

Chapter 8

Direct Democracy and the Constitution

Bruno S. Frey, Alois Stutzer, and Susanne Neckerman

Introduction

This chapter applies a comparative view to evaluate initiatives and referendums in the context of Constitutional change. Instruments of direct democratic decision making are compared to those of a purely representative democratic system in which members of parliament decide Constitutional issues like basic rights, the scope of democratic decision making and market exchange, the organization of government and the judiciary, and the federal structure of the country. Section 2 briefly describes aspects of direct democratic decision making that we deem critical from a Constitutional economics perspective. In particular, we hint to changes in the political process if citizens are directly involved through initiatives and referendums. We also list where these instruments have been applied. Empirical evidence on the consequences of direct democracy is presented in Sect. 3. Section 4 discusses arguments for and against direct democratic elements in a Constitution. Important issues for designing a Constitution that includes direct participation rights for the citizens are taken up in Sect. 5. Section 6 offers concluding remarks.

B.S. Frey (✉)
CREMA (Center for Research in Economics, Management and the Arts),
Department of Economics, University of Zurich,
Wilfriedstrasse 6, CH-8032 Zurich, Switzerland
e-mail: bruno.frey@econ.uzh.ch

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Direct Democratic Decision Making and Its Diffusion

There are many different conceptions of "direct democracy," which have resulted in a number of misunderstandings. In the following, we list two aspects that are central to our understanding and definition of direct democratic decision making.¹

Controlling Politicians

Direct democracy (or, more precisely, semi-direct democracy) shifts the right of final approval of policy matters to the citizens. This, however, does not substitute for parliament, government, courts, and other authorities important in representative democracies. Referendums and initiatives rather complement citizens' Constitutional rights in the control of their representatives in the democratic process beyond elections.

A referendum that is open to the entire electorate of a country gives decision-making power to people *outside* the legislator and the government. The typical voter making the decision is not integrated into the *classe politique* and cannot be directly influenced by the politician. Accordingly, optional and mandatory referendums can serve as an effective control of government because, if successful, they overrule the decisions taken by the executive and the legislative bodies. Initiatives allow citizens to put issues on the political agenda that members of parliament would prefer not to discuss.

To be effective, politicians must not be able to block popular referendums. In many countries, the Supreme Court or, even more controversial, the parliament, has the power to decide whether a referendum is admissible. The criteria appear to be purely formal but, in fact, the members of the *classe politique* have a considerable number of possibilities to impede referendums threatening their position.

Empirical evidence shows that referendums are indeed able to put through Constitutional provisions and laws that are totally against the interests of politicians as a group with at least some common interests (see Blankart 1992).

Politicians are well aware that the institutions of direct democracy severely restrict their leeway and also their possibility to "exploit" the citizens/taxpayers. Therefore, they mostly oppose introducing elements of direct democratic decision making.

Referendums as a Process

A referendum is not just a vote. Two important stages before and after the vote need to be considered.

¹ For different conceptions of direct democracy, see, for example, the work by Magleby (1984), Cronin (1989), Butler and Ranney (1994), Frey (1994), Dubois and Feeney (1998), Kirchgässner et al. (1999), and Frey et al. (2001).

The Pre-referendum Process

Referendums stimulate the *discussion process* among the citizens, and between politicians and citizens.² Pre-referendum discussions may be interpreted as an exchange of arguments among equal persons taking place under well-defined rules. This institutionalized discussion meets various conditions of the “ideal discourse process,” as envisaged by Habermas (1983). Some referendums motivate intense and far-reaching discussions. Those that are considered to be of little importance to the voters engender little discussion and low participation rates. This variability in the intensity of discussion and participation overrides the predictions of many models that were developed in reaction to the “paradox of voting” (Tullock 1967; Riker and Ordeshook 1973).

