

Direct Democracy Worldwide

DAVID ALTMAN

Pontificia Universidad Católica de Chile



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Direct Democracy at the Turn of the Century

Direct Democracy Worldwide addresses the relationship between direct and representative democracy and uncovers the specific conditions under which both can coexist in a mutually reinforcing way. It demonstrates that direct democracy is Janus-faced: Some mechanisms of direct democracy look forward in an attempt to democratize politics whereas others look backward, enhancing the power of politicians who deliberately use them. From this latter perspective, instead of *giving power to the people, other times it subjects the people to the powerful*. *Direct Democracy Worldwide* fills a lacuna in our understanding on the uses of mechanisms of direct democracy in the contemporary world, paying special attention to how direct and representative democracies interact under different institutional circumstances.

This book reevaluates how citizens acquire power to abide by public decisions and whether they have the right to take part equally and fairly in the *entire process* that generates these decisions, which naturally fall beyond national elections and the twelve or thirteen times we exercise sovereignty in our lives. It does not debase the importance of free and fair elections – to the contrary. Free and fair elections are a *sine qua non* constitutive element of democracy, and without them everything collapses. However, the time elapsed between elections may be agonizingly long for citizens whose preferences are systematically unheard, and these interelection spaces constitute the weakest link of current democracies. They tend to be left aside as an empty space filled with horizontal – but not vertical – accountability in a manner that eliminates the most important component of the first polyarchy transformation (Dahl 1989).

Any constitutive part of democracy, such as freedom of expression, is expected to be fulfilled at any time and indefinitely in the future. This must hold true for popular sovereignty as well – and it should not be limited to just one day every few years. Thus, this book attempts to revitalize something that is intrinsically one of the backbones and leitmotifs of the democratic tradition: popular sovereignty as a way of addressing the demands of citizens and the dependence of public policies on their preferences. The question is: How can

current democracies translate popular sovereignty into working institutions adapted for the twenty-first century?

This book answers this question in relatively simple terms. I claim that there are some institutions that deserve a closer look and, depending on certain prerequisites, should be given a chance. These institutions comprise the citizen-initiated mechanisms of direct democracy (CI-MDDs). Yet this assertion of CI-MDDs should not be understood as a romanticized version of participatory or deliberative democracy. I simply claim that these are control mechanisms to be potentially used by citizens, and this does not imply voting every week, the steamrolling of minorities through majority rule, or the substitution of party politics by citizens. More important, CI-MDDs are not intended to supplant representative democracy but rather to serve as intermittent safety valves against perverse or unresponsive behavior of representative institutions and politicians. Citizen-initiated mechanisms of direct democracy are not simply about a blind use of majority rule, and those understanding them as mere votes on a certain issue are ignoring possibly the most crucial part of the direct democratic game: the process itself, which is arguably more important than the outcome of the ballots themselves.¹

Citizen-initiated mechanisms of direct democracy are a subtype of mechanisms of direct democracy (MDDs) in general and, by definition, not every MDD has to be initiated by citizens gathering signatures, as is usually the case. Some MDDs are initiated by chief executives (e.g., presidents) or by a well-defined group of individuals (e.g., legislators), and sometimes by both. These “top-down” MDDs often have no other intention than the erosion of the power of other state institutions or simply bypassing institutions and procedures when the political aims of the initiator do not match with the other power. Thus, some MDDs could be characterized as strongly eroding crucial aspects of representative democracy, minimizing the exchange of ideas, and evading the political battles that characterize representative liberal democracies.

Direct democracy involves many complex factors and is most certainly not a monolithic concept. Any assessment of direct democracy in general must be undertaken with extreme caution. In large part, the debate surrounding the topic has been based on stereotypes of representative and direct democracy; consequently, the literature repeatedly asks the wrong questions and, thus, provides the wrong answers. Portraying direct democracy as inherently *good* or *bad* for representative democracy does not seem to be a very good starting point for a productive and wise research agenda, yet this is where much of the literature begins.

Not every concern about direct democracy is based on stereotypes; however, as the reader will witness, the discussion about direct democracy is plagued with normative and empirical tensions, many of which have a palpable influence in our daily life. This book captures the negative side of direct democracy, provides

¹ On the value of processes in and of themselves, see Ackerman and Fishkin (2004), Elster (1998), Sen (1997), Tyler (1997), Benhabib (1996), Fishkin (1991), and Pateman (1970).

a balanced treatment of the subject, and fairly vents the considerable skepticism that has emerged about these mechanisms. For example, it would not be risky to acknowledge that these institutions have often been manipulated by elites; this is very damaging to representative democracy.²

Nonetheless, and despite their potential misuses, it would be unwise not to seriously consider CI-MDDs and their potential positive synergy with representative democracy. Indeed, parliaments, elections, and even basic freedoms have also been repeatedly misused, yet their normative value had not decreased – in fact, our efforts for improving them are constantly increasing. The words of a president who faced several national CI-MDDs during his administration (and lost most of them) are eloquent:

All institutions have their own weaknesses, including those mechanisms of direct democracy. It has been the situation with all institutions and it had always been so. But so what? Will we then have to remove the mechanism because it could be deformed? Oh no! Extrapolating that, we might even think that we are to eliminate national elections because they could warp, because people could use them demagogically. . . . No, no, no. . . . (Interview with Jorge Batlle, February 2008)³

In broader terms, this book deals with the distribution and exercise of power in our states – the *power* of making binding decisions that affect our lives. Who is in charge of making such binding decisions – the powerful or the numerous? What types of decisions are made, and are all included? What about overriding those decisions – who does that? All these questions remain open despite having been considered for thousands of years and having perhaps one of the longest traditions – in what we today call “the social sciences” – engaged in the constant search for the best form of government. From Herodotus’ time – and not omitting Aristotle – we have compared the virtues and deficiencies of contemporary governments. Nowadays, for normative and practical reasons, we are convinced more than ever that representative democracy is the best regime of all possible, or at least the lesser evil.

Since its very millenarian origins, democracy has been always under enormous pressure for renewal – a renewal that becomes inexorable.⁴ If the beginnings of the twentieth century were marked by demands for extending citizenship and ensuring fair representation, contemporary democracies face different challenges, such as transparency, access, and accountability. Phases of democratic transformation are a persistent matter throughout history, and demands for adjustments “in one direction often wane as new problems and new possibilities surface” (Cain, Dalton, and Scarrow 2003: 3). Indeed, I am positive there is at least a minimum consensus in political science: There are no

² As becomes clearer in Chapter 2, this does not parallel the populist paradox, as Gerber titles her book, which is based on the belief that economic interest groups manipulate direct legislation against other interests (Gerber 1999: 6).

³ Jorge Batlle, president of Uruguay from March 2000 until March 2005.

⁴ The study of democracy has been one of the most prolific areas of interest in comparative politics. If truth be told, most of us agree on many of the diagnoses of current democracies, yet consensus has not been reached in terms of the prognosis.

magic formulas that will ensure us a “high-quality” democracy. All institutional settings are the product of a delicate balance, often between conflicting choices. Although there are no neutral institutional arrangements, the status quo implies a deliberate policy choice.

Yet representative democracy remains far from perfect, presenting numerous problems and shortcomings. A great consensus exists on the contemporary challenges of current democracies (high levels of civic disaffection, distrust of political parties, and in general, animosity toward the democratic game), and one of the most tricky aspects of our democracies lies in the direct and daily relationship between citizens and the state (O'Donnell 2004a: 57). Indeed, the warning given by Dunn about representative democracy is rather illustrative: “[O]ne day’s rule every four years has very much the air of a placebo” (1979: 16). Evidently, we all want a greater involvement of the citizenry in public affairs, a greater sensitivity of the state with regard to weaker sectors of society, and a greater redistributive justice of markets, among other numerous and noble aspirations. This discussion focuses on how best to achieve these goals.

A number of forces have been devoted to improving democratic institutions; electoral systems have excelled among these democracy-improving institutions despite the tradeoffs implied by this choice (e.g., representation versus efficiency). Elections usually become the focus of analysis, which leads scholars to overlook what occurs in the period between elections. Nonetheless, some scholars with a more sophisticated vision warn us that “the development of democracy is much more than the perfection of its electoral system” (O'Donnell 2004a: 49). The basic problem of democracy goes beyond simple institutional improvements: “Democracy, once again in favor, is in need of conceptual renewal. Although the traditional concerns of democratic theory with state-centered institutions remain importantly crucial and ethically central, they are increasingly subject to the limitations we should expect when nineteenth-century concepts meet twenty-first century realities” (Warren 2001: 226).

Democracy, as we understand it today, is the long fusion, and sometimes confusion, of political traditions at least centuries long. Athenian democracy, despite its highly restrictive (by today’s standards) enfranchisement rules, demonstrated the fairest imaginable distribution of power among its agents. It also exemplified the value of a political milieu that excels through the *equality* and *sovereignty* of its (few) members. With Republicanism – first Roman and then Florentine – came the concept of mutual *control* as the means for citizens to be free from state domination and arbitrary misbehaviors. A sophisticated net of institutions was established to control each other, and these operated under known rules of the game, establishing a key concept: the rule of law. Finally, liberalism, from which we borrow the idea that individuals are *free*, emerges; individuals are thus perceived as autonomous and responsible (à la Kant) and know what is best for themselves (à la Hobbes), their peer community, and their society as a whole (à la Rousseau or Locke).

Thus, democracy today can be fit under four umbrella concepts: freedom, equality, sovereignty, and control. All democracies have a flavor of each, but the

concepts are combined in different shapes and sizes, and an even combination is hardly – if ever – attained. I argue, however, that in current definitions of democracy, one concept is systematically minimized but must be refreshed and invigorated: Popular sovereignty, galvanized in the twentieth century, must be revitalized in the form of binding CI-MDDs.

Current democracies are indisputably far from the ideal representative democracy that theory promises us. It could be claimed that democracy today more closely resembles an oligarchy with the façade of democracy rather than the ideal, prototypical, representative democracy about which we teach our students every year. According to Walzer, “[G]overnment is in principle democratic, in (liberal) theory mixed, and in practice oligarchic” (2004: 25).⁵ How many of us genuinely are potentially elected officials in our community? Of course, it is not that we do not have the proper conditions or vocation to do or be so; it is simply that in real terms, we do not have the effective right to be elected despite that we assume, believe, and have collectively decided we are all legally entitled to stand for election if we so choose. In practice, only a small group of people actually run for office.

Even assuming, for the time being, a positive institutional assemblage of the state, wherein the legislature, the executive, and the administration relate to each other in institutionalized patterns of behavior under the umbrella of what we call the *democratic rule of law*, the infamous “corridors of power” generate incentives for perverse interests and behaviors (Pettit 2003).⁶ But this is not terribly new: Already, Michels (1999 [1911]), in his *Iron Law of the Oligarchy*, and the writings about the circulation of elites of Mosca, Pareto, and even Weber, later reevaluated by the literature on party cartelization (Cox and McCubbins 1993; Katz and Mair 1995; Koole 1996), account for these tendencies. Contemporary democracies must provide tools for controlling these behaviors both horizontally (by other institutions) and vertically (by citizens).

An almost Schumpeterian, electoralist conceptualization of democracy would tell us that citizens regularly exert control in national elections, activating their sovereignty, punishing misbehaviors and rewarding others. Nevertheless, “the chances to exercise vertical accountability, however, are only periodic and, in some cases, citizens must wait several years for the next election” (Morlino 2004: 19) – when, sometimes, the misdeeds are already done, the window for justice has passed, and our desires and preferences are ignored. The implications of these rather scattered flashes of popular sovereignty for the crafting of controlling institutions are evident. If the people’s interest is

⁵ In this regard, Rousseau’s disrespect for elected representation is noteworthy: “The English people believes itself to be free; it is gravely mistaken; it is free only during the election of Members of Parliament; as soon as the Members are elected, the people is enslaved; it is nothing. In the brief moments of its freedom, the English people makes such a use of that freedom that it deserves to lose it” (Rousseau, *The Social Contract*, bk. III, chap. 15).

⁶ By corridors of power, I loosely imply those obscure places where the elite can impose their own will in how they interpret and implement policy without public scrutiny (e.g., bureaucracy, cabinet, courts, police force).

undermined or ignored, it is incumbent on them to activate their democratic power – their sovereignty – to force a change in the status quo or ensure its maintenance in keeping with their preferences. Maintenance activities take the shape of *referendums* (trying to stop certain measures going against the general preferences), whereas status quo shifts often manifest as *popular initiatives* (trying to push forward certain measures that, otherwise, the establishment would not consider of its own volition).⁷

Direct democracy now has entered the game, and it is unlikely that use of its mechanisms will decrease because of its theoretical and practical tensions with representative democracy. Despite the importance and growing impact of these institutions worldwide, we still lack a comprehensive understanding of these mechanisms. There are two reasons that can explain the relatively low intensity of the cross-national study of MDDs. One stems from the belief that direct democracy has a marginal role in contemporary politics. Indeed, some colleagues argue that “referendums are relatively rare events in politics of most democratic nations” (LeDuc 2003: 13; see also Qvortrup 2002: 2). Yet I have collected information on more than seventeen hundred MDDs at the national level alone since 1900. A total of 5,342 state-level *direct popular votes* in the United States have been on the ballot between 1904 (when the first one went before voters in Oregon) and 2008;⁸ this figure increases exponentially if we include MDDs at the county level, which number literally in the tens of thousands. Between 1970 and 2003, a total of 3,709 cantonal popular votes were held in Switzerland, and Bavaria alone held more than one thousand popular ballots since their constitutional introduction in 1995. It seems evident that the intermittency claim regarding the use of MDDs is, at least, questionable.

The second reason often given for the as-yet minimal cross-national study of MDDs is the disorder that still exists in terms of a common language to deal with this multifaceted factor in contemporary politics. Evidently, some clarification of the concept of direct democracy is required and urgently needed given the terminological confusion that exists in constitutional texts (e.g., what is called a *referendum* in one country is termed a *plebiscite*, or even a *popular initiative*, in another). Furthermore, it is not the case that in each country there is at least a systematic use of the definitions and wording of MDDs; rather, concepts such as “initiatives,” “plebiscites,” and “referendums” are actually used as synonyms within the very same piece of legislation! To aggravate this problem, scholars have demonstrated relatively low elasticity in trying to

⁷ I define measures as a complete range of political actions that could perfectly oscillate between practical policy implications (on taxes, subsidies, alcohol, and even sex education) to discursive and even symbolic ones (e.g., anthems and flags).

