	10.2	1,555	23.0
50,000 - 100,000	1.1	351	6.3
> 100,000	2.1	635	11.4
	100	5,534	100

Source: Forschungsstelle, Database, and my calculations.

Issues of initiatives and referendums

The issues dealt with in initiatives and referendums depend, as mentioned earlier, on the admissibility of subject matters in different *laender* regulations. As a main difference stands out that issues of city planning, zoning and the like are not allowed in most states except in Bavaria, Hesse, Saxony and the city states.

As a first area *amalgamations* of municipalities represent about 14 percent of all initiative and referendum cases. This had been a major item of administrative reforms at the municipal level in Germany in order to create larger and more effective administrations. In several West German states territorial reforms were undertaken in the 1970s and 1980s and provoked many political conflicts. In this period before 1990, only Baden-Wuerttemberg provided initiative and referendum instruments, which have been used to a substantial degree with regard to the issue of mergers. Very often the form of referendums called by councils was used, representing one third of all cases in that state, and in the period 1956-1989 the share was even higher – more than 50 percent of all referendums in that period concentrated on this subject and in the one year of 1971 (Wehling 1991).

A similar development can be observed in the East German *laender* after 1990 when again territorial reorganisation had been strong on the agenda. Of overall 916 initiative and referendum cases, in 1990-2009, in East Germany, about 60 percent dealt with the issue of mergers. In addition, council referendums, compared to initiatives, have been significantly more frequent on this subject here than in the Western *laender*, e.g. in Brandenburg 99:6, in Saxony-Anhalt 89:60, in Mecklenburg-West-Pomerania 18:4 or in Saxony 39:49 (see also Table 4, Appendix-Table 2). Obviously, mergers of municipalities are regarded as fundamentally affecting local identity and, thus, municipal councils have been seeking popular support and legitimacy for new municipal borders and concentration of administrative services.

Other issue areas leading to initiatives or referendums have been:

- Infrastructure of education and social welfare, about 17 percent,
- Traffic projects like streets, pedestrian malls, ca. 17 percent,
- Infrastructure of public service and utilities, ca. 14 percent,
- Business projects like supermarkets or industrial plants, ca. 14 percent,
- Waste and sewage projects only count for ca. 5 percent of all cases.

Differences in these areas are not very strong between the states, except that in West Germany traffic issues, infrastructure projects and privatisation issues have a higher significance than in East Germany. In Bavaria, traffic projects, public service/utilities and business projects account for more than 20 percent each. One regulatory item, however, can heavily influence the opportunity to use particularly the initiative instrument: the exclusion of city planning/zoning issues from direct democracy except in six *laender* including city states. A comparison of issue patterns in the states with and without this restriction would be interesting, but a detailed statistical analysis for that field is only partly available or would be too complex to be presented here. A rough idea can be given if we cumulate areas like planning statutes, traffic projects, industrial projects, housing zones etc. in which formal planning procedures play a significant role. In states like Bavaria and Hessen where city planning/zoning is not excluded these subjects account for about half of all initiative and referendum cases. In other states, initiatives related to these subject areas only have been started with a share of around 30 percent, and some of them may be called inadmissible anyway later in the process.

To illustrate the wide range of issues only few cases can be mentioned. In the field of city planning in Munich (Bavaria) ballot votes defended the existing height regulation against high-rise buildings in the city centre but allowed building a new soccer stadium complex. In the area of public infrastructure and utilities many popular referendums were opposed to privatising power and gas utilities, public water supplies and sewage. Privatisation of large social housing property has been stopped by citizen-initiated referendums in cities like Freiburg 2006 (Baden-Wuerttemberg) and Leipzig 2009 (Saxony) with even nationwide attention (Reidinger/Zinnel 2009). Maintenance or improvements of child care or sport services have been frequent issues in the social field. Traffic-related subjects often included pedestrian malls, street-car projects, road planning, tunnel projects and airports. Dresden (Saxony) became prominent for her conflict about a bridge project backed by a referendum vote but contradicting cultural landscape heritage and even jeopardizing the city's status as UNESCO World Heritage site. In the field of environmental and climate related innovation the small town of Schoenau (Baden-Wuerttemberg) has become quite famous, in the early 1990s, for a successful initiative to purchase local power utilities back from the regional supplier and combine decentralization and climate protection.

So, the range of issues has been rather widespread. In part they resulted from local „routine“ conflicts like traffic plans or business projects producing waste, noise or chemical pollution, partly they were responding to a squeeze in local finance for social services or to neoliberal reform strategies like privatisation. These issue patterns were concentrated more in the West German states which have been stronger affected by financial problems and administrative reforms whilst the new East German states experienced more basic moderni-

sation of infrastructure and benefited from financial transfers from the „old“ Federal Republic of Germany to the East.

Procedural stages and results

Referendums called by a municipal council (in the states where available) follow a rather simple procedure: The council decides with the majority required, a simple majority in Bavaria, Brandenburg, Bremen (city), Mecklenburg-West-Pomerania and Lower Saxony, whereas a majority of two Thirds is required in Baden-Wuerttemberg, Berlin (districts), North Rhine-Westphalia, Lower Saxony, Saxony-Anhalt and Schleswig-Holstein. In Brandenburg only mergers of municipalities can be the subject, in Lower Saxony only one special case is allowed. Normally no problems of admissibility should arise since councils know their municipal competences, and they regularly decide on the admissibility of citizens' initiatives. For the validity of a ballot vote the same requirements apply as for votes originating from an initiative.

Admissibility of initiatives

For a citizens' initiative the procedure is much more complicated. First, the subject matter must not fall under an exclusion clause (see above). Secondly, the proposal or request has to be supplemented by a ‚financial statement‘ („Kostendeckungsvorschlag“), an estimate of costs of the measure and a recommendation how it can be financed. Thirdly, according to the quorum, the signatures of citizens supporting the initiative have to be collected in the form required (partly in public offices, on forms with proper personal identification). Fourth, the time limit for presenting any proposal and the signatures required by law has to be met.

These requirements can be rather hard to meet. Thus, not surprisingly significant numbers of all initiatives, i.e. about 25 percent, are declared inadmissible (1,199 of 4,829 initiatives), with major variations between the *laender*. At the top we find inadmissible initiatives in Mecklenburg-West-Pomerania (46 percent), Lower Saxony (43 percent) and Baden-Wuerttemberg (37 percent), at the lower end Saxony-Anhalt (17 percent) and Bavaria with only 13 percent. If we take the large share of Bavarian cases out of the calculation as a gross exception, the average for the rest of Germany stands at 33 percent inadmissible initiatives. One important factor for inadmissibility surely is the exclusion of subjects, particularly city planning/zoning etc. which six states with the largest share of inadmissible cases do not allow, whilst Bavaria does not exclude them. Difficulties with providing an adequate financial statement seem to be a second factor for having an initiative rejected. Other reasons are an insufficient number of (correct) signatures and missing the defined time-limit which can be crucial in states where the limit for a referendum request to object a council's decision is only four or six weeks (Schiller 2007; First Report on Citizens' Initiatives 2008).

Adoption of proposals by council

Admissible initiatives can either be adopted in substance by the municipal council, or, if rejected, will lead to a ballot vote. Acceptance of the proposal by the local council plays at least some role in practice, which indicates that procedural interactions between initiators and representative councils can be very productive. It seems obvious that adoption is less frequent with regard to citizen-requested referendums since their very goal is objecting to

an actual council decision. Even here, however, it may happen that, for example, a high number of signatures or the speed of signature collection demonstrates very strong support for the opposing of the initiative and can convince the council. More often acceptance makes sense with regard to new proposals of initiatives by which the innovative function of the instruments of direct democracy would be underlined. The overall figure of acceptance stands at about 12 percent. Again we see major variations between states, with Hamburg (under rather special conditions) and North Rhine-Westphalia above average and some other states with a ratio of 5 percent and even lower (Baden-Wuerttemberg, Brandenburg, Saxony-Anhalt). To adopt initiative proposals gives a council the option to avoid a ballot vote and also offers to the signatories of the initiative some chances of influence.

In addition, in several instances anticipation effects could be observed where signature collection had not been completed but its strong signals led authorities to re-consider disputed projects. No complete account of such more informal interaction processes is available but they also can induce at least partial success. In Frankfurt, for example, the city executive had planned to save money by selling the subway system to international investors and lease it back („cross-border leasing“); this was stopped by an initiative collecting signatures at a high speed – and this surely saved millions of Euros during the crisis of the world financial system 2008/09 when the deal would have broken down anyway.

Ballot vote: success or failure

Ballot votes („Buergerentscheid“) are taken on initiatives and on referendums called by a council, and both forms (in German termed identically „Buergerentscheid“) have to be kept in mind here. Whereas council referendums in principle always go to the ballot, citizens' initiatives arrive there only after formal admission by the council (or other authority in charge) and if not adopted in substance by the council. 410 council referendums and 2,055 initiatives (or 47 percent of the original cases) have finally been brought to the ballot (Table 6). Council referendums reached a valid vote in favour in 67 percent of ballots and 23 percent with a negative vote, in 5 percent of votes the required approval quorum has not been met (rest of cases unclear). Votes on citizens' initiatives ended with a valid result in 48 percent of the cases and 35 percent without a majority of votes cast. In 15 percent of ballot votes, however, the majority of votes cast did not represent the approval quorum and, thus, a valid vote was not achieved.

Table 6: Ballot votes, results (1956-2009)

Result	Ballot votes (from initiatives)		Councils' referendums		Procedure unclear	Ballot votes total
Vote valid, majority in favour	988	48 %	273	67 %	38	1,299
No majority	724	35 %	95	23 %	10	829
Vote invalid (majority but approval quorum not met)	310	15 %	23	5 %	4	337
Invalid, unclear	33		19		2	54
Total	2,055	100 %	410	100 %	54	2,519

Source: Forschungsstelle, Database.

There are also some variations between the *laender*. In Bavaria, which only introduced an approval quorum in 1999 (upon a judgement by the constitutional court), an overall share of 5 percent of initiatives has been invalid for missing the approval quorum, whilst North Rhine-Westphalia saw 49 percent of ballot votes not meeting the approval threshold of 25 percent (later 20 percent), and Lower Saxony had 38 percent invalid cases.

The overall results show interesting differences between councils' referendums and votes from initiatives. Whereas councils had a good success rate they nevertheless lost a substantial share – about one fourth – of the referendums they had called. The success rate of valid votes from initiatives – almost 50 percent – also seems quite impressive, but their rate of one third of votes without a majority is higher than the results of councils' referendums. A special consequence follows from the required approval quorums, since 15 percent of the initiatives achieving a majority of votes cast were invalidated for missing the approval quorum. This signifies the price for the regulatory goal of securing votes with a higher degree of legitimacy. Yet, on the other hand, we also learn that some 80 percent of citizen-initiated ballot votes arrived at validity just on the basis of simple majorities.

Participation

One of the important goals of introducing direct democracy surely is to provide more opportunities for political participation. How far could this goal be achieved, and which conditions do support participation? In addition to frequency of usage, as described above, a second aspect of civic participation is involvement and particularly turnout in ballot voting.

Practicing initiative and referendum instruments refers to participation in several respects: active citizens in civil society are needed to organize and represent an initiative, a larger number of citizens must be willing to support a proposal with their signatures, and many should be ready to engage in public debates. Obviously the procedural thresholds for such activities will influence the motivation and opportunity and, thereby, the frequency of using particularly the initiative instrument. Thus, a liberal requirement profile is most likely to invite more participation, like in Bavaria or the city districts in Berlin and Hamburg, whilst restrictive profiles with many excluded subjects and high quorums for signatures and valid votes will prohibit initiating activities, like in Rhineland-Palatinate, Sarre or Saxony-Anhalt. The fact that only in about 20 percent of German municipalities initiative or referendum procedures have been undertaken implies that the citizens of 80 percent of municipalities did not experience this opportunity of participation. In addition, only one initiative in a town or city in many years will not build up an intense experience in direct democracy. Yet, so far municipalities with three or more cases are rather rare. Therefore, towns and cities with a larger number of initiatives and referendums would be interesting cases, like some 70 locations which exercised more than five of the procedures. Of the top-10 cities with more than 10 initiatives and referendums seven are located in Bavaria (Mittendorf 2009a). Unfortunately, so far no in-depth studies on patterns of participation and the impact on political culture in these places are available.

The second important aspect is participation in ballot voting on initiatives and referendums. The average turnout rate in all votes for which participation data are available stands at 50 percent of registered voters (similar to voting turnout in Swiss municipalities). These turnout rates seem to vary particularly with the population size of municipalities. In towns with less than 10,000 residents turnout increases to almost 60 percent, in the size category

of 10,000-30,000 the average stands at 43 percent, in size up to 100,000 turnout is 34 percent, and in big cities of more than 100,000 residents average participation is ca. 30 percent. Differences like this will have a strong impact on *laender* variations, since the small number of only 396 municipalities in populous North Rhine-Westphalia have an average population much higher than in more than 2,000 Bavarian towns and cities. Obviously, it is also more difficult in such large cities to meet an approval quorum of 20 or 25 percent unless this quorum has a degressive design for large cities (which is the case in Bavaria, Baden-Wuerttemberg or North Rhine-Westphalia but not in Hesse or Lower Saxony). One may also find significant variations according to the issues of initiatives and referendums. An analysis combining subject areas and size of municipalities (Appendix-Table 3) demonstrates that business projects attract higher turnout than issues of social services. For most subject areas turnout is decreasing with growing size of population, but business, waste and traffic projects induce high participation rates (35 percent or more) also in the categories of 100,000 - 200,000, partly even up to 500.000 residents. Other factors for possible variations of participation may be approval or turnout quorums which invite de-mobilising strategies by opponents of an initiative (Mittendorf 2008). In all size categories of municipalities ballot votes on council referendums attract a voter turnout somewhat higher than votes originating from citizens' initiatives (Table 7). In part, this may result from the fact that a significant share of council referendums deal with the issue of municipal mergers.

It has to be recognised, however, that some more general context factors for participation also will have an impact on turnout rates in ballot voting, e. g. voting on elections days, average turnout in local elections, specific conflict intensity, the role of parties in referendum campaigns etc.

Table 7: Average turnout according to size of municipality and type of procedure (-2009)

Size (residents)	Ballot vote (from citizens' initiatives) (in %)	Councils' referendum (in %)
< 10,000	56.7	63.3
< 30,000	42.3	52.9
< 100,000	33.6	41.1
> 100,000	28.8	44.3

Source: Forschungsstelle, Database.

5 Conclusions

Direct democracy at the municipal level in Germany has been introduced late, mainly after 1990, and since then developments in regulations and practice have been rather slow. In some states, very restrictive requirements have been slightly eased: North Rhine-Westphalia and Schleswig-Holstein reduced their approval quorum from 25 to 20 percent (early 2000s), Baden-Wuerttemberg, in 2005, reduced it from very high 30 percent to 25 percent and made subject restrictions less tight. So, at least a tendency towards more citizen-friendly rules can be observed. The most important reform took place in Thuringia in 2009. This state had started out with the most restrictive profile with a signature quorum of 17-13 percent of registered voters and an approval quorum of 25-20 percent. By way of a citizens' initiative on the state level to reform these requirements new rules have been adopted by the state parliament (to avoid a ballot vote) which reduced the signature quorum

significantly down to 6-7 percent and the approval quorum to 20-10 percent (similar to Bavaria) – a move to the top group of liberal profiles. In addition to Bavaria and Hamburg, this was the third example for using a citizens' initiative at the state level to introduce or improve the regulations for the municipal level.

Regulations and practice of initiative and referendums instruments have shown major variations between German *laender*. There is no doubt that states with liberal regulations like Bavaria and Hamburg also invited most frequent usage, whilst highly restrictive requirements as in Rhineland-Palatinate, Saxony-Anhalt or Sarre have a prohibitive effect. Few states with medium requirements show rather frequent usage like in North Rhine-Westphalia following partly from the small number of highly populated municipalities.

Some variations can be found between West Germany and the (new) East German states. With the exception of the very special cases of Bavaria and the West German city states, regulations between Eastern and Western have been rather similar. In practice, however, municipalities in East Germany were at the low end of using the instruments, particularly with regard to citizens' initiatives, whilst council-initiated referendums have been used in a much higher proportion. So, the historical background of democratic transformation („we are the people“) did not lead to patterns of very active participation in local initiatives.

As to the forms of direct democracy in practice, citizens' initiatives stand out as the dominant procedure in using direct democracy at the local level, representing more than 85 percent of all cases for 1956-2009. Government-initiated referendums called by the municipal councils do not play a dominant role and add up only to less than 15 percent (not available in four states). Their role even diminished over time, due to the fact that they have been used to a large extent for the issue of mergers of municipalities which had their peak time in Baden-Wuerttemberg 1971 and in the East German *laender* in the late 1990s. Thus, council-initiated referendums did not gain a dominant function as a ‚plebiscitary‘ form of direct democracy.

Within the category of citizens' initiatives the popular request for a referendum to reject a council decision achieved the highest frequency (70-75 percent). That means that the function of control and correction of representative decision-making is most prominent. In the ballot votes these rejective referendums are also more likely to succeed than initiatives for new proposals. Citizens' initiatives in a narrow sense, submitting new proposals, represent a clear minority of cases but they obviously serve a function of articulation and innovation, in some cases even with a regional or national impact. Popular referendums, on the other hand, by no means have always a reactive character. By questioning or blocking a particular council decision they sometimes also suggest new ideas and stir up a debate which may lead to better solutions.

Direct democracy contributes an additional qualitative dimension to the public space of local politics by opening new channels for public deliberation on issues. In this deliberative arena local political parties also play an important role but at the local level they do not have the same dominating power as at the state or the national level. Additional civil society actors and a broader range of arguments can very often be observed in municipal initiative and referendum debates. Local media, particularly newspapers, usually offer intense coverage of information and controversies beyond executive and professional representative and party discourses, and thereby support the democratic potential of direct-democratic procedures (for a general account with reference to the local level: Mittendorf 2009b).

Local direct democracy in Germany developed, as in other countries, in a broader context of „participatory democracy“ and concepts of democratic innovations. Some other forms of more intense participation like citizens' juries, forums, deliberative polls, consensus conferences, citizens' budgeting etc. are attributed more deliberative and consensus-building qualities. Whereas the majoritarian and decision-oriented features of initiatives and referendums have often been stressed their contribution to public deliberation seems rather underestimated. They may also offer more potential for combining different forms of democratic participation by shaping policy proposals in explicitly deliberative procedures and taking them to a popular decision by ballot vote. So far, this option has not really been experimented in relevant numbers in Germany.

The issues dealt with in initiatives and referendums seem to have been mainly of local importance. Some cases, however, developed regional or even national attention and impact, particularly in the areas of privatisation of social housing and of public utilities. These initiatives and ballot votes contributed to re-consider the social service functions of municipalities and strongly supported innovative developments towards decentralising energy utilities and sustainable environmental policies.

Instruments of direct democracy exist at the local level as a formal institution in all German states. The frequency of practical use, however, is distributed rather unevenly between the municipalities. Where initiative or referendum procedures have not been used at all or only once or twice over many years they may serve as a latent instrument but have not been fully institutionalised in real political life.¹² As an established institution direct democracy can only function in the rather small number of municipalities in which more frequent use could be experienced and the procedures have become part of the institutional setting and political culture.

After two decades of local direct democracy in Germany we may also ask whether initiative and referendum made any impact on the political system in general. In the municipal presidential system with a directly elected mayor and a strong elected council direct democracy provides the option of an additional veto player which often induces more cooperation between mayor and council. With regard to party systems there are more differentiated and less stable patterns at the local level than at state or national levels; direct democracy gives smaller groups additional instruments of influence and, thus, supports a tendency towards more openness. New civic or protest groups also can gain institutional access and sometimes are also pushing or drawn into the electoral system on a „single issue“ track. In this way, initiative instruments may even foster a recruitment function for representative democracy which could be observed several times in Germany.

Finally, a general remark on ideological aspects of using initiatives and referendums should be made. In the political debates whether or not to introduce measures of direct democracy the fear of populist abuse of initiatives and referendums has often been stressed, particularly in Germany with explicit reference to German history before 1945. The overall range of issues in practicing the instruments does not support this apprehension in any way: populism or extremism has not been a relevant feature of local direct democracy in Germany.

¹² By 2007, in only 846 of some 12,000 municipalities initiatives or referendums have been practiced at least two times, in only 66 municipalities more than five times (see Mittendorf 2009a: 328).

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Data Source:

Forschungsstelle fuer Buergerbeteiligung und Direkte Demokratie [Research Centre for civic participation and direct democracy], Institute of Political Science, University of Marburg – Datenbank Buergerbegehren [Database on Citizens' Initiatives], in cooperation with Mehr Demokratie e.V. I am particularly grateful to Volker Mittendorf for developing and coordinating the database since the 1990s. www.forschungsstelle-direkte-demokratie.de.

Since 2010, the Database is organised as a joint project of the Research Centre at University of Marburg (director: Theo Schiller) and the Research Centre for Civic Participation at University of Wuppertal (director: Hans J. Lietzmann).

A summary report has been published in 2008: *Erster Buergerbegehrensbericht Deutschland 1956-2007*, Forschungsstelle + Mehr Demokratie, Berlin/Marburg (2008). English version available: *First Report on Citizens' Initiatives in Germany (2008)*. Data up to 2005 are used in Schiller (2007). All data up to 2009 are directly derived from the Database on Citizens' Initiatives.

Appendix

Table 1: Local Initiatives/Referendums (1956-2009) – ranked by number of citizens' initiatives

Land (regional state)	Number of municipalities since	Instrument	Citizens' Initiatives	Referendums (called by council)	Ballot votes	Ballot votes	
					(from citizens' Initiatives)	in favour of proposal	(from citizens' Initiatives)
Bavaria	2056	1995	2052	76	1110	542	35
North Rhine- Westphalia	396	1994	593	20	148	55	1
Baden-Wuerttemberg	1111	1956	521	148	217	93	33
Hesse	426	1993	311	not poss.	110	58	not poss.
Schleswig-Holstein	1132	1990	269	23	109	55	8
Lower Saxony	1032	1996	212	2	67	30	0
Saxony	779	1993	196	53	85	60	32
Rhineland-Palatinate	2305	1994	138	1	51	19	0
Saxony-Anhalt	1295	1993	130	96	65	26	68
Brandenburg	1489	1993	100	100	30	15	82
Thuringia	1053	1993	88	not poss.	25	17	not poss.
Hamburg (districts)	7	1998	88	not poss.	12	8	not poss.
Meckl.-West- Pomerania	1069	1994	80	27	16	6	14
Berlin (districts)	12	2005	31	not poss.	9	4	not poss.
Sarre	52	1997	14	not poss.	0	0	not poss.
Bremen (districts)	2	1994	6	not poss.	1	0	not poss.
SUMME			4,826	546	2055	988	273

Source: Forschungsstelle fuer Buergerbeteiligung und direkte Demokratie, Institute of Political Science, University of Marburg, and Forschungsstelle fuer Buergerbeteiligung, University of Wuppertal: Database on Citizens' Initiatives, in cooperation with Mehr Demokratie e.V.

Table 2: Subjects of initiatives and referendums (cases), by state (1956-2009)

	A.	B.	C.	D.	E.	E1.	F.	G.	H.	I.	K.	L.	Z.	TOTAL
	Public Infra- struc- ture and Utili- ties	Social Ser- vices	Cul- ture	Waste dispo- sal	Busi- ness	Spec. Busi- ness: Mobile Trans- mit- ters	Traffic pro- jects	Taxes duties	By- laws	Hous- ing pro- jects	Other Town plan- ning	Mer- gers etc.	Other	
Baden- Württemberg	139	136	38	11	69	7	114	1	11	11	24	82	30	673
Bavaria	278	286	89	149	370	117	470	38	25	29	226	28	88	2193
Berlin	3	7	3	0	3	0	7	1	0	4	0	0	3	31
Brandenburg	6	18	9	5	19	1	16	7	1	0	0	123	6	211
Bremen	0	3	0	0	1	0	1	0	0	1	0	0	0	6
Hamburg	12	19	9	0	11	0	7	0	0	21	4	1	4	88
Hessen	47	61	12	21	62	4	55	3	15	17	6	4	4	311
Mecklenburg West-Pomer.	7	15	2	4	20	1	10	0	1	1	1	39	6	107
Lower Saxony	40	57	9	6	38	4	38	3	10	0	0	10	3	218
North Rhine- Westfalia	120	186	43	22	68	3	103	10	13	8	2	0	35	613
Rhinel.-Palat.	30	42	5	4	13	6	19	3	2	1	2	9	3	139
Sarre	3	7	0	1	1	0	1	0	0	1	0	0	0	14
Saxony	16	38	6	7	20	0	18	4	1	0	2	129	9	250
Saxony- Anhalt	3	10	0	3	20	1	5	0	0	0	0	216	1	259
Schl.-Holstein	79	62	12	20	47	2	58	3	9	7	9	14	10	332
Thuringia	8	10	0	4	7	2	6	5	1	1	0	41	4	89
TOTAL	791	957	237	257	769	148	928	78	89	102	276	696	206	5534

Source: Forschungsstelle fuer Buergerbeteiligung und direkte Demokratie, Institute of Political Science, University of Marburg, and Forschungsstelle fuer Buergerbeteiligung, University of Wuppertal: Database on Citizens' Initiatives, in cooperation with Mehr Demokratie e.V.

Table 3: Ballot votes: average turnout, by subjects and population of municipalities, 1956-2009 (in %)

	< 5,000	< 10,000	< 20,000	< 50,000	< 100,000	< 200,000	< 500,000	> 500,000
A. Public Utilities	64.7	50.2	45.9	41.9	34.9	31.1	26	20.5
B. Social Services	59.5	47.3	42.3	34.3	25.4	22.7	24.5	19.1
C. Culture	64.6	50.4	44.7	36.2	29.4	22.7	41.1	0
D. Waste disposal	65	58.5	30.6	33.3	31.2	34.6	47.5	0
E. Business projects	63.6	51.5	45.2	43.3	32.8	44.2	25.1	19.4
E1. Business: Mobile transmitters	46.5	40.9	20.1	22	0	0	0	0
F. Traffic projects	59.9	51.7	44	43.9	35.9	33.6	35.8	32
G. Taxes, duties	54.7	70.1	48.5	20.1	34.8	29.4	0	0
H. Local by-laws	58.9	42.3	42.5	38	29	57.9	0	0
I. Housing projects	57.6	48.9	35.9	22.7	0	0	20	22
K. other town planning	55.9	50.7	39.3	48.7	20.7	31.4	26.9	0
L. municipal mergers/ separations	61.7	57.6	53.5	43.1	38.7	0	0	0
Z. Other	51	58.5	39.9	37.1	12.5	0	19	10.1

Source: Forschungsstelle fuer Buergerbeteiligung und direkte Demokratie, Institute of Political Science, University of Marburg, and Forschungsstelle fuer Buergerbeteiligung, University of Wuppertal: Database on Citizens' Initiatives, in cooperation with Mehr Demokratie e.V.

The institutionalisation of the referendum in the Italian political system: from the national to regional and local levels

PierVincenzo Uleri

To the memory of Renzo Rastrelli*

„The referendum in itself has powerful edifying force on public life, since it accustoms citizens to concern themselves with things rather than people“ (Giovanni Giolitti)**

Introduction***

The first modern examples of the referendum phenomenon in Italian political history date back to the end of the 18th century. The constitutions of the Cispadane and Ligurian republics were put to a popular „vote“ in so-called „*comizi primari*“, or town meetings (literally: „primary meetings“). Just as with similar experiences in the Batavian Republic in the Netherlands and the Swiss Confederation, the first Italian experiences (1797-1805) were the fruit of both the influential political ideas of the French revolution and the power of the Napoleonic troops which were to occupy part of the Italian peninsula for a number of years (Uleri 2003: 115-122). These consultations were set up as votes to ratify constitutions. The first such experiences had been those in Massachusetts and New Hampshire (1778-1781), and for this reason referendums of constitutional ratification have been considered a „pure product of the American constitutionalist movement of the revolutionary period“ (Auer 1989: 8). Nevertheless, such votes, in France and in other countries occupied by French troops, were rapidly transformed into Bonapartist plebiscites.

In March of 1797, the Constitution of the Cispadane Republic – after certain corrections made by Napoleon himself and his subsequent tacit approval of the text worked out by the Constituent Congress – was approved with 76,382 votes in its favour (Candeloro 1978, vol. I, 227-229). Notwithstanding pressure from the occupying French military presence, the outbreak of violent clashes and accusations of electoral fraud, 14,259 votes were cast against the Constitution (*ibidem*). The vote was neither free, nor secret, and was carried out „in the shadow of intolerance, fear, and intimidation“ (Zaghi 1986: 115). In December of the same year, the Constitution of the Ligurian Republic was ratified by the *comizi primari*, with approximately 100,000 votes in favour and 17,000 against (Candeloro 1978, vol. I, 245).

* This chapter is dedicated to the memory of Renzo Rastrelli, our kind and smiling colleague for many and many years at the „Cesare Alfieri“ in Florence, who left us in summer of 2008.

** This statement was attributed to Minister of the Interior Giolitti during the Congress of the National Association of Italian Municipalities, held at Messina between the 9th and 11th November 1902. On that occasion the representatives of the municipalities which were members of the ANCI discussed which types of referendum it was desirable to adopt at the municipal level (Gaspari 1998: 108). Giolitti is reported to have made the statement during discussion of the proposed law on municipalisation approved in March 1903; see the discussion below.

*** Translated by Chris Hanretty (European University Institute, Florence).

Other referendum consultations, held at both „regional“ and local levels, and more or less plebiscitary in nature, would play a role in the political events surrounding the construction of the Italian nation state in the middle of the 19th century. In the course of roughly twenty years (1848-1870), ten „plebisciti“ were held on four separate occasions to ratify the accession of parts of the Italian territory to, first, the Kingdom of Sardinia (1848) and, subsequently, to the Kingdom of Italy (1860, 1866, 1870) (Basile 1992; Mongiano 2003). The French policy, led by the actions of Napoleon III, also influenced some of these consultations, such as, for example, the referendum held in Tuscany in 1860 (Danelon Vasoli 1968).

During the first two decades of the twentieth century, local referendums became relatively significant: in fact the Giolitti law on municipalisation (law no. 103 of 1903, article 13) instituted the first kind of referendum hitherto established in Italian law: the compulsory referendum in order to ratify the decisions of municipal councils to set up public service corporations (Basile 1994; Gaspari 1998: 83-118). The law required decisions of municipal councils to establish public sector corporations to be put to a ratification vote by the electors of the relevant municipality. Between 1904 and 1914, dozens of compulsory municipal referendums were held throughout all of Italy, but especially in the North and Centre.¹ The municipalities in which such referendums were held included not just small, but also medium-sized and even large towns, such as Milan, Rome, Palermo, Turin, Genova, Pavia, Padova, Verona, Udine, Venice, Parma, and Reggio Emilia. These votes concerned decisions such as: the construction of electric tramways, thermo-electric, hydro-electric and sanitary plants, electric or gas street lighting, council housing, and pharmacies. This experience was certainly influenced by the attention paid by Italian politicians and scholars to the Swiss referendum experience during the preceding decades. How and why this experience should have fallen by the way-side in the democratic period, and should indeed fail even to leave a trace in public consciousness, is a fact which merits some reflection and explanation.

The authoritarian Fascist regime obtained the consent of the Italian people by recourse to two „electoral plebiscites“, in 1929 and 1934: these votes were neither free nor competitive, and the single list of candidates of the *Partito Nazionale Fascista* (National Fascist Party) won 98.4 and 99.9 per cent of the vote.

After the fall of the fascist regime and the end of the Second World War, a referendum vote of the 2nd June 1946 put an end to the monarchy, and instituted a Republic. The republican and liberal-democratic Constitution which entered into force on the 1st January 1948 permitted various types of referendum. Compared with the experience of other countries, the Italian referendum experience – at national level – should be considered as one of the most significant, both for the presence of referendums which can be called by a popular request signed by citizens, and also in terms of the numbers of questions put to referendum.

Beginning in the late seventies and continuing until the first decade of the 21st century, the referendum phenomenon has undoubtedly been an important part of Italian national political life. The process of institutionalization of the referendum phenomenon at the regional and local level has been slower, more difficult and somewhat weaker, at least until the present day. This has been so in virtue of the institutions' and parties' greater ability to control the process of institutionalisation. The comparison between the national, and re-

¹ A full list of obligatory referendums on municipal corporations is found in the Appendix to Basile [1994: 308-313].

gional and local referendum experiences in Italy offers multiple points of departure and raises many questions and problems.

The limited diffusion of the referendum phenomenon at regional and local level becomes much more problematic when we consider the political and institutional processes which have characterised Italian politics in the last three decades of the twentieth and first decade of the twenty-first century (1968-2008). In these four decades, the centralized state has been profoundly affected by a political and institutional transformation towards the kind of regionalised state already foreseen by the 1948 Constitution. From the nineties until the present day, this process has had significant effects not just on the regional, but also on the municipal and provincial levels. Do these transformations favour the diffusion and institutionalisation of the referendum at the regional and local levels? Not necessarily, nor automatically. The analysis of the referendum phenomenon at the regional and local levels cannot be framed without reference to the institutional and political context and referendum experience found at the national level.

1 The constitutional framework of the referendum²

The Italian constitution, which entered into force on 1 January 1948, permits nation-wide referendums both on ordinary legislation (article 75) and on constitutional change (art. 138) respectively. Both articles are found in the second part of the Constitution, „Organisation of the Republic“. Article 75 is found in the part concerning the Parliament and the legislative process. A further article in this section, article 71, permits popular „legislative initiatives“ counter-signed by at least 50,000 voters. This form of participation does not imply any obligation for the Parliament, nor, in any case, a referendum-type vote. Article 138 is inserted in the part of the Constitution concerning „Constitutional guarantees“ and „Amendments to the Constitution“. Until 2008, Articles 71, 75, and 138 had never been modified.³

In the political-institutional design of the 1948 constitution, the Republic is conceived of as a unitary state, sub-divided into the several regions, the provinces, and the municipalities. Article 5 establishes that

The Republic, one and indivisible, recognises and promotes local autonomies, and implements the fullest measure of administrative decentralisation in those services which depend on the State. The Republic accords the principles and methods of its legislation to the requirements of autonomy and legislation“.⁴

Title V of the Second Part of the Constitution, („The Regions, the Provinces and Municipalities“, Art. 114-133) is entirely dedicated to the institutional design of the regional and municipal set-up. Articles 123, 132 and 133 provide for referendums at regional or municipal level; Article 133 does not expressly mention the term ‚referendum‘, but states that the Region, „*having heard the relevant population*“, may set up, by regional legislation, new municipalities, modify the territorial divisions and the names of the municipalities.⁵ Title V

² In this work I use the term „referendum“ to indicate generally any type of referendum institute. I have already discussed the problem of the classification and terminology of referendum institutes in Uleri (2003: 57-109).

³ The legal literature on this topic, and in particular on the abrogative referendum, is extremely broad. General reference texts are, for article 75, Luciani (2005); and for article 138, Pizzorusso et al. (1981).

⁴ [Http://www.camera.it/cost_reg_funz/345/copertina.asp](http://www.camera.it/cost_reg_funz/345/copertina.asp)

⁵ General reference texts are Carli et al. (1990) and Rotelli et al. (1990).

was the object of an important amendment (constitutional law no. 3, 2001), which marked an important, if incomplete, stage in the implementation of a regional state. Articles 123 and 132 were modified, whilst Article 133 remained unaltered.

In its original formulation article 123 of the Constitution established that the regional statutes were to regulate „the exercise of the right of initiative and the referendum on laws and administrative provisions of the Region“. According to the constitutionalist Massimo Luciani, with this article the constitution „made rules on popular participation one of the essential and necessary components“ of the regional statutes (Luciani 2008). The article was modified by two different constitutional laws (constitutional law of 22 December 1999, no. 1, art. 3; constitutional law of 2001, no. 3, art. 7) (see the text in the Appendix).

Article 132 required a referendum for the „fusion of existing regions or the creation of new regions“ decided by constitutional legislation; it also provided for „Provinces and Municipalities... [to be] removed from one Region and joined to another“ with a referendum and national-level legislation. This was also modified by the constitutional law of 2001 (no. 3, art. 9, first clause, see text in the Appendix).

Finally, article 133 does not explicitly foresee referendum-style votes, but says that „The Region, after consultation with the populations involved, may establish through its laws new Municipalities within its own territory and modify their districts and names“ (see text in the Appendix).

2 The national level referendum experience in synthesis

The Italian experience traces a path of the slow and contested institutionalisation and political legitimation of the referendum principle. It encompasses over sixty years of political life, from the institutional referendum of 2 June 1946 to the last consultation of 2006 (Barbera – Morrone 2003). After the referendum of 1946, 28 years passed before another referendum at national level. In fact, the democratic constitution approved by the constituent assembly entered into force on 1 January 1948 without popular ratification.

The constitutional norms on referendums remained „frozen“ until the approval of law no. 352 of 1970, which fixed the procedures and schedules for all referendum procedures, both those concerning the „abrogative referendum“ and those concerning constitutional and regional referenda. In May 1974, voters were called to the ballot box to vote on the first of a long series of abrogative referendums, the majority of which were called through popular requests which gathered voters' signatures.

Almost all of the referendum questions voted upon by Italian electors between 1974 and 2006 have been promoted using the „abrogative referendum“ permitted by article 75. Between 1971 and 2007, 144 abrogative questions have been promoted: 59 have been voted upon by electors in 14 popular consultations; 12 have been resolved by pre-emptive decisions of the Parliament. Other than the abrogative referendums, two referendum consultations were held on the basis of article 138 to ratify constitutional amendments.⁶ Finally, in 1989 an *ad hoc* referendum was held on European integration.

The number of abrogative referenda promoted between 1970 and 2008, 144 in total, is certainly significant. At the same time, the number of questions actually voted on is less, 59

⁶ I have analysed the referendum experience at the national level in previous works: Uleri (1985; 1989; 1996; 2002; 2007) and Uleri-Fideli (1996).

(Tab. 3). The Constitutional Court has judged 75 questions admissible, rejecting 67. Law no. 352 allows the Parliament to intervene with its own decisions, both before and after a popular vote. Therefore, of the 75 questions judged admissible by the Constitutional Court, 12 have been pre-empted by parliamentary decisions⁷. The approval of law no. 194 of 1978, which legalised and regulated abortion is probably the most important decision of those taken by Parliament to avoid a referendum vote.

In six pooled votes (in 1990 and successively in the next five, between 1997 and 2005), the quorum of 50 per cent plus 1 voters was not reached. In this fashion, the vote on 24 referendum issues was declared null and void. Consequently, 40% of the votes expressed by electors have been completely useless. Rendering this situation even more disconcerting is the fact that the total number of individuals registered on the electoral rolls, from which the quorum is calculated, is not entirely reliable. We may ask ourselves whether this national experience constitutes a factor which facilitates or instead hinders the diffusion of the referendum at the regional and municipal level.

Table 1: Synthesis of national level referenda experience in Italy (1946-2008)

Date / Period	Type of referendum	Questions voted by electors
1946	Institutional referendum	1
1989*	Consultative referendum	1
2001 and 2006	Referenda on ratification of constitutional revision (Art. 138, Const.)	2
1970-2008	Abrogative referendum questions on ordinary laws (Art. 75, Const.)	59
1970-2008	Total questions voted upon by electors	63
1970-2008	Abrogative referenda on ordinary laws (Art. 75 Const.) resolved by Parliament before the date on which the referendum was to have taken place	12

Table 2: Synthesis of national level abrogative referenda in Italy (1970-2008)

Abrogative referenda promoted	144
Questions on which the Constitutional Court has expressed a judgement of admissibility	142
Abrogative questions judged inadmissible by the Court	67
Abrogative questions promoted in a single year (1995)	30
Abrogative questions promoted on a single occasion by a political movement or party	18
Abrogative questions promoted on a single occasion by some Regions	12
Abrogative questions put to the vote in a single pooled vote	12
Abrogative referendum consultations held	14
Abrogative referendum consultations nullified for failure to reach quorum (of a total of 14 consultations)	6
Abrogative votes on individual issues nullified for failure to reach quorum (of a total of 59 individual issues voted upon)	24
Issues approved by voters and valid for having reached the quorum (of a total of 59 individual issues voted upon)	21
Issues rejected by voters and valid for having reached the quorum (of a total of 59 individual issues voted upon)	14

⁷ These are not indirect referenda of the type present in certain of the United States, nor a counter-project of the Swiss kind. There is no possibility for promoters of a referendum to withdraw their request.

3 The institutionalisation of the regions and the municipalities

In Italy, the principal governing and administrative institutions at subnational level are spread out over three levels: the Municipality, the Province, and the Region.⁸ The constitutional revision of 2001 also permitted the institution of metropolitan city areas, but none of the ten forecast metropolitan areas has been implemented (Vandelli 2004: 81-84; Baccetti 2008: 115-117).

The long history of the Italian municipalities dates back to the eleventh and twelfth centuries. Municipalities (*comuni*) and provinces (*province*) were present in the organisation of the Italian state at the second half of the 19th century. The region, by contrast, is the fruit of the republican constitution of 1948, even if proposals for the unification of the Italian state along federal and regional lines had already been discussed and put forward in the first half of the 19th century during the events which would lead to the building of the nation-state.⁹

Currently, the regions are the most important in political or administrative terms, followed then by the municipalities and subsequently by the Provinces (107)¹⁰, which have been reinforced in recent years notwithstanding the criticisms of those who have, on repeated occasions, called for their abolition. There are, additionally, other entities such as districts or wards in cities of moderate or large size (*municipi, circoscrizioni*), mountain communities (*comunità montane*) (355), unions of municipalities (146), consortia (4,000), special corporations (800) and finally local-government owned share-holder corporations (300) (*società di capitali a partecipazione pubblica locale*) (Vesperini 2004: 5; Baccetti 2008: 54-65; 70-71). Whilst local institutions are those which are judged most favourably by a large part of the citizenry, these have, at the same time „ballooned dramatically and unjustifiably in recent years“ (Carboni 2008: 129). Thus, for certain scholars the problem:

„is the quality and efficiency of this over-developed political-administrative apparatus which has invaded our country on the molecular level, with certain outgrowths which cry out, such as the case of the new „mini-provinces“ or mountain communities next to the sea“ (*ibidem*).

The constitution which entered into force on 1 January 1948 foresaw nineteen regions, which later became twenty (1963). Fourteen regions with statutes of ordinary autonomy were set up, and five with statutes with „special autonomy“, or with „particular forms of and conditions for autonomy“. The presence of regions with Statutes of special autonomy was a response to multiple factors in both international and domestic politics which threatened the autonomy of the nation state after the end of the Second World War.

The eighth of the transitory and closing provisions of the Constitutions called for the first elections to the regional assemblies in regions with ordinary autonomy to be held „within a year of the entry in force of the Constitution“. Instead, the law that opened the road to the establishment of the regions with ordinary autonomy was approved only in 1968, and the first elections to the regional councils were thus held in the spring of 1970.

In subsequent years, the regional assemblies, which are elected every five years, would approve their own statutes and laws to implement the norms relating to referendums, popu-

⁸ The legal and political aspects of these three levels are described in Vandelli (2004); Caretti – Tarli Barbieri (2007); Sebastiani (2007); and Baccetti (2008).

⁹ The literature on regionalism is vast: see, for example, Rotelli (1962; 1967); Ruffilli (1971); ISAP (1983: 1998).

¹⁰ For the full list ordered by population see Baccetti (2008: 90-93).

lar initiatives, and other institutions of popular participation. The statutes and implementing legislation would be approved only after numerous difficulties and obstacles due to the uncertain picture at national level concerning the relationship between the central state and the regions, a picture that would be completed – in a scarcely more satisfying manner – only in 1977 (Caretti – Tarli Barbieri 2007: 23).

4 The never-ending transition: from proportional democracy to majoritarian democracy?

For almost twenty years, spanning the end of the 20th and beginning of the 21st century, the Italian political system has undergone a troublesome and complex process of transformation, both on the national and sub-national levels.¹¹ A dozen laws, both constitutional and ordinary in nature, have modified the relationships between the central state and the institutions of „local government“, with the municipalities and the regions in the front rank. The factors which have aided this transformation are numerous: the referendum movement for reform of the electoral system, the crisis of the party system which distinguished Italian politics from 1948 to 1992, and the emergence in the northern regions of a strong support base for the *Lega Nord* (Northern League), a populist-type party but one nevertheless strongly committed to the federalisation of the Italian state (Diamanti 1993). The historic divisions between the north and south of the Italian state, far from fading away, seem instead to have been accentuated.

The political and institutional events of the nineties appeared to be a crisis for the political regime, with a never-ending transition that both parties and institutions, after over a decade, still cannot bring to a close (Ceccanti-Vassallo 2004). For almost half a century, between 1946 and 1993, Italian electoral law, characterised by strong proportionality, remained unchanged. The abrogative referendum was a body-blow for this state of affairs. Referendum questions on electoral law have been promoted and voted upon repeatedly from 1990 until 2007 (Baldini 2008). The changing of the electoral law is a complex and fevered affair: begun in 1990, it cannot be said to have concluded even after two decades. Between 1993 and 2005 electoral laws at national, regional and municipal level have changed one or more times, and the utility for the political system of having seven different electoral laws has been called into question (Salvi-Villone 2005: 108-128). In particular, the proportional electoral systems for the Camera and the Senate were changed in 1993 to a predominantly majoritarian system, and then changed again in 2005 with a proportional-based system with a minimum threshold and a bonus for the largest party or coalition (Fusaro 1995; Luciani – Volpi, 1995; D’Alimonte – Fusaro 2008).

Changes in electoral law have also affected local government. In 1993, before a referendum was due to take place,¹² parliament approved a law for the direct election of mayors and provincial presidents: this was in fact an objective of one of the referendum questions voters would have voted on. That law, which also reformed the structure of municipal govern-

¹¹ On the political system of the so-called first Republic, see Hine (1993); in general, Cotta-Verzichelli (2007; 2008). On particular events in Italian politics from 1986 onwards, see the annual *Politica in Italia*, also published in English under the title *Italian Politics*.

¹² According to law, national referendums must be held on a Sunday and Monday morning between 15 April and 15 June.

ments, has been judged amongst the most successful of the reforms attempted between the start of the nineties and the current day (Di Virgilio 2005). In 1995, parliament approved a new, complex electoral law for the regions, with a mixed-proportional basis, with a majority bonus and the direct election of the regional presidents and the regional government.

The Italian party system, as with the rest of the institutional set-up, seems far from stable consolidation. Should parliament fail to approve a new electoral law, a referendum modifying the electoral law will be held in the spring of 2009, having already been postponed from 2008. Moreover, amendments to the electoral law introducing a threshold may be approved before the spring 2009 elections for the renewal of the European Parliament.

5 Whither the State: from the unitary to the regional state?

The official date of birth of Italy as a nation state is 1861; the Italian state was born in the political administrative mould of the unitary, Napoleonic state. The strong territorial divisions present – the result of a history spanning several centuries – have not disappeared, making it appropriate to talk of a „state which is unitary, if not united“ (Cotta, Verzichelli 2008: 188).

During past decades, and as in other political systems, Italy has engaged in a process of political and institutional transformation of the set-up of the state: from a unitary to a regional state, according to a political-institutional design already to be found, in its main lines, in the 1948 Constitution. This transformation – which remains ongoing – concludes in political and administrative decentralisation granting substantial local autonomy (Vandelli 2004). According to some scholars, there is therefore good reason to ask whether these processes of regionalisation of the unitary state are not in fact a stage in a „long journey towards federalism“ (Cotta, Verzichelli 2008: 187-213; Baldi 2003: 120-130; Baldi – Baldini 2008).

The implementation of the Republican constitution of 1948 was a slow and tortuous process, conditioned by the balance of power between the political and social groupings active at the time. The consolidation of Italian democracy, for over forty years, had to come to terms with a blocked system, one which lacked genuine possibilities for alternation in government.

Both on the national and regional level, the political legitimisation of the referendum as an instrument entirely compatible with representative democracy entered into conflict with a period in Italian politics characterised by the „centrality of Parliament“ (Cotta 1994). The implementation of constitutional provisions on the regions and the system of local autonomy was an important element in maintaining the „centrality“ of Parliament: the principle and the practice of parliamentary centrality were also extended to the regional assemblies. Many maintained that there was no possibility of political participation outside of the parties and the principle of parliamentary representation. The institutional design of the regional governments, as found in the statutes approved between 1970 and 1975, was influenced by the national political climate and by such convictions. Intuitively, it is easy to see that it would be difficult to obtain legitimacy for institutions such as the referendum that were, rightly or wrongly, perceived (or maliciously interpreted) as „institutions of direct democracy“, given such a political climate.

The implementation of the regional state in the seventies and eighties has been somewhat weak and uncertain, so much so that one constitutionalist, reflecting on the experience, was moved to ask „Who Killed the Regions?“ (Bin 2008: 151). His answer is that „the regions were born weak, but the bureaucracy, with the complicity of the political system, has slowly and inexorably suffocated them“, such that some regions „are nothing more than a geographical expression“ (Bin 2008: 154).

6 From the Regional to a Federal State?

At around the mid-point of the nineties a dozen or so Regions, predominantly from the North and the Centre, promoted a significant number – seventeen – of national abrogative referendums. In such fashion the regions pushed to win transfers of competence on certain matters. Ten of these questions were rejected by the Constitutional Court, four would be resolved by parliamentary decisions, and three would be voted upon and approved by voters in two national referendums held in 1993 (two questions) and 1997 (one question).

Between 1997 and 2005 there began an intensive period of reforms, with ordinary legislation and, especially, constitutional change concerning the structure of local government, in particular at regional and municipal level. On two occasions – in October 2001 and June 2006 – the first referendum consultations on constitutional reform – as foreseen by Article 138 of the Constitution – were held. The constitutional revision of 2001 was decided by the centre-left and approved also by the electorate; the reform of 2005, approved by a centre-right majority, was instead rejected. The centre-right government (Berlusconi IV) which took office after the early elections of April 2008 will surely take up once again the theme of constitutional revision. The *Lega Nord*, an indispensable ally in the coalition, and greatly reinforced by the results of the elections, has won a post as Minister for Reform for its leader Umberto Bossi, and will do everything possible to realise its objective of „fiscal federalism“.

The part of the Constitution contained in Title V concerning „the Regions, the Provinces and the Municipalities“ has been the subject of a wide-ranging revision implemented principally through the approval of three important constitutional laws. The first in chronological order is law no. 1 of 1999 which reinforces the statutory autonomy of the fifteen regions with ordinary autonomy. The second is law no. 2 of 2001, which permits the five regions with special autonomy to bolster their own autonomy insofar as permitted by constitutional law no. 1 of 1999. Finally, the third is law no. 3 of 2001 which rewrote the division of competencies between state and regions.

Article 114, the first of Title V, states:

The Republic is composed of the Municipalities, the Provinces, the Metropolitan Cities, the Regions and the State. Municipalities, provinces, metropolitan cities and regions are autonomous entities having their own statutes, powers and functions in accordance with the principles laid down in the Constitution. Rome is the capital of the Republic. Its status is regulated by State Law.

The process of constitutional revision of the institutional links between the central state and the local autonomous entities cannot be said to have reached its conclusion. Indeed, a large part of the constitutional revisions which have already been approved have not yet been

fully implemented, in particular those parts concerning regional and local finance. The parliament, in November 2005, had approved a constitutional law which proposed a fuller and more general reform of all of Part II of the Constitution concerning the „Organisation of the Republic“, or that part which includes Title V. This reform, additionally, was intended to remedy problems which had emerged in the implementation of constitutional law no. 3 of 2001. Put to the vote of the citizenry in June 2006 in a referendum to ratify the changes, the revision was rejected: turnout was 53%, with 61.3% voting against, and 38.7% in favour.

Four decades after the creation of the Regions with ordinary statutes, and after almost two decades of federalist rhetoric, the Italian political system has, on the one hand, „the characteristics of a centralised regional state“ (Fabbrini 2008: 169), and yet does not seem capable of „drastically reducing the complexity of the various bodies and the procedures of local government“ (Cotta – Verzichelli 2008: 212). Indeed, the Italian party system, as with the rest of the institutional set-up, seems far from clear change and stable consolidation.

7 The institute of the referendum in the regional statutes prior to constitutional reform

The history of the referendum at regional and municipal level can be depicted as a political and institutional „journey“ in two phases. The first stage ran from the 1948 entry in force of the Constitution to the approval, at the beginning of the seventies, of the statutes of those regions with ordinary autonomy. In 1989 Parliament recognised the European Charter of Local Autonomy ratified in Strasbourg in 1985. The second stage began with the approval of law no. 142 of 1990 on the organic reform of the structure of local government – which until that point had been governed by texts which dated back to 1915 and 1934. The second stage continued with new electoral laws at municipal, provincial and regional levels, the constitutional revisions approved between 1999 and 2001, the approval of the new municipal and regional statutes, and finally the national referendum of 2006 which failed to ratify the constitutional revisions (dubbed ‚devolution‘) sought by the centre-right (Cotta – Verzichelli 2008: 200-212).

The types of regional referendum foreseen in the statutes and adopted in the seventies were extremely homogeneous and circumscribed by the form of the national abrogative referendum. Proposals and attempts to adopt additional types of referendum were made with the approval of regional laws intended to discipline the effective functioning of regional referenda. In certain cases, these laws were approved up to a decade after the approval of the statute in question, and were modified through the intervention of the government, the constitutional court, the Court of Cassation, the regional administrative tribunals, and, finally, the council of state (Scudiero 1992). Just as with the abrogative referendum at the national level, the crucial procedural point at the regional level remains the judgement on the admissibility of the referendum question. At the national level the decision is entrusted to the Constitutional Court. At the regional level, different hypotheses were entertained: a tribunal, a court of appeal, the regional assembly, a special regional office for decisions on admissibility, and special expert committees (including professors of law, magistrates, advocats at the Court of Cassation). Just as with the abrogative referendum at the national level, a further cardinal element in the regional referendum procedure

has been the *quorum* of voters required for the vote to be valid (in general, equal to 50% plus one of all registered voters, as foreseen by Art. 75 for the national abrogative referendum). These and other details frame an overall scenario of referendum procedures and their application which has made the regular implementation of those few regional-level referendums quite difficult and uncertain.

At the end of the eighties, the norms of the regional statutes on the referendum, and the laws on their implementation, were testimony to the dominance of institutional and political choices characterised by „a generally prudent, if not distrustful, behaviour towards the referendum“ (Caretti 1988: 33). The uncertainty of the norms and procedures was such that one constitutionalist was led to ask herself whether it would not be better to delete entirely the institute of the referendum from all regional statutes (Carlassare 1988). Twenty years later, notwithstanding the new constitutional provisions, those judgements would be confirmed and reinforced: „the instruments of participation have revealed themselves to be weak and, for the most part, little valued by the political bodies of the Region“ (Caretti – Tarli Barbieri 2007: 197). The prudence or distrust of the regional political class has been a rather generalised fact, irrespective of the prevailing political orientation of each region. Given this, in the three decades following the first regional elections of 1970, the referendum phenomenon in the regions – both those with special autonomy and those with ordinary autonomy – was almost irrelevant, if not non-existent. There have been few attempts to call referendums: those few which have been made have been in large part the work of environmental associations, the first Green political movements, and few local associations of the Radical Party.

Towards the end of the eighties, the entirety of the referendum experience was confined to a few cases concentrated in five regions (Piedmont, Lombardy, Emilia-Romagna, Tuscany and Lazio) and one autonomous province (Trento). These cases all concerned calls for „abrogative referendums“, predominantly on the theme of regional legislation in the field of hunting. In certain cases the referendums did not take place because the regional councils modified the law which had been the object of the abrogative questions; in other cases the questions were judged inadmissible. Other referendum questions were also put forward on the issues of regional financing for private schools and, in one case, the formation of multi-municipal consortia (Carli 1988: 46-48). The few requests which did obtain the requisite number of signatures and which went to a vote generally either failed to reach the quorum of voters necessary for the validity of the consultation, or were rejected. In Lombardy there was a singular and certainly disquieting case: some of the forms, with electors' signatures collected for the promoting the referendum, disappeared from the regional administrative offices.

8 The institute of the referendum in the new regional statutes approved after the constitutional reforms

Until June of 2008, eleven of the fifteen regions with ordinary autonomy had approved new statutes to implement the above mentioned constitutional reforms.¹³ Four regions still had to complete the decision-making process necessary for approval of the new statutes.¹⁴ What changed for participatory institutions and more in particular for the referendum in these new

¹³ Abruzzi, Calabria, Emilia-Romagna, Lazio, Liguria, Lombardy, Marche, Piedmont, Puglia, Tuscany and Umbria.

¹⁴ The Veneto, Molise, Campania and Basilicata.

regional statutes? According to Caretti and Tarli Barbieri, „the procedures of the new statutes regulate participatory institutions in disappointing fashion“ (Caretti – Tarli Barbieri 2007: 197). For these two scholars, the statutes – with the exception of the statute of Emilia-Romagna – „have not gone beyond merely articulating the principle, or re-proposing instruments already experimented with, namely the petition, the popular initiative and the referendum“ (ibidem). Luciani argues that the new statutes: „have not satisfied expectations, even if one must note undeniable progress with respect to the past (progress that, obviously, for the moment remains on paper: the functioning of the new institute may only be evaluated in the future, if and when this machine is put into motion)“ (Luciani 2008: 167).

Almost four decades after the founding of the regions with ordinary autonomy, and a decade after the constitutional reforms, the „abrogative referendum“ in the new regional statutes „closely follows the provisions of Art. 75 of the Constitution and law no. 352/1970 implementing them“ (Picchi 2006: 393). Nevertheless the picture at regional level is more detailed than in the past, with some important experiences in certain regions (Sardinia, Val d’Aosta, Friuli-Venezia-Giulia, and the autonomous provinces of Trento and Bolzano in Trentino Alto-Adige/Südtirol) and few attempts in other Regions.

What then are the institutions of „popular participation“ present in the new regional statutes? In the jurisprudential literature there does not seem to be full agreement on the terms used in naming the different referendum types. The names of the referendum institutions are often misleading, making it necessary to check, in detail, the texts of the statutes (or the statutory laws in the case of the regions with statutes of special autonomy) in order to see which referendum types are permitted. For example, the „propositional referendum“, foreseen by the statutory laws of Val d’Aosta and Friuli-Venezia-Giulia, is „apart from the name, reducible to the popular consultative initiative“ (Caretti – Tarli Barbieri 2007: 208-209).

8a The ‘abrogative referendum’ promoted by request of electors

At the regional level, just as at the national level, the procedure for the „abrogative referendum“ can be put into motion either by a request signed by a certain number of voters or by institutional actors (such as a certain number of provincial or municipal councils). This observation also holds for other forms of regional referendum, in particular for consultative referenda.

The 500,000 signatures necessary to call for an abrogative referendum at national level correspond to approximately 1.06% of registered voters in Italy for elections to the Chamber of Deputies in 2006.¹⁵ As far as the procedure for the requests of regional abrogative referendum is concerned, in general the number of signatures is indicated by an absolute number. Only in two new statutes, those of Liguria and Calabria, is the figure indicated by a percentage of the total number of electors registered on the electoral roll: 3.5 and 4 per cent respectively.

¹⁵ I use data from these elections to provide a homogeneous comparison between all regions. Registration on the electoral roll is automatic at the age of eighteen. The official number of voters has for years been at the centre of a debate because it is believed that the electoral roll contains tens of thousands of voters who are no longer alive (Uleri 2002).

In other statutes there are significant differences both between those regions with statutes of special autonomy, and those regions with statutes of ordinary autonomy. Concerning the former, the 4,000 signatures required by the Statute of the Val d'Aosta correspond to around 4% of the electorate; the 15,000 signatures required by the Sardinian statute by contrast correspond to approximately 1.1%. Concerning the latter, the 300,000 signatures required by the new regional statute of Lombardy correspond to slightly more than 4% of the electorate, whilst the 50,000 signatures requested by the statute of Lazio correspond to approximately 1.15%. The provisional draft of the statute for Basilicata foresees a number of signatures equal to 10% of the electorate.

For regional referendums a quorum – in general equal to 50% of registered electors – is required in order that the vote be valid, as with abrogative referendums on the national level. Some statutes have introduced significant innovations: the Tuscan statute requires 50% of those voting at the last regional elections (art. 75, clause 4); equally, the new Statute of Sardinia (7 March 2007) establishes that the result of the abrogative referendum is valid if at least 50% of those who voted in the last regional elections vote in the referendum (art. 2, comma 2),¹⁶ while the Lombard statute requires the participation of „two-fifths of the electoral roll“ (art. 51, clause 6).

As set out by art. 123 of the Constitution, these referendums may concern „laws and administrative measures of the Region“. The different statutes already approved have interpreted which „administrative procedures“ may be put to a referendum in a more or less generous fashion. The statutes in general have long and detailed lists of those matters which are excluded from the abrogative vote of the electorate. Generally, the following may not be put to an abrogative vote: articles of the regional statute, laws concerning taxation and the budget, laws implementing norms of the European Union, internal regulations concerning the regional council, and the regional electoral law (Caretta-Tarli Barbieri 2007: 202-203).

The „abrogative referendum“ promoted by institutional actors: – In general, two types of institutional actor may activate this procedure: the provincial councils, and the municipal councils. This type of referendum is provided by a number of Statutes; by contrast, the statutes of the Veneto, of Liguria, of Tuscany and of the autonomous province of Bolzano do not permit it. The statutes which do foresee this type of referendum specify a minimum number of provincial or municipal councils necessary to call the referendum. Certain statutes, in addition to the number of municipal councils, also indicate a minimum number of electors or inhabitants resident in the municipalities calling for the referendum. The statute of Lombardy (which has 12 provinces and 1,546 municipalities) allows for requests from: „at least four provincial councils or five municipal councils representing at least a tenth of the population of the region, or 150 municipal councils, irrespective of the population they represent“.

The „statutory referendum“: – Following the constitutional revision of 1999, article 123 of the constitution establishes that

„The [regional] statute has to be submitted to a popular referendum when, within three months of its publication, a request is made by one fiftieth of the electors of the region, or by one fifth of the members of the regional council. The statute submitted to referendum may not be promulgated unless approved by a majority of valid votes“.

¹⁶ The original regional law in Sardinia on the referendum (L.R. 17 May 1957, n. 20) required the participation of a third of registered voters (art. 14, comma 2).

8b The „consultative referendum“

The regional „consultative referendum“ was foreseen only by some of the regional statutes approved in the seventies; it is now present in almost all of the regional statutes and also in the statutes of the two autonomous provinces of Trento and Bolzano. In general, the statutes grant the regional council the power to decide whether or not to hold a consultative referendum. Some statutes require the decision to be taken by an absolute majority of the members of the Council, whilst other Statutes require a qualified majority (of two-thirds, for example, as foreseen by the statutes of Tuscany and the Marche). Some statutes also permit the consultation request to be presented by municipal councils or provincial councils.