Post-referendum Adjustments

In a referendum, a political decision is formally made. However, which side gets a majority is not the only thing that matters. A referendum also clearly reveals how the population feels about the issue, whether there are distinct minorities and how large these are. Hence, groups dissenting from the majority and their preferences are identified and become part of the political process (see Gerber 1997).

The Diffusion of Direct Democracy

The extent of direct participation rights varies between different countries and states. Still, they usually include the issue of Constitutional change, which typically requires a mandatory referendum. Optional referendums and initiatives (allowing citizens to put issues on the political agenda) require a predetermined number of signatures by citizens to be launched.

Over the period 1991 to 2000, no less than 385 referendums on the *national level* were recorded (Kaufmann et al. 2008). About two-thirds (235) of them took place in Europe, 76 in America, 35 in Africa, 24 in Asia, and 15 in Oceania. In the decade before (1981 to 1990), there were only 200 national referendums. Up until August 2002, issues of European integration led to no less than 30 national referendums. There are a large number of popular referendums at lower levels of government. In the German state of Bavaria there were as many as 500 since its adoption in 1946. In Switzerland, there are thousands of referendums at all three levels of government: local, cantonal, and federal. In the USA, the initiative and referendum process is available to citizens in 24 states. Since 1904 when the first statewide initiative appeared on Oregon’s ballot, approximately 2021 measures have been decided directly by voters (Waters 2003).

²The essential role of discussion in direct democracy is more fully discussed in the works by Frey and Kirchgässner (1993) and Bohnet and Frey (1994). Its role for democracy in general is addressed in the work by Dryzek (1990).

Empirical Evidence on the Consequences of Direct Democracy

Direct democracy changes the political process in three important ways, compared to a purely representative democracy:

- Due to restricting established politicians' power, the *outcome* of the political process is closer to the citizens' preferences.
- The participatory character of direct democratic decision making provides incentives to voters to inform themselves about political issues, and changes their relationship with authorities and fellow citizens. Moreover, the referendum *process* is a source of procedural utility.
- Direct democracy affects *institutional* change, and protects rules that favor the citizens. In particular, it is a safeguard against overcentralization.

In order to substantiate these hypotheses, the following paragraphs discuss systematic empirical evidence from a number of studies that cover both Switzerland and the USA (for surveys see, e.g., Bowler and Donovan 1998; Eichenberger 1999; Kirchgässner et al. 1999; Gerber and Hug 2001 or Matsusaka 2004).

Effects on Policy Outcomes

Public Expenditures and Revenues

In a study covering the 26 Swiss cantons and the years between 1986 and 1997, Feld and Kirchgässner (2001) measure the effects of mandatory fiscal referendums. As compared to those without, cantons with fiscal referendums exhibit lower expenditures and revenues (about 7 and 11%, respectively). In a sample of 132 Swiss towns, the same authors replicate their test for the mandatory referendum on budget deficits for 1990. In cities where a budget deficit has to be approved by the citizenry, expenditures and revenues are, on average, about 20% lower and public debt is reduced by about 30%. With an extended panel data set from 1980 to 1998, the effect of the mandatory expenditure referendum is analyzed, taking the spending threshold into account and controlling for many factors such as income level in the canton, federal aid, age structure of the population, population size, population density, unemployment rate, as well as whether people are German-speaking or not (Feld and Matsusaka 2003). At the median threshold of 2.5 million Swiss francs (SFR), spending per capita is reduced by 1,314 SFR, that is, by 18% for an average expenditure level of 7,232 SFR (compared to cantons that either have an optional financial referendum or no referendum on new public expenditures). Moreover, the authors find that mandatory financial referendums have a smaller effect when it is easier for citizens to launch initiatives for new laws or to change an existing law (measured by the signature requirement). Thus, there is a substitutive relationship between the two institutions with regard to their consequences on cantonal fiscal outcomes.