⁸ It has to be noted that despite that, the first popular initiative was held in Oregon in 1904; the first state to adopt the initiative and the referendum on a statewide level was South Dakota in 1898. Since then, of the 5,342 popular direct votes, 3,285 (61.5 percent) were initiated by the executives or legislatures and 2,057 (38.5 percent) initiated by citizens. Based on Initiative & Referendum Institute (2007), The National Conference of State Legislatures (2008), and the author's calculations.

find criteria that can travel relatively easily from one place to another. Some colleagues fall into the temptation of studying MDDs from a purely formal perspective, based on the names that constitutional texts provide for direct democracy, but research may only proceed if we eschew this and do not become entangled in semantic confusion.

It is important to note that this volume does not purport to be a book on democratic theory, despite having theoretical, conceptual, and empirical implications. I will not elaborate a justification of representative democracy because there is a large literature on the topic. I begin with the assumption that current representative democracy is given yet perfectionable in both realistic and conceptual ways. In so doing, I follow Morlino, explicitly acknowledging two liberal assumptions that cross evenly through this research. First, people are able to accurately perceive their own needs. Second, “either alone or as part of a group, people are the only possible judges of their own needs [...] this is to say, no third party can decide those needs” (Morlino 2004: 13–14).

1. What Constitutes Direct Democracy? Definition and Typology

I define an MDD as a publicly recognized institution wherein citizens decide or emit their opinion on issues – other than through legislative and executive elections – directly at the ballot box through universal and secret suffrage. Therefore, a *sine qua non* characteristic of all MDDs is the vote itself, where we are all equal, delivering our Rousseauian $1/n$ power.⁹ From this perspective, MDDs are composed of those mechanisms through which, after the representatives and the government are elected, the citizenry continues to be – voluntarily or involuntarily, explicitly or implicitly – a veto actor or a proactive player in the political process.¹⁰ Here, it is theoretically reasonable to exclude legislative popular initiatives from the realm of direct democracy and to treat nonbinding MDDs as populist placebos (I return to this point in due course).

Direct democracy constitutes a broad category that incorporates diverse resources, such as referendums, plebiscites, recalls, and popular initiatives.¹¹ The literature offers several typologies of MDDs, each one stressing a different aspect of these mechanisms. Because one of my major interests is conducting

⁹ From a Rousseauian perspective, each citizen has a $1/n$ share of “sovereign authority,” where n is the total number of citizens.

¹⁰ According to Tsebelis, veto players are individual or collective actors whose agreement (by majority rule for collective actors) is required for a change of the status quo (Tsebelis 1995: 289).

¹¹ A more orthodox perspective on the matter would refer to this group of institutions as expressions of “semidirect” instead of “direct” democracy.” The latter term is reserved for those citizens’ assemblies where issues were brought up, discussed, and decided directly without any institutional intermediation. Examples include New England town hall meetings and the modern-day remnants of the Swiss *Landsgemeinde* in Obwalden and Nidwalden, where voting is done by show of hands. This also applies to citizens’ assemblies in classical Greece. Because a consensus on terminology is difficult to attain, I will adhere to its simplest form, “direct democracy.”

an empirical study on direct democracy at different levels of democracy, the typology I provide should travel relatively easily along the democratic continuum. The first dichotomy I use to classify MDDs refers to whether the mechanism considered is regulated by law (or the constitution). In other words, are MDDs *mandatory* or *facultative* (also termed *regulated* or *unregulated* in the literature)?

A second dimension involves whether the resolution of an MDD is absolute in a given discourse or if another institution has the final say on that topic. The literature refers to this dichotomy as *binding* versus *consultative* MDDs. The third criterion refers to the intention of the MDD, which could be either *proactive* or *reactive*. Simply put, does the MDD attempt to alter or sustain the status quo? The fourth and final criterion concerns the main trigger of the MDD: Did it derive from the political establishment (e.g., the executive power or the legislature – whether a majority or a minority), in which case the event is labeled *top-down*? Or, rather, was it derived from a group of citizens, in which case the event is labeled *bottom-up* or *citizen-initiated*? From this last dichotomy (establishment versus citizens), we can derive a third group of MDDs, which refers to constitutionally mandatory MDDs, sometimes called “obligatory referendums.”

For this research, I built a typology that travels relatively easily from one place to another. It also fits rather well within the categories used by the most prodigious employer of MDDs worldwide: Switzerland.¹² The adoption of these categories has nothing to do with Swiss terminological imperialism; it is simply a matter of practicality. I do not see the point of forcing rather marginal categories based on ad hoc criteria instead of using the categories employed by the country that, in one way or another, serves as a focal point in the study of direct democracy. In other words, if the same “animal” is called “cow” 85 percent of the time, “spotted grass-eater” 10 percent of the time, and “methane maker” 5 percent of the time, we should simply call it “cow.”

Nonetheless, the Swiss terminology is not exhaustive enough to cover, in a systematic way, most of the “animals” that fit within the basic criteria of this study. Many but not all types of MDDs exist in Switzerland and, as a result, the terminological names of these other types must be obtained elsewhere. The questions are where and how.

If we agree that a typology should help to aggregate MDDs in clusters, a question remaining is how many levels of disaggregation are required for traveling far enough while remaining adequately profound. A typology – a nominal measurement – has to fulfill certain conditions; namely, it must be exhaustive

¹² Switzerland occupies a unique and prominent position in the literature of direct democracy not only because it is the most experienced country on earth with these institutions, but also because it is an ideal case scenario for comparative research given its huge variations in how direct democracy is practiced and institutionalized at and within its different levels (federal, cantons, communities). Moreover, the late Stein Rokkan once called Switzerland a microcosm of Europe because of its cultural, religious, and regional diversity (Linder 1994: xii).

and its categories mutually exclusive. In other words, categories should include all of the possibilities for the measure, and they should be differentiated in such a way that a case will fit into one, and only one, category. Of course, in the case of institutions, the creation of a typology can be a complex task. For instance, it is still open for debate what type of regime exists in Switzerland. For those who emphasize executive formation, Switzerland is a truly pure hybrid regime (Klöti 2001; Lüthi 2007); however, for those who highlight government business and daily life, it behaves more like a presidential one (Kriesi 2001). As a matter of fact, in terms of government survival, Switzerland resembles a “pure” presidential regime in the sense that once the executive is appointed by the Federal Assembly, councilors cannot be removed and there is no possibility of dissolution of the legislature by the executive (Cheibub 2007: 36). Thus, if the question that motivates research is government survival, the inclusion of the Swiss case, along with other parliamentary regimes of Western Europe, would distort the research, unless we want to explain how different regimes affect government survival.¹³

Because my interest is to examine how direct and representative democracies interact while keeping my typology relatively simple, I consider it crucial to determine who initiates the MDD, what its purposes are, and whether the MDD is the final word on an issue. Each of the three criteria is then further divided. With regard to initiators, I found three major alternatives: citizens (through signature gathering), political establishment (executives, legislators, or both), and the legal or constitutional regulations existing in a country. With regard to the purposes of MDDs, we find two very large groups: those that maintain the status quo and those that alter it. Finally, the issue of whether the MDD is the last word (i.e., it becomes law) or can simply be ignored is important (this is the differentiation between binding and nonbinding MDDs). This typology thus allows for conceptualization comprising twelve categories (three types of instigators times two possible purposes times two potential legal statuses). Although these are all theoretically possible combinations, not all of these combinations exist, as we will see.

On many occasions, colleagues have told me that “this particular MDD held in that particular country” was rather special and thus could not fit properly into any of the twelve categories I have created. Rather, we should create a special box for “this type of case.” My answer is simple: I do not continue disaggregating this typology because my theory does not require it. I simply note that this typology could be disaggregated further, even to the extreme of generating a typology with as many categories as the number of MDDs that exist. In other words, given that no two MDDs are exactly equal, we could expand our typologies to capture a minor difference between two extremely similar MDDs. The question, however, is whether this practice is

¹³ Vatter (2008) has shown how difficult it is even to locate Switzerland within just one continuum (majoritarian-consensus) and how stressing different characteristics of this continuum would produce rather different locations for a single case.

useful either for research or theory building. For example, if technical nuances on how a vote was held are of interest for the researcher, it would be logical to include whether the vote was an e-vote (electronic in some way) or if ballots were cast at physical polling stations. Otherwise, including that distinction would not be theoretically relevant and would be, for practical reasons, inconvenient.¹⁴

Figure 1.1 describes the typology of MDDs using the criteria delineated in the previous paragraphs. Note that the second row deals with the initiators and the third row considers whether the MDD is binding. The bottom row indicates the political purposes of MDDs in terms of the status quo. Before moving on to the figure and describing each category, I elucidate a few points.

We must be extremely careful in dividing the waters between MDDs into categories. In this typology, I make the division between those that are “citizen-initiated” (or “bottom-up”) and those initiated from above, “top-down.” This differentiation is crucial because top-down MDDs usually represent plebiscitary means either for bypassing other representative institutions, disengaging from the responsibility of tough policies, or simply as mobilization/legitimation populist tools. As Kaufmann and Waters state,

[I & R (initiatives and referendums)] have to be clearly distinguished from plebiscites. These are votes on issues implemented from above by a government, without support from or influence of the citizens. Plebiscites have nothing to do with I&R; on the contrary, they are often used by governments who want to get a special legitimacy on their policies by bypassing existing laws and constitutional rules (Kaufmann and Waters 2004: xix).

Here, the terminological differences between the continental and American literatures are evident. Whereas the previous quotation notes a clear

¹⁴ The literature offers a wide menu of typologies that link mechanisms of direct democracy and democracy types, such as those presented by Vatter (2009) or that of Hug and Tsebelis (2002). These typologies include certain aspects not covered by my typology, including “decision rules” (particularly with parliamentary-minority initiated MDDs). Vatter’s typology (and, for this matter, also the typology offered by Hug and Tsebelis) is an extremely useful cognitive map of different types of mechanisms of direct democracy in the context of developed democracies. However, I have reservations about how useful it would be to extrapolate it to non-European countries because it does not necessarily travel smoothly to the southern regions of the globe. For example, unlike most Western developed countries (Vatter’s universe of cases), all Latin American countries are typical presidential regimes, where the executive party is usually the largest minority within the legislature and sometimes even a small minority within it (as the cases of Brazil and Ecuador illustrate best; many countries in Africa also present this configuration). In this context, although it is possible to identify MDDs triggered by the gathering of citizens’ signatures that favor or go against the status quo, it is extremely difficult to assess if legislators pushing for a particular MDD belong or not to the executive’s legislative-coalition in that particular time in a broader cross-regional comparison. By the own nature of regimes, assessing the “ruling majority” in a multiparty presidential regime is far more complicated than doing so in parliamentary regimes (Chasquetti 2001). In other words, I am more concerned about the applicability of Vatter’s typology to my universe of cases (all countries of the world) and its fit with the objectives of my research than with the typology itself.

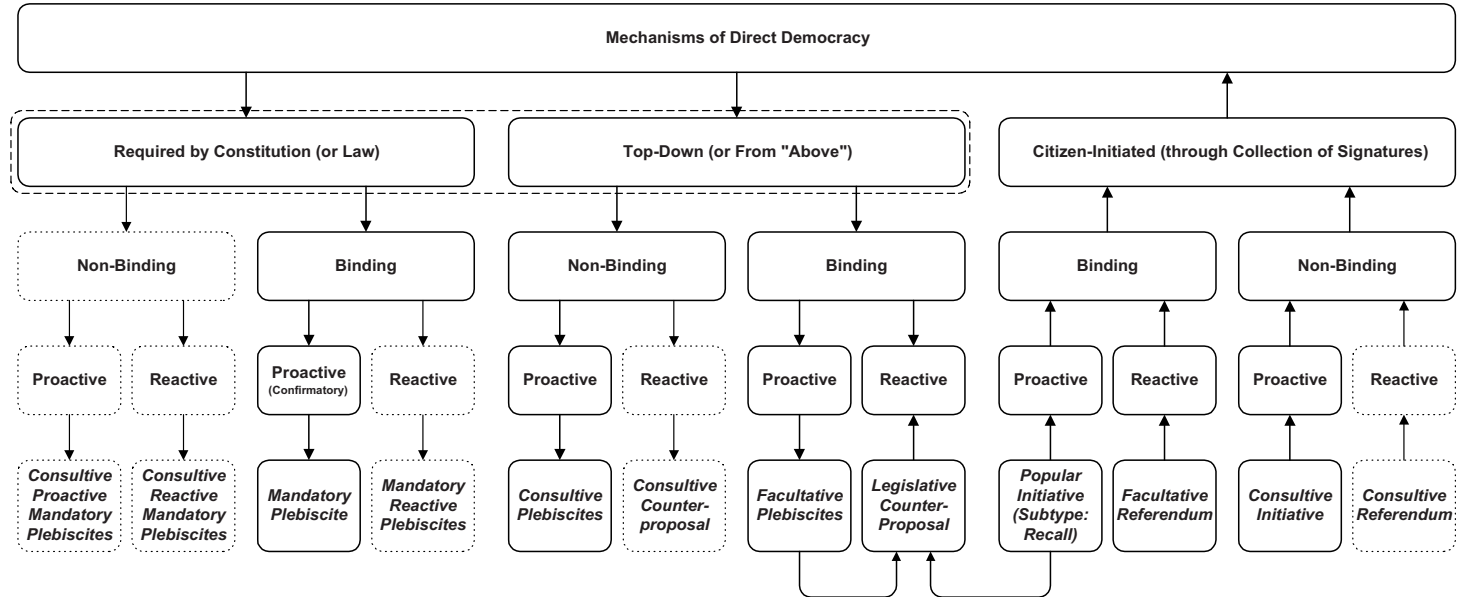


FIGURE 1.1. Procedural Typology of Mechanisms of Direct Democracy.¹⁵

¹⁵ The dashed box denotes the current debate of whether MDDs required by constitution and top-down MDDs are strictly discernible families of MDDs. Dotted boxes represent theoretically plausible configurations but with no correlates in real life.

differentiation between *initiatives* and *referendums* on the one hand and *plebiscites* on the other, in the American vocabulary, the differentiation is the following: “The *initiative* allows voters to propose a legislative measure (statutory initiative) or a constitutional amendment (constitutional initiative) by filing a petition bearing a required number of valid citizen signatures. A *referendum* refers a proposed or existing law or statute to voters for their approval or rejection. Some state constitutions require referendums; in other states, the legislature may decide to refer a measure to the voters” (Cronin 1999: 2).