Only the statutes of a limited number of regions grant electors the possibility of signing a request for a consultative referendum: Tuscany (30,000 electors), Molise (7,500 electors), Basilicata (one-fifth of electors), Calabria (10% of electors), and Sardinia (15,000 electors). The statute of Emilia-Romagna allows for the request to be made by 80,000 residents, who need not be electors nor, indeed, Italian citizens.

As with the other referendum forms mentioned above, the term „consultative referendum“ is also used to denote more than one type of procedure. For example, the obligatory referendums on the creation of new municipalities or the fusion of two or more contiguous municipalities, as well as the modification of wards or the names of the municipalities (which according to the provisions of the Constitution – art. 133, clause 2 – must be permitted by the statutes of all regions) is sometimes included as a „consultative referendum“.

Table 3a: Abrogative referenda in those Regions and two autonomous provinces (Trento and Bolzano) with statutes of special autonomy

	Population	Registered voters (a)	Promoters: Citizens on the electoral roll			Promoters Municipal and/or provincial councils
			First statutes N.	New statutes		
				N.	(%) (b)	
Valle d'Aosta	123.978	100.580	4.000	4.000	(3,98)	20 Municipal councils (each council decides by absolute majority)
Autonomous province of Bolzano	482.650	365.358	13.000	13.000	(3,56)	===
Autonomous province of Trento	502.478	388.615	8.000	8.000	(2,06)	20 Municipal councils (each council decides by two-thirds majority)
Friuli Venezia Giulia	1.208.278	984.950	20.000	30.000	(3,04)	2 Municipal councils (each council decides by two-thirds majority) 4 provincial councils representing at least 50% of the regional population (1/3 regional councillors)
Sardinia	1.655.677	1.380.487	10.000	15.000	(1,08)	40 Municipal councils which represent at least one-tenth of the inhabitants of the region
Sicily	5.017.212	4.039.868	Not envisaged	50.000	(1,24)	

(a) Voters registered for the general election of 9th April 2006, Chamber of Deputies.

(b) This percentage has been calculated on the basis of the voters registered for the 2006 general election to give an indication of the „percentage cost“ of the abrogative referendum in the different regional statutes and in the statutes of the provinces of Trento and Bolzano, which together make up the autonomous region of Trentino Alto Adige/Sud tirole.

Table 3 b: „Abrogative referenda“ in those Regions with statutes of ordinary autonomy

Region	Population	Voters (a)	Promoters: Citizens on the electoral roll				Promoters: Municipal and/or provincial councils
			Old statutes (1970-1971)	New statutes (1999-2008)		Period for collection of signatures	
			N.	N.	(%) (b)	Number of months	
Piedmont	4.352.828	3.521.492	50.000	60.000	(1,64)	6	<ul style="list-style-type: none"> • 3 provincial councils • 10 municipal councils representing at least one-fifth of the voters in the region
Lombardy	9.545.441	7.440.015	20.000	300.000	(4,03)	6	<ul style="list-style-type: none"> • 4 provincial councils; • 5 municipal councils representing at least one-tenth of the regional population • 150 municipal councils
Veneto	4.773.554	3.713.441	30.000			6	Non previsti
Liguria	1.607.878	1.335.980	50.000		3,5% of those registered to vote in the last regional elections	6	Non previsti
Emilia Romagna	4.223.264	3.348.280	30.000	40.000	(1,16)	4	<ul style="list-style-type: none"> • 10 Municipal councils representing at least one-tenth of the inhabitants of the region • 2 provincial councils
Tuscany	3.638.211	2.934.440	30.000	40.000	(1,36)	6	Non previsti
Umbria	872.967	691.127	10.000	10.000	(1,45)	60 days	<ul style="list-style-type: none"> • 1 provincial council • Municipal councils representing at least one-fifth of the regional population deliberating by two-thirds majority (art. 24, c. 1) • 2 provincial councils; • 20 municipal councils; • Municipal councils representing one-fifth of the regional population
Marche	1.536.098	1.217.783	20.000	20.000	(1,64)	4	<ul style="list-style-type: none"> • 1 provincial council • Municipal councils representing at least one-fifth of the regional population

Table 3b: „Abrogative referenda“ in those Regions with statutes of ordinary autonomy (continued)

Region	Population	Registered voters (a)	Promoters: Citizens on the electoral roll			Period for collection of signatures	Promoters: Municipal and/or provincial councils
			First - statutes (1970-1971)	New statutes (1999-2008)			
			N.	N.	(%) (b)		
Lazio	5.493.308	4.395.508	50.000	50.000	(1,14)	4	<ul style="list-style-type: none"> • Two provincial councils deciding by a two-thirds majority of the members of the council • Ten municipal councils who have on their electoral roll not less than 50,000 voters in total, each deciding by a two-thirds majority of the members of the council. (art. 61)
Abruzzi	1.309.797	1.070.331	15.000	One-fiftieth of voters		4	<ul style="list-style-type: none"> • Two provincial councils • Municipal councils representing at least one fifth of the population of Abruzzo(art. 75, c. 1)
Molise	320.074	264.516	10.000			4	<ul style="list-style-type: none"> • Regional councillors • At least 15 municipal councils representing not less than a tenth of the regional population • Five municipal councils which represent a total population of 200,000 inhabitants, or • Two provincial councils • Fifteen municipal councils, irrespective of the population they represent, o
Campania	5.790.187	4.562.333	50.000			Not specified	<ul style="list-style-type: none"> • The mountain municipalities, concerning laws of specific interest to those municipalities (art. 13, c. 1) • (Old statute: 2 provincial councils; 1 or more municipal councils with more than 50,000 registered voters) • 3 provincial or metropolitan councils
Puglia	4.069.869	3.272.677	50.000	60.000	(1,83)	6	<ul style="list-style-type: none"> • 30 municipal councils representing at least one quarter of the population of the Region • 2 provincial councils; • 10 municipal councils with at least 8,000 registered voters
Basilicata	591.338	482.972	8.000			4	<ul style="list-style-type: none"> • Organizations linked to trades unions with a request signed by at least 8,000 voters
Calabria	1.998.052	1.592.428	5%	4%		4	<ul style="list-style-type: none"> • 2 or more provincial councils • 10 municipal councils with at least 100.000 registered voters

(a) Voters registered for the general election of 9th April 2006, Chamber of Deputies.

(b) This percentage has been calculated on the basis of the voters registered for the 2006 general election to give an indication of the "percentage cost" of the abrogative referendum in the different regional statutes and in the statutes of the provinces of Trento and Bolzano.

9 The referendum in the municipal statutes

The Italian Constitution does not explicitly provide for forms of referendum on subjects that fall under the competences attributed to the municipal administrations. Indeed, it is precisely the size of the municipal administrations that makes them, even for some of the most intransigent critics of the referendum, amongst the most suitable for allowing citizens a vote on a specific question.

Nevertheless, the municipal level of administration raises a problem of the design of democratic institutions, which are, or ought to be, considered in relation to the „size“ of the community for which they are designed. The problem concerns both the most typical institutions of representative democracy, as well as the referendum. The „size“ of the community can certainly be measured upon the basis of the number of inhabitants, but also in relation to the geographic extension of the territory, and, ultimately, in relation to other socio-economic, cultural and geographic indicators. As is well known, the relationship between the size of the community and the form of government is a classic and ancient theme in the study of politics.¹⁷

The number of Italian municipalities, as of January 2008, is 8,101; this number has been stable since the fifties (7,810), and almost unchanged since the sixties. Their average population is approximately 7,000 inhabitants, but the effective population varies greatly: the smallest municipality, Mortirone, has 32 inhabitants; the largest, Rome, has 2,718,768.¹⁸ The largest group (2,700) is of municipalities with a population of one to three thousand inhabitants.¹⁹ Legislative attempts designed to favour the merger of smaller municipalities have not produced results: municipalities with fewer than 5,000 inhabitants have formed a pressure group to further their own interests.²⁰ Finally, there are the „large“ municipalities (some with a population greater than five hundred thousand or one million), for which the institutional form of the ‚metropolitan city‘ was conceived, but which, as I noted above, has not yet been implemented.

As was already said, the political and institutional reform process of the nineties also affected politics at the municipal level (Vandelli 2004). The general reform of the organisation of the local autonomies, contained in the already-cited law no. 142 of 1990, was the first in a complicated series of laws reforming local politics. One important step was the approval of the law (again, already cited) on the direct election of the mayors and provincial presidents (law no. 81 of 25 March 1993). These two laws – and others approved in successive years – were grouped together in the Unified Text on the Organisation of the Municipal Autonomies (legislative decree no. 267 of 18 August 2000, hereafter ‚Unified Text‘). Both the 1990 law and the Unified Text of 2000 permit referendums on matters

¹⁷ The classic reference for a modern reflection on the subject is probably Dahl and Tufte (1973), but the literature is vast.

¹⁸ There are 21 municipalities with less than 100 inhabitants, whilst the two largest have over a million inhabitants each. There are almost 800 municipalities with a population of between one hundred and five hundred.

¹⁹ Around 1200 municipalities have a population varying between three and five thousand inhabitants; a slightly smaller number (around 1,150) have a population between five and ten thousand inhabitants. More than seven thousand municipalities have a population less than 10,000 inhabitants. There then follow around 1,000 municipalities whose dimensions vary between 10,000 and 500,000 inhabitants.

²⁰ There are 5,740 municipalities with fewer than 5,000 inhabitants: a detailed analysis of such municipalities can be found in IFEL [2008]. Their association, entitled „National Association of Small Italian Municipalities“ [„Associazione nazionale dei piccoli comuni d'Italia“], was formed in November 1999 (<http://www.anpci.it/index.asp>).

which are the competence of the municipal administration. In both cases the provisions are formulated in rather generic terms; there is, however, one difference which should be underlined.

Two clauses of Article 6 of the 1990 law (clauses 3 and 4) permitted (but did not oblige) municipal statutes to include forms of „consultative referendums“. The third clause ended with the following words: „consultative referendums may also be permitted by request of a sufficient number of citizens.“ The fourth clause made it explicit that: (a) the subject of the referendum must be a „matter of exclusive local competence“; (b) that referendums „may not take place in conjunction with other votes“. A complete reading of the two above-mentioned clauses of Article 6 shows how the institute of the referendum was considered by the Parliament in 1990 as a form of participation which was secondary to all others. Indeed, in reference to the municipal statutes, the third clause began with the following words:

„the statute *must* provide for means of consulting the population, as well as procedures for the admission of petitions, motions, and proposals by individual citizens or by associations aimed at promoting action in the common good; guarantees for their speedy examination must also be fixed“ (emphasis added).

The clause continued, as noted above, with a section dedicated to the consultative referendum. Even a non-expert in administrative law can understand the differing political weight placed by the legislators on „means of consulting the population“ compared to „consultative referendums“.²¹

During the parliamentary debate, full legislative proposals, as well as amendments to the committee text, were proposed, envisaging different types of local referendum (abrogative, propositional, and so on) which were broader and politically more significant. The reporter for the committee, Senator Guzzetti (DC), opposed to the adoption of referendum forms other than the consultative referendum, affirmed that „there would, with an abrogative or propositional referendum, be a possibility that the administrative activities carried out by the local authorities might be constrained or undone“ (Senate, 18 April 1990) – a truly curious and surprising affirmation. One wonders, in fact, what purpose the referendum serves, and upon what logical basis the abrogative referendum – permitted at the national level – should be excluded at the municipal level. One realistic explanation is found in the words of a constitutional lawyer for whom the above-cited Article 6 „means giving a more solid legal basis to, and *requiring a more restrictive compliance* from, a previous practice which was both lively and spontaneous“ (Di Giovine 1992: 152, emphasis added). In fact, there were, between the end of the seventies and (most of all) in the eighties, dozens of referendums which were requested or held at municipal level (Uleri 1986), whilst in some municipalities (for example, in Florence), rules for the holding of consultative referendums were approved. According to Luciano Vandelli the forms of citizen participation in local administrative life have seen „limited, with often disappointing development. This conclusion is particularly true for the referendum which... has finished by being used in extremely

²¹ A full and detailed analysis of the multiple forms of citizen participation in local government, as set out in law 142 of 1990, and their implementation in the municipal statutes, has been carried out by Zucchetti (1992); the consultative referendum is dealt with on pages 160-190. Barrera (1992), Di Giovine (1992), Lazzaro (1998), Rossi (1999), all concerning legal aspects, are also useful. The journal *Amministrare* (anno XXIX, n. 2, 1999), has published a collected volume on the theme „Local direct democracy in Switzerland and California“.

few cases, yet still facing rather high rates of abstention“ (Vandelli 2005: 71).²² Certainly, the limited use of the referendum and high abstention rates are not historical accidents, but may in large part be explained with clear reference to the provisions for the holding of referendums adopted in the municipal statutes and regulations, which have often been inadequate.

Clause 3 of Article 8 of the Unified Text retains the requirements of Article 6 of law no. 142. Compared to other, obligatory, forms of participation, the referendum is still relegated to a secondary role. The municipal statutes *may permit* „referendums on the request of an adequate number of citizens“; it is not made clear that this clause concerns „consultative referendums“. The municipal statutes may therefore permit more types of referendum, for example, „abrogative or propositional“, types which, ten years earlier, seemed to have been excluded. According to Ettore Rotelli, the possibility of including multiple types of referendum in the municipal statutes is merely „a faculty that these [the municipal councils] will only be able to avail themselves of with great difficulty“ (Rotelli 1999: 308).

Finally, clause 4 of article 8 retains the constraint on „subjects of exclusive local competence“, and the ban on holding referendums „in conjunction with provincial, municipal, or ward elections“. Thus – and differently from what was established by law 142 – municipal referendums may be held in conjunction with regional, national or European elections, a detail which is not of secondary importance if one considers that, in general, the requirement of a certain quorum of voters is also present in municipal referendums, including consultative referendums.

There are numerous questions which I cannot answer systematically here: in first place, whether the municipal statutes after the approval of the Unified Text allow additional types of referendum other than the consultative referendum as foreseen by law no. 142 of 1990. Certainly, in some municipal statutes in provincial or regional capitals there are forms of referendum described as „abrogative“ and/or „propositional“ referendums,²³ whilst in the statutes of other cities only the consultative referendum is permitted.²⁴ Some statutes include other, no less interesting forms, such as those for the revision of municipal statutes.²⁵ The identification of different types of referendum is not always self-evident, and the texts of the statutes are not always impeccable from the lexical point of view. The statute of Aosta, in a very precise and well-ordered manner, dedicates a specific article to each type of referendum adopted: art. 30, the abrogative referendum; art. 31, the propositional referendum; art. 32, the consultative referendum, and so on. Other statutes bring together in a single article two or more types of referendum without further specification. For example, article 64 of the statute of Reggio Emilia: „a consultative or propositional referendum on a matter of exclusive local competence and of general interest to the municipality shall be

²² Vandelli edited a special issue of *Regione e Governo Locale* (1986, vol. VII, nos. 3-5) on the theme „The referendum and direct democracy at the local level“, also including articles on foreign experiences. Some of his reflections on the local referendum experience can be found in (Vandelli 1997: 76-78).

²³ The case in the municipal statutes of Aosta (articles 30 and 31), Torino (article 16), Trento (consultative, propositional, and abrogative referendums), Trieste (article 8), Venice (article 28b and 28c.), Reggio-Emilia (article 64), Perugia (article 20), Ancona (article 19), Roma (article 10), Catania (article 47), Bari (article), Reggio Calabria (article 21).

²⁴ The case in the municipal statutes of Genoa (article 24), Bolzano (article 50), Bologna (article 7), Florence (article 101), L'Aquila (article 11), Cagliari (article 66), Palermo (article 17).

²⁵ The case for those municipal statutes which provide for a popular referendum for the revision of the statute: municipal statutes of Sassari (article 122), and Napoli (article 93).

held whenever it is requested by at least 4% of voters or a third of ward councils or the municipal council“.

The statute of the municipality of Milan²⁶ – which, compared to the previous statute, contains no relevant changes on the subject of referendums – merits certain further considerations, beginning with the terms employed to identify different forms of „consultative referendum“. The first clause of Article 10 allows for 5,000 citizens to „exercise a popular initiative [*iniziativa popolare*] through proposing a statement of deliberation [*schema di deliberazione*]“; the second and last clause establishes that „the competent organ shall deliberate on the proposal for a popular initiative within the timetable fixed by the regulations“. Article 11, entitled „Referendums following popular initiatives“ allows for 1.5% of the electors of the municipality to request a consultative referendum following a „popular initiative“ if this has not been „approved by the competent body“. The same percentage of electors may request a „consultative referendum directing the municipality on its stance in decisions in municipal affairs, or concerning which the municipality may express an opinion or formulate a proposal“. The vote is valid if at least 30% of electors participate (art. 14). These two referendum procedures may also be put into practice by ward councillors: article 12, entitled „Retrospective referendums“, permits 3% of the electors of the municipality, or a certain number of ward councils, to request a „consultative referendum on a proposal to revoke a decision of the Council and... decisions of the administration“. The vote is valid if at least 40% of electors participate (art. 14).

The second clause of art. 12 lists nine distinct subject areas which may not be put to a referendum: the municipal statute, the budget forecast and the year-end accounts; provisions concerning: taxes or tariffs, mortgage terms or loans granted; municipal personnel, and so forth. Zucchetti, analysing a sample of Italian municipal statutes approved after the 1990 law, drew up a list of 19 different subjects (Zucchetti 1992: 171-2). One subject of particular interest removed from consideration was that concerning „territorial and town planning decisions“, their implementation and subsequent amendment, a theme of particular importance for territorial government and the defence of the environment.

10 Brief remarks on the referendum experience in the Regions and Municipalities

The past few years have seen increased use of the referendum. The tables in the Appendix offer a rough overview of the referendum experience at regional and municipal level. The available documentation does not allow a complete overview nor an in-depth empirical analysis of the referendum in the regions and municipalities. In general, the web sites of national, regional and municipal authorities are not particularly user-friendly for those in search of information or data on referendums.²⁷

²⁶ Adopted by the municipal council on 9 June 2003.

²⁷ As with all generalizations, this too admits of exceptions: there are indeed certain regional and municipal sites which offer good information. For those who search for ‚Archivio Referendum‘, the best site can be found at www.ti.ch/Generale/dirittipolitici/archivio/archivio_referendum.asp, the official site of the Canton of Ticino: Italian language and Swiss experience!

10a Regional experiences

At the regional level the referendum phenomenon is found mainly in a few regions with one element in common: they are all regions granted special autonomy by the 1948 constitution. Sardinia is the region in which the largest number of referendum questions have been promoted and voted upon, whilst in Sicily there has been only one consultation, with a single question voted upon by just 17% of the electorate.²⁸ The consultation held in November 2007 in the Valle d'Aosta, with five issues voted upon, is important because it is the first instance of propositional referendums promoted by the signed request of the electorate.²⁹ Like the majority of regional referenda, these referenda were declared null and void after having failed to reach the quorum of voters: just as at the national level, it is more convenient for those actors opposed to the issue at hand to call for abstention. In such circumstances this may, in my opinion, lead to a violation of the principle of the secret ballot, especially for those voting in smaller municipalities or wards where it is easier to exercise control over, or put pressure on, individual electors.

In the regions the use of the referendum has been in large part the result of the mobilisation of parties or groups internal to the parties, sometimes crossing the majority/minority divide which characterises the political life of the regional councils. The referendums promoted on the theme of regional electoral law seem significant in this context. At the regional level, more than at the national and municipal level, the referendum institute is not yet fully under the control of citizens, opinion or interest groups or other organisations who mean to oppose a decision taken by the government, or to invite the later to take a decision they would not otherwise take. Attempts in this direction have been made, but the obstacles placed on them – thanks to the margin for discretion of the „rules of the game“ – are such that in certain cases the referendum procedure has come to a halt before arriving at a vote. An example of this can be found in the protracted history of one abrogative referendum question called in opposition to a large increase in the salaries of regional councillors in Umbria. After numerous diversions, obstacles and postponements, the referendum did not take place because the regional council opted for a small reduction in councillors' salaries. The table in the Appendix does not offer a complete overview of the regional referendums which have been voted upon; such an overview would need to list also those referenda requested but rebuffed (because they were judged inadmissible) or referenda which were not voted upon (because prior to the vote „the facts changed“, as in the above mentioned example in Umbria).

One particularly notable case is found in the autonomous province of Bolzano, where a number of citizens have organized a group called „Initiative for greater democracy“ („Initiative fuer mehr Demokratie“). The origins of the group date back to the early nineties, before it had taken on its current name. It is, to my knowledge, the only group in Italy which has as its stated aim an institutional campaign (called „For a better law on direct democracy“) calling for the adoption of a wide range of referendum institutes in municipal and provincial statutes. To this end, the group has worked on a popular legislative proposal put to a popular vote in autumn 2009.³⁰ The „gold standard“ is the referendum as practised in the Swiss can-

²⁸ Until the new Statute. The old Sicilian regional statute did not foresee referendums.

²⁹ http://www.regione.vda.it/amministrazione/elezioni/Referendum2007/default_i.asp

³⁰ Further details in Italian, German, and Ladina can be found at www.dirdemdi.org, and in the book published by Benedikter (2008: 176-190), one of the group leaders.

tons, in particular the German-speaking cantons, aided by the fact that the majority of the leadership of the group is Germanophone.³¹ Were the result of the vote forecast for autumn 2009 to be positive, its consequences might, in the medium-run, extend past the borders of the Province of Bolzano and the Trentino-Alto-Adige/Südtirol region.

Table 4: Regional referenda

N.	Region	Date	Type of referendum	Subject of the referendum	Registered voters	Turnout %	Votes in favour	Result	Notes
A – In those Regions with statutes of special autonomy									
1	Friuli-Venezia Giulia	24 - 11 - 1991	Abrogative	Regional law 28 October 1986, n. 42, on environmental protection	1,054,636	38,6	n.d.	Null	Failure to reach quorum
2	" "	" "	" "	Regional law 24 January 1983, n. 11, art. 12, first clause, on hunting in parks	" "	" "	n.d.	" "	" "
3	" "	" "	" "	Regional law 15 May 1987, n. 14, art. 3, clauses 1,2,3, on the hunting of certain species	" "	" "	n.d.	" "	" "
4	" "	" "	" "	Regional law 11 July 1969, n. 13, art. 3, on the management of hunting reserves	" "	" "	n.d.	" "	" "
5	" "	" "	" "	Regional law 20 May 1995, n. 22, regional plan for road maintenance	" "	" "	n.d.	" "	" "
6	" "	30 - 6 - 1996	" "	Regional law 27 February 1995, n° 13 concerning: „Revision of the regional hospital network „ (sections of article 7, clause 1, and article 21, clause 3)	1,082,702	35.7	71.4	Null	Failure to reach quorum
7	" "	" "	" "	Regional law 30 August 1994, n° 12, concerning the regional health service (sections of article 21, clause 3)	" "	" "	" "	" "	" "
8	" "	" "	" "	Regional law 27 February 1995, n° 13 concerning: „Revision of the regional hospital network“ (sections of article 17, clause 3)	" "	" "	" "	" "	" "
9	" "	" "	" "	Regional law 27 February 1995, n° 13 concerning: „Revision of the regional hospital network“ (sections of article 11, clause 2)	" "	" "	" "	" "	" "
10	" "	" "	" "	Regional law 27 February 1995, n° 13 concerning: „Revision of the regional hospital network“ (sections of article 7, clause 1)	" "	" "	" "	" "	" "
11	" "	15 - 6 - 1997	" "	Regional law concerning regional contributions on behalf of those attending private schools	1,085,228	32.3	" "	Null	Failure to reach quorum
12	" "	29 - 09 - 2002	Confirming	Regional electoral law	1,088,290	23.06	26.9	Null	Failure to reach quorum
1	Valle d’Aosta	18 - 11 - 2007	propositional	Electoral reform - single preference voting	103,765	27.61	24,843	Null	Failure to reach quorum (45%)
2	" "	" "	" "	Electoral reform - Direct election of the regional administration	" "	27.52	24,685	" "	" "
3	" "	" "	" "	Electoral reform – Advance notice of electoral coalitions	" "	27.60	25,402	" "	" "
4	" "	" "	" "	Electoral reform - Gender-balanced electoral lists	" "	27.40	21,373	" "	" "
5	" "	" "	" "	Construction of a new unified health service head-quarters	" "	27.16	16,891	" "	" "

³¹ The majority (70%) of the citizens of the province of Bolzano are German-speakers, whilst those who speak Italian and Ladina make up 25 and 5% of the population respectively.

1	Sardinia	11 - 05 - 2003	abrogative	Regional law 2 January 1997, n. 4 – concerning the creation of new provinces and the modification of provincial constituencies				Null	Failure to reach quorum
2	" "	" "	" "	Regional law 12 July 2001, n. 9 - concerning the creation of the provinces of Carbonia-Iglesias, Medio Campidano, Ogliastra and Olbia-Tempio	15.77			Null	" "
3	" "	" "	" "	Regional law 1 luglio 2002, n. 10 - concerning measures relating to the creation of new provinces				Null	" "
4	" "	" "	" "	Decision of the regional council of the 31st March 1999, concerning the new provincial set-up				Null	" "
5	" "	12/13 - 06 - 2005	" "	Regional law n. 8 del 2001 concerning the importation of waste as a raw material	1,454,691	26.06	7886	Null	Failure to reach quorum
6	" "	21 - 10 - 2007	confirming	Statute law	1,466,701	15.05	3208	Null	Failure to reach quorum
7	" "	5 - 10 - 2008	abrogative	Referendum n. 1, on article 3 of regional law 17/10/1997, n. 29 concerning: „Creation of a unified water utility”					
8	" "	" "	" "	Referendum n. 2, on article 15 of regional law 17/10/1997, n. 29, concerning: „Creation of a unified water utility”					
9	" "	" "	" "	Referendum n. 3, on Regional law 25 November 2004, n. 8 concerning the planning of public pathways and the protection of regional territory					
1	Sicily	15/16 - 05 - 2005	confirming	Legislative proposal concerning „Provisions for the election of the President of the Region of Sicily. Amendments to Regional law 20 March 1951, n. 29”		16.85	260,814		
B – In those Regions with statutes of ordinary autonomy									
1	Veneto	06 - 10 - 2002	abrogative	Abrogation of the Regional law on school grants to families of students attending private schools	3,871,857	21.15	749,214	Rejected	Failure to reach quorum
1	Liguria	27 - 04 - 2003	" "	Abrogation of Regional law n. 14 of the 20 March 2002 on school grants	1,413,029	24.47		Rejected	Failure to reach quorum

Note: an incomplete list.

10b Municipal experiences

The referendum experience at municipal level is certainly richer and more diverse. Again, it is not possible to provide a complete synthesis of the phenomenon for the simple (if effective) reason that we do not have an archive which records both those consultations which were actually held, as well as those which were proposed but either judged inadmissible or not held for other reasons. It is important to note that here we are concerned with a phenomenon encompassing over some hundred cases.

There is a wide variety of issues which have been put to a vote (or which some have wished to put to a vote) in municipalities of all sizes, from the smallest to the largest. It is not uncommon for municipalities to have to approve or update their procedures for the holding of referendums prior to the vote, regulations that in certain cases arrive years after the approval of the municipal statute, and that often demonstrate lacunae and inadequacies

which are the result of a political and institutional culture that downplays its inexperience with referendums that are often treated diffidently by administrative authorities.

A certain number of referendum requests do not lead to a vote because the questions which are the object of the request are judged to be inadmissible, either on the basis that they feature on the municipal statute's list of proscribed subjects, or on the basis of a more or less discretionary interpretation of such lists.

A large number of the referendums which have been voted upon have been declared null and void since it is rare that turnout surpasses the quorum of electors which is generally set out in the statutes. Actors opposed to the objectives of those calling for the referendum in general abstain from mobilizing voters or call more openly for voters to abstain. For several reasons it is easier to invalidate a referendum through failure to reach the quorum at communal and regional level than at national level. It is enough to note that in general turnout at municipal and regional elections is lower than that for general elections, and that in local referendum campaigns the quantity of information available is certainly inferior.

Often votes are requested to oppose and block decisions taken by the municipal administrations. This, for example, was the case of an important consultative referendum held in Florence. The intention of the promoters of the referendum was to block the construction of two important tram lines, part of a project which foresaw three in total, the first of which was already under way.³² Voters voted on two ballot questions, each concerning one of the lines; the second of these questions was some degree longer than the first.³³ In these cases, just as in the national abrogative referendums based upon Article 75 of the Constitution, those who were against the municipal council's decision had to vote Yes, whilst those were in favour had to vote No. Both questions indeed began with the formula „Do you want the [following] municipal council decisions to be annulled?“ It is legitimate to wonder whether all voters were entirely aware of this aspect of the vote, given the limited experience of referendums at the municipal level. Turnout in the referendum was equal to almost 40%, for which, given a quorum of 50%, the result was declared null and void. Nevertheless the majority of valid votes were in line with the intentions of the referendum's promoters, gaining significant consensus: approximately 52% and 54% on the two questions respectively. The Mayor of Florence was understandably displeased, blaming the parties which formed his majority in the municipal council. According to the mayor, the parties had not committed themselves thoroughly enough to mobilizing voters in the support of such an important public work.

The issue of tram-line construction also arose in other cities, for example in Parma, where the call for a referendum was not judged admissible by the appropriate committee. Note that a significant number of municipal referendums on the construction of tram lines by municipal corporations were also held in a number of cities between 1904 and 1914: Bergamo, Genova, Civitanova, Cassano Magnago, Padova, Este, Pavia, Roma, Torino, Vicenza (Basile 1994: 308-313).

³² Those behind the consultation included a municipal councillor from the Christian Democratic-inspired centrist minority, who years earlier had already called for a local referendum, and a series of citizens' committees of different residential areas affected by the two tram-lines.

³³ Of, respectively, 120 and 750 words (<http://www.nottraffico.org/content.aspx?idcont=1139>).

Table 5: Tram-line referendum, Florence municipality, 17th February 2008

Questions	Yes		No		Voting		Valid votes	
	N.	% of valid votes	N.	% of valid votes	N.	Turnout (%)	N.	% of those voting
Q n. 1 – Tramline Careggi – Viale Europa	64,069	51.87	59,440	48.13	124,206	39.35	123,509	99.44
Qn. 2 – Tramline Peretola – Piazza della Libertà	66,466	53.84	56,974	46.16	124,207	39.35	123,440	99.38
Number of registered voters	315,641							

Source: elaboration of data from the municipality of Firenze's web site (a well designed and easy to navigate site, and thus one of the exceptions noted above): <http://www.comune.firenze.it/elettorale/refe2008/>.

As in the Florentine case, a series of referendum have public works as their subject, whether for the construction or transformation of industrial plants of different types (power stations fuelled by coal, methane, oil), or the construction or transform of buildings of public interest. The construction of waste disposal sites and gas liquifaction plants has been particularly contested.

One issue, which has been the subject of a dozen referendum requests which have not yet reached a vote, pertains to prayer sites for Islamic immigrants, and in particular the use of land for the construction of mosques, a rather complex subject which cannot be explained with sole reference to the more or less xenophobic campaigns run by the Lega Nord in the cities of northern Italy. The problem has arisen in cities like Milan, Padua, Bologna, and in other provincial capitals like Modena, Ravenna, Treviso, and others. In Genova, following the mayor's decision to permit construction of a mosque, notice of the intention to call a consultative referendum was given by four councillors belonging to four different parties. A model case is that which took place in Tuscany, in Colle Val d'Elsa, a small but important town in the province of Siena. In a political and administrative setting traditionally controlled by the former Communist party and subsequently by its successor parties, the collection of a considerable number of signatures against such use of public land raised much surprise. The municipal administration's decision not to let the referendum proceed was no less controversial given the high number of signatures collected.

In summer of 2008 the Lega Nord announced the presentation in Parliament of a legislative proposal on the construction of mosques, a proposal which envisaged a compulsory referendum in municipalities in which mosques were to be built. This is a problem which also affects other European countries, as the September 2008 protest against the construction of a mosque in Cologne, attended by extreme right-wing groups from across Europe, shows.³⁴

In certain sporadic cases, referendums are held upon the initiative of the mayor and the majority in the municipal council in order to win citizen support for administrative decisions. This was the case for two municipalities of the province of Pisa which planned on

³⁴ „Moschee, la legge-muro della Lega „Non deve nascere una ogni 4 ore“. Referendum obbligatori, divieto di minareti e preghiere degli imam in italiano“, *Corriere della Sera*, 22nd August 2008, article by Alessandro Trocino.

building a wind-farm.³⁵ In these referendums, the turnout was greater than 50% of the electorate, and the result of the vote was in favour of the promoters' objectives.

10c A special family of municipal referendums

One particularly interesting „family“ of referendums is one that we might call the „territorial referendum“. Some examples will clarify. In the municipality of Venice, four referendums were held (in 1979, 1989, 1994, and 2003) to decide upon the separation of the historic centre of Venice from the modern area of Mestre sited on solid ground. It was not a simple matter of ‚campanilismo‘ [„hyper-localism“] so typical of so many Italian stories, but of important choices for Venice and its surroundings, including not just Mestre but also the industrial port of Marghera and the industrial site there – at one time a huge chemical centre and the source of devastating environmental damage. For some, the solution may come about through the creation of a Metropolitan city zone, but, as we have already noted, the Metropolitan city project has remained on paper even if it may come into existence, at least in certain cases, prior to the administrative elections of 2009.

Yet the politically most relevant and significant experiences from this „family“ have been those referendums promoted on the basis of article 132 of the constitution, in those municipalities which have asked to be transferred from one region to another. To this end a small „Union of Italian Municipalities for a Change of Region“ was even formed in August 1992.³⁶ In the course of little over a decade, a somewhat unexpected phenomenon spread. Around thirty municipalities have already voted on proposals to change region; others (around fifty) have begun procedures to initiate a vote or are rushing to do so. The reasons behind this phenomenon are numerous, but are often economic or financial in nature. Indeed, a number of these municipalities have asked to move from regions with ordinary statutes to regions with special statutes, thereby enjoying more favourable economic and financial conditions. It is also necessary to bear in mind the more obviously political and electoral aspects, given the consequences that these changes can have on electoral districts. The first such referendum was held in the municipality of San Michele al Tagliamento on 29 and 30 May 2005. It is important to stress that the referendum had been requested by the municipal council on 10 February 2002 and declared admissible by the Court of Cassation on 10 December 2004; the referendum was finally called with a Council of Ministers decree of 4 March 2005.

At the present time there are no municipalities which have asked to move in the opposite direction, from regions with special statutes to regions with ordinary statutes. The phenomenon can nevertheless also be found in requests for transfers between regions with ordinary autonomy.

The referendums already held on this matter have been concentrated in a score of municipalities in the Veneto who have voted to move to bordering provinces of the regions of Trentino-Alto-Adige/Südtirol or Friuli-Venezia-Giulia, both of which, as we have seen, have statutes of special autonomy. Voting procedures have begun in around fifteen other municipalities in the Veneto; in the Marche, around ten municipalities have voted to change

³⁵ Montescudaio and Monteverdi Marittimo.

³⁶ For more detailed information, see: <http://www.comunichecambianoregione.org/presentazione.php> and linked sites, from which I have taken much of the information presented here.

region, joining Emilia Romagna: in this case, a change between two regions with ordinary autonomy.³⁷

One region which might soon face a consistent exodus of its municipalities is Campania. More than forty municipalities in two provinces of Campania have begun procedures to move to the neighbouring regions of Molise and Basilicata (also regions with statutes of ordinary autonomy). The majority of these municipalities, with a population of around 200,000 (and thus marginal and peripheral in a region of six million inhabitants) would like to gain greater importance in regions like Basilicata, which are somewhat smaller, and composed of only two provinces with around 600,000 inhabitants.³⁸ It is possible that in at least some of these cases words will not be followed by concrete actions.

From a legal and institutional aspect, the history of these referendums is another piece in the jigsaw of the difficult and contested process of the institutionalisation of the referendum in Italian democracy. This type of referendum, as with all the other types foreseen in the Constitution, remained „frozen“ until the approval of law no. 352 of 1970, which governed all the referendum types foreseen in the constitution, and thus also those foreseen by article 132.³⁹ The first attempt to hold a referendum for a change of region was in 1990, 42 years after the entry in force of the Constitution and twenty years after the approval of law no. 352.⁴⁰ A number of reasons may be given to explain why the first attempt was only made twenty years after law no 352, with one possible reason consisting in the fact that articles 41-47 of the law lay down great obstacles. It is not possible here to illustrate the procedure required by the law and the modifications born of a judgement of the constitutional court declaring law no. 352 partly unconstitutional.⁴¹ That judgement certainly made the decision-making process for municipalities who wish to change region less onerous. The referendum in municipalities wishing to change region is a stage, albeit a crucial one, in a decision-making process which concludes with a law passed by Parliament.

We have already noted how article 75 clause 4 of the Constitution requires a quorum of 50% of electors for a vote to be valid. The regional and municipal statutes have, in general, repeated the quorum requirement as a prerequisite for the validity of regional and municipal referendum, in certain cases with a threshold lower than 50%. Law no 352 (art. 45, second clause) establishes, by contrast, that in order to be approved the decision to change region must win a number of votes „not less than a majority of those on the electoral roll of the municipality in which the referendum is held“. This is a true „super-quorum“: turnout and the number of votes in favour of the proposal must be equal to or greater than 50% of those on electoral roll. It is thus all the more necessary to underline the fact that in this type of referendum the turnout and the percentage of voters in favour have almost always been above the threshold of 50% (see table) – a fact which certainly merits greater analysis.

Given the number of referendums exceeding the superquorum threshold, the left-wing cabinet led by Romano Prodi proposed an amendment to the first clause of article 132 of the Constitution, which would have required that

³⁷ Amongst these seven, the Municipality of Valmarecchia: <http://www.unavalmarecchia.org/>.

³⁸ The project was dubbed ‚Grande Lucania‘ <http://www.grandelucania.it/index.htm>. Lucania was the name of an ancient region of Southern Italy, the origins of which date back to the 3rd century BC.

³⁹ See Part 3 of law no. 352, articles 41 to 47.

⁴⁰ Chieuti, a municipality in Puglia, had requested to change region, passing to Molise.

⁴¹ Constitutional Court, decision no. 334 of 2004, with reference to law no. 352, art. 42, second clause.

„For the transfer of one province from one region to another, the request for transfer must be approved, through referendum, by a majority of the population of each of the regions concerned. For the transfer of one or more municipalities from one province to another belonging to a different region, the request for transfer must be approved, through referendum, by a majority of the population of each of the provinces concerned“.⁴²

This proposal thus required a referendum not only in the municipalities (or provinces) affected by the passage from one region to another, but also a referendum in the two provinces (in the case of the transfer of individual municipalities) or two regions (in the case of transfer of an entire Province) affected by the change. The fall of the centre-left government led to the de facto end, for the time being, of this process of constitutional revision.

It is not possible to forecast the evolution of this „referendum family“ over the course of the next few years. It is likely that this type of „territorial referendum“ will continue to manifest itself unless and until a „federal“ type institutional set-up is completed, understood as referring to so-called „fiscal federalism“, a subject at the centre of the agenda of the government in office after the elections of April 2008. Undoubtedly this type of referendum raises complex issues concerning the referendum formula most suitable for the type of decision at hand.

Less problematic from an institutional point of view are the transfers of municipalities from one province to another; the creation of new provinces within a region, and the fusion of two or more municipalities or wards to create a new municipality: for example, in Friuli-Venezia-Giulia, three referendums on the fusion between some municipalities of the province of Udine (Resia; Lusevera; hamlet of Ucea; Attimis and Faedis; Campolongo al Torre and Tapogliano). In the third of these three referendums residents voted by computer, substituting entirely the traditional paper ballot.⁴³

Perhaps the most significant experience was the consultation held in March 2004 on the creation of the new province of Alto Friuli. Voters in 43 municipalities were called to vote in a consultative referendum on the creation of the new province, with the mayors of 38 area municipalities promoting the measure. The referendum was called by the regional council of Friuli-Venezia-Giulia.⁴⁴ Even though it was merely consultative, the referendum, in order to be approved by the voters, had to gain a majority of votes cast, without a quorum of any kind, whereupon the regional council would have been able to institute the new province with a special regional law. The majority of electors voted against the proposal. The data demonstrate how the two communities which grouped together the merging municipalities had sharply clashing orientations.

⁴² Consiglio dei Ministri n. 44 of the 30th March 2007. Draft of a constitutional law: „*Modifica all'articolo 132, secondo comma, della Costituzione, in tema di distacco ed aggregazione di comuni e province*“.

⁴³ <http://referendum2007.regione.fvg.it/>.

⁴⁴ The referendum was at regional level.

Table 6: „Territorial referendums“ – Municipalities which have requested and obtained a referendum for a change of Region on the basis of Art. 132 of the Constitution

Prior region and province		Desired region	Municipality	Date held	Number of registered voters	Votes in favour	Votes in favour as a percentage of registered voters %	Result
Region	Province	Region						
Piedmont	Turin	Valle d'Aosta	Noasca	08/09 - 10 - 2006	180	95	52,7	Approved
" "	" "	" "	Carema	18/19 - 03 - 2007	634	432	68,1	Approved
Veneto	Venezia	Friuli - Venezia Giulia	San Michele al Tagliamento	29/30 - 05 - 2005	10,892	4,844	44,4	Rejected
" "	Belluno	Trentino - Alto Adige	Lamon	30/31 - 10 - 2005	4,151	2,377	57,2	Approved
" "	Venice	Friuli - Venezia Giulia	Cinto Caomaggiore	26/27 - 03 - 2006	2,994	1,790	59,7	Approved
" "	" "	" "	Gruaro	26/27 - 03 - 2006	2,642	1,214	45,9	Rejected
" "	" "	" "	Pramaggiore	26/27 - 03 - 2006	3,756	1,675	44,5	Rejected
" "	" "	" "	Teglio Veneto	26/27 - 03 - 2006	2,097	911	43,4	Rejected
" "	Belluno	" "	Sappada	09/10 - 03 - 2008	1,199	860	71,72	Approved
" "	Vicenza	Trentino - Alto Adige	Pedemonte	09/10 - 03 - 2008	811	414	51,04	Approved
" "	Belluno	Trentino - Alto Adige	Sovramonte	08/09 - 10 - 2006	1,925	1,246	64,7	Approved
" "	Vicenza	" "	Eight municipalities, Altopiano di Asiago (1)	06/07 - 05 - 2007	20,864	12,404	59,4	Approved
" "	Belluno	" "	Tre comuni Ampezzano	28/29 - 10 - 2007	6,828	3,847	56,3%	Approved
Marche	Pesaro e Urbino	Emilia - Romagna	Mercatino Conca	09/10 - 03 - 2008	935	474	49,11	Rejected
" "	" "	" "	Monte Grimano Terme	09/10 - 03 - 2008	1,216	520	42,76	Rejected
" "	" "	" "	Montecopiolo	24/25 - 06 - 2007	1,124	651	57,9	Approved
" "	" "	" "	Sassofeltrio	24/25 - 06 - 2007	1,273	645	50,6	Approved
" "	" "	" "	Seven municipalities, Valmarecchia (2)	17/18 - 12 - 2006	16,410	9,211	56,1	Approved
Campania	Avellino	Puglia	Savignano Irpino	11/12 - 06 - 2006	1,411	555	39,3	Rejected

Note: 1) Comuni Altopiano di Asiago: Asiago/Sleghe, Roana/Robaan, Rotzo/Rotz, Gallio/Ghèl, Enego/Ghenebe, Foza/Vüsche, Lusiana/Lusaan e Conco/Kunken; 2) Comuni Valmarecchia: Casteldelci, Maiolo, Novafeltria, Pennabilli, Sant'Agata Feltria, San Leo, Talamello.

Source: Elaboration of author's data, with information and additional data from <http://www.comunichecambiano regione.org/presentazione.php>.

Table 7: Autonomous Region of Friuli Venezia Giulia – Consultative Referendum to create new municipalities

Date	Municipalities	Number of registered voters	Voting		Yes		No	
			N.	Turnout %	N.	%	N.	%
27 - 11- 1994	Resia; Lusevera; hamlet of Ucceca	1,333	931	69.8	900	97,8	20	2,2
25 - 11 2007	Attimis; Faedis	5,047	2,561	50,7	1,297	51,1	1,241	48,9
" "	Campolongo al Torre; Tapogliano	1,082	561	51.8	459	85,4	78	14,53

Source: elaboration on data from the Regional website <http://elezioni4.regione.fvg.it/Referendum2004/>

Note: no *quorum* required, the three proposals were accepted.

Table 8: Autonomous Region of Friuli Venezia Giulia – Consultative Referendum on the creation of a province of Alto Friuli (43 Municipalities), 21st March 2004.

Territory	Number of registered voters	Voting		Yes		No	
		N.	% Turnout	N.	%	N.	%
Carnia	40,261	20,569	51.09	14,628	71.87	5,725	28.13
Gemonese, Canal del Ferro, Val Canale	35,022	17,973	51.32	2,969	16.63	14,886	83.37
Total: Alto Friuli	75,283	38,542	51.20	17,597	46.06	20,611	53.94

Note: no *quorum* required; the proposal was rejected.

Conclusions

In Italy, the first examples of the referendum phenomenon date back to the political incidents of the late eighteenth century. Midway through the nineteenth century a series of referendum consultations had an important role in the process of building the nation-state. In the last two decades of the nineteenth century, proposals to adopt broader or more restrictive forms of referendum in local administration were discussed in the Italian parliament in the context of political clashes over the reform of the system of local autonomy. The 1903 law on the creation of municipal corporations in public service delivery foresaw a compulsory municipal referendum in order to decide whether or not to ratify the municipal administration's plans to implement that type of corporation. From 1904 onwards, for more than the course of the decade, dozens of referendums were held in many of the major Italian cities.

In the 1948 constitution and in the statutes of the regions and the municipalities the referendum has a significant presence. One important characteristic lies in the fact that some

of these types of referendum may be promoted with a request signed by citizens registered on the electoral roll. From the seventies onwards the referendum phenomenon has been a persistent element in Italian political life, above all at national level. A comparison with the experiences of the more consolidated European democracies demonstrates the institutional and political relevance of the Italian experience. It should be enough in this context to compare the Italian to the French case, even in the light of those constitutional revisions concerning the referendum which have been proposed.⁴⁵

The process of institutionalisation of the referendum at the national, regional and municipal has been a relatively slow, tortuous and difficult one. The „rules of the referendum game“, especially at the regional and municipal level, are not of the highest quality. There are three factors which have weakened the institutionalisation and legitimisation of the referendum: the quorum of voters (equal to 50% plus one of those registered); the list of subjects excluded from referendums; and the broad discretion in the consequent judgement of admissibility of the referendum request. These factors are even stronger at the regional and municipal level where the process of institutionalisation began a decade behind and where the process is without doubt weaker. Nevertheless we may, over the course of the past few years, observe a diffusion of the phenomenon at the regional and – above all – municipal levels.

Regional and municipal statutes permit, to a greater or lesser extent, both forms of „deliberative democracy“ and forms of referenda. Politicians and bureaucrats working in local and/or regional government are open and favourable to forms of participation which are guided and controlled by them, so as to create and catalyse support around the decisions of those in government on behalf of interest groups, associations and other specific groups. In general, the forms of deliberative democracy found in the regional and municipal statutes offer, in comparison with referendum, greater guarantees in this respect; they were, for that reason, welcomed with greater openness by local and regional politicians and bureaucrats.

The recent experiences of deliberative democracy at the local level in Italy seem to privilege the creation of consensus and the legitimisation of local governments rather than the institutional expression of dissent (Bobbio 2002: 191-193 and 205-207; Sebastiani 2007: 167-189). Some regions have sought to promote diffuse participation through a wide range of deliberative democratic procedures and with a residual role for the institute of the referendum.⁴⁶ This seems, for example, to be the orientation found in the law passed by the region of Tuscany (law no. 69 of 27 December 2007, „Provisions on the promotion of participation in the elaboration of local and regional policies“), the fruits of which we will be able to observe in the next few years.⁴⁷

⁴⁵ On 21 July 2008, news came from France that a wide-ranging reform of the 1958 constitution had been approved. Article 11 was modified so as to allow a referendum on the request of the joint initiative of a fifth of the members of Parliament and a tenth of registered voters.

⁴⁶ On the theory and practice of deliberative democracy there is, quite apart from the vast international literature, a broad literature in Italian; I limit myself to citing the following: articles in the special issue of *Stato e Mercato*, no. 1, 2005; the volume edited by Gelli (2005) and Bobbio (2007); the critical work by Giannetti (2007). From a theoretical perspective that goes beyond the theme of deliberative democracy, the research reports presented at an international conference on the „Quality of Democracy, Governance and Participation: the local perspective“, hosted by the Autonomous Province of Trento on the 23-24th May 2008, are of particular interest. The fact that the referendum was dealt with by a German scholar, Brigitte Geissel, and not an Italian, may be more than simple coincidence.

⁴⁷ The law has been described by Florida (2008).

In the short term it appears much more likely that there will be a growing diffusion of a mix between „plebiscitary democracy“ (which has as its cornerstone the direct election of municipal mayors and provincial and regional presidents) and „deliberative democracy“ (as articulated in a variety of procedures and experiences of consultation and participation of both groups and individual citizens). Such a mix relegates the institution of the referendum – which faces a certain degree of mistrust at regional and municipal level just as at the national level – to a secondary role.

It will be important in the coming years to ascertain to what degree and to what effect the offer of political participation will be able to respond to the demand for political participation. Sebastiani observes critically that „if the theory as described suggests the activation of participatory processes to prevent conflict, the theory put into practice seems to demonstrate that participatory processes occur precisely where there is no conflict“ (Sebastiani 2007: 186). The missing match between the demand for, and offer of, political participation would seem to depend on the fact that the offer is influenced by factors such as „the opportunity to win financing, in particular from the EU; the search for political visibility on the part of a local administration or single members thereof...; or the independent initiative of sectors of the local administration which are newer and more professionalised“ (ibid.). At the time of writing, there are, with the exception of the already mentioned group „Initiative fuer mehr Demokratie“ („Initiative for Greater Democracy“) in the province of Bolzano, no movements which make the reinforcement of the referendum the central objective of their mobilisation and campaigning efforts.

Well-worn attitudes of distrust – already demonstrated at national level – continue to plague the referendum, in a departure from what can be seen in debates surrounding deliberative democracy. Politicians and local bureaucrats likely perceive the referendum as an instrument of participation and decision-making which is less easily controlled, and more likely to conduce to the expression of dissent and opposition. The current process of transforming the centralised Napoleonic state into a regional state may prefigure, in the medium to long term, a political and institutional context which allows broader diffusion of the referendum phenomenon at the municipal and regional levels.

At the beginning of the twentieth century the adoption of the administrative referendum was a request which came from the pro-municipality movement organised around the National Associations of Italian Municipalities (Associazione Nazionale dei Comuni Italiani, ANCI). The institution of the municipal corporations with the aim of securing a series of public services was a central theme in that season of ‚municipalism‘ (Gaspari 1998: 83). The political debates on the various forms of administrative referendum were important themes in the clash between different components of the mayor’s movement, who came from different political backgrounds (socialist, radical, liberal, and popular). The theme was considered so important that the ANCI decided to hold, together with the mayor’s movement, a national rally at Milan (28 June 1903) to ask for the administrative referendum and relief for costs incurred by the state (ibidem: 108-111). One of the suggestions called for a compulsory referendum in tax matters.

At the beginning of the twenty-first century one of the themes of the Italian political agenda concerns the reform of „local public services“, modern heirs of the municipal cor-

porations, depicted by some as a system of „local public capitalism“.⁴⁸ The reform of the law on the control and management of local public services (following the European Union’s competition directives) concerns an important segment of political and economic power. Several consolidated interests are opposed to the possibility that services might be liberalised. Contributing to the debate the mayor of Bologna has written: „why is there no courage to talk of real liberalisation, where the citizen can choose between multiple offers of services?“⁴⁹ The referendum may make the citizen’s choice a genuine one.⁵⁰ The limited ability of citizens to control and direct – through referendums similar to those found in Switzerland and numerous American states – decisions concerning taxes and regional and municipal spending could constitute a deterrent capable of improving the quality of local government.

In closing, the institute of the referendum is not an anachronistic residue of the „direct democracy“ of the ancients; rather, it is an institutional pattern for articulating, expressing, and resolving political conflicts within the context of modern representative democracy. The notion of „direct democracy“ is a misleading concept that does not help in understanding the political meaning of the referendum phenomenon;⁵¹ rather, it preserves the prejudicial juxtaposition between representative democracy and the institution of the referendum. Even the concept of „participation“ and the notion of „participatory democracy“ are, if removed from precise references to the notion of a decision, insufficient or inadequate in understanding the more precise meaning of the referendum phenomenon.

The notion of „control of the decisions of those in government by those who are governed“ seems to me more appropriate in analysing and evaluating the contribution given by different types of referendum to improving the quality of liberal representative democracy. The adoption and reinforcement of the referendum may allow a higher quality and greater quantity of civic and political participation, but only if these allow the punctual and effective control of the decisions of those in government. There is, amongst scholars of the referendum phenomenon, a fairly broad consensus on the fact that the referendum is not a magic wand which will allow us to heal, with one blow, all the problems of liberal democracy. However, where well-planned and well-organised, these institutions may allow citizens the possibility of effectively controlling the actions of those who govern them, both in the decisions that they take, and in those they do not.

Benedetto Croce, more than half a century ago, proposed the following distinction: „„Liberal“, I said, has „illiberal“ as its antithesis or negation, or he who has faith in a law

⁴⁸ The expression belongs to Francesco Giavazzi, in „La rendita dei comuni – centrodestra e servizi pubblici“, *Corriere della Sera*, 1 September 2008. On municipal capitalism see Gavana, Osculati and Zatti [2007] and Fondazione Civicum [2008].

⁴⁹ Sergio Cofferati, „Le rendite? I comuni non le hanno, lo Stato sì“, *Corriere della Sera*, in response to the article by Giavazzi cited previously. Cofferati was for several years general secretary of the General Confederation of Italian Labour (CGIL).

⁵⁰ After the completion of this article I became aware of a consultative-abrogative referendum called for 28 September 2008 by the municipality of Carpi (Modena province) on a municipal decision on the partial privatization of Aimag SpA, a local public service corporation. 12,100 people voted, equal to 21.2% of the electoral roll; 58.6 per cent voted in favour of the abrogation. Amongst those on the electoral roll there were also 1,017 sixteen and seventeen-year olds, and 4,789 foreigners resident in Carpi and who had been registered for at least a year prior to the vote. In the last local election there was a turnout of 82.5%; in the general election of April 2008 the turnout was slightly more than 88%.

⁵¹ On the transformation, within Marxist political thought, of the concept of „direct democracy“ into a sort of fetish, the considerations made by Bobbio (1976) remain relevant.

which is imposed by a religion or dictatorship on the people whilst at the same time judging the people incapable of achieving the same by itself⁵². One may hope that in the twenty-first century Italian citizens might be able not just to elect their representatives, but also to express themselves, in favour of or against, laws approved by their representatives, and, finally, to propose laws that their representatives do not intend to, or will not risk, taking.

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⁵² Benedetto Croce, „L'unificazione liberale“, in „Il Mondo“, 25 August 1951.

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Appendix

Articles of the Constitution concerning referenda at regional and local level modified by constitutional laws

Article 123 now reads as follows: „Art. 123 – Each Region shall have a statute which, in harmony with the Constitution, shall lay down the form of government and basic principles for the organisation of the Region and the conduct of its business. The statute shall regulate the right to initiate legislation and promote referenda on the laws and administrative measures of the Region as well as the publication of laws and of regional regulations.

Regional statutes are adopted and amended by the Regional Council with a law approved by an absolute majority of its members, with two subsequent deliberations at an interval of not less than two months. This law need not be submitted to the Government commissioner. The Government of the Republic may submit the constitutional legitimacy of the regional statutes to the Constitutional Court within thirty days from their publication.

The statute is submitted to popular referendum if one-fiftieth of the electors of the Region or one-fifth of the members of the Regional Council so request within three months from its publication. The statute that is submitted to referendum is not promulgated if it is not approved by the majority of valid votes.

In each Region, statutes regulate the activity of the Council of local authorities as a consultative body on relations between the Regions and local authorities“.

Article 132 now reads as follows: „Art. 132 – By a constitutional law, after consultation with the Regional Councils, a merger between existing Regions or the creation of new Regions having a minimum of one million inhabitants may be decided upon, when the request has been made by a number of Municipal Councils representing not less than one-third of the populations involved, and the request has been approved by referendum by a majority of said populations.

The Provinces and Municipalities which request to be detached from one Region and incorporated in another may be allowed to do so, following a referendum and a law of the Republic, which obtains the majority of the populations of the Province or Provinces and of the Municipality or Municipalities concerned, and after having heard the Regional Councils“.

Article 133 now reads as follows: „Art. 133 – Changes in provincial boundaries and the institution of new Provinces within a Region are regulated by the laws of the Republic, on the initiative of the Municipalities, after consultation with the Region.

The Region, after consultation with the populations involved, may establish through its laws new Municipalities within its own territory and modify their districts and names“.

Direct democracy in local politics in Norway¹

Aimée Lind Adamiak

Introduction

As of 2006 Norway was divided into 431 local municipalities and 19 county municipalities. The 431 local municipalities vary significantly in size, population and topography. Twelve municipalities have more than 50,000 inhabitants, while more than half of them have less than 5000. The capital and biggest city, Oslo, with about half a million people, is both a county municipality and a local municipality. All the (county) municipalities have the same administrative status, but it is the central government which has the overriding authority and supervision of their administration. The framework for the activities of the municipalities is laid down by the Storting (Parliament) through legislation and decisions on local government financing. It is also the parliament that determines the division of functions between the different levels of government. Government can only assign new functions to local government by means of legislation or decisions made by the Storting, but the municipalities can, on their own initiative, take on tasks that are not given to another level by law (Ministry of Local Government and Regional Development 2000).

Procedures of direct democracy

National level

There are no formal provisions in the Norwegian Constitution for initiative and referendum procedures, but they can be used if triggered by a majority in the Storting. The decision is non-binding and advisory, as only the parliament is regarded sovereign. Norway had six referendums between 1905 and 1994.

Regional and local level

The „Kommuneloven“ (the ‚law‘ for the municipal level) does not mention if or when local referendums can or must be held (NOU 1990:13:100f). At the municipal level (the school district level) Norway has an issue-specific popular initiative for language issues. According to the Education Law (Opplæringsloven), an advisory local referendum must be held in the event of a change in the main language in a school, or if at least one quarter of the electorate or a majority in the local council demand it. There has to be at least five years between an old and a new resolution on language, but if school districts with different languages merge, a local referendum is to be held (Adamiak 2001:35, NOU 2006:7:91, Ot.prp.nr 44, 2004-2005:13).

¹ Special thanks to Edwin McRae and Tor Bjørklund for useful comments.

From 2003 an agenda initiative² at local (and regional) levels was introduced where:

The local council or the regional council has to decide on a proposal which is under its authority within 6 months if at least 2% or 300 of the inhabitants at local municipality (kommune) level or 500 at county municipality/regional (fylke) level support the initiative. A proposal with the same content cannot be put forward again within the same electoral period, or before 4 years have passed.

Historical perspective and comparison

Norway is not among the group of countries where there is a significant element of direct democracy in politics or the presence of various kinds of referendums and initiatives. On the other hand, the tradition of popular consultation and the Norwegian municipalities' experience with local referendums is not insignificant in a comparative perspective. Norway had „special laws“ for local referendums at a time when very few other countries had introduced such laws. The trend is rather the opposite today. When other countries – especially during the 1990s – were passing laws for more direct democracy, Norway went the other way and actually reduced the possibility for local referendums by revising some of the older special laws (Adamiak 2001:121; 2002).

The use of the referendum as a political instrument is not an integral part of Norway's daily politics. When the instrument was mentioned in academic literature prior to 2000, it was normally only national referendums that were being referred to. If local referendums were explicitly mentioned, they were often described as few in number. However, the historical evidence shows that it is a decision-making process that has been much used in the past and that Norway has a long tradition of local referendums on issues such as the licensing of alcohol and the choice of language in school. In 1894 the establishment or the closing of a licensed alcohol-cooperative outlet was made dependent on local referendums. From 1898 women got the right to vote on the same basis as men, and participation in general was high. Over the years the laws allowed both binding local referendums and popular initiatives. Bjørklund (2004) shows that until the 1920s the institution of the referendum was an effective instrument for reducing the sale of alcohol while after the 1920s it was an instrument that „helped open the taps“. Over the past 100 years these licensing laws have been changed several times and in 1989 Norway got a new „alcohol law“, in which the possibility of arranging or holding *binding* referendums was abolished (Adamiak 2001:5, 27-8, Hauge 1998, NOU 1995: 24:6).

The former „school laws“ (e.g. Grunnskoleloven) allowed for two different kinds of local referendums on the issues of school districts and language.³ In 1892 the Storting had decided that it was the school board that could choose the language to be used in school after canvassing the opinion of the local residents. These first referendums were only advi-

² In Norwegian this initiative is called „citizen's initiative“

³ Norway has two official languages (bokmål and nynorsk), and in each referendum voters had to choose between the two linguistic alternatives in order to decide which language should constitute the primary language in the school district. About 15% of Norwegian school children use nynorsk as their primary language (Søberg and Tangerås). The difference between the languages is mostly symbolic, but closely tied to the identity and culture of the local community. People with the two different languages have no difficulty understanding each other when talking or reading written texts.

sory, but from 1915 the results were binding and a popular initiative was also possible. There have been many changes during the years, especially in relation to who was entitled to vote in the language referendums – only the parents of school children, or all the adults living in the school district. This has influenced the number of referendums and thus the outcome as to which language was chosen. Today the eligible electorate comprises all the adults in the district. Where the language referendums have been only advisory, the school board has in some cases overlooked the winning alternative and continued with the language the school had prior to the referendum, due to low turnout and/or a marginal majority in favour of change (Adamiak 2001:31-35, Bjørklund 2004).

According to the old school law, the school board could decide that questions about changes in the school district boundaries or the building of a new school could be put to the electorate in a local referendum (Adamiak 2001:70).

Concrete practice with direct-democratic instruments at the local, regional and national levels in Norway

National level

There have been six countrywide referendums. In 1905 two referendums were held on ending the union with Sweden and the foundation of a „new“ kingdom. In 1919 and 1926 the issue was about the prohibition of alcohol, while the last two – in 1972 and 1994 – asked the people of Norway to give their opinion on EU membership.

Regional level

No referendums held or (agenda) initiatives initiated.

Local level – 1970-2000

I will here divide the presentation into two: before and after 2000. For the period 1970-2000 the statistics and material included are almost comprehensive⁴, while for the period from 2001 some details of some referendums have not yet been included in the material since this information has not been confirmed by the municipalities concerned⁵. No official nation-wide statistics about the use of local referendums exist at the present time.⁶

How many?