Very similar results are found across US States (Matsusaka 1995, 2004). In a panel from 1970 to 1999, including all states except Alaska and controlling for many factors, initiative states on average have lower expenditures as well as lower revenues than noninitiative states. Both effect sizes are about 4%. These effects are, however, significantly different when the signature requirements to launch an initiative are taken into consideration. States with a 2% requirement are estimated to levy \$342 less taxes and fees per capita than noninitiative states (Matsusaka 2004, Chap. 3). These effects can be assigned to the referendum process and not, for example, to the ideology of a state's electorate.

The results provide evidence against the simple median voter model approach that is popular in economics. According to this model, politicians implement the expenditure and revenue level that is preferred by the median voter. In that world, referendums and initiatives should have no effect. However, it could well be that the observed low expenditure and revenue levels reflect some well-organized interests (e.g., rich people) that rely less on public services rather than more effective government control to refrain from unnecessary spending. Therefore, the efficiency of the provision of public goods has to be analyzed.

The cost-efficient use of public money under different institutional settings can be directly studied for single publicly provided goods. In a careful study on waste collection, Pommerehne (1983, 1990) finds that this service is provided at the lowest cost in Swiss towns that have extended direct democratic participation rights and choose a private contractor. The average cost of waste collection is the highest in towns that rely on representative democratic decision making only, as well as on publicly organized collection (about 30% higher than in the most efficient case).

The efficiency of public services is also reflected in a study relating fiscal referendums to economic performance in Swiss cantons (Feld and Savioz 1997). For the years 1984 to 1993, a neoclassical production function is estimated that includes the number of employees in all sectors, cantonal government expenditure for education including grants, as well as a proxy for capital based on investments in building and construction. The production function is extended by a dummy variable that identifies cantons with extended direct democratic participation rights in financial issues at the local level. Total productivity – as measured by the cantonal GDP per capita – is estimated to be 5% higher in cantons with extended direct democratic rights, compared to cantons where these instruments are either weak or not available.

Based on an aggregate growth equation, Blomberg et al. (2004) analyze the degree of efficiency with which US states provide public capital (utilities, roads, education, etc.). Based on data for 48 US states between 1969 and 1986, they assess whether there is a difference between initiative and noninitiative states. They find that noninitiative states are only about 82% as effective as states with the initiative right in providing productive capital services, that is, approximately 20% more government expenditure is wasted where citizens have no possibility to launch initiatives.

Citizens' Happiness

Individuals do not only have preferences for material affluence, but also with regard to freedom, equal opportunities, social justice, and solidarity. Whether individuals' preferences are better served in direct democracies than in representative democracies can be conjectured, but not deduced, from the evidence described so far. In contrast, the analysis of people's reported subjective well-being or happiness (for surveys see Frey and Stutzer 2002a; b; Frey 2008) can offer important insights into whether people in direct democracies are happier. In a study for Switzerland in the early 1990s, the effect of direct democratic participation rights on people's reported satisfaction with life is empirically analyzed (Frey and Stutzer 2000) based on survey data from more than 6,000 people. The proxy measure for individual utility is based on the following question: "How satisfied are you with your life as a whole these days?" People answered on a scale from one (=completely dissatisfied) to ten (=completely satisfied). The institutionalized rights of individual political participation are measured at the cantonal level, where there is considerable variation. A broad index is used that measures the different barriers preventing citizens from entering the political process via initiatives and referenda across cantons. There is a sizeable positive correlation between the extent of direct democratic rights and people's reported subjective well-being (after taking important socio-demographic and socio-economic variables into account). This effect is more than a third as large as the difference in life satisfaction between the lowest income category and the one reporting the highest life satisfaction. As the improvement affects everybody, the institutional factor capturing direct democracy is important in an aggregate sense.