The differentiation (in the second row) among the initiators addresses the mechanics of triggering an MDD and how this process takes place rather than the content of the proposal. We must be aware that although the great majority of MDDs that come “from below” are truly citizen-activated weapons, this is not necessarily always the case. This differentiation could be blurred by the fact that in some countries (e.g., those in Latin America), a given president could ask a group of loyalists to start gathering signatures for an “MDD from below.” These cases are extremely rare, and usually presidents pursue routes for advancing their interests other than mobilization of their constituents. Indeed, the unique case of an executive pushing for an MDD from below is exemplified by the Colombian reelection movement under the presidency of Uribe at the time this manuscript was published. Evidently, Uribe is rather fond of the initiative, but undoubtedly there is also a legitimate social movement pushing the measure forward. It is highly unlikely that this movement is simply a consequence of presidential desires (see Chapter 5).

However, in an extremely weak democracy that needs to maintain a legalistic façade, presidents have resorted to artificial, even forced signature gathering. Maybe the most evident case is that of Ukraine in 2000, when more than 4 million signatures were gathered in record time. Many of the signatures were adulterated, some even faked to boost presidential powers vis-à-vis parliament (Wheatley 2008). Technically, the mechanism was “citizen initiated” but, of course, it was supported by all-encompassing executive power. The good news is that in these cases, it is rather easy to find out when there is something suspicious occurring by examining the level of correspondence between the MDD and the executive’s desires.

Now I briefly describe the most important characteristics of each of these institutions, starting with those for which there are cases and then moving to those where – despite theoretically possible alternatives – no cases are found. As described, Figure 1.1 shows three large subgroups of MDDs: a) those required by the constitution, b) top-down (or from “above”), and finally, c) citizen-initiated through collection of signatures (or from “below”). Each of these groups is divided into two subgroups, binding and nonbinding, which are subsequently divided into two other additional subgroups, proactive and reactive. In the bottom row, each box denotes the highest level of disaggregation considering these criteria. Note that there are some boxes drawn with dots; these are theoretically plausible combinations but for which no correlate “in real life” has been found.

Starting from the left on Figure 1.1, the first family of MDDs we find are those required by the legal apparatus of a country. This family has only one combination with empirical correlates, *mandatory plebiscites* (the European literature sometimes refers to these as *obligatory referendums*). A mandatory plebiscite does not depend on the wishes of an individual because they are determined by law and, most of the time, by the constitution of a country. Usually, this type of institution accompanies constitutional reforms.¹⁶ This type of plebiscite is binding; it has the power to oblige whatever is decided becomes law. By their very nature, these are proactive MDDs; they are mandated popular votes that are sought to gather support for a major constitutional reform or political alteration of the status quo.

It is debatable whether mandatory plebiscites correspond with the realm of MDDs “from above”; this is why there is a dashed line around the categories “required by the constitution” and “top-down.” On the one hand, they could be considered “from above” because, after all, they depend on the wishes of an institution of the state (usually the legislature), which is formed by individuals who are well aware that if they maintain a certain course of action, this proposal will eventually be decided at the ballot box. For example, since the early 1990s, Uruguayan legislators had been debating about the reform of the almost century-old electoral system. They knew perfectly well that if a significant majority was reached, the reform would have to be approved directly by the citizens in a popular vote, which was the case in 1996. Did this come from above? Many would argue “yes” because the MDD was, after all, triggered by the majority of legislators. On the other hand, these are not sudden MDDs that come from nowhere because one day someone “from above” wakes up and says, “Let’s have a popular vote on X issue.”

Moving to the right in Figure 1.1, we then find the cluster of facultative (or unregulated) top-down MDDs. This category is composed of two major and different proactive MDDs, facultative and consultative plebiscites, and a reactive one, legislative counterproposals. A facultative plebiscite is, by far, the most frequently used MDD in several regions of the world, especially Latin America, Africa, and the Commonwealth of Independent States. These facultative plebiscites occur when the political establishment (executive, legislative, or both) submits a proposal to the citizenry, and whatever is decided then becomes law (either regular or constitutional – it does not matter at this level of aggregation). Frequently, these mechanisms are used as legitimizing tools for a tough policy, to avoid the political price of adopting such a policy (Setälä 2006a; 2006b), or as a means to bypass other state institutions (in presidential regimes, the legislature is usually the bypassed institution).¹⁷

¹⁶ For example, most (but not all) presidential regimes in Latin America force mandatory plebiscites facing a constitutional reform.

¹⁷ The term *plebiscite* encapsulates a plethora of different types of the phenomenon: legislators’ minority initiative; legislative initiative, or executive order. There is not enough room to argue whether it is a wise decision to subsume under the concept of plebiscite those that are initiated

A consultative plebiscite occurs when the executive or legislative branch of government consults the opinion of the citizens regarding a matter with no legal consequence; that is, it is not legally binding. Sometimes governments submit combined questionnaires regarding diverse topics to the citizenship (as was the case in Ecuador in 1995, 1994, and 1986) and ask simple questions regarding ratification of peace treaties (as in Argentina in 1984 regarding the Beagle Treaty with Chile), the partitioning of territories, such as the Schleswig Plebiscites of 1920 (see Laponce 2004), or pose miscellaneous unique questions, such as the obligatory conscription military service question posed in Canada in 1942.

Finally, within the sphere of those coming from above, we encounter legislative counterproposals. The very name of these MDDs indicates that they are reactive because they respond to an alteration of the status quo by another agent that is usually the citizenry (through a popular initiative or another plebiscite of the establishment itself). These are top-down binding-reactive measures. Facing a popular initiative, some countries (e.g., Switzerland, Liechtenstein, and Uruguay) allow their legislatures to make counterproposals to be voted on simultaneously against the citizen-initiated measure. This vote is held concurrently with the original initiative and implies multiple (at least three) choices for citizens (Measure A [citizens'], Measure \neq A [legislature], and the status quo). Perhaps one of the most vivid examples of legislative counterproposal comes from Uruguay in 1966, when a jointly sponsored proposal by the major parties of the country faced two simultaneous counterproposals. Yet if the vote under examination does not react to another MDD and if it is binding, it should be characterized as a facultative plebiscite and, if nonbinding, a consultative plebiscite.¹⁸

Lately, a wave of popular votes has blossomed in several European countries with regard to accession, integration, and enlargement of the European Union (EU) (Auer 2007; Hug and Schulz 2007), yet important differences exist among them, serving as an example of different measures coming from above. In some countries, these votes were mandated plebiscites (Ireland, Switzerland), whereas in other countries, consultative plebiscites (France, Norway) or facultative plebiscites (Denmark, Lithuania) were the norm. The difference between

by the legislative branch and thus potentially by the opposition. It is, instead, reasonable to claim that these are two different types of plebiscites that follow different causal logics. In other words, the conditions explaining plebiscites initiated by the government narrowly defined are likely to look different from those that explain plebiscites initiated by the opposition. In this research, however, these differences are tackled more profoundly from Chapter 5 forward (Latin America and Uruguay, respectively).

¹⁸ Given that legislative counterproposals were sometimes used to derail popular initiatives in Switzerland, in the latest reform of the Swiss Constitution (1999), Art. 139 (6) stipulates that citizens may vote simultaneously for the popular initiative as well for the counterproposal made by the legislature, against the status quo. In a separate question, citizens also may indicate which drafts they prefer (in case they voted for two of the proposals against the status quo). If one of the drafts obtains the majority of the people's vote and the other the majority of the cantons, neither of them shall come into force, and the status quo prevails.

the last two concerns how authorities relate to the measure, despite that in practice, both may have the same political consequences. In other words, if a vast majority of the citizenry rejects a certain measure in two democratic countries, it matters relatively little if it is a consultative or a facultative plebiscite, despite the first being nonbinding and the second binding. Instead of emphasizing the content of the proposals dealt with in an MDD, the key aspect is who was in charge of triggering the MDD and how the process takes place.

I now turn to CI-MDDs. As operationalized, two types of MDDs compose this particular subgroup: binding and nonbinding MDDs from “below.” Within the first subgroup there are two types: popular initiatives and referendums. Although the two types have different objectives, the mechanisms to trigger a CI-MDD are basically the same: Organizers of the measure have to gather a minimum number of signatures from the electoral body (each country has a different threshold) and propose a specific measure to the electoral authority. If the number of signatures passes the legal thresholds and they are subsequently validated, the electoral authority authorizes and implements the mechanism. The vote for the CI-MDD, also dependent on the country, must be held either during a delimited amount of time from the approval of the signatures or in the following general election.

A popular initiative is a proposed law, statute, or constitutional amendment supported by a group of citizens that offers an alternative to the status quo. It is the classic proactive power in the hands of the citizens and for some is the most democratic institution within the scope of direct democracy (Hautala, Kaufmann, and Wallis 2002). Unlike a popular initiative, a facultative referendum allows citizens to reject (veto) an adopted law.¹⁹ In the Americas, Uruguay continues to be the only country in which referendums have been used systematically at the national level, with varied degrees of success. Although the referendum aimed at abrogating a law of 1986 on amnesty for those involved in human rights violations during the military dictatorship (1973–1985) failed in 1989, the withdrawal of the privatization law in 1992 was a success. This success was extremely visible in Latin America (and beyond) because it was one of the first democratic responses that sought to halt the then-fashionable

¹⁹ The concept of *referendum* has a Latin-origin meaning: “something to be referred.” *Plebiscite*, on the other hand, is defined by the *Oxford English Dictionary* as “the direct vote of all the members of an electorate on an important public question.” The concept of plebiscite comes from ancient Rome, referring to a law enacted by the plebeians’ assembly in approximately the fifth century A.D. (from Latin *plebs*, “the common people” and *scitum*, “decree”) (Suksi 1993). This concept was used not only since 1793 in France for the popular consultations on the Montagnarde Constitution and the formation of the National Assembly of two-thirds of the Constitutional Council (twice each) but also to describe the resolution votes of boundary conflicts in the League of Nations and to categorize the popular votes of legitimization of the Nazi regime in Germany (Kobach 1993: 4; Suksi 1993: 97–103). The concept of referendum was used for the first time in Switzerland in the constitutional vote on the legitimization of the new regime of the Helvetic Republic, which was imposed by the French conquerors in 1798 (Kobach 1993: 4).

Washington Consensus in the region. For other examples of referendums we must look to Europe, particularly Switzerland, Liechtenstein, and Italy.²⁰

Also, within the realm of binding, proactive CI-MDDs, there is a subtype that deserves some attention: the recall – an institution that allows citizens to dismiss and replace an elected authority. Despite the fact that some scholars are reluctant to include these actions within the direct democracy realm – because they are aimed at persons and not issues (Kaufmann, Büchi, and Braun 2008: 91) – the recall fulfills the definition of an MDD provided at the beginning of this section. It is not widely used internationally, and this institution characterizes a more locally driven rather than a national-scale MDD. So far, this mechanism has been used only once at the national level, in Venezuela in 2004 against President Hugo Chávez. In fact, discussions about its use brought Venezuela to the brink of a civil war during 2002 and 2003. Perhaps the soundest use of the recall in recent years was in California in 2003, which paradoxically resulted in the recall of Governor Joseph Graham Davis Jr. (Democrat) and the simultaneous election of the protagonist of the 1990 film *Total Recall*, Arnold Schwarzenegger (Republican).

Recalls are notably stressful situations for party systems, particularly for the party to which the recalled representative belongs. Given that recalls are motivated by political reasons, the party of the incumbent is most likely to shield the politician in question, but it also needs to present an alternative candidate in case the recall succeeds.²¹ Thus, a party could easily find itself defending one incumbent while simultaneously promoting a different candidate for the same, and indivisible, post.

In this type of election, two simultaneous votes are held: one for the recall itself and one for electing the substitute in case the first vote wins. These situations may produce seemingly illegitimate results (even undemocratic for some) because the elected candidate can easily receive far fewer votes than the recalled incumbent. For example, if 45 percent of citizens vote against the recall and 55 percent in favor of it, the incumbent needs to leave office. However, if, in the simultaneous election for filling the vacant post, three candidates receive barely one-third of the votes each, the winner has received far fewer votes than the removed incumbent.²²

²⁰ With regard to the Italian experience, Uleri has fine-tuned the typology of referendums (1996; 2002), differentiating between whether a referendum goes against an already enacted law (abrogative) or against laws that are not yet in force (rejective). Given that for a worldwide study of direct democracy, the amount and quality of information required for this classification are almost impossible to gather, I will simply use the category of facultative referendum.

²¹ No crime has to be committed by an incumbent in order to be recalled. If an elected official commits an illegal act, that person could be impeached and then sent to regular justice. On impeachments, see Pérez-Liñán (2007).

²² Although this procedure is not uncommon in the United States, it has been successful only twice. The first successful recall was in North Dakota in 1921 when Governor Lynn Frazier was censured by citizens. See Cronin (1999: chap. 6). On the particular case of the 2003 California recall, see Alvarez, Goodrich, Hall, Kiewiet, and Sled (2004); Bowler and Cain (2004); and Stone and Datta (2004).

Strictly speaking, both popular initiatives and facultative referendums promote an alteration of status quo through rejecting an approved law and proposing a new legislative (or constitutional) measure. Yet in a country where the facultative referendum exists, one can only talk about the status quo when the time limit for a referendum has expired. Only at that point does the considered law or statute become the *new* status quo. When time prescribes, even if the MDD tries to abolish a law, this has to be considered a popular initiative.

Finally, at the extreme bottom right of Figure 1.1, there are the consultative initiatives and the consultative referendums, which are a seldom-used prerogative in the hands of citizens. These are odd in that significant efforts have been made to force a vote, yet the measures do not make the results binding. Why is this so? The answer is generally found in the constitutional texts of some countries. Indeed, the only recorded evidence I have found of a consultative initiative occurred in Colombia in 1990, when a rather amorphous social movement, led by the student unions of the country, succeeded in including an informal ballot calling for a constituent assembly to reform the Colombian Constitution. Massive support for the measure in the form of opinion polls and a push to include the ballot in the vote led the establishment to count the votes of the initiative. Then, in a legally questionable measure, the Supreme Court of Justice retrospectively declared it binding.

As noted, of the twelve theoretically possible combinations, five do not have correlates in real life. For example, consultative mandatory plebiscites (in either proactive or reactive subtypes) appear at the far-left side of the figure. Although theoretically possible, I am not aware of the existence of such an alternative. In the proactive subtype, we could imagine the constitution of a country stating that before carrying out “X,” a consultative plebiscite would have to be held. This is an odd case of a constitutional mandate requiring a nonbinding vote on a certain issue, and the question is what the constituents would have had in their mind when creating such a nonstandard institution.