In the period 1970-2000 at least 514⁷ local referendums were organised in Norway. Fig. 1 shows their distribution over the 31 years. The annual rate varies from 5 referendums in 1982 to 41 in 1985. On average there were 16.6 referendums per annum in this period, with a median figure of 15 (Adamiak 2001, 2002).

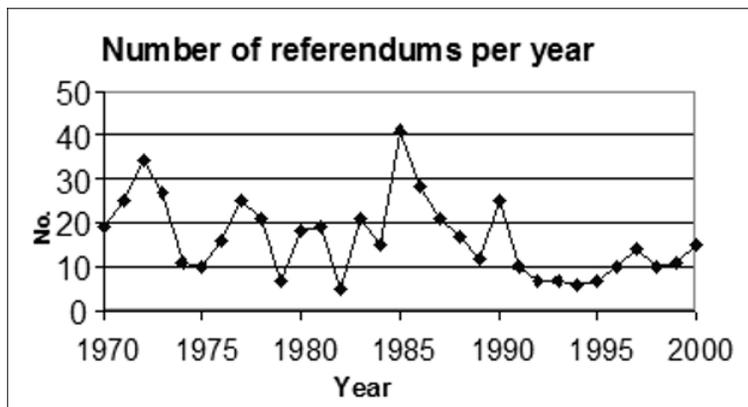
⁴ I have recently found another three referendums in the period 1970-2000 that are not included in the material, two of these being about language in 2000. These referendums have been included in my second survey: 2000-2007.

⁵ My e-mail/phone survey among the 431 municipalities was completed in October 2007, but some information has to be confirmed by the municipalities, or is missing e.g. on voter turnout.

⁶ From 2009 the task of making a nation-wide statistics is given to Statistics Norway

⁷ There were complaints about three referendums and in these cases new referendums were held. Cf. also footnote above.

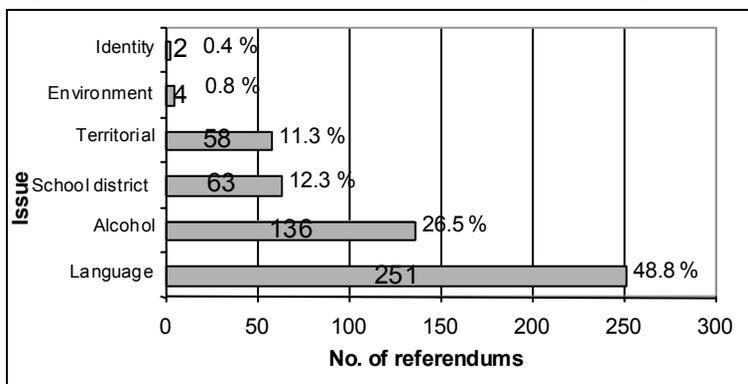
Figure 1: Local referendums in Norway between 1970 and 2000



What issues?

Those issues on which Norway has a long tradition (language in school and alcohol) constitute the majority (75%) of the local referendums arranged in the period. There have been several referendums of a territorial character, either on the merging of municipalities or on a change of municipality/county municipality for some districts. There have also been several referendums about school district boundaries. The last two of the six categories are entitled environment and identity. See Fig. 2 for the number and percentage distribution of each category (Adamiak 2001, 2002).

Figure 2: The 514 local referendums distributed according to issue



Referendums about alcohol

There are 136 referendums that fall into the category of referendums on alcohol. Except for 1975 there were between one and 17 referendums each year between 1970 and 1990. Some of the referendums contained more than one question, making 167 separate questions to be voted on. Of these 105 were approved and 60 rejected. The reasons why there were no

referendums in the period 1991-99 are rather obvious. Firstly, the popular initiative law was not included in the new alcohol law in 1989, and secondly, as a result of liberalization, the great majority of Norwegian municipalities already permitted the retailing of alcohol. These referendums have played an important role in the political mobilization process in Norway. They were important for both men and women, but especially for women's participation (Adamiak 2002, Nilson 1972:46).

Referendums about language in school⁸

There have been 251 referendums about language, one or more each year in the period 1970-2000, with 19 referendums in 1971 alone. The majority of the referendums were held at schools with „nynorsk“. Prior to 1985 the result of the referendums was binding if at least 40% of the electorate voted for the winning alternative. Since not all the referendums have been binding it has not always been the winning alternative that was decided upon by the school board. The results of the 251 referendums show a majority for „nynorsk“ 105 times (41.8%) and for „bokmål“ 143 times (56.9%). The results of the votes by the school boards show that for the 248 referendums about which I have more detailed information „nynorsk“ was the choice 119 times (48%), while „bokmål“ was decided upon in 129 cases (52%). On fourteen occasions when „bokmål“ was voted for by the majority of the electorate, the language actually chosen was „nynorsk“ (Adamiak 2002:202ff).

One might expect the turnout to be significantly higher in the (semi-)binding than in the advisory referendums. Søberg and Tangerås⁹ found that semi-binding referendums display a higher turnout, but that the statistical significance of the observed difference vanishes once they control for changes in voting rights. Hence, the empirical evidence does not corroborate the prediction that turnout increases with the decisiveness of the referendum, but instead suggests that voters act as if the advisory referendums are like the binding referendums. When suffrage has been constrained to parents with children of school age, the participation rate is significantly higher.

School district boundaries

There have been 63 referendums (12% of the total) about school district boundaries. It is possible that several of these referendums were held simply because the old school law included this opportunity. But the local school and where it is situated is an important issue for the inhabitants. In many smaller communities the school is not only central for the families with children, but the building itself can function as a meeting-place for the whole community (Adamiak 2002: 204).

Territorial referendums

There have been 58 local referendums (11%) held on territorial questions. In some years we have seen more referendums than in others as a result of different proposals coming from government committees that had the task of looking into the number and division of municipalities in Norway. Thus in 1990, 17 local referendums were arranged, and in 1999 six, about the merging of municipalities. Several municipalities were merged prior to 1970 and

⁸ All pupils have to learn both written Norwegian languages, „bokmål“ and „nynorsk“. The referendums decide which of the two will be the „primary language“.

⁹ Søberg and Tangerås have studied „the effects of referendum type on voter turnout, i.e. the extent to which voter participation is affected by whether a referendum is binding, semi-binding or merely advisory“.

10 out of 21 previously merged municipalities again became separate municipalities after referendums in the 1970s. The inhabitants of the municipalities involved were clearly not very happy about the mergers, but there are some examples where referendums have been arranged and municipalities have merged voluntarily. Two municipalities chose to merge after local referendums¹⁰ in 1999, and a new municipality was born in 2002. Since 2000 the number of municipalities in Norway has decreased from 435 to 431. Questions about the division of municipalities have been a typical issue in local referendums in neighbouring countries as well, as this issue is mentioned in several European constitutions (Adamiak 2002, NOU 1974:14:94, NOU 1986:7, NOU 1992:15:75).

Referendums about environmental issues as a broad concept

The four referendums in this environmental category are very different, but what they have in common is that they can all be classified within a broad environment vs economy perspective or a development vs protection challenge. The first was held in 1977 and the question was ‚yes‘ or ‚no‘ to the erection of broadcasting antennae. In the second, in 1980, the electorate voted on the establishment of a petrochemical industry. In 1982 the issue was the development of a watercourse/river. The fourth environmental referendum was in 1996 and the inhabitants gave their opinion on whether the local airport should be developed into the new main airport for small planes in the area. The turnout for these referendums varied: 66.6%, 64.3%, 48.6% and 36.6% respectively. In the last one, the level of participation and the number of ‚no‘-votes were naturally higher in the parts of the municipality that were closest or most affected. Three out of the four referendum results were complied with by the local council and the results for three of them were building/development rather than protection of the environment or the local area. Seen in the context of the political developments of the 1970s it is not surprising that such questions have arisen as issues in local referendums. Some have been more surprised that there have not been several more such referendums, but several appeals for environmental referendums were turned down by the respective local councils in the period 1970-2000 (Adamiak 2002:206f).

Identity

Two of the referendums have been classified as falling into a category called ‚identity‘. Both were held in 1997. The first was about city status for a parish. It was voted down by the inhabitants (57.6% not in favour) and the voter turnout was 61.8%. The second was about changing the name of the municipality. The turnout was very low (29.2%), but a majority of 54.1% voted in favour of change. However, the outcome was not implemented by the local council (Adamiak 2002:207).

The use of referendums during the survey period

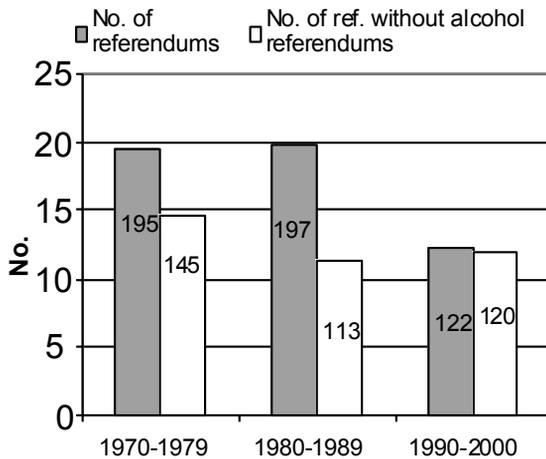
Are there any patterns in the period 1970-2000? Fig. 3 below shows the number of referendums in the 1970s, 1980s and 1990s.¹¹ If we compare the 1970s and the 1980s, the data

¹⁰ In Ramnes 79.3% voted in favour of merging and the participation was 52.5%, while in Våle the turnout was 57.2% and 50.4% of the electorate was in favour.

¹¹ The first two categories each cover a 10-year period, while the last covers 11 years since the year 2000 is also included in the data.

show that the number was very stable; there was then a considerable drop in numbers in the 1990s. Since there have been major changes in the alcohol laws and a liberalisation of people's attitudes, the chart also shows the number of referendums with the alcohol referendums excluded.

Figure 3: Local referendums distributed by decade



The trend does show change and we see that the most referendums were in the 1970s, followed by a significant decrease in the 1980s and then a slight increase in the 1990s (Adamiak 2002:208).

Participation and number of municipalities involved

During the period in question almost half (211 out of 435 = 49%) of the municipalities had experience of local referendums in the whole or part(s) of the municipality. 109 out of the 211 municipalities have had one referendum. Six municipalities have each had between 10 and 19 referendums during these 31 years. About 200 out of the 514 total referendums have been arranged in the municipalities as a whole, while the rest of the referendums were held in larger or smaller districts of the municipalities (Adamiak 2002:209).

Participation

How many electors have potentially been involved in the local referendums in these 31 years? One problem is that some electors have participated or have had the opportunity to participate in several referendums, while the electors in 224 municipalities have not had this possibility. The average participation rate in the 492¹² referendums, as seen in Table 1 below, is 52.4%. For this calculation every possible elector and every participant was given

¹² Census data for 22 out of 514 referendums are missing.

equal weight. If, on the other hand, we treat each referendum as equal, irrespective of the number of electors, average participation comes out at 58.3%¹³ (Adamiak 2002:209ff).

Table 1: Participation in local referendums distributed according to issue

	E lec. even*	R. even**	Lowest part.	Highest part.	Part. Abs.	Electorate	Part. in %
Alcohol	57.8 %	56.4 %	23.2 %	83.2 %	377077	652011	-
Language	44.3 %	63.9 %	5.8 %	100.0 %	40058	90523	-
Territorial	46.9 %	59.6 %	11.9 %	96.9 %	122317	261033	-
School district	32.9 %	38.7 %	1.2 %	95.6 %	13958	42456	-
Environment	39.6 %	54.0 %	36.6 %	66.6 %	10856	27402	-
Identity	41.5 %	45.5 %	29.2 %	61.8 %	6335	15282	-
Total					570601	1088707	28684 %
Average						52.4 %	58.3 %
*Electorate as unit						(of 492)	(of 492)
**Referendums as unit							

I have further looked at turnout and the question to be voted on. When the electors are the unit, average participation varies between 32.9% and 57.8%, while the variation is between 38.7% and 63.9% when the referendums are the unit. Otherwise the participation varies between 1.2% and 100%. Five referendums on language had a 100% turnout, but in all of these only the parents could vote. Thus there are some referendums with a very high or very low turnout which may influence considerably the average participation level. I have therefore also looked at the average turnout in those referendums where the number of electors are the same as if it had been a local election. This calculation has been done for both electors as a unit and referendums as a unit. There has also been some variation as to who has participated in the territorial referendums. As opposed to the language referendums, there have never been any restrictions on the possibility of participating *within* a district, but some referendums have only been arranged in one or more of the most affected districts. Thus one calculation is with and one without the territorial referendums (Adamiak 2002:211f).

Table 2: Participation at local referendums – selected issues

	Electorate as unit	Referendums as unit
A+E+I	56.8%	56.2%
A+E+I+T	54.1%	57.2%
A=Alcohol E=Environment I=Identity T=Territorial		

Table 2 shows that the exclusion of language and school district referendums does not produce a very different outcome. The average participation without these referendums varies within the same range (52.4%-58.3%) as when all referendums are included (Adamiak 2002:212).

¹³ The percentage participation is added for each referendum and divided by the number of referendums.

Characteristics of the municipalities and the occurrence of referendums

Have the small, medium-sized or large municipalities used the referendum instrument the most? In Table 3 below, the 435 municipalities have been divided into six categories according to the number of inhabitants.

Table 3: The 435 Norwegian municipalities distributed according to the number of inhabitants in 1997 and their experience with local referendums¹⁴

Category	Size of municipality (municipality as unit)						Total
	1	2	3	4	5	6	
	-2499	2500-4999	5000-9999	10,000-19,999	20,000-59,999	60,000+	
No. of municipality 1997	122	122	93	58	33	7	435
% share	28.0 %	28.0 %	21.4 %	13.3 %	7.6 %	1.6 %	99.9 %
Municipality with experience	50	61	56	25	17	2	211
% share	23.7 %	28.9 %	26.5 %	11.8 %	8.1 %	0.9 %	99.9 %
Municipality with experience - T*	45	53	50	23	11	1	183
% share	24.6 %	29.0 %	27.3 %	12.6 %	6.0 %	0.5 %	100 %
* T = Territorial referendum							

Reference: Population statistics – Statistisk Sentralbyrå 1997 (Statistics Norway)

Table 3 shows that in 1997 more than half of Norway's municipalities had less than 5000 inhabitants (categories 1 and 2), while municipalities with over 60,000 inhabitants accounted for only 1.6% of the total. The municipalities with the lowest number of inhabitants constitute a smaller share of those with referendum experience, while municipalities with 5000-9999 inhabitants (category 3) account for a higher proportion of referendums than their percentage share of the total number of municipalities. Otherwise, the two comparisons are very similar. In table 4 below I have looked at the distribution of the municipalities when the referendums are the unit.¹⁵ The outcome is now generally larger, but for categories 2-4 the deviation is not significant. The first category gets a lower percentage of referendums than the proportion these municipalities represent of the total number Norwegian municipalities. In contrast, categories 5 and 6 get a higher percentage of the number of referendums than the proportion they constitute of the 435 municipalities. Overall, however, we can conclude that local referendums have been very evenly distributed in comparison to the number of inhabitants (Adamiak 2002: 14f).

¹⁴ The year 1997 is chosen for practical reasons (rather than attempting to identify the actual number of inhabitants in the year(s) the referendum took place). Every municipality with referendum experience is only counted once, irrespective of how many referendums it has actually had.

¹⁵ Every referendum in the table counts as one. A municipality in category 3 with 3 referendums counts as three.

Table 4: The 514 local referendums distributed after number of inhabitants in municipality

Size of municipality (referendum as unit)							
Category	1	2	3	4	5	6	
Inhabitants	-2499	2500-4999	5000-9999	10.000-19.999	20.000-59.999	60.000+	Total
No. referendums	96	149	122	65	61	21	514
% share	18.7%	29.0%	23.7%	12.6%	11.9%	4.1%	100 %

*Local level – 2000-2007*¹⁶

In this period there were at least 108 referendums.^{17,18} In 2002, only five local referendums were held, while in the following year, 2003, there were 26 referendums. The average is 13.5¹⁹ referendums per year. These referendums can all be assigned to the same six categories as were introduced above. Table 5 shows that language referendums still account for the majority of the referendums – 52 of the 108 referendums. There were 29 referendums of a territorial character, 13 about school districts, three about alcohol, nine about environment and, lastly, two about identity.

Table 5: The 108 local referendums distributed according to issue and year

Year	Issue						Total
	Language	Territorial	School district	Alcohol	Environment	Identity	
2000	15	0	1	1	0	0	17
2001	5	3	0	1	0	1	10
2002	1	1	1	0	2	0	5
2003	10	16	0	0	0	0	26
2004	6	6	10	0	0	0	22
2005	5	2	0	1	4	0	12
2006	5	1	1	0	2	1	10
2007	4	0	0	0	1	0	5
Total	51	29	13	3	9	2	107

Participation and number of municipalities involved

Since 2000, about 16% of the municipalities, 69 out of 435/431, have had experience with one or more local referendums in the whole or part(s) of the municipality. 53 out of the 69 municipalities have had one referendum. Nine municipalities have each had between 3 and 9 referendums during the past eight years. 38 referendums covered the municipality as a whole, while the rest of the referendums (69) were held in larger or smaller districts of the

¹⁶ Some referendums may have been arranged in the second part of 2007 that have not been included in this material.

¹⁷ I have carried out a complete e-mail and phone survey of *all* the 431 municipalities.

¹⁸ 15 referendums from 2000 are included in the data material above when the period 1970-2000 is discussed.

¹⁹ Based on the referendums between January 2000 and September 2007.

municipalities. The average participation level (when referendums are the unit) was 53.8%.^{20 21}

Some examples of the local referendums held from 2000-2007

One of the referendums about identity asked the voters to decide on the name of their municipality: whether they wanted to keep the existing name or adopt the name of the city in the municipality. The turnout was 68.9% and a small majority voted in favour of a change, which was followed up by the local council. 26 out of the 29 referendums in the territorial category were about the merging of municipalities. In one other, the electorate was asked whether they wanted to merge or cooperate with a neighbouring municipality. Two of the environmental referendums were about whether to give consent to the building of a wind-farm or not. In some municipalities, consent has been given by the local council without a referendum. One referendum was about the building of a new road and where it should be sited (the relevant department had already decided that a new road was to be built). The voters could choose between six alternative routes. Three of the alternatives got between 28% and 31% of the votes. The local council supported the one with the most votes, while the department decided upon one of the other ones. The turnout in the referendums was only 39.8%.

Conclusion on local referendums

Participation after 2000 seems to have decreased slightly, but the turnout data for the missing referendums might influence this to a certain degree. It seems that to a large extent the explanation for Norway's more than 600 local referendums over the past 37 years lies with the changes in legislation. Many of the territorial referendums were held because there was an existing tradition of holding such referendums. It will be interesting to see if the increase in the use of environmental referendums will continue.

Agenda Initiative and E-Initiative

As of 2006 there have been at least 100 agenda initiatives. 27 of these have been in Oslo, the capital, and nine in Bergen²², the second largest city. The last proposal up to the end of 2006 was for a local referendum on building a city tram network in Bergen, but it was rejected by the city council. Of the 27 initiatives in Oslo between 2004 and 2005, nine were rejected, eleven were not fully processed (as of December 2005), and seven were accepted to be discussed in the local council. Of these, four proposals were voted down, two required further investigation and one initiative has been followed up by the local council. A survey

²⁰ Based on 90 of the local referendums. The information for 17 of the referendums is insufficient when it comes to voter turnout.

²¹ Voter turnout data for all 52 referendums on languages are included, but turnout figures for 10 out of the 29 territorial referendums, for example, is missing. Turnout in language referendums is often lower in the period after 2000 due to the extension of the electorate from only parents with children at the school to all adults in the school district. These facts might have a smaller or greater impact on the average participation, since the total number of referendums in this 8-year period is naturally much lower than for the period 1970-2000.

²² Seven initiatives were proposed in 2004, and one initiative in 2005. Five of these were rejected on formal grounds. The last three were accepted to be discussed in the local council, but all three proposals were subsequently voted down.

of the municipalities and the agenda initiatives shows that most of the initiatives are about very concrete and local issues. Issues about roads, tunnels, buildings and green areas are the most common (Adamiak 2005, NOU 2006:7:194).

The Ministry of Local Government and Regional Development is supporting a three-year project called the „E-Initiative“. Agenda initiatives in three municipalities may be proposed on the Internet and the signatures collected electronically. The project started on 1st November 2005. In November 2006 the project was extended to eleven further municipalities, all of them in the same county municipality. In these agenda initiatives there is no 18-year old age limit for proposing an issue or for online signature. The purpose of the e-initiative is to make the agenda initiative more available to people and make it easier for those who are putting proposals forward to reach out to a larger part of the municipality. There is greater opportunity for debate during the process of signature-gathering and the local council can inform the inhabitants online about the progress of a proposal. Several proposals have been put forward and the first ones have been handled with different outcomes in their respective local councils. The project was evaluated in December 2006 (Adamiak 2005, www.e-initiative.no).

Evaluations and developments

Agenda initiatives

The agenda initiative is not well known. There is not enough information given about the new democratic instrument. Another challenge is that there is a question of interpretation about whether an issue has been put forward in the past four years or not. It is up to the local council to decide on that. Many initiatives have been rejected on the grounds that the council has voted on the issue within the last four years, though not necessarily as a result of an initiative. Voters could become discouraged if too many initiatives are rejected before they reach the council or the council votes all of them down. On the other hand, there are examples of where the inhabitants have won. Some initiatives have led to further deliberation by the local government. The instrument is used in municipalities with both small and large numbers of citizens, although most initiatives have been in the three largest municipalities. It seems as if the initiative instrument can be more easily accepted by the politicians and inhabitants than a referendum. The politicians are still in ‚power‘. More focus is on the issue of the initiative and not on the rules or how to interpret the result of e.g. an advisory referendum (Adamiak 2005, NOU 2006:7).

Statistics on the use of direct-democratic instruments

The political leadership has expressed a wish to compile statistics for local referendums, but the relevant department has not yet made any decisions about when and how. Most likely it will be the responsibility of Statistics Norway since it already has the responsibility for election statistics. Statistics Norway will probably be given the responsibility from January 2009 and onward and perhaps also try to publish material prior to 2009.

Local governance in change?

The committee on local democracy published their second report: „Change in local governance? On participation and engagement in local politics“ (2006). Their task was to analyse

and judge the conditions for local democracy. Despite the fact that participation in local politics (measured by turnout in local elections) is decreasing, participation is at the same time more varied. Municipalities have taken a range of initiatives to develop a better dialogue between the inhabitants and the local representative democracy. Examples of this are 'open hearings', the direct election of the chairman of the local council, participation in budgeting, and e-initiatives (NOU 2006:7). It will be interesting to see if and how the agenda initiative, the e-initiative and other initiatives will affect participation in the municipalities both when there are elections and between elections.

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Twenty years of Polish direct democracy at the local level

Andrzej K. Piasecki

1 Constitutional foundations

In recent Polish legislation the first reference to direct democracy was made in 1987 when, as part of the preparations for a referendum, the Constitution was amended to provide a possibility for the *working people to express their views in a referendum*.¹ This issue was regulated in detail by the simultaneously adopted Public Consultation and Referendum Act. At the local level, a referendum could be held only on the initiative of a territorial organ of state administration.

The political transformation of 1989 and 1990 also encompassed the issue of the direct participation of citizens in the process of governance. Article 2 of the Act of 29 December 1989² on changes to the Constitution stated that the Nation exercises power through its representatives – but also by means of referendum. At the national level a referendum can be organized in four cases:

- to amend the Constitution (mandatory);
- to delegate the jurisdiction of national organs of state to multinational organisations (facultative);
- if citizens collect 500,000 signatures to request a referendum on a particular issue (facultative);
- to decide on other matters of importance to the State (facultative).³

This provision enabled the inclusion of direct democracy in the Local Government Act of 8 March 1990⁴, which explicitly defined the forms of community self-government. Inhabitants of a commune (*gmina*) may take decisions by popular vote (elections and referendums) or through the representative body of the commune. This act set out the hierarchy of power, giving priority to the popular vote (referendum) over the representative body. At the same time, the following types of referendum were mentioned:

¹ E. Zieliński, *Referenda w Polsce*, in: E. Zieliński, I. Bokszczyński, J. Zieliński, *Referendum w państwach Europy*, Warszawa 2003: 214.

² Dz. U. 1989 no. 75 pos. 444; <http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU19890750444&type=1&name=D19890444L.pdf>

³ These issues were regulated by the so-called Small Constitution of December 1992 and by the National Referendum Act of 1995. These issues are now regulated by the Constitution of the Republic of Poland of 2 April 1997 and by the National Referendum Act of 14 March 2003.

⁴ Dz.U. 1990 no. 16 pos. 95; <http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU19900160095&type=3&name=D19900095Lj.pdf>

- a mandatory referendum to recall an organ of communal self-government before the end of its tenure;
- a mandatory referendum on the self-taxation of inhabitants for public purposes;
- a facultative referendum to decide other matters of importance to the commune.

The Act of 8 March 1990 also specified those who can initiate referendums and set out the referendum thresholds. Any referendum could be held on the initiative of at least 10 percent of the eligible voters within the commune. In addition to the inhabitants, the communal council could also initiate a referendum by passing a resolution to this effect. However, this rule applied to only two types of referendum: the referendum on self-taxation and the facultative one. A 30 percent turnout was required to make the referendum valid. The referendum proposal was approved if more than half of the total number of valid votes were in favour. In the case of the referendum on self-taxation, this threshold was increased to two-thirds of the total number of valid votes.

The constitutional foundations of direct democracy were strengthened by the inclusion of the institution of a local referendum in the so-called Small Constitution of 1992⁵ which provided that: *Inhabitants may take decisions by way of a local referendum. The conditions and procedures for holding a local referendum are defined by applicable law.*

With the adoption of the Constitution of the Republic of Poland of 2 April 1997⁶ the institution of the local referendum became another local authority matter. Article 170 put an additional emphasis on the possibility of recalling a representative body by way of a referendum: *Members of a self-governing community may decide, by means of a referendum, matters concerning their community, including the dismissal of an organ of local government established by direct election. The principles of and procedures for conducting a local referendum shall be specified by statute.*

Over the course of time the Act of 8 March 1990 has been slightly amended to include changes to the organs of communal self-government. At the same time, such acts have become the basis of interpretations made by the Constitutional Tribunal and the Supreme Administrative Court and have also enabled the extension of direct democracy to the level of the district (powiat) and the province (voivodeship).

2 The evolution of regulations

Neither the provisions of the Constitution nor the Local Government Act were sufficient to directly implement the referendum. This was only made possible by the Local Referendum Act of 11 October 1991.⁷ The petition for a referendum to recall the communal council could be filed by those eligible voters with a place of residence in the territory of the commune. The initiator(s)⁸ would send a written notification to the provincial electoral commis-

⁵ Dz. U. 1992 no. 67 item 336; <http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU19890750444&type=1&name=D19890444L.pdf>

⁶ Dz. U. 1997 no. 78 item 483; <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>

⁷ Dz. U. 1991 no. 110 item 473; <http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU19911100473&type=2&name=D19910473.pdf>

⁸ A local referendum could be initiated by a single citizen (or a group of citizens) entitled to vote in elections to elect a communal council, or by an organisational unit of a political party or organisation having its office and conducting activities in a given commune.

sioner and the mayor informing them of the intention to hold a referendum to recall the communal council before the end of its tenure. The initiator(s) of the referendum then had 60 days to collect the required number of signatures in favour of the petition (10 percent of the eligible voters). Before submitting the original petition the person(s) initiating the referendum should, in the customary manner, inform the inhabitants of the intention to recall the council, stating the reasons for the requested recall. The provincial electoral commissioner was not authorized to examine the justification for the petition, but was supposed only to check the legal and formal aspects of the petition. If no fault was found, the commissioner was obliged to announce a decision to hold the referendum. Such a decision was accompanied by an action plan analogous to that which occurs in the case of a general election: the establishment of polling commissions, the placing of announcements, the preparation of electoral lists, etc. The composition of the territorial commission was determined by the commissioner on the basis of the suggestions submitted by the communal executive board and the initiator(s) of the referendum. Councillors, members of the communal executive board, the initiator(s) of the referendum or their representative were not allowed to sit on the (territorial and polling) commissions.

The Communal Referendum Act did not set out detailed principles for conducting the referendum campaign, nor place any restrictions on the frequency of referendums. Referendum costs were to be financed from the communal budget, except for the expenses related to the commissioner's work. The initiator(s) of the referendum had to cover the expenses associated with informing the inhabitants about the vote. In determining the result of the referendum, it was expressly agreed that blank and void votes were not to be taken into consideration except for calculating the turnout. In the event of failure to exceed the 30 percent threshold the referendum would not be valid. If this threshold was exceeded, the announcement of the result of the referendum in which a majority of the eligible voters had voted for the recall of the council marked the end of the tenure of this organ. The recall of the communal council resulted in the disbanding of the executive board and the resignation of the mayor. The Prime Minister would then appoint a person to act as the temporary administrator until the new communal administration was elected.

The Act was first amended in 1995. According to the amended regulations a recall referendum could not be held within 12 months of the last election or of the previous recall referendum, or within six months of the end of the term of office. Also important was the provision that prohibited withdrawal of support by the initiators for the petition for a referendum – a provision designed to prevent manipulation on the part of the opponents of the referendum.

In 1996 the Local Government Act was amended by the inclusion of a provision whereby consultations with the inhabitants were to be held in the cases specified in the law or in relation to other matters of importance to the commune.

In 1998, upon adoption of the Act on district and provincial self-government, recall referendums could also be used by the new self-governing communities. The same applied to facultative referendums on the so-called „important matters“, as well as to consultations. Only the referendums on self-taxation remained within the sole jurisdiction of the commune.

The establishment of new administrative units entailed another change in the law. Parliament subsequently adopted the new Local Referendum Act of 15 September 2000⁹. Thus the Commune Referendum Act of 11 October 1991 was repealed.¹⁰ The new law specified that in districts and provinces a referendum can be initiated by a group of at least 15 eligible voters (five in communes), or by the local organisational unit of a political party or association having a legal personality and conducting activity in the territory of a given self-government unit. In essence, the referendum thresholds did not change: the signatures of 10 percent of the eligible voters (5 percent in the case of a province); a 30 percent turnout. Additionally, the Local Referendum Act specifically regulated the process of conducting a referendum: 1) the referendum campaign (announcements, appeals, slogans, media clarifications, electoral campaign silence); 2) financing from the budget of the self-government unit; 3) the powers of the initiator(s) of the referendum and his/their authorized representative; 4) the mode of counting the votes and announcing the results.

This law was first amended in 2002 when the Act on the direct election of mayors and communal executive officers was passed. As of the new term of self-government, a recall referendum could apply not only to the council, but also to the mayor. In the case of the recall of a mayor, the referendum could also be initiated by the communal council. A referendum could also be held if the mayor did not receive a budget discharge from the council, or for other reasons. In this case the support of 25 percent of the councillors and the opinion of the audit committee were required. Councillors voted by roll call and the adoption of the petition for a referendum required a majority of 60 percent of the members of the council. An important restriction designed to prevent abuse of the law by councillors was the provision whereby if – in the case of a referendum held upon the motion of the council to recall the mayor or communal executive officer (for a reason other than failure to give a budget discharge) – more than half of the votes are cast against this motion, then the term of office of the communal council comes to an end. It was also specified that councillors and employees of the self-government unit were allowed to take part in the campaign – but not in their official capacity.

The latest and most important amendment to the referendum legislation was made on 8 July 2005 and has been in force since the beginning of the current term of office (2006-2010). The amendment introduced a new wording to Article 55: *A referendum to recall an organ of self-government elected in direct elections will be binding if at least 60 percent of the number of voters who voted in the elections to the body that is to be recalled has taken part in such a referendum.*

3 The recall referendum in practice

Referendums held to recall organs of self-government have dominated the practical dimension of direct democracy in Poland at the local level, accounting for about 85 percent of all referendums. This tendency became particularly marked already during the first term of the new local governments (1990-1994). The most important motive for the majority of the

⁹ Dz. U. 2000 no. 88 pos. 985; <http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU20000880985&type=2&name=D20000985.pdf>

¹⁰ K. Kiljan, Referendum lokalne w świetle przepisów ustawy z 15 września 2000 r., „Samorząd Terytorialny” 2001, no. 11, p. 21.

votes was opposition to the government, and populist demands. The accusations were usually vague and general, for instance: *disregard for the electorate; hypocrisy of the authorities; loss of public confidence; abuse of power and arrogance of government officials; passivity of the council as regards the problem of unemployment.*

Already by the mid-1990s it had become possible to identify the general pattern of referendums. These included:

- politically-motivated referendums – resulting from general dissatisfaction with the political make-up of the council;
- referendums that were the result of the conflict of interest among councillors, where the opposition sought the support of the local population;
- referendums resulting from the inadequate understanding of the law of the inhabitants of a commune – such referendums were most often due to their misunderstanding of a communal council's decision on e.g. an increase in taxes, rent or other charges.¹¹

During the first term of local governments a trend in the development of recall referendums became visible, with their number increasing every year¹² until in 2000 it reached the record level of 108 votes. The effectiveness of referendums increased too. Whereas during the first term the turnout in one-third of the referendums was actually lower than the number of signatures collected (10 percent), by 1999 the average turnout was as high as 26 percent. However, only one popular vote managed to exceed the required voting quorum (30 percent).

Nearly 40 percent of the recall referendums were held in the years 2000-2001. This peak was the result of the increased activity of local communities which – partially thanks to the administrative reform of 1999 – became aware that they were actually able to influence politics. The referendum turmoil was also caused by the reform of the education system, as the closure of about one thousand schools simply had to lead to numerous local conflicts. At the same time, the electoral regulations of 1998 brought about political polarization in small-town Poland. Dissatisfied party activists tried to use referendums to devalue the results of the general election. It should also be remembered that the overall mood of the society, as well as the economic situation, deteriorated at that time and that the farming industry was hit by a serious crisis, which in 1999 resulted in the so-called „pig war“. For several months farmers blocked roads and used other forms of protest and finally managed to coerce the government into increasing the sale price of livestock.

After the year 2002, the direct election of communal executive officers did not result in an increase in the number of referendums. However, they did reveal the true purpose of referendum initiatives. Most often they were an attempt to recall the mayor. In 2002-2006 there were 92 recall referendums, 72 of which were held to recall the executive organ of the commune (in 20 cases both the council and the communal executive officer were to be recalled). The turnout level and effectiveness of the referendums remained at a similar level as in 1998-2002.

¹¹ E. Sękowska, *Referendum gminne*, in: M. T. Staszewski, D. Waniek, eds.: *Referendum w Polsce i w Europie Wschodniej*, Warszawa 1996: 141-143.

¹² In years when general elections were held (1994, 1998, 2002) the number of referendums decreased due to, among other things, the waiting periods imposed by law. A. K. Piasecki, *Referenda w III RP*, Warszawa 2005: 89.

Table 1: Referendums on the recall of a council – absolute numbers and percentage (effective referendums in brackets)

TERM OF OFFICE	COMMUNES ¹³	TOWNSHIPS	CITIES	DISTRICTS	TOTAL	TURNOUT%*	EFFECT**
1990-1994	23 (1)	3	22 (2)	-	48 (3)	14.4	6.3
1994-1998	46 (5)	6	51 (4)	-	103 (9)	16.4	8.7
1998-2002	115 (18)	3	76 (7)	1	195 (25)	18.7	12.8
TOTAL	184 (24)	12	149 (13)	1	346 (37)	-	-

* Average turnout for all referendums during a given term of office.

** Effective referendums (as a percentage of the total number of referendums held).

The greatest changes in the practice of organizing referendums in the period 2002-2006 were reflected in their geographic distribution. In previous terms of local governments referendums were mostly held in small towns and rural communes. No referendum held in a district capital managed to reach the validity threshold. In 2002-2006 the situation was similar, but despite the slim chances of breaking through the 30 percent barrier, several referendums were initiated in medium-sized and large cities.¹⁴ The initiators probably assumed that a lack of protest against the mayor's policy would have worse consequences than an unsuccessful referendum. In spite of losing they somehow managed to focus media attention on the problem of the mismatch between the statutory regulations and the social reality of large local communities and thus indirectly contributed to the amendment of 8 July 2005, which provides for more flexible voting thresholds. The effects of this change were noticeable during the next term of office. In the period 2006-2008 as much as 39 referendums were conducted. In the case of 30 of them the main reason for running the referendum procedure was to recall the executive organs. Additionally, in 11 cases there was also an expectation of recall the council. High attendance (20.5 percent) was also very efficient (20.5 percent). If this tendency had been maintained up to the end of the term of office, it would have brought the best outcomes in the area of attendance and total number of voting that led to recall the self-government organs. Nevertheless, for the first time in the history presidents of two cities (Zduńska Wola and Olsztyn) lost their mandates as a consequence of referendum.

The geography of referendums can be viewed in two ways. The first refers to the above-mentioned problem of such votes being held primarily in rural communes and small towns. In large cities it was already difficult to collect the 10 percent of signatures required to hold a referendum. It was equally difficult to carry out an effective district referendum. In the period 1998-2006 such referendums were held in only five districts and none was successful. Provincial referendums were totally impracticable. In the case of Poland's largest prov-

¹³ There are 2486 communes, 315 districts and 16 voivodeships in Poland. The division of administration for districts and voivodeships was based on the Act of 1998. The executive of a commune is represented by the Communal Council and (from 2002) by the Head of the Commune. The executive at the district level is represented by the County Council, and at the level of the voivodeship by the Regional Parliament.

¹⁴ Some mayors of large cities gained notoriety for governing the city from behind bars after they had been placed under temporary arrest.

ince the required number of signatures was as high as 200,000. By comparison, the threshold for a citizens' initiative (for a legislative proposal) is 100,000 nationwide.

The other aspect of the geography of referendums was the spatial pattern of votes. The majority were held in the western part of the country, the record being set by the communes in the Province of Lower Silesia with their accumulation of social phenomena, such as: unemployment in the post-PGR¹⁵ villages, the „restless spirit“ of the displaced and their descendants, and the low level of integration of local communities. There were the fewest referendums in eastern and central Poland.

There was also the tendency to renew the referendum procedure. In approximately 30 communes referendums were held on two occasions. In Kleszczów in 2005 there were two simultaneous referendums to recall the mayor (on the initiative of the councillors from the opposition) and to recall the council (on the initiative of the mayor's supporters). A record was set. The turnout was 72 percent. 67 percent of those who voted were in favour of recalling the council, 32 percent wanted the mayor to be recalled.

Empirical analysis of the referenda to recall an organ of local government reveals the phenomenon of populism which is typical of the majority of such initiatives. Also noticeable is the growing effectiveness of people who initiate referenda,¹⁶ the professionalism of commissioners from the branches of the National Electoral Office (who organize polls), and the clear interpretation of the decisions of the Supreme Administrative Court. The institution of the referendum is being used more and more often by the communities of medium-sized and large cities and districts. The more flexible election thresholds introduced in 2006 have also been conducive to the latter phenomenon.

4 Facultative referendum

The inclusion of the facultative referendum in the law – and particularly the somewhat unfortunate name given to this type of vote: *referendum on any other matter of importance to the commune* – opened up wide possibilities for its interpretation and practical application. Hence it was this type of referendum that most often involved court decisions (often inconsistent). Most problematic was the objective scope of the vote. For obvious reasons, it could include matters relating to the precise definition of the rights and responsibilities of the commune. On the other hand, judicial decisions were aimed at regulating matters that could be decided by way of a referendum. In 1992, the Supreme Court ruled that a referendum cannot be used to restrict decisions by local government construction departments and force changes in local planning or spatial management. As early as 1993 the Supreme Administrative Court had prevented a referendum concerning the administrative affiliation of a commune.

In the new Local Referendum Act of 15 September 2000 the words „any matter of importance“ had been dropped. Article 2, section 1 included a more precise wording: „(...) inhabitants of a unit of territorial self-government as members of a self-governing commu-

¹⁵ PGR – Polskie Gospodarstwo Rolne (National Farm).

¹⁶ The results of the votes were proof of the growing polarization among voters. In the areas where inhabitants were inclined to keep the current authorities in power, they simply did not participate in the referendum even if they had previously signed the petition for a referendum. However, in those places where a referendum proved effective, the turnout tended to be higher.

nity express by way of a referendum their will as to the method of deciding matters concerning their community within the competence and scope of responsibility of a given unit (...).“ In practice there was only this one type of facultative referendum which differed in the object and mode of the vote from mandatory referendums (recall, self-taxation). It was not until 2003 that the objective scope of the referendum was expressly and broadly interpreted by the Constitutional Tribunal. Following this ruling it is now possible to hold a referendum concerning, for instance, the administrative borders of a commune (district, province), the location of a motorway, etc.

Also of great importance was the earlier decision of the Supreme Administrative Court of 19 March 1997, in which the court ruled that a communal referendum is one of the powers of a self-governing unit, indeed the highest one. Thus on a specific matter the institution of the referendum supersedes the competence of the commune’s executive board and council.¹⁷

The largest number of referendums concerned matters of administrative affiliation. However, in practice they were of a consultative nature. The second largest group of referendums on an important matter were the so-called „waste referendums“, in which inhabitants protested against the construction of waste incinerators in their area. However there were no wider consequences of the so-called NIMBY syndrome,¹⁸ which could be the driving force behind referendums. Local authorities could reject referendum petitions, as a vote initiated by citizens required a supporting resolution by the council, though in this case it could lead to another initiative in the form of a recall referendum.

In the history there was only one facultative referendum in the area of voivodeship, conducted on 20 May, 2007 in Podlaskie Voivodeship. This referendum was a consequence of a conflict about motorway construction run through Rospuda Valley. The ecologists protesting against this investment were conflicted with local inhabitants living in north part of the Augustów region. These people were simply tired of oppressive traffics. This problem was widely discussed in the state mass media. The politicians of ruling party (including the prime minister himself) proposed resolving the problem by organizing the referendum. This idea was attractive because there was also necessity to organize re-election to Voivodeship Sejm. This coincidence could have had a positive influence on referendum attendance. On the other hand, the politicization of the problem would also have taken place. Finally, in the referendum participated fewer citizens than in the last election (in percentage: 21.7 / 22.4). Although 92 percent of voters supported the idea of motorway construction, the outcome of the referendum was not taken into account because it had gained attention less than 30 percent of citizens who had the right to vote.

Facultative referendums were seldom held on the initiative of the council. Local authorities decided to take this step when they wanted to share the responsibility for difficult decisions (e.g. the closure of a school, or finding a location for a new one). The arguments against such initiatives were the burden that the costs of the referendum would be put on the commune’s budget and uncertainty as to the turnout. In the period 1992-2006 a total of about forty facultative referendums were organized, some of which were held for consultative purposes. The comprehensive character of local issues and the small number of refer-

¹⁷ H. Izdebski, *Samorząd terytorialny. Podstawy ustroju i działalności*, Warszawa 2004: 138.

¹⁸ The NIMBY (Not in my Back Yard) syndrome usually applies to initiatives concerning construction of a waste disposal plant. P. Matczak, *Spoleczne uwarunkowania syndromu NIMBY*, in: R. Cichoński, *Podmiotowość społeczności lokalnych. Praktyczne programy wspomagania rozwoju*, Poznań 1996.

endums make it difficult to classify this form of direct democracy. No significant trend illustrating an increase or decrease in interest in the facultative referendum can be traced. This type of popular vote usually remained in the shadow of more spectacular recall referendums.

5 Referendums on self-taxation

The referendum on self-taxation was of a mandatory character (similarly to a recall referendum) and could be initiated by either the communal council or the inhabitants. The cost of the referendum was financed from the communal budget and the referendum resolution had to define the purpose and principles of self-taxation. The purpose could be environmental protection, housing needs, spatial planning, land management, waste disposal, etc.

The two-thirds approval quorum required for the referendum to be valid and decisive proved quite difficult to achieve. Besides, the wider use of referendums on self-taxation was blocked by judicial decisions and the opinion of experts on financial law who declared that: *the institution of self-taxation in its present form seems to be without any legal sanction (...) if the source of obligation as regards self-taxation is not an act of parliament but a communal referendum, such an obligation can hardly be regarded as a tax obligation.*¹⁹ In practice this meant that it would be impossible to collect this type of voluntary tribute from those who would not want to pay it.

Taking specific examples²⁰ of referendums on self-taxation enables us to determine their most important features. In communes where referendums on self-taxation were held there were not usually enough opponents who could present a pronounced alternative to such a vote. As with other types of referendum, self-taxation was voted on in small towns and rural communes. What makes this type exceptional (when compared with others) is that on several occasions it was successfully conducted in medium-sized cities. Another regularity should also be noted. This type of vote was more often held in wealthy communes, especially those situated in the vicinity of a large city. They were also initiated by the council and the informal advocate of such a solution was the mayor and the official apparatus behind him.

Such referendums did not tend to be held in communes where there was some kind of internal conflict. Campaigns were usually positive and appealed to civic awareness, to a sense of duty and community. They involved the participation not only of local government officials (communal executive board and council), but also of its auxiliary structures and local elites (teachers, priests). This explains why referendums on self-taxation – unlike recall referendums – were characterized by a high turnout and a majority of „yes“ votes. The higher turnout was also the result of the frequent practice of organizing referendums on the same day as nationwide elections.

The peak period for such referendums was the second term of local governments (1994-1998). However, the interest of local authorities in this type of initiative slumped after a series of decisions by supervisory bodies in 1996-97 which threw into doubt the legality of

¹⁹ E. Olejniczak-Szałowska, *Referendum lokalne*, Warszawa Łódź 2002: 116.

²⁰ The lack of a nationwide register of such referendums makes it impossible to establish their precise classification. The author managed to identify approximately 30 such referendums (some of these were of dual nature; they were held on the same day as a facultative referendum).

collecting charges on the basis of self-taxation. Moreover, referring decisions to the whole electorate and taking risky initiatives was not popular among local leaders, for whom conciliation and stabilization were most important.

6 Other forms of direct democracy

Apart from referendums, local communities can also make use of the citizens' initiatives, consultations and residents' assemblies (the latter only in villages). However, these forms of direct democracy are marginal. This refers to both their normative basis and the practice of applying them in public life. There are also no premises which would allow an evaluation of the progressive or regressive nature of the way these very different forms of citizens' participation function in the decision-making process at the local level.

Although the self-government legislation does not provide for citizens' initiatives, yet in the by-laws of some cities there are provisions which make it possible for groups of citizens to use this form of direct democracy (e.g. in Wrocław a petition signed by three thousand people is required). Initiative proposals submitted in this way usually refer to local (e.g. to increase the number of licensed outlets for the sale of alcohol) or social issues (e.g. a mayor's petition to the taxation authorities concerning the inheritance tax on houses inherited together with resident tenants). However, inhabitants seldom exercise this right and their initiative proposals do not always receive the council's approval (e.g. the proposal to grant a coat of arms to one of the housing estates in Toruń).

Consultations were added to the Local Government Act in the amendment of 1996. Despite their constitutional foundations they did not have the character of a permanent institutional procedure. Some organs of local government regulated this issue by introducing a relevant provision in their by-laws. Consultations very rarely took the form of a popular vote²¹, although it happened that some local authorities that were considering a change of the name of their town conducted public consultations before taking any action. On the other hand, numerous local referendums were of a consultative nature. The importance of this form of democracy is likely to increase following Poland's accession to the European Union. Judicial decisions by Polish courts more and more often refer to EU legislation. As regards self-government this means primarily the European Charter of Local Self-Government, which requires that public consultations be undertaken in the case of important decisions directly concerning local inhabitants (e.g. changing the name of a street).

Finally, one should mention the most traditional form of direct democracy in Poland, i.e. the village assembly. It functions only in the area of a village (part of a commune) pursuant to Article 36 of the Act on Communal Self-government, which established a village assembly as the legislative body of the village council.

7 Proposals for the future

Four full terms of office of the local authorities have contributed to the consolidation and empowerment of local communities. The paradigm of this phenomenon could be direct

²¹ E. Olejniczak-Szałowska, *Konsultacje we wspólnocie samorządowej*, „Samorząd Terytorialny” 1997, no. 1-2.

democracy which has taken firm root in Polish communes. The way in which it has been evolving so far enables one to outline some proposals which may be somewhat presumptive, but which appear to have real potential. They are the following:

- an increase in referendum turnout;
- greater rationality of referendum initiatives;
- a reduction in populism in favour of the civic dimension of referendums;
- the promotion of further diversification of the forms of direct civil participation in local government (an „initiative“ and perhaps a „veto“);
- the introduction of the direct election of the starosta (district governor) and the marshal of the voivodeship (province).

Finally, one should mention the possibilities of new forms of participation made available by the emergence of the Internet. Electronic democracy strengthens the exertion of influence, enables broad consultation, initiatives and referendums, i.e. the classic forms of direct democracy. However, the Internet is still being used first of all as a new method of communication, also in a local dimension. Recent research carried out in the province of Silesia has shown that only 47 percent of self-government bodies have their own web pages, 44 percent of which are used only for one-way communication (providing information).²² Rapid development of this area of life will force a change in these instruments. The ongoing information technology revolution remains one of the greatest hopes for increasing direct civil participation. It applies especially to the younger generation who already use the world-wide web to express their opinions and interests more often than the traditional channels of political communication.²³ The trend of development of such forms of direct participation in public life is certainly going to be characteristic of civil activity in the first decades of the 21st century.

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²² M. Boszczyk, Media elektroniczne jako środek komunikowania politycznego, in: S. Michalczyk, *Media i komunikowanie w społeczeństwie demokratycznym. Szkice medioznawcze*, Sosnowiec 2006: 198.

²³ L. Porębski, Rewolucja informacyjna a jakość polskiej debaty, in: *Jak poprawić dialog Polaków*, Gdańsk 2005: 63.

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Second-order direct democracy in Switzerland: How sub-national experiences differ from national ballots

Michael Buetzer

1 Introduction

Direct democracy can be understood as an effective complement to representative institutions, adding the electorate as an additional veto player to policy-making processes (Kriesi & Trechsel 2008; Hug & Tsebelis 2002). Direct democratic institutions change the game of political decision-making, since all players' agreements are necessary for a change in the political status quo. The introduction of referendums and initiatives results thus, on the one hand, in a higher number of veto players, making changes to the status quo more difficult. But on the other hand, political outcomes tend to better approximate the preferences of the median voter if the possibility of a ballot vote exists. While quite a lot of attention has been paid to the design and use of these institutions at the national State level, less is known about them at subnational levels of government.

In this chapter, I will focus on the key characteristics of direct democratic institutions in Swiss cities in order to identify similarities and dissimilarities with regard to national direct democracy. The aim of these analyses is to better understand direct democratic mechanisms at subnational state levels. Which institutions are most relevant at subnational state levels, how do their institutional implementations vary with regard to national institutions, and what are the most striking differences between state levels regarding ballot outcomes? The paper is divided into three parts. In the next section, I will outline the theoretical arguments and develop four key hypotheses. Section three presents the direct democratic experience in Switzerland, by comparing the national, cantonal and communal state levels. In section four, I will empirically test the hypotheses with a large and unique dataset of Swiss ballot votes.

2 Theoretical argument and hypotheses

In their seminal article, Reif & Schmitt (1980) developed the argument as to why, in the eyes of political parties and the public, elections for national governments are more salient than European elections. It is argued that national elections offer voters the critical choice of who should govern the country (Norris 1997). Elections for officials at EU or subnational state level are considered less important – hence the term *second-order elections*. Second-order elections are held at the national level or in a part thereof, but there is less at stake for voters than in first-order elections. The theoretical rationale behind this claim is that (i) there are fewer incentives to turn out and vote in second-order elections, (ii) one is freer to vote for minor parties that have no realistic chance of forming the government, and

(iii) there is less point in collecting or using information about the specific political arena when making decisions. Moreover, voting behaviour in second-order elections is in general strongly influenced by first-order considerations (Marsh 1998). Governing parties may fare better or worse in second-order polls, since voters can use the opportunity to voice their support for or protest against the ruling administration.

The second-order election model has also been applied to direct democratic ballots, notably to European Union referendums (see e.g. Hug 2002; Garry et al. 2005). In addition to first-order considerations and the salience of a referendum issue, Hug (2002) emphasises that the institutional context affects how strong second-order factors are likely to be. The distinctions as to whether the government decides to hold a referendum or is constitutionally required to do so, and if a ballot vote is legally binding for government or not, are, however, less relevant in the Swiss context. In this country, the vast majority of ballots occur indeed independently of the will of government, and almost none are not legally binding (Papadopoulos 2001). The key distinction in Swiss direct democracy is made with respect to the actor who *triggers a ballot vote* and to the actor who *decides on the ballot wording*. A ballot vote can occur because of constitutional requirements after a political proposal is passed by Parliament, or because political minorities specifically asks for a ballot vote. In the latter case, two situations can be discerned: on the one hand, a group of voters themselves propose a measure in form of an initiative petition, or alternatively, they decide to challenge a governmental proposal with a referendum petition. On the other hand, a political minority in Parliament (or in citizen assemblies) may be granted the right to challenge an already adopted proposal and submit it to the citizens' appreciation.

In contrast to EU (supra-national) referendums, and because of the Swiss federalist state structure, national considerations (e.g. satisfaction with national parties) are likely to be less prominent for voting predictions in subnational ballot votes. Common multi-polar party systems further distance the Swiss case from the second-order voting logic (Reif 1997). Notwithstanding, when combining salience and institutional considerations (Garry et al. 2005) several hypothesis can be derived with respect to voting behaviour in sub-national ballot votes. Independent of state levels, general levels of satisfaction with governing political elites are likely to play a weaker role when votes occur 'automatically'. Voter support for governing majorities is also expected to rise in subnational ballot votes. Voters are expected to have fewer direct incentives to show their disapproval of governing parties when votes come to polls because of legal requirements, and they are also expected to show less interest in subnational ballot proposals. As opposed to this, the voters' interest is likely to rise if ballot votes are triggered by the people or by a dissenting political minority, and governing elite support is expected to decline. Minority viewpoints are, however, more likely to be supported in subnational ballot votes, since voters are supposedly less critical and well-informed on subnational political issues, and feel more free to vote for a measure with no realistic chances of being accepted.

The hypothesis that there is normally less at stake in voter decisions at subnational state levels than in national ballots, and that this has an impact on turnout and ballot outcomes, certainly deserves a closer inspection. I will therefore propose to test the second-order voting model for subnational direct democratic ballots in Switzerland. More precisely, I will compare turnouts, occurrences and outcomes of ballot votes from Swiss cities and cantons to those from the federal level. Do voters treat these two (or three) sorts of ballot votes the same way, or are there systematic and understandable differences between them? Systemat-

ic comparisons of ballot vote experiences from different State levels should then allow me to assess predictions of the second-order voting model in the direct democratic arena. Based on the arguments of Reif & Schmitt (1980), four specific propositions that characterise the aggregate voting behaviour in national and subnational elections will be tested in the context of direct democratic votes:

1. Hypothesis: Controlling for simultaneous ballot vote occurrences at all State levels, turnout is lower in city and cantonal votes than in national votes. Since less is at stake, voters have fewer incentives to participate in subnational ballots.
2. Hypothesis: City and cantonal governments have greater ballot support rates than the national government, because subnational ballot votes are less important and there is less point for voters to collect and use information critically.
3. Hypothesis: Ballot support for government is generally higher for compulsory proposals than if they are triggered by a political minority, because compulsory voting proposals tend to be more consensual and less salient, which is why voters generally have fewer incentives to show their disapproval at the polls.
4. Hypothesis: Ballot support levels for uncontrolled proposals (optional referendums and popular initiatives) are higher in subnational than in national polls. Similarly to the preference for smaller parties in subnational elections, voters are freer to vote for minority point of views.

In the next section, I will describe some historical elements and my classification of direct democratic institutions. For the sake of simplicity and comparison, only three broad direct democratic institutions are distinguished. Moreover, before testing my hypothesis, I will describe direct democratic experiences at all three state levels in more detail. Ballot vote occurrences in subnational entities will be discerned according to political-legal traditions (city-state, rural, Latin). Vote trends between 1990 and 2000 will be presented according to direct democratic institutions for all three state levels. In order to better assess the mechanisms that shape direct democratic outcomes, I will conclude my analyses by presenting a model measuring the impact of governing elite consensus on the probability of ballot vote acceptance in the three different arenas and for each institution separately.

3 Direct Democracy in Switzerland

3.1 Definitions and general overview

After Napoleon's invasion in 1798 and the end of the old Confederation, modern political institutions were gradually implemented during the 19th century, first in the cantons and subsequently at both the federal and communal levels of government (Buetzer 2007).¹ The

¹ The Swiss political system is undoubtedly one of the most complex western democracies. Although three of its key features – neutrality, federalism and direct democracy – are not exclusive to Switzerland, it is their combination inside the same polity which renders the Swiss case so interesting in comparative perspective. More importantly, the combination of the three institutions account for Switzerland's status as the paradigmatic case of consensus democracy, offering a structure with a very large number of veto possibilities. By focussing on one of these feature in this chapter – direct democracy – some readers that are less familiar with the Swiss case might

introduction of referendums and initiatives was facilitated by a strong popular distrust of elected officials. However, direct democratic institutions were not traditionally understood as alternative, but rather as a complement to representative or assembly democracies (Buetzer 2005). The introduction of *compulsory referendums* aimed at legitimising governmental proposals by the people, either through legal regulations or by a majority decision of government. *Optional referendums* (proposed by Government, triggered by Parliament or the electorate) allow a political minority to question and eventually to abrogate governmental decisions. With *popular initiatives* (proposed and triggered by electorate), the most spectacular instrument, a group of voters directly places an issue on the political agenda by proposing a new policy measure.²

From a game-theoretical perspective, direct democratic institutions add the electorate as a veto player to the policy-making process (Hug & Tsebelis 2002). This can not only lead to important policy consequences in case of a ballot occurrence, but influences more generally the way policy decisions are elaborated. In other words, direct democracy changes the contextualised game of political decision-making, since all veto players' agreements – open or tacit – are required for a successful change of the legislative status quo. On the one hand, the introduction of referendums and initiatives results in a higher number of veto players, making changes to the legislative status quo more difficult, since more (diverging) interests need to be taken into account. But on the other hand, final outcomes will be less determined by minority viewpoints and tend to better approximate the preferences of the median voter if the possibility of a ballot vote exists (Hug 2004). Direct democratic institutions can therefore be seen as effective complements to representative institutions, reinforcing the median voters' weight in political decision-making.

At this point, I would like to shortly elaborate on the notion of *political elite*. In Gordon Smith's famous distinction of referendums (Qvortrup 2000), political elites are referred to as the governmental and parliamentary majorities that shape and determine political processes. Ballot outcomes can either be *in line* (pro-hegemonic, successful) or *not in line* (anti-hegemonic) with their recommendations. I will rely on votes in parliament as indicator for the governing elite's consensus and position. Swiss voters are asked to cast their votes on federal, cantonal and city ballot proposals three to four times a year. Representatives and voters thereby co-decide over a wide range of legislative and administrative proposals. At the federal level, the inclusion of citizen in political decision-making is focused on the most important and salient political matters, which are essentially constitutional or legislative in nature. With other political functions and tasks to accomplish in cantons and cities, the electorate is increasingly included in political process for other matters and is called to decide on many administrative issues at the polls as well. At the city level for instance, the building of a big infrastructure project, such as a new school, is more likely to be a potential ballot object as is a proposal for a revision of the city charter. The effect of these differences on direct democratic experiences will be discussed below.

The complementary character of direct democracy resulted in complex interdependencies between representative political bodies and the electorate (Papadopoulos 2001). In order for Swiss governing elites to accommodate ballot threats hanging over political pro-

want to read more about other key institutions, or about the Swiss political system in general, for which I strongly recommend Kriesi & Trechsel's seminal Book „The Politics of Switzerland“ (2008), especially chapters 3-5.

² Note that I have included parliamentary counter-proposals to popular initiatives into the category of compulsory referendums.

cesses, the functioning of the political system was gradually reshaped. One indirect system effect attributed to direct democracy lies with the consensus-seeking strategies in legislative procedures. In order to prevent an ulterior defeat at the polls, governing majorities co-opt all important political actors at an early stage in political processes. The aim of this inclusion strategy is to find broadly accepted compromises, which should, in turn, guarantee the absence of a referendum petition or a successful ballot outcome, since no major group has an interest in opposing the parliamentary compromise in the plebiscitary arena. A second indirect effect – partly attributed to direct democracy – relates to the concordant government composition. At the federal level, the same four political parties are represented in the Federal Council according to their relative vote share in parliament³. Likewise, concordant governments are important features in cantonal and city politics, with all major political parties represented in government according to their relative vote share. At the subnational level, however, governmental party compositions often differ from the federal level and change from one canton or one city to another, because of local or regional parties.

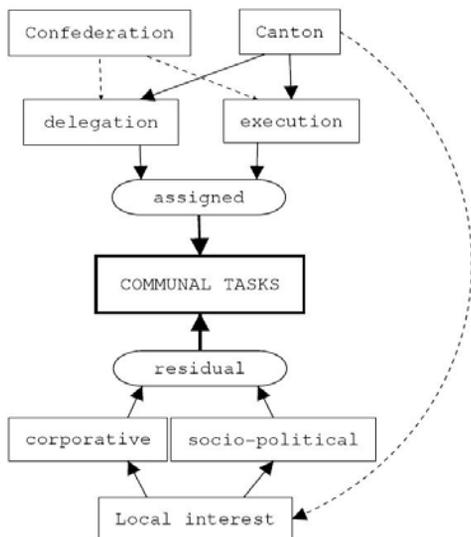
Several legal characteristics for the analysis of subnational direct democratic experiences need to be mentioned as well. Firstly, the subsidiarity principle in Switzerland has led the cantons to be sovereign in all policy fields where the federal level was not expressly granted the competence. As a consequence, public entities at the communal level are neither regulated by Federal law, nor do they enjoy the same autonomy status as the cantons. As a matter of fact, they totally depend on cantonal regulations. Generally speaking, cantonal governments (and to a lesser extent the Federal government) either (i) define communal tasks exhaustively, (ii) partly assign communal tasks, or (iii) leave the circumscription of communal tasks largely to the communes themselves. What is more, depending on the distributional arrangement of competencies between the different government layers, the respective competencies may vary considerably between cantons and communes according to the different policy fields. Latin cantons generally grant their communes relatively few legal tasks, while competencies are rather extensive for communal governments in the German-speaking cantons. Figure 1 summarises the attribution and description of communal tasks.

Similarly, direct democratic regulations for Swiss communes depend almost exclusively on cantonal laws, but the communes' autonomy for citizen engagement mechanisms varies again considerably between regions and cantons. While communal direct democratic regulations are sometimes almost exhaustively decided by the cantons, other communes enjoy far-reaching possibilities to complement and extend their direct democratic framework. Generally speaking, the Swiss cantons follow two logics to define communal direct democratic regulations, either (i) by providing minimum requirements, which can be altered and complemented rather freely by communes, or (ii) by defining regulations that can barely be altered by communes, often with extensive positive lists (final enumeration of both legal requirements and possible types of ballot proposals). In both cases, the cantons may also expressively exclude some items from a ballot vote (negative lists). To sum up, the scope of direct democratic participation varies tremendously among government levels, between policy fields, according to specific cantonal and communal regulations, as well as among the communes of the same canton. This complexity represents a major obstacle for compar-

³ After the national elections in November 2003, this governmental „magic formula“ was slightly changed for the first time in more than forty years.

isons (not the least because of individual terminologies) and requires first and foremost a coherent analytical framework.