Effects on the Process of Political Decision Making

Direct democracy fundamentally changes the *process* of political decision making. The direct involvement of the people changes their motivation when they act as voters, taxpayers, or fellow citizens (Frey 1997). It is widely believed that well-informed citizens are an essential prerequisite for a well-functioning and stable democracy. However, collecting information in order to make an informed decision at the poll is a public good that citizens are only willing to make to a limited extent. On the one hand, it can be debated whether a direct democratic decision on a particular issue demands more or less information than the choice of a candidate, given the institutions that lower citizens' information costs. On the other hand, it can be asked whether the level of voters' information itself is dependent on the political system in which citizens live. A political system giving citizens more political participation possibilities changes the demand for political information, as well as the supply of it. Benz and Stutzer (2004) provide systematic empirical evidence. The data shows that political participation possibilities are positively correlated with voters' level of political information.

People's satisfaction with the provision of public services in direct democracies is likely to influence their behavior as voters collecting information or as taxpayers. In addition, the process of decision making may also change people's trust in

authorities (this can be seen as a psychological contract, Feld and Frey 2002) and their motivation to obey the law. It has, for example, been shown that people's tax morale increases and tax evasion decreases with more extensive democratic participation rights. Based on survey data from the World Values Study, Torgler (2003) finds that in more direct democratic Swiss cantons, citizens are more likely to agree with the statement that "cheating on taxes if you have a chance" is never justifiable. Pommerehne and Weck-Hannemann (1996) directly study tax evasion in Swiss cantons and find that it is substantially lower where citizens have a direct say in budgetary policy.

Citizens also benefit from the *process* of direct democracy beyond its political outcomes (for a general account on procedural utility, see Frey et al. (2004)). In order to disentangle the effect of direct democracy on policy outcomes from its direct (procedural) effect on reported subjective well-being, Frey and Stutzer (2005) use foreigners as a control group. Foreigners benefit from the favorable outcomes, but are excluded from the procedural benefits of direct democratic rights. The authors find that the positive effect of direct democratic participation rights is about three times larger for citizens than for foreigners, which hints to the importance of procedural concerns.

Arguments Against and Counter-Arguments for Referendums

Systematic evidence has been accumulated documenting that, as compared to a purely representative democratic system, direct democracy leads to policy outcomes that are more in line with citizens' preferences. Nevertheless, referendums can hardly be considered a prevalent institution in democracies, let alone in authoritarian systems. Not surprisingly, members of the *classe politique* are quick to raise many objections against increasing citizens' participation rights. They realize that referendums constitute a threat to their position by limiting their rent-seeking potential. Many intellectuals – even those who do not share the spoils of the politicians' cartel and those opposing the political establishment – put forward a variety of arguments against referendums. The basic reason is that they consider themselves to be better judges of what is good for the people than the citizens themselves. They tend to see themselves in the role of "philosopher-king", determining what constitutes social welfare. Consequently, they prefer decision-making systems where they have a larger say. Thus, they oppose referendums for the same reasons as they oppose the market.

The following arguments are often raised against the institution of referendum.

The issues are too complex for the citizens to understand.

This view can be refuted for various reasons: First of all, it is inconsistent to trust citizens to be able to choose between parties and politicians in elections, but not between issues in referendums. If anything, the former choice is more difficult, as one must form expectations on how politicians will decide on future issues. Second, the voters need not have detailed knowledge about the issues at stake. Rather, they only need to grasp the main questions involved. These main questions are not of a

technical nature, but involve decisions of principle, which a voter is as qualified to make as a politician. Third, the general intelligence and qualifications of politicians should not be overrated. Fourth, a number of institutions have emerged in direct democracies, helping citizens to reach reasoned decisions. The parties and interest groups give their recommendations concerning decision making, which the citizens may take into consideration. Even more importantly, the discourse in the pre-referendum stage brings out the main aspects and puts them in perspective. Finally, direct democracy provides incentives for the citizens to privately collect information, and for the political actors and the media to provide it.

Citizens have little interest in participating.

Participation in initiatives and referendums is often relatively low and varies with the size of the jurisdiction (see, e.g., Hansen et al. 1987). Sometimes, only a few eligible voters go to the polls. It is concluded that citizens are not interested in the issues to be decided on.