It is important to note what is not included in the typology offered here. By definition, this typology does not include what are usually called legislative popular initiatives (LPIs). An LPI exists when the citizenry forces the legislature to consider a proposed action or a bill (though the legislature will not necessarily accept it), which represents control over the agenda rather than a tool for political change. Given that there is no popular vote whatsoever, LPIs are not considered in this research. Moreover, it is important to differentiate between MDDs and other institutions of deliberation or political leverage. Thus, I also leave aside all the institutional products of the newly fashionable decentralization wave, even when citizens have the right to directly influence politics, as in the Bolivian Organizaciones Territoriales de Base or the new experiments at the Colombian municipalities. None of the mechanisms of participatory budgeting used in several cities in Latin America (e.g., Porto Alegre, Rosario, and Montevideo) counts as an MDD in this typology.²³ In these cases, despite the fact

²³ For participatory budgeting, see Goldfrank (2002; 2006).

that citizens might participate in public deliberations, there is not necessarily a universal and secret vote on such agreements, if a vote even occurs. Needless to say, no informal mobilizations of people (e.g., the *Piqueteros* in Argentina or the *Movimento dos Trabalhadores Rurais Sem Terra* in Brazil) are considered here. I am not stating that these forms of civic participation are not important enough to be studied. On the contrary, I am stating simply that they do not fulfill the operationalization of the concept offered here and therefore are not included in this research.

As we see, there is a plethora of MDDs; some of them are used quite frequently, whereas others, though theoretically possible, remain unused. The importance of spending time to deal with each of the categories of MDDs is further justified by the fact that, for instance, the recently so-called presidential recall in Bolivia (2008) was no more than a facultative plebiscite called by President Morales as a confidence vote (see Chapter 5). Along the same lines, despite being officially called a referendum, the October 2007 Costa Rican vote on the Central America Free Trade Agreement with the United States must be considered a facultative plebiscite because it was triggered by the President Arias with the legislature to deactivate a potential popular initiative.²⁴ In other words, there were no referendums or recalls whatsoever in Latin America in 2007 or 2008, but there were critical presidential plebiscites in two countries in the region.

Finally, it is important to point out that this typology is not sensitive to the administrative or political level where MDDs take place, whether local, regional, or national. Because my research agenda is primarily focused at the macro level, local or subnational MDDs are not taken into consideration.

2. The Devil Is in the Details: Institutional Requirements and Constraints on Mechanisms of Direct Democracy

As the popular phrase states, the devil is in the details. Even within a single type of MDD, there exist important differences at the procedural level as well as among the available possibilities for their deployment. These differences are crucial for assessing the degree of potential penetration and an eventual operationalization of direct democracy. Almost any binding procedure in the hands of citizens must fulfill some requirement of support, and this foundation is universally achieved through signatures.²⁵ Promoters of an MDD must show the authorities a predetermined portion of citizens endorsing their objectives; once checked, the measure is triggered.²⁶ This proportion of the electorate oscillates between 2 and 3 percent of the electorate for popular initiatives

²⁴ For a meticulous concatenation of events regarding this popular vote, see Breuer (2009a) and Feoli (2009).

²⁵ In some countries, signatures have to be accompanied by fingerprints.

²⁶ The procedures for checking the signatures vary significantly from place to place, even within the very same country, such as in the United States. These procedures could be as varied as a manual check of each and every signature (as in Idaho, Massachusetts, and Maine); a check

(e.g., in Hungary, Slovenia, or Switzerland) to 25 percent for a referendum as in Uruguay. Of course, in countries such as Uruguay, which encompasses a massive diaspora, this 25 percent of the electorate in real terms could be close to 30 percent of the citizens living in its territory. This phenomenon can be classified as an *entry hurdle*. But there are other critical aspects to take into account: participation quorums, approval quorums, time limits (or circulation time for triggering an MDD), decisiveness of the MDD (whether binding or not), and qualifiers (exclusion of potential issues to consider). I deal with these aspects related to any MDD in due time, but first I offer a brief introduction.

The approval of an MDD differs from country to country and even within the same country with regard to the particular variety (e.g., popular initiatives and referendums). Also, approval quorums must be studied alongside participation quorums given that in some countries, the decision at the polls is contingent on a minimum number of citizens participating in the procedure, which is concomitant with the existence of compulsory voting for certain measures. For example, in some countries, MDDs are approved by simple majorities, yet differences persist in whether the simple majority relates to all votes or only to all valid votes. In other countries, an MDD is approved if a majority of all citizens endorse the MDD.

The required majorities for approval must consider whether the final decision lies uniquely in the citizens' desires for other types of majorities. Some federal countries (e.g., Switzerland and Australia) require double majorities (i.e., they must win both a majority of citizens' votes *and* a majority of states in the country) for the MDD to be approved. *Ceteris paribus*, double majorities are more difficult to obtain because there are other institutional veto players to overcome along the way. Double majorities constitute safeguards in relation to what James Madison once called the *tyranny of the majority*. In other countries, super-majorities rather than double majorities are required. For instance, it is quite common to require the absolute majority of all enrolled citizens, regardless of whether they vote. However, super-majorities do not constitute another veto point; they have exactly the same objective as double majorities.

The debate on the necessary requirements for approval of an MDD opens the door for other discussions. One is related to the imputed preferences of passive citizens (those who do not vote). Assume, for example, that there is a participation quorum of 35 percent (as with obligatory referendums in Uruguay) and 70 percent of the electorate is willing to vote. Among those willing to vote, a significant majority, about 70 percent, support "A" (the objectives of the MDD) and about 30 percent support "B," opposing its objectives. A superficial perception of the situation is that the "B" option is likely to be overwhelmed by "A," but a more cautious view provides an alternative interpretation. If "B"

on signatures until the minimum number needed is met (as in Alaska and South Dakota); a random sampling (as in Arizona, California, and Oregon); and even, as in Oklahoma, where signatures are not checked and presumed valid, unless challenged (Silva 2003: 22–24).

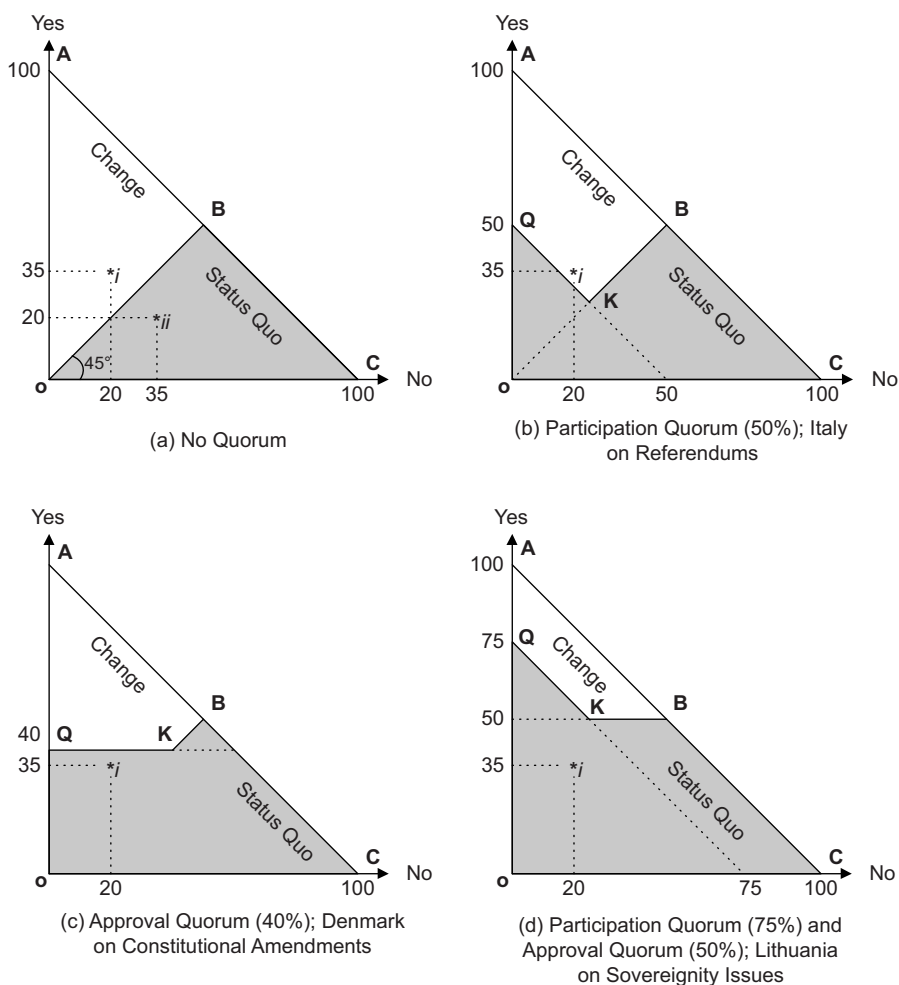


FIGURE 1.2. Interaction between Participation and Approval Quorums.

Source: Adapted from Aguiar-Contraria y Magalhães (2009; 2010) and Hug (2004).

voters stay at home on the decision day, their opinion will prevail because the 35 percent quorum will not be obtained.

As the study of Aguiar-Contraria and Magalhães demonstrates, all possible results of an MDD could be represented in the surface delimited by two orthogonal axes (yeas and nays), taking into consideration their interaction with participation and approval quorums (Aguiar-Contraria and Magalhães 2009; 2010). In Figure 1.2(a), no required quorums are needed for the measure to be approved. In other words, it does not matter how many people vote or how much of the electorate those people represent. In this figure, there is a 45-degree line that divides in two equal sizes all possible results of a typical

two-choice MDD, the segment \overline{OB} . The vertical axis represents the “yea” votes and the horizontal, the “nays.” Thus, point B represents a situation in which *all* citizens voted, with a perfect fifty–fifty distribution. For instance, if the results fall in point i , then 35 percent of the citizenry voted for and 20 percent against, and if the results fall in ii , then otherwise. For any i point closer to O than to B , this signifies a higher rate of abstention.

In Figure 1.2(b), however, there is a participation quorum of 50 percent of the citizenry. In other words, if fewer than half of the citizens participate, the result is not binding regardless of the relative strength of each camp; even if 100 percent of voters vote affirmatively, results are not legally binding. Indeed, any result falling below \overline{QKB} would be nonbinding. As seen, the status quo’s region increases drastically from a surface of 50 percent in Figure 1.2(a) to 62.5 percent in Figure 1.2(b). In this situation, if the results fall in point i , the decision is still binding. This requirement of 50 percent participation is widely used, most evidently in Italy, as seen in the next section of the chapter.

In Figure 1.2(c), there is no participation quorum but rather an approval quorum, which is why the segment \overline{QK} is horizontal instead of parallel with segment \overline{AB} . In this case, the votes in favor must gather at least 40 percent of all citizens, but there is no explicit required participation quorum. Of course, there is no possibility of reaching the 40 percent of necessary affirmative votes if less than a minimum of 40 percent participates. Thus, there is an implicit participation threshold of 40 percent. This type of approval quorum is used in Denmark for constitutional amendments. In this case, point i produces non-binding results.

Finally, Figure 1.2(d) illustrates a situation that combines both participation and approval quorums. This double requirement is rare and greatly reduces the size of the potential “change” field. This is the case of Lithuania on MDDs on sovereignty issues. For this type of vote, there is a participation quorum of 75 percent and an approval quorum of 50 percent. The area of change is reduced to less than 20 percent of the triangle $\triangle OAB$ (exactly 18.75 percent).

One could think that the former scenarios were created for the sake of the explanation, but they were not. Some political actors (e.g., nongovernmental organizations and parties) frequently get involved in boycott campaigns to support a side of the discussion when they perceive that they would be defeated at the ballot box. A prime example of where this type of campaign is rather recurrent is Italy, which has a participation quorum of 50 percent for its citizens on both abrogative and rejective referendums (Uleri 2002).

On February 19, 2004, the Italian Parliament passed Law 40, *Norme in materia di procreazione medicalmente assistita*, introduced by Berlusconi’s coalition government, which also succeeded in gaining support from a significant sector of the opposition.²⁷ For its supporters, this was the first attempt to regulate an arena that hitherto had been out of their control. To its detractors, it was a law that extended the Catholic Church’s conservative

²⁷ The full text of the bill is available at <http://www.camera.it/parlam/leggi/04040L.htm>.



FIGURE 1.3. “Every One of Us Is a Former Embryo” (Posters in Rome against Referendum on “Procreazione Medicalmente Assistita”).

preferences to the detriment of the health of women seeking medically assisted procreation.

The Radical Party campaigned to cancel in a referendum the law as a whole, but the Constitutional Court ruled that it was not acceptable to scrap the new legislation altogether.²⁸ Despite the fact that the required number of signatures to override the law had been collected, the court only allowed the possibility of removing four of the most controversial articles.²⁹ The referendum was finally on the way. The Radical Party gathered the support of the Democratici di Sinistra, Socialisti Democratici Italiani, Rifondazione Comunista, and other liberal and progressive civic associations. The church and conservative sectors of Italian politics and society actively called for a boycott of the referendum aimed to loosen restrictive fertility laws for women. As shown in Figure 1.3,

²⁸ A very similar decision was made by the Oregon Supreme Court of Justice in 1998 in a case known as *Armatta v. Kitzhaber*. On this occasion, the court invalidated an initiative on the grounds that it involved multiple changes to the state’s constitution, which should have been considered separately by voters (Miller 2003: 461).

²⁹ In substance, these clauses limit the number of embryos that may be created during a cycle of medically assisted conception, ban the storing of embryos, control which tests may be carried out on the embryo, ban the use of gametes from outside of the couple, and limit the availability of medically assisted conception to couples according to certain criteria.

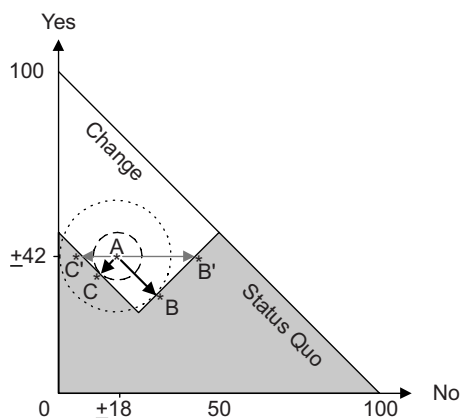


FIGURE 1.4. Italy 2004 on “Procreazione Assistita.”