Figure 1: Scheme for the attribution and description of communal tasks in Switzerland



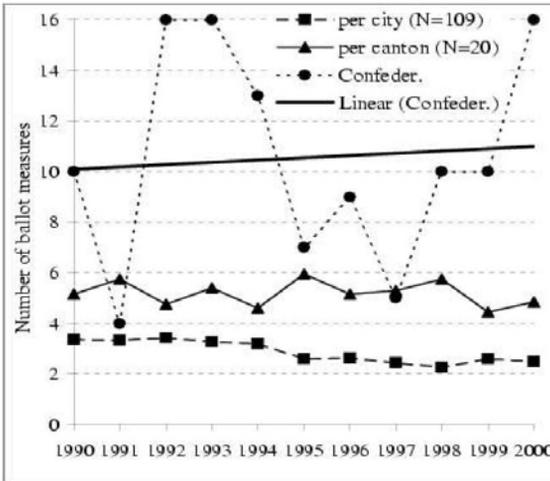
While the use of direct democratic institutions and the occurrence of ballot votes have been rising steadily all over the world (Auer & Buetzer 2001; Gallagher & Uleri 1996; Scarrow 2001), Swiss direct democratic institutions have been playing an integral part of modern political decision-making at all state levels for more than a century. The national level represents the most important political arena, but cantons and – to a lesser extent – communes assume important political roles and functions, too. Unlike most other European countries, subnational state units have maintained a considerable autonomy, especially in certain policy domains (Buetzer 2007; Ladner 1991). What is more, citizenship and political rights are granted at the local level in Switzerland, contributing to a strong personal identification with subnational politics. Overall, while there is less at stake at subnational state levels than in national politics in Switzerland, cantons and communes remain important political entities and enjoy an extensive functional autonomy.

3.2 Vote trends at three state levels

In order to gain better insights and a clear picture of direct democratic experiences at all three State levels during the nineties (1990-2000), I will now describe ballot vote trends, differences among political traditions of cantons and cities, as well as ballot vote occurrences according to direct democratic institutions. First of all, my focus lies on the average number of ballot measures at each state level and their evolution during my observation period (see figure 2). On average, the most ballot measures came to the polls at the federal level, with about ten ballot measures per year (Confederation linear), followed by the can-

tons (N=20) with between five and six ballots per year, and the cities (N=109) with about three to four votes. When comparing direct democratic activities at the three state levels, the Confederation is thus by far the most important state level, with an average of more than double the number of ballot measures as the cantons per year, and about three times the average number of communal ballot measures per year.

Figure 2: Average number of ballot measure at three Swiss state levels



Differences between the three state levels appear also with regard to vote trends. At the city level, the number of ballot measures that came to the polls has slowly declined, from around four ballot measures per year in 1990 to about three in 2000. By contrast, the vote trend in the cantons appears to be relatively stable over that same period, remaining on average in between five to six ballot measures per year. However, not only did most ballot measures come to the polls at the federal level, but in addition a slightly increasing vote tendency could be observed during the nineties. At the beginning of the decade, the number of ballot measure first increased, and then slowly went down, before resurging towards the end of the millennium. To sum up, average direct democratic activities are highest at the federal level, where we also observed a slightly increasing vote tendency, and lowest at the city level, with a declining tendency. Cantonal direct democratic experiences lie in between these two levels.

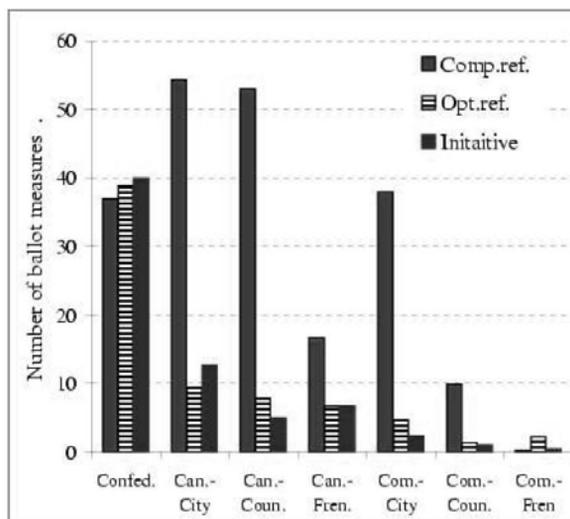
3.3 Ballot votes and political traditions

Direct democratic competencies are distributed unevenly according to state level at hand, with administrative issues gaining in importance in cantons and cities. Subnational political systems must, furthermore, also be differentiated with respect to traditional characteristics. Unlike European countries, Swiss cantons were relatively free to institutionalise their own state conceptions when first implementing modern political systems. Broadly, three subna-

tional political traditions can be distinguished (Buetzer 2005): German-speaking assembly democracies, pluralist parliamentary democracies in German-speaking city-states, and more elitist representative democracies in cantons and communes of the Latin-French tradition. Roles and functions that direct democratic instruments play in a particular political system vary significantly from one tradition to another. An important impact of political traditions on occurrences of ballot votes can indeed be identified, as shown in figure 3.⁴

My first observation relates to the use of different institutions at the three state levels. It appears that all institutions under observation are almost equally used at the federal level, while compulsory referendums clearly represent the category with most ballot measures at subnational state levels. The use of optional referendums and popular initiatives is comparatively more common at the federal level than in cantons or cities. At subnational state levels, uncontrolled ballot votes often come to the polls in entities of the city-state tradition, foremost in form of popular initiatives in cantons, and in form of optional referendums in cities. Contrasting sharply with all other experiences, the use of direct democratic instruments is limited to a few ballot votes on optional referendums in cities of the Latin-French tradition. Other striking differences can be observed between political traditions of cantons and cities. Occurrences of cantonal ballot votes are in all traditions more frequent than in cities of the same tradition, with Latin-French entities showing considerably less ballot votes than entities of the other traditions. Thus, ballot votes are essentially concentrated in German-speaking entities at the cantonal, and in the city-state tradition at the communal level.

Figure 3: Average number of ballot votes according to state level, institution and political tradition (1990-2000)

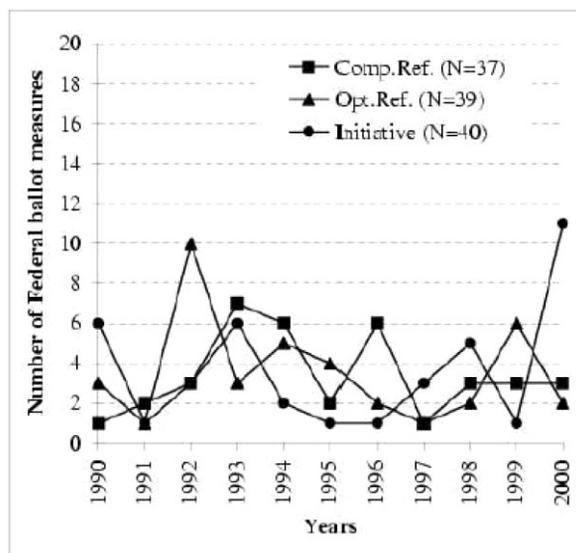


⁴ At the cantonal level, city-states are the cantons of Bern, Basel-City, Lucerne, St.Gallen, Schaffhausen, Solothurn, Zurich, while all other German-Speaking cantons belong to country-side tradition, and all Italian and French cantons to the French tradition (N total=20). Cities enclose all communes with more than 10'000 inhabitants and were classified accordingly, namely German-speaking communes with a parliament (city-states N=52) or an assembly system (country-side N=29), and all remaining cities to the French tradition (N=22).

3.4 Ballot vote trends and institutions

Coming back to the evolution of ballot votes during the nineties according to state level, direct democratic experiences differ with respect to the Federal state on the one hand, and the cantons and cities on the other. As already seen above, all three direct democratic institutions were fairly equally used at the federal level (see figure 4), whereas in cantons (figure 5) and cities (figure 6), the compulsory referendum is by far the dominant ballot institution. In other words, compared to the absolute number of compulsory referendum votes, popular initiatives and optional referendums play a less prominent role in cantonal and city politics, but are as important as compulsory referendums at the Federal level. The main reason for these differences lies in the fact that voter competencies are directed towards other issues at subnational state levels as well (foremost administrative and financial). Similarly to the Federal state, voters in cantons and cities regularly decide on constitutional and legislative measures.

Figure 4: The use of direct democracy in the Federal state (1990-2000)



When comparing vote trends between 1990 and 2000, experiences in cities are to be distinguished from those in cantons and the Federal state. The overall ballot frequency is indeed rather stable at both the Federal level and the cantons, but distinctly declining in cities. Three possible explanations can be invoked for this decline. First, faced with difficult economic situations in the nineties, several cities have thoroughly reformed their institutional frameworks (Kübler & Ladner 2003). Institutional changes to popular rights included the introduction of optional referendums instead of compulsory ballots for largely undisputed proposals, underlying a general tendency to concentrate citizen engagement on 'important' city matters (Buetzer 2005). A second reason for the declining local vote frequencies is linked to the loss

of local autonomy. The shift of political power to the Federal state and cantons leaves cities with fewer competencies and with fewer issues to decide autonomously. Finally, another reason for the declining number of city votes might lie in the evolving decision-making structures at the local level. Metropolitan issues are increasingly addressed by regional committees, often limiting citizen involvement in decision-making processes.

Figure 5: The use of direct democracy in 20 Cantons (1990-2000)

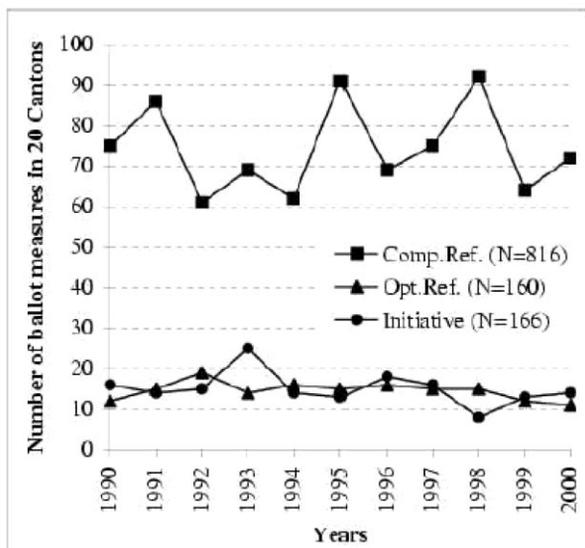
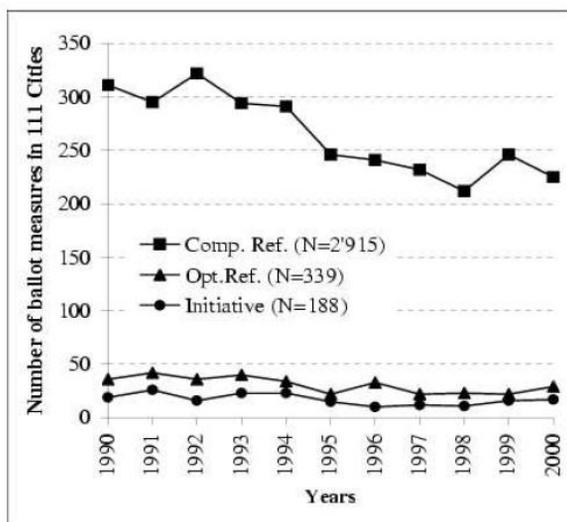


Figure 6: The use of direct democracy in 111 Cities (1990-2000)



4 Subnational ballot votes in perspective

So far, the description of ballot vote occurrences in Swiss cities, cantons and the Confederation showed an astounding diversity of direct democratic experiences at the three state levels. All three institutions under observation were frequently used at the federal level, unlike experiences in cantons and cities, where compulsory referendums are quantitatively by far the most important institution at the polls. Generalisations about the use of direct democratic institutions become, however, much more tricky at subnational state levels, especially in cities, since big differences appear between political traditions. What is more, vote tendencies also show an uneven picture, with the most notable development being a sharp decline of compulsory referendum votes at the city level. Bearing in mind that in view of all these diversities, aggregate analyses must be taken with the necessary precautions, I will now continue my analyses with testing my four hypotheses with regard to the second-order voting model.

4.1 Turnout in ballot votes

For the first hypothesis, I am comparing turnout rates for city, cantonal and federal ballot votes, while controlling for simultaneous ballot votes at each state level. My analyses of turnout rates focus on both the distribution of voting weekends⁵ and number of ballot measures voted on at each state level. When considering subnational ballot votes, one has to consider that communes and cantons are strongly encouraged to let their ballot dates coincide with national votes (or elections, which I did not consider here). In addition to substantive cost reductions, the key reason for holding votes at the same time is to stimulate a high turnout rate. Table 4.1 gives us a comparative picture regarding the coordination of ballot votes and the impact on voter turnout. In absolute numbers, more than *two thirds of all ballot measures* are decided at federal voting weekends, about a quarter comes to the polls in coordinated voting weekends at subnational state levels (cantons and communes). The remaining tenth of ballot measures are more or less equally divided between cantonal and city votes.

The positive impact on turnout rates, when holding ballot votes at all three state levels simultaneously, distinctly emerges in federal voting weekends, with the average turnout rate standing at more than 44 percent of the electorate. Interestingly, the highest average turnout rate in such voting weekends actually lies at the city level, with over 45 percent, followed by the cantons with over 42 percent and the federal level with less than 42 percent. As opposed to this, the average turnout rate declines to about 32 percent of the electorate if a vote takes places simultaneously at the cantonal and city level⁶, or if a ballot vote takes place at one level (cantonal or city) only. With regard to our hypothesis, this leaves me with some mixed results. On the one hand, average turnout rates are clearly lower in

⁵ Note that almost all cantons know postal voting procedures. Normally, the ballot material is sent out to voters about three weeks prior to the polls, and they can send it back as of its reception. The few people that actually still go to the polls can do so from Friday to Sunday on the voting weekend.

⁶ I distinguished only whether a ballot vote took place at one state level, independent of how many entities were concerned (1 to 20 cantons, 1 to 109 cities), and independent of a city's affiliation to a canton. This explains why there is no bandwagon effect for simultaneous ballots in cantons and cities (e.g. ballot votes of canton X are aggregated with those of a city from canton Y).

subnational ballot votes if not held in federal voting weekends. If less is at stake in the direct democratic arena, voters have less incentive to participate and turnout in subnational ballots is indeed lower than in federal ballots. On the other hand, however, if subnational ballot votes are held simultaneously with federal ballots, average turnout rates are actually slightly higher in subnational ballots.

Table 4.1: Voting weekends and average turnout rates in ballot votes at three state levels (1990-2000)

	Turnout	Week-ends	N mea-sures	ϕ - rate.	federal ballot	canton ballot	city ballot
Ballot measures in							
Federal+cantonal+city		33	2'941	44.76	41.86	42.36	45.66
cantonal+city		47	1'052	31.11		30.55	31.28
cantonal only		17	36	32.67		32.67	
city only		100	327	32.14			32.14

The coordination of subnational ballot votes with those at the national level is in any case an efficient and winning strategy to increase turnout rates at all state levels, but especially in cantonal and city ballots. It is therefore all the more astonishing that federal voting weekends – approximately three per year (33 over eleven years) – represent only about one sixth of all ballot voting weekends in my observation period. Cantons and cities go to the polls much more often than at the federal level, either in individually organised or in coordinated ballots. More precisely, in almost all cantons and cities, one additional voting weekend to federal ballots took place on average over eleven years. This general affirmation certainly has only limited practical implications, especially because of the huge inter- and intra-group differences regarding subnational ballot occurrences. Nevertheless, this last results underlines that direct democracy at subnational state levels shows an impression vitality and independence from political developments at the federal level.

4.2 Elite recommendations and ballot outcomes

After observations as to how voters participate in direct democratic votes, I would now like to show to what extent elites' responses to permanent ballot threats have proved useful for controlling political processes. More precisely, I will focus on vote recommendations of governing elites and ballot outcomes of federal, cantonal and city votes. I could show significant differences in ballot occurrences between state levels, according to institution and political tradition. To what extent do these differences impact upon ballot outcomes? For *compulsory referendums*, which take place at the end of the political process, a 'yes' vote always signifies an endorsement of the governing elite's position. The approval of a com-

pulsory referendum at the polls therefore represents a success for governing elites.⁷ As we can see in table 4.2, elite success rates for compulsory referendums are very high⁸. Independent of state level and number of ballot votes, political elites can be very confident when a compulsory referendum comes to the polls. At the federal level, eight out of ten compulsory referendums represent a success for governing authorities, while this ratio is even climbing to nine out of ten in cantons and cities. This result herewith confirms my second hypothesis.

The interpretation of vote outcomes for the two other institutions is less straightforward. Government and parliament both give out vote recommendations for every ballot measure (they are normally the same), calling either for the acceptance or rejection of a specific proposal. If both governing elites and the people accept (or reject) a proposal, ballot vote outcome represent an elite success. If there is disagreement between the two, ballot outcomes can be unsuccessful for elites. More precisely, governing elites are almost always in favour of optional referendums, since such proposals originate from within their ranks and are adopted by them with a majority decision. By contrast, elites usually oppose popular initiatives, because they represent a challenge to their power to set the political agenda. A rejection of an initiative at the polls thus generally represents a success for governing elites. At subnational state levels, with more administrative ballot proposals, vote recommendations sometimes differ from these assumptions, and governing elites can support an initiative once in a while.

Table 4.2: Acceptance and success of ballot measures in the Federal State (1947-2000), Cantons and Cities (1990-2000)

Level	Institution	Comp. Ref.	Opt. Ref.	Initiative	Total
<hr/>					
Federal state					
accepted in % (N)		79.2 (144)	58.8 (85)	5.9 (101)	
Success in % (N)		79.2 (144)	58.8 (85)	96.0 (101)	79.1 (330)
<hr/>					
Cantons (N=20)					
accepted in % (N)		90.6 (816)	53.8 (160)	29.5 (166)	
Success in % (N)		91.4 (455)	62.7 (51)	84.8 (79)	83.2 (1'142)
<hr/>					
Cities (N=111)					
accepted in % (N)		87.1 (2'904)	39.1 (338)	28.2 (188)	
Success in % (N)		87.3 (1'193)	41.2 (177)	78.1 (96)	81.1 (1'466)
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Average success in %		85.9	54.2	86.3	81.1
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⁷ Time spans for the Federal and subnational levels differ in these analyses, as the number of observations for federal ballots decreases considerably. Acceptance levels for federal ballots in the nineties do, however, not change significantly (Comp.Ref. 83.8 % (N=37), Opt.Ref. 66.7% (39), Initiative 7.5% (40)).

⁸ The declining numbers of observations for success measures at subnational state levels are due to the lack of reported vote recommendations in cantonal and city parliaments. Data sources: Federal ballots (Federal Chancellery, www.admin.ch), cantonal ballots (Alexander Trechsel, University of Geneva) and city ballots (Swiss National Science Foundation, research grant no. 11-59366.99).

Success rates for *optional referendums* are significantly lower than those for the two other institutions, with only half of optional referendums a success for governing majorities (see table 4.2). At the federal level and in cantons, on average six out of ten ballot votes turn out to be in line with elite recommendations, this rate even dropping to four out of ten votes in cities. Compared to the two other institutions, optional referendums must thus be considered the institution with the highest outcome uncertainty for governing elites, since only one in two such referendums are a success for them. Unlike our observations for the second hypothesis, ballot vote support rates for governments are highest in cantonal and national politics with six out of ten proposals a success, and decline significantly to four out of ten ballot measures in cities. So although there is the ‚least at stake‘ in communal politics, ballot vote successes in optional referendums are not easier for local governing elites to obtain. This finding actually represents a confirmation for hypothesis number four: Chances for voters to successfully challenge a policy proposal of governing majorities are significantly higher in communes than in cantons or the Confederation, since voters feel freer to support minority viewpoints.

For *popular initiatives*, differences appear between the federal level and the subnational state levels. At the former, initiatives are both very rarely supported by elites and accepted at the polls, which leads to an extremely high elite success rate for initiatives.⁹ By contrast, in cantons and cities, the chances of acceptance for initiatives are significantly higher, with three out of ten winning approval at the polls. Since elites at lower state levels tend to support subnational initiatives more often, their success rate also amounts to a high 80 percent of initiative ballots. This finding again corroborates the fourth hypothesis, with chances for voters to successfully pass an initiative proposal at the polls being significantly higher at subnational state levels than at the federal level.

To sum up, elite control of direct democratic processes varies considerably with respect to institutions at stake. In compulsory referendum and initiative ballot votes, political elites are very successful at the polls, whereas vote outcomes for optional referendums are more unpredictable. When comparing overall success rates for governing elites, only small differences appear between the three state levels. Indeed, four out of five ballot measures turn out to be a success for governing elites, independent of the state level and the number of ballots that were voted on at this level. This result thus contradicts my second hypothesis, according to which ballot vote support rates are generally higher at subnational state levels.

4.3 Probability of ballot vote approval at the polls

By enlarging my analyses, I propose to assess these high success rates for political elites with some further explanations. As indicated above, Swiss political elites have developed consensus-seeking strategies in the pre-parliamentary stage of political processes. While the overall elite success in ballot votes turns out to be high, I would like to address in more detail if this success is in fact due to the elites' strategy of forging large consensus. For this purpose, I will present three logistic regressions for ballot vote outcomes at each state level,

⁹ It must be added that popular initiatives – especially at the federal level – often exert important indirect effects on political processes, for instance by forcing elites to place an issue on their agenda or by reformulating an existing proposal. Institutionally, elites can elaborate a counter-proposal to a popular initiative, which may be put on the ballot in conjunction with or as an alternative measure to the initiative.

in distinguishing the three direct democratic institutions under observation. The dependent variable in all regressions is the probability of a ballot measure approval at the polls, while the independent variable constitutes the degree of elite consensus. The predicted statistical relationships are presented graphically in figures 7, 8 and 9.

It turns out that except for optional referendums, consensus seeking strategies are an efficient way for governing elites to win a ballot vote at the polls, independent of the state level. The higher the consensus in parliament, the more likely a ballot vote is accepted at the polls. For compulsory referendums and initiatives, relationships are straightforward. If 80 percent of the members of the Federal parliament are in favour of a proposal submitted to compulsory referendum, the chances of the ballot outcome being successful for governing elites are equally high (80 percent). Likewise, if 80 percent of parliament opposes an initiative proposal, the likelihood of the latter being rejected at the polls is even higher (95 percent). The same observations can be made for cantonal and city votes. However, initiatives are more likely to win popular approval in cantons and cities, as exemplified by the flatter curves for initiatives at subnational state levels.

Figure 7: Probability of ballot vote approval in Federal polls (1947-2000)

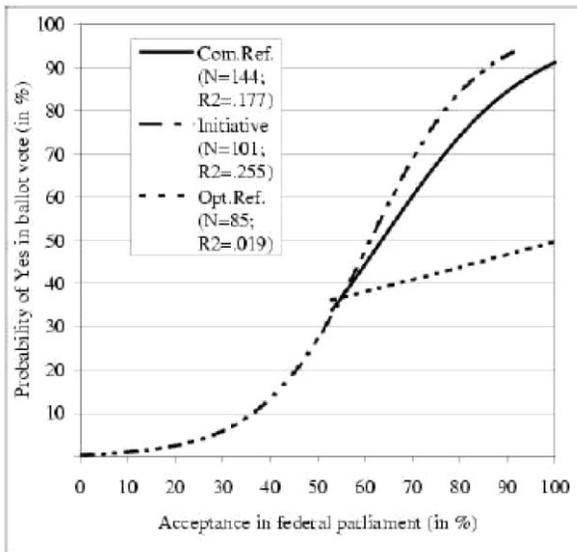


Figure 8: Probability of ballot vote approval in cantonal polls (1990-2000)

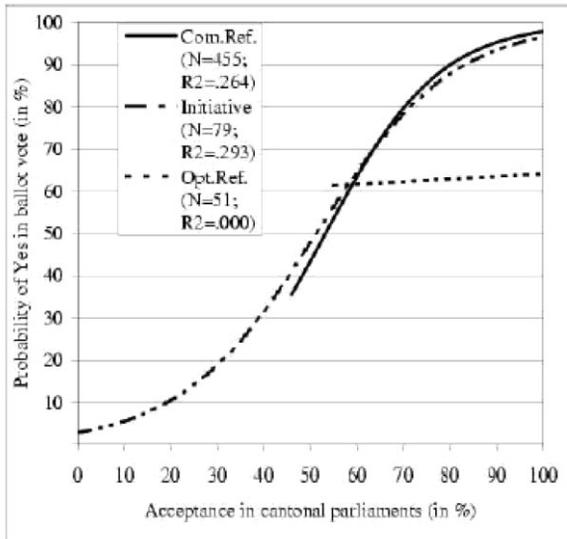
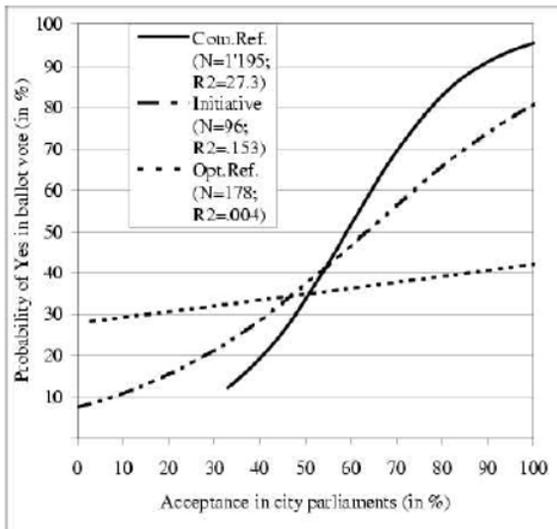


Figure 9: Probability of ballot vote approval in city polls (1990-2000)



For optional referendums, the relationship between elite and popular support is not statistically significant at any state level, implying that consensus of parliament has no impact on outcomes of optional referendum votes. Nonetheless, as has been shown by Trechsel & Sciarini (1998), parliamentary consensus strongly influences the initiation of referendum

petitions at the federal level. On average, in only seven percent of all measures subject to the optional referendum is a petition actually launched.¹⁰ Hence, the probability of a successful launch of an optional referendum is strongly related to elite consensus in parliament. The higher the consensus, the lower the chances of a successful launch of a referendum. Once an optional referendum is successfully placed on the ballot, however, parliamentary consensus has no effect on ballot outcomes.

By comparing direct democratic experiences at three state levels, it is interesting to observe that the impact of elite consensus on ballot outcomes follows the same logic in all contexts. Direct democratic outcomes depend largely on parliamentary consensus. In the case of compulsory referendums and popular initiatives, the higher the elite consensus, the more likely it is that voters will approve a measure at the polls. The likelihood of losing a vote increases significantly if elite consensus falters. For optional referendums, elite consensus has no impact on vote outcomes, but affects the probability that items will be placed on the ballot in the first place.

More specifically, even though legal regulations, the implementation and the use of direct democratic institutions differ significantly between state levels, direct democratic processes and ballot outcomes are surprisingly similar across State levels. For compulsory referendums, in eight out of ten ballot votes at the Federal state, and nine out of ten in cantons and cities, political elites successfully control direct democratic processes. Similar ballot success rates can be observed for popular initiatives, with an increased direct impact of initiatives at subnational units. Finally, the launching of optional referendums can effectively be prevented with high inter-parliamentary consensus, but once items reach the ballot, outcomes are unrelated to elite consensus in all units. In sum, with the strategy of forging large parliamentary compromises, Swiss political elites have successfully reduced ballot uncertainty at all state levels.

5 Conclusions

The occurrence of subnational ballots differs from the use of direct democratic instruments at the national level in systematic ways. Second-order voting theory can at least partly explain some of these differences in voting behaviour. In general, Swiss political elites responded to the threat of direct democracy by developing consensus-seeking strategies in the parliamentary stages and by forging large coalition governments at all three state levels. As a result, four out of five of all ballot measures turn out to be successful for governing majorities, at all State levels. To be sure, occurrences of ballot votes depend on institution at hand, as well as the political tradition of an entity. Voter support of governing elites also changes with respect to direct democratic institution and, more importantly, in some cases between national and subnational state levels. However, empirical evidence from subnational state levels casts doubts on claims that elite control on direct democratic processes

¹⁰ While comparable data is largely unavailable for subnational units, self-collected evidence from three Swiss cities suggests that the same processes are at work there. In the city of Arbon, 65 measures were subject to optional referendum between 1990 and 1997, but in only one case a petition was initiated. Similarly, in the city of Worb, 16 measures were subject to optional referendum between 1990 and 1994, and only one petition was launched. In the city of Schaffhausen, in six out of nine years between 1991 and 1999, 52 measures were subject to optional referendum, and four petitions were launched.

decreases with a higher ballot frequency. Direct democratic processes and ballot outcomes broadly follow the same logic and pattern at all state levels.

The implications with regard to the implementation of direct democratic instruments at subnational state levels are threefold. First, direct democracy adds the electorate as an additional veto-player to decision-making processes. Political decisions are thereby expected to better approximate the median voters' preferences in a given entity. On the subnational state levels, the use of these institutions depends very much on political tradition of an entity. The mechanisms that lead to ballot vote occurrences, however, seem to be pretty much the same among state levels. Thus, ballot occurrences are largely dependent on institutional arrangements and traditions, but also on elite consensus in case of compulsory referendums and popular initiatives. In case of optional referendums, the most unpredictable institution for governing majorities, elite consensus is important for the launching of a referendum petition (occurrence), but has no impact on ballot outcomes.

Second, chances for voters to successfully challenge governmental proposals are significantly higher in cities than at higher state levels. Chances for winning an initiative proposal at the polls are also higher in both cities and the cantons than at the federal level. Ballot vote success rates for compulsory referendums are, likewise, slightly higher on average in cantons and cities than at the federal level. Another striking effect according to second-order voting theory could be observed with respect to turnout rates in ballot votes. Average turnout rates are significantly higher if subnational ballot votes are coordinated in federal voting weekends compared to ballot votes at subnational state levels. Finally, absolute numbers of ballot occurrences do of course not tell us anything about the *political impact of a ballot vote*, that is, consequences for policy-making. Thus, what can be voted on (as well as other institutional arrangements) need to be more properly analysed and be an integral part in all future discussions about direct democratic institutions and experiences.

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Direct Democracy at the local level: a comparison of eight municipalities from four countries around Lake Constance (Austria, Germany, Liechtenstein, Switzerland)

Wilfried Marxer/Zoltán Tibor Pállinger

1 Introduction

Municipalities/local authorities are the foundation stones of the superstructure of the state. Municipalities¹ function, on the one hand, as the lowest level of state administration; and on the other, they are also the vehicles of the idea of communal self-government. Municipalities thus serve to resolve local problems on the one hand, while on the other they mediate between the individual level and the remoter organs of the state. They thus represent the most immediate and direct point of reference in the citizens' relationship with the state. It would seem reasonable to assume, at least as a preliminary working hypothesis, that similar social problem sets (against a relatively homogeneous socio-economic background) will find solutions in similar institutional-political models („bottom-up“ hypothesis). If the hypothesis is correct, we would expect to find a large degree of conformity within the present sample in terms of the forms of local direct democracy.

A systemic approach, in which the local authorities are seen as sub-systems of the national political system, would produce a contrary hypothesis: that the national, or in a federal state the regional political system, exercises a much greater influence on direct democracy than the local problem-set („top-down“ hypothesis). The assumption then would be that the institutional forms of direct democracy within the observed local authorities would vary considerably as a result of the national differences.

We begin by examining to what extent the selected local authorities have similar forms of direct democracy, and to what extent these differ.² Using this evaluation, we then attempt to answer the question raised by the opposing hypotheses as to whether it is primarily local or national/regional factors which determine the forms of the direct-democratic provisions in the eight local authorities selected.

Choosing the area around Lake Constance as a geographical focus allowed us to compare the situation in four separate but neighbouring states, with added sub-state/regional differences.

¹ In German-speaking countries, the lowest tier of government/administration is called the *Gemeinde* – a word with several layers of meaning: commune, community, church congregation, local authority area, municipality. The *Gemeinde* can be very small – a village of 100 souls; or very large – a city of several million. Other countries have often very different structures, and differing distributions of power. The English words *municipality* and *local authority* have been selected as the most appropriate, though they both lack the sense of human community which the word *Gemeinde* conveys.

² Special thank to Manuel Frick who did much of the collecting of data and information.

In addition to selecting the local authorities for our sample there was also the question as to what time period the investigation should cover. Since it was to be expected that in some of the local authorities the use of direct-democratic rights is rather infrequent, it was necessary to take a reasonably long period of time in order to even out random peaks and troughs in individual years. On the other hand, however, there were limits both to the amount of material that could be processed and to the demands that could be placed on the local authorities. For these reasons the years 1995 to 2005 were chosen as the period of investigation.

2 Selection of local authorities

2.1 Selection criteria

The Lake Constance „Euregio“ (cross-border European region) comprises the following: the administrative districts (*Landkreis*) of Oberallgäu, Kempten, Lindau, Ravensburg, Bodenseekreis, Sigmaringen and Konstanz (close to Lake Constance and belonging to the two German states of Bavaria and Baden-Württemberg); the Austrian state of Vorarlberg; the Swiss cantons of Schaffhausen, Thurgau, St. Gallen, Zürich, Appenzell Innerrhoden and Appenzell Ausserrhoden; the Principality of Liechtenstein. The canton of Graubünden was also included in the study, since – like St. Gallen and Vorarlberg – it also borders on Liechtenstein. From these areas only those local authorities were selected which are close to Lake Constance or which lie along the Upper Rhine. Due to its more distant location, the canton of Schaffhausen was not included in the study.

In order to limit the range of variation in the chosen municipalities, the size and structure of the latter were taken into account, in addition to their geographical distribution. They should not exhibit any one-sidedness in terms of their economic or employment structure, so that, for example, Vaduz – as the capital and financial centre of Liechtenstein – had to be ruled out, as did communities around Lake Constance which are predominantly focused around tourism. Since none of those communities in Liechtenstein which met the requirements of the study has a population in excess of around 5,000, it was clear that the population size of the selected communities would necessarily lie within the range 4,000 to 6,000 (or, if clearly necessary, within an extended range of 3-7,000).

2.2 The eight local authorities

We had a very positive response in general from the local authorities. With the sole exception of the two authorities from Appenzell Ausserrhoden (Teufen: not interested in taking part; and Heiden: no information provided), all the local authority representatives – in most cases the secretary of the authority or the mayor – were very happy to cooperate. We decided not to look for alternatives in Appenzell Ausserrhoden, since we already had four Swiss municipalities from four different cantons.

Ultimately, then, the following eight municipalities were included in our study: Heimenkirch (Bavaria/D), Eriskirch (Baden-Württemberg/D), Koblach (Vorarlberg/A), Sennwald (St. Gallen/CH), Sulgen (Thurgau/CH), Zizers (Graubünden/CH), Rüte (Appenzell Innerrhoden/CH), Balzers (Liechtenstein/LI).

Table 1: Structural data on the selected municipalities

	Balzers LI	Zizers CH/GB	Sennwald CH/SG	Rüte CH/AI	Sulgen CH/TG	Koblach AT	Eriskirch GER/BW	Heimenkirch GER/BA
Population	4436	3064	4686	3056	3400	4157	4444	3730
Surface area (km ²)	19.7	11.0	41.5	40.9	9.1	10.2	14.6	21.2

Source: Statistical Services (websites) of the relevant countries, federal states, cantons and local authorities. Information provided by the local authority administrations.

2.3 Geographical location

To qualify for selection the municipalities had to satisfy the requirements relating to size and structure and also be in as close geographical proximity to each other as possible. For the German states this meant a location close to Lake Constance and not far from Lindau. For the Vorarlberg and Swiss contenders, proximity to Lake Constance or the Upper Rhine was desirable. The maximum distance between any two of the chosen municipalities is no greater than 100 kilometres.

Figure 1: Geographical location of the eight chosen municipalities



Source: <http://www.bodenseekonferenz.org>. Marking of the municipalities by the authors.

3 Organisation of the municipalities and participatory rights

As noted above in footnote 1, the word *Gemeinde* can be used for different forms of community (including a church community or congregation, a school community, a local community etc.). The comparative study which follows refers solely to the sense of *Gemeinde* as a political unit – reflected in the English word *municipality*.

There are three different forms in which citizens can participate in decision-making on substantive issues beyond the election of representatives:

- direct citizen participation in local affairs through community/municipal/popular assemblies and the like, at which decisions are taken in the presence of the voters;
- direct-democratic participation through referendum ballots;
- non-binding forms of participation through formal or informal channels – such as community/municipal council meetings which are open to the public, round table discussions and the like.

3.1 Superordinate rules

Municipalities are subject to formal rules of organisation set out in legal provisions administered either by the state (Liechtenstein), the cantons (Switzerland) or the federal states (Germany, Austria). There are differences in the extent and complexity of the rules. In general, the rules specify the municipal organs and their various powers: municipalities are usually allowed to decide for themselves whether to be governed by bye-laws or by a municipal constitution.

It is generally true to say that the cantonal bye-laws give individual Swiss municipalities greater room for manoeuvre than is the case for the municipalities in the other states included in the study. This is true both for the organisational form of the municipalities (the municipal organs of administration) and for the elements of direct democracy (procedures, substantive powers). Nonetheless, despite all the differences in the legislative frameworks, direct-democratic rights at the local level are provided for in the superordinate (state/ canton) legislation for all the eight municipalities in the study. These are by no means limited solely to consultative procedures, but can all – under different names – be classed either as initiative rights, referendum rights (in certain cases), and, in the case of Vorarlberg, also recall rights.

Voting and electoral rights are also set out in cantonal law and in the bye-laws of the German and Austrian federal states. These reveal significant differences in respect of the electoral rights of foreigners; in the two countries which are member states of the EU (Germany and Austria), the tendency is for foreigners to be granted voting rights at the local level. A further difference lies in whether a distinction is made between residents (*Einwohner*) and those who have acquired formal municipal citizenship (*Gemeindebürger*).

Table 2: Voting and electoral rights

	Balzers LI	Zizers CH/GB	Sennwald CH/SG	Rüte CH/AI	Sulgen CH/TG	Koblach AT	Eriskirch GER/BW	Heimenkirch GER/BA
Voting rights	Liechtenstein residents (for citizenship applications only citizens of the municipality)	Residents of Switzerland	Residents of Switzerland	Residents of Switzerland	Residents of Switzerland	Austrian residents and citizens of other EU member states	German residents and citizens of other EU member states	German residents and citizens of other EU member states

Source: Bye-laws and other regulations of the federal states, cantons etc.

3.2 Assembly democracy

The details of the organs of administration, their various powers, and the direct-democratic rights of the citizens are set out in the bye-laws or constitutions of the individual municipalities.

Table 3: Form of municipal organisation and composition of the representative municipal organ

	Balzers LI	Zizers CH/GB	Sennwald CH/SG	Rüte CH/AI	Sulgen CH/TG	Koblach AT	Eriskirch GER/BW	Heimenkirch GER/BA
Legislative	Municipal assembly Gemeindeversammlung Municipal council Gemeinderat	Municipal assembly Gemeindeversammlung	Popular assembly Bürgerversammlung	District council Bezirksgemeinde	Municipal assembly Gemeindevertretung	Local parliament; 24 members Gemeindevertretung	Municipal council Gemeinderat 15 members Popular assembly; no decision-making powers Bürgerversammlung	Municipal council Marktgemeinderat 17 members Popular assembly; no decision-making powers Bürgerversammlung
Executive	Municipal council Gemeinderat - seats 13 - chairperson Principal / provost Vorsteher	Executive committee Gemeindevorstand 7 President Gemeindevorsteher	Municipal council Gemeinderat 5 ,Ammann' – council chief Gemeindevorsteher	District council Bezirksrat 9 District chief Bezirkshauptmann	Municipal council Gemeinderat 7 ,Ammann' – council chief Gemeindevorsteher	Executive committee Gemeindevorstand 7 Mayor Bürgermeister		

Source: Information services (Websites) of the relevant municipalities. Information from the municipal administrations.

Direct democracy in the form of local/municipal assemblies is only provided for in the Swiss and Liechtenstein municipalities. However, no such decision-making assemblies

have taken place in Balzers (LI) since the 1970s. Direct-democratic decisions are now made through the ballot box. In the two German municipalities, assemblies are provided for – but only for information and consultation.

The conditions for an obligatory decision by the municipal assembly vary considerably between the four Swiss municipalities from four different cantons. In Zizers, for example, a mandatory decision is triggered by any new, non-recurrent, expenditure of 100,000 Swiss francs or more, whereas in Sennwald the threshold is 1 million francs.

Table 4: Public assembly powers in the Swiss municipalities

	<i>Zizers</i>	<i>Sennwald</i>	<i>Rüte</i>	<i>Sulgen</i>
<i>Expenditure limit – non-recurrent</i>	100,000 CHF (2006 < 1% of public expenditure)	1,000,000 CHF (2007 < 8% of public expenditure)	> 10% of public expenditure	> 3 % of taxes
<i>Expenditure limit – recurrent</i>	10,000 CHF (2006 < 0.1% of public expenditure)	100,000 CHF (2007 < 0.8% of public expenditure)	> 1 % of public expenditure	> 0.5 % of taxes

Source: data provided by the municipal administration and/or set out in the bye-laws.

There is also considerable variation in the frequency of assembly decisions. Between 1995 and 2005 there were only 11 assembly votes on municipal affairs in each of Sennwald and Rüte, whereas there were 20 in Sulgen and 44 in Zizers.

Table 5: Assemblies and subject-matter of assembly votes in the selected Swiss municipalities between 1995 and 2005

	<i>Zizers</i>	<i>Sennwald</i>	<i>Rüte</i>	<i>Sulgen</i>	<i>Total</i>
<i>Number of assemblies</i>	44	11	11	20	86
<i>Subject-matter</i>	171	72	52	109	359
- Finance	40	22	23	25	110
- Infrastructure	60	2	13	25	100
- Citizenship applications	0	47	0	35	82
- Bye-laws	20	0	3	8	31
- Municipal area	12	0	11	3	26
- Acquisitions/purchases	10	0	2	1	13
- Functional unions	1	1	0	4	6
- Rates/charges/tariffs	0	0	0	4	4
- Other	28	0	0	4	32

Source: data provided by the municipal authorities.

Assembly democracy – often portrayed as the ideal form of democracy – has a downside if voter turnout is considered. Less than 5 percent of the registered voters take part in the municipal assemblies in Zizers on average. Turnout is somewhat higher in other municipalities, but is nowhere greater than about 20 percent.

Table 6: Voter turnout at assemblies in the selected Swiss municipalities 1995 to 2005

	<i>Zizers</i>	<i>Sennwald</i>	<i>Rüte</i>	<i>Sulgen</i>
Turnout (percentage)	< 5 %	not known	c. 20 %	7.9 %

Source: data provided by the municipal authorities (including minutes of meetings etc).

3.3 Initiative, referendum, popular vote

The regulations regarding direct-democratic rights (exercised by the collection of signatures, and ballot votes) in the municipalities covered by the study vary very widely. Rüte and Sulgen do not have the right of initiative and referendum at the local level, since these two municipalities practise assembly democracy.

Zizers and Sennwald, which also have the direct-democratic institution of the municipal assembly, have in addition both initiative and referendum rights.

In *Zizers*, 200 signatures are required for an initiative (currently 6.6 percent of the registered voters) and 150 signatures for a referendum (4.9 percent). In *Zizers* there is also a long list of issues which cannot be decided upon in the municipal assembly (*Bürgerversammlung*), but have to be decided at the ballot box: the passing, amendment to or repeal of constitutional and legislative provisions; approval of new, non-recurrent, expenditure and liabilities of more than 200,000 francs and of new, recurrent, expenditure and liabilities in excess of 50,000 francs; the purchase, sale or mortgaging of municipally owned real estate, as well as the granting and termination of easements and commitments, where such dispensations exceed the financial authority of the municipal assembly; the conferral of water rights, the granting of other special usage rights, and the exercise of reversion in the context of water rights' legislation where the one-off value (or the capitalised value at 5 percent) exceeds 2 million francs; decisions of the municipal assembly against which a referendum has been launched.

In *Sennwald* the quorum for signature collection is set at 10 percent of the registered voters for the initiative and 5 percent for the referendum. As in *Zizers*, there are also certain issues which may not be decided in the municipal assembly: any business falling under Art. 8, where the decision has been taken at the assembly to have a ballot vote; requests for a referendum according to Arts. 24 and 26; new, non-recurrent expenditure which exceeds 1 million francs; initiative proposals, unless they concern the municipal bye-laws.

In theory, *Balzers* has assembly democracy. But no use is made of it. The right of initiative and referendum, on the other hand, is not only provided for in law, but is also made use of in practice. There is a marked difference in the level of the signature quorum between the two Swiss municipalities with initiative and referendum rights and the municipality of Balzers in Liechtenstein. Whereas quorums of between 5 and 10 percent of the registered voters (depending on the particular instrument and municipality) are required in *Zizers* and *Sennwald*, the signature threshold for launching either an initiative or a referendum in *Balzers* is one-sixth (16.7 percent) of the electorate. It should be mentioned that, in general, voting rights apply to all Liechtenstein citizens living in the municipality. This does not, however, apply to referendum votes on citizenship applications. In such cases, voting rights apply only to the citizens of the municipality who are resident in the municipality (not to all Liechtenstein residents).

In *Eriskirch*, direct-democratic rights appear under the label of the *Bürgerbegehren* (literally ‚citizens’ demand‘) and the *Bürgerantrag* (citizens’ submission) provided for in the municipal bye-laws of Baden-Württemberg. The *Bürgerbegehren* aims at proposing changes (initiative) and at reversing a decision by the municipal council (referendum). In the case of a referendum, the signatures have to be handed in within six weeks (before 2005: four weeks) of the publication of the municipal council decision. Both initiative and referendum require the signatures of 10 percent of the citizens of the municipality of Eriskirch. The list of exceptions (non-permissible subject-matter) for initiatives includes: decisions which according to the law are reserved for the mayor; issues to do with the internal organisation of the municipal administration; laws relating to the budget; the annual accounts; development planning rules; public building regulations etc. (more restrictive before 2005). The *Bürgerbegehren* leads to a *Bürgerentscheid* (popular vote, literally ‚citizens’ decision‘), if the municipal council – in the case of an initiative – does not approve the proposal. There is an approval quorum of 25 percent (before 2005: 30 percent). A *Bürgerantrag* (‚citizens’ submission‘) aims at putting an issue on the political agenda of the municipal council. The signature quorum is 3 percent (in a municipality of this size). It has to be dealt with by the council, but it does not necessarily lead to a popular vote. In addition, there is the municipal council’s right (dependent on a two-thirds majority of council members) to put a decision to a public vote in a referendum (authorities’ referendum).³ Baden-Württemberg’s municipal bye-laws further enjoin the municipal authorities to discuss important local matters with the local residents. As a rule, the municipal council is expected to arrange a residents’ meeting at least once a year (plus extra meetings if necessary). These meetings can be restricted to portions of the municipality – parts of towns, smaller districts, and villages, for example.

In *Heimenkirch* the direct democratic rights are based on the bye-laws of the Free State of Bavaria. The *Bürgerbegehren* provides the right to launch a citizens’ initiative or a referendum. It requires the signatures of 10 percent of the registered citizens of Heimenkirch. If the municipal council does not approve the proposal there has to be a popular vote on the initiative (*Bürgerentscheid*). There is no time limit for a referendum against a decision of the council. In municipalities with less than 50,000 inhabitants an initiative is only successful if at least 20 percent of the whole electorate vote ‚yes‘ at the ballot. The outcome of a popular vote is equivalent in effect to a decision of the municipal council: it can only be amended within a year by another referendum. There exists the authorities’ referendum as well, which allows the municipal council to have a popular vote on an issue. Regulations for subject-matters are less restrictive than those in Eriskirch. In addition, the Bavarian bye-laws require the principal mayor to call a citizens’ meeting at least once a year (and more frequently if the municipal council requests it) to discuss municipal affairs. A public assembly can also be called if five percent of the registered citizens request one. Recommendations arising from the citizens’ assembly must be dealt with in the municipal council within three months. It is also possible for one percent of the registered citizens to submit a *Bürgerantrag* – a well-founded request for a specific matter to be dealt with by one of the organs of the municipality.

³ The legal basis is Art. 21 of the Municipal Act (Gemeindeordnung), Art. 41 of the Local Electoral Regulation (Kommunalwahlordnung) and Art. 53 of the Baden-Württemberg Local Electoral Law (Kommunalwahl-Gesetz).

Table 7: Legal provisions for popular referendums

	Balzers LI	Zizers CH/GB	Sennwald CH/SG	Rüte CH/AI	Sulgen CH/TG	Koblach AT	Eriskirch GER/BW	Heimenkirch GER/BA
Initiative	Initiative	Initiative	Initiative	[assemblies]	[assemblies]	Volksbegehren	Bürgerbegehren	Bürgerbegehren
Signature quorum	1/6 of electorate	6.6 %	10 %	-	-	20 %	10 %	10 %
Period of time after last ballot							3 years	1 year for community council
Obligatory referendum	Referendum	Referendum	Referendum	[assemblies]	[assemblies]	-	-	-
Threshold	35 % of budget (c. 7 million CHF)	2 million CHF (c. 15 % of budget)	1 million CHF (c. 3.5 % of budget)	-	-	-	-	-
Facultative referendum	Referendum	Referendum	Referendum	[assemblies]	[assemblies]		Submission by citizens within 6 weeks	Submission by citizens (no time restriction)
Signature quorum	1/6 of electorate	4.9 %	5 %				10 %	10 %
Authorities' referendum						Referendum if called by mayor or municipal council	Referendum if requested by 2/3 of municipal council	Referendum if requested by simple majority of municipal council
Validity quorum	1/6 of electorate	None	None			None	25 % approval quorum	20 % approval quorum
Recall						Referendum vote on recall of mayor after decision by municipal council		

Source: Information services (Websites) of the relevant municipalities. Information from the municipal administrations.

Citizens of *Koblach* also have direct-democratic rights, which are set out in the bye-laws of the state of Vorarlberg⁴. One-fifth of the citizens of the municipality can submit a *Volksbegehren* (an initiative). The initiative must be dealt with by the municipal authorities, but they are not obliged to decide in favour of the initiative proposal or to call a referendum (although the same term is used as in Germany, in fact this is an agenda initiative). A fifth of the citizens can also call for a referendum, known as a *Volksabstimmung*. Referendums can also be called by the mayor or by a decision of the municipal authorities. The mayor can also call a referendum on a proposal which he has previously made to the municipal authorities but which has been rejected by them. On the other hand, the municipal council

⁴ Arts. 20 to 25 of the Vorarlberg municipal law.

can decide by simple majority to organise a recall referendum to try to remove the mayor from his post. There is, finally, the option of a *Volksbefragung* – a general consultation – if such is requested by a fifth of the registered citizens or if the municipal council decides that one should be held. Such consultations can also be arranged for parts of the municipal area.

There are also differences between the eight municipalities in their practical use of the direct-democratic instruments. Zizers has a clear lead with 43 ballot votes at local level, followed by Balzers with 8 referendum votes (plus another 15 votes restricted to registered citizens only). During the investigation period only 4 referendum votes were carried out in Sennwald at the local level.

Table 8: Referendum ballot votes at local level and subject-matter 1995 to 2005

	Balzers LI	Zizers CH/GB	Sennwald CH/SG	Rüte CH/AI	Sulgen CH/TG	Koblach AT	Eriskirch GER/BW	Heimenkirch GER/BA
Citizenship applications	[11] ⁵							
Bye-laws	5 ⁶	31	1					
Infra-structure	2	8	3					
Administrative partnerships *	1	3						
Other		1						
TOTAL	8	43	4	no provision	no provision	0	0	0

* German Zweckverband: a functional union between (usually neighbouring) local authorities for a specific purpose

Source: Information services (Websites) of the relevant municipalities. Information from the municipal administrations.

4 Conclusions: the use of direct-democracy at the local government level

This appraisal of direct-democratic rights and their practical use in the eight municipalities studied reveals wide differences within what is culturally a largely homogeneous region centred on Lake Constance. The national differences (from one country to another) are significantly greater than those between different municipalities in the same state. The facts clearly suggest that the „top-down“ hypothesis offers a better explanation for the form of the direct-democratic instruments than the alternative „bottom-up“ hypothesis. However, the relatively small size of the sample does not allow any definitive conclusions to be drawn. Nonetheless, in terms of a first interim finding the following observations are justified.

It is hardly surprising to discover that the Swiss municipalities show the largest number of direct-democratic decisions at all levels – local, regional and national. The municipality representing Liechtenstein comes second in this respect – but much further behind – while

⁵ Eleven votes on citizenship applications have been held. Only the registered citizens have the right to vote.

⁶ Four further bye-laws dealing with the organisation of the citizens' association (*Bürgergenossenschaft*) were voted on exclusively by the registered citizens.

little or no use was made of direct-democratic decision-making procedures in the Austrian and German municipalities.

Table 9: Assembly democracy and ballots

	Balzers LI	Zizers CH/GB	Sennwald CH/SG	Rüte CH/AI	Sulgen CH/TG	Koblach AT	Eriskirch GER/BW	Heimen- kirch GER/BA
Number of issues voted on in assemblies	not used	153	49	52	105	no provision	no provision	no provision
Number of issues voted on in local referendums	23	43	4	no provision	no provision	0	0	0
National referendums	12	> 100	> 100	> 100	> 100	0	no provision	no provision
Regional/federal state referendums	no federal states	c. 80	c. 40	popular assembly	c. 20	0	0	8
Total direct-democratic votes	35	> 376	>193	>152	>225	0	0	8

Source: Information services (Websites) of the relevant municipalities. Information from the municipal administrations.

However, it must not be forgotten that – depending on the particular point of view chosen – more *direct* democracy does not necessarily mean more democracy as such. The case of Zizers, in particular, shows that an exceptionally high number of direct-democratic decisions was accompanied by a disconcertingly low voter turnout. Between 1995 and 2005, around 200 local and a further 200 cantonal or national referendum votes were held in Zizers. The average turnout for the 153 assembly votes at the local level was under 5 per cent.

Other municipalities attempt to offset the weakness of direct-democratic decision-making procedures or their under-developed use in part by offering alternative forms of participation. In Heimenkirch, for example, the municipal council meetings are open to the public and regular „citizen consultation sessions“ (*Bürgerfragestunden*) are held.⁷ In Eriskirch there are annual residents’ meetings and other information-giving events, in some cases through the course of lengthy planning processes, also take place.⁸ The meetings of the municipal council in Koblach are also open to the public.⁹

This presentation of direct-democratic rights in eight municipalities from four countries and seven sub-national entities invites a number of questions relating to: the historical background to the creation and evolution of the direct-democratic rules in the various municipalities; the relationship between direct-democratic rights at local, regional and national levels; the reasons for the widely divergent frequency of use of the direct-democratic instruments; and, finally, the influence of direct democracy on the level of interest in and satisfaction with politics, on the responsiveness and the efficiency of municipalities – and thus on the quality of democracy on both the input and output sides. This paper did not take

⁷ Information given by Georg Bockhart, head of the finance section of Heimenkirch. Cf. Bye-laws of Bavaria.

⁸ Information given by the mayor Markus Spieth. Cf. Bye-laws of Baden-Württemberg.

⁹ Cf. Bye-laws of Vorarlberg.

these factors into account. An attempt to include them would present some methodological problems – such as how to measure municipal efficiency – and would require specific comparative data which are not currently available in the necessary quantity and quality.

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II. Small Beginnings

Direct democracy in Britain: citizens' empowerment or political cosmetics?

Michèle Breuillard

More than a century after John Stuart Mill, Western Europe has come to terms with the idea that direct democracy does not compete with representative government but rather reinforces and supplements it. In general, the term direct democracy usually refers to citizens making policies and decisions in person, without going through representatives and legislatures. The „participative revolution“ described by sociologists of the early 1980s was a consequence of urban unrests that had spread across poor neighbourhoods in the 1970s. Again in the 1990s, the same demand emerged and local democracy gradually gained legal status. Since then discourses on participatory democracy have taken shape. More specifically, election of representatives, as an epoch-making mode of political organisation, has been called into question and is currently being challenged.

The general hypothesis – or even postulate – is that contemporary political systems are tending towards pluralism. Sub-national spaces, and cities in particular, are favourable ground for the observation of the dynamics at work when the role of elected representatives and representative democracy is being questioned: „Citizens' participation in decision-making is at the heart of the idea of democracy. It is a right, as well as being the force which energizes the whole democratic system. It is even more true when it comes to local democracy, which is one of the cornerstones of democracy as such and which contributes to the stability of European societies. Indeed, in this matter the general public's expectations have evolved and demand is now high for more direct and flexible methods in the organization of their participation“ (Sintomer 2002).

Such a definition of democracy implies that citizens have the right to be informed; democracy and democratic values are promoted through, on the one hand, improved communication between public authorities and citizens as one characteristic of representative democracy and, on the other hand, through advocated direct forms of participation in decision-making processes“ (Council of Europe 2001, Recommendation 19). According to the Parliamentary Assembly of the Council of Europe (1999), a truly living democracy depends on the active contribution of all citizens. Their participation in political life and their cooperation within political institutions are thus a decisive factor for the smooth functioning of democratic institutions. The poor rate of participation in parliamentary elections, as well as in referendums held in member states and, in general, citizen dissatisfaction with the functioning of pluralist democracies call for a debate on the phenomenon. This is hardly surprising, since democracy is a permanent quest demanded by new circumstances and changing attitudes (Council of Europe, Parliamentary Assembly, 1997).

These general standards have been conveniently applied to the local management of local affairs in nearly every European state, with a dramatic reversal of the political trend in the case of Britain. The almighty sovereignty of the Parliament of Westminster was said to

be incompatible with any form of political decision-making process other than its own – such as a decision made by the citizens themselves. So until the 1990's the United Kingdom had had a very brief – and rather negative – experience of participatory democracy at the national level and none at all at the local level. One of the very first countries to firmly establish representative democracy at the national level, it took Britain more than a century to supplement the sovereignty of Westminster and of the elected local councils with provisions for direct democracy. Building on the argument of the 'modernization' and 'democratisation' of politics, the 1997 Labour Party manifesto aimed at inspiring a cultural change in accord with the 'new' vision that had spread right across Europe and had been considered as an indisputably inappropriate and purely American model. A centralised country, Britain turned to devolution and insisted on direct democracy as a means for change in governance. John Stuart Mill's theory has been remembered: that the people's participation in politics does not compete with representative government but rather reinforces and supplements it.

In this paper we will assess local democracy at work in Britain in the light of the Council of Europe recommendations:

Being convinced that direct democracy is in line with, and complement representative democracy, the Parliamentary Assembly (of the Council of Europe) recommends the use of referendums as a means to reinforce the democratic legitimacy of political decisions, enhance the accountability of representative institutions, increase the openness and transparency of decision making and stimulate the direct involvement of the electorate in the political process. The fact that direct and representative democracy complement each other implies that referendums should not be considered as an alternative to parliamentary democracy and should not be misused to undermine the legitimacy and primacy of parliaments as legislative bodies (Council of Europe, 1999).

Our analysis is mainly focussed on the legal conditions and constraints for local referendums to be held, though other tools for consulting and informing local communities are also available. Then we will give a brief account of historical and institutional evolutions in the national context that led to the legalization of direct democracy and especially of referendums at the local and sub-national (regional) levels.

1 The various provisions for Direct or Participative Democracy in the British context:

Direct democracy is the term used to describe particular forms of voting within any democratic system. It commonly refers to three distinct types of voting:

- referendums, which are votes for a single issue or piece of legislation (rather than for a political party or candidate);
- citizens' initiatives, whereby citizens can propose new legislation or constitutional amendments in a petition to force a vote for their proposal. Very few cases are provided for by British regulations, although the 1972 Local Government Reform Act made such petitions possible for parishes only, that is for very small communities;
- recall, under which citizens can force a vote on whether to oust an incumbent elected official by collecting enough signatures in a petition. This is not to be found in Britain.

Local direct democracy aims at allowing citizens and/or inhabitants to take part in, or be associated with, local government decisions. It appears to be a remedy for citizens' scepticism about the elected councils' capacity to manage local affairs in the local communities' interests. Local participative democracy deals with either consultation, local services evaluation, or information. A culture based on democratic values should also favour experiments and mechanisms for monitoring and spreading good practice, for including citizens who disengage from local politics, and for ensuring a fair share of female participation. It should, finally, make better use of the potential of children and young people and highlight the role of the voluntary sector. One can say that the right to be informed comes first before any form of participation. One cannot contribute to local affairs efficiently if one is not sufficiently informed.

The problem is that in Britain local referendums have a rather limited impact on local decision-making, either legally or practically, as we will see later on. By contrast, a wide range of other mechanisms provides for dialogue between inhabitants and public authorities: public debates, public enquiries, citizens' conferences and forums (whatever name they go under), and not forgetting e-democracy. In order to make a clear distinction between consultation processes through citizens' or group meetings and individual voting, we will separate 'institutionalized groups for consultation' from the 'institutionalized' integration of the whole population in the decision-making process. This second definition better fits the common idea of local referendums, with reference to the Executive Committee on Local and Regional Democracy's report on citizens' participation in local politics and policies (2000).

Consultative Democracy

In respect of the general public's right to consultation, Britain can be proud of its long tradition. Through public enquiries on town and country planning, urban regeneration, local service users' meetings etc., local communities are closely associated with local government decision-making, and their intervention in local policies is seen as less political and more effective than it is in France (Guérard 2005). Under the 1992 Conservative government, participation by the local community, as well as the private and voluntary sectors, became a major aspect of the local regeneration partnerships tasked with formulating bids for public funding (Fraser and Lérique 2007).

Typical of the „neo-liberal“ stands on „value-for-money“ and „responsible councils“, the 1992 Citizens' Charter has given users (or „clients“) a voice on local authorities' strategies regarding the quality and delivery of local services. Since 1985, regulations have imposed on local authorities the duty to make information readily available for citizens. For the same purpose, though in a completely different ideological context, the 1999 Greater London Act provided for some aspects of participative democracy for Londoners, in addition to representative democracy with an elected London Assembly and elected mayor: twice a year, London inhabitants are entitled to get information from the mayor and the Assembly through "question-time" sessions (Hiscock-Lageot 2004).