This is, however, a wrong conclusion for three reasons: First, participation is not always low. When the citizens feel that an issue is important, voting participation rises considerably. Second, high voting participation is not necessarily a good thing. Citizens are perfectly rational not to participate when they find the issue unimportant, when they are not affected or when they are undecided. Voting participation reflects citizens' preference intensities, which adds to the information on people's preferences elicited with the vote. Third, it would be naive to think that the voting participation of politicians in parliaments, which is also *freely chosen*, differs widely from that of citizens in popular referendums. This is reflected in the often extremely low participation in parliamentary sessions. The Members of Parliament sometimes have to be herded together from the lobby or their offices to cast the vote.

Interest groups set the agenda and manipulate the citizens.

Financially strong parties and pressure groups are better able to start initiatives and to engage in referendum propaganda than are financially poor and nonorganized interests. This cannot be denied. However, using this as an argument against referendums is misleading because it takes an absolute stance: it is *always* true that rich and well-organized groups wield more power. The crucial question is whether they have *more* or *less* power in a direct than in a representative democracy. It is well known that well-organized and financed pressure groups exert considerable power over the politicians sitting in parliament and in government. It may even be argued that it is cheaper and less transparent to influence the small number of legislators and government politicians than the total electorate.

Citizens decide emotionally.

Again, this charge must be considered in a comparative perspective. There is little reason to believe that politicians are less subject to emotions. After September 11, many politicians agreed in the heat of the moment to far-reaching decisions with regard to the restrictions of personal freedom. Moreover, parliaments are known to have highly emotional debates, sometimes even erupting into fist fighting.

Direct democracy is not capable to reach unpopular, but foresighted decisions.

Politicians are sometimes supposed to make unpopular decisions. An example would be a restrictive fiscal policy, when the budget deficit is getting too high or when inflation soars. Such policy pays off only in the medium or even long run. It is argued that such unpopular policies would be impossible in a direct democracy.

This conclusion, however, does not necessarily hold. In a direct democracy, the politicians are forced to explain their policies to the citizens. If they can give good reasons why they propose to undertake such a seemingly unpopular policy, the citizens will not oppose it.

Referendums are inadequate for major issues.

As the voters are taken to be poorly educated and ill informed, subject to manipulation and to emotional decisions, it is often argued that referendums should only be used for small and unimportant issues. In contrast, issues of great consequence – such as changes in the Constitution – should be left to the professional politicians.

The opposite makes more sense. Major issues can be reduced to the essential content. Evaluation is then not a matter of (scientific) expertise but of value judgments. Following the idea of citizen sovereignty, only the citizens may be the final judges when it comes to preferences, and a substitution by representatives is, at most, a second best solution.

Small and unimportant issues, on the other hand, may well be delegated to professional politicians because the transaction cost of a popular vote would probably outweigh the benefits.

Referendums hinder progress.

Critiques argue that the populace often rejects decisions because they do not like changes, and prevents the adoption of “bold, new ideas.”

It may well be true that many new propositions are rejected in referendums, but this does not mean that this constitutes a disadvantage. The fact that proposals contain new ideas is no proof of their quality. Indeed, the citizens are right in rejecting them when they are in favor of the *classe politique*. The concept of “bold, new” solutions is not rarely the result of technocratic thinking and of a planning mentality. They strengthen the politicians’ and bureaucrats’ position, but need not necessarily be in the voters’ interests.

There are too many referendums.

When the citizens have to simultaneously decide on a large number of issues (in California, for instance, the voters often have to deal with 20 or even more propositions at the same time), they gather information about and focus on a few clear issues. The decisions on all other issues are then haphazard.

This is indeed a situation to be avoided. However, the number of referendums put to the vote can be steered via the number of weekends with ballots over the year and via the number of signatures required for an initiative or optional referendum. If the number of issues to be decided on gets too large, the number of signatures

required can be raised. However, such a decision should be made via a Constitutional referendum to prevent the *classe politique* from fixing such a high number of signatures that referendums become infeasible.