Source: Adapted from Aguiar-Conraria y Magalhães (2009; 2010) and Hug (2004).

members of the conservative Alleanza Nazionale integrated the so-called Committee for an Active Abstention. The question is why they called for abstention and not for a negative vote.

The clergy, with the support of the then-brand-new pope, reasoned as follows: If someone votes “no,” that person will be strengthening the “yes” camp simply by helping that camp reach the 50 percent participation quorum. Given that the “yes” was a clear majority of those who cared about the vote, abstention became the most rational way to fulfill their political preferences (for those who opposed the “yes” camp). Even the words of Pope Benedict XVI were illustrative: “*What is the principle of wisdom, if not to abstain from all that is odious to God?*”³⁰

Given the distribution of preferences regarding the legislation targeted by the referendum and opinion polls, which indicated that only 60 percent of citizens were considering turning out to vote, it was much more rational to demobilize the citizenry than to mobilize it against the referendum.³¹ Graphically speaking, in Figure 1.4, it was easier (i.e., shorter) to go from A to C than from A to B. In this case, it is assumed that the demobilization efforts would affect all individuals evenly (regardless of whether they are in favor of or against the referendum). Even in the case of a highly emotional topic, where the demobilization efforts would impact mostly the “no” camp, it is more rational to demobilize than to mobilize against the referendum (i.e., to go from A to C' than from A to B') when turnout is expected to be close to the requisite quorum.

The church's strategy was eventually a success. Despite the vote in favor of the measures being more than 80 percent (Table 1.1) of the votes counted, it

³⁰ Pope Benedict XVI, in a speech made in June 8, 2005, four days before a referendum on in vitro fertilization in Italy, cited by Aguiar-Conraria and Magalhães (2009).

³¹ For a rather complete series of opinion polls, see Angus Reid Public Opinion at Angus Reid Global Monitor, <http://www.angus-reid.com/>.

TABLE 1.1. *Results of the Italian Referendums on Assisted Procreation (Procreazione Assistita), June 2005*

Question	For (Votes)	Against (Votes)	Invalid (Votes)	For (%)	Against (%)	Approved
1 – Limit to the clinical research and experiences on the embryos	10,743,710	1,461,217	870,740	88.0	12.0	NO
2 – Norms on the limits of access	10,819,909	1,367,288	910,500	88.8	11.2	NO
3 – Norms on the finality, subject rights, and access limits	10,663,125	1,492,042	960,855	87.7	12.3	NO
4 – Prohibition of in vitro fertilization	9,391,161	2,744,895	979,679	77.4	22.6	NO

Electorate: 49,648,425; abstention: 36,910,807; participation: 25.90 percent.

Source: Italian Ministry of Interior, <http://www.referendum.interno.it/>.

never attained the 50 percent quorum. In a way, this case supports the idea that the maximization of the vote is not always rational, as McCubbins and Rosenbluth neatly explain in their theoretical view of Japanese party politics (1995). A basic question that arises is why participation quorums exist in the direct democracy realm but not in the representative one. As Verhulst and Nijeboer state, participation quorums “give unequal weighting to the votes of supporters and opponents of an initiative, provoke calls for boycotts, and negate the role of the mandate in direct decision-making” (2007: 21).

The existence of a quorum has one perverse effect and one ironic potential outcome. In the words of Aguiar-Conraria and Magalhães,

The perverse effect is that, in some situations it gives incentives to people to mask their true preferences and to abstain, acting as if they were indifferent. The ironic potential outcome is known in the literature as the “No-Show paradox”: it is possible that the quorum is not reached precisely because of its existence or, in other words, turnout exceeds the quorum only if this requirement does not exist. (Aguiar-Conraria and Magalhães 2009)

Moreover, there is one potential, and even more basic, consequence of a demobilization campaign: the violation of the secrecy of the vote, particularly in rural or small urban areas where close social ties exist. The historical record of MDDs shows several occurrences of threats to, and abuses of, people in order to compel them to abstain from voting.³² As Suksi remarks, “[I]n a case where

³² After World War I, landed aristocrats of Germany demanded that the state compensate for the expropriations they were subject to during the war. The only way the Weimar Republic

it is possible to influence the outcome by abstention, the act of voting itself might become a statement on the policies an individual was supporting" (Suksi 1993: 211).

A second typical discussion about MDDs relates to how to delimit the demos. This topic is particularly acute in questions concerning women's rights, sovereignty, or international settlements of disputes (Rourke, Hiskes, and Zirakzadeh 1992). With regard to women's rights, in both Switzerland and Liechtenstein, the struggle for them was agonizingly long because of the quite stubborn and conservative popular vote of men. Women had only an indirect influence, if they had any at all. Indeed, male decisions at the polls pushed these two countries to be the latest comers in the Western Hemisphere regarding the extension of such rights (Switzerland in 1971 and Liechtenstein in 1984).

Also, the delimitation of the demos is critical in terms of sovereignty. For example, some Canadians have voted twice (in 1980 and 1995) regarding the possible independence of their largest province, Quebec. An important debate took place regarding who should compose the demos in such instances (see, e.g., LeDuc 1993; 2003; Nadeau, Martin, and Blais 1999). Was this a matter for all Canadians or just for the Quebecois? In Canada, the answer was in both instances, only for the Quebecois. Yet a provocative question can be asked: Is Spain ready to allow the Catalans or the Basques to vote for independence on their own? What about the minorities within those independence-leaning regions – are they to be "protected" or not? This problem is especially acute when there is an evident unevenness of power between minorities (e.g., the French in Algeria) and the rest of the population.³³

There are other "details" that must be taken into account to complete the picture of MDDs and their procedures. For example, it seems evident that it would be harder to gather the required signatures if only three months were available to do so instead of, say, one year – which is related to the size of the country in consideration. For instance, gathering 10 percent of citizens' signatures in Peru is presumably much harder than gathering the same 10 percent in Liechtenstein, where the required number of signatures almost could be gathered in the main piazza in a couple of days. Certainly, it could be claimed that everything is proportional, even the resources to gather signatures.

could cover those costs was by drastically increasing taxation. In 1926, both the Communist and Socialist Parties launched an initiative that sought to "confiscate without compensation, in the interest of general welfare" the property of members of the nobility. Supporters of the aristocracy, the German Nationalist and the German People's Parties, the press, and other conservative forces joined what Verhulst and Nijeboer call "the mother of all boycott campaigns" (2007: 82). They ordered their followers to stay away from the polls on election day and publicized false announcements that the election had been postponed. Furthermore, "Threats were made by the Nationalists that those who went to the polls would be noted as Communists or Socialists" (Gosnell 1927: 121). This strategy was a success for the nobility, as 39.1 percent of citizens voted and, therefore, the participation quorum (50 percent) was not attained. The results were, however, eloquent: 96.1 percent in favor and just 3.9 percent against.

³³ See Margalit and Raz (1990).

Yet, even assuming that this is so, urbanization and distance are likely to make a huge difference.

Finally, and just as an introductory note, the qualifiers seem unmistakably significant, and the Hungarian case fits like a glove in making this point. In Hungary, despite CI-MDDs that can be triggered more easily than in other Central and Eastern European countries, the constitution explicitly forbids the realization of CI-MDDs for seventeen topics (and another one in the electoral law). CI-MDDs may not be held on the following subjects: a) laws regarding the central budget, the execution of the central budget, taxes to the central government and duties, customs tariffs, and the central government's conditions for local taxes; b) obligations set forth in valid international treaties and on the contents of laws prescribing such obligations; c) the provisions of the constitution on national referendums and popular initiatives; d) personnel and restructuring (e.g., reorganization and termination) matters falling under Parliamentary jurisdiction; e) dissolution of the Parliament; f) the government's program; g) the declaration of a state of war, a state of emergency, or a state of national crisis; h) the use of the armed forces abroad or within the country; i) dissolution of the representative body of local governments; and j) amnesty (Hungarian Constitution 2003, Art. 28c). The question then is: What remains?

This section is intended to introduce the reader to little nuances that might make big differences. Indeed, the list of "details" could be extended almost to infinity. For example, who pays for the campaigns, who is in charge of wording the question to be answered, and so on. Most of these details, however, are discussed throughout the course of this research.

3. Organization of the Research

Although our knowledge of direct democracy has grown rapidly in recent years, there are still many unanswered questions concerning the use of direct democracy in the context of representative democracies. Unlike other aspects of contemporary political life, such as electoral or government regimes, which are mainly centered on technical discussions, the world of MDDs is deeply related to the very (normative) idea we have regarding democracy, its citizens, and more important, their capabilities as reasonable beings able to make responsible decisions. The general question addressed in this book is: Under what conditions does direct democracy supplement or undermine representative democracy?

This research is approached both theoretically and empirically (from a variety of perspectives and methodological points of view). Theoretically, the aim of this book is to analyze the potentialities and the problems inherent in the use of direct democratic institutions within representative democracies. Empirically, the aim is to outline the role of MDDs in different political systems and regimes. The research is organized as follows:

Chapter 2 lays out the basis for the theoretical dimension of the book. There is no doubt that democracy constitutes a key component of the current debate in political science. Most of the comparative literature analyzes

elections (a *sine qua non* component of any democratic regime) and the associated rights and preconditions for them to be fair and free. However, less attention has been devoted in the literature to what happens between elections. Although some key institutions and processes have been examined (i.e., rule of law, human, social, and economic rights) a central dimension of democracy – popular sovereignty – has been surprisingly absent in mainstream comparative political-science debates. Popular sovereignty is critical because, even assuming a reasonably well-functioning state, representative institutions alone generate incentives for narrow and selfish interests that must be controlled by citizens. This chapter demonstrates that CI-MDDs are the institutions that allow popular sovereignty to flourish within contemporary representative democracies.

Nonetheless, this is not an easily made theoretical claim. On the one hand, diehard opponents of direct democracy argue that representative democracies are inherently inimical to one or another aspect of direct democracy based on arguments such as the risks of the tyranny of the majority. It also has been argued, from a social-choice perspective, that there is not one universal and fair system of aggregation of interests; thus, the use of majority rule could lead us down a road of cycling and alternating decisions and, consequently, instability. On the other hand, supporters of direct democracy claim that it is simply a strong medicine against most pathologies of representative democracy and, therefore, more direct democracy is advisable. I argue that most of the debates regarding direct democracy are approached in the wrong manner. They ask the wrong questions, and most of their critiques are based on incorrect assumptions about not only direct democracy in general but also about representative democracy itself.

Chapter 3 asks why some countries use MDDs exceptionally frequently, others rarely, and still others not at all. No theory thus far has comprehensively offered an answer to this question, and most conjectures are usually based on anecdotal evidence from a few selected cases. Most analyses of direct democracy select on the dependent variable, which, as a rule, we learn not to do in graduate school. Thus, this chapter contributes to filling this lacuna by analyzing an original database examining the use of MDDs (either top-down or citizen-initiated) on an annual basis in *all* countries in the world from 1985 to 2009.

This unique database presents a year-by-year picture of every country, providing almost five thousand observations and including information about the use of different types of MDDs in each and every country (we may call them “events”), plus several independent variables. The foci of study at this stage are the tools of direct democracy used at the national level only; I do not consider nonofficial or subnational MDDs. Also, this chapter studies the actual use of MDDs, not the legal possibility for their realization, as do Hug and Tsebelis (2002). The prevalence of zeros and the tiny values and discrete nature of the dependent variable (non-negative and integer valued) make the ordinary least-squares technique unsuitable for this research. Therefore, given that the dependent variable is a non-negative count (events of MDDs per country

per year), a negative binomial cross-sectional time series regression is the most appropriate tool for statistical inference.

This statistical analysis undermines many of the assumptions in the literature while confirming a few others. Contrary to much of the conventional wisdom, evidence supports the claim that direct democracy is strongly associated with higher levels of democracy. Therefore, the idea that MDDs are not part of the truly democratic world seems to be disconfirmed. Consequently, many of the arguments about the nondemocratic nature of MDDs are weakened. Moreover, the findings also help to redirect some of the hypotheses advanced directly or indirectly by previous researchers.

Chapter 4 goes down one step in the ladder of generality (Collier 1991; Sartori 1970), examining MDDs from a lower perspective: the political regime. Given that this manuscript deals with the relationship between direct and representative democracy, this chapter takes the opportunity to deal with the flip side of the coin: the use of MDDs in nondemocratic regimes. The dynamics of the political game are different when played within an authoritarian regime (not to mention totalitarian regimes) than in a democracy. On the one hand, some authoritarian leaders have never resorted to top-down MDDs (e.g., Somoza and Pol Pot). On the other hand, some nondemocratic leaders (e.g., Lukashenko and Jean-Claude “Baby Doc” Duvalier) frequently did so to advance their political interests. This chapter asserts that the use of plebiscites under non-democratic regimes is typically motivated by the maintenance of an illusion of an existing democratic process (to observers both within and outside the country), to cement a psychological and emotional bond between the regime and the population through its mobilization and excitement, and to show the strength of the regime (also for both those within and outside the country).

In this chapter, I also try to answer a frequently forgotten question: Having approximately all the tools necessary to rig a plebiscite, why do some authoritarian regimes accept defeat when they have held an MDD? According to my historical records, in only three nondemocratic regimes did officials recognize their defeat at the ballots (i.e., Uruguay 1980, Chile 1988, and Zimbabwe 2000). What factors determined the acceptance of these results? I assert that a surprise factor, the international leverage and institutional design, provides – in differing degrees – the answer for this question.

Chapter 5 returns to the democratic framework and expands the theoretical discussion from Chapter 2, which assumes that certain levels of horizontal and vertical accountability are present within the environment where MDDs are practiced. In Latin America, unregulated plebiscites are blamed for triggering delegative democracies, but this shows that delegative democrats use MDDs, not the other way around. Despite the use of MDDs by questionable leaders to foster their particular interests, sometimes MDDs open a window of opportunity in the context of minimum democratic guarantees. The question thus is whether MDDs have helped to further undermine the already-weak institutions that several of these countries exhibit. I claim that there is a reasonable amount of skepticism regarding this argument.

If Venezuela had had a constitutional arrangement wherein constitutional amendments were approved only by the sitting Congress without consultation with any other actor, Chávez's 2007 constitution would have been adopted without major issue because of the absolute majority he enjoys in Congress; however, this was not the case. Undeniably, the history of the continent is plagued by a long list of regimes altering the rules of the game without any scrutiny by their respective citizens and within an environment of poor democratic performance. A few examples include the Dominican Republic (1994), Honduras (1982), El Salvador (1983), and Nicaragua (1987, 1995).