The Blair Government launched Local Strategic Partnerships with Community Forums as independent community groups to be developed as part of the Community Governance programme. Membership of a Forum should include either individual residents or groups:

local community groups, faith groups, local businesses, local service providers such as doctors, schools, police etc. One of the roles of a Community Forum is to establish a link between local councils and other service providers within a community. As an independent community group, they are able to apply for funding and use the money to enhance or create various local projects or initiatives, such as community gardens, park facilities etc. Having a Community Forum in an area gives residents a chance to be involved in the decision-making process from the onset; they are given a voice to suggest where funding could be spent so that it actually addresses their community needs. Community Forums need to have a formal structure as they are allocated a budget that is calculated on a demographic basis. Therefore the larger the population a Forum represents, the greater the amount of money it receives. Interestingly, Forums are made up of local residents who give their time voluntarily because they have an interest in their local community and want to make a difference.

Participatory or decision-making democracy

In Britain, a referendum on questions asked by local governments always implies that a simple majority of votes cast has to be taken into account. This is a consequence of the *ultra vires* principle which denies local authorities a general competence to deal with local affairs but rather delegates to them (or withholds from them) some of the central government's responsibilities. The main reason for a local authority to hold a referendum is to decide on a scheme for local government re-organisation: meaning the creation, amalgamation or abolition of a local authority, or a change in the structure and responsibilities of local government within the political and administrative system as a whole.

So far, referendums have only taken place about the abolition of the two-tier system of local councils (to be replaced by unitary councils), the direct election of mayors, and, more recently, the creation of a directly elected regional council in the North-East of England. The 2007 Local Government Involvement in Health Act announced new measures on local petition powers: from April 2009, local authorities will have a duty to involve local people in local services and policies. As J. Healy put it when Local Government Minister, „the act serves as a key step towards the devolutionary measures set out in the Prime Minister's Green Paper on *Governance of Great Britain*, which include the establishment of citizens' juries and power of redress to scrutinize and improve the delivery of local services. It will help bring accountability and decision-making more within people's reach.“

2 What is the rationale for referendums? A not so ‚quiet revolution‘.

Referendums appear to be worthwhile primarily for major institutional reforms.

Local referendums are understood in broad terms, since no regulation of constitutional quality is provided for any way of consulting citizens either local or national terms. Indeed each consultation, whether compulsory or optional, requires specific legislation. An Act of Parliament has to be passed to define the legal conditions in relation to the specific circumstances and political needs. Until the 1990s referendums were rather exceptional. In the 1970s they were dedicated to national issues: the UK's European Union membership and Northern Ireland (Annex 1: list of national and regional referendums). Common wisdom

believed that referendums were ‚just not British‘, as Clement Attlee put it in 1945 when he explained that (he) ‚could not consent to the introduction into (our) national life of a device so alien to all (our) traditions as the referendum“. The Labour leader was answering to Winston Churchill's suggestion that a referendum be held on whether to extend the wartime coalition until after Japan's surrender.

By contrast, under the Blair governments, local referendums have become the usual way of tackling the big issue of the day, the ‚modernisation and democratisation of the country‘ (Annex 2: the list of local referendums on elected mayors).

Referendums have been held for major regional and local government reforms: devolution for Scotland, Wales (1997-98) and Northern Ireland, the creation of the Greater London Authority (GLA) for the capital-city region with a directly elected London mayor and Greater London Assembly (1999); then 35 local referendums in England on elected mayors; and finally a regional referendum in North-East England in 2004. After the GLA, the North-East region was expected to be the next step towards regionalisation across England. But the ‚No‘ majority forced the government to abandon the process. The reform of regionalisation, which proposed the creation of unitary authorities as a single tier of local government, has been put on hold for obvious political reason. The citizens' refusal in the North East, a traditionally Labour stronghold, was not to be overcome,

Beyond proposals for local government reorganisation, new local government ‚constitutions‘ have been implemented by the Local Government Act 2000. Part II covers four broad institutional models: a council leader and cabinet; a mayor and cabinet; a mayor and council manager; and a council leader/chairman, (in fact the status quo), for smaller communities only. From June 2001, the Act requires all councils to consult their communities before selecting a new political management structure: a referendum is to be held about electing mayors. A council can opt for an elected mayor if the move is backed by a local referendum. The legislative change allows electors to petition for a referendum on a directly elected mayor. A mayoral referendum in England can only be triggered either by a majority vote of the councillors or by a petition signed by 5 percent of the constituents or registered electorate. In Wales, the threshold is 10 percent.

Since powerful local government voices, anxious about possible threats to their own influence, have opposed elected mayors, very few councils have pushed for them. Where referendums have been held, local politicians have often led a campaign against them. So it is not surprising that only 13 mayors have been elected, including the Greater London mayor.¹

As the process developed, Pratchett (2002) detected a ‚widespread reticence or confusion in the consultation process“ because, he explained, the Government offered a somewhat ambiguous line. Indeed the Government did not contradict Pratchett's criticisms: ‚although the Secretary of State has the power to direct a referendum on a different form of constitution including that of a mayor, the Government takes the view that the best way forward is by agreement between those involved, such that the authority itself resolves to

¹ By early 2009, mayors are directly elected in Bedford, Doncaster, Hackney, Hartlepool, Lewisham, Mansfield, Middlesbrough, Newham, North Tyneside, Stoke-on-Trent, Torbay, Watford and Greater London. Ex-mayors are Linda Arkley, North Tyneside (2003-2005); Chris Morgan, North Tyneside (May 2002-April 2003); Mike Wolfe, Stoke-on-Trent (October 2002-May 2005); Ken Livingstone, London mayor (2000-2008). Sources : BBC News (2 July 2008)

hold such a referendum where that is appropriate“ (Office of the Deputy-Prime Minister, ODPM, 2002: para. 38).

As a major innovation in 2007, in addition to the right of petition and the enlargement of the range of topics that can be submitted to citizens' consultation, decision-making referendums will be finally allowed for all three tiers of local government. It is a cautious change, however, with strict constraints imposed by law, because local politicians needed reassurances against their fear that if referendums are held too frequently, oppositional forces could be released which would challenge the power base of local authorities.

3 The politics of local referendums

That there has been an increase in the number of local referendums in the United Kingdom is beyond question, but the development of the process is still rather slow. Referendums have not really been incorporated into the local political systems since the opening up of those systems, bringing with it a shift in the status of elected politicians. Most of the time, a referendum is not considered as a complement to representative government but rather as an alternative. Consequently the input is clearly controlled by the local authorities, and especially by mayors, who seek to enhance their legitimacy through organizing such public votes. However, notwithstanding the reluctance and resistance of local councillors, it is relevant to state that the tendency is clearly towards more direct democracy. Local politics is becoming more complex (Zolo) as a result of these new processes which allow new social actors to emerge and which change the nature of local authorities. Indeed, the fact that some citizens become more active and take part in the governance of their community (Papadopoulos) extends the duration of the public policies beyond the period of the local authorities' mandate. The decisions are harder to take, but the local level is becoming a 'political' and not merely a managing or enabling authority. Should the North-East regional referendum be viewed as a governmental „debacle“?

Earlier governments have lost referendums before, as John Prescott, the then Deputy Prime Minister, reminded the House of Commons on 8 November 2004. But whilst their victories had sometimes been very close,² the scale of the defeat in the North East was unprecedented. The government had lost hands down and had to face the lowest voter turn-out (47.8 per cent) of any referendum on top of a clear 'No' vote majority (79.0 per cent). Unlike in other countries, referendums in the UK are rather seldom and are usually organised for *both* legal *and* political reasons particularly when an amendment is proposed to the constitutional settlement *and* when the ruling party is not entirely certain of its political support within Parliament. Through referendums, major policy changes can be depoliticised to a limited degree, and the potential damage of defeat offset (Tickell, John and Musson 2005).

There are good general reasons for expecting governments to win referendums.

First, while in some countries the constitution prescribes referendums in specific circumstances, the very decision to hold a vote is in the British Government's hands. Second, research evidence from numerous referendums in different countries suggests that whilst the referendum is used to defend and legitimate their plans, governments tend to win them because they are able to tilt the broader public agenda in their favour, and also mobilise

² See annex 2.

their supporters. Third, governments are able to choose the timing of the referendum to suit their objective. Indeed, as Annex 1 shows, the record of British governments is good. Victories have been won in regions including Scotland and Wales in 1997 and London and Northern Ireland in 1998. On the other hand, on a more local scale, the Office of the Deputy Prime Minister backed proposals to introduce elected mayors in England and Wales which were supported in only 11 out of 31 local referendums.

The defeat of the Government's proposals on inaugurating an elected assembly in North-East England was not only a personal blow to the Deputy Prime Minister, but has apparently derailed the plans to introduce an elective dimension to regional government in England, a proposal that had been sustained by a series of institutional reforms for nearly a decade.

4 Conclusion: more cosmetics than reforms? More questions than answers?

As a reminder of the state of developments, the following table points to the various existing mechanisms.

<i>Provisions for local direct democracy in the United Kingdom</i>	
Constitutional requirements?	No
Dedicated acts and statutes?	Yes (very few)
Groups specially designed?	No
Local authorities obliged to organize referendums by constitution?	No
Institutionalized groups for consultation only?	Local Strategic Partnerships (England and Wales), Citizens' Forums (Scotland)
Institutionalized integration of the whole population in the decision-making process?	-Public inquiries -Referendums -Community Councils (Scotland)
Existing compelling mechanisms?	No

Source: Anders Knape 2005.

Local democracy can be said to be the poor relative of decentralisation reforms. Compared with the traditional pair made up of central and local government that are usually presented as the two pillars of civil society, civil society in the UK has long been under-represented. Recently, the 'participative revolution' has made an impact in the form of numerous regulations and new – or 'renewed' – practice. It has also found its way into abundant literature which establishes that by means of deliberative arenas the state's dominant rules compel participants to perform as 'good citizens'. It has also been established that participative politics are more than a zero sum game that sanctions the position of actors who are already dominant. Participation politics is also accompanied by learning processes; for example, learning new modes of action for both institutional actors and actors from civil society. Between the ideals and the tests of reality, participative politics currently faces a number of challenges and vital issues. It remains to be seen who – the electorate or the elected council or even central government – actually has the power to solve conflicts of interest and make the final decision. Similarly, the issue of whether direct or participative democracy contradicts representative democracy must be assessed, as also the issue of legitimacy.

Many questions remain to be asked about how referendums relate to local democracy and how useful these tools are for the promotion of local democracy.

The first set of questions asks: What type of referendum for which local democracy? How efficient and effective are they? Must a local referendum be binding? Or is local democracy better implemented when the local people are involved in the decision-making process through a referendum in association with the working of representative democracy? Does local democracy aim at substituting the electorate for local councillors, or rather at better informing the electorate in making it fully involved in the decision-making process, as soon as policies start to be planned?

The second range of issues to be raised is about the real impacts of decision-making referendums: Are referendums really useful? Are there criteria for a ‚perfect‘ local democracy? Local participative democracy must be enlightened and sincere and it should contribute to, not compete with, the general public’s interests and representative democracy. Maybe the key issue lies in the fact that representative and participative democracies are independent from each other. Why are deliberative councils not seen as being best placed to protect initiatives? Why should the popular initiative be imposed?

There is a tendency in the literature not to clearly distinguish local autonomy and local democracy. As a consequence, there is an assumed bilateral relationship between them in which changes in the one are always deemed to affect the other – particularly in policy formulations. Local autonomy means *freedom from* central interference; *freedom to* effect particular outcomes; and the *reflection of local identity*. Each of these conceptualisations raises different challenges for local democracy and its relationship to broader forms of democratic practice. Although localities are being afforded some autonomy, most initiatives are not supporting the enhancement of local democracy (Pratchett 2004).

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Annex 1:
List of referendums on devolution and regionalisation in the United Kingdom

Year	Territory	Question	Result Data	Turnout
1973	Northern Ireland	1. Do you want Northern Ireland to remain part of the UK? Or 2. Do you want Northern Ireland to be joined with the Republic of Ireland, outside of the UK?	Option 1 accepted Government win Option 1: 98.9% Option 2 : 1.1%	58.1%
1979	Scotland	,Do you want the provisions of the Scotland Act 1978 to be put into effect?*	No Government loss No : 51.5%: Yes: 38.5%	63.8%
1979	Wales	,Do you want the provisions of the Wales Act 1978 to be put into effect?'	No Government loss Yes: 29.3% No: 70.7%	58.3%
1997	Scotland	1, I agree that there should be a Scottish Parliament; or 2. I do not agree that there should be a Scottish Parliament'	Yes Government win Yes: 74.3%	60.4%
		2. ,I agree that a Scottish Parliament should have tax-varying powers; or 2. I do not agree that a Scottish Parliament should have tax-varying powers'	Yes Government win Yes : 63.5% No : 25.7%	60.4%
1997	Wales	1. ,I agree that there should be a Welsh Assembly'; or 2. ,I do not agree that there should be a Welsh Assembly'	Option 1 accepted Government win Option 1: 50.3% Option 2: 49.7%	50.1%
1998	London	,Are you in favour of the Government's proposals for a Greater London Authority, made up of an elected mayor and a separately elected assembly?	Yes Government win Yes: 72.0% No: 28.0%	34.1%
1998	Northern Ireland	,Do you support the agreement reached at the multi-party talks on Northern Ireland and set out in Command Paper 3883?'	Yes Government win Yes: 71.1% No: 28.9%	81.1%
2004	North East England	,Should there be an elected assembly for the North East region?'	No Government loss Yes: 22.0% No: 79.0%	47.8%

*At least 40 % of the electorate was required to vote ,yes' for the Scotland Act 1978 to be put into effect.

Source: Tickell, John, Musson (2005).

Annex 2: Referendums on the option to elect mayors in Britain (2001-2007)

Council	Date	Result	Yes	No	Turnout
Berwick-upon-Tweed	7 June 2001	No	3,617 (26%)	10,212 (74%)	64%
Cheltenham	28 June 2001	No	8,083 (33%)	16,602 (67%)	32%
Gloucester	28 June 2001	No	7,731 (32%)	16,317 (68%)	31%
Watford	12 July 2001	Yes	7,636 (52%)	7,140 (48%)	25%
Doncaster	20 Sept 2001	Yes	35,453 (65%)	19,398 (35%)	25%
Kirklees	4 Oct 2001	No	10,169 (27%)	27,977 (73%)	13%
Sunderland	11 Oct 2001	No	9,375 (43%)	12,209 (57%)	10%
Brighton & Hove	18 Oct 2001	No	22,724 (38%)	37,214 (62%)	32%
Hartlepool	18 Oct 2001	Yes	10,667 (51%)	10,294 (49%)	34%
Lewisham	18 Oct 2001	Yes	16,822 (51%)	15,914 (49%)	18%
Middlesbrough	18 Oct 2001	Yes	29,067 (84%)	5,422 (16%)	34%
North Tyneside	18 Oct 2001	Yes	30,262 (58%)	22,296 (42%)	36%
Sedgefield	18 Oct 2001	No	10,628 (47%)	11,869 (53%)	33%
Redditch	8 Nov 2001	No	7,250 (44%)	9,198 (56%)	28%
Durham (City)	20 Nov 2001	No	8,327 (41%)	11,974 (59%)	29%
Harrow	6 Dec 2001	No	17,502 (43%)	23,554 (57%)	26%
Plymouth	24 Jan 2002	No	29,559 (41%)	42,811 (59%)	40%
Harlow	24 Jan 2002	No	5,296 (25%)	15,490 (75%)	35%
Newham	31 Jan 2002	Yes	27,263 (68%)	12,687 (32%)	26%
Southwark	31 Jan 2002	No	6,054 (31%)	13,217 (69%)	11%
West Devon	31 Jan 2002	No	3,555 (23%)	12,190 (77%)	42%
Shepway	31 Jan 2002	No	11,357 (44%)	14,438 (56%)	36%
Bedford	21 Feb 2002	Yes	11,316 (67%)	5,537 (33%)	16%
Hackney	2 May 2002	Yes	24,697 (59%)	10,547 (41%)	32%
Mansfield	2 May 2002	Yes	8,973 (55%)	7,350 (45%)	21%
Newcastle-under-Lyme	2 May 2002	No	12,912 (44%)	16,468 (56%)	31.5%
Oxford	2 May 2002	No	14,692 (44%)	18,686 (56%)	34%
Stoke on Trent	2 May 2002	Yes	28,601 (58%)	20,578 (42%)	27%
Corby	1 Oct 2002	No	5351 (46%)	6239 (54%)	31%
Ealing	12 Dec 2002	No	9,454 (55%)	11,655 (65%)	10%
Ceredigion	20 May 2004	No	5,308 (27%)	14,013 (73%)	36%
Isle of Wight	5 May 2005	No	28,786 (43.7%)	37,097 (56.3%)	60.4%
Fenland	14 July 2005	No	5,509 (24.2%)	17,296 (75.8%)	33.6%
Torbay	14 July 2005	Yes	18,074 (55.2%)	14,682 (44.8%)	32.1%
Crewe & Nantwich	4 May 2006	No	11,808 (38.2%)	18,768 (60.8%)	35.3%
Darlington	27 Sept 2007	No	7,981 (41.6%)	11,226 (58 %)	24.65 %

Source: Devweb – *the internet's only guide to UK Devolution* (<http://homepage.ntlworld.com/jt.williams/dev/index.htm>)

Towards a law on local direct democracy in Bulgaria

Iva Taralezhkova

Bulgaria – Historical Context

Bulgaria is located in South-Eastern Europe and occupies the North-Eastern part of the Balkan Peninsula. A country with a history stretching back thirteen centuries, rich in tradition and culture, that has traversed a long path through grandeur and decline, through wars and strife and the progress of society and science, to emerge as a European country with a democratic political system.

The Bulgarian kingdom was established in 681, by Asparuh, the first Bulgarian ruler, who entered a union with the native Slavs and concluded his first peace treaty with Byzantium. This was the official recognition of a new political entity – Bulgaria. Periods followed of exhausting wars, as well as of long peaceful years of rapid cultural and social growth.

Since the end of the ninth century Bulgarians have their own alphabet – the first alphabet of a language different from the three officially approved by the Church. The modern Cyrillic that is also used in Russia, Mongolia, and some other countries, is a descendant of the Pro-Bulgarian alphabet created by the brothers Cyril and Methodius. Today, Bulgaria is proud to „import“ the Cyrillic alphabet into the European Union.

What is significant in relation to the development of democracy in the country is that after the Second World War, from 1944 to 1989, Bulgaria was ruled by the Bulgarian Communist Party. Consequently there was a centralized government and a political system dominated by the Party apparatus. Moreover, democratic opposition was crushed, information and speech were censored, and agriculture and industry were nationalized. There were no civil rights and no civil society.

1989 marked the introduction of the democratic changes in Bulgaria. In 1991, following a period of social unrest and the adoption of a new Constitution, the first fully democratic parliamentary elections were held, won by the Union of Democratic Forces. Thus, Bulgaria chose the path towards Euro-Atlantic integration, democratic development and a market economy.

As a result of numerous efforts, negotiations, and transformations, Bulgaria has been a member of the European Union since January 1, 2007.

Procedures of Direct Democracy in Bulgaria

According to the new Bulgarian Constitution, approved by the Grand National Assembly in July 1991, Bulgaria is a Parliamentary Republic, which means that political decisions are made by parliament. Parliament exercises the legislative power. It consists of 240 members who are elected for a 4-year mandate through a system of proportional representation in 31

electoral regions¹. The Council of Ministers is the main organ of executive power, headed by the Prime Minister. The head of state is the President, who embodies the unity of the nation and represents the Republic of Bulgaria in its international relations.

The governmental system of Bulgaria consists of two major groups of institutions: institutions of *central government* (the Council of Ministers) and institutions of *local government*.

Local government is legally independent of central government in the sense that the central government is not authorized to issue specific orders to local authorities. However, fiscal decentralization is not yet accomplished which still makes the municipalities in practice dependent on the state budget.

Under the Constitution, the territory of Bulgaria is divided into 28 regions (each headed by a regional governor appointed by the central government) and 263 municipalities (consisting of municipal councils and municipal mayors). The municipal council is the body of local self-governance with jurisdiction over all settlements within the municipality. Executive power in the municipality is entrusted to the mayor. Both the mayor and the members of the city council are elected directly every 4 years.

According to Article 1, (2) of the current Constitution, „the entire power of Bulgaria shall derive from the people. The people shall exercise this power directly and through the bodies established by this Constitution“. This wording is a clear expression of the principle of popular sovereignty, which means that the people are the source and subject of power. There are two main ways in which the principle of popular sovereignty is realised. The first consists in the formation, through general elections, of the National Assembly and in the election of Municipal Councillors at the regional level. The second is the plebiscite on various issues of national or local significance.²

The Constitution also mentions national and local referendums, but the law which directly relates to the procedures for referendums and citizen initiatives in Bulgaria is the so-called *Referral to the People Act*³. It was passed in November 1996, seven years after the beginning of the democratic changes. However, what is proclaimed as a constitutional principle is considerably limited by the current Act. The Act details the direct participation of citizens in resolving matters of general state or local importance in four ways, i.e. through a national or local referendum, a public meeting of the population, or a petition. In February 2007, a new paragraph was added to the Act that obliges the municipalities to organize public meetings with the citizens in order to determine the conditions for the use of the common land. The new paragraph did not change the overall essence of the Act.

A *national referendum* is limited in scope. Citizens are not able to decide, through referendum, on a range of issues such as: constitutional amendments; matters falling within the competence of the Grand National Assembly; matters relating to the national budget and taxation; and in particular matters covered by the blank wording „and where the law has set a special procedure for resolving other matters“. All these issues fall outside the scope of the national referendum, the law-makers having considerably divested national referendums of their significance as an active vehicle for the effective consideration of important prob-

¹ For more information on Bulgarian Parliament visit: www.parliament.bg/?lng=en

² For a general overview see also Daniel Smilov, Bulgaria, in: Andreas Auer/Michael Buetzer, eds. (2001): *Direct Democracy. The Eastern and Central European Experience*, Aldershot, pp. 13-28.

³ Promulgated, State Gazette No. 100/22.11.1996, amended, SG No. 69/3.08.1999, effective 3.08.1999, amended and supplemented, SG No. 24/21.03.2006 and No. 13/ 09.02.2007

lems affecting large sectors of society. The number of actors who are permitted to propose a national referendum has been considerably restricted; the right of initiative lies with not less than one quarter of the MPs; the Council of Ministers; and the President of the Republic. There is, therefore, no possibility for a citizens' initiative, i.e. for Bulgarian citizens to initiate a national referendum. There is no legal provision for regular annual national referendums on matters of general state importance. A provision such as this would widen the regular participation of citizens in decision-making at the national level. Conversely, the regular invitation to citizens to take part in national referendums would deepen their interest in, as well as their sense of responsibility towards, state governance.

A *local referendum* is only held on matters of local importance which fall within the competence of the local self-governing authorities and whose referral to a referendum is explicitly provided for in the law. The law also defines those issues that may not be the subject of local referendums, namely: matters relating to the municipal budget and taxation within the ambit of the Local Taxes and Fees Act, or where „the law has established a special procedure for certain local matters“. Given the severely restricted subject scope of local referendums, the rare application of this instrument of direct democracy and the relative lack of interest of the people in using it is perhaps understandable.

The validity of both the local and the national referendum votes, until 2009, depended on a turnout quorum of 50 percent + 1 of the registered voters. In contrast, neither the parliamentary elections nor the local ones require a minimum turnout. The average turnout in the last three elections was 46.87 percent. Analyzing the quorum requirement and the turnout activity, we may conclude that the application of this referendum legislation was absolutely pointless. It is hard to expect much a higher turnout at a referendum (which is, in most cases, quite specific in topic and in the circle of people interested) than in national or local elections that generally concern all the citizens.

The central electoral committee and the municipal electoral committees are responsible for the organization and the conduct of the referendums, as well as for calculating the results. The procedures are as complicated and expensive as are the procedures for the elections. No deadlines are laid down for the execution of the referendum decisions.

Regulating Policies

If we trace the roots of social development in Bulgaria, it is quite clear that there is no lack of traditions of direct democracy in our country. The first law on direct citizen participation was adopted as early as the turn of the last century. This was the Appeals to the People on Municipal Affairs Act passed in 1909. The act was in force for 25 years. It enjoyed great popularity across the country and taught Bulgarians to participate directly in municipal government. Any citizen of a municipality could initiate an appeal!

The second Bulgarian law on appeals to the people was adopted during the government of Alexander Stamboliyski, in October 1922. It remained in force for only a short period of time, until March 1924, but was used for the conduct of the first national referendum in Bulgaria on 19 November 1922. The subject of that referendum was the guilt of ministers from the three previous governments in the wars declared and waged by Bulgaria, which led to two national catastrophes, in 1913 and 1918.

The third law on appeals to the people was adopted by the 26th National Assembly on 26 July 1946, after the Bulgarian Communist Party came into power. This was the Law on Appeals to the People for Eliminating the Monarchy and Declaring a People's Republic and for Convening a Constitutional National Assembly. This led to the second national referendum, which was held on 8 September 1946 with a turnout of almost 100 per cent. As a result of the referendum, Bulgaria, until then a monarchy, was declared a people's republic, with 92.72 percent of the votes „for“ and 4.37 percent of the votes „against“. However, the legitimacy of this referendum is still a subject of debate. The third national referendum was held 25 years later, on 16 May 1971, on the adoption of the Second Republican Constitution of Bulgaria, which was effective between 1971 and 1991. The Constitution was approved, with almost 98 percent of the votes in favour. These extremely high turnouts are explained by the fact that the people were forced to cast their votes under the threat of punishment.

Based on the 1971 Constitution, a fourth law on appeals to the people was adopted in 1983, which remained in effect until 1996, but not a single national referendum was held under it!

Since 1996, as mentioned above, the Referral to the People Act has been in force, but for a variety of reasons it does not function. First of all, no national referendum has been organized and held under it for the past ten years. As for the local referendums, they deal only with changes to the administrative division of certain settlements and municipalities rather than with issues of governance. There is also inadequate experience of holding general assemblies/public meetings. Whereas it could perhaps be argued that the failure to implement the law may be due to the low level of political activity on the part of the citizens, in most cases the reason lies in the weaknesses of the rules and in the onerous legal framework for implementing the various forms of direct democracy, especially at the national level.

Practice

In 2003, in order to verify in practice the soundness of the reasoning behind the requirements set by the existing law, Balkan Assist initiated, in cooperation with the municipal authorities, local referendums in two Bulgarian municipalities very different in terms of social, economic and demographic characteristics: *Elena*, a relatively small municipality (about 11,000 inhabitants), with a high unemployment rate (about 30 percent) and an underdeveloped economy, and *Sevlievo*, a typically-sized Bulgarian municipality (about 43,000 inhabitants), with a well-developed economy and a low unemployment rate (under 7 percent). Since we wanted to pose, for the referendum decisions, a question that referred to government, not to administrative division, the biggest challenge was to formulate the questions in compliance with the legal requirements. It emerged that the law does not allow the issues which are really important for both the local government authorities and the people of the two municipalities to be presented for decision in a local referendum. However, a compromise solution was found and the question presented in Elena referred to the establishment of a children's library in a municipal building, while the question in Sevlievo referred to turning one of the city centre streets into a pedestrian precinct. The referendum in Elena was initiated by a petition from the citizens. In three weeks, the citizens' initiative

group managed to collect 480 signatures in support of the local referendum – a considerable achievement in the opinion of our Swiss partners, who have extensive experience in this field.

In both referendums, the turnout rate was about 7 percent, the same turnout as in the first referendums in the Swiss Cantons of Lucerne and Zug held in 1905. Analysis showed that the majority of votes came from the most active (in the economic and demographic terms of the word) citizens of both municipalities – those who have more civil experience. It seemed that the other citizens would need some preparation and experience of referendums before they would take part. Such experience will be hard to gain in Bulgaria if referendum law continues to be poorly designed.

In 2007, two other local referendums – in the Kozloduy and Kresna municipalities – were held on questions of governance. Citizens in *Kozloduy* had to vote „for“ or „against“ the construction of a storage depot for low- and medium-level radioactive waste. The initiative committee was of the opinion that after the shutdown of units 3 and 4 of the Kozloduy Nuclear Power Plant, the population of the municipality faced a new economic reality, and the construction of a national radioactive waste storage facility within the Kozloduy municipal area would definitely restrict future options. In addition, the area produces high-quality cereal crops which had secured a place not only in the regional market, but also nationwide – (markets which might be lost if the waste facility were built). The referendum was held in February, but it was declared invalid, because only 5,146 people voted – slightly more than 28 percent of all the eligible voters.

The second local referendum in 2007 was carried out in the *Kresna* municipality, where the citizens had to answer the question: „Do you agree that the use of the drinking water sources for producing electric power should be halted?“ 2256 votes were cast (representing 44 percent of the electorate), 2155 of which (95.5 percent) supported the proposal. Only 101 votes were in favour of continuing to use the drinking water mains to produce electric power locally.

According to the existing legislation, the voter turnout in the two municipalities was not high enough for the referendums to be recognized as valid. However, both these examples show a very high level of political interest among the citizens and reveal a trend towards increasing the level of citizens' participation in the decision-making processes, especially on issues of local importance.

In early 2008, two more local referendums were held, the first being in the municipality of *Burgas*, one of the large Bulgarian municipalities on the Black sea. The question was: ‚Yes‘ or ‚No‘ to the construction of the Burgas – Alexandrupulos Oil Pipeline.⁴ The ‚No‘ argument was based on the potential threat of pollution of the Black Sea coast, endangering not only the people living there, but also the development of tourism – a major source of income in the region. The turnout was 27.9 percent (51,225 votes). Only 3.25 percent (1654 votes) supported the construction of the pipeline, with an overwhelming majority of the Burgas voters (49,552 = 96.75%) saying ‚No‘. Nonetheless, according to the current legislation, the will of the citizens is not sufficiently clear and the referendum is not ‚legitimate‘.

At the same time, the citizens of *Novi Khan*, a small village close to the capital, held the first „successful“ referendum in Bulgaria on an environmental issue, as was reported in the media. It was initiated by the collection of signatures by the citizens. The question was:

⁴ For this project an international contract was ratified by the Bulgarian parliament in 2007.

„Shall the radioactive waste depository near Novi Khan be immediately closed and liquidated?“ Approximately 65 percent of the local citizens participated. However, the people are still not convinced that the state, which owns the radioactive waste depository, will take the necessary steps. Actually, two years later, no steps were taken towards implementing the decision of the referendum. The official position is silence, but if one asks, the only answer would be that this is a national issue and it can not be solved by a local referendum.

Evaluation

The activities and projects of the Balkan Assist Association in the area of citizen participation and local self-government all indicate that Bulgarians do not suffer from a deficiency of activity and willingness to take part in deciding common issues and problems, particularly at the local level. However, our legislation hinders rather than facilitates the application of the tools of direct democracy.

First of all, it provided no possibility for the citizens to initiate a national referendum. Second, the high thresholds for initiating local referendums and the turnout quorum stultify initiatives. At the local level, there was the theoretical possibility for citizens to initiate a referendum. To do so, however, it was necessary to have a petition signed by at least one-quarter of the voters, i.e. for a municipality with around 20,000 *voters* (not 20,000 citizens – the size of most municipalities in Bulgaria), it is necessary to collect a minimum of 5,000 signatures. Moreover, this one-quarter of the voters does not serve as a guarantee that the municipal council will approve the proposal; this requires the signatures of more than half of the voters; only then will the municipal council not be able to reject the outcome of a local referendum.

The powerlessness of citizens to voice their will on significant issues is yet another serious reason for the almost complete lack of attractiveness of referendums. It is clear that some of the issues that are most significant for the citizens, dealing not only with their concerns, but also with their money, cannot be decided by referendum. On the other hand, legalistic clauses like: „issues for which there is a specific procedure provided by other laws“ are a real trap for direct democracy. Expertise in and interpretation of all those laws present a challenge for lawyers, let alone the citizens. In addition to that, the onerous and expensive procedures can discourage even the most open municipal authorities from encouraging direct citizen participation.

Developments

Direct democracy is an essential element of the activities of the Balkan Assist Association that distinguishes the Association from all the other organizations in Bulgaria. The goal of Balkan Assist is to adapt to the experience of other countries in direct democracy (to Bulgarian conditions) and to improve Bulgarian legislation so as to bring it closer to the citizens. This is part of the project „Referendum and Citizens' Initiative“, which was launched in 2002 and is supported by the SDC (Swiss Development and Cooperation program).

In 2003, a working group of the Association developed proposals for amendments to Bulgarian legislation and practice based on the results of analyses of the legislation of dif-

ferent countries, as well as on the referendums held in the towns of Sevlievo and Elena. These proposals were summarized in a detailed draft proposal for amendments to the Referal to the People Act drawn up by a working group of Balkan Assist's members. The chairmen of two parliamentary committees – the Committee for Legal Affairs and the Committee for Local Government, Regional Development and Development of Public Services – presented it to the National Assembly. Apart from this, two other alternative proposals were made for amending the same act. After the first reading, the three versions were amalgamated into a single draft, which was presented to Parliament in November 2003.

It was not until June 2004 that this draft was considered by the Parliament. During the debates, there was no political will to provide more opportunities for citizen participation in government, no understanding of direct democracy, even a fear of it and a nostalgia for the past. As a result, the members of parliament did not reach an agreement and no amendments were adopted. This was the end of the work of the 39th National Assembly on the subject of direct citizen participation. Nevertheless, we continued with our demand for a new and effective Law on Referendums, aiming now at the 40th National Assembly.

After a series of meetings and consultations, working with experts from NGOs, municipalities, the media and institutions, we finally have the draft of a brand-new law for direct citizen participation in government. We were counting on the support and assistance of the Committee for Legal Matters, in the person of its chairman, in order to get the draft law onto the parliamentary agenda. It was important to us in the process of the elaboration of this act that we had the support of many municipal authorities which recognize the advantages of direct democracy, as well as the partnership of the National Association of Municipalities in the Republic of Bulgaria (NAMRB), the Bulgarian Media Coalition (BMC), the National Association of the Secretaries of Municipalities in the Republic of Bulgaria, the Association of Municipal PR Specialists, regional associations of municipalities and other NGOs, media, and citizens. This gave us the courage to carry on the public debate, to work in close relationship with our partners in other European countries, and to insist on the improvement of the legislative framework for direct democracy in Bulgaria and in other countries.

In February, 2008, after a number of amendments, discussion meetings and conferences, the draft Act was presented to Parliament by the Chairman of the Legal Affairs Committee and a group of MPs from different political parties. In brief, the principal suggestions in this Act were:

1. A statutory possibility for the citizens to initiate a referendum on the national level.
2. A possibility to initiate a national referendum following a decision by 1/10 of the city councils in the country.
3. Lower thresholds for initiating referendums:
 - For a national referendum: 150,000 signatures;
 - If 300,000 signatures of Bulgarian voters are collected, a national referendum becomes obligatory;
 - For a local referendum: a decrease in the signature quorum for an initiative from 1/4 to 1/20 of the citizens having the right to vote;
 - If the signatures of 10% of the electorate are collected, a local referendum must be held.

4. Eliminate the requirement for a 50% + 1 turnout for legitimate national or local referendums (there is no quorum required in local and national elections).
5. Broaden the scope of allowable issues for referendums:
 - All the issues within the jurisdiction of the National Assembly may be the subject of a national referendum, and thus directly decided by the citizens.
 - All the issues within the jurisdiction of City Councils may be the subject of a local referendum, and thus directly decided by the citizens.
6. Introduce a time limit for the collection of signatures for initiating a referendum by the citizens: up to three months for both national and local referendums.
7. Regulate the information campaigns, with equal possibilities for both positions.
8. Create regulations for facilitating referendums with regard to organisation and technically:
 - Enlarge the voting units and decrease the number of the commission members;
 - The possibility to vote on more than one question in the same referendum;
 - Voting with one ballot instead of two different ones – one – for „yes“ and one – for „no“
 - The possibility for voting to take place over a weekend (two days in a row).
9. Specific deadlines for conducting referendums:
 - At the national level – not earlier than two or later than four months following the day of the promulgation of the decision by the National Assembly;
 - At the local level – not earlier than 45 days or later than 60 days following the decision by the City Council.
10. Specify deadlines for the implementation of the referendum outcome.

The draft was reviewed and approved in three of the Parliamentary Commissions: the Legal Affairs Commission, the Regional Development and Local Government Commission, and the Civil Society and Media Commission.

After a lot of controversial debates where no clear positions were displayed it was finally approved in July, 2009.⁵ Unfortunately, it was modified severely during the debates to pander to the different parties' interests. Its very title given by the MPs speaks of a deep misunderstanding of the essence of direct democracy: they called it „*Act on direct citizen participation in the state authority and local government*“. According to the new Act, national referendum can already be initiated by the citizens but only after collecting 500 000 signatures in three months. The referendum is only valid when the voters are at least as many as the turnout in the last parliamentary elections. The scope of the national referendums is still quite restricted and adequate public debates before the referendum conduct are not provided for. The procedure is still quite heavy and expensive which discourages even those authorities who are eager to apply it.

As far as the local referendum is concerned, the new Act is more favourable. The scope has been broadened, allowing most of the issues within the competency of the Municipal council, to be a subject to the referendum. However, municipal budget and local taxes are still outside this scope. Paradoxically, no financial issues can be decided with the direct participation of the tax-payers – either at national or at local level. Another limitation still existing in the new legislation is the quorum required for the validity of the local referen-

⁵ Thanks to Prof. Atanas Slavov, Sofia, for additional information.

dum decision. Although the thresholds for initiating referendums have been considerably decreased (1/20 of the registered voters can submit a proposal to the Municipal Council; when 1/10 of the voters have signed, the referendum is obligatory), the proposal subject to the local referendum is only approved when the turnout was not less than the turnout in the last local elections and more than half of them voted „Yes“.

Still, there are some new instruments that were introduced in the new Act that encourage citizen activity and direct participation. The new Citizen Initiative option allows a group of citizens to start collecting signatures and ask the Municipal Council to decide on specific issues of local significance (an agenda initiative). The City Council, the mayor or whoever the addressee of the local citizen initiative, are obliged to review the proposals submitted and announce their decision and the measures taken within a months time. This possibility did not exist in the former legislation, and it provides for the initiation of public debates on matters that the people or specific citizen groups consider important. And thus – participate directly in the set up of the local agenda.

Getting the draft Act approved and implemented was an essential component of the portfolio of activities aimed at the real implementation of direct democracy in Bulgaria and at overcoming the mistrust of direct democracy in the public institutions and political parties. The draft reflected the position of various social groups in Bulgarian society. In the way that these groups worked together to make it a reality, it is a model of a transparent process and a consensual approach. The Act was aimed as a contribution to improving the political culture and citizen participation in society and to overcoming the crisis in the Bulgarian political system. In addition, the new political situation resulting from Bulgaria's EU membership also imposed more democratic practice at both local and national levels, bearing in mind that European legislation and the Lisbon Treaty also provided for such possibilities at the pan-European level. If Bulgarian citizens are expected to be adequately equipped to work with the European mechanisms of direct democracy, they need to gain experience of using direct democracy tools at home. And this can be achieved only by securing and implementing a new, functional and democratic act for direct citizen participation in local, regional and government.

Although not in its best shape, the new Act is all the same a step forward to a more qualitative direct democracy environment. The efforts of the organizations, experts and citizens were not all the way in vain. They will still continue in the future to work for a better understanding of the constitutional right of the citizens to be the major force, the engine of the democratic government of Bulgaria.

Denmark – fragments of local direct democracy

Palle Svensson

Elements of direct democracy at the local level does exist in Denmark, but it is little known, because no formal rules regulate this aspect of political life, because results from popular initiatives and referendums are not recorded in official statistics, and because few systematic analyses have been published. This paper, accordingly, has an explorative nature and asks two basic questions: What is the current state of direct democracy at the local level in Denmark, and what are the prospects for a further development of direct democracy at the local level in Denmark? The paper is based on a couple of MA theses, a few articles in books and periodicals, a public report, and results from opinion polls conducted in 2000 and 2005.¹

1 Procedures of direct democracy

There are no regulations in the Danish constitution on direct democracy at the local level. The constitutional regulation of local politics is very general as article 82 only specifies that „the right of the municipalities to manage their own affairs independently under the supervision of the State shall be laid down by Statute.“

The Danish constitution provides for a number of national referendums, but there are no constitutional provisions for other forms of direct democracy, such as citizens' initiatives, agenda initiative or recall.

The constitution comprises rules for obligatory referendums on constitutional amendments (article 88), change of the voting age (article 29), and delegations of constitutional powers to international authorities (article 20). Furthermore, the constitution provides for facultative referendums as a third of members of parliament – the Folketing – under certain conditions can demand a referendum on a passed law. All these referendums are legally binding. Voluntary and legally consultative referendums are unregulated by the constitution, but can be undertaken by a law passed by the Folketing. Although not legally decisive, they are generally considered to be political decisive. Two such voluntary referendums at the national level have been conducted (in 1916 and 1986), and in total 20 national referendums have been held in Denmark up to the present day (see further on national referendums in Denmark in Svensson, 1996).

¹ I want to thank Jørgen Elklit for valuable corrections and suggestions during my writing this paper.

2 Regulating policies

No specific regulations in Danish legislation deals with local direct democracy. The local government act contains no specific rules, but the general interpretation and actual practice is that municipal councils may call consultative referendums. A public report on local democracy from 1977 dealt with the issue and previously four types of local referendums were provided for in various legal acts.

In 1977 a public report on local democracy dealt with the issue of direct democracy at the local level and discussed the suitability of local referendums (Kommunalt Nærdemokrati, 1977: 87-93). The report was highly critical on local referendums, rejected citizens' initiative, and stressed the advantages of representative democracy. However, the report made it clear that municipal councils do have the possibility of conducting consultative referendums on subjects that may be discussed in the municipal council, such as voluntary municipal services (local plans, roads, building of sport centers, old-age homes, libraries etc.). Consultative referendums are not possible on issues such as the administration of legislation, the obligatory municipal services (primary schools, social benefits etc.) and on finance, wages, constitution, international law.

The report did not consider it very important whether local referendums are legally decisive or consultative, as legally non-decisive results normally would be political decisive (Kommunalt Nærdemokrati, 1977: 89), but consultative referendums were to be preferred, because in certain situations it would be appropriate for the municipal council to intervene, for instance if the yes- and no-votes were very close or if the turnout was very low.

The report did not result in any recommendation on legal regulations of local referendums, but suggested a number of good practices for such popular votes in order to avoid that they take on a party political character, such as conducting the votes in accordance with the general rules for municipal elections, using the electoral register of the municipality, not changing the voting age, ensuring that the ballot text is unambiguous and not leading, informing the public well in advance etc. (Kommunalt Nærdemokrati, 1977: 91f).

Whereas no general legislation regulates local referendums, on four specific issue areas legislative regulation has provided for local referendums for some time (Madsen & Nielsen, 1999).

- Binding referendums on alcohol licences (1924-1970)
- Binding referendums on closing down primary schools (1958-1988)
- Consultative referendums on municipal boundaries (1972-2002)
- Binding referendums on disposal of waste water on small islands (1992-2005)

Recently, a number of local votes have taken place in relation to a structural reform of local government. In June 2004 the Government announced its intention to reform the municipal structure with a view, i.a. to reducing the number of municipalities and increase the sustainability of the municipalities. At the end, the reform reduced the number of municipalities from 271 to 98. The Government had the authority to determine the new administrative structure, but in a number of cases the new boundaries were decided after local referendums after a broad agreement in Parliament in March 2005 had decided to open up for local referendums on new municipal boundaries, if municipal councils decided to conduct referen-

dums, if referendums were strongly demanded by voters, or if an arbitrator decided to solve particular conflicts by a referendum.

3 Practice

It is difficult to provide a precise account on the number of local referendums in Denmark. In any case, it is impossible to give a complete overview of the total number of referendums as some local archives are lost. However, it is possible to describe with some certainty the number of local referendums for the 1970-1997 period, the 1998-2001 period; and the precise number of local referendums on the structural reform of local government 2004-05.

In a MA thesis from the University of Aalborg the number of local referendums after the first structural reform in 1970 up to the end of the 1990s was identified on the basis of published materials and a questionnaire sent to all municipalities (Madsen & Nielsen, 1999). More than 90 per cent of the municipalities replied and the analysis does not claim to have drawn a complete picture.

During the almost 30 year period at least 159 local votes took place, i.e. on average five to six every year. As shown in table 1 most of these local referendums concerned the closing down of local primary schools. As these referendums took place in school districts and other smaller areas concerned with local matters and not among all voters in the municipalities in question, the extent of direct democracy should not be exaggerated, as only seven pct. of the votes took place in whole municipalities (N = 11)(Madsen & Nielsen, 1999: 83).² On the other hand, they were in many cases the result of citizen's initiatives. And the turnout was at the same level as in local government elections, 71 pct.

Table 1: Issues for Local Referendums, 1970-1997

	Pct.	N
Closing down schools	55	88
Municipal boundaries	6	9
Disposal of waste water	2	3
Physical planning	15	24
Closure of roads	8	13
Change of place names	3	5
Other issues	11	17
Sum	100	159

Source: Madsen & Nielsen, 1999: 80.

It has been argued that in order to avoid conceptual confusion, a distinction has to be made between (1) *municipal* referendums as votes in which all registered voters in a municipality have the opportunity to turn out to vote in accordance with the general rules for municipal

² Roger Buch (2001: 103) also identifies 11 local referendums in the 1970-97 period, but whereas he includes Løgstør 1974, he excludes Tårnby 1983. It is, in addition, somewhat unclear whether Madsen & Nielsen exclude Nordborg 1988 (incomplete information) or one of two referendums in Vamdrup 1984 or 1992 in arriving at 11 local referendums in whole municipalities.

elections with secret vote, control of the voting procedure, counting of the votes etc.; (2) *local* referendums as votes following the same rules, but only involving the voters in a part of a municipality; (3) *citizen surveys* as providing all citizens in a municipality the opportunity to express their opinions by other means than turning out to vote; and (4) *user surveys* as providing all citizens in a municipality or a part of a municipality using particular benefits or services the opportunity to express their opinions by other means than turning out to vote (Buch, 2001: 104).

In 1998-2001 municipal referendums took place in four cases. First, a municipal referendum in Billund in 1999 concurrent with the European Parliament election about changing from one county to another; second, in three municipalities on Langeland in 2000 about amalgamation into one municipality; third, in the municipality of Copenhagen concurrent with the national referendums on the Euro in 2000 about the expanding of neighbourhood councils to the whole Copenhagen municipality; and fourth, in five municipalities on Bornholm in 2001 about amalgamation into one municipality (Buch, 2001).

In a MA thesis from the University of Aarhus, the local referendums about the structural reform 2004-05 were recorded systematically on the basis of newspaper articles, enquiries to all municipalities (100 pct. response rate), minutes from municipal councils and official press releases (Jørgensen, 2006a: 6). No less than 73 local referendums took place during 14 months, 60 pct. on the initiative of the municipal council and 40 pct. on the initiative of the citizens or the arbitrator (Jørgensen, 2006b: 177f). Applying the analytical framework of Gordon Smith (1976) it was shown (see table 2) that the result of the votes in most cases (45 of 73 or 62 pct.) was in accordance with the position of the majority of the municipal council, and that it was important who took the initiative, as most results were in line with the initiators (32 of 45 and 16 of 28)(Jørgensen, 2006b: 174-80).

Table 2: Local Referendums on Structural Reform, 2004-05

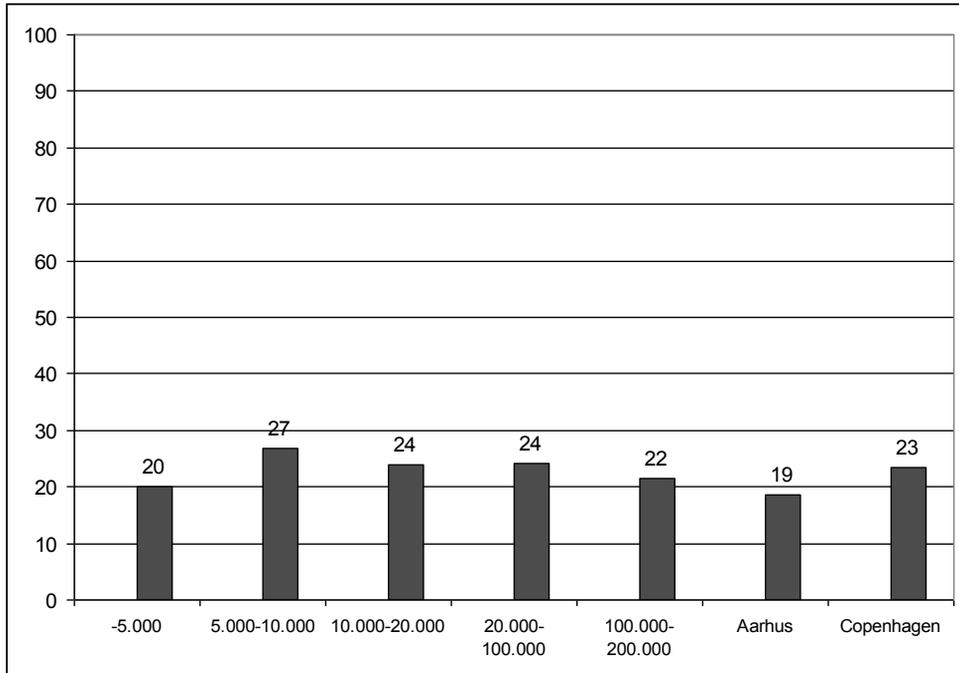
	On the initiative of the municipal council	On the initiative of the citizens or the arbitrator	All
Outcome favorable to the municipal council majority	32	13	45
Outcome not favora- ble to the municipal council majority	12	16	28
All	44	29	73

Source: Jørgensen, 2006b: 174-80.

The turnout was once again at the same level as in municipal elections (71,1 pct.) and in only three votes was it below 50 pct., which meant that turnout specifying a minimum turnout required for the vote to be valid quorums – where such quorums were laid down – in reality did not have an impact. It is also of some interest to observe that the turnout was higher in votes on the initiative of the citizens or the arbitrator (81,3 pct.) than in votes on the initiative of the municipal council (64,4 pct.)(Jørgensen, 2006b: 183f).

It has been discussed to what extent the size of the community influences the turnout in local referendums in Denmark. It has been indicated that in very small communities with a few hundred voters the turnout tend to be higher (Madsen & Nielsen, 1999: 42), but data from a national survey in 2005 following the local elections that year indicates that the size of the community does not have an impact on the turnout in local referendums when the size of the municipality is above a few thousands voters, see Figure 1 (Svensson, 2007).

Figure 1: Turnout in Local Referendums and Size of the Community. Pct.



4 Evaluation

Local referendums have undoubtedly played an important role in solving local disputes on the new municipal structure during 2004-05 and they may also previously have contributed positively to the functioning of local democracy. It might be expected that such experiences would stimulate a stronger demand for referendums at the local level than at the national level. Furthermore, as citizens feel it is easier to participate in smaller communities than in larger communities (Albrecht Larsen, 2002: 323), it might be expected that they would be more sympathetic to referendums at the local level than at the national level.

As shown in table 3, this hardly seems to be the case in Denmark. When asked in 2005 about their demand for more referendums at various levels, the citizens seem to be less positive on referendums on municipal and regional issues than on national and – in particu-

lar – EU-issues. Thus, a stronger local direct democracy does not seem to be a strong popular demand in Denmark (Svensson, 2007).

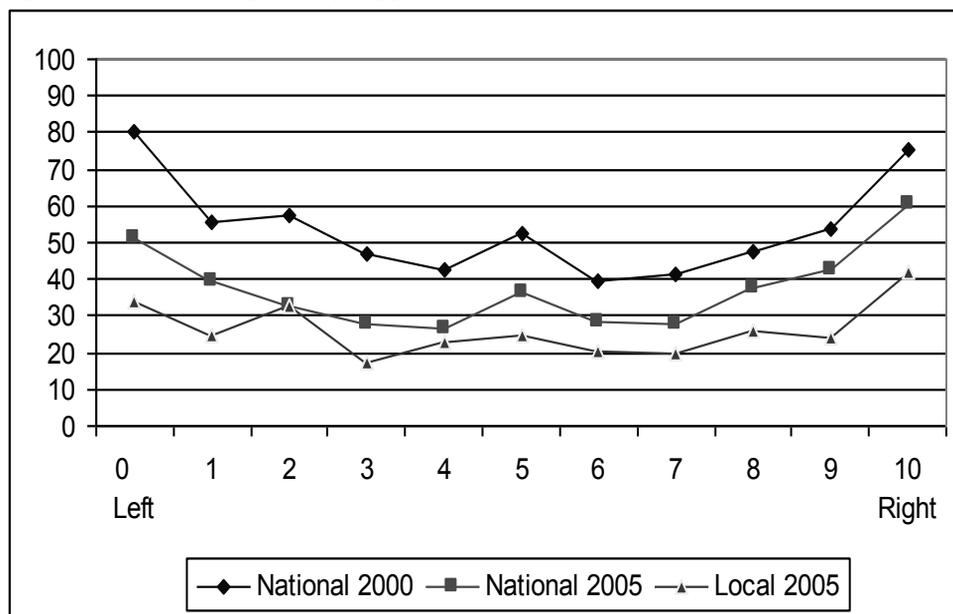
Table 3: Popular Demands for more Direct Democracy. Pct.

	Agree	Neither nor	Disagree	DK	N
More EU-issues should be decided by a referendum	44	7	46	3	2.011
More national issues should be decided by a referendum	34	6	57	3	2.011
More regional issues should be decided by a referendum	24	6	66	4	2.011
More municipal issues should be decided by a referendum	24	5	68	3	2.011

Source: Svensson, 2007

Moreover, those who are most in favour of referendums in general and local referendums in particular seem to belong to the left wing *and* the right wing in Danish politics, not to the centre. As shown in Figure 2, when the self-location of the voters on the left-right scale is combined with their support for national and local referendums the tendency is clearly to less support in the centre end stronger support on the left wing and right wing.

Figure 2: Left- and Right-wing Support for Referendums, 2000 and 2005. Pct.



These popular attitudes closely reflect the opinions of elite groups. Proposals for more direct democracy in general and local direct democracy in particular has mainly been expressed by political parties at the left wing and right wing or by smaller political parties and never by the larger political parties around the centre and the positions of power, such as the Social Democrats, the Liberals, and the Conservatives. The proposals have either been rejected in a final vote in the Folketing or been discontinued.

Taking a look at the last ten years, this pattern clearly emerges.

In 1996-97 the right-wing Progress Party reintroduced a proposal in the Folketing on regional initiative and referendum – previously introduced in 1992-93 – according to which five pct. of the voters should have the right to call a consultative referendum.

In 1996-97 the left-wing Socialist People's Party introduced a proposal in the Folketing on municipal and regional initiative and referendum. It was reintroduced again in 1997-98 and 2004-05. According to the latest version ten pct. of the voters in a municipality or a region should have the right to demand a legally decisive referendum on a decision taken by the municipal council or the regional council or to formulate their own proposal. Five pct. of the voters in a municipality or region should have the right to an agenda initiative, demanding an issue to be discussed in the municipal or regional council. A number of issues, such as the budget, location of public institutions, and protection of minority rights, should be exempted from initiatives and referendums.

In 1997-98 the left-wing Socialist People's Party introduced a bill in the Folketing to reintroduce the possibility for popular initiative and local referendum on closing down local schools – a possibility abolished in 1988.

In 2003-04 and again in 2004-05, the left-wing Unity List introduced a proposal in the Folketing on municipal and county referendum. Ten pct. of the voters in a municipality or county should have the right to demand a referendum on a decision taken by the municipal or county council. Referendums should either be legally decisive or consultative.

In 2003-04, and again in 2004-05 and 2005-06, the left-wing Socialist People's Party introduced a bill in the Folketing on comprehensive constitutional amendments including municipal initiative and referendum. According to this proposal, 20 pct. of the voters in a municipality should have the right to demand a legally decisive referendum. A law should outline which issues should be exempted from local referendums.

In 2003 the former Minister of Foreign Affairs, Niels Helveg Petersen, from a small centre party, The Social Liberals, published a proposal for a comprehensive amendment of the constitution. It contained among other suggestions provisions for popular initiatives and referendums, but only at the national level. It has, however, never been introduced in the Folketing.

The right-wing Danish People's Party has in various debates on proposals on municipal and regional initiative and referendum expressed its sympathy, but never formulated its own proposal in the Folketing on local direct democracy instruments.

The Government has repeatedly rejected all proposals on local direct democracy. Thus, the Minister of the Interior, Lars Løkke Rasmussen (Liberal), on November 20, 2004, in the Folketing argued that the present rules are in line with the representative democracy that forms the basis for local government in Denmark. Responsibility for local affairs is placed with elected officials, who have the authority to make decisions on behalf of all the citizens in the municipality, also on issues that were not on the agenda in the most recent election.

„The rules make sure that it is the municipal council with responsibility for local affairs that also has the right of initiative to decide what has to be voted upon. The rules make sure that the municipal politicians do not disregard their responsibility by handing over the initiative to organise a referendum to smaller groups of citizens, who are not necessarily representative of the voters of the municipality.

The admittance for e.g. ten pct. of the voters to instruct a municipal council or a regional council to organise a referendum on a specific issue is according to the opinion of the Government in conflict with the basic principles of representative democracy ... such an admittance might have the result that also, what might be called, complex municipal issues, which may not immediately be put on a simple formula and for that reason not suitable for a referendum, are sent to a popular vote.

According to the opinion of the Government this would weaken the possibilities for the municipal council to make long-term political priorities, and this holds if a referendum is consultative, but even more if it is legally decisive as suggested by the proponents.“

Both Social Democratic and Liberal-Conservative Governments on several occasions have rejected to start a process for amending the Danish constitution, in particular since the 150 years anniversary of the first constitution of 1849.

5 Developments

In conclusion, neither public opinion nor the dominant parts of the political elite favour direct democracy instruments to be introduced at the local level in Denmark. Attempts to introduce such elements have failed, and consultative local referendums have been confined to specific issues during specific times. Thus, there are, at present, no realistic prospects for constitutional reform in general, no promising prospects for increased direct democracy, and no encouraging prospects for increased local direct democracy in Denmark.

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Local popular votes in Finland – procedures and experiences

Rolf Büchi

„It [the political system in Finland] is perhaps the best in the world.“

Paavo Lipponen, former Prime Minister and Speaker of the Finnish Parliament. Helsingin Sanomat 13.3.2007

„In comparison with Finland, the Swiss institution of the referendum is as if from another planet.“

Markku Suksi (2002)

What kind of popular vote procedures exist on the local level in Finland? How are these procedures used? Can they be categorized as direct-democratic? When were they introduced? And what are the prospects for modern direct democracy in Finland? These are the main questions dealt with in this article.

For understanding the Finnish popular vote procedures, it seems necessary to clarify the underlying concept of direct democracy and the use of the words ‚popular vote‘, ‚referendum‘, ‚initiative‘ and ‚plebiscite‘. Direct democracy is controversial, both as an idea and in practice. Different terminologies and typologies of procedures are used. The relationship between the name and the form of procedure is often not clear; for example, the same word ‚referendum‘ is used to designate different kinds of popular vote procedures. In different constitutions we find different terminologies and classifications, and this makes comparison more difficult.

The basic forms of modern direct democracy are 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. However, there exist procedures and practices, which do complicate this classification and there are grey zones between the different types.

Starting from the basic terms used here, in Appendix 2 a more differentiated typology of popular vote procedures is presented which can help to compare the repertoires of direct-democratic instruments in different countries.¹ For the case of Finland, agenda initiatives and advisory referendum will have special importance.

¹ Büchi 2006 and Kaufmann, Büchi, Braun 2007.

Local Resident's Right of Participation in Finland

Description

The rights of participation are regulated in chapter 4 of the Local Government Act (LGA) of 1995.² As on the national level (Constitution: Section 53), advisory popular votes are possible on the municipal level as well (LGA: Section 30). In both cases only the parliament or council (national parliament = eduskunta, municipal or local council = valtuusto) has the right to call a popular vote. It also decides the subject matter, the ballot question, and the polling date. There is no appeal against decisions of the local council not to call a popular vote (Act on Procedure: Section 99).

Local residents representing at least five per cent of the electorate may request an advisory popular vote (LGA: Section 31). The local council shall decide without delay whether to hold a popular vote (according to the provisions of Section 30). The subject matter must be specified in the request, and the sponsors must identify themselves as eligible voters. In addition to their signature the following data are required: name, profession or occupation, address (Act on Procedure: Section 4).³

The law obliges municipal councils to ensure that local residents have „opportunities to participate in and influence their local authority's operations“. According to the law participation can be furthered specifically, for example, by arranging municipal popular votes (LGA: Section 27).

A local resident has the right to petition. The petition must address a question which is within the competence of the municipality (LGA: Section 28.1).

If a petition to the local council is supported by at least 2% of the local electorate, the matter shall be considered by the local council within six months (LGA: Section 28.2).

Classification

The LGA uses the terms „right of initiative“ (Section 28), „referendum proposals“ (section 31) and „municipal referenda“ (section 30). To understand and compare the Finnish procedures and experiences with those of other democracies, the terminology used in the LGA has first to be translated into a general typology (details in Appendix 2).

What the LGA defines under the header „municipal referenda“ (section 30) is a popular vote procedure under the exclusive control of the local parliament. No power-sharing between representatives and represented is involved. Based on our typology, the procedure is not direct democratic in the full sense and must be classified as an advisory local authorities' plebiscite.

What the LGA defines under the header „referendum proposals“ (section 31) can be considered a direct-democratic procedure only in a broad sense. There is some power-sharing between representatives and represented, but the latter do not have any decision-making power. In terms of our typology, this procedure can be classified as a popular initia-

² English translation of the Local Government Act 365/1995:
<http://hosted.kuntaliitto.fi/intra/julkaisut/pdf/p0702191032100.pdf>

³ Act on Procedure: laki neuvon-antavissa kunnallisissa kansanäänestyksissä noudatettavasta menettelystä 656/1990 www.finlex.fi/fi/laki/ajantasa/1990/19900656

tive proposal or agenda initiative which includes the possibility of an advisory local authorities' plebiscite.

What the LGA calls „right to initiative“ (Section 28) is not a direct-democratic procedure but simply a petition. The result of our translation is the following (Table 5):

Table 1: Popular vote procedures in the Finnish Local Government Act: translation of terminology

LGA	LGA terminology	Our terminology	
		TYPE OF PROCEDURE	FORM OF PROCEDURE
Section 28	Right of initiative	FUNDAMENTAL RIGHT	Petition
Section 30	Municipal referenda	PLEBISCITE	Advisory local authorities' plebiscite
Section 31	Referendum proposals	MIXED: INITIATIVE + PLEBISCITE	Agenda initiative + possibility of advisory local authorities' plebiscite

The reality behind the terminology used by the LGA is not that of a real direct democracy at all. Finnish citizens and local residents do not have any decision-making power regarding substantive political issues.

Local resident's right of participation (LGA 365/1995)

(TYPE OF PROCEDURE, **Form of procedure**, Legal provisions (design of procedure))

FUNDAMENTAL RIGHT:

Petition (Section 28: right of initiative)

A local resident has the right to make a proposal to the municipality. The proposal must address a question which is within the competence of the municipality. The petitioner has to be informed about the measures taken in response to his/her initiative. The local council has to be informed at least once a year about the initiatives for which it is responsible and about the measures which have been taken in response to these initiatives.