Preconditions for Introducing Referenda and Constitutional Design

There are many obstacles to introducing political institutions that restrict the competence and influence of established interests. However, in a societal crisis or after a revolution (like in the former communist countries in Europe), there is a window of opportunity for institutional change and new basic rules for society. In order to successfully introduce direct democracy during these periods of time, a civic culture is necessary that facilitates the use of referendums and initiatives. It is impossible to successfully run directly democratic institutions where there is no adequate basis in society. One condition under which direct democracy works well is when there are strong cross-cutting cleavages (e.g., with respect to per capita income, religion, and culture or language). This guarantees that it is not always the same group of persons that finds itself in the minority and therefore feels exploited. As has also been emphasized, the citizens must have sufficient trust in the politicians that they actualize the referendum decision, and the politicians must trust that the citizens take reasonable decisions when voting on issues. This trust must develop over time and cannot simply be instilled from outside. Therefore, the "grand" solution of jumping from a representative democracy straight into a fully developed direct democracy is both unrealistic and undesirable. Rather, direct participation rights for the citizens should be gradually introduced, so that a *learning process* can take place between the citizens, parliament, and government. The use of initiatives and referendums by the citizens is, however, also a major factor in raising civic culture, especially in the form of the trust citizens have in their government. Direct democracy thus helps to create the necessary conditions for its own smooth functioning.

The crucial question is *who governs* the step-by-step introduction of direct democratic instruments. Ideally, it would be a Constitutional assembly. Its members are not directly involved in current politics, so they can take a more objective stance. They do not have to fear a reduction in their own power if direct democracy is introduced in the future. In reality, however, a considerable number of the members are likely to belong to the *classe politique*. They either served in parliament in the past, currently do so, or hope to do so in the future. In all cases, they tend to oppose popular participation in political decision making.

For these reasons, the active involvement of the citizens in amending the Constitution, as well as in more general political decision making, cannot be substituted by resorting to representation.

Concluding Remarks

Reasons for giving citizens the rights to directly participate in political decision making stem from two main strands of argumentation. The first strand takes such political rights as a *value as such*, which must not be legitimized any further. Direct democracy is then taken as the next logical major step from the introduction of democracy in the classical Athenian city-state and its broadening over whole nations in the wake of the French revolution.

The second type of reasoning considers the favorable consequences of giving the citizens the right to directly participate in political decision making. This paper identifies two sources of benefits: (a) *Procedural Utility*. Direct participation rights raise citizens' utility, quite independent of the outcomes reached. Empirical evidence suggests that citizens' subjective reported well-being (*ceteris paribus*) is the higher, the more extensive their participation rights are. (b) *Outcome Utility*. When the citizens are allowed to directly participate in political decisions, the policies undertaken yield more favorable results for them. Extensive empirical evidence for Switzerland and the USA (the leaders in direct democracy) suggests that more extensive participation rights via popular initiatives and referenda lead to a lower tax burden and lower public expenditures; to higher efficiency and productivity in the provision of public goods and services; and to higher overall satisfaction (happiness) of the population.

The following arguments are often raised against direct democratic institutions: the citizens fail to understand the complex issues; they have little interest in participating; they are easy to manipulate; they tend to decide emotionally; the large number of referenda lead to confusion; leadership is made impossible; direct democracy is inadequate for major issues, hinders progress, destroys civil rights and is very expensive. This paper argues that these arguments should be rejected, in particular if a comparative stance is taken, that is, if decision making in direct democracies is contrasted with that in representative democracies.

Elements of direct democracy should be introduced gradually. There are many design variables that allow a flexible introduction. Examples are the required majority, the issue domain, the time, the extent of codetermination of citizens and parliament, as well as whether referendums concern the local, national or supranational level.

We conclude that increasing the direct democratic political participation rights of the citizens is an important step for any democracy and the evolution of its Constitution.

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