Chapter 6 shifts our perspective from the general to a single case study: Uruguay. Four facts make Uruguay a particularly interesting case study for this research. First, it presents wide variation in the dependent variable (it employs referendums, mandated plebiscites, popular initiatives, and legislative counterproposals). Second, the institutional design of Uruguayan presidentialism has varied substantially since it became a democratic regime, so we will be able to assess the impact of different institutional designs on uses of direct democracy while holding other variables constant. Third, Uruguay has a peculiar party system that makes it relatively easy to observe what is happening inside parties because the internal divisions are in the open. Finally, Uruguay is the most prodigious user of CI-MDDs in the global south (i.e., it does not belong to the "developed" north and is not a member of the Organisation for Economic Co-operation and Development [OECD] or Europe). All of these factors make Uruguay a manageable case for understanding direct democracy.

Chapter 6 is divided into two major sections. The first accounts for the historical and legal context of direct democracy; the second examines how the use of CI-MDDs challenges existing theories of voting behavior in Uruguay. It is possible to trace direct democracy in Uruguay to the constitutional discussions of the early twentieth century. Although the mandatory plebiscite was included in the constitution of 1934, along with popular initiatives, it was already being used in 1917. Since 1934, obligatory referendums (also known as "constitutional plebiscites") and popular initiatives were employed several times, but it was not until the constitution of 1967 that facultative referendums were included (through an obligatory referendum, of course).

The second section of Chapter 6 deals with the "first cut" usually made in studies of direct democracy: results and voting behavior. The literature on direct democracy tends to suggest that economic interests or social groups could easily use direct democracy for their own particular benefit, making it, in the end, harmful to representative democracy. Nonetheless, this chapter will show that, at least in the Uruguayan case, this argument does not hold equally and consistently for all uses of MDDs. Using a "linear" logic, I examine how the use of CI-MDDs in Uruguay challenges existing theories of voting behavior. I find that when Uruguayans go to the polls to vote on a popular initiative, their vote choice is primarily the result of their party loyalty rather than a direct reaction to economic conditions. In testing my hypotheses, I rely

on the following statistical methods: King's ecological inference, multivariate regression, and path analysis.

Chapter 7 continues with the case of Uruguay, but the question and the methodological approach differ from that of Chapter 6. I analyze the possible combinations of institutional and political factors under which MDDs manage to limit the action and political desires of the government, thus becoming a weapon of political control in the hands of the citizenry. With this objective, this analysis selects from all MDD occurrences in Uruguay in which the government and the promoters of the initiative held contrasting positions. Simply stated, using the Uruguayan experience, Chapter 7 explains which combination of factors is necessary and/or sufficient conditions to approve a CI-MDD, a subset of MDDs when governments lose (and organized citizens win). In so doing, I rely on a qualitative comparative analysis (QCA), an analytic technique that uses organized and logical case comparisons anchored in the rules of Boolean algebra, to distinguish the mixture of explanatory variables that are exclusive to a particular result.

Substantively, Chapter 7 shows that when the executive opposes the objectives of the promoters of a measure, governments lose at the polls under specific configurations. This occurs when: a) economic issues are at stake, the MDD attempts to maintain the status quo, there is a negative evolution of real wages, and there is a strong lobby or union behind the MDD; or b) economic issues are at stake, the MDD is concurrent with elections, there is a positive evolution of real wages, and there is a strong lobby or union behind the MDD.

The results of the QCA are notably solid in terms of theory confirmation. However, the flip side of the coin also deserves analysis. Thus, the second section of this chapter deals with how political elites approach direct democracy. I had the opportunity to meet with the last three presidents of Uruguay – whose programs were derailed on several occasions by CI-MDDs – and talk extensively with each regarding direct democracy. I also successfully conducted structured interviews with deputies at the national Parliament. Indeed, I can safely say that based on these interviews, ninety-one of ninety-nine deputies confirmed (contrary to conventional wisdom) that most power holders think rather highly of the use of MDDs.

Chapter 8 concludes with the argument that an overall normative evaluation of MDDs as either inherently *good* or *bad* for representative democracy must take into account the very different institutional contexts in which these mechanisms are used. Furthermore, it must consider the strength of the political actors involved as well as the type and purpose of the MDD used. Indeed, the discussion of “direct democracy” as a homogeneous category is not conducive to any serious theoretical or empirical learning because it constitutes different and sometimes opposing institutions.

This book claims that the existing debates on direct democracy tend to be mired in theoretical stereotypes of how direct and representative democracy work; however, these debates could be illuminating insofar as they offer fertile ground for interesting research enquiries. Nonetheless, the question is how

realistic these theories are. How often do we see this circulation of votes in the direct-democratic game, and how often do we witness a blooming of populists' policies? Even in countries where CI-MDDs are comparatively easy to trigger, we have not witnessed any circulation of votes regarding a certain issue. This is because CI-MDDs are not simply about a blind use of majority rule. Those understanding CI-MDDs as mere votes on certain issues are ignoring possibly the most crucial part of the direct-democratic game: the process itself. The evidence does not suggest that Switzerland or Uruguay seems more vulnerable to populist policies than other purely representative democracies in their respective regions, neither do they seem to be performing poorly in terms of democratic processes, even with regard to political outcomes.

In Uruguay, MDDs in general, and CI-MDDs in particular, do not undermine representative democracy because their passage depends largely on the mobilization efforts of organized partisan groups operating outside the conventional legislative arena while still accepting and playing the political game within the formal representative institutions. The central actors working for the approval of MDDs are political parties' factions and the basic institutions of electoral, legislative, and political representation.

MDDs are reasonable barometers for society, even in a context of weak democratic institutions. They force a finer tuning between party elites and citizens and serve as institutionalized intermittent safety valves for political pressure. In a way, MDDs can be understood as the calcium against potential party-system osteoporosis. MDDs help ground the political system in reality.

Terms of the Debate Surrounding Direct Democracy

There is no doubt that democracy constitutes a key component of the current debate in political science. Most of the comparative literature analyzes elections (a *sine qua non* component of any democratic regime) and the surrounding rights or preconditions for them to be fair and free. However, less attention has been devoted in the literature to what happens between elections. Although some key institutions and processes have been examined (e.g., rule of law; human, social, and economic rights), a central dimension of democracy – popular sovereignty – has been surprisingly absent in mainstream comparative political science debate. Popular sovereignty is critical because representative institutions generate incentives for narrow and self-interests that must be controlled by citizens. Despite MDDs being either loved or hated institutions, this chapter shows that many of the critical arguments within the discussion about direct democracy are based, to an important degree, on stigmatization of how both direct and representative democracy work.

This chapter has two sections. The first section shows how free and fair elections are a necessary but not sufficient condition for democracy to flourish. For democracy to re-enchant citizens, serious consideration must be given to the popular sovereignty dimension of democracy. I claim that this can be done by returning sovereign power to the citizens. Of course, this sovereign power has its risks; thus, in the following section I tackle the most important apprehensions associated with the direct-democratic game.

1. Democracy Is More than Simply Free and Fair Elections

The importance of direct democracy in current debate in the discipline is enhanced by the fact that “normal” electoral politics are problematic. Today, this debate is even more intense because we face two contradictory scenarios.

On the one hand, never more than before have so many people around the globe been free to elect their leaders in a democratic manner. On the other hand, more often than not, democratic performance seems to be challenged by the emergence of public disaffection, weak rule of law, the corruption (both real and assumed) of elected officials, an increasing gap between the rich and the poor, a lack of accountability and transparency, and the continuous marginalization of important groups in society, among other factors. It is clear that unless something changes, the aforementioned problems will continue their course in eroding democracy, its representation, and its normative hegemony.

Some students of democracy claim that free and fair elections are sufficient conditions for the existence of democracy. This is true insofar as we agree to overcome the ultraminimalist procedural definition of democracy. It is crucial because the way we think about representation is correlated with the way we think about democracy, and the way we think about democracy has its correlates in the way we approach direct democracy.

Representation itself constitutes the common denominator of contemporary democracies, no matter whether this is considered a *necessarily evil*, a *technical necessity*, or a *positive good*. Whatever (implicit or explicit) stance the researcher adopts regarding representation, it is usually described as a principal-agent relationship in which “we can conceive of the citizens as principals represented by agents to whom the citizens temporarily delegate the power to make public policies” (Powell 2004: 274). This definition opens the door for what Pitkin calls the “mandate-independence controversy” (Pitkin 1967:145), in which the tension centers on whether representatives should behave as *delegates* (with a significant quantity of independent judgment) or as *trustees* (simply as transmission belts) for their voters. After all, the expectation is that whatever shape representation takes, representatives – sooner or later, individually or collectively – are obligated to explain and justify their actions to their constituents. In other words, representatives are accountable to their voters through regular elections, in which they may be sanctioned or rewarded on the basis of their proceedings (Kiewiet and McCubbins 1991; Mayhew 1974; Setälä 2006b: 703).

If someone believes in the delegative view of representation, direct democracy may be seen as a device that gives a more precise depiction of the will of the majority without the deformation caused by representation. In terms of the principal-agent model, direct democracy may be a corrective institution when agents fail to represent their principals’ views on some issues (Setälä 1999a). However, the classic principal-agent problem eclipses representation and democratic accountability in several ways. Particularly in the context of weak, inchoate, or poorly institutionalized party systems, such as many in the Latin American milieu, personalistic electoral movements manage to be elected, according to a successful mobilization of the discontented, and once in office, their leaders often betray the programmatic principles articulated during

their campaigns (Stokes 1996; 2001; Weyland 1998; 2002).¹ Of course, these betrayals are not the exclusive capital of Latin American presidential regimes, as Maravall illustrates. In his study of the Spanish case, the Socialist Party used misleading campaign methods to cling to power from 1982 to 1996 (Maravall 1999). Clearly, these phenomena back the status quo and generate strong challenges not only to representation but also to democratic legitimacy, performance, and stability.

Free and fair elections are a necessary but not sufficient condition for democracy to flourish. Determining the other conditions of democracy has been a major focus of the comparative politics “quality of democracy” research agenda. The major lines of research can be divided into two broad categories: those that underline the outcomes democracies ought to produce and those based on the procedures for making decisions. Those in the second group have asked who participates and what the scope of their participation is. This includes Gerber, for whom “all democracies face a fundamental problem in deciding how much political participation to allow and by whom” (1999: 3). By the turn of the twentieth century, a broad consensus had been reached with regard to who has the right to participate (usually, all adults in society who possess a reasonable degree of mental health and who are not imprisoned, generally absencing any other considerations) – a consensus shared by most liberal democracies on earth. Yet the scope and type of this participation still is a topic for debate; for some, the basic role of the citizenry is selecting ruling elites, whereas at the other extreme, the citizenry must be a consistently active player whenever political decisions are taken.

a. Democratic Preconditions for Direct Democracy

Schumpeter (1950) offered perhaps the first attempt to provide a working definition that challenged the classical, more normative doctrine of democracy. In his view, democracy was not an end in itself but rather a “political method. That is to say, a certain institutional arrangement for arriving at political – legislative and administrative – decisions [. . .] in which individuals acquire the power to decide by means of a competitive struggle for the people’s vote” (1950: 269). He was severely criticized for the elitist character of his definition. In his view, the elite had a paramount role in politics, and the only role of citizens was to elect governments. Furthermore, given that the extension of suffrage was something to be decided by each society, it was perfectly plausible that elites in a given society reduced the suffrage to such a minimum that “they could fully exclude popular preferences from the process of competition” (Munck 2007: 28). An even more negative twist of this Schumpeterian electoralist definition is given by George Bernard Shaw, for whom democracy is “the substitution of

¹ These infidelities follow a similar direction “from ‘welfare oriented’ campaigns to ‘efficiency-oriented’ policies” (Stokes 1999: 100). Moreover, Stokes shows that the excuses advanced by these presidents who, once in office, discovered information they previously did not have about the fiscal health of the state could not be sustained.

election by the incompetent many for appointment by the corrupt few” (Shaw quoted in Danziger 1998: 155).

Other authors attempted to go beyond purely electoralist definitions of democracy by taking into consideration the institutional requirements needed for a democracy to transpire. In this vein, Dahl (1956; 1971; 1989) coined the concept of *polyarchy* in an attempt to distinguish it from the notion of democracy, which he viewed as an ideal rather than a real possibility. The concept of polyarchy was originally developed to refer to extant democracies. In this view, polyarchies were characterized by the ability of the government to continuously address the demands of the citizens without any form of political discrimination against them. To reach this goal, there were two requirements: Citizens should be able to publicly voice their preferences, and participation in the political system should be as inclusive as possible. Thus, polyarchy could be reduced to participation and opposition (or competition), assuring a required minimum threshold of individual rights.

Dahl defines a polyarchy as a regime that elects its leaders through free and fair elections as well as one in which most of the adult population has the right to vote and run for public office. He conceived this as a multifaceted concept composed of eight different institutional requirements: freedom of organization and expression, the right to vote, eligibility for public office, the right of political leaders to compete for support, the presence of alternative sources of information, free and fair elections, and institutions linking public preferences to policy outcomes (Dahl 1971: 3). Dahl’s definition constitutes the classic procedural minimum characterization of democracy par excellence.

Defining democracy as a procedural minimum – a set of necessary conditions – has several advantages. First, it is broad enough to acknowledge a common denominator of democracy that travels far in comparative research. Most students of democracy would probably agree with this basic definition, if only because it is broad enough to accommodate several perspectives. More important, “[I]t is thin enough *to omit* mention of many qualities that are commonly associated with democracy, such as majority rule, judicial independence, separation of powers, local autonomy, [...], not to mention socioeconomic equality, *direct democracy*, small population, and public-spirited harmony” (Coppedge, *Approaching Democracy*: chap. 2; italics are mine).

Dahl’s definition of polyarchy hinges on a set of institutional conditions allowing mass participation and free opposition to the ruling elite. The lack of such conditions determines the absence of polyarchy. However, even if all conditions are present to some extent (making the country a member of the polyarchic collection of regimes), limited violations of civil and political rights may hinder the quality of democracy. Countries in which some specific regions or social groups are affected by political violence or electoral manipulation are clearly worse off than democracies in which the whole population effectively exercises its rights – of course, no country has a *perfect* record. Dahl’s polyarchy is a good starting point, but this does not mean that a polyarchical setup

will necessarily turn itself into a democracy, even if we witness free and fair elections.