If a petition, for which the local council is responsible, is made by at least 2 percent of the municipal electorate, then the local council has to consider the proposal within 6 months.

MIXED (INITIATIVE + ADVISORY PLEBISCITE):

Agenda initiative + advisory local authorities' plebiscite (Section 31 referendum proposals)

At least 5 percent of the municipal electorate can request the calling of 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 (Section 30) will be organized (Section 31).

Act on Procedure: The issue of the requested popular vote has to be specified (Section 4). The sponsors must identify themselves as voters of the municipality. In addition to their signature the following data are required: name, profession or occupation, address (Section 4). Postal vote is possible (Section 9). The Ministry of Justice makes additional rules if needed (Section 19).

ADVISORY PLEBISCITE:

Advisory local authorities' plebiscite (Section 30 municipal referenda)

The local council can decide to organize a popular vote asking a question for which it is responsible. The popular vote is advisory. The procedure is regulated in a separate law.

Act on Procedure: The local council must decide the voting question and day at least 60 days in advance. The voters must have 3 options to answer the voting question: yes, no, no-opinion (Section 3). Postal vote is possible (Section 9). The Ministry of Justice makes additional rules if needed (Section 19).

Practice 1: Petitions

In the City of Järvenpää a conflict over land-use arose between local residents and the authorities. A citizens' movement gathered strength to protect a cultural landscape from intrusive urban development by the City. It organized countless debates, developed alternative plans for the area concerned, submitted statements and comments to the authorities, participated in public hearings, contacted the political parties and the municipal council, wrote articles and letters to the press, and gathered 4,764 signatures (the city has 37,500 inhabitants) for a petition; all this generated a huge public debate during the years 2002-2004.

In the Land Use and Building Act 132/1999 citizen participation or interaction between stakeholders and authorities during the whole planning process is emphasized. On its home page the City of Järvenpää invites people to participate. But what are the citizens' experiences when they get involved? Are their opinions valued and are they allowed to genuinely influence the plans?

In their own experience, active citizens were seen by the authorities as „potential complainers and plaintiffs, a threat, troublemakers, silly old grandmas“, and „persons who do not consider economic realities“. Seen from the grassroots perspective, authorities considered the opposing citizens, in contrast to themselves, as „not representative“, and as a „group of outsiders“ and „amateurs“ not entitled to decision-making.

Järvenpää is no singular case; elsewhere, for example in Helsinki and Tampere, people experience citizen participation in much the same way.⁴ Citizens feel that their genuine participation is not welcome, and that their possibilities to influence decision-making are in no relation to the size of their efforts. This experience – that participation is a sham – lies at the heart of the often deep disappointment with politicians and the existing political system. There is a consensus among active citizens that the authorities are neither ready nor prepared to share power with the people. There is also a consensus among active people about sticking to the idea of self-directed citizenship and continuing the struggle to make participation real.

The campaign in Järvenpää shows many elements of a popular initiative process, but it assumes a deeply different character due to the categorical imbalance of power between the citizens and the decision makers. The result of all the hard work was disappointing. Attempts to get a popular vote on the issue failed, the local councillor who proposed calling a

⁴ Tampere: Häikiö 2005; Leino 2006; Helsinki: my interviews with participants of the City Forest Movement (ongoing research).

popular vote was accused of populism, and the local masterplan was adopted by the municipal council, without major changes, by 35 to 16 votes.⁵

In the light of these experiences it appears as no surprise that the petition (the so-called „right of initiative“) is the least-used form of citizen participation and that people do not believe in it as an efficient means of participation (Pekola-Sjöblom, Helander, Sjöblom 2006).

Finnish experiences with citizen participation are in many respects similar to experiences in other places and at other times. What Sherry Arnstein wrote in a well-known article on citizen participation as long ago as 1969 is true also for the consultation of citizens, an obligation set by many legal acts⁶ in today's Finland: „What citizens achieve in all this activity is that they have ‚participated in participation.‘ And what powerholders achieve is the evidence that they have gone through the required motions of involving ‚those people.‘“

Practice 2: Agenda Initiative

In Hämeenkyrö, the Vapo company plans to construct a waste incineration plant. The main purpose of this plant would be to produce heat and power for the local industry (a saw-mill, a board mill), which is looking for cheaper energy and less dependence on Russian natural gas.⁷

The project runs into opposition from local people.⁸ For them waste incineration is a dirty energy source that will harm the environment and public health. They see the project as a megalomaniac enterprise and fear for the green image of their municipality.

Supporters of the project hope that cheaper energy for local industry will secure both employment and Hämeenkyrö as a workplace. They consider waste incineration rather as a clean energy solution than a threat to people and environment.

An advisory popular vote proposal is submitted to the local authority on 8 May 2006. It is signed by about 800 people (10% of the electorate) and contains two demands to the local parliament:

- to call a popular vote and to respect its result;
- to formulate the ballot question in such a way that the result of the vote shows clearly what „opinion“ the voters have regarding the construction of a waste incineration plant in Hämeenkyrö.

The language used is ambiguous. On the one hand, the vote is not considered as an expression of the political will of the local citizens who consider themselves sovereign, but merely as an expression of „opinion“. On the other hand, however, the local council is asked to respect that „opinion“.

⁵ For more details on the case of Järvenpää see Büchi 2006: 73-80.

⁶ Legal acts concerning citizen participation – an overview made by the Finnish Ministry of Justice: <http://www.om.fi/tulostus/30480.htm>

⁷ For a short description of the project see the following document, p.25: http://www.vapo.fi/filebank/2385-vapo_csr_2005.pdf

⁸ Hämeenkyrön puolesta – hyvässä hengessä (For Hämeenkyrö – in good spirit): <http://www.hameenkyronpolitto.laitos.net/>

On 29 May 2006, the local government decides in favour of holding a popular vote and proposes the following ballot question: „Should the Municipal Council make it possible through the land-use plan for the waste incineration plant to be built in Hämeenkyrö?“ On 26 June 2006, the local council accepts the local government proposal unanimously.

The popular vote takes place on 19 November 2006. The result is: 2,029 (46.3%) „yes“-votes, 2,159 (49.3%) „no“-votes, and 190 (4.3%) „I do not support either of the proposed alternatives“-votes. Voter turnout is 55.1% (4,381 votes out of a total of 7,946).

On 22 January 2007, the local government decides to respect the result of the vote: it proposes not to build the waste incinerator and instead to foster the production of domestic bio-energy. This decision, however, is turned down by the local council on 19 February 2007. Against the majority popular will it decides, by 21 to 14 votes, to make the construction of the waste incineration plant possible.

Hämeenkyrö is, on the one hand, a typical example of the subordinate role which citizens play in Finnish politics. But on the other hand, the holding of a popular vote in Hämeenkyrö is an exception to the rule that advisory popular vote proposals are almost always turned down by the local council. In practice, it also implies an expansion of the range of issues which have been subject to popular vote (Appendix 1, table 7).

For what reasons did local councils reject advisory popular vote proposals? From council minutes I have found at least the following arguments:

- The issue is not important enough
- The issue has only a minor impact on the local residents
- The holding of a popular vote is too expensive
- The bridge forms part of an already agreed land-use plan.
- It is not appropriate to submit a single investment to a popular vote
- On a single investment no popular votes have been held
- Closing a school is part of a whole plan and cannot be considered separately
- Popular votes are not intended for solving complex questions
- No other issues than the fusion of municipalities and road construction have been subjected to a popular vote.
- The initiative proposal puts into question the municipality’s strategy of regional co-operation. It would affect people in neighbouring municipalities.
- The very limited support for the request does not support the holding of a popular vote (in this case 7.7% of the eligible voters had signed the popular vote proposal).

The Finnish Local Government Act came into force on 1 January 1996. From 1996 to 2000 one out of only four advisory popular vote proposals was accepted. From 2001 to 2005 the number of proposals tripled, but all of them were turned down by the local councils. In the year 2006, out of three proposals only the one in Hämeenkyrö was accepted. The remarkable aspect of the Hämeenkyrö case is that the popular vote was about the construction of a waste incineration plant and not about the merging of municipalities. It represents a break with the usual practice of reducing the range of issues de facto to the single one of municipal mergers.

Practice 3: Local Authorities' Plebiscites

52 local authorities' plebiscites were held in Finland from 1990 to 2007: twice on road construction (1991, 1992), once on changing province (1997), once on the construction of a waste incineration plant (2006), once on the annexation of territory from Sipoo to Helsinki (2007), and 47 times on municipal mergers (see table 11: advisory local plebiscites in Finland 1991-2007).

Table 2: Number of local authorities' plebiscites/year:

1991	92	93	94	95	96	97	98	99	2000	01	02	03	04	05	06	07
4	7	1	-	3	4	1	7	1	2	2	1	2	4	-	3	10

The Local Government Act (LGA) allows popular votes on any matter resting with the local authority, but in practice the range of voting issues has been restricted to almost only the one of municipal mergers. It remains to be seen whether the plebiscite in Hämeenkyrö on the construction of a waste incineration plant marks a break with this tradition. It seems that local politicians resist the sharing of power with citizens no less than national politicians do.

In Finland popular votes are always advisory and their result is not binding on local councils, which make the final decision. From a democratic point of view it is strange if a local council decides against the majority political will as, for example, in Konginkangas, Kuorevesi, Pattijoki, Vehkalahti, Korpolahti and Hämeenkyrö (see table 2).

In a debate in the Finnish Parliament the social democratic MP Tero Rönni spoke of the consequences of the plebiscite in Kuorevesi (LA 65/2000 vp, 13.6.2000):

„In Kuorevesi, the neighboring municipality of my home town Mänttä, an advisory popular vote was organized. The residents of Kuorevesi were asked whether they wanted to join the municipality of Jämsä or remain independent. 86 per cent went to vote, 54 per cent voted for independence and 44 per cent for municipal merger. The local council made a decision, taking into consideration – or not, depending on your interpretation – the result of the popular vote, and decided by 14 to 7 votes to merge the municipality with the City of Jämsä. This was the beginning of an enormous number of complaints, a process which is still going on. Of course, people have the right to file complaints and to make decisions, but this is a difficult and expensive way of dealing with the issue. The expensive and difficult popular vote was a futile exercise, which in my opinion made a mockery of democracy. The phone lines and mail etc. of the local councillors were massively disrupted, and relations between people broke down completely for years; some even think the effects will last for decades. Some families even broke up because of the way in which the merger was handled.“

Pattijoki was a different case from Kuorevesi. The decision to consult the people was made by the state, not the local council. The Finnish state shows a clear interest in the promotion of municipal mergers, for example through monetary incentives and legislation. Under certain conditions, the Ministry of the Interior may also initiate municipal mergers, and in such a case it may order the holding of a popular vote if it is proposed by the municipal boundary administrator (Act on Local Authority Boundaries (kuntajakolaki) 1196/97).

In Pattijoki a very small majority voted against the municipal merger. Judging from prior opinion polls, the „no“-result was unexpected, and it gave room for different interpreta-

tions: the difference between the „yeses“ and the „noes“ was only 9 votes, and in addition there were 73 „no opinion“ –votes.

In a voting pamphlet the municipalities of Raahe and Pattijoki informed people about the popular vote on the merging of the two municipalities. The pamphlet „RAAHE-PATTIJOKI. Together or separate? Now you can have your say“ stated:

- The popular vote will decide whether or not Pattijoki and Raahe will merge to form a new municipality.
- A positive result in Pattijoki and Raahe will give the national government the right – but not the obligation – to decide for the municipal merger even if the local council takes a negative stand.
- If the people of Raahe and/or of Pattijoki vote against the proposed merger, the government will not make any decision on the issue.
- But in this case the local councils may decide that the municipal merger takes place, even if in both municipalities the majority of the voters have voted against it.

The pamphlet emphasizes that the people’s vote is decisive for the municipal merger, but at the same time it makes it clear that in no case will the popular vote be decisive. After the popular vote the issue returns either to the state or to the municipality, where the real decision will be made either by the Ministry of the Interior or the local council.

This was the course of events:

- 29 March 2000: on the joint initiative of the local councils of Pattijoki and Raahe the Ministry of the Interior ordered a special inquiry into the merging of the two municipalities.
- 2 October 2000: municipal boundary administrator Pekka Myllyniemi proposes that the two municipalities are abolished and merged into a new one. He proposes the calling of popular votes.
- 30 August 2001: the Ministry of the Interior orders the holding of popular votes on the municipal merger.
- 25 November 2001: the popular votes are held. In Raahe the municipal merger is accepted, in Pattijoki rejected by 1631 to 1622 votes; in addition there are 73 „no opinion“ –votes.
- 27 March 2002: the local councils in Raahe and Pattijoki both accept the municipal merger. They will receive money from the state: 6.73 million euro for implementing the merger and a further 1.682 million euro for investment and development.
- 19 June 2002: the government decides to merge the City of Raahe and Pattijoki into a new municipality of Raahe, as from 1 January 2003.

The Purpose of a Procedure is Revealed by its Design

The Finnish Local Government Act, like the Constitution, contains regulations for only one popular vote procedure: a local authorities’ plebiscite (Section 30). It also contains regulations for an agenda initiative (Section 31), which is unknown to the Constitution. This request is empowering citizens, but without giving them decisional power. The holding of a

popular vote is always decided by the parliament, and this is incompatible with direct democracy as defined above.

The advisory plebiscite is called „neuvoa-antava kansanäänestys“ (literally: advisory popular vote). The usual English translation for the word ‚kansanäänestys‘ is referendum, and no distinction is made between plebiscites and referendums. The word ‚kansanäänestys‘ has different meanings; it can be a decision made by the people, but usually it means a consultation of the voters which precedes decision making by the authority. The word is used not only in the context of decision making on substantive issues, but also to designate the direct election of the president or a mayor.

Table 3: Characterization of local popular vote procedures in Finland

Local popular vote procedures in Finland	Well-designed modern direct democracy
The local council (authority) monopolizes the right to make decisions on substantive political issues.	Modern direct democracy implies that both representatives and citizens have decisional power; citizens are „occasional politicians“.
Municipal plebiscites are designed as instruments of the politicians, not the people. The local council decides when and on what a popular vote is called.	Direct democratic procedures are designed as instruments of the people. The decision to call a referendum or to launch a popular initiative is made by people, not the authorities.
Popular votes are used on rare occasions.	Popular votes are held on a regular basis, according to the needs of the people.
The voters are given the role of advisers, not decision makers.	In direct democratic procedures citizens are decision makers, government and parliament are given the role of advisers.
People making an advisory popular vote proposal must explain and justify their demand to the authorities, which alone can decide. Active citizens tend to become lobbyists and public debate comes second.	The proponents of a popular initiative or referendum must explain and justify their request to the whole electorate, which makes the final decision.
The result of a popular vote is not binding, the local council makes the final decision afterwards and may disregard the will of the people.	There are no plebiscites, only referendums. The result of a referendum is binding.
The agenda initiative and the advisory popular vote proposal are not direct democracy in a strict sense. There is no citizen law-making.	Initiative and referendum procedures allow people to participate in the process of law-making. Popular initiatives make citizen law-making possible.
The limitations of the instruments show, that political power belongs to the representatives and not to the citizens.	Referendums and initiatives are instruments of power sharing between representatives and citizens.
Citizens without voice are difficult to motivate for participation.	Citizens with decisional power have more motivation to participate.
Popular vote procedures are poorly defined in the Finnish Constitution and in the Local Government Act as well.	Direct democratic procedures are well defined in the constitution and law.

There is no popular initiative in Finland, although the word for it exists: ‚kansanaloite‘. But this word has no well established meaning. There is also the word ‚kansalaisaloite‘ (citizen initiative), but this word is used mostly to describe various kinds of petitions to authorities submitted by a group of citizens. The word ‚referendumi‘ is seldom used, the word ‚plebiskiitti‘ even less.

Finland has few experiences with direct democracy and the understanding for it is not yet well developed. There is a lack of established words or concepts for describing the different instruments of direct democracy.

In table 3, the popular vote procedures on the local level in Finland are characterized and compared with well-designed modern direct democracy.

On its homepage, the City of Järvenpää, like many other municipalities, invites local people to participate and to be active. At the same time authorities stick to their traditional way of doing politics and decision making. There is a contradiction between rhetoric and practice. But from this does not necessarily follow that local authorities are in reality unwilling to cooperate with the citizens. The gap between rhetoric and practice may also be explained by assuming that authorities and citizens attribute different meanings to the words participation and democracy.

In the authorities' view participation means primarily consultation, an instrument to get to know the opinions, needs and expectations of the citizens. Participation is seen as a prolongation of the authorities' activities, responsibility is transferred to the citizens but no decisional power. Citizen participation should help to make decision making more efficient and more legitimate.

For the people participation is implied in the principle of democracy and self-government. It means having a voice, making decisions together with others, power sharing. Participation is an instrument to bring one's own view into public debate and the decision making process. The expectation is, of course, that participation has a significant impact on outcomes.

Elements for a History of Direct Democracy in Finland

Direct democracy was on the agenda already before Finland's independence. The introduction of universal, equal suffrage and of „the right to direct legislation for the people by way of the right to propose and to repeal laws“ was among the basic demands adopted by the Social Democratic Party in 1903 at the Party Congress in Forssa. In 1908 and 1914 proposals for local direct democracy were submitted to the Parliament. The 1918 draft constitution of the Finnish left contained provisions for a popular initiative which included the possibility of a counter proposal by Parliament. It was the time of the Civil War between the „Reds“ and the „Whites“. The plan was to submit the constitution to a referendum – after victory, which never came. During one year, 1918-1919, there existed a right to popular referendum on the local level, which was used only once.⁹ The referendum provisions were quickly repealed by the victorious Whites, and direct democracy was put aside.

The constitution of 1919 was purely representative with no provisions for popular votes. In 1922 the Finnish Parliament struggled with the proposal to call a plebiscite on the issue of alcohol prohibition. The deputies were afraid of the possibility that the voters could make another decision than the parliament. They felt that such a contradictory outcome would be a condemnation of the parliamentary legislator by the people. Prohibition was controversial also within the political parties. Parliament was not able to resolve the

⁹ 30.1.1919: creation of the new municipality of Huopalahti, which before was a part of the rural municipality of Helsinki.

question and turned to the voters for help. Following the example of Iceland, Norway and Sweden a plebiscite was held on 29-30 December 1931.

After this first experience of a national plebiscite, the Finnish Parliament developed three guiding principles for the use of popular votes. Paraphrasing Markku Suksi (2002: 37), they read as follows:

1. Parliament alone may decide to call a plebiscite.
2. The subject matter must be simple enough so that people can understand it.
3. Plebiscites are held as a last resort.

In fact these are guidelines for avoiding plebiscites; based on them, proposals for holding a plebiscite have been rejected repeatedly (Suksi 2002: 37).

A few parliamentary proposals were made to improve the popular vote procedure as such, but they all remained without effect. Representative and direct democracy were incompatible for the prevailing mentality. The introduction of the plebiscite into the Constitution in 1987 represented no break with the traditional thinking; it was not a new beginning but only the continuation of public consultation as it had been practiced before.

So far only one plebiscite was held, the one on EU accession on 16 October 1994. Interestingly enough, the voters had only two options („yes“ and „no“), and not three as required by the Act on Procedure (578/1994).

The plebiscite was adopted basically without alteration into the new Constitution of 2000. In practice nothing changed, although there are signs of a change as well. An alternative view, which considers representative and direct democracy not as opposites but as complementary, becomes more visible since the 1990s. It gets legal backing by the new constitution which obliges public authorities to:

- provide instruments of direct citizen participation in addition to the right to vote in elections (Section 2.2);¹⁰
- „promote the opportunities for the individual to participate in societal activity and to influence the decisions that concern him or her“ (Section 14.3);
- „guarantee for everyone the right to a healthy environment and for everyone the possibility to influence the decisions that concern their own living environment“ (Section 20.2).¹¹

In 1990 an amendment of the 1976 LGA (Local Government Act) introduced an advisory popular vote proposal and an advisory local authorities' plebiscite. Both instruments were transferred to the 1995 LGA which was presented as an opening for more public participation. However, the number of voters required for an advisory popular vote proposal was increased from 2 to 5 per cent.¹² Parliament also rejected the idea that the local council is given the right to decide case-by-case whether a popular vote should be binding or not. It

¹⁰ In the preparatory work, the popular initiative is mentioned as an example of a mechanism for direct citizen participation (HE 309/1993 Hallituksen esitys Eduskunnalle perustuslakien perusoikeussäännösten muuttamisesta, see also HE 1/1998).

¹¹ Section 121.1 reads: „Finland is divided into municipalities, whose administration shall be based on the self-government of their residents.“ Certainly local direct democracy is compatible with this provision.

¹² The Report of the Administration Committee (HaVM 18/1994) argued, that a higher threshold underlines the importance of the procedure both in general and in respect to the right of petition (LGA: Section 28).

eliminated this possibility from the draft law arguing that a binding popular vote would have been in conflict with the principle of representative democracy.

Since the middle of the 1990s Finnish governments have implemented a series of projects and programs to promote citizen participation.¹³ The driving motive behind these endeavours is that authorities are worried about the decline in voter participation and the loss of representativity and legitimacy of the political system. Direct participation in decision making, however, is not a main concern; rather the aim is to strengthen representative democracy by activating citizens and leaving direct democracy aside.¹⁴

Direct Democracy was not an issue in the campaigns for the Finnish Parliament Election 2007. Of all the political parties only The Greens advocate it in their party program, and a little bit also the Christian Democrats. In general, „popular vote“-debates are mostly debates about whether or not to call an advisory plebiscite on a certain issue. There is much less debate about the procedure as such, and hardly any about direct democracy in a strict sense. In parliament proposals were made to submit to popular vote the following issues: EU accession, nuclear energy, EMU membership, alcohol retail monopoly, EU Constitutional Treaty (see table 4).

Table 4: Issues proposed for submission to popular vote

EU accession	LA 24/1991 Esko Seppänen /vas et.al.
	LA 37/1994 Erkki Pulliainen /vihr
Nuclear energy	LA 18/1993 Esko Seppänen /vas et.al.
	LA 174/2000 vp Kimmo Kiljunen /sd et.al.
	LA 178/2000 vp Mirja Ryyänen /kesk vp
EMU membership	LA 1/1995 Esko Seppänen /vas
	LA 113/1997 Aapo Saari /kesk et.al.
Alcohol retail monopoly	LA 2/1998 Risto Penttilä /nuors et.al.
EU Constitutional Treaty	Oral question PTK 46/2004 Outi Ojala /vas
	LA 11/2005 vp Arja Alho /sd et.al.
	Parliamentary Debates 2005, 2006

¹³ The Participation Project Phase I and II of Prime Minister Paavo Lipponen's governments (1997-2002) and the Citizen Participation Policy Program of Prime Minister Matti Vanhanen's government (2003-2007).

¹⁴ As part of the Citizen Participation Policy Program 1 Million € had been spent on a campaign to activate voter participation in the Parliament Elections of 2007. However, total voter turnout reached a new low since the 1939 elections; it was 67.8% or 1.9% less than in the 2003 elections.

There were also a number of proposals dealing with procedure, yet none was implemented:

Table 5: Proposals concerning popular vote procedure

Popular votes together with elections	LA 10/1993 Pekka Rätty /vihr et.al. LA 142/2003 vp Antti Kaikkonen /kesk et.al.
Mandatory referendum (delegation of constitutional power to international authority)	LA 30/1994 Heidi Hautala /vihr
Popular initiative	KK 573/1999 vp Petri Neittaanmäki/kesk
Local council shall determine whether popular vote is binding or not	LA 65/2000 Tero Rönni /sd et.al.
Binding popular vote	TA 261/2000 Erkki Pulliainen /vihr
Local plebiscite: only „yes“- and „no“-option	LA 157/2001 vp Unto Valpas /vas et.al.
	LA 16/2006 vp Unto Valpas /vas
(direct election of mayor)	LA 61/2006 vp Oras Tynkkynen /vihr

LA = parliamentary motion (lakialoite), KK = written question (kirjallinen kysymys), TA = petitionary motion (toimenpidealoite)

Kesk: Centre Party, Nuors: Young Finnish Party, Sd: Social Democratic Party,

Vihr: The Greens, Vas: Left Alliance

Future Prospects

The Finnish institution of the plebiscite has been formed in the first two decades of independence. It was implemented in the constitution much later, in 1987, based on the report of the Referendum Committee (KM 1983:25). This report shows a very negative attitude towards the idea of direct democracy and raises a number of the usual arguments against it. According to the committee the Finnish representative democracy functions perfectly well and is in no need of reform. Of all the popular vote procedures only the advisory plebiscite is considered compatible with representative democracy, which is given absolute priority.

The report of the Referendum Committee has been serving as a basis for the further development (or rather: non-development) of the Finnish popular vote institution. Both the new Local Government Act of 1995 and the new Constitution of 2000 represent rather continuity than change. The same is true for the government's participation programs (1997-2007). Prime Minister Matti Vanhanen's government stressed the advantages of representative democracy and put direct democracy deliberately aside. In a dissenting opinion to the report of the Democracy 2007-Commission, Hautala and Heikkinen (The Greens) state, that the commission was not willing at all to promote possibilities for direct citizen participation. Any reform towards turning the plebiscite into an instrument of the citizens was considered as too radical.

The reflections of Laura Nordenstreng (2004) on the reform of the Finnish plebiscite are also marked by continuity. But she departs from the report of the 1983 Referendum Committee in two respects. She concludes with a critique of the plebiscite which cannot fulfill the promise of increasing the possibilities for citizen participation. And, in a rather ambivalent way, she argues that there is a need to strengthen representative with direct democracy.

The governmental participation projects and policy programs may be steps towards direct democracy. But these projects are still very much under the spell of politics as usual.

The golden thread running through the states popular vote policy since the 1920s has been to secure the monopoly of decision making on substantive issues for the politicians. The same thread runs through the states participation policies of the last decade. Citizen participation is subordinated to „strong representative democracy“ and „direct democracy“ is given a merely consultative role.

The conclusion is unavoidable that in Finland the popular vote continues to be an instrument for the government to exercise power rather than a means for real citizen participation in political decision making. Citizen participation is still not understood as citizen power. Instead of real participation citizens are offered rubber-stamp participation; people have little opportunities and resources to influence the policies designed „for their benefit“. If there is a will for sharing power with the citizens, it is still overshadowed by the old mentality which is rather hostile towards citizen participation in decision making and tries to avoid it as best as possible.

If left to the representatives, the prospects for getting direct democracy in Finland are slim. However, pressure from below might change the situation. And there is growing pressure from below, such as a citizens' movement for the preservation of the city forests (kaupunkimetsäliike) in the capital Helsinki. In 2008, it collected signatures for an agenda initiative which demands that the city parliament calls a popular vote on the issue. This agenda initiative is the first one in the capital city. It is a protest against plans to build houses on green areas, and at the same time it is also a call for more citizens' rights of participation. It is a demand to supplant the weak and tedious agenda initiative with a real popular initiative.

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Appendix 1:

Table 6: Advisory popular vote proposals 1991-2007

Year	Municipality	Decision of the local council	Issue
1991	Tuusula	accepted	road construction
1992	City of Lohja	accepted	road construction
1994	City of Porvoo	rejected	construction of a bridge
1997	Kuhmoinen	accepted	changing province
1997	Forssa	rejected	confidence in the city manager
1999	Tampere	rejected	construction of a bridge
2000	Ruovesi	rejected	placing of a retirement home
2001	Turku	rejected	construction of a water purification plant
2001	Vaala	rejected	preservation of the existing school network
2002	Oulu	rejected	marketization of Oulun Energia
2003	Pudasjärvi	rejected	municipal form: turn Pudasjärvi into a city
2003	Tuupovaara	rejected	municipal merger
2004	Eura	rejected	municipal form: turn Eura into a city
2004	Naantali	rejected	construction of an indoor swimming pool
2005	Pyhäselkä	rejected	health cooperation treaty between Joensuu and Pyhäselkä
2005	Suolahti	rejected	municipal merger
2005	Kaavi	rejected	transfer of secondary school from Kaavi to Juankoski
2005	Ruokolahti	rejected	close down of local school
2005	Mäntsälä	rejected	construction of an indoor swimming pool
2006	Mäntsälä	rejected	construction of an indoor swimming pool
2006	Kihniö	rejected	municipal merger
2006	Kurikka	rejected	municipal merger
2006	Hämeenkyrö	accepted	construction of a waste incineration plant
2007	Eura	rejected	close down of local school
2007	Kuusankoski	rejected	municipal merger
2007	Tohmajärvi	rejected	Regional cooperation for the organisation of public services
2007	Vilppula	rejected	municipal merger
2007	Joutseno	accepted	municipal merger
2007	Pertunmaa	accepted	municipal merger

Table 7: Advisory local plebiscites in Finland 1991-2007 (September)

Authority's decision (#) / voting day	Result (##)	Voter turnout	Procedure
1 TUUSULA: ROAD CONSTRUCTION PROJECT			
14.1.1991 12.5.1991	rejected 55.4%	46.5%	agenda initiative + advisory local authorities' plebiscite
2 KONGINKANGAS: MERGER WITH THE MUNICIPALITY OF ÄÄNEKOSKI			
09.9.1991 10.11.1991	rejected 53.1%	74.4%	advisory local authorities' plebiscite
3 VIIALA: MERGER WITH THE MUNICIPALITY OF TOIJALA			
10.09.1991 24.11.1991	rejected 63%	71.5%	advisory local authorities' plebiscite
4 TOIJALA: MERGER WITH THE MUNICIPALITY OF VIIALA			
10.09.1991 24.11.1991	rejected 56.7%	57.7%	advisory local authorities' plebiscite
5 PULKKILA: MERGER WITH THE MUNICIPALITY OF PIIPPOLA			
12.11.1991 19.1.1992	approved 80%	67%	advisory local authorities' plebiscite
6 PIIPPOLA: MERGER WITH THE MUNICIPALITY OF PULKKILA OR PYHÄNTÄ			
11.11.1991 19.1.1992	rejected 56.8%	79.7%	advisory local authorities' plebiscite
7 PYHÄNTÄ: MERGER WITH THE MUNICIPALITY OF PIIPPOLA			
29.11.1991 02.02.1992	rejected 72.8%	72.1%	advisory local authorities' plebiscite
8 SÄYNÄTSALO: MERGER WITH THE MUNICIPALITY OF JYVÄSKYLÄ			
30.1.1992 29.3.1992	approved 72.7%	79%	advisory local authorities' plebiscite
9 NURMO: MERGER WITH THE MUNICIPALITY OF SEINÄJOKI			
17.2.1992 26.4.1992	rejected 71.6%	72.5%	advisory local authorities' plebiscite
10 CITY OF LOHJA: ROAD CONSTRUCTION PROJECT			
25.3.1992 31.5.1992	6 options, improving status quo got 59.9% of the votes	38.9%	agenda initiative + advisory local authorities' plebiscite
11 VIJAKKALA: MERGER OR INDEPENDENCE?			
17.6.1992 24.8.1992	60.7% for independence	83.8%	Unofficial advisory popular vote
12 VUOLIJOKI: MERGER WITH THE MUNICIPALITY OF KAJAANI			
23.9.1993 12.12.1993	rejected 56.3%	76.6%	advisory local authorities' plebiscite

13 RURAL MUNICIPALITY OF LOHJA: MERGER WITH THE CITY OF LOHJA			
14.6.1995 03.9.1995	approved 54.6%	61%	advisory local authorities' plebiscite
14 CITY OF LOHJA: MERGER WITH THE RURAL MUNICIPALITY OF LOHJA			
15.6.1995 03.9.1995	approved 90.9%	60%	advisory local authorities' plebiscite
15 JÄMSÄNKOSKI: MERGER WITH THE MUNICIPALITY OF JÄMSÄ			
16.06.1995 22.10.1995	rejected 59.2%	75%	advisory local authorities' plebiscite
16 RURAL MUNICIPALITY OF PORVOO: MERGER WITH THE CITY OF PORVOO			
18.10.1995 28.01.1996	approved 55.9%	72.2%	advisory local authorities' plebiscite
17 CITY OF PORVOO: MERGER WITH THE RURAL MUNICIPALITY OF PORVOO			
18.10.1995 28.01.1996	approved 63.6%	62.4%	advisory local authorities' plebiscite
18 RURAL MUNICIPALITY OF PIEKSÄMÄKI: MERGER WITH THE CITY OF PIEKSÄMÄKI			
18.12.1995 25.02.1996	rejected 77%	79.6%	advisory local authorities' plebiscite
19 CITY OF PIEKSÄMÄKI: MERGER WITH THE RURAL MUNICIPALITY OF PIEKSÄMÄKI			
18.12.1995 25.02.1996	approved 73.7%	49.4%	advisory local authorities' plebiscite
20 KUHMOINEN: CHANGING PROVINCE			
24.3.1997 25.5.1997	rejected 54%	74%	Petition + advisory local authorities' plebiscite
21 SUOLAHTI: MERGER WITH THE MUNICIPALITY OF ÄÄNEKOSKI			
19.1.1998 05.4.1998	rejected 61.5%	68.1%	advisory local authorities' plebiscite
22 ÄÄNEKOSKI: MERGER WITH THE MUNICIPALITY OF SUOLAHTI			
19.1.1998 05.4.1998	rejected 58.2%	60.4%	advisory local authorities' plebiscite
23 ANTTOLA: MERGER OF 5 MUNICIPALITIES TO CREATE „BIG-MIKKELI“			
18.5.1998 06.9.1998	approved 53.8% 1.1.2001 merger with the municipalities of Mikkeli (city + rural municipality)	77.6%	advisory local authorities' plebiscite
24 HIRVENSAJMI: MERGER OF 5 MUNICIPALITIES TO CREATE „BIG-MIKKELI“			
18.5.1998 06.9.1998	rejected 69.5%	75.8%	advisory local authorities' plebiscite

25 CITY OF MIKKELI: MERGER OF 5 MUNICIPALITIES TO CREATE „BIG-MIKKELI“			
18.5.1998 06.9.1998	approved 83.5% 1.1.2001 merger with the municipalities of Anttola and Mikkeli (rural)	51.1%	advisory local authorities' plebiscite
26 RURAL MUNICIPALITY OF MIKKELI: MERGER OF 5 MUNICIPALITIES TO CREATE „BIG-MIKKELI“			
18.5.1998 06.9.1998	rejected 52.2% 1.1.2001 merger with the municipalities of Anttola and the City of Mikkeli	64.7%	advisory local authorities' plebiscite
27 RISTIINA: MERGER OF 5 MUNICIPALITIES TO CREATE „BIG-MIKKELI“			
18.5.1998 06.9.1998	rejected 61.5%	66.5%	advisory local authorities' plebiscite
28 KUOREVESI: MERGER WITH THE MUNICIPALITY OF JÄMSÄ			
23.06.1999 21.11.1999	rejected 54.2% 1.1.2001 merger accomplished	86.5%	advisory local authorities' plebiscite
29 HAMINA: MERGER WITH THE MUNICIPALITY OF VEHKALAHTI			
20.6.2000 03.9.2000	approved 70.1%	58.9%	advisory local authorities' plebiscite
30 VEHKALAHTI: MERGER WITH THE MUNICIPALITY OF HAMINA			
12.6.2000 03.9.2000	rejected 54.8% 1.1.2003 merger accomplished	67.4%	advisory local authorities' plebiscite
31 PATTIJOKI: MERGER WITH THE MUNICIPALITY OF RAAHE			
30.08.2001 25.11.2001	rejected 50.1% 1.1.2003 merger accomplished	77.8%	advisory popular vote (Ministry of the Interior)
32 RAAHE: MERGER WITH THE MUNICIPALITY OF PATTIJOKI			
30.08.2001 25.11.2001	approved 80.1%	51.5%	advisory popular vote (Ministry of the Interior)
33 PERÄSEINÄJOKI: MERGER WITH THE MUNICIPALITY OF SEINÄJOKI			
8.4.2002 9.6.2002	approved 54%	69%	advisory local authorities' plebiscite
34 MIETOINEN: MERGER WITH THE MUNICIPALITY OF MYNÄMÄKI			
25.10.2002 26.01.2003	rejected 69.8% 1.1.2007 merger accomplished	87.4%	advisory popular vote (Ministry of the Interior)
35 MYNÄMÄKI: MERGER WITH THE MUNICIPALITY OF MIETOINEN			
25.10.2001 26.01.2003	approved 73.1%	59.1%	advisory popular vote (Ministry of the Interior)

36 SAHALAHTI: MERGER WITH THE MUNICIPALITY OF KANGASALA			
13.10.2003 11.01.2004	approved 53.7%	72.7%	advisory local authorities' plebiscite
37 KANGASLAMPI: MERGER WITH THE MUNICIPALITY OF VARKAUS			
11.11.2003 25.01.2004	approved 68%	68.5%	advisory local authorities' plebiscite
38 KIIHTELYSVAARA: MERGER WITH THE CITY OF JOENSUU			
19.11.2003 25.01.2004	approved 63.3%	69.6%	advisory popular vote (Ministry of the Interior)
39 SAHALAHTI: MERGER WITH THE MUNICIPALITY OF KANGASALA			
17.11.2003 01.02.2004	rejected 73.2%	74%	advisory local authorities' plebiscite
40 SIIKAJOKI: MERGER WITH THE MUNICIPALITY OF RUUKKI			
14.12.2005 19.02.2006	approved 54.1%	68.9%	advisory local authorities' plebiscite
41 KORPILAHTI: MERGER WITH THE CITY OF JYVÄSKYLÄ On 14 November 2006 the local council accepted municipal merger by 17 to 10 votes.			
28.08.2006 29.10.2006	„yes“ votes 42.1% „no“ votes 52.1%	63.8% (electorate: 3'948 voters)	advisory local authorities' plebiscite
42 HÄMEENKYRÖ: CONSTRUCTION OF WASTE INCINERATION PLANT The local council approves by 21 to 14			
12.06.2006 19.11.2006	rejected 51.6%	55.1%	agenda initiative + advisory local authorities' plebiscite
43 SIPOO: MOVING OF MUNICIPAL BORDER Ballot question: „Do you approve, that the border of the municipality of Sipoo is moved according to the proposition of Pekka Myllyniemi?“ On 28 June 2007 the Finnish government accepted the moving of the municipal border of Sipoo (in practice: annexation of territory from Sipoo to Helsinki).			
18.12.2006 25.02.2007	rejected 94.9%	65.6%	advisory local authorities' plebiscite
44 YLISTARO: MERGER WITH THE CITY OF SEINÄJOKI AND THE MUNICIPALITY OF NURMO			
22.01.2007 22.04.2007	accepted 52.9%	68.8%	advisory local authorities' plebiscite
45 NURMO: MERGER WITH THE CITY OF SEINÄJOKI AND THE MUNICIPALITY OF YLISTARO On 21 Mai 2007 the local council accepted municipal merger by 18 to 17 votes.			
22.01.2007 22.04.2007	rejected 64.5%	72.1% (6487/8992)	advisory local authorities' plebiscite
46 JOUTSENO: MERGER WITH THE CITY OF LAPPEENRANTA			
25.06.2007 14.10.2007	rejected 75.9%	66.2	advisory popular vote
47 PERNAJA: MERGER WITH THE CITY OF LOVIISA OR PORVOO?			
18.06.2007 28.10.2007	With Loviisa 62.7% With Porvoo 36.1% „no opinion“ votes 1.0%	73.9	advisory popular vote

48 LAPINJÄRVI: MERGER WITH LIJENDAL, LOVIISA, PERNAJA AND RUOTSINPYHTÄÄ			
20.06.2007 28.10.2007	rejected 52.7%	59.8	advisory popular vote
49 LIJENDAL: MERGER WITH LAPINJÄRVI, LOVIISA, PERNAJA AND RUOTSINPYHTÄÄ			
18.06.2007 28.10.2007	Accepted 71.4%	63.1	advisory popular vote
50 LOVIISA: MERGER WITH LAPINJÄRVI, LIJENDAL, PERNAJA AND RUOTSINPYHTÄÄ			
13.06.2007 28.10.2007	Accepted 92.3%	48.9	advisory popular vote
51 RUOTSINPYHTÄÄ: MERGER WITH LAPINJÄRVI, LIJENDAL, LOVIISA AND PERNAJA			
18.06.2007 28.10.2007	Accepted 50.7%	51.7	advisory popular vote
52 PERTUNMAA: MERGER WITH HARTOLA AND HEINOLA			
24.09.2007 25.11.2007	Rejected 83.4%	68.6	agenda initiative + advisory popular vote

(#) Authority = Municipal Parliament or Ministry of the Interior

(##) The calculation of the result is based on the total number of the „yes“ and „no“-votes; the „no opinion“ –votes were not counted.

The local council decided against the majority popular will:

1991 Konginkangas	In addition:
1999 Kuorevesi	1998 rural Mikkeli merged with the City of Mikkeli and Anttola
2001 Pattijoki	2003 Vehkalahti was merged with Hamina
2006 Korpilahti	2007 Mietoinen was merged with Mynämäki
2007 Hämeenkyrö	2007 Viljakkala was merged with Ylöjärvi
2007 Nurmo	

APPENDIX 2:

Typology of Modern Direct Democracy

Rolf Buechi

This typology offers a coordinate system, covering all procedures of popular votes on substantive issues. This means that popular votes on persons and parties, like for example recall procedures, are NOT included. The basic structure of the proposed classification 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 which are initiated by a representative authority, be it the majority or a majority. There exist procedures and practices where elements of different forms of procedure are combined, and this is quite often the result of bad legal design.

A typology of popular vote procedures

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

What does this typology look like?

This classification of popular vote procedures includes only 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. Citizen- and law-initiated procedures are in color (green for the initiative, yellow for the referendum) and procedures triggered by an authority are in grey.

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 this typology.

Three TYPES and eleven forms of popular vote procedures

Type 1. INITIATIVE

Designates a certain type of popular vote procedures (this typology distinguishes three types: INITIATIVE, REFERENDUM, and PLEBISCITE). Initiative procedures are characterized by 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. Popular or citizens' initiative [PCI]

A direct democracy procedure and a political right that allows a given number of citizens to put their own proposal on the political agenda. The proposal may be, for example, to amend the constitution, adopt a new law, or repeal or amend an already existing law. The procedure is initiated by a prescribed number of eligible voters. The sponsors of a popular initiative can force a popular vote on their proposal (assuming that their initiative is formally adopted). The initiative procedure may include a withdrawal clause, which gives the sponsors the possibility to withdraw their initiative, for example in the event that the legislature has taken action to fulfill the demands of the initiative or part of them.

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. In practice, it is a means to synchronize the citizens' view with the politicians' view.

Form 1.2. Popular or citizens' initiative + authorities' counter-proposal [PCI+]

Within the framework of a popular initiative process a representative authority (normally parliament) has the right to formulate a counter-proposal to the initiative proposal. Both proposals are then decided on at the same time by a popular vote. If both proposals are accepted, the decision on whether the initiative proposal or the authority's counter-proposal should be implemented can be made by means of a special deciding question.

Form 1.3. Agenda (setting) initiative [PAI]

An 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, Switzerland).

Type 2. REFERENDUM

Designates a certain type of popular vote procedures (This typology distinguishes three types: INITIATIVE, REFERENDUM, and PLEBISCITE). The referendum is 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. Popular or citizen-initiated referendum [PCR]

A direct democracy procedure and a political right that allows a specified number of citizens to initiate a referendum and 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“ or demos (i.e. all those with the right to vote) has the right to decide in retrospect on decisions made by the legislature. Whereas the popular initiative works like a gas pedal (speeding up developments which can be progressive or regressive), the popular referendum gives people the possibility to step on the brakes. In practice, popular referendums (like popular initiatives) are a means to synchronize the citizens' view with the politicians' view.

Form 2.2. Popular referendum + counter-proposal [PCR+]

This direct democracy 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. Referendum proposal [PPR]

This procedure is characterized by the right of a prescribed number of eligible voters to propose to a competent authority the calling of a popular vote on a specified issue; note that the demand is addressed to a representative authority (usually parliament – local or national) which decides about further action.

Form 2.4. Obligatory referendum [LOR]

This direct democracy procedure is triggered automatically by law (usually the constitution) which 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 (for example, in Denmark the delegation of powers to international authorities is decided by popular vote if more than half but less than four fifth of the

parliament accept such a proposal). Unconditional referendums are without loophole (for example, in Switzerland changes of the constitution must always be decided by a popular vote).

Type 3. PLEBISCITE

Designates a certain type of popular vote procedures (This typology distinguishes three types: INITIATIVE, REFERENDUM, and PLEBISCITE). A plebiscite is a public consultation controlled „from above“. It is the powers that be (the President, Prime Minister, Parliament) which decide when and on what subject the people will be asked to vote or give their opinion. Rather than being an active subject in control of the procedure, people (popular votes) become means to an end which is determined by a representative authority. Plebiscites give ruling politicians additional power over citizens. They are used to evade responsibility for controversial issues which have become an impediment, they are used to provide legitimacy for decisions those in power have already taken, they are used to mobilize people behind rulers and parties, and they are used by an authority to bypass another representative authority. The aim of a plebiscite is not to implement democracy, but to reinforce or salvage those in power with the help of „the people“.

Form 3.1. Plebiscite [ATP]

A popular vote procedure whose use lies exclusively within the control of an authority. In this form the author of the ballot proposal and the initiator of the procedure are the same (for example parliament or president).

Form 3.2. Veto-plebiscite [AVP]

A popular vote procedure whose use lies exclusively within the control of the authorities. In this form the author of the ballot proposal and the initiator of the procedure are NOT the same. For example, a government or a president may oppose (veto) a decision of parliament and refer it to a popular vote; hence the name veto plebiscite.

Form 3.3. Authorities' minority veto-plebiscite [AWP]

A direct democracy procedure characterized by the right of a minority of a representative authority to put a decision made by the majority in the same authority before the voters for approval or rejection. This procedure enables a minority of a representative authority to step on the brakes and give the final say to the voters.

Form 3.4. Authorities' minority plebiscite [AMP]

A direct democracy procedure and a political right that allows a specified minority of an authority (e.g. one third of the parliament) to put its own proposal on the political agenda and let the people decide on it by a popular vote.

Local referendums in France: a disappointing experience

Stéphane Guérard

Introduction

The rise of direct democracy in France is worth taking note of. For a long time the so-called ‚Republican‘ tradition has been suspicious that the intervention of ordinary citizens in political decision-making processes would only create opportunities for special interests to become mixed up with the interests of the general public. That is why it was only the elected representatives of the citizens, not local communities themselves, which were entitled to protect and defend the Nation’s interests. Moreover, the history of the 19th century reminds us that the 1852 national referendum – when Napoleon III managed to turn the 1848 Republic into an imperial regime – was the first example of political manipulation. Since then France has been reluctant to use what have been termed plebiscites. A hundred years later President De Gaulle dared to call for national referendums as a way of overcoming opposition to his proposals from MPs within both the majority and the opposition parties. That is why it is only recently – years after it turned to decentralisation – France has embarked on direct democracy as a means for modernising government. Nowadays, as in other European countries, local direct democracy seems to be a fashionable cure for the growing deficit in the citizens’ confidence in their councillors’ capacity to manage local affairs in the best interests of local communities. Tools for direct democracy comprise a mixture of all the processes that allow citizens to be more closely connected with the making of regulations and policies that are usually the exclusive responsibility of local councils, or to the elaboration of major decisions that are related to local services and utilities. So it can be said that direct democracy can take place at various stages in a local authority’s life: upstream of decision-making processes, through information and consultation, within the process, usually through some kind of co-decision-making with the responsible local institution; but also in some cases downstream, when it relates to monitoring and evaluating the enactment of policies.

Local participative democracy deals with either consultation, the evaluation of local services, or information.

„One can say that the right to be informed comes first before any form of participation. One cannot efficiently contribute to local affairs if one is not sufficiently informed“ (Council of Europe, 2000).

The trouble is that the French law on local government refers to „referendum“ for both decisive and consultative processes. Moreover, in France local referendums have a rather limited impact on local decision-making, legally as well as practically, as we will see below. By contrast, France has developed a wide range of mechanisms that provide for dialogue between inhabitants and public authorities: public debates, public enquiries, citizens’ conferences and forums, by whatever name they are called, and not forgetting e-democracy.

So it is crucially important to stress the different ways in which local authorities can seek their residents' advice. They can organize talks and debates at meetings open either to the community as a whole or to specific groups, or arrange voting opportunities for individual citizens. There are two types of votes, depending on who has the final say; so we have to study the different conditions for purely consultative referendums and for decision-making ones. In France, local referendums can be either binding or non-binding, depending on the issues and the conditions that are imposed by the Constitution or by law (see Annex 1). We will describe first the tools for consultative direct democracy, and then local and regional referendums *per se*, in terms of their past development and their present legal and practical impacts.

1 A window of opportunity: Consultative Democracy through advisory panels

As its name indicates, local participative democracy aims at allowing citizens, though not necessarily all inhabitants, to take part in the working out of governmental decisions. So whether they are citizens, users, or inhabitants, it is reasonable to assume that they should be fully informed (Magnette 2001).

„We can assert that the right to be informed comes first before any kind of participation. Nobody can usefully contribute to local politics if he/she does not have enough information ready at hand. It is not mere chance if some countries referred to a lack of transparency and an inadequate provision of information to citizens as one of the key problems in relation to the development of local democracy“ (Council of Europe 2000: 28).

In France, these tools are numerous; all the more so because they have been „invented“ by diverse and scattered regulations on many different issues. Each field, whether spatial planning, public transport, protection of the environment, health, medical care, or social housing, has had its own local, municipal, inter-communal or sub-national assembly, in accord with the various local, municipal, or sub-national tiers of government. They are open to users or dedicated groups more often than to citizens only (in legal terms, those who have the right to vote).

Like many other countries, France has embarked on numerous initiatives, at local and national level, aimed at launching a wide range of participatory instruments. Some of them have been developed into permanent arenas where inhabitants or users are involved with political or administrative decision-making processes (Nonjon 2004). Some have a general remit of economic development in its wider meaning (*conseil local de développement*) and fully incorporate appointed citizens into the elaboration of local policies. Some are dedicated to specific domains: *comités de lignes du TER*¹ (regional railway lines users' committees), *commissions consultatives compétentes pour les services publics locaux*² (consultative committees on local services – water, sewage and drainage systems, sports utilities). This second category is compulsory for regions, *départements*, communes of over 10,000 inhabitants, for joint inter-communal bodies (*établissements publics de coopération intercommunale: EPCI*) that bring together a population of over 50,000, and for other joint bodies including at least one commune over 10,000 inhabitants. Tenants in council houses and flats are represented on the executive boards of public housing associations. Tenants' action groups often belong

¹ Loi solidarité renouvellement urbain, 2000

² Loi sur la démocratie de proximité, 2002

to dedicated groups that are called on to report to the Ministry for Cities and Urban Regeneration in regional housing conferences and negotiation rounds. In the field of urban regeneration policy, local democracy has been reinforced through neighbourhood meetings (*conseils de quartier*): a bill was passed in 2002³ to make such meetings compulsory in communes of over 80,000 inhabitants. In each neighbourhood a forum is designed, composed and organised according to rules issued by the city council. So the actual name (*Comité citoyen, conseil de quartier, comité de voisinage, conseil de la vie locale*) and the way they work vary widely from place to place. Under the 2002 Act, *conseils de quartier* can also be consulted by the mayor and they can initiate proposals about any issue regarding the relevant part of the city or the whole city. The mayor can involve them in the elaboration, implementation and assessment of policies that affect the area, especially in the field of urban policy (*politique de la Ville*). The city council can allocate these forums a meeting place in a public building and some money to spend on organising them.

Some committees are only concerned with age-based categories of inhabitants: *conseils des anciens* (pensioners' councils) are in existence in a few villages, in the style of assemblies of elders in traditional tribes and remote villages. More often we find local assemblies for young people. Interestingly, these assemblies have been granted official status right up to the top tier of central government.

Les conseils de la jeunesse (1971 Act) et les conseils locaux de jeunes: Les conseils départementaux de la jeunesse (youth councils) exist at sub-regional and national level. In each of the 100 *départements* they are chaired by the *préfet*. Members are aged 16 to 26. They are appointed for a 2-year mandate by the *préfet* from lists presented by local youth councils and local societies. The *Conseil national de la Jeunesse* (National Youth Council) is chaired by the Minister for Sport. It is partly made up of the 100 representatives of the *conseils départementaux de la jeunesse*, plus 100 delegates from civic societies, political associations or trade-unions.

Les conseils locaux des jeunes (local youth councils) were established much earlier by some local authorities in the bigger cities, *départements* and regions. Their members are usually elected by pupils from secondary schools. They decide upon activities aimed at improving the quality of life of the inhabitants.

Le Parlement des enfants: since 1994 it has brought together 577 children once a year. Each child is elected to represent a French constituency. Children in primary schools are invited to write a bill, with the help of their teacher, on whatever subject they want. Ten bills are selected by a parliamentary committee and debated by the elected children at the annual parliamentary one-day session. The one 'bill' chosen from the ten will ultimately be enforced just like any Act of Parliament.

Foreign-born inhabitants from outside the European Union have no right to vote in local referendums or elections. So, participative democracy is the only way for them to have a say on their life in their communes. Here we find two different institutions, one is collective – le *Conseil des étrangers* – and one is for some individual councillors (*le conseiller municipal adjoint*).

Le Conseil des étrangers (Foreigners' committee) is consultative and composed of foreigners who belong to and represent the various communities in the commune. The municipal council has sole responsibility for its creation and governance.

³ *ibidem*

One or more *Conseiller municipal adjoint* (Deputy Local Councillor) can be elected by the non-EU residents who live in the commune and are 18-years old or over. They take part in the municipal council's meetings to discuss proposals or issues regarding immigration. They have no right to vote but they can speak as representatives of their 'electorate' at the beginning of meetings when the council starts to discuss the agenda. Finally, as a means of overcoming the large-scale opposition to foreigners' right to vote, the municipal council can call on one foreign-born resident who is active in voluntary work and immigrants' groups to act as an 'expert' for the council.

2 Local referendums *per se*: a long and painful delivery

What French law calls a 'local referendum' can be either binding or non-binding. In reality, it is more often than not a mere consultation. The range of issues which can be referred to decision-making referendums is rather small and it is only recently that it has included local government re-structuring in some places, i.e. the merger or splitting up of communes, or the establishment or abolition of other types of local authority with the aim of creating new ones with new responsibilities and new boundaries.

A few referendums have taken place about more decentralized responsibilities and the creation of joint inter-communal bodies, but French citizens' experience in local and regional referendums is rather brief, because institutional issues are a matter for representative democracy, not participative democracy.

What is the rationale for local referendums?

Cities have always been seen as appropriate places for inhabitants to manage their own affairs. Under the 'Ancien Régime', royal law devolved the management of local interests to local assemblies ('gens du village', 'général des habitants', 'Assemblée générale') which made decisions on the main affairs (mortgages, trade, trials etc.) on behalf of their local community ('commune jurée'). While it had been tolerated or even encouraged under the Ancien Régime, then glorified in the first years of the 1789 Revolution, local participatory democracy was gagged, despised, and even denied by administrative court judges in line with a re-centralisation process that extended from the 1792-1795 period of the 'Terror' till the start of the 3rd Republic in the late 19th century. It was nearly forgotten up to 1958 (Rosanvallon).

The first ever local referendums in France took place at the end of the nineteenth century without any legal definition having been given. A number of MPs tabled different bills to formalize the process; all of them were rejected (e.g. Lanessan bill, 1883⁴ and Mackau bill, 1890⁵ (Viguier 1996). The arguments against creating specific procedures mainly cited the risk of anarchy, and of discrimination between tax-payers and other citizens at a time when only landowners paid taxes. The representative principle was the *raison d'être* of local government: communal councils had been elected since 1884. The Republican institutions were

⁴ This proposal promoted the popular initiative at the local level. 5% of the voters would be able to launch a referendum on any matter being deliberated by the local authorities.

⁵ Journal Officiel de la République Française, annex n°3853, 1889 and annex n°582, 1890.

grounded at the local level. Around 30 local referendums⁶ took place between 1880 and 1907, although no accurate number can be given. Their topics would concern daily life or non-political issues such as: where to locate the market place, whether and where to erect buildings for the Army, should a municipality be divided up, how to organize religious services? Local authorities wanted to know the views of electors on financial or budgetary issues. Then central government, through the Ministry of the Interior, began to declare these processes invalid. In cases in 1905 and 1907, the Conseil d'Etat (the supreme administrative court) quashed some local authorities' decision to hold local referendums. Between 1907 and 1959, only one local referendum was held. It was not until 1971 (the Marcellin Law) that local referendums were made optional – but only in the case of municipal mergers. According to Paoletti (1997), there were 202 local referendums between 1971 and 1992 (Loi sur l'administration territoriale de la République). Curiously, from the same period on it became routine for official speeches to mention local referendums. In the seventies, in the aftermath of debates on local democracy within left-wing political parties, the idea of referendums as instruments of local democracy began to spread also among right-wing politicians and within the Socialist Party.

An uneasy ,renaissance‘ since 1958

The uneasy, and much opposed, renaissance of direct democracy took place first at the national level and – fifty years later – is still waiting to be developed at the local level.

Direct democracy at the national level

Under the regime of the Fifth Republic, the Constitution slightly reduced the status of parliamentary representative democracy by re-launching national referendums (Art. 11, 53-3 and 89). At the same time it has reaffirmed that ,local communities are freely managed by elected councils‘ (Art. 72), thus confirming that local democracy could only be representative. Nine national referendums were held under the provisions of Art. 11, while only one of the seventeen constitutional reforms ended up being referred to a referendum (Art. 89) – in 2000, on reducing the President's term of office from 7 to 5 years.

Direct democracy at the local level

Although citizens could be asked their advice on difficult matters such as EU law or constitutional law, until the sixties they could not have their say on issues affecting the quality of life in their own communities – such as the construction of a major utility (a nuclear power station, a TGV rail-line, a highway etc.). The 1982-83 decentralisation reform did not bring in any process of democratisation either, despite its basis in the 1982 Decentralisation Act (Art.1) which promised that „acts of parliament will ensure the development of citizens' participation in local affairs“.

⁶ In the following towns of Cluny (1888), Bagnols (1888), Riom (1889), Suresnes (1895), Beauvais (1896), Meudon (1896), Dijon (1897), Fougères (1897), Pont-Audemer (1897).

From the 1991 *loi d'orientation sur la ville* to the 1992 *loi d'orientation*, supplemented in 1995, and through to the 2002 *loi relative à la démocratie de proximité* local councillors have maintained their monopoly on policy-making. In fact, when bills were passed to take into account the idea of asking the citizens' advice, the term *consultation locale* was chosen instead of the word *referendum* – in order not to contradict the principle of citizens' representation through elected local councils referred to in all Republican Constitutions. For central government, referendums could only be consultative processes, a kind of public enquiry, and could not be imposed on local councils. After the 1992 Act (*loi administration territoriale de la République* - *loi ATR*), residents, not only citizens, could be consulted on a restricted number of issues. Finally, for the first time in French constitutional history, the 1995 Act introduced the popular initiative: people had the right to demand that a referendum be held in their community if they were able to collect the signatures of 20% of the registered citizens.

3 Decisive referendums on institutional reforms: a *'quiet'* revolution?

Since the end of the 19th century, local councils have been allowed to create various kinds of joint bodies in an attempt to overcome the difficulties of managing very small, scattered and penniless communes and to enable them to share the costs of local services and public utilities (Breuillard 2005). The 2003 Decentralisation Reform Act, pompously called the *'second wave of decentralisation'* by the Raffarin Government, took the most recent step in the enforcement of local referendums.

According to the reformed art. 72 of the 1958 Constitution⁷, a decision may be taken by statute to submit to the local community for consultation any proposal to establish a special-status local authority, to change the organisation of such an authority, or to change the boundaries of territorial units. The fact is that up to 2003 central government alone was responsible for approving any changes to local boundaries. New commune boundaries were to be approved by the *préfet*, after a public inquiry had been held locally. Abolitions of *communes* and regions were approved by the Council of Ministers, while modified boundaries for *départements* and regions had to be approved by Parliament. Local referendums could apply only to a proposal for merging neighbouring *communes*.

French law thus provided the citizens with very few occasions to have their say on the shape of their councils, at least in metropolitan France. In the overseas regions (Guadalupe, Martinique, Guyana, La Réunion), and in Pacific regions with a specific status (New Caledonia, French Polynesia, etc.), a local referendum has to be held before Parliament can decide on changing the status of any local authority. On the other hand, referendums have been made optional when they deal with changes to the organisation, responsibilities and legal system of overseas local councils.

The Constitutional Reform Act (*loi constitutionnelle sur l'organisation décentralisée de la République*) was voted for in March 2003, since when it has been implemented only once, in Corsica. A special bill to arrange a referendum was passed in July 2003. The date was fixed by decree. The Corsican electorate was asked to answer the following question: *'Do you accept the proposed reform of Corsica's institutional organisation as mentioned in*

⁷ Constitutional Reform Act, 2003 (*Loi constitutionnelle sur l'organisation décentralisée de la République* “).

Annex 1 of the 2003 Act?'' The proposed changes dealt with the creation of a single unitary authority instead of the existing two-tier system (one ,Collectivité territoriale' and two ,départements' (Haute-Corse and Corse du Sud). The referendum was held on 6 July 2003 and the proposal was turned down by a majority of 50.98 percent of the voters on a 60.89 percent turn-out. The negative outcome has brought the whole process to a halt. Holding a referendum on regional re-organisation with voting restricted to the citizens of the relevant region – not of the whole country – has been seen as an ,innovative experiment', a kind of ,revolution' in the field of institutional reform.

The 2003 constitutional reform also provides for a citizens' petition right in all three tiers of local government, so that any issue within the competence of the local council can be debated by the citizens in the local community. Thus referendums can be organised in two cases: first, an Act of Parliament can propose that the electorate have its say when a new special local authority is to be created. This was the case in the Corsican referendum in July 2003. A second opportunity for a local referendum is available to any local authority that seeks its local community's advice on any project within the limits of its responsibilities. Within a local system based on the general principle of free administration one would expect no legal restrictions to be placed on any referendum dealing with local community affairs.

In fact there are some legal constraints: the *préfet*, who exercises legal and financial supervision over local authorities, can object to the organisation or the result of a local referendum on the basis of an issue unlawfully put to the electorate, or of an excessively low turnout. The *préfet* is entitled to sue the local authority and ask the court (*tribunal administratif*) to quash what he sees as an unlawfully held referendum.

This was the fate of many local referendums which sought the views of the local community and its support in opposing some policy of central government such as its immigration policy, or the construction of major buildings and utilities planned by ministries – such as nuclear power stations, motorways, national airports or harbours, etc. which are listed as ,projets d'intérêt national' and were totally out of reach of the people and the elected council in the areas affected by the proposals.