Dahl's dimensions of participation and competition reflected the *right* to participate and compete, not the actual rate of participation or competition. Indeed, Dahl was rather ambiguous regarding whether he was talking about rights or effective conduct. Dahl is not alone in this ambiguity in terms of his definitions and thresholds. For Bobbio, democracy is "first and foremost a set of procedural rules for arriving at collective decisions in a way which accommodates and facilitates the fullest possible participation of interested parties" (Bobbio 1987: 19). Yet he never spells out what "fullest possible" really implies in terms of a threshold. Despite the ambiguities pointed out herein, the literature shows that very few scholars would challenge the idea that one essential characteristic of contemporary democracies, a *sine qua non* element, is free and fair elections, and that for elections to be free and fair, certain preconditions are to be met. Moreover, those who are elected are to continuously address citizens' demands expressed in an orderly and legal way.

Modern democracy is mainly based on the hypothesis that voting in elections of representative bodies fulfils the ideal of popular co-determination: the people leave their decision-making rights for a certain period of time to an assembly, which in principle, ought to be a cross-section of the people and which therefore ought to reflect the opinions of the people (Suksi 1993: 1).

Delving deeper into the participation dimension of Dahl's work, most scholars contend that voter turnout (effective participation) should not be part of a definition of democracy. But many others have argued that turnout is an important measure of the *quality* of democratic life (Altman and Pérez-Liñán 2002; Brasil De Lima 1983; Hill 1994; Lijphart 1997; Miller 1988; Moon, Harvey, Ceisluik, Garlett, Hermias, Mendenhall, Schmid, and Hong Wong 2006; Schattschneider 1960; Teixeira 1987). Greater participation – whether voluntary or encouraged by "compulsory vote" – makes democratic governments responsive to a larger share of the population. The health of a democratic regime is particularly poor when some citizens are effectively disenfranchised as a consequence of poverty, lack of basic education, or sheer apathy. Some analysts contend that low participation may reflect high satisfaction with the political regime, but I dispute this because most studies have shown that the less educated (i.e., those with fewer opportunities in the system) people are, the less inclined they are to vote, and vice versa (Almond and Verba 1963; Lijphart 1997; Powell 1986; Rosenstone and Hansen 1993; Wolfinger and Rosenstone 1980).

With regard to Dahl's second dimension of polyarchy, students of democracy and elections have developed different measures of *competition*.² All recognize

² Competition is understood as the struggle between two or more agents to capture scarce, limited, and valued resources within a defined system or context. It is often assumed that competition is a zero-sum game in which one participant's gain or loss is exactly matched by the loss or gain of

the theoretical leverage of this dimension; however, an agreement on how to operationalize this variable still remains elusive.³ What is clear is that competition fosters uncertainty and, for many, it is this uncertainty that differentiates democracies from non-democracies: "Democracy is a form of institutionalization of continual conflicts [...] of uncertainty, of subjecting all interests to uncertainty" (Przeworski 1986: 58).

Despite all the possible theoretical shortcomings of the procedural minimum definition of democracy, there is no doubt that this approach is sensible for distinguishing between polyarchies and non-polyarchies. Nonetheless, the Dahlian approach to democracy does not lend much assistance in the differentiation between polyarchic regimes. In other words, although Dahl's contributions make it possible to distinguish a democratic from a nondemocratic regime, after we cluster the universe of democracies, we can say very little about the nuances, main characteristics, and even the asymmetries of power coexisting within those regimes. This limitation has become particularly obvious in light of the third wave of democratization (Huntington 1991).

In the context of the latest wave of democratization, students of comparative politics have noticed, not without satisfaction, a decreasing range of variance in their favorite dependent variable: the political regime. Explaining the conditions for the emergence, breakdown, or survival of different types of political regimes has been the bread and butter of comparative studies.⁴ Political regimes have tended to remain democratic in many countries, which means that the dependent variable no longer shows significant variance. This situation has led scholars to new and subtler questions about the preconditions for democratic consolidation and to more detailed analysis of the institutional features of new democracies. Moreover, it has sparked a growing interest in the prospects of consolidation and the quality of democratic life – factors that clearly vary from country to country and even within the same country.

another. Political competition involves the struggle for power, for example, through elections in a democratic regime. It is a concept employed in virtually all subdisciplines of political science because it is a universal aspect of human life. Although everyone is affected by it in one way or another, a clear definition of the concept remains elusive.

³ For example, Ranney (1965) built a multidimensional index of competition in the American states over several decades, and Powell (1986) measured competition as the frequency of alternation in power over a nineteen-year period. For some, such as Przeworski, Alvarez, Cheibub, and Limongi (2000), alternation in office constitutes *prima facie* evidence of contestation. See also Hill and Leighler (1993) and Hill (1994). This long-term perspective is not very useful for new democracies in which just a few elections may have taken place. Other students have measured competition as the winner's percentage of the votes (Patterson and Caldeira 1983), the percent margin of victory (Cox and Munger 1989), and the raw vote margin of victory in elections (Cox 1998). In a way, the already-classic effective number of parties developed by Laakso and Taagepera (1979) is a widely used measure of political party fragmentation that is highly correlated with any of the measures of political competition expressed here.

⁴ Among those who maintain the classic quantitative cross-national analysis, we can emphasize Cutright (1963), Huntington (1968), Bollen (1979), Bollen and Jackman (1985; 1995), and Muller (1988; 1989; 1995).

Knowing that democracy entails more than free and fair elections has prompted scholars to pursue two main goals: to develop a differentiated conceptualization of democracy that captures the diverse experiences of these countries and to extend the analysis to a broader range of countries without stretching the concept of democracy, as Collier and Levitsky (1997) have shown. These goals resulted in a series of conceptual innovations that led to the “adjectivization” of democracy. In other words, the main way that scholars could reflect the empirical diversity within the universe of democracies was to attach an adjective to the concept (e.g., neopatrimonial-, authoritarian-, or delegative-democracy). Although several types of definitions for democracy are found, a substantial consensus emerged around a procedural minimum or expanded procedural minimum definition of democracy, such as that elaborated by Dahl.⁵

Often from case-oriented research (also known as small-N or qualitative analysis), some scholars recognize substantive defects that negatively affect democratic life in a given country or set of countries (Karl 1995; O'Donnell 1993, 1994; Valenzuela 1992). To deal with these cases of “reserved domains,” lack of “horizontal accountability,” or “electoralism,” to mention just a few, scholars have developed a whole array of diminished subtypes of democracy (Collier and Levitsky 1997; Diamond 1999). This perspective has been extremely lucid in identifying challenges for (and flaws of) new polyarchies, but it has usually avoided a comprehensive definition of democracy and tended to ignore problems of cross-national measurement (these last issues, however, fall beyond the scope of this research).

Because of the immense variety of countries and societies, one of the consequences of previous research agendas was the acknowledgment of a rather simple conclusion: It is virtually impossible to find a magical formula for obtaining and maximizing democracy and each of its oft-debatable components (e.g., rule of law; civic participation; civil, political, and social rights). All of these aspects and dimensions can hardly be tackled in a comprehensive way in a limited work such as this one. What is clear, though, is that “there is no one answer, and there are no shortcuts. In most countries that lack stable and effective governance today, we must be prepared to work on a number of fronts over a prolonged period of time” (Diamond 2003).

From my perspective, most of the rights underlined by Dahl are *sine qua non* conditions for democracy. But the checklist of freedoms and rights is fairly elastic, and it would be almost impossible to spell out what O'Donnell calls the *minimal sufficient set* of freedoms (O'Donnell 2004b: 18). Those who are concerned mainly with the preconditions of democracy tend to focus on those

⁵ These five definitions are: 1) Electoralist – reasonably competitive elections, devoid of massive fraud, and having broad suffrage; 2) Procedural Minimum – basic civil rights are present; 3) Expanded Procedural Minimum – elected governments have effective power to govern; 4) Prototypical Conception of Established Industrialized Democracies; and 5) Maximalist Definition (Collier and Levitsky 1997).

rights that enable citizens to be agents. To be citizens, individuals must be free of deprivation: If they do not eat and if they cannot feed their children, they will not be able to choose what type of life they want. In other words, they will be driven only to fulfill these basic needs and, as such, will remain prisoners of their own deprivation. If this is the case, citizens will be unable to fulfill their *agency* potential as responsible and reasonable beings. One of the critical debates in the literature of democracy acknowledges that most definitions of democracy have their purpose in free and fair elections, yet they differ in the necessary and sufficient conditions for achieving this. Citizens need either a “decent social minimum” (Nussbaum 2000), a minimum degree of “social integration” (Munck 2007: 31), or “human development” (Sen 1999). Of course, the meaning and content of these preconditions vary both spatially and temporally and are outside the scope of this book.⁶

Democracy “is not just a matter of the preferences of each citizen being treated equally in the process of forming a government” (Munck 2007: 31), and “fair elections are not sufficient for characterizing a democratic regime” (O'Donnell 2004b: 15). The question is how we should proceed with our empirical and theoretical aims of grounding democracy. The debate has diverged into looking at either the preconditions for democracy to flourish or the outputs democracy should produce. At this point, I enter the murky “quality of democracy” theoretical and conceptual space.

There is a substantial difference between addressing the quality of democratization and the level of democratization of a political regime. Every analysis of the quality of democracy must assume a minimum degree of democratization (i.e., Dahl's procedural minimum). Yet questions arise, and Dahl's work deserves a closer look – must citizens have the right to participate, or must they participate? What happens if they do not participate? Furthermore, most definitions of democracy observe that most of the adult population must be able to play the political game and, in the Western world, the standard of eighteen years is set as the minimum age for citizenship.⁷ However, if a regime includes those older than sixteen years (as in Austria, Brazil, and Nicaragua), is this country – *ceteris paribus* – more democratic than one that allows only those older than twenty-one (as in Gabon, Central African Republic, and Fiji)

⁶ These other rights, those belonging to the so-called second or third generation, must be evaluated (Méndez 2004). However, this book is not intended to discuss how and which rights or freedoms must be considered new constitutive parts of democracy or whether they should be isolated from the democratic definition (e.g., habeas data). Moreover, rights per se are problematic as well; “for instance, the freedom of speech can become the freedom to slander or the freedom to incite via hate speech. The freedom of the press can become the freedom to libel and defame one's political opponent. The freedom of religion can become the freedom to create hatred and significant social cleavages. And, the freedom to associate can become the freedom to revolt or even overthrow the democratic government itself” (Marcus, Mease, and Ottemoeller 2004: 115).

⁷ Clearly I am speaking here of the type of inclusion that incorporates people within reasonable limits of age, mental health, and so forth.

to participate? Also, if by democracy, we understand a political regime to be one that makes electorally binding political decisions from time to time, which is more democratic – the country that votes for the executive every four years (e.g., Chile) or that in which citizens vote every six years (e.g., Mexico)? It is difficult to gauge the quality of democracy based on these characteristics alone.

As an example of the dimension of quality versus quantity of democracy, *The Federalist Papers* opens an interesting line of reasoning with regard to the discussion of the frequency of elections. Elections are not to be held just once in a while, they state; they should be as frequent as possible for electoral accountability, and a finer tuning between voters and the elected should take place:

As it is essential to liberty that the government in general should have a common interest with the people, so it is particularly essential that the branch of it under consideration should have an immediate dependence on, and an intimate sympathy with, the people. Frequent elections are unquestionably the only policy by which this dependence and sympathy can be effectually secured. But what particular degree of frequency may be absolutely necessary for the purpose, does not appear to be susceptible of any precise calculation, and must depend on a variety of circumstances with which it may be connected (Madison in Hamilton, Madison, and Jay 1961: 295).

Despite Madison being supported by data showing that “the longer the period between elections the less responsible or the more independent representatives will behave relative to the desires of their polity” (Amacher and Boyes 1978), he does not represent a uniform consensus on this topic. For some elitists, the frequency of elections is rather problematic:

The kind of democracy that thus survives is not, however, popular rule, but rather an intermittent, sometimes random, even perverse, popular veto. Social choice theory forces us to recognize that the people cannot rule as a corporate body in the way populists suppose. Instead, officials rule, and they do not represent some indefinable popular will. Hence that can easily be tyrants, either in their names or in the name of some putative imaginary majority. Liberal democracy is simply the veto which it is sometimes possible to restrain official tyranny (Riker 1982: 244).

This concern is unfounded. In modern and complex societies, elections are not to be held every day, and representatives are thought to be as professional as possible. Yet, as mentioned in Chapter 1, no matter how well intentioned our leaders are, the infamous “corridors of power” generate incentives for perverse interests and behaviors (Pettit 2003). Therefore, contemporary democracies must be able to provide tools for controlling these behaviors both horizontally (by other institutions) and vertically (by citizens).

When we compare the quality of democracy across countries, we are not comparing which countries are more democratic. Rather, we are analyzing in which countries democracy performs better given some normative standards. Indeed, much of the debate about the quality of democracy is about the identification of these normative standards (Altman and Pérez-Liñán 2002). According to Coppedge, “[W]e should seek the path of finding out what constitute ‘more’

and ‘better’ democracy and what implies ‘less’ or ‘worse’ democracy. To do so, we need not formulate any absolute right or list of absolute rights; we only need to know how much of each good corresponds to what degree of democracy” (Coppedge 2004: 246). This is especially important because “there cannot exist a theory that establishes a firm and clear line that would determine [...] *a minimal sufficient set* [of political rights]” (O’Donnell 2004b: 18).

I claim that a country that allows its citizens to activate MDDs, either in its proactive or reactive forms, is more democratic than one that does not. This claim does not constitute “just another” voluntaristic inclusion in the *set of rights* we have discussed so far, and this statement is not coming from nowhere. Rather, it is linked directly to democracy and even to the first predemocratic ancestors of contemporary democracy and deals with the first polyarchy transformation. We may or may not like it, but there are very few institutions as embedded in the democratic tradition as the citizenry deciding whether its political concerns are just – concerns that are concomitantly defined by the citizens themselves. Moreover, “the institutions and mechanisms of representative democracies are the main objects of the analysis of the quality of a democracy. *This is not to ignore direct democracy as the highest expression of democratic quality*, but to acknowledge the secular experience of representative democracies and their real potential for improvement” (Morlino 2004: 13; italics are mine).