The other restriction on citizens' participation in re-organisational issues relates to turnout. Local referendums on the creation of new local authorities or joint inter-communal bodies are valid only if 50 percent of the registered electorate turn out, whatever the size of the majority vote. The Government's draft bill proposed only a 40 percent turnout quorum. The Senators, who are indirectly elected by local councillors, were anxious not to let direct democracy gain too much room for manoeuvre; they succeeded in imposing a 50 percent figure, which has made local referendums simply unfeasible.

In France, like everywhere else in Europe, people are demanding to take a greater and greater say in local policies that directly impact their lives, especially in the field of protection of the environment and planning.

Conclusion

Is participative democracy compatible with representative democracy in France?

For a French observer, there is a two-fold interest in comparing France with its neighbouring EU-member states. First, it helps in understanding why and how different regimes can exist and work according to different – not to say opposing – views. Secondly, it helps in questioning two important pillars of local democracy ‘à la française’: a traditional view that links local democracy with the general principle of free administrative competence and with uniform local government structures (Breuillard and Volmerange 2004). Undoubtedly, since they cut across the main characteristics of the traditional French ‘model’ of local government, the recently passed pieces of legislation for Corsica and the West Indies help France to come a little closer to what Italy and Spain have achieved in terms of regionalisation. But even if the ‘French exception’ is challenged and hopefully transformed into a ‘modernised’ system more in tune with institutional evolution across Europe, the national characteristics will not easily disappear – because legal practice also relies on cultural, social and historical views that always retain some national imprint.

An obvious conclusion is that in France referendums are primarily a tool for the mayors (Paoletti 1997). In 1997, only one referendum was initiated by the local people: in Alsace. From the beginning of 1995 to July 2004, the popular initiative only accounted for 2.45 percent of all binding and non-binding referendums. Public enquiries were set up. All other demands were rejected by local councils.⁸ If the popular initiative is provided for at the local level, the imposition on it of a high turnout quorum – unknown in any other kind of vote – is a major restriction on direct democracy. Conversely, one has to remember that the popular initiative is not possible in national referendums, though no minimum turnout percentage is required in this case. In 1999, M. André Gérin, a Communist Party MP, tabled a bill introducing the popular initiative at municipal, regional and national level. The bill was rejected.

In France, the Republican tradition denies citizens the right to overcome the power of elected leaders. In fact, mayors control the mechanisms of local democracy, which is why the municipal system can be compared to a kind of ‘municipal presidentialism’ (Sorbets 1983).⁹ This does not mean that, contrary to what some local councillors fear, representative democracy is condemned to death sooner or later (Guérard 2004). Rather this means that more and more often the various tools for participative local democracy that we have described here supplement, or make up for weaknesses in, the classic representative system.

Whether a referendum is binding or not usually has a major impact on the final decision to be made. Only when they bindingly vote ‘No’ or ‘Yes’ do the local citizens become responsible decision-makers. This is why in France local referendums are seldom decisive: both local and central government – and many local authority leaders are also Members of Parliament or Senators – is afraid of plebiscites and of local councillors being dispossessed of their responsibilities. That is also why the organisation of referendums rests in the hands of local councils.

Practically speaking, local democracy illustrates four issues that need to be discussed:

⁸ Data source: Ministry of Interior.

⁹ Sorbets C, 1983 : ‘, Est-il légitime de parler d’un présidentialisme municipal’, in : *Pouvoirs* n°24, pp. 105-116.

First, the usefulness of education in democratic citizenship: holding a referendum, either at local or national level, presupposes that citizens are educated in democratic citizenship, then in democracy itself.

Secondly, the need for a democratic culture: the French are not spontaneously really enthusiastic about democracy, as the local government system based on ‚notables‘ and on strong executive powers allocated to individual politicians shows.

Thirdly, the role of information and communications technology ICT. Electoral democracy was born before the rise of the Internet; the numerous experiments with electronic voting carried out in several European countries clearly show that these technologies can really help to develop local democracy. France has only timidly embarked on this technological revolution: in 2003, it allowed French citizens living in the USA to vote online for their representatives at the Conseil supérieur des Français de l'étranger (Supreme Council of French Nationals Abroad).¹⁰ Again, as costs must be met by local representatives, this is another example of how much representative democracy overlaps direct democracy.

Finally, there is a danger of local democracy becoming conservative. History teaches us that it may be risky to give a voice back to the people. We must not forget that Switzerland, the ‚motherland‘ of the referendum, was the last European country to give women the right to vote – only in 1971 – after many previous rejections by the (until then male only) voters.¹¹

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¹⁰ Law n°2003-277 of 28 March 2003

See also: draft legislative proposal to authorise (remote) online voting for the election of members of the European Parliament, Senate, n°377, 28 June 2004 : www.senat.fr/leg/pp103-377.html .

¹¹ Duroy (S.), Giroux (D.), Boizel (R.) et Spiliotopoulo (E.-E.), 1987 : *Les procédés de la démocratie semi-directe dans l'administration locale en Suisse*, Travaux et recherches de l'Université de Paris II, n°13.

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Annex 1: Mechanisms for local direct democracy

Existing constitutional provisions	yes
Dedicated Acts and statutes	yes
Existing specially formed groups	yes
Are local authorities compelled by the constitution to organize referendums?	no
Institutionalized groups dedicated to consultation only	Consultative committees for non-EU foreign-born inhabitants and interest groups (in some cities)
Existing mechanisms for institutionalising the integration of the whole population into the decision-making process	- Referendums (only for whole country and local authorities, not inter-communal bodies) - Petitions - Public inquiries
Existing mandatory mechanisms?	- Yes (referendums) - No (in the case of all other mechanisms)

Source: Anders Knappe, 2005 : *La participation de la population aux affaires*, rapport sur la Charte des Pouvoirs locaux, Parlement Européen Groupe politique PPE/DC.

Annex 2: List of French Acts of Parliaments referring to ,local referendums‘ and to ,local consultations‘.

Loi n°71-588	16 July, 1971	Loi sur la fusion de communes (,Loi Marcellin‘)
Loi n° 92-125	6 February, 1992	Loi sur l’Administration territoriale de la République
Loi n°95-115	4 February, 1995	Loi d’orientation pour l’aménagement et le développement du territoire (,Loi Pasqua‘)
Loi n°2002-276	27 February, 2002	Loi relative à la démocratie de proximité
Loi n° 2003-486	10 June, 2003	Loi organisant une consultation des électeurs de Corse sur la modification de l’organisation institutionnelle de la Corse
Loi n°2003-705	1 August, 2003	Loi organique relative au référendum local (loi de réforme constitutionnelle)

Slovakia – restricted direct democracy in local politics

Erik Láštík

Since its establishment in 1993 Slovakia has experienced several national referendums, all of them surrounded by legal and political controversy (overview: Bárányi et al. 2001). As a consequence of an uninspiring constitutional text and as an instrument in the hands of political parties, the national referendum has yet to convince Slovak voters about its unique role as „the people’s check on the legislature, [allowing them] to take the responsibility which the legislature does not want, cannot, does not know how to, or is unable to bear“ (Láštík 2007). Are local direct democracy instruments more successful in bringing people into the political ball game, or are they just as unsuccessful as direct democracy at the national level?

The fall of communism in 1989 brought major changes in all areas of society, including local government. The major issue about who is to govern at the local level – whether the state through its local agencies (as prior to 1989) or local authorities (s)elected by the local electorate – was decided by the establishment of the level of self-government, with a set of pre-defined powers and financial resources. The state, represented by the central government, became the setter of the rules according to which the local authorities perform. The Slovak Constitution of 1992 recognized this conceptual change by establishing a separate section of the constitution entitled Local Self-Government. The articles provide an elementary framework for local government, its powers and relations with the central government. Article 67 provides for different forms through which self-government can be enacted – elected authorities, public assemblies, and local referendums. According to the constitution, the conditions for the use of local referendums shall be laid down by the law. The 2001 amendment to the constitution (Art. 64) established a second level of self-government in Slovakia – regions (higher territorial units) – and also recognized the regional referendum as a possible means of self-governance on this level.

1 Regulating policies

The state, via its central institutions, is responsible for laying down the rules for municipalities. As long as they respect the constitution and laws, they are left with almost absolute autonomy when it comes to their decision-making. The constitution and the relevant laws specify the powers of the municipalities, which include legislative authority in the form of resolutions and directives. Since 1993, the powers of the municipalities have changed profoundly as a result of the massive decentralization which took place between 2000 and 2006. The transfer of dozens and dozens of powers from the state to the local level (municipalities and regions) was accompanied by a newly designed financial transfer mechanism, which established predictable rules for the financing of local government and clarified their financial resources. The decentralization process massively increased the importance of local affairs, including local direct democracy (Klimovský 2006).

The law on municipalities includes rules on the types and conditions for the use of local instruments of democracy. Since 1990 several amendments have changed the rules on direct democracy, with three of them (1998, 2001, and 2006) bringing significant changes to the types of votes, the vote and agenda setting, the legal implications of the vote and the permissible issues at the local level.

The 1998 amendment to the law on municipalities (225/1998 Col.) was produced by the government as a response to the local referendum that took place in a town on the Slovak-Hungarian border, Štúrovo. The infamous national referendum of 1997, in which the government dropped the question on direct presidential elections from the ballots and issued ballot papers with only the three questions about NATO entry, ended up with the majority of the voters refusing to vote when presented with a ballot with only three questions. Consequently, the referendum was marred by confusion over the ballots. On 26 May 1997, the Central Referendum Commission officially announced that the referendum was invalid. According to the Commission, the referendum did not comply with the rules, because four questions should have been included on the ballots. The referendum controversy continued into 1998. On 9 January, the Constitutional Court ruled that the petition on the direct election of the President was still valid. Mr. Šimko, the chairman of the petition committee, asked president Kováč to call the referendum once again. The president called the referendum vote for 19 April 1998, with all four questions. This decision was revoked in March 1998, however, when Prime Minister Mečiar assumed presidential powers, because the parliament had failed to elect a new president. In a reaction to the Prime Minister's decision to cancel the referendum, the local parliament in Štúrovo decided to call a local referendum on April 19 with similar questions to those originally called by the President, including the question on direct presidential elections. According to the mayor of the city, the rationale was to find out „whether the government had managed to frustrate the citizens enough not to take an interest in public matters anymore“ (Hrabko 1998:15). The resolution calling for a local referendum caused a national political turmoil, with the state authorities eager to stop the vote from taking place. The district court ordered the city authorities to stop the vote, only to be overruled afterwards by the higher court. Just days after the vote took place, with its result being two hundred votes short of the 50 percent turnout quorum,¹ the government proposed an amendment to the law on municipalities and by using a fast track legislative procedure proposed a new version of the rules on permissible subjects in local referendums. According to Prime Minister Mečiar, „it was necessary to draw some conclusions from the Šturovo referendum“ (ibid: 25). The amendment, passed in parliament, explicitly forbade a municipality to hold a referendum on other subjects than of local importance and enlarged the power of the court, the district attorney and the local state administration by enabling them to stop a local referendum on an „illegal“ subject from taking place and fine the municipality up to SKK 3 million if it refused to comply with the order. A large portion of the amendment was later ruled as unconstitutional by the constitutional court², which upheld only the changes in the rules on permissible subjects (which were later changed nevertheless).

Another change in local direct democracy came in 2001. Prior to the amendment (453/2001 Col.), the law specifically mentioned the possibility of holding a vote on the

¹ 4,933 voters (out of 10,317) voted in the referendum.

² Ruling 1999/185, http://jaspi.justice.gov.sk/jaspiw1/htm_zak/jaspiw_mini_zak_zobraz_clanok1.asp?kotva=k&&skupina=3

introduction/abolition of local tax and revenue. (This provision was removed by the amendment). The amendment also dropped explicit reference to the legal status of the local referendum vote. The original version of the legislation stated that if the vote was valid, the result was legally binding and would replace the relevant resolution by the local assembly. Such an outcome was also protected from being changed by the local assembly for a period of one year after the vote took place. Another change in the law increased the percentage of voters required to call a referendum from 20 to 30 percent of the registered voters in the respective municipality. The national legislature completely revamped the conditions for dissolution of the community by requiring an emerging community to have at least 3,000 inhabitants. In sum, this single amendment restricted the use of the local referendum and altered its legal status without the issue having been subjected to either political or public debate.

The 2006 amendment (267/2006 Col.) is somewhat unique, not only in the context of local democracy legislation. At the end of the parliamentary term, right before the early elections, parliament approved an amendment to the law on municipalities initiated by Members of Parliament. The amendment enabled a regional office (local state administration body) to change municipal boundaries without needing the approval of the municipality, on condition that a historically independent part of a municipality had its own territory and that dissolution was supported by a petition signed by at least 75 percent of the inhabitants of the historically independent municipality. The amendment, however, limited this procedure to a single case of the municipality Zlate Klasy and the historically independent municipality Maslovce. Thus the amendment, in an unprecedented manner, created a single exception that overrode the general conditions for dissolution and violated normal legislative requirements, which demand that a law be generally applicable.

The current legal situation recognizes the obligatory and facultative referendum and the recall vote on the mayor of a municipality. According to the law, the local assembly is obliged to call a referendum vote in three situations:

1. The assembly calls the vote on the merger, dissolution or abolition of the municipality. The final decision on the territorial change is in the hands of central government, which assesses whether all the conditions laid down in the law have been met. In the case of a merger, the referendum results, together with a legal contract between the merging municipalities, must be submitted to the government. More conditions apply to the dissolution of a municipality. According to the law, a newly forming municipality has to have a single territory, more than 3,000 inhabitants and there must be no significant infrastructure investments on the territory of the new municipality on which the original municipality is dependent. A stricter list of the conditions for dissolution was introduced partly as a response to the growing number of local referendums on the dissolution of municipalities. The original conditions of dissolution enabled dozens of communities to be re-established as new municipalities, which was to soften the impact of forty years of communism during which the state forced smaller communities to merge in order to create larger municipalities. As we see in Table 1, more than 700 municipalities disappeared in the years 1950-1989 as a result of an organized administrative effort by the state to consolidate the territorial structure.

Table 1: Number of municipalities in historical perspective

Year	1950	1961	1970	1980	31.12.1989	31.12.1990	31.12.2006
Number of municipalities	3334	3237	3091	2725	2669	2826	2891

Source: Territorial changes in municipalities since 1990. The Interior Ministry of the Slovak Republic, Bratislava, 2003: 34-39

2. The local assembly is obliged to call a referendum if it is initiated by a resolution of the local assembly.

3. In this case the referendum vote will be called if a petition, signed by at least 30 percent of the eligible voters, asks for a referendum. Three members of the local assembly are obliged to check whether the legal conditions (i.e. the number of signatures, the correct petition form) have been met. If the petition asks for the dissolution of a municipality, members of the assembly will also explore whether the conditions for dissolution are fulfilled. This means that the role of the local assembly in calling the referendum is not merely symbolic and its review of the petitions or fulfilment of legal conditions could be potentially controversial. As we will show later, individuals have frequently challenged the review power of the local assembly at the constitutional court. The facultative referendum may be called upon a resolution by the local assembly in „other important cases of self-governance“, with no restrictions on the potential subject of the referendum. We argue that some limits on the subject-matter of local referendums are applied implicitly; however, the question as to what happens if a municipality calls for a referendum which apparently violates constitutionally guaranteed freedoms is a merely theoretical one. As of today, there is no legal mechanism to prevent such a vote from taking place, with its result being the subject of an ex-ante review by the constitutional court if an individual files a constitutional complaint.

The second instrument of local direct democracy is a vote to recall the mayor. The recall can be initiated by a resolution of the local assembly or by a petition asking for a recall and signed by at least 30 percent of the eligible voters. According to the law the assembly is obliged to call for a recall vote if the mayor seriously or repeatedly violates her/his duties, the constitution, constitutional laws or other legally binding norms. On the other hand, the assembly may initiate a recall if the mayor is unable to execute her/his duties for a period longer than six months.

The conditions which regulate voting and the outcome are the same for all the instruments. The vote is valid only if at least half of the eligible voters turned out and at least half of them voted in favour of the proposal. With the same conditions applying to all votes and all municipalities, no matter what their population is, the current legal status effectively prevents any votes in large municipalities, especially those with more than 100,000 inhabitants. This is supported by the data on the average turnout in municipal elections in large cities over the last two elections. Both the capital, Bratislava (turnout 28.79 percent in 2002 and 32.75 percent in 2006), and the second biggest city, Košice (turnout 33.31 percent in

2002 and 26.54 percent in 2006), would have a hard struggle to meet the 50 percent turnout requirement.³

Regional level

With the exception of the referendum on territorial change, the same instruments can be found in the law on the regions. The referendum may be initiated by a regional parliament or by a petition of at least 30 percent of the eligible voters in the region. The 50 percent turnout requirement for a valid vote applies as well. The recall procedure (of the regional president) is similar to that at the municipal level, with the regional parliament obliged to call for a recall if the president is incapable of exercising her/his functions for more than six months or if her/his conduct in the office does not comply with the law. To date, there have been no regional referendums or recalls, not even an attempt to organize one, with the signature quorum and the voter turnout requirement clearly producing a powerful obstacle to direct democracy at the regional level. With average regional election turnouts in 2001 and 2005 well below 30 percent (26.02 percent in 2001 and only 18.02 percent in 2005), it seems that direct democracy at the regional level will remain a dead letter in the law for the immediate future.

2 Practice

As is the case in other countries in Europe, research on local democracy in Slovakia is almost non-existent. Slovakia has approximately 2,900 municipalities, meaning that there are 2900 different stories on local governance. As there is no legal obligation for a municipality to report information on votes to the Statistical Office, we are unable to use any official data on local direct democracy. Local referendums remain, with few exceptions, local business. Only indirect data from secondary sources is available. For example, since 1990 the number of municipalities increased from 2669 to 2891 (2006). Because new municipalities emerged predominantly as a result of a dissolution process, which included a local referendum, we can argue that at least 200 local referendums on dissolution took place in this time period. Despite the lack of statistical evidence, local direct democracy became nationally visible as a result of a constitutional review.

Even if there is no explicit possibility of a constitutional review in relation to the local direct democracy stipulated in the constitution, according to Article 127 a subject may file a constitutional complaint, claiming that her/his rights and freedoms – as guaranteed by the constitution and international agreements – were violated and recourse is not available under ordinary court review. On several occasions these constitutional complaints involved local direct democracy, especially in connection with the procedural aspect of vote setting. These cases also highlight the unavailability of legal remedies in the case of local direct democracy. This leaves local direct democracy and citizens without effective court protection in problematic cases. The following case review offers a summary of cases decided by the court in connection with local direct democracy.

³ Data on election results are available at the website of the Statistical Office of Slovak Republic under *Election statistics*. <http://www.statistics.sk>.

The first case⁴, 3/94, arrived on the Constitutional Court's docket in 1993. It referred to the city of Stary Smokovec, where a citizens' initiative had demanded a referendum on the dissolution of the city in order to create a new municipality, Tatranská Lomnica. The city assembly refused to call the vote, arguing that in their opinion the proposed dissolution did not fulfil the obligatory condition stipulated in the law i.e. that the new municipality should have its own territory. The organizers of the petition filed a complaint, arguing that the assembly's refusal to call the referendum violated their constitutional right to participate directly in the administration of public affairs. In its finding the court agreed with the petition organizers by explaining that the legal condition „to have an independent territory“ is not an obligatory one. In the second part of the decision the judges clarified the nature of the right to directly participate in the administration of public affairs. According to the judges, „the exercise of this constitutional right is ensured through such an organization and legal form of territorial self-government which enables any inhabitant of a municipality to take part in its administration, and to directly decide about public affairs of community importance through the direct and specific declaration of will by all the inhabitants, or by a certain group of inhabitants of a community“. The court observed that if a local authority „fails to fulfil its obligation to enable the inhabitants of a community to take part in the voting, [it] prevents them from exercising their constitutional right to participate in the administration of public affairs“. The same line of the argument was confirmed in case I. ÚS 46/96⁵, in which the court declared that a refusal to call a referendum constitutes a violation of the right to participate in the administration of public affairs.

In a second case (II. ÚS 9/2000⁶) in which the local assembly refused to call a referendum, arguing that none of the conditions for dissolution laid down in the law were fulfilled, the court widened previous findings by analyzing the relation between the local assembly, its power to review the petition, and the citizens who were asking the assembly to grant them their constitutional rights to participate in administrative matters. The court introduced a „principle of objectivity“ which has to be considered as an inseparable part of any decision making by state authorities, including local ones. In other words, in order to assess whether the conditions for a referendum on dissolution are met, the assembly has to consider each condition objectively and is obliged to „obtain such expert statements (standpoints), which expressly and in a professional manner evaluate the specific issue which is supposed to be decided upon“.

In a third case⁷, just few weeks later, the court expanded the objectivity principle. The judges argued that although the local council's refusal to call a referendum was based on an expert opinion, that opinion was unable to provide a clear and unambiguous answer on whether the legal conditions were fulfilled or not. The fact that the expert opinion was prepared by the urban planning division of the city also violated the principle of objectivity. This was the first time the court had declared a violation of an additional constitutional right: the right to petition as guaranteed in Art. 27 of the constitution.

⁴ http://www.concourt.sk/S/Zbierka/1994a/3_94a.htm

⁵ http://www.concourt.sk/S/Zbierka/1998a/14_98a.htm

⁶ http://www.concourt.sk/S/Zbierka/2000a/6_00a.pdf

⁷ http://www.concourt.sk/S/Zbierka/2000a/7_00a.pdf

3 Conclusion

As was mentioned above, despite the relatively extensive regulation of direct democracy procedures at the local level, the practice is affected by high turnout requirements, which in most cases prevent voters from having an impact on the decision that is on the ballot. The high quorum requirement is similar to that at the national level, where only one out of seven referendums was valid. On the other hand, the picture of local democracy and citizens' involvement would not be complete without describing other instruments available to citizens for increasing their possibilities of influencing local politics.

A possibility for citizens to influence legislation proposed by the local authorities was introduced in the law on the municipalities and the law on the regions in 2002. The municipality is obliged to publish the draft legislation ten days before the session of the local parliament, thus offering the opportunity for the citizens to express their opinions and comments, or to propose changes to the draft. Their proposals are included in a report attached to the draft and are available to all Members of Parliament who are to discuss and vote on the legislation.

Another important instrument, which directly affects local governance, has to do with the law on freedom of information (211/2000 Col.). This law, which requires all public authorities to provide information on their actions, including local authorities, made the functioning of the public sector more transparent, with a wide range of information – from draft legislation to the budget figures – readily available for public scrutiny. The same applies at the local level, where an extensive amount of information is available to citizens, e.g. on legislation, the budget, expenses, and local authority contracts. The obligation to publish information on their performance is supplemented by the citizens' right to demand additional information on various aspects of the performance of municipalities/regions. With active citizens it is much more complicated for local authorities to govern as autonomously and in as carefree a manner as was the case before the legislation was passed.

The reform of the public administration, which started in 2000, increases the pressure on municipalities to provide better services and to be financially responsible. With a fragmented municipal structure dominated by small communities, it is only a matter of time before the state and the municipalities themselves will start to question the viability of local governance on such a small scale, where most of the resources are used for daily business and none are left for future development. It will be interesting to see how the process of re-unification will be designed and what role will be played by direct democracy.

What we see in the Slovak case is the national legislature's ability to restrict direct democracy at the local level in one year and introduce a new tool for citizens in another, in both cases without extensive discussion on the reasons for such amendments. When the parliament legislates on local direct democracy and tools of participation, the respective changes come „out of nowhere“ and are subject to no discussion whatsoever. As no ideas about local direct democracy are included in the relevant political parties' manifestos, or are part of a local direct democracy advocacy movement, it is impossible to predict what, if any, changes will be introduced in the future.

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Direct democracy in Slovenia – poor practice at the local level

Bernard Nežmah

This paper on Slovenia's local referendums deals with a basic paradox: Slovenia is one of the leading countries in terms of the number of national referendums,¹ but at the same time it is grouped in the class of countries with a low rate of local referendums.

In an attempt to describe this contradiction, the paper is divided into two parts. In the first, the principle and the practice of the local referendum is presented, while in the second, reflections on the national level will be given. The attempt to resolve the initial paradox will be pursued in the final conclusions.

1 Local Referendum

The local referendum in Slovenia is regulated by the laws on local government and on referendums and public initiatives. The first Local Government Act was passed in 1993; the current Local Government Act was introduced in October 2005. The first Referendum and Public Initiative Act was passed in 1994, while the current Act was introduced in March 2007.²

1.1 Procedures of direct democracy

a) Mandatory referendum, consultative referendum.

b) Procedural rules:

- i) if a demand is made by the mayor or a member of the local council to call a referendum, the referendum will take place if a clear majority of the council votes in favour.
- ii) if 5 percent of the local community demand a referendum, the referendum has to be called by the local council (citizens' initiative).

¹ Number of citizens' referendums in the world 2001-2003: Switzerland (24), Azerbaijan (8), Botswana (8), Slovenia (5) etc. Cf. Kaufmann, Bruno and M. Dane Waters, eds: *Direct Democracy in Europe*. Carolina Academic Press, Durham 2004: 139.

² <http://zakonodaja.gov.si/>. See Referendum and Public Initiative Act and Local Government Act: articles 44, 45, 46, 47 and 48, Zakon o referendumu in o ljudski iniciativi. Ur.l. RS, št. 26/2007 (=Official gazette).

c) Deadlines:

- i) the demand for a referendum has to be submitted within 15 days of the adoption of an administrative act;
- ii) the mayor can refuse the call for a referendum if he considers that the demand is against the law. In this case the initiator of the referendum has 8 days in which to amend his demand to conform with the law;
- iii) the initiator of the referendum can also appeal to the court to overturn the mayor's decision; the court has 30 days to reach a verdict on the issue;
- iv) if the local council believes the referendum initiative is against the law or against the constitution it can halt the referendum activities while the constitutional court decides on the issue. The constitutional court has to declare its judgment within 15 days;
- v) the referendum has to be held within a period of between 30 days and one year after the official call for the referendum was made.

d) Subjects not allowed in referendums:

- i) budget, ii) taxes, iii) issues that could be against constitutional rules.

e) Validity of the referendum vote:

a referendum is decided by a simple majority of the votes cast; there is no requirement such as a turnout quorum.

1.2 Practice

As no systematic statistics from the local referendums are available, some specific examples will be given.

The majority of referendums dealt with the formation of communities: mostly establishing new communities from previous larger ones. Only a small number of local referendums are recorded which dealt with other issues.

In Ljubljana (the capital of Slovenia) not a single local referendum was held in the last 20 years. However, in 2004 a civil initiative succeeded in gathering over 10 percent of the signatures needed for a referendum against the city council's decision to allocate a certain plot of land for the construction of an Islamic centre. The mayor blocked the call for a referendum on the location of the mosque due to its constitutional implications. The Constitutional Court found the initiative to be unconstitutional and in the end the initiative was rejected.

In 1996, the Green Party in the city of *Mezica* called for an advisory referendum to oppose the construction of a new polyurethane factory. The turnout was 68 percent; 75 percent supported the referendum. The factory was not built.

In the city of *Bled* the local authorities allowed the electricity supply company to enlarge the reservoir. Later, this was challenged by a popular ecological initiative which resulted in the referendum of 2002. The result was in favour of the eco-initiative, thus stopping the plan to change the local environment.

In 2000, the city council of the city of *Pivka* organised an advisory referendum on the question as to whether the city's name – ,Pivka' – should be replaced by its previous name ,Sempeter na Pivki'. The majority voted against the proposed name change.

In 1999, a people's initiative in the city of *Ajdovscina* called for a referendum against the renaming of the village from ,Vipavski kriz' to ,Sveti kriz' (,Saint Cross' instead of ,Vipava Cross'). The majority opted for the old village name.

In 2000, the city of *Postojna* held an advisory referendum on the request of a civil initiative. The referendum demand was radical: it called on the state government to abandon the local army tank and artillery base. Over 70 percent of the voters turned out for the referendum and almost 70 percent supported the referendum proposal. This brought significant political consequences. While the army base remains at the same location, the Ministry of Defence started to pay compensation to the local population for the inconvenience caused by military activities, live firing exercises have been restricted, certain military activities have been dropped, and farmers have obtained freer access to the fields.

In 2003, the local council of the city of *Krsko* began action to initiate an anti-nuclear referendum dealing with the status of the local nuclear plant. This was a political threat: as soon as the government reached a new agreement with the local community the initiative was withdrawn.

In 2004, a citizens' initiative in the city of *Radovljica* made a call for a referendum against the planned route of a motorway. The mayor blocked the call for a referendum. The initiators then appealed to the court, which supported the mayor's decision, with the explanation that the planned route of the motorway had been fixed by the state government and the local council had merely given their non-binding approval. The ruling thus maintained that such a local approval is to be regarded as a non-administrative act and as such it cannot be challenged in a referendum.

In 2005, a citizens' initiative in the city of *Koper* called for a referendum against a municipal act which planned to amalgamate two local schools into one. The turnout was 49 percent, and only 33 percent voted in favour of the proposed objection.

In 2005, the city council of the city of *Trzic* called for a mandatory referendum against the proposed site for a refuse dump. The majority voted in favour and the mayor respected the people's will.

In 2006, the mayor of the city of *Trzin* called for a mandatory referendum. The majority voted against the proposed location for a new cemetery.

In 2008 in the village community of *Borovnica* took place a binding referendum: the majority of the citizens voted against the local act by which the serial of appartement blocks were planed to be erected beside the traditional single houses.

In 2009 in the city of *Zagorje* a mandatory referendum against the incineration of waste in the local factory took place. The result was almost 90 percents in favour of greens, yet it had no effect on the acting factory.

In the same 2009 the city council of *Piran* passed the act by which the prohibition of the street traffic in the medieval city was introduced. The opponents called for a binding referendum. The result is that the street traffic is still allowed in the city of Piran.

1.3 Evaluation

In summing up the local referendums, we can perceive a dichotomy between the small number of referendums and the relatively simple procedures for calling a referendum.

What are the possible reasons for this situation?

The cost of a referendum is always stressed by politicians, and then again by the mass media. Political parties see the holding of a referendum as a political defeat. This holds true for all political parties, regardless of whether they form a local or state government or find themselves in the opposition. When a political party is among the initiators, or if it supports the referendum through civil initiatives, it is afraid of losing the referendum. In this event, their opponents would blame them for the unnecessary expense. In general, a referendum is regarded as the last resort for limiting the power of the government or a mayor. So, having a referendum already implies that the authorities have conducted themselves with a lack of political wisdom.

The fact is that a referendum is considered to be a remedy that cures deviations of the intended policy of the ruling parties and not as a regular constitutional way of participating in politics.

2 National referendums

At a conference in Sofia in 2005 I presented a survey of referendums in Slovenia. At the time I thought that only the new specific referendum cases would need to be added. However, I will have to retell the Slovenian referendum story from the very beginning.³

In 2005 I did not pay specific attention to the distinction between a popular initiative and a referendum. This was due to the fact that Slovenian juridical terminology distinguishes between two modes of referendum in terms of adopting or rejecting a bill. One is termed a „preliminary“, and the other a „legislative“ referendum. In both cases, the same procedures are applied and the same type of issues can initiate a demand for a referendum. The main distinction is based on the level of the legislator. The legislative referendum is applied *a posteriori* (after the parliament has passed a bill); thus it has the function of allowing a show of public approval or disapproval. In a representative democracy the citizens are asked to reach their own judgement on the bill in question.

The preliminary referendum, on the other hand, is launched with the aim of allowing the citizens themselves to decide whether a particular law proposal should be adopted; in the event of a positive outcome, the parliament would be obliged to implement their decision in passing the bill. However, even though the parliament was the legislator, it acted either as a genuine decision-maker or as a mere executor of the decision reached at the referendum. In 2005, these distinctions did not seem relevant to the Slovenian practice of direct democracy.

In order to clarify the position of direct democracy in Slovenia, a historical survey is in order. Over the last 16 years (up to the end of 2008) as many as twelve (national) referen-

³ For a general overview: Igor Luksic/Andrej Kurnik (2001): Slovenia, in: Andreas Auer/Michael Buetzer, eds.: Direct Democracy: the Eastern and Central European Experience, Ashgate: Aldershot etc., 192-204.

dums have taken place – an exceptional figure by comparison with other EU countries. The following question should be asked: why has the institution of the referendum become such an important issue in Slovenia?

The independent state of Slovenia was proclaimed 20 years ago. Prior to this, Slovenia was one of the six Yugoslav republics. Yugoslavia was an example of a communist country in which political parties were forbidden and the practice of free elections did not exist.

In spring 1990, the Slovenian Communist Party was defeated in the first free parliamentary election after the Second World War. The victorious DEMOS coalition was to fulfil its crucial pre-election promise: to declare Slovenia an independent state. In its prolegomena, the Yugoslav constitution referred to the right of secession which could be granted to an individual republic – although this right was considered merely theoretical, for there were no specific procedures for executing the concrete dismemberment of the state.

In practice, the constitutional right to secession was rejected by the army high command which effectively banned any such action, considering it a violent attack on the integrity of Yugoslavia. In post-war history the army was a guarantor of stability for the political regime; all high-ranking officers were members of the communist party and all political conflicts were always suppressed with the threat of army intervention. So the aim of gaining Slovenian independence through legal means seemed hard to achieve. Merely passing a law in parliament would not be a powerful enough means of paralyzing a potential military coup. A new weapon had to be invented.

True to communist theory, the Yugoslav army had been created as the people's army. What did this actually mean? The supreme commander of the army was not the president, but the nation. It was certainly a vague concept, but the army ideology was based on the slogans of the brotherhood of all Yugoslav nations and of the genuine will of the people.

The practical solution found by Slovenian politics was a logical one: only a decision by all the people could be accepted as an effective answer to the question. So, in late 1990 the Slovenian parliament called its own plebiscite on the sovereignty of Slovenia, with a clear indication that an absolute majority was needed. The result was fascinating: 93 percent of all the voters turned out to cast their vote, of which 88.2 percent voted in favour of declaring independence.

The referendum therefore became one of the foundations of the Slovenian state⁴ and as a consequence the article on referendums was written into the constitution. It provides that the right to approve a law is not limited to a majority of the representatives. There are three other occasions when the parliament is obliged to call a referendum:

- when 30 representatives (one third) call for a referendum.
- when a majority in the national council (the upper house of parliament) votes for a referendum.
- when 40,000 citizens sign a demand for a referendum.⁵

⁴ This fact was also noticed from a foreign perspective: „Since the great success of the 1990 referendum on independence, popular referendums have been highly regarded by the Slovenian populace – as is also the case in Lithuania“. Ewert, Benjamin: *Potentiale der direkten Demokratie in Litauen, Slowenien und Ungarn unter besonderer Berücksichtigung der politischen Kultur*. Frankfurt am Main: P. Lang, 2007: 124.

⁵ Constitution of the Republic of Slovenia, article 90.

Now I would like to continue with the concrete examples of referendum in Slovenia, which differ from case to case. It can be considered as a pioneering epoch for the implementation of direct democracy.

In 1996 there was an ongoing polemic concerning a possible constitutional change in which people were undecided as to whether a proportional electoral system should be changed in favour of a majoritarian one. After 40,000 citizens had already signed their support for the relative majority system, a group of representatives used their right to hand in a demand for a modified proportional system, and then the national council presented their call for a referendum on a proposal for a semi-proportional system.

The right to direct democracy was ignored because the other demands for a referendum were processed more quickly. So, instead of having a referendum campaign, there was an ongoing deceitful struggle on how to stop the people's initiative. The manipulation was evident: when the signatures were collected, the political parties reacted immediately and in literally a moment brought to the Speaker a list with the signatures of 30 representatives.

The problem was put to the Constitutional court, which had to decide which of the referendum demands should be given to the voters. A judgment of Solomon was announced: three referendums would take place at the same time.

Each voter therefore faced a triple question, which of course caused a series of misunderstandings. However, the referendum initiated by the voters was carried, with 44 percent in favour and 25 against, while the other two referendums failed.

Then a new problem arose: the parliamentary majority which disliked the proposed change in the electoral system asserted that the people's referendum had also failed, on the grounds that it had gained less than 50 percent of the total votes. Due to the complicated system, almost 10 percent of the votes were considered void. The group which led the people's referendum appealed to the Constitutional Court with the objection that the invalid votes had been counted as no-votes.

A new judgment was declared. The Court accepted the arguments of the promoters of the people's referendum and once again declared that the people's referendum had won. But now the parliamentary majority showed their hand, refusing to implement the result of the referendum and adopt a new electoral law.

Once again the constitutional court decreed that the referendum outcome had to be implemented. Then the coalition parties accused the constitutional court of ignoring the constitution, which differentiates between legislative and juridical power. This ping-pong continued for years; in the end the referendum results became irrelevant, because the proportional electoral system was amended.

In 1999, the government planned to take out an international loan for a new power station. When public opposition to this reached a certain level, a group of representatives from the governing coalition called for a referendum. The result was catastrophic for the government; less than 20 percent of all the voters backed its plan. This was the first time that a decision made by the will of the people was accepted without any manipulation.

In 2001, the government passed radical liberal legislation: a right to in-vitro fertilisation, part of which – the extension of the right to single women – was strongly opposed. 40,000 signatures were collected for a referendum and over 70 percent of the voters opposed the law proposed by the government. The law failed.⁶

⁶ Due to the lack of a coherent official information system on referendums in Slovenia some misunderstandings resulted, for instance: „72.36 percent of those who voted were against an already approved law which allows

In January 2003, two referendums took place on the same day. Two people's initiative groups gathered 40,000 signatures, first for a referendum against the proposed privatisation of the national railroads, the second against privatisation of the national telecoms provider. Despite the topics being almost identical, the first failed while the second succeeded. Why did the voters reach a different decision in similar cases?

The answer is to be found in the semantics of the referendum question on the national railroads which was extremely difficult to comprehend: „Do you support the referendum law that changed the law passed by the government in the following 6 articles?“ (These were elaborated in detail in a series of paragraphs.) This vague formulation of the question embarrassed the non-educated citizens who were confused, so that they actually did not know what they were voting for by saying ‚yes‘.

In spring 2003, another double referendum was called, this time dealing with Slovenia's entry into the European Union and NATO. Almost 90 percent of the voters voted in favour of the European Union, while support for NATO was lower, with 66 percent in favour.

2003 proved to be the most prolific year for direct democracy, for in the autumn the citizens took part in a referendum for the fifth time that year. This time it was to decide upon a demand to end Sunday trading for shopping centres, except for 7 Sundays each year. The citizens' referendum was approved with a 57 percent ‚yes‘-vote. However, it then took two years for the parliament to draft and approve a bill that implemented the referendum's decision. The new bill was enforced and the shops were closed on Sundays for a few weeks until the companies which ran the shopping centres appealed to the constitutional court. It appeared that the wording of the bill implementing the referendum decision was not in complete accordance with the referendum question.

What happened then? Did parliament pass a new, accurately-worded bill? – Not at all. In the meantime, the shop assistants' trade unions reached a compromise solution with the owners of the shopping centres which substantially increased the rate of pay for working on Sunday and freed mothers with young children from having to work on Sundays.

In the end there was no-one left to demand that the outcome of the referendum should be converted into legislation; the apparent function of this referendum was to support the trade unions' battle with the multinational shopping centre chains.

In 2004, parliamentary conflicts continued to be acted out through the referendum. The leading coalition promoted and passed a law granting certain benefits to the group of ex-Yugoslavs living in Slovenia (i.e. an ethnic minority). The move was strongly opposed by the majority population. The opposition parties collected signatures from their representatives so that they could call for a referendum. Then a strange situation occurred, because the leading coalition tried to organise a boycott of the referendum. Nevertheless, a substantial portion of the population came out to vote (more than 31 percent), of which 94 percent opposed the law.

The last referendum at the state level was called by opposition representatives in September 2005 when the new law regulating the national television was challenged. The proposers failed, securing only 49 percent of the votes.

At this point it is worth looking at the statistics. Up to 2007, 12 referendums were called, six by party representatives, 5 by citizens' initiatives, one by the national council. The representatives won three out of their six, while the various peoples' initiatives won four out of

artificial insemination of single women. But voter turnout was insufficient to recognise the results.“ Tsekov, Petyo. *Direct Democracy An Overview of History and Practices*. Balkan Assist Organisation, Sofia 2005: 71.

five. But if we exclude the two consensus referendums on NATO and the EU, the result shows that only one referendum called by the representatives was won, which underlines the importance and the potential force of the citizens' initiative.⁷

The main objection to a referendum is that it puts a political decision in the hands of a minority of the population. Average turnout is 34 percent, varying between 27 and 60 percent; however it is stable, with no downward trend.

Now it is time to return to the beginning of this paper to elicit the difference between the citizens' initiative and the referendum as such. Of the four cases of bills that were proposed by the citizens, three were won at referendum. However, a gap remained between the results of the referendums and their further implementation. Since none of the referendum questions was put in the form of a fully-drafted bill (as normally is being done in Switzerland), the representatives were obliged to formulate the precise wording themselves. Only in a single case the outcome of the referendum was converted into an adequate bill and implemented.

Despite the failures in implementing the bills proposed by the citizens at referendums, this political act of direct democracy is to be regarded as very successful. The political elites felt it as an unbearable trauma to have to execute the citizens' referendum decision, for this implied that they are no longer the sovereign legislators. However, in the end they amended the laws and changed the legislation at least in the direction proposed by the citizens.

When the citizens' initiatives were regarded as a type of democratic decision, the constitutional court decreed that a bill resulting from a „preliminary“ referendum launched by a citizens' initiative was not in accordance with the constitution. The task of the parliamentary parties was to correct the details. But instead of this something very surprising happened. The government and opposition parties, which were constantly fighting in parliament, suddenly reached an unexpected agreement. They formed an absolute majority which gave them the right to change the constitution itself.

It is of interest to mention the important recent changes to referendum law:

- firstly, the initial number of signatures required for the initiative to start collecting signature support for a referendum was raised from 1,000 to 2,500;
- secondly, on 29 December 2006, the ‚preliminary referendum‘ was deleted from the legislation.

The otherwise antagonistic political parties joined forces to eliminate the citizens' right to have legislation adopted by means of referendum. The scope of direct democracy was narrowed to the right to reject a specific bill of parliament in a referendum vote.⁸

However, it should be noted that it was not only the anti-referendum amendments which were approved. In terms of the process of collecting the required 40,000 signatures, a great step forward was made. Until then, the citizens had had to come to the municipality to identify themselves. With the amendments, electronic signatures are also admitted and this has

⁷ The referendum is a success even under unfavorable circumstances, such as when the government funded the advertising of its own bill while refusing to pay the referendum costs of the civil initiative. Cf. Nežmah, Bernard: *Pot v napačno smer*, in: *Mladina* 4, 2003: 18.

⁸ However, due to article 88 of the Constitution, the popular legislative initiative still exists, in the sense that 5,000 citizens can propose a specific bill for parliament to vote on (agenda initiative).

made the process of securing the 40,000 signatures much easier. In fact, two and a half percent of the voting population is a reasonable proportion which ensures that direct democracy in the form of a referendum will still flourish.

3 Conclusion

How to interpret the gap between the very high frequency of the national and the low frequency of the local referendums?

The referendum is in general seen as a political weapon of the opposition parties, and even in those cases where the initiative is a popular one the political parties will always take sides.

Why? During the period of the communist regime, when non-communist parties were forbidden, the role of civil society was tremendous: peace movements, ecologists, Christians, lesbian and gay clubs etc. acted as the substitutes for the political parties when they demanded human rights and a series of different bills to be passed in parliament. So when, in 1990, political democracy was established, the common view emerged that all political issues could be conveyed solely through the political representatives – which suddenly, and surprisingly, positioned the various civil groups – along with the communist apparatus – as remnants of the dark past.

The fact that the referendums are called by political parties themselves or through the various civil initiatives could explain the difference between the frequency of referendums at the national and local levels. Local communities are led by the mayors and their councils, which conduct politics with more pragmatic and less ideological platforms. This results, on the one hand, in a relatively small number of referendums, but on the other hand the subjects of referendums are, to a large extent, issues of interest to citizens and not merely to political parties.

Sweden: Better late than never. Towards a stronger initiative right in local politics

Bruno Kaufmann

Abstract

Sweden has recently experienced two major events relating to direct democracy in local politics. One was genuinely local, but with a national impact, the other was a national initiative with a major local impact. In late 2010, a popular vote in the western city of Lidköping on the establishment of a new municipal library marked the 105th time that a local electorate was able to make a decision on a local substantive issue. This increased the national awareness of modern direct democracy. And in early 2011 a new Swedish constitution introduced a stronger direct-democratic right for the citizens at the local level: in future 10 percent of a local electorate will have the right to trigger a popular vote on a substantive issue.

This article explores the long road towards these most recent humble milestones of modern representative democracy in Swedish local politics and offers an assessment of a very difficult democratization process in a unitarian state system. It concludes by proposing a few steps, which, if implemented, would make the biggest Nordic country ready for more citizen participation in the decade to come – including the establishment of a supportive direct-democratic infrastructure and close interaction with transnational developments towards more people power.

1 Introduction

A couple of years ago, in what was a remarkable and rather surprising assessment, the Economist Intelligence Unit crowned Sweden as the „most democratic country“ in the world¹. An even more fascinating feature of this assessment was the awarding of the maximum of ten points for the level of political participation in the country. So, one might expect that an article on direct civic participation in Swedish politics would offer a wealth of both procedural and practical records and stories. The reality is rather different, however: Swedes have very limited formal rights to influence electoral processes at all. Leaving aside the 1-2 percent of the population who are actively involved in party politics and elected political bodies, citizen decision-making is foreseen only on election day, which is held every fourth year – simultaneously² for the local, regional and national parliaments.

¹ <http://a330.g.akamai.net/7/330/25828/20081021185552/graphics.eiu.com/PDF/Democracy%20Index%202008.pdf>

² Elections are held on the third sunday of september until 2010; from 2011 this event will move to the second sunday in september, in order to give a possibly new government more time for the budgeting process.

In respect of voting rights on substantive issues, the former Swedish constitution of 1975 basically offered only consultative „powers“ to the electorate (Chap. 8.4 in the basic law), while binding decision-making at the national level is available for constitutional amendments only (Chap. 8.15)³. To date, six nationwide popular votes on substantive issues (alcohol, the pension system, driving on the left, nuclear energy, EU membership, and the introduction of the Euro) have taken place; all of them were triggered by a parliamentary majority and were merely consultative.

The democratisation of Swedish democracy offers similar patterns as many other western and European countries. Those in power (societal classes, political parties, gender, nationals) are generally less prone to share voting rights with new groups. In Sweden the transformation from an originally undemocratic regime into a parliamentary monarchy was initially fought by the political right, while the left – mostly in power since the 1930s – tried after the introduction of universal suffrage in 1921 to limit the further extension of voting rights on substantive issues on all political levels. Key democratization proposals, including universal suffrage as well as voting rights on substantive issues have been and are mainly suggested by smaller centrist parties, as for example the Liberals in the late 19th century, the Centre and Christian Democratic Parties in the second half of the 20th century and the Green Party in the early 21st century.

However, contrary to other countries, the Swedish electorate has never had the opportunity to participate directly in the constitution-making process of their country. The legal procedure introduced in 1980 for a binding abrogative popular vote has not been used until now. The indirect procedure to have a general election between the two readings of a constitutional amendment has not proven to be an efficient way to democratize Swedish constitution-making.

As a consequence constitutional changes are left within the powers of parliament where they are dependent on the approval of the biggest political parties. In other words: like Germany, where a 2/3 parliamentary majority is required for constitutional changes, Sweden's biggest parties – the Moderates and the Social Democrats – have a form of veto power on important forward steps in democratization. This veto power was used extensively last century, initially against ‚basic‘ universal suffrage and then against ‚extended‘ universal suffrage, which includes initiative and voting rights on substantive issues as well.

While the developments just described contrasts sharply with the *Economist* ranking of optimum „political participation“, the realities are more complex. It turns out that the intelligence unit of the London-based magazine only compared average turnout in elections, party membership levels and the numbers of newspaper subscriptions. No other elements of participation were considered. In this respect, however, Sweden too has experienced an interesting growth in direct democratic practices – especially at the local level. This includes both procedures and practices, featuring 105 local popular votes on a substantive issues as well as the decision to introduce a stronger popular initiative right at the local and

³ Kaufmann et al, „Guidebook to Direct Democracy“ (2007), p. 262, pay attention to the fact that the binding citizen decision-making is only available in an abrogative way. This means, that a constitutional amendment, which has passed the first reading in parliament may be put to a popular vote if 1/3 of the parliament does request this. In the popular vote, a majority of the voters but no less than 40 percent of the electorate, must say no to the proposed amendment. In this case the amendment has definitely failed. If, however, such a no-quota is not reached, the parliament is formally free to ratify the amendment in a second reading – or not.

regional level. Both aspects will be explored in this article. But first, let us look into the century-long struggle for more democracy in Swedish local politics.

2 Swedish local democracy – an unfinished journey

From a monarchy, national representative democracy slowly evolved in Sweden after the end of royal absolutism in 1809. In essence, however, it never changed its centralistic structure, on the contrary: in recent decades the 25 historical provinces („*landskap*“) have been replaced – both politically and administratively – by 25 departments („*län*“), whose chiefs are appointed by the central government in Stockholm. And there is a government proposal that these 21 „*län*“ shall be further reduced to between six and ten major regions by 2014.

But despite the historical roots of this strong centralism, the local entities do play an important role in Swedish politics and the democratic history of the country. Like the Swiss alpine villages, Swedish local communities managed to develop and practice pre-modern forms of classic assembly democracy. These assemblies, called „*sockenstämma*“, brought together the eligible male population – at that time farmers who owned some land – at the local level and decided on most local affairs, including judicial decisions. Between 1850 and 1950, however, the local assemblies lost most of their competencies to national government bodies, and during the same period the organisation of local entities was reformed several times, a process which was finalized by the big municipal reform after World War II. In 1946, the national Swedish parliament decided to replace almost 2500 local administrative entities („*socken*“) with less than 1000 municipalities („*storkommuner*“). This huge reform was finally implemented in 1952 and ended the period of classic assembly democracy in Sweden.

Table 1: Legal forms and practical experience with modern direct democracy in Sweden

	Level	Local	Regional	National
Form				
Citizen-initiated popular votes (initiative & optional referendum)		x (limited, established 1994), successfully initiated at least 150 times, stopped by local parliaments in more than 90% of all cases), New stronger right from 2011	x (limited, established 1994), very few practical cases, always stopped by regional parliaments), New stronger right from 2011	- (several attempts at introduction: 1952, 1954, 1963, 1972, 1978, 1987, 1993; always stopped by national parliament)
Mandatory popular votes (mandatory referendum)		- (de facto mandatory popular votes on issues like merger of municipalities and nuclear waste storage)	-	-
Authority-initiated popular votes		x (consultative only, establ. 1977), used at least 100 times	x (consultative only, establ. 1977), no practice	x (consultative, establ. 1921 – abrogative binding, est. 1980), 6 times

In order to balance this obvious loss in citizens' rights a parliamentary commission, as well as the government of the time, proposed the introduction of local popular votes on substantive issues („folkomröstning“), without however specifying whether such votes should take place as a result of citizens' initiatives and referendums, or upon the decision of an authority (e.g. the majority of a local parliament). But this proposal was never adopted by the national parliament in the 1950s and traditional representative democracy – which means purely indirect democracy – prevailed. It took another quarter of a century, until 1977, before a new legal framework could be put in place, which finally gave the municipalities the possibility to organize popular votes on substantive issues.

This provision has been amended several times (1991, 1994, 2002) and is now part of the national municipal law of Sweden. These rules did not allow for binding citizens' decisions at the local level and offered no binding possibility for specified parts of the electorate to demand a popular vote on a certain substantive issue. However, in 1994 a local agenda initiative was introduced, which stipulates that a local parliament may take the decision to hold a popular vote if at least 5 percent of the electorate demands it. While the procedural requirements for both the initiation and the conduct of a popular vote on a substantive issue were fairly extensive (they included, among other things, the issuing of signature forms and the formulation of an initiative request), many key aspects remained unclear⁴. The Swedish agenda initiative neither had any time limits nor are there any specifically excluded items. At the end of the day, everything depended on the „goodwill“ of the governing majority. This „will“ was, however, not very „good“ since the introduction of the local agenda initiative in 1994. More than 150 citizens' initiative committees did in fact manage to gather the required minimum number of signatures (5% of the electorate) for their proposals and delivered them to the local authorities – but in only 12 cases were the proposals ultimately the subject of a local popular vote. Democratically more effective were the popular vote processes initiated by the local authorities themselves: the vote which took place on September 19, 2010 was at least the 105th such local vote to have been held since 1977⁵, more than 60 of which have taken place since the year 2000.

In the next section we will show that Swedish local democracy is an unfinished journey, in the course of which it has been transformed from a partly classical assembly democracy into a mainly traditional representative form – but is now about to undergo yet another transformation into a modern representative democracy, combining indirect parliamentary democracy with direct citizen forms of participation. As there was a big imbalance of power between the electors and elected, the new Swedish constitution, which came into force on January 1, 2011 introduced a somewhat stronger citizens' initiative instrument – a reform which will be assessed in detail.

3 Initiative and referendum – the Swedish practice

The introduction and use of more direct democracy has been on the agenda of Swedish politics for more than one century. Initial ‚direct-democratic‘ practices were launched to-

⁴ For a comprehensive procedural overview on the rules for initiatives and referendums in Swedish local politics see the Swedish Local Government Act and the Municipal Referenda Act: www.regeringen.se/sb/d/574/a/29535.

⁵ „At least“ because there may have been additional popular votes which have not been found during the research for this article. Even now there is still no obligation to register initiatives and referendums in Sweden.

gether with the introduction process of universal suffrage. By 1913 the national association for female voting rights had gathered more than 350,000 signatures for the introduction of universal suffrage, which was finally introduced after World War I, in 1921. Since then little has happened in respect of the further extension of voting rights.

It was only after the end of the Cold War that most political forces began to understand that the lack of political participation by the citizens had become a serious problem for the sustainability of the whole system. As a consequence many proposals and declarations have been made, all of them underlining the need for stronger and more effective citizen participation in politics. However, as soon as concrete reforms and proposals for the democratization of Swedish local (and also national) democracy are on the table, sceptical voices within the political parties are able to slow down or even veto such steps. And at the end of the day, things become rather obvious. In the commentary to the country's new constitution⁶, which entered into force in January 2011, the committee offered the interpretation that in Swedish practice „representative democracy“ is nothing more than „party democracy“⁷.

One can fairly confidently state that the Swedish electorate would not share this limited view of democracy. Indeed, a large majority would prefer to see the introduction of stronger direct democratic tools, as several opinion polls have shown⁸. This generally positive attitude to extended voting rights was confirmed by the practical use of the two – until now comparatively weak – instruments available until the end of 2010: the non-binding agenda initiative („folkinitiativ“) and the authority-triggered consultative popular vote on substantive issues („folkomröstning“).

Let us first assess the use of agenda initiatives since the introduction of this procedure in 1994. Despite the non-binding and merely agenda-setting design of the instrument it has inspired many citizens' groups to become active on a variety of substantive issues, including planning issues, educational matters, transportation and infrastructure plans, as well the introduction of paid vacation schemes for parents with young children and the issue of nuclear waste. A recent survey by the local politics magazine „Dagens Samhälle“ counted no less than 150 ‚successful‘ citizens' initiatives, where ‚successful‘ means that the initiators were able to gather the support of at least 5 percent of the electorate within a municipality. Nevertheless, only ten of these 150 initiatives were forwarded by the local parliament to the electorate for a „consultative“ popular vote⁹. This fact clearly indicates the profound dysfunctionality of the tool, which is why it was taken up in several reform committees in the national parliament during the late 1990s and early 2000s. While a majority¹⁰ in the national parliament voted on several occasions to introduce a stronger popular initiative procedure, the Social-Democratic minority government was able to postpone implementation again and again. In the end, the whole issue was delegated to the constitutional reform committee, which in early 2009 presented the proposal for a new citizens' initiative law¹¹, which we will look at in detail at the end of this article.

⁶ SOU 2008:125

⁷ *ibid.*, p.231

⁸ Recent opinion polls by Temo (www.temo.se) and Sifo (www.sifo.se/folkomrostning) underline this: on average more than 70 percent of Swedes approve the proposal that more popular votes on substantive issues should be held and that the citizens' initiative right at the local level should be strengthened.

⁹ <http://www.dagensamhalle.se/zino.aspx?articleID=8798>

¹⁰ The majority included the right-of-centre parties – moderates, liberals, Centre and Christian-Democrats – plus the Green Party.

¹¹ Chap. 34.a

Examining a few practical examples will enable us to better understand the various positive and dysfunctional elements of the Swedish agenda initiative process. This includes the identification of two major problems: firstly, the way local parliaments deal with initiatives which have satisfied the qualifying requirements and, secondly, the outcomes, which at times get very far from the initial ideas of the concerned citizens and sometimes even produce a contrary effect.

Since 1974, it has been possible to register two types of agenda initiative in Sweden: „Initiative“ proposals deal with the presentation of a ‚new‘ idea, a substantive issue, which has not (yet) been on the agenda of a local parliament, while the second type can be described as „referendum“ proposals. In this case the initiators seek to „refer“ a decision by the local parliament back to the whole electorate. However, as the Swedish citizens’ initiative culture is still young and weak and as the local parliaments in most cases just try to avoid a popular vote, many citizens do not know how to use and deal with this instrument of direct democracy. As there is no official advice and support infrastructure available, agenda initiatives at the local level sometimes include issues which are outside the competence of the local authority. In such cases it is very important for the authorities to make clear what concrete action a vote can trigger and what not – in order to avoid later frustration.

Table 2: Examples of local citizens’ initiatives in Sweden since 1994

Municipality	Citizens’ proposal	Parliament handling	Output remark
<i>Alingsås (1995)</i>	Convert the local brewery house into a cultural activities’ centre.	Parliament proposes to remove the building, but accepts a popular vote, in which more than 65% vote in favour of the initiative; the parliament then overturns the decision and orders demolition.	Some young people who protested against the local parliament’s decision and tried to block the demolition work were punished by being forced to help with the demolition.
<i>Kungälv (2003)</i>	Keep and improve the local music school	The initiative was a reaction by the people to the parliament’s decision to abolish the music school; after delivery of the signatures the parliament halted implementation and decided to hold a popular vote with a de facto binding character.	76.6% of the voters approved the initiative proposal and agreed to pay a little more in taxes to make this possible; the school moved to better premises and was developed into a school for music and the arts.
<i>Mora (2005)</i>	In collaboration with inhabitants in several other municipalities of the Dalarna province, a citizens’ initiative to allow the hunting of wolves was successfully submitted.	As this issue is not within the powers of local government, the local parliament agreed to a popular vote but with the clear indication that the vote could only trigger a future appeal by the local authorities vis-à-vis the national government on the issue.	More than ¾ of the voters in Mora supported the initiative (turnout: 60.4%). The local government sent a letter to the national government, requesting that it reconsider the current, restrictive hunting scheme. ¹²

¹² Factsheets (in Swedish) dealing with local popular agenda initiatives can be found on the Swedish local and regional government website: www.skl.se.

Many Swedes are clearly interested in becoming more active politically at the local level – but on specific issues rather than in terms of traditional party politics. If in future some of the greatest limitations of the current law can be fixed – especially the gap between the initiation and implementation of a popular vote – and if the authorities start to realise the democratizing impact of the tool, then a much more extensive use of the initiative instrument can be forecast for Sweden over the next decade.

The key reward of the newly established, stronger local and regional initiative law is the much higher probability of a popular vote, which features both a genuinely public handling of the matter proposed and a decision, which – even if *de jure* it remains merely consultative – will *de facto* empower the electorate considerably.

But why should the growing number of citizen-triggered initiatives and popular votes deliver „*de facto* binding“ results at all? Will the local authorities, which until now have shown little respect for the use of citizens' initiatives, become truly „fair players“? Clearly, many actors within elected authorities and political parties will continue to present their traditional scepticism when it comes to power-sharing processes. However, an assessment of the 105 popular votes already held in the last three decades shows that there is a profound respect shared by all the stakeholders for the outcome of popular votes. While no-one questions this respect when it comes to the election of representatives, early practice at the national level included some major attempts to manipulate popular votes: in 1955, most Swedes voted against the proposal to change from driving on the left to driving on the right. However, ten years later the change was implemented without a new vote. A more ‚sophisticated‘ way of confusing the voters and the vote happened in 1980, when a popular vote on the future of nuclear energy featured three different options but no clear procedure for getting a majority decision. It was only with the popular votes on European issues in 1994 and 2003 that a free and fair national process could be re-installed in Sweden.

This slow maturation of democracy is also mirrored in the Swedish record of local popular votes on substantive issues as set out below (Appendix, Tab. 3). The possibility of holding such votes was introduced in 1977, but remained formally merely a consultative procedure which can be triggered by a majority in a local parliament. In contrast to the agenda initiative, there are few elements of real empowerment built into this mechanism as such. Nonetheless, the record does manifest some respect by the local authorities for the outcomes.

Over a period of more than 30 years more than 4 million Swedes had the opportunity to participate in one or several popular votes on substantive issues (Appendix, Table 3). Road-building and transport issues accounted for nearly half of the votes, followed by territorial questions, and social issues such as schools and hospitals, with 11 votes in total. Quite a large number of municipalities were involved in the direct decision-making by the people in Sweden, the 105 votes being held in 80 different municipalities, with the industrial and multi-cultural city of Södertälje holding the record, with 4 votes. Three popular votes each were held in Täby, Ekerö, Norsjö and Vaxholm. All these places are close to Stockholm and had made their first experiences with citizens' votes on substantive issues before 1991. The average turnout for the votes was rather high, with more than 64 percent of the relevant electorate taking part. One important factor for this high participation and level of interest is the finding that the local authorities respected or implemented the decisions made by the people in most (98 out of 105) cases. Only in four cases did the local authorities not respect the citizens, and in three other cases the national authorities intervened. The best-known case is the anti-immigration vote in the southern municipality of Sjöbo, where in a 1988

referendum vote most people decided against welcoming more asylum seekers. After this vote, the national rules were changed and the decision could not be implemented.

Most of the popular votes held were triggered by the authorities themselves. In only around ten cases did the local parliament take the decision to hold a vote after a properly submitted citizens' initiative. The figures reveal a profound distrust of the electorate by their elected representatives. From an elitist standpoint – this includes not only elected officials but also many of the leading journalists, as well as academics – direct democracy is not seen as a tool for more cooperation and for finding compromise, but is viewed antagonistically.

Fortunately, political practice can sometimes transcend this ideological hurdle: a few issues have become de facto mandatory subjects for local popular votes – including the territorial mergers or divisions of a municipality, changes in regional affiliation, as well as the opening of a nuclear storage site or building of huge power plants. Another de facto mandatory issue – the introduction of road pricing schemes – has acquired a prominent position in the nationwide statistics on local popular votes. Interestingly, this series of local votes has its origin in a popular initiative in the city of Stockholm. On January 30, 2003 more than 30,000 signatures were delivered to the mayor of the Swedish capital, Barry Andersson. The local authorities did not at that point accept the popular demand for a vote. Later on, however, the citizens' proposal was implemented, but only after having had a one-year trial of the road pricing scheme. The local popular vote on the issue was held in Stockholm on September 17, 2006, producing a 53:47 yes vote. This procedure seems now to have become the default method, as the local parliament in Sweden's second biggest city, Göteborg, decided in early 2009 to introduce a road pricing system by the same two-step method: first a full-scale trial, then a full-scale decision by the people – at some point before 2013.

A hundred years of slow democratization has brought the people more onto the centre stage of Swedish local politics, but there is still a great deal more to do since elected officials and party representatives still tend to try to monopolize the agenda-setting and decision-making processes. This can explain why in a centrally-governed country like Sweden, where local authorities nonetheless have considerable powers, reforms leading towards greater democracy are very difficult to achieve. But when reforms are introduced, the Swedes seem to be able to use the tools of modern direct democracy in a free and fair way. With the new constitution yet another chapter in the history of Swedish democracy has been opened. I will conclude this article by casting a forward glance into this new chapter.

4 Conclusions

There is no doubt that the majority of Swedish politicians are not yet too familiar with the challenges and opportunities of modern representative democracy in the 21st century. In the comments on the new basic law which was drawn up by an all-party committee over a period of four years, one sentence makes this very clear:

„Den representativa demokratin bars upp av de politiska partierna som konkurrerar om väljarnas roster och är således i praktiken en partidemokrati.“¹³

¹³ „Representative democracy is based on the political parties, which compete for the electorate's votes, and is *de facto* a party-democracy“, SOU 2008: 125.

While this bottom line may exemplify and explain the low level of interest within the parties for more democracy, the constitutional draft nevertheless offers an initial context for future steps towards a more representative democracy by establishing extended voting rights, which also include tools of modern direct democracy. The committee did in fact discuss all available options – such as a fully-fledged initiative and referendum system at the national level – and also the introduction of a mandatory referendum for constitutional amendments. Obviously, many members of the committee would have liked to see more reforms towards a modern democratic system. In the end, however, the minorities in the parliament would block any such attempts, and the constitutional draft does not propose any changes at the national level, nor does it make any reference to the new agenda initiative right at the EU level, introduced by the Lisbon Treaty¹⁴.

Ultimately, the committee could only agree on one direct-democratic reform – the popular initiative at the municipal level. This new, or reformed (more precisely formulated) instrument will give at least ten percent of the electorate within a municipality the right to demand a popular vote on a specific substantive issue.¹⁵

The reform was announced by the committee itself as the „förstärkt folkinitiativ“ („strengthened popular initiative“). Presenting the new constitutional draft at a media conference in Stockholm, committee chairman Per Unckel listed the popular initiative as one of the three key innovations, together with the introduction of the EU dimension in the constitution and the strengthening of legal assistance to the citizens vis-à-vis the state.

Three articles in the new constitution deal directly with the popular initiative at the municipal level:

- Chapter 5.23-7 on the filing and validation of a popular initiative.
- Chapter 5.34-1 on the calling of a popular vote by the local parliament.
- Chapter 5.34-3/4 on the conduct of a local popular vote.

While the former popular initiative right was in reality merely an agenda initiative right (in nine out of ten cases), the new one starts the metamorphosis towards a fully-fledged popular initiative which does lead to a popular vote. However, as a minority in the constitutional committee (the Social Democrats and the post-Communists) was against this reform, a compromise was agreed which limits the citizens' impact and strengthens the power of local parliaments. The compromise gives local parliaments the right to veto the holding of a popular vote if

- the proposed substantive issue for the vote is not within the competencies of the municipality (and the local parliament) and
- if more than two thirds of the local parliament do not wish to have such a popular vote.

While the first restriction makes a lot of sense and can potentially prevent much frustration and misunderstanding, the second symbolizes a rather strange distrust of the democratic

¹⁴ Lisbon Treaty, Art.11.4. The new EU Treaty has been ratified in late 2009 and went into force on Dec. 1, 2009. The European Citizens' Initiative right law was adopted by the EU in December 2010 and will from early 2012 on give one million Europeans from a significant number of member states the same right as the European Parliament and the European Council already have: to put a law proposal to the European Commission.

¹⁵ En reformerad grundlag, p. 231 (SOU 2008).

process and the ability of the electorate to make responsible decisions. It goes back to the belief of the elected representatives that in the end they know what is best and are better able to do what is required. In fact, it is an expression of the lack of willingness on the part of some political parties and representatives to share decision-making power.

The new constitution also defines the formal requirements for a popular initiative to be validated: at least ten percent of the electorate must sign in person (no e-signatures), giving the date of signature, and the full name, social security number and address of the signatory. While the absence of any provision for the collecting of e-signatures shows that in the field of e-democracy Sweden has no big ambitions (in contrast to neighbouring Estonia or Finland), the requirement to give a social security number will create some additional hurdles for initiative committees, as this unique number is also used in many other contexts and many Swedes do not like to reveal it in political contexts. However, the new, more formal requirements will also strengthen the legal standing and status of the popular initiative as an important popular right – more on an equal footing with other electoral processes such as parliamentary elections.

There is no provision in the new constitution for a verification process. But, as a new feature, popular initiatives will have a time limit on their efforts to validate a proposal: six months. This reform is welcome in that it will tend to create a more focused process on relevant issues, but it does not solve the problem that the new tool may be used both as a genuine initiative – to launch and propose new ideas – or as a means of securing a referendum – as an instrument for challenging parliamentary decisions and for putting them to a popular vote. But if, for example, a local parliament has plans to close down a local school for economic reasons, the people may launch a ‘referendum’ initiative against this. However, if the parliament makes its decision before the popular initiative is filed and validated, the citizens’ demand will have come too late and it is very likely that the parliament will vote down the request for a popular vote on the issue.

As the authority-controlled popular votes (available since 1977) have developed into *de facto* mandatory popular votes, it remains to be seen whether the reformed popular initiative right can in practice develop into a proper citizens’ initiative right for popular votes on municipal substantive issues. The provisions offered by the new Swedish constitution are an opportunity for a considerably improved practice, but they are by no means a guarantee for more democracy at the local level. If the local parliaments continue to see politically active people – especially those who are committed enough to launch initiatives – as people mainly representing ‘extreme special interests’ against their own perceived role as administrators of the general interest, even the strengthened local initiative tool will fail.

Beyond this obvious weakness and risk it will be necessary to establish an extensive initiative infrastructure – both nationally and locally – in order to make the popular initiative a citizen-friendly, democratizing and effective process. Nationally, the government should offer advice, information, and education around the new initiative tools – directed both to municipalities, electoral management bodies, non-governmental organizations, the media, academia and interested citizens. Such provisions should also include assistance to Swedish citizens abroad, who are also eligible to launch, sign and finally vote on initiative proposals.

Locally, municipal administrations and non-governmental actors should set up local citizens’ offices to inform all residents of the agenda- and decision-making rights, the initiatives in the making and forthcoming popular votes (and of course elections). Last but not

least, potential initiators of popular initiatives should be briefed and educated in the effective use of the instruments from the very beginning in early 2011.

The new constitution proposed by the parliamentary committee has been adopted by the Swedish Parliament in a final vote on November 24, 2010. Seven out of eight parties in the Swedish Riksdag did vote yes. Only the anti-immigration party *Swedendemocrates*, which entered parliament in October 2010, did vote against the reform.

The decade to come can offer many new opportunities for Sweden to become a much more democratic country – one that is not just content with the past and complacent about international rankings such as the one quoted at the beginning (the *Economist* list of countries with the most participative democracy). In 2021 the country will celebrate the 100th anniversary of the introduction of universal suffrage, which gave most female and male nationals the right to vote for political parties in elections and on substantive issues in popular votes initiated and controlled by the authorities. With the new constitution Sweden has made a small step in the right direction – beyond the mainly indirect and nation-state based democracy of the past.

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Appendix:

Table 3: Local popular votes on substantive issues 1977-2008*

#	Municipality	Date	Issue	Yes %	No %	Turnout %	Remarks
1	Vaxholm	10/10/78	Territorial	64.1	31.5	35.7	Implemented
2	Härjedalen	17/12/78	Territorial	33	67	70	Implemented
3	Falkenberg	23/03/80	Construction of bridge	Ca 10	78.9	65	Not respected by local parliament
4	Hova	23/03/80	Territorial	>50	< 50	?	Yes
5	Ovanåker	23/03/80	Name of new municipality Ovanåker Alfta-Edsbyn Voxnadalen	83 9 8		62	Respected
6	Täby	23/03/80	Transportation Better tramway New subway	73.6 25		?	Respected
7	Vallentuna	23/03/80	Transportation Better tramway New subway	92 7		?	Respected
8	Vara	23/03/80	Territorial	34	60	67	Implemented
9	Botkyrka	08/02/81	Territorial	34	64.8	29.1	Implemented
10	Norsjö	22/02/81	Territorial	56	42	68	Implemented
11	Sigtuna	19/09/82	Territorial	15.8	80.3	81.8	Implemented
12	Uppsala	14/03/85	New road	48.5	51.5	52	Not respected by local parliament
13	Sandviken	02/10/85	Territorial	76.5	23	62	Implemented
14	Norsjö	26/04/87	Opening of local liquor store	42	57	57	Respected (until 1991)
15	Sjöbo	18/09/88	Acceptance of refugees	33	67	84	Not implemented as outside local competence
16	Linköping	23/04/89	New road	25	70	47	Respected
17	Ekerö	15/09/91	Reconstruction of road	23	73	88.6	Respected
18	Södertälje	15/09/91	Territorial	57	41	56	National government intervened
19	Nacka	05/04/92	Territorial	14.4	71.4	61	Respected
20	Södertälje	12/09/93	Territorial	41	57	60	Respected
21	Borås	19/09/93	Territorial	53	43.9	67.6	Respected
22	Norrköping	15/09/94	Territorial	28	66.9	64.8	Respected
23	Söderhamn	18/09/94	Regional independence	66.5	26.6	77.2	Implemented
24	Hallsberg	13/11/94	Territorial	20.7	78.3	70	Respected
25	Älvdalen	13/11/94	Hydropower plant	25.6	72.1	74	Respected
26	Helsingborg	03/06/95	New museum	61.1	38.9	ca 50	Implemented
27	Borås	17/09/95	Territorial	14.3	72.7	35.2	Respected
28	Gagnef	17/09/95	Local liquor store	54.1	45.6	47.5	Implemented
29	Mullsjö	17/09/95	Local liquor store	57	40.6	83.4	Implemented
30	Storuman	17/09/95	Nuclear waste storage	28	71	84	Respected
31	Habo	23/02/97	Change of regional affiliation	74	25	67	Implemented
32	Södertälje	25/05/97	Territorial	77	21	68.9	Implemented
33	Malå	21/09/97	Nuclear waste storage	44	55.2	84	Respected
34	Mullsjö	23/02/97	Change of regional affiliation to Jönköpings Län to Västra Götaland	66 33		64.5	Implemented
35	Norrköping	21/09/97	Territorial	41	55	73	Respected

36	Göteborg	02/09/98	Territorial Älvsborg independent municipality?	16.5	76.5	62	Respected
			Askim independent municipality?	16.9	77.7	62	Respected
			Torslanda indepen- dent municipality?	17.7	75.9	62	Respected
37	Heby	02/09/98	Change of regional affilia- tion	>50	<50	?	Implemented
38	Uppsala	02/09/98	Territorial	>50	<50	?	Implemented
39	Huddinge	13/06/99	Territorial	36	59	36	Not respected
40	Kalix	14/10/01	Taxes	58 no change	29 lower	51	Respected
41	Öckerö	28/11/01	Ferry or bridge	66 ferry	33 bridge	81	Respected
42	Nyköping	21/11/01	Higher taxation	25	75	53	Respected
43	Essunga	15/09/02	New name	51.4	47.6	75.8	Implemented
44	Haninge	15/09/02	Public housing	52.9	47.1	60.5	Implemented
45	Haparanda	15/09/02	Urban planning project	46.2	52.3	52	Respected
46	Håbo	15/09/02	New name	27.7	69.7	68.6	Respected
47	Karlstad	15/09/02	Child care project	68.2	22.5	33	Implemented
48	Ljusnarsberg	15/09/02	New name	<50	>50	?	Respected
49	Orust	15/09/02	New connection to main- land	33.9 bridge	34.6 tunnel	42.7	National autho- rity intervened
50	Skurup	15/09/02	Off-shore wind farm	49	51	?	Respected
51	Uppvidinge	15/09/02	Child care project	51.6	39.9	51.4	Implemented
52	Luleå	01-06/04/03	Local road use	24.8 only buses	68.4 cars & buses	46.1	Respected
53	Danderyd	14/09/03	Road pricing.	15.7	81	72.9	Respected
54	Ekerö	14/09/03	Road pricing..	16.3	79.8	78.7	Respected
55	Lidingö	14/09/03	Road pricing..	7.8	90.4	77.6	Respected
56	Nacka	14/09/03	Road pricing	16.3	80.9	73	Respected
57	Nykvarn	14/09/03	Road pricing..	12.9	81.4	76.8	Respected
58	Salem	14/09/03	Road pricing.	13.6	83.4	73.5	Respected
59	Solna	14/09/03	Road pricing..	19	77.1	68	Respected
60	Sollentuna	14/09/03	Road pricing..	16.1	79.5	73.2	Respected
61	Tyresö	14/09/03	Road pricing..	14.7	81.8	75.6	Respected
62	Täby	14/09/03	Road pricing..	14.5	82.1	78.2	Respected
63	Vaxholm	14/09/03	Road pricing.	19.4	76	72.8	Respected
64	Österåker	14/09/03	Road pricing.	14.3	82.1	73.4	Respected
65	Örkelljunga	14/09/03	Road pricing.	61.1	25.8	57.4	Respected
66	Södertälje	14/09/03	New bridge	40.4	55.7	67.2	Respected
67	Norsjö	30/11/03	Water protection project	31	69	65	Respected
68	Ragunda	13/06/04	Territorial	19.5	77.5	48.5	Respected
69	Bräcke	13/06/04	Territorial	35	64.5	43.5	Respected
70	Norrköping	13/06/04	Keeping emergency hospital	96	4	49	Respected
71	Partille	13/06/04	New road	39	61	44	Respected
72	Värmdo	13/06/04	Road pricing	22	78	37.7	Respected
73	Värmdö	13/06/04	Project for young people	78	22	37.6	Implemented
74	Kungälv	13/06/04	Keeping music school	77	21	45.5	Respected
75	Kalix	15/05/05	New school plan	11	89	34	Respected
76	Öckerö	20/11/05	Ferry or bridge	34	65	55	Respected
77	Danderyd	17/09/06	Road pricing	32.5	67.5	76.8	Respected
78	Ekerö	17/09/06	Road pricing	32.5	67.5	81.6	Respected
79	Eskilstuna	17/09/06	Territorial	21.7	78.3	53	Respected
80	Gällivare	17/09/06	Car-free town centre	50.4	49.6	66	Implemented
81	Haninge	17/09/06	Road pricing	40.8	59.2	69	Respected

82	Härnösand	17/09/06	New shopping centre	43.5	56.5	60	Respected
83	Lidingö	17/09/06	Road pricing	29.6	70.4	78.7	Respected
84	Mora	17/09/06	Hunting of wolves	77.3	22.7	60.4	Respected
85	Nacka	17/09/06	Road pricing	42.9	57.1	78.1	Respected
86	Nynäshamn	17/09/06	Road pricing	41.2	58.8	65.8	Respected
87	Orsa	17/09/06	Hunting of wolves	81.7	18.3	58.1	Respected
88	Rättvik	17/09/06	Hunting of wolves	72.7	27.3	62.8	Respected
89	Salem	17/09/06	Road pricing	39.6	60.4	76	Respected
90	Sollentuna	17/09/06	Road pricing	40.8	59.2	72.7	Respected
91	Solna	17/09/06	Road pricing	43.9	56.1	74	Respected
92	Stockholm	17/09/06	Road pricing	53	47	76.4	Implemented
93	Tyresö	17/09/06	Road pricing	44.3	55.7	77.7	Respected
94	Täby	17/09/06	Road pricing	34.2	65.8	78.6	Respected
95	Vallentuna	17/09/06	Road pricing	42.5	57.5	74	Respected
96	Vaxholm	17/09/06	Road pricing	45.9	54.1	80.2	Respected
97	Älvdalen	17/09/06	Hunting of wolves	87.7	12.3	65.6	Respected
98	Österåker	17/09/06	Road pricing	40.9	59.1	74.9	Respected
99	Huddinge	20/04/08	Territorial	40	58.8	52.6	Respected
100	Vilhelmina	17/11/08	Hydropower line	46	52	74.5	Respected
Sub-totals/averages	75 municipalities	30 years: (-1988:15, -1998: 23, -2008: 62)	Transport: 42 Territorial: 28 Social: 11 Hunting: 4 Liquor Store: 3 Various: 12			64.1	93 respected or implemented 4 not respected by local authority 3 interventions by national authority

* 2009-10, five additional local popular votes took place in five different municipalities across Sweden, including Mörbylånga/Borgholm on the island of Öland about the merger of two municipalities (June 7, 2009), in Avesta on the question of a train stop (June 7, 2009), in Kinda about the selling of a municipal building (September 19, 2010) and Lidköping about the location of the library (September 19, 2010).

Democratic participation at the local level in post-communist states: Estonia, Latvia, Lithuania

Jüri Ruus

Introduction

Citizens can be involved in local politics in two main ways – through the ballot box and through direct participation in local affairs. It is vitally important to combine elements of representative and participatory democracy. Local authorities should take steps to increase the turnout at local elections by fostering more positive attitudes towards elites. One way of achieving this is to stimulate local dialogue between the people and their representatives. The emphasis in the current theory of local democracy is also moving increasingly in the direction of the need to respond to public expectations. It might, therefore, be assumed that a practice of encouraging a higher level of interest in politics among citizens – including welcoming citizens' initiatives – would have a cumulative effect in the long term. The current trend suggests that local government reform – in any country – is unlikely to be properly implemented without a more in-depth situation analysis than has been carried out to date.

The planners of administrative-territorial reform in the Baltic region should learn from the experiences of the Western European governments that have amalgamated first-level local government units. The practice of these countries would offer some guidelines to the Baltics in how to avoid widespread public discontent and unexpected results. The experience of the Western European countries and Scandinavia suggests that the success of administrative-territorial reform (and probably any other kind of reform) depends on the approval of those most affected by it. Non-consideration of public preferences will almost always result in failure. Although Scandinavian practice has shown that a voluntary component of amalgamation slows down the process, the Baltic governments should avoid the compulsory unification of municipalities if it wishes to avoid widespread public discontent. Baltic governments should try to find at least some level of agreement with the public over the most suitable and democratic form of implementation. The focus should be switched from hasty implementation of the reform towards a thorough consultation process with the public. Only in this way successful outcomes will be possible.

1 Estonia

1.1 Historical background

The first constitution (1920) allowed the popular initiative. 25,000 signatories were required to initiate a referendum process to propose a new law or to change an existing law passed by the Estonian Riigikogu (article 31). In practice, this happened only once: the law

on restoring religious instruction in secondary schools came into force after popular adoption in 1923 (,Yes'-votes: 71.7 percent; turnout: 66.2 percent).

Between 1919 and 1933, the average term of office of national governments was eight months. Political instability was greatly aggravated by the social effects of the Great Depression. Pressure for political reform grew, particularly from the right-wing conservative League of Freedom Fighters, an association of veterans of the War of Independence. In October 1933, their proposal for constitutional reform gained 72.7 percent of the votes in a referendum (turnout 77 percent). The following March, the acting president Konstantin Päts made use of the new authoritarian constitution to declare a state of emergency, close Parliament and disband the League of Freedom Fighters. A referendum on a new Constituent Assembly formally legalized his caretaker regime in 1936. He ruled by presidential decrees until 1938. After WWII, the Baltic countries were run for decades by a Soviet autocratic regime with little focus on democratic values as they are perceived in Western Europe. When the Baltic States were socialist republics of the former Soviet Union, local government was subordinated to the centralized administrative and bureaucratic structure. Its role was to implement the state plans for economic and social development in its area. The *nomenklatura* system (the „list“ of administrative positions that were considered to be crucial to the Soviet system) created top-down management designed to communicate planning directives and passively report compliance with them. Though residents formally elected local councils, in reality local government in the true democratic sense of the term did not exist during the Soviet period. At the local level, governance entirely served the central Soviet government level, and in the early 1990s all that had to change.

1.2 Regime change, legal conditions

Today, there are also provisions in the constitution for the kind of direct democracy represented by referendums. In the Estonian Constitution, the referendum is regarded as a complementary, but rather exceptional, feature of the traditional decision-making process. Since the recovery of independence in 1991, only two nationwide referendums (1992: new constitution; 2003; EU accession) have been held.

Compulsory Referendum and Public Initiative

A national referendum is obligatory in cases where a new law involves changes to the first chapter (General Provisions) or the last chapter (Changing the Constitution, Art. 15 of the basic law). A change to any of the general provisions (seven articles) necessitates an obligatory referendum. The general provisions establish the legal basis of Estonia as a democratic independent state.

There are some restrictions on the range of issues that may be referred to the citizens. As in other Baltic states, the constitution does not allow a referendum on issues relating to the budget, taxation, financial obligations of the state, ratification and denunciation of international treaties, the declaration or termination of a state of emergency, or national defence (Art. 106 of the Constitution). The following laws can be adopted or amended only by a majority of the full house of Parliament: the law on citizenship, the law on parliamentary

elections, the law on electing the president of the republic, referendum law (Art. 104 of the Constitution).

All citizens of Estonia have the right to elect the parliament (Riigikogu) and to participate in referendums (Art. 56). The right to initiate laws shall rest with: 1) members of parliament; 2) factions of the parliament; 3) parliamentary committees; 4) the government of the republic; 5) the President of the Republic (Art. 103). Article 161 of the constitution states: „The right to initiate amendments to the constitution shall rest with a minimum of one-fifth of the members of Parliament and with the President of the Republic.“ The constitution may be amended by a law which has been adopted by 1) a referendum; 2) two successive complements of the parliament (Art. 163). However, the Constitution of the Republic of Estonia Implementation Act (§ 8) states that „the right to initiate an amendment of the Constitution during the three years following the adoption of the Constitution by a referendum also rests, by way of public initiative, with no less than ten thousand citizens with the right to vote. A proposal to amend the constitution made by public initiative shall be entered on the agenda of the Riigikogu as a matter of urgency and shall be resolved pursuant to the procedure provided by paragraph one of this section.“

In order to put a proposed amendment of the constitution to referendum, the approval of a three-fifths majority of the full membership of parliament shall be mandatory. The referendum shall not be held earlier than three months from the time that such a resolution is adopted in the parliament (Art. 164). The law to amend the constitution shall be proclaimed by the President of the Republic and it shall enter into force on the date determined by the same law, but not earlier than three months after its proclamation (Art. 167).

1.3 Referendum Law

The referendum is regulated by a special Law on Referendums (1994, 2002),¹ according to this law it is up to the Riigikogu to decide whether a referendum will be held or not, the timing of such a referendum, as well as the question(s) to be posed. Thus, parliament has the right to put draft legislation or other national issues to a referendum.

1. Several drafts of the proposed legislation can be put to referendum simultaneously. The questions to be put to popular vote should have a clear content understandable to every citizen. However, the Supreme Court has a right to block the law by declaring the bill unconstitutional (Referendum Law, article 8).
2. The decision of the people shall be determined by the majority of those participating in the referendum (Referendum law, article 2).
3. A law which has been adopted by referendum shall be immediately proclaimed by the President of the Republic (Referendum Law, article 63).
4. Should the draft law which has been put to referendum not receive a majority of yes-votes, the President of the Republic shall declare early elections for the parliament (Referendum law, article 64). This has never happened so far.

¹ <http://wlex.lc.ee/test/?act=https://www.riigiteataja.ee/percent2Fert/percent2Fact.jsp/percent3Fid/percent3D12849907>

1.4 Regional and Local Level

Other laws regulating direct democracy:

Article 154 (Local Government Functions): All local issues shall be decided on and regulated by local government, which shall operate independently in accordance with the law. Obligations may be imposed upon local government in accordance with the law or in agreement with the local government. Expenses relating to the obligations imposed on the local government by law shall be covered by the national budget.

Article 157: A local government shall have an independent budget whose basis and drafting procedure shall be determined by law. A local government has the right, on the basis of law, to levy and collect taxes, and to impose duties.

Article 158 allows the boundaries of local government units to be altered by agreement between the respective governments involved.

Before 1993, Estonia had two real levels of local government: rural, town, and city municipalities on the first level, and 15 counties, together with six independent cities, on the second level. This was changed by the Local Government Organization Act 1993, which reduced the county governments to national authorities, changing their responsibilities and competences.

Currently, there are 246 local governments in Estonia – 42 towns and 204 rural municipalities. Estonia is divided into 15 administrative counties (*maakond*), some of which are named after their capitals (like Tartumaa), some after their geographical characteristics (like Läänemaa). Obviously, in terms of local policy and administration, counties and municipalities must work together instead of separately; an appropriate level of teamwork is advisable for well-functioning local government (www.estonica.org). As in many European states, the leaders of the counties, called governors, are not elected, but are appointed by central government. Nonetheless, the counties are concerned with local government. They have two main tasks: to represent their region and its special interests to the government; and to supervise the municipal governments to ensure that they adhere to national policy. Besides supervision, they interact with the municipalities in terms of regional planning, which cannot be done by the municipalities alone.

Thus, local governments derive their powers largely through representative democracy: every four years (before 2005 it was every three years), the voters elect the council and the council makes decisions on behalf of the people. In order to bring local government closer to the interests of the people, it has been seen to be necessary to introduce additional elements of participatory democracy. In fact, such elements do exist in the organisation of local government in Estonia; in certain circumstances people have the right to initiate the adoption, repeal or amendment of council legislation. According to the amended local municipality law, a public initiative is possible if one percent of the local municipal population, but not less than five local residents, raise an issue. The municipal council is obliged to debate the people's initiative no later than three months after it has been submitted. The initiative is non-binding. According to local government law, only territorial (boundary) changes require an obligatory consultation with the people. The law does not say that the

amalgamation of municipalities can be done only via a local referendum. In other words, the council is empowered to hold opinion polls on important issues.²

After regaining independence (since 1992), most of the Baltic political parties have not made any proposals concerning nationwide or local referendums. The only party to campaign for popular initiatives at the local level as binding decisions for municipal councils is the Estonian social-liberal Centre Party – and this only since 2004. The ones who seem to be most in favour of referendums in general and local referendums in particular in the Baltic states are politically either centrist or leftist (the Greens, for instance).

In February 2006, 25 members of the Estonian Parliament (out of a total of 101), most of them members of the Centre Party, proposed a bill that would allow 25,000 eligible citizens to initiate laws. The proposal was discussed in the cabinet council of the coalition government, but it was not supported by the governing parties. After the most recent parliamentary elections (March 2007), the newly composed parliament and coalition has not yet discussed initiative and referendum issues.

2 Latvia

2.1 *Emergence of the Structure of Local Governance in Latvia*

History: The development of the new local governance in Latvia was of great importance for the whole re-establishment of independence in the country. The transition to the current form of local government took place in three waves of reforms. The first wave of reforms was the measures taken to abolish the least useful of the Soviet structures. These measures can be described as ad hoc ones, made in the chaotic times of 1989-1990. In 1991 and 1992 laws were created to reduce the districts' control over the municipalities, the goals being democratisation and decentralisation. In general it can be said that self-governance was quite strong in Latvian municipalities at this time (Vilka, Pukis, Vanags 2006: 112).

In 1994, the second wave of reform started, with new laws introduced to clarify the decision-making authority and the functions of local government. The ad hoc situation had to be changed. Representative structures were implemented. The idea was to make the municipalities responsible for their own affairs – but this proved to be a difficult task, especially for the smaller ones.

In response to the problem of the smaller municipalities finding it difficult to govern themselves effectively, a third wave of reform started. This can be characterised in one word: amalgamation. The goal was to have no more than 100 rural and town municipalities (see King, Vanags, Vilka, McNabb 2004: 935-937).

At the national level in Latvia, a referendum is obligatory: firstly, in cases when the six articles of the constitution dealing with the fundamentals of the independent Latvian state are to be changed: if the Saeima adopts the law to amend these articles, an obligatory referendum must be held; secondly, in relation to accession to the EU and substantial changes to the terms of membership (the latter only if requested by over half of the parliamentary deputies (Art. 68); thirdly, if the President has suspended the proclamation of a law for up to two months, and at least 10 percent of the electorate have petitioned for a referendum on

² (<https://www.riigiteataja.ee/ert/act.jsp?id=1048161>)

this law (Art. 72); fourthly, if at least 10 percent of the electorate petition parliament with a ,fully elaborated draft of an amendment to the Constitution or of a law‘ (Art. 78).

A popular vote must also be held if the president proposes the dissolution of the Saeima (Art. 48). In practice, the president has never used this right, because in proposing the dissolution of the Saeima, he/she endangers his/her own position. Art. 50 of the Constitution states: „If in the referendum more than half of the votes are cast against the dissolution of the Saeima, then the President shall be deemed to be removed from office and the Saeima shall elect a new President to serve for the remaining term of office of the President so removed.“

As in other Baltic States, the constitution also establishes which questions a referendum may not address. „The budget and laws concerning loans, taxes, customs duties, railroad tariffs, military conscription, peace treaties, declaration of a state of emergency and its termination, mobilization and demobilization, as well as agreements with other nations may not be submitted to national referendum“ (Art. 73). (see also Auers 2006; Usacka 2001: 94-96).

2.2 Local Government Structure

Latvian local government currently has two levels. 530 municipalities, 7 cities and 53 towns, 444 parishes, 26 amalgamated local municipalities) operate at the lower territorial level. At the regional level there are 33 municipalities (26 counties and 7 cities). The municipalities at the first territorial level are governed by elected councils. The council will elect a chairman and in smaller municipalities these chairmen have vast influence. As in other Baltic states, the functions of the municipalities are, among other things, to provide education, municipal services and assure health care for their inhabitants (King, Vanags, Vilka and McNabb, 2004: 938).

The ULRGL association (Union of Local and Regional Governments in Latvia) represents the local and regional authorities in dealings with the national level. It was founded in 1991 and acts on a voluntary basis but it is an important association in Latvian governance, also promoting cooperation between different local and regional municipalities. Since the size of some municipalities is rather small, the ULRGL’s task of promoting and assisting cooperation is obviously very significant for the functioning of local government in Latvia. (cf. also Vilka, Pukis, Vanags 2006: 112, 133, 139).

As can be seen by this description of Latvian reforms, they were prompted by a variety of different motives and aims. If local governance can be seen as a mirror of democracy, it can be argued that the attitude towards democracy has changed during the period from independence until today. In fact, Latvia can still be described as a relatively decentralised country, but this decentralisation is not yet legally embedded in the constitution. The current trend seems to be for more and more decisions to be made at the national level. Even though this is supported by the Latvian population, it can be considered problematic from a democratic point of view (interviews).

2.3 Forms of Direct Democracy in Latvia

Latvia is one of the few countries in Europe in which the citizens have a full range of initiative and referendum rights which enable them to launch initiatives to amend the constitution, create a new law, or veto a decision by parliament.

However, the restrictions and the framework are relatively complicated and not very citizen-friendly. The biggest hurdle is the approval quorum, which makes it very difficult to get valid referendum decisions (see also Kaufmann, Waters 2004: 77).

The various forms of direct democracy (local referendum, public hearing, etc.) are not very popular in Latvia. As in other Baltic states there is no special law on the local referendum, but the political importance of acknowledging public opinion appears to be accepted by local elites, especially on the issue of territorial administrative reform. In some local governments — for example, in Riga — public hearings have been organized on the concept and plan for land use developments and the construction of large buildings.

The statutes of local government, formulated in accordance with the „Law on Local Governments“ and model statutes approved by the Cabinet of Ministers, determine the organization of the work of the council, which is conducted at its meetings and by standing committees. Council meetings must be convened at least once a month and must be open to the public. A decision can be adopted if the meeting is attended by more than one-half of the deputies. Unless the law stipulates other provisions, the decisions of the municipal councils must be approved by a simple majority of the deputies. The procedure for decision-making at the district level is as follows: if none of the deputies expresses an objection to a proposal, the decision is adopted without a vote; if any of the deputies objects to a proposal, a vote is taken. Decisions of the council must be made public to every resident in accordance with procedures set forth in the local government statutes (Vilka, Pukis, Vanags 2006: 136).

2.4 Public Participation in Decision-Making

There are several laws designed to guarantee transparency at the local level in Latvia. For example, residents of an administrative area have the right to attend local government council meetings. Residents participate in local government activities through open roundtable discussions and other meetings, sociological surveys, debates in newspapers and other forms of mass media, and participation in interest groups, advisory councils, etc. The public has a right to free access to the records of any decision by the council or audit commission, orders by the chair and the minutes of open meetings of the council. The meetings of the council must be held in venues suitable for accommodating residents, representatives of the media and officials of municipal and district institutions. The council chair, deputies and the executive director have open office hours at least once a week, during which residents may approach them with questions, concerns or proposals. Not only deputies, but also residents may be members of boards, commissions or working groups set up by the council. The laws of the Republic of Latvia provide the right for residents to establish and participate in social organizations and political parties, to lodge formal complaints and applications, to question the administrative documents of government institutions, etc. One such

law is „The Order for Reviewing Applications, Complaints and Proposals in State and Local Government Institutions“, passed by the Saeima on 27 October 1994.

Thus the office-holders are making efforts to make the policy-process in general more transparent and open. On the Latvian national government website, for example, there is information on how to take part in the political process (see www.gov.lv).

Openness and accountability

Openness and transparency are very important in a democratic society. Without that, citizens are not aware of what is decided upon and cannot therefore take part in the process by expressing their opinion in various ways. The extent of public participation in decision-making depends, to some extent, on access to information. The central government has proposed the creation of a state-supported program designed to inform inhabitants about territorial administrative reforms and other processes involving local governments. Proper information on what is going on in the political process is also crucial for accountability in a democracy. In Latvia much of this information comes from the ULRGL, which also has the task of providing citizens with information about the on-going policy-making processes at regional and municipal levels. Much of the information is available in clear websites. The availability of better information may have produced greater transparency, but at the same time, actual accountability has not in general improved considerably because of Latvia's continuing problem with corruption (see Jacobs 2004: 323).

Survey of influence/participation

In a Latvian survey of democracy at the local level, one of the questions presented to citizens asked in what way they felt that they were able to take part in the political process. The response revealed that people believed that the referendum was the main means of influencing decisions, with 68 percent of the respondents saying that voting in a referendum is a good way to influence decision-making. Second in importance came the media, at 52 percent. Only 22 percent thought political parties were a good way of influencing decisions. Movements, groups and associations (which can be understood as NGOs) are not seen as a good way to have influence at all, with only 13.5 percent stating that one can influence decision-making through associations. The findings show that the importance of different kinds of democratic mobilisation is rather unevenly acknowledged by people (see Vilka, Pukis, Vanags 2006: 142). As in other Baltic states, the politically active people are generally those from a higher socio-economic background.

3 Lithuania

3.1 History and Legal Provisions

The current system of regional and local government began while Lithuania was still part of the Union of Soviet Socialist Republics (USSR). Under *perestroika*, on 12 February 1990 the Supreme Council of the Lithuanian SSR instituted the „Law on the Foundation of Local Self-Government“, which created a two-tier system consisting of ten Counties at the first

level, with 44 Rural Local Governments and 12 Urban Local Governments as a second tier. The law also defined the principles of self-government. The origins of the system suggest its usefulness, since, like most pieces of Soviet legislation, the law seems great on paper, but it was created in an undemocratic atmosphere.

S. Kropas, a local government expert, enumerates the problems of this legislation:

(1) the absence of a coherent system of regional and local government; (2) undefined functions of central and local government; (3) the absence of a realistic financial basis for local government; (4) an imperfect system of internal administration in local government; (5) an unclear strategy of local government development; and (6) undefined rights of local government employees (see Beksta, Petkevicius 2000: 169).

Citizen participation is a key element in the understanding and practice of contemporary democracy. In Soviet times and even before – during the period of independence – there were no provisions for initiative and referendum (see also Kaufmann, Waters 2004: 86).

The Supreme Soviet of the Lithuanian Soviet Socialist Republic passed the first new law on referendums on 3 November 1989. Referendums played a significant role in the process of the restoration of Lithuanian statehood in 1990 and 1992. Lithuania became the leading country in Eastern and Central Europe for the number of national referendums held within a single country during a six-year period from 1991-1996, when ten national referendums (calculated as the number of individual referendum questions) were held. But before and since that period, only one referendum decision has been made – on joining the EU, in 2003. Since 1997, national referendums have become an instrument of party politics (interviews).

Because the initial Lithuanian referendum law was passed in the last days of the communist regime, during a period of political turmoil, it was designed only for decisions on nationwide issues. The law does not apply at regional or local levels.

The new referendum law of 2002 still has no provisions or legal framework for organizing regional and local referendums. Municipalities have made no attempts to introduce their own referendum bye-laws or to allow popular initiatives. In theory, it is possible to use the right of legislative initiative at regional and local levels, but it has never been employed since 1998, i.e. since the adoption of the law on the legislative initiative (interviews, see also Kaufmann, Waters 2004: 88).

After 1989, obligatory referendums required a high approval quorum (50 percent of the electorate). This resulted in most referendums being declared invalid: 7 out of 11. These earlier Lithuanian laws required that more than half of the registered electorate who participate would vote in support of a proposal in order for the result to be binding on the government. In 2002, this requirement was lowered to one third of all registered voters (or one third of the citizens having the right to vote), in the case of referendums on a transfer of national sovereignty. Thus, the new 2002 referendum law partially removed the turnout quorum for referendums on accession to international organisations where a transfer of national sovereignty is involved. This meant that the 2003 EU referendum was not threatened by too low a turnout.

Citizens also have the right of legislative initiative as a popular proposal. A draft law may be submitted to the Seimas by 50,000 citizens of the Republic of Lithuania (article 68). The Seimas must consider the draft law. The precise procedure for the submission of a draft law is regulated by the law on legislative initiatives of 22 October, 1998. Parliament decides on the organisation of referendums. Thus, all politically, economically and socially relevant issues may be subjected to referendum (Krupavicius 2006).

Article 147 of the constitution regulates the procedure for initiating an amendment to the constitution by referendum and states that a proposal must be submitted to the Seimas by either no less than one fourth of the members of the Seimas or by at least 300,000 voters.

So far, all referendums held have been obligatory and national.

3.2 Political Aspects of Lithuanian Local Government

In terms of local government politics, Lithuania is also distinct.

Chapter 10 of the Lithuanian constitution sets the rules for the governance of the local administrative units. The local governments have the right to draft and approve their own budgets, and levy local taxes. The Law on Local Self-Government defines the principles of local self-government as:

1) coordination of the interests of the municipality and state; 2) direct participation of the citizens in municipal council elections, polls, public meetings and petitions; 3) accountability of self-government institutions and officers to residents; 4) publishing of and response to public opinion; 5) law and order and social justice; 6) economic independence.³

The Law on Local Self-Government defines the municipality as the primary political unit of the Lithuanian local government system. Every four years (formerly three years, as in Estonia) municipal councils are elected „on the basis of universal, equal and direct suffrage by secret ballot by the residents of their administrative unit“. Council terms of office were increased for two reasons. First, „local government councils and administrations were unable to function effectively with such a short tenure in office. Second, the proportional system of representation conflicted with that of parliament, which is a mixed system“ (Beksta, Petkevicius 2000: 171, 177). The councils are responsible for informing citizens on the progress of their work, as well as appointing mayors and elders. The Law on Local Self-Government states: „The council must at least once a year provide information to the residents concerning the activities of the council and the institutions formed by it, shall correct the indicated shortcomings of its work, and implement constructive proposals“. This measure suggests that the council must demonstrate its accountability to the citizens explicitly at least once a year. The councils generally work under a general plan, which is created by the mayor. As in other Baltic states, they possess the power to form committees to enhance their ability to govern.

3.3 Public Participation and Forms of Direct Democracy

Thus, the constitution and laws do not provide for local and regional referendums. Local authorities may organize polls on decisions made by local governments, proposals to change the names of localities, the merging of local governments and other issues. The results of such polls are non-binding and only advisory in nature. As in other Baltic states, in some cases the law requires mandatory consultations with residents. Significantly, municipalities are required to consult citizens on significant matters such as the changing of place names, the Law on Territorial Administrative Units of the Republic of Lithuania and

³ Law on Local Self-Government in Lithuania. <http://www.litlex.lt/litlex/Eng/Frames/Laws/Documents/167.HTM>.

Their Boundaries being an example. This law states: „The names of residential areas shall be given and they shall be changed by the Government of the Republic of Lithuania on the proposal of the municipal council, taking into consideration the proposals of the local inhabitants“.⁴

A similar requirement is also included in the law on territorial planning, which indicates that the public must be able to see and discuss the planning documents. „In such cases, those organizing such projects are charged with calling public meetings to discuss the proposals“ (Beksta, Petkevicius 2000: 178-179).

The Law on Territorial Planning is also significant in terms of the problems it underscores. Although the law requires public hearings, citizens have in fact shown little interest in attending, unless they have a direct interest in the project (investors and specialists). General public opinion is rather inadequately represented. Non-governmental organisations, which should be the vehicles for the expression of local public interests and needs, are still in their infancy in Lithuania (see Beksta, Petkevicius 2000: 186).

The situation is better in respect of territorial administrative reform, where residents have expressed an overwhelming interest in municipal affairs. Although the significance of these polls should not be exaggerated, they are important for maintaining close relations between local government institutions and permanent residents (interviews).

According to the amendments to the law of local Self-Government in 1997, council meetings are open to the public. The residents – either individually or as a group – may come up with draft decisions for local government (see Structure and Operation of Local and Regional Democracy. Lithuania, Council of Europe 2006: 15).

The council's statutes establish the procedures for the participation of representatives of state institutions, enterprises, offices and organisations, as well as residents, at council meetings. Experts and public representatives may participate in the work of committees and commissions in accordance with procedures established by the council. The local authority may be controlled by the county governor and the members of the Seimas, who have the right to participate in and, with the consent of the council, take the floor at such meetings (Beksta, Petkevicius 2000: 187).

Public participation is a significant problem in any democracy. However, the onus for political participation falls on the citizen, not the government, and there is only so much a government can do in this regard. This reveals the infancy of Lithuanian democracy, which is a problem that only time and the proper development of NGOs can facilitate.

3.4 Problems of Lithuanian Local Government

Although many post-communist governments struggle with decentralization problems, one of the clearest problems with Lithuanian local government is the unwillingness of the central government and its ministries to cede further autonomy and ministerial functions to the municipalities.

In order to increase the political responsiveness and accountability of local governments to their citizens, there should be concrete changes in this direction. One possible reform

⁴ Law on Territorial Administrative Units of the Republic of Lithuania and Their Boundaries. <http://www.litlex.lt/litlex/Eng/Frames/Laws/Documents/163.HTM>.

would be to grant the governors more power to influence ministries to cede more power to local governments. Another option would be to establish a special commission at the central government level which would be charged with encouraging ministries to cede more functions. Allowing local governments more control over issues such as education would allow municipalities to demonstrate their capacity to provide their citizens with specialized attention that is otherwise lacking at the moment.

Another problem is the issue of elected officials within the municipal governments. For instance, as in other Baltic states, the mayor is responsible for appointing several important local administrators and advisors – but he himself is not elected by the public, but by the council. Such a situation seems to distance the population from their local government to too great an extent. Since the members of the board, the other executive power, are also not elected by the general population, it seems advisable to make at least one of these institutions more accessible to the citizens. Indeed, „the key factors driving reform are (1) increasing resident participation in managing local affairs, and (2) increasing access of residents to local government administrative institutions“ (Beksta, Petkevicius 2000: 201).

This is compelling for two reasons. On the one hand, this would be a move against the trend of administrative consolidation that has been popular in the 20th century in many democratic states. On the other hand, it would clearly be a monumental step in increasing the access of Lithuanians to their governments, and would definitely increase the transparency, openness and accountability of local government. Although Lithuania has clear problems in terms of local government, one must also applaud their successes. After all, positive reinforcement is always a good incentive for change.

4 Comparative aspects

4.1 *Municipalities and municipal size*

The lowest level of government is formed by the municipalities. Their main task is to represent the local population before the central government, making sure that their interests are not overlooked. As the Baltic States are unitary states, all/most taxes are raised at the national level. Nearly half of the budget of rural municipalities (including indirect support – as much as 70 percent in some areas) comes from the state. The budget funds are mainly used to maintain existing resources – to repair roads and buildings, fund the fire service and to pay the salaries of the people employed by the municipality. In unitary states, local governments are more mediators of state welfare rather than being separate economic and political powers.

The urban and rural municipalities vary greatly in terms of geographical area and population size; for many small villages it would not have been reasonable to create their own municipality, so they were combined into one rural municipality. Still, the differences in population are huge: the largest municipality (Tallinn) has about 400,000 inhabitants, while the island of Ruhnu has only 60 residents (see Table 1, for comparison see also appendix IV). The population size as well as the number of local governments differ from country to country; Tables 1 and 2 list the number and sizes of municipalities in the Baltic States.

Table 1: Number and size of municipalities in the Baltic States

	Estonia	Latvia	Lithuania
Smallest	65 (Ruhnu)	303	2,630
Largest	396,000 (Tallinn)	735,000 (Riga)	550,000 (Vilnius)
Average size of population (excluding the capitals)	3,900	3,000	49,000
Number (municipalities/ counties)	226 / 15	536 / 26	60 / 10

Table 2: Sizes and numbers of municipalities

Number of inhabitants of the municipality	Local government proportion by population size in percent			Population proportion within population range in percent		
	Estonia	Latvia	Lithuania	Estonia	Latvia	Lithuania
< 999	14	35	0	2	6	0
1,000 - 1,999	41	38	0	11	13	0
2,000 - 4,999	28	17	2	16	11	0.1
5,000 - 9,999	11	5	2	12	8	0.2
10,000 - 49,999	5	4	68	17	16	38
50,000 - 99,999	0.4	1	20	5	9	22
> 100,000	0.8	0.4	8	37	37	40

Municipalities according to share of population size and share within population range.

The differences are obvious: Lithuania seems to have a much more centralized approach to local government, while Estonia and Latvia are more similar to each other. Still, Latvia clearly has far more very small municipalities than Estonia, allowing better representation of individuals, but also creating more difficulties for administration by decentralizing it to a high degree.

Especially in Estonia, the constitution allows local governments "to form unions and joint agencies with other local governments" (Constitution of Estonia, art. 159).

It is noteworthy that according to the 1996 statistical data only nine local authority areas had populations under 30,000. In twenty-four local authorities the number was 30-50,000; in thirteen, 50-70,000; in five, 70-100,000; with a further five having more than 100,000. The size of municipal territories varies from 9 square kilometres in the urban local authority of Visaginas to 2,412 square kilometres in the rural authority of Varena. Generally, however, there are only four local governments (out of forty-four) with areas of less than one thousand square kilometres. In comparison with many other European countries, Lithuanian local government areas seem to be among the largest. Residents are inconvenienced by having to travel long distance to local government centres in order to obtain various documents or arrange consultations. An alternative solution, however, would be to increase the competence of neighbourhoods. It is a point of debate as to whether changing the institutional structure will achieve the goals stated (Beksta, Petkevicius 2000: 178-179).

However, the idea of increasing the number of local authorities – thus decreasing their size – seems to be a sensible one.

4.2 *Local Referendums and Public Initiatives in Practice*

The first time that the institution of local referendums was fixed by law in Estonia was in May 1927, when the Law on Alcoholic Beverages stated that if 10 percent of the citizens entitled to vote requested a referendum, then a local referendum would be held to decide whether there should be a ban on the sale of alcoholic beverages. In June 1929, for example, in Tudulinna county 343 votes were cast in favour of closing a local shop selling alcoholic beverages, with 283 votes against.

However, there were no local referendums during the period 1993-1999. Since the reinstatement of independence there have been several local referendums, mostly concerning the administrative-territorial division of counties and mergers of municipalities, but also – in some districts of large cities – in relation to the construction of new roads, land reform, and the removal of the WWII Tõnismäe monument from Tallinn City to an outlying area. In 2004, citizens came up with an initiative to reduce parking fees in Tallinn. Citizens were able to sign the petition online (at <http://rahvaalgatus.zzz.ee/pages/front.php>) and the initiative secured more than the required 4,000 signatures, which forced the city council to discuss the issue.

Another local referendum on the night-time sale of alcohol in Tallinn took place in May 2004. In total 21,688 inhabitants, or five percent of the population of the city, participated in the local referendum, with 64 percent in favour of limiting the sale of alcohol during the night-time and 36 percent against (Postimees, 11.05.2004).

The Tallinn City government created a public opinion-polling centre in 2002. The main idea behind the institution was to sample public opinion in as broadly-based a way as possible on the burning issues facing the city (Postimees, 16.04.2002). One of the issues which was decided by local referendum was the question of whether to create a park or allow building development in Harju street. Public opinion (87 percent) was strongly in favour of creating a green area in the centre of the city. Altogether 7,630 people took part in the vote – 2.4 percent of the eligible city voters (Postimees, 01.07.2005).

The issue of the location of the Freedom Statue in Tallinn was also decided in a local referendum: 5,090 people turned out to vote (1.5 percent of the eligible electorate) (Postimees, 31.01.2005). In 2007-2008 the proposed location and the design of the Freedom War Victory Statue caused a lot of lively debate in the media and the Internet. 12,000 people voted, of which 7,407 were against the statue in its proposed form. The authorities have not yet made a final decision. More than 6,000 signatures were given, mostly from big cities, in an attempt to „freeze“ the unreasonably high salaries of Estonian members of parliament (Postimees, 14.03.08).

In a Lithuanian questionnaire, 43.9 percent were in favour of building a new nuclear power station, 29.85 were against, and 26.3 percent were undecided (Respublica, 4 September 2007). Some of the politicians and NGOs are pushing for referendums on the Ignalina power station, the aim being to delay the closure of the second Ignalina reactor, slated for December 2009 (The Baltic Times, Feb. 2008). The authorities have not yet made a final decision.

Over the last five years, thousands of signatures have been collected in all three states in the attempt to stop new construction on unsuitable sites in the Baltic capitals of Tallinn, Riga and Vilnius. Protests have been voiced against the felling of trees in the very heart of the capital cities. In Vilnius, disabled people organized a rally and thousands of participants

handed a petition to the government demanding equal rights and an end to employment discrimination (Respublica 21 September 2007). In all three Baltic states there have been many demonstrations, with thousands of signatures gathered, against the low state pension and the meagre salaries of civil servants, but in many cases the local authorities did not take the protests into account in their decision-making (Postimees, 19 March 2007; Respublica, 11 Sept. 2007).

An Estonian survey carried out among local municipal leaders showed that a majority (62%) believed public meetings to be the best way to communicate with people. This means was valued much more highly in smaller municipalities (population 1-3,000) than in larger ones (over 5,000). The survey thus demonstrated a high correlation between municipal size and the importance of public meetings. In the big municipalities, respondents argued against public meetings, citing the organizational difficulties of arranging such meetings. In answer to the question as to whether local municipal leaders were interested in listening to the opinion of local inhabitants, 75 percent responded positively. However, only 21 percent of the leaders of local municipalities placed a high importance on local referendums, citing as negative arguments the time-consuming procedure and high organisational costs. 66 percent of the respondents thought that ongoing administrative reform of local municipalities would facilitate the inclusion of people in local decision-making. 77 percent of those questioned considered people to be too passive in their communication with office-holders. Several reasons for people's inactivity were quoted, the primary one being that the previous political regime relied heavily on the notion that the state should take care of everything; people are not yet used to the idea that active participation and intervention can bring them any benefits. Only 34 percent of the respondents said that they had carried out a local referendum to determine the opinion of local people on proposed mergers of municipalities (Ausmees 2005: 54-68.). Two-thirds had not: here, indeed, elitist decision-making is clearly visible.

4.3 *Political Participation and Citizenship*

If local authorities are a mirror of democracy it is vital to look at political participation at the local level in the Baltic States. It would be fair to conclude that good conditions for political participation at the local level indicate a satisfactory democratic situation in a region as a whole.

In order to participate effectively in a democracy – in, for example, actual policy-making – one has to have legal rights to do so. In all the Baltic states, possession of citizenship is essential for participation in nationwide elections and referendums. Every Latvian citizen, and citizens of any European Union country living in Latvia, can take part in *national* elections. In terms of the right to vote and run for *local* elections, citizenship is crucial, especially in Latvia, but also in Estonia. The rules are as follows: all Latvian citizens and any citizen of a European Union country living in Latvia can take part in the elections to the municipal councils (website of the Latvian Ministry of Regional Development and Local Government). Since many residents do not possess formal citizenship, there exists, as in Estonia, the potential for ethnic divisiveness, which also has a territorial character: for example, ethnic Russians living in Latvia and in Estonia are not fully integrated, but instead live in rather concentrated areas (see Table 3).

Table 3: Number of Municipalities by Percentage of Minorities in Latvia

Group	Number of municipalities	percentage
Above 50 percent	57	10
31- 50 percent	87	16
10- 30 percent	257	46
Below 10 percent	157	28
total	558	100 percent

Source: The State of Local Democracy in Central Europe, 2002: 117-118.

Estonia has a somewhat more liberal approach than Latvia, since it allows permanent residents (defined as someone, who has lived in the country for five or more years) to vote in local elections, though they do not have the right to stand for election. The Minister for Social Integration in Latvia, O. Kastens, stressed the importance of wide debates on such issues: „We need the referendum to find out what people think“ (Baltic Times, 27 Sept.-3 October, 2007). Lithuania has a different approach from Estonia and Latvia when it comes to the issue of citizenship and the right to participate in local elections. All permanent residents in Lithuania are allowed to vote and run in elections to local councils. Although Lithuanian local government has its shortcomings – as in all post-Soviet democracies – the issue of multicultural government is clearly more advanced in Lithuanian legislation. Although Lithuanian is the national language, and therefore the language of local government, there are provisions for ensuring that minorities are not excluded from the political process. As in Estonia, in regions where a certain minority group constitutes a significant share of the population, public administrators, in addition to the Lithuanian language, must be prepared to use the language spoken by the local minority population (see also Nørgaard, Hindsgaul, Johannsen, Willumsen 1996: 185).

In addition, there are provisions for the education of significant minorities in their own language. The President of the Parliamentary Assembly of the Council of Europe, René van der Linden, gave a most positive assessment of the three Baltic States and even said that Lithuania should serve as an example to its neighbours (Baltic Times, 27 Sept-3 Oct., 2007).

Nevertheless, there are also problems in Lithuania in connection with national minorities. For instance, in ethnic minority dominated areas, „local administrations have attempted to close existing Lithuanian schools, thus limiting the access of the Lithuanian population to education. Laws and regulations on the use of the Lithuanian language are sometimes ignored“ (see Beksta, Petkevicius 2000: 187). In the long run, the situation might lead to fewer regional cleavages in the country, since different marginal ethnic groups tend to live in certain parts of the country. Latvia and Estonia, on the other hand, have an ongoing debate about ethnic participation issues, often related to specific regions of the two countries.

4.4 Modern Technology, E-Inclusion

Estonia has gone further than Latvia or Lithuania in its efforts to open up the political process to the eyes of its citizens. This is very clear if one looks at the development of e-democracy in the country over the last few years.

A well-developed information society facilitates the work of local authorities and contributes considerably to the development of democracy. In Estonia, which is famous for its rapid development of information technology, local authorities are required to publish any important information about their municipalities on a website. This is set out in the Public Information Act.

In recent years, there have been mostly positive developments regarding direct democracy developments. For instance, the Estonian Civil Society Concept has been worked out by the Representative Council of NGO Roundtable and accepted by Estonian Parliament in 2002. The concept regulates generally the relations between public authority and civic initiative. In many local councils the representatives of the citizen associations are members of regular council and expert committees.

In 2006, more than half of Estonians (15-74 years old) use Internet. E-voting was for the first time used in local elections 2005 and in 2007 (March) nationwide parliamentary elections. The country is holding the sixth place among the most frequent internet users. Survey among local politicians of five different CEE countries (Bulgaria, Poland, Slovakia, Hungary, and Estonia) being conducted by the Tocqueville Research Center in 2003 has shown that Estonian council members and mayors are very well used to the so-called new technologies of e-mail and Internet: "three out of four local elected representatives use the Internet and three out of five send and receive email regularly" (Soós, Kiss 2003: 15)

Also, E-government in Estonia is mainly supported by the central portal www.eesti.ee; from there, Estonian citizens have access to most public services, including also those of local governments.

Besides local e-plebiscites (referendums) and internet sites for letters and opinions in local municipalities (also exists in Latvia and Lithuania) exist on national level special electronic sites TOM (Today I decide), which is the main instrument of e-participation as well as THEMIS (<http://www.lc.ee/themis>), the main instrument of people's legal initiative. Research shows that 10 percent of the ideas of citizens, inhabitants of the country are being acknowledged and put into practice by government, ministries or parliament. In the former case, although public intervention has been so far considerable, however, many say that there are problems of competence – many of the proposed ideas have often no connection to the actual laws under discussion (interviews).

The 2005 E-government readiness index assesses the e-readiness of the member states of the United Nations according to a qualitative composite index of e-readiness based on website assessment, telecommunications infrastructure and human resource endowment. Lithuania is ranked 40th in the world (index 0.5786, Table 4).

Table 4: E-government readiness index in the Baltic States

Country	index	world ranking
Estonia	0.7347	19
Latvia	0.6050	32
Lithuania	0.5786	40

Source: UN Global E-Readiness Report, 2005: 27-29.

It is the fundamental instrument to show the willingness of the parliament to deal with the topic of participation in the information society. In the E-participation index 2005 Lithuania is ranked at 37 (index 0.1111, Table 5). Recently Lithuanian parliament has voted down

amendments to election laws that would have legalized Internet voting, and rejected the possibility of revising them (The Baltic Times, 24-30 January 2008).

Table 5: E-participation index in the Baltic States

Country	index	world ranking
Estonia	0.6190	9
Latvia	0.1746	33
Lithuania	0.1111	37

Source: UN Global E-Readiness Report, 2005: 239-244.

In both categories, Latvia and Lithuania lag considerably behind compared to Estonia. However, all the Baltic States show a positive cumulative trend.

5 Conclusions

If the local authorities are the mirror of democracy in a society, then it is fair to say that democracy is changing. The Baltic States have managed to create a structure for local and regional governance that works, but which needs further development. Nowadays, the emphasis in the theory of democracy is moving increasingly in the direction of responding to public expectations. Therefore, it might be assumed that the practice of giving greater weight to citizens' preferences and opinions will continue also during the implementation and consolidation phases of local government reform.

So far, there is little provision for local referendums in the legislation of the Baltic States. Local authorities may organize polls as an expedient for specific decisions made by local government, such as changing place names, merging local authorities and other important issues. Any citizen with the right to vote and who is a permanent resident in the territory of the respective government can take part in the poll. Council meetings are open to the public. Local residents may participate and take the floor in sittings. The biggest problem here is the weakness of civil society and passivity of citizens. Many local residents do not yet realise the fundamental importance of their involvement in public affairs. Clearly this has to do with the political socialization in the previous communist regimes (where the state took care of everything), as well as generally non resident-friendly legal provisions for direct democracy in the Baltic States. In fact, the only state which offers legal recognition for popular initiatives is Estonia.

What is striking is the diversity in the number of local municipalities for such a relatively small region. The pattern across the three states varies considerably. Lithuania clearly has the biggest and the most centralized system of local government, but it has a lot of work to do to bring forward the information society, for instance in relation to E-participation.

Local referendums have been carried out to solve many problems the municipalities face: the merger of municipalities, construction of new roads, provision of green areas etc. Popular votes are always advisory and their result is non-binding on local councils, which make the final decision. Although the results of the polls are non-binding, they are, however, taken into account in many cases by local governments. It seems that of the many aspects of local democracy outlined by contemporary academics which have been empha-

sized in the different government documents from the Baltic region, and also during the debates in parliament and in the media, only three of them – self-determination, public participation and the capacity to act – have been steadily dominating both the published documents and the debates.

Last but not least, since the Baltic States joined the European Union in 2004, they should also fulfil the EU requirements relating to local government, as well as the European Charter for Local Self-Government. In this context, the Baltic States should be flexible and prepared to adopt new legislation. Here, the reform work of consolidating the municipalities gives hope for the Baltics to find ways towards an efficient and committed citizen-oriented local government structure.

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Appendices

Appendix I: Ranking of Strategic Goals by Local Representatives in Estonia and Poland / percent). Survey in 2002

Poland

	1 most important	2	3	4 least important
Maintain order	62.2	19.5	11.5	4.6
Give people more say	23.2	27.0	32.3	15.3
Fight inflation	14.1	29.8	22.4	30.7
Protect freedom of speech	8.6	21.7	26.6	40.1

Estonia

	1 most important	2	3	4 least important
Maintain order	57.3	23.7	11.5	2.6
Give people more say	21.3	27.0	37.3	9.0
Fight inflation	8.6	28.2	23.7	34.1
Protect freedom of speech	7.8	16.1	22.0	48.3

Source: Faces of Local Democracy, Comparative papers from Central and Eastern Europe (2005) ed. by Gabor Soos, Violetta Zentai, Open Society Institute, Budapest: 225.

Appendix II: Legal Provisions of Referendums in the Baltic States: National level

	Lithuania	Latvia	Estonia
Outcome	Binding	Binding	Binding
Origin	Popular initiative	Popular initiative	Parliament
Criteria for adoption	At least 50 % of the electorate support the proposal	At least 50 % of the electorate support the proposal, at least half the number of voters who participated in the previous national elections	majority of participants in the voting

In Lithuania and Latvia: both participation and approval quorums

Appendix III: Referendums in Modern Latvia

Year	Purpose	Turnout (%)	For %	Against %	Spoiled %
1991	Latvian independence	1,666,128 (87.6)	73.7	24.79	1.6
1998	Citizenship	928,040 (69.2)	45.0	52.5	2.5
1999	Pensions	339,879 (24.1)	94.2	5.3	0.5
2003	EU membership	1,010,467 (72.5)	67.0	32.3	0.8

Source: Latvian Electoral Commission (2006).

Appendix IV: Population Size in the Municipalities of Nordic Countries

	Under 1,000	1,000-5,000	5,001-10,000	10,001-50,000	50,001-100,000	Over 100,000		
Percent							Total	Average size
Norway	5.3	50.3	21	20.6	1.6	1.2	433	10,500
Finland	5.1	46.3	25	20.4	1.8	1.4	432	12,100
Denmark	0	5.9	41.7	46.1	4.8	1.5	271	19,900
Sweden	0	4.5	21	59.7	10.7	4.1	290	31,100

Source: V. Trasberg „Local Government reforms“, Tartu University, Powerpoint Presentation, 03.04.2007 (unpublished).

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