2. Do Mechanisms of Direct Democracy Represent *More and Better* Democracy?

Direct democracy does not constitute a panacea for solving problems of current democracies, nor is it something intrinsically wrong to be avoided at any price. Indeed, discussions about “direct democracy” as such will not reach a safe harbor simply because they involve consequentially different nuances and institutions, as discussed in Chapter 1. As is evident, the appraisal of direct democracy in general will depend on how, why, where, when, and which institutions of direct democracy are used. As Suksi remarks, “[W]hen speaking about the institution of the referendum, it is often forgotten that it is not an indivisible monolith, but a multidimensional phenomenon, consisting of diverse forms all of which have their special features” (1993: 3).

Despite having been excluded from most definitions of democracy with which comparative political scientists work (including even those maximalist definitions of high quality of democracy), direct democracy is intimately related to democratic theory and some aspects of direct democracy; that is, CI-MDDs are the true descendants of the purest democratic ideal. Within the realm of democratic regimes, the debate between supporters and detractors of direct democracy has been extensive. Even though this has not traditionally been a major topic of democratic theory, the debate is of increasing political theoretical relevance. This section addresses the most prominent concerns with regard to the use of CI-MDDs. Before I continue, I emphasize that the bottom

line of this debate can be reduced to the following: Opponents of direct democracy usually tend to accuse it of using stereotypes of direct and representative democracy. Indeed, most (if not all) of the concerns raised by those who tend to be reluctant about the possibilities of CI-MDDs can be turned around and eventually expressed as legitimate concerns regarding representative democracy itself. Yet, despite the fact that this comparison is not extremely lucid in its attempt to undermine the assessment of direct democracy, it helps us to be more careful in our own assessment.

Direct democracy has become increasingly relevant during the last few decades. On the one hand, the rise of single-issue interest groups drive measures onto the ballot, and popular distrust of government and politics leads citizens to go over leaders' heads by voting on policies directly.⁸ Additionally, as technical advances in communication and media provide citizens with better access to information, their ability to vote on more political issues is increased. Because of these factors, many argue that citizens should be expected to employ MDDs more frequently. The assumption behind this claim is that citizens should be given the opportunity to decide directly on policy matters.

On the other hand, some scholars argue that political, economic, or social groups could easily use direct democracy for their own particular benefit, making it, in the end, harmful to representative democracy. As Bell mentions, "[T]here is ample reason today to give serious consideration to the founding fathers' cautious approach to direct democracy. They were closer than we to those basic structural arrangements by which individual rights in a free society must be protected against the tyranny of the majority" (1978: 28–29). In the same vein, scholars claim that citizens lack all the information needed to make decisions about complex political issues.⁹

A group of outstanding political scientists have indirectly explored the tensions between representative democracy and such decision-making forms.¹⁰ In general, these social scientists have not been comfortable with MDDs because of their "uncontrollable and unforeseeable" character (Suksi 1993). Moreover, some scholars, such as Gamble (1997), go beyond this uncertainty and claim that MDDs are essentially reactionary. The central arguments against MDDs maintain that a) they weaken the power of the representatives elected by the citizens; b) the ordinary citizen is unable to make informed (or rational) decisions about extremely complex problems; c) the MDD actor behaves as the electoral actor – alone, by him- or herself, and without debate or participation, so there is no chance to measure the intensity of beliefs; d) it establishes a zero-sum game, in which the majority wins everything and the minority loses all,

⁸ In this sense, the Italian experience could be considered the clearest example of bypassing the representative structures of the country by referendums. They are also "symptomatic of a more general crisis of representative democracy and the resurgent ideas of direct democracy" (Uleri 1996: 120).

⁹ For a good treatment of the effect of information on voting behavior regarding direct legislation, see Gerber and Lupia (1995), Gerber (1999), Lupia (1994), and Lupia and McCubbins (1998).

¹⁰ Cunningham (2002), Dahl (1989), Phillips (1991), Sartori (1987), and Held (1993).

leaving no possibility for compensation or concessions regarding the problems presented; furthermore, there is a risk of the tyranny of the majority over the minority; and e) there are extra costs in terms of time and money. Finally, as Parkinson observes, “[I]n complex societies deliberative participation by all those affected by collective decision-making is extremely implausible” (2003) or even manipulated by political elites (Higley and McAllister 2002).¹¹

In Uruguay, which has used CI-MDDs far more frequently than any other country in Latin America, the negative implications of this popular decision-making tool have been highly debated. Professor Romeo Pérez Antón considers that “since 1967 [the Uruguayan] governmental regime involves at the same time presidentialist, parliamentarist, and direct democracy institutions, which consequently results in a system of mutual paralyzations” (Interview, September 1995). Before the two popular initiatives of 1994, the influential Uruguayan weekly report *Búsqueda* argued:

(...) It is a new kind of corporatist behavior, which is without doubt a worrisome fact because it produces distortions, threatens the actions of the next government, and tries to incorporate into the Constitution the specific interests of particular groups in society. Nobody could affirm that the history of plebiscites is the history of democracy. Moreover, what history teaches us is that usually corporatism and plebiscites go together, never for the people’s welfare (Author’s translation; *Búsqueda*, Nov. 1994: 2).

Yet those who support MDDs argue that “if enthusiasm for democracy is to be sustained, ways may have to be found to make individuals feel more involved” (*The Economist*, June 17, 1995: 21). One of the most outstanding premises of the supporters of MDDs is that the citizen feels more concerned with democracy because a) all of the issues can be contemplated and thus avoid the passage through intermediate organizations; as *The Economist* asserts, “more referendums might be an antidote to more lobbyists”; b) public decisions are achieved publicly; c) the popular will is more accurately expressed: “The popular will is the sum of the citizens’ individual wills. When the will is expressed directly, without intermediation of any kind, it is bound to be expressed accurately” (Butler and Ranney 1978: 31); d) such public involvement combats apathy and alienation; the citizen will feel more concerned when issues relevant to the public are considered;¹² e) human potentiality is maximized (this premise is distrusted by the feminist critique of representative democracy); and f) as a pedagogical tool, increased opportunities for participation in the legislative process

¹¹ Kriesi gives another twist on the negative impact of direct democracy. He says: “The bad news is that uncertainty about how to vote is, in part at least, cognitively determined. That is, those who do not have a sufficient amount of cognitive resources at their disposal are more likely to be uncertain about how to vote, and, therefore, less likely to participate in the vote” (2002: 185).

¹² In a study carried out in Switzerland, Frey, Kucher, and Stutzer (2001: 271) show that the “reported subjective well-being of the population is much higher in jurisdictions with stronger direct democratic rights. This is not only the case because people value political outcomes higher but also because they derive utility from the political process itself.” A similar argument was sustained by Olken (2008).

will make citizens more civilly aware and virtuous and, in some sense, freer (see Qvortrup 1999). In short, MDDs (especially from below) have been considered as the prescription for the current democratic disaffection that distresses most democracies. In the words of scholars who have studied this phenomenon:

According to numerous recent cross-national studies of public support for democracy, citizens of both well-established and newer democracies continue to share a strong commitment to the ideals and principles of representative democracy. Paradoxically, however, these same citizens are increasingly “critical” of and “dissatisfied” with the performance of their national democratic institutions. One response has been to call for the “re-invention of government” through the use of referendums and ballot initiatives (Freire and Baum 2003: 135).¹³

There is a recurrent group of challenges advanced by the literature against direct democracy. Of course, these concerns do not constitute a unified theory against direct democracy. Indeed, many of these fears contradict each other. On the one hand, one of the strongest concerns has been the risk of a tyranny of the majority over the minority. On the other hand, another recurrent apprehension is exactly the opposite: the impossibility of finding majorities at all; in other words, the impossibility of majority rule.¹⁴ There exists a certain tension between these arguments: Although MDDs play in favor of narrow (perhaps economic) interests, they also turn out populist policies. As we see, these arguments contradict each other. The evident contradictions in these positions do not imply that either is without merit.

a. Tyranny of the Majority and Cycling Decisions

The debate on the tyranny of the majority is not new. Aristotle was concerned with the fact that a democracy could easily lend itself to demagoguery – a concern shared by Tocqueville. However, the ideas of the Founding Fathers of the American Revolution provide the context for the extreme caution with which the subject matter is considered in modern times. Their utmost desire was the prevention of all forms of tyranny – including that of the government or the majority – through a system of checks and balances. They were rather sophisticated electoral engineers and were conscious of nearly every crucial trade-off that institutional design encounters. For instance, with regard to vertical accountability, they were aware that the social heterogeneity of a district, which is closely related to the number of people within it, affects the treatment of minorities.

In article 9 of *The Federalist Papers*, Hamilton argued that the tyrannical capacity of a majority would be constrained by the “enlargement of the orbit” (Hamilton, Madison, and Jay 1961: 41) and, in article 10, Madison advocated

¹³ See also Frey and Stutzer (2000).

¹⁴ Although those scholars fearing tyranny could be called, in this regard, the “liberals” because of their concerns regarding the protection of human independence, those in the second group could be called the “conservatives” because of their obsession with the order and stability of political outcomes.

that the area of a democracy be extended because, in small jurisdictions, “more frequently will a majority be found of the same party” and “more easily will they concert and execute their plans of oppression” (Hamilton, Madison, and Jay 1961: 51). This idea appears several times but is best spelled out in article 51: “[S]ociety itself will be broken into so many parts, interests, and classes of citizens that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority” (Madison in Hamilton, Madison, and Jay 1961: 292).

Still, there is no consensus on how the shape and size of districts might encapsulate the risks of a majority tyranny, and no more than anecdotal evidence has been traditionally presented from a theoretical perspective. Without a doubt, most of the statements with regard to this issue are theoretical conclusions, such as Svensson’s assertion that popular initiatives and referendums are “better suited for small and homogeneous societies than large societies with many conflicting interests” because the larger the community, “the more interests and opinions exist, and the more difficult it is to achieve complete or just approximate agreement and correspondence between popular opinions and policies” (2007) – exactly the opposite of Hamilton’s concerns.

In the last ten years, however, an especially noteworthy debate emerged on this subject, triggered by a controversial article by Gamble (1997). Gamble’s hypothesis claimed that “without the filtering mechanisms of the representative system, direct democracy promotes the tyranny of the majority as the scope of civil rights conflicts expands and citizens vote on civil rights laws” (1997: 245). Studying seventy-four MDDs in five areas of civil rights in California, she claimed that “anti civil rights initiatives have an extraordinary record of success: voters have approved over three-quarters of these” (1997: 261). Not only was this position directly challenged by Frey and Goette, who claimed that in Switzerland, only 23 percent of MDDs had a conservative character (1998),¹⁵ demonstrating that direct democracy protects civil rights, but more interestingly, Donovan and Bowler, using the same type of initiatives in the same jurisdictions, showed results that contrasted with Gamble’s. They found that only 18 percent of MDDs could be said to have produced decidedly antiminority policy outcomes (Donovan and Bowler 1998: 1022). They went a step further, controlling for the jurisdiction’s population to test whether MDDs treated minorities better in larger jurisdictions, as could be inferred from Publius.

¹⁵ Of course, they claim this despite controversial measures having been put forward in Switzerland, such as the popular initiative in November 2009 for a constitutional amendment banning the construction of new minarets. This popular initiative was approved by 57.5 percent of the participating voters (turnout was 53 percent). The initiative was triggered by a conservative alliance of the Swiss People’s Party and the Federal Democratic Union. The Federal Council and the Federal Assembly, along with many social organizations (e.g., the Amnesty International’s Swiss office, Swiss Federation of Jewish Communities, and Federation of Swiss Protestant Churches, among many others), recommended that the proposed amendment be rejected as inconsistent with basic principles of the constitution. As expected, the ban provoked reactions from within Switzerland and the rest of the world.

They showed strong evidence that the larger the constituency, the more supportive of gay rights the legislation outcomes were.

The Donovan and Bowler study shows that minorities are less protected by direct democracy in “smaller communities – places that we assume have a greater homogeneity of interests.” But they are also careful not to make theoretical derivations from this information: “[T]his evidence should not be used to imply that direct democracy per se is abusive of minorities” (Donovan and Bowler 1998: 1023). Indeed, they open the question of whether there is a substantial difference in how minorities are protected in *any* small community under *any* form of democracy (representative or direct). Thus far, evidence suggests that the smaller the community – in terms of population – the lower the level of protection that minorities receive (Wald, Button, and Rienzo 1996).

Perhaps there is no better place than the Alps (Switzerland and Liechtenstein) to illustrate how, through these types of mechanisms, other rights may be considerably delayed. In 1968, there was a consultative vote in Liechtenstein triggered by Parliament when the question arose of whether the right to vote should be granted to women. On this occasion, women and men voted separately, and electoral records indicate that the female vote was barely positive (50.5 percent in favor) and the male was negative (60.1 percent against). Three years later, in 1971, men voted in a binding legislative plebiscite to confer these rights on women, and the vote again was negative (51.1% against), although closer to an even fifty-fifty than before. This happened again in 1973, but the negative vote was larger this time (55.9 percent against). Women had to wait another eleven years, until 1984, before their national voting rights were finally accepted by men. Equal rights for women and men were later introduced in the constitution by the decision of the *Landtag* (Liechtenstein’s Parliament) without a popular vote in 1992, and a law on equal rights for women and men followed in 1999.¹⁶

In Switzerland, the historical record shows a less linear development than in Liechtenstein. After World War II, with the incorporation of the Social Democrats into government, an expansion of the social security system occurred with a concomitant invigoration of women’s movements. After all, women were the backbone of the Swiss economy during the war (men were mobilized in the army for long periods of time). Although the political environment seemed to be fertile for the extension of citizens’ rights to women, a complete wave of cantonal popular votes thwarted any aspiration in this regard. It was only in 1957 that the executive sent a bill to the Federal Assembly, and by late 1958, a referendum campaign was already in progress. On February 1, 1959, a majority of men rejected women’s right to vote – 654,939 (66.9 percent) versus 323,727 (33.1 percent) for. In 1971, the Federal Council

¹⁶ It is worth noting that the Princely House law is the only area left without gender equality. Only men have the right to vote within the House of Liechtenstein and only men can become ruling prince of Liechtenstein, an office that retains important political power (he can veto and even refuse to sign a law).

pushed again for the extension of rights, and this time an obligatory referendum was also held on February 7. The women's vote was accepted by a majority of 621,109 (65.7 percent) versus 323,882 (34.3 percent). Although Switzerland conferred electoral rights to women in 1971 at the federal level, some cantons maintained their traditional exclusion of women into the late 1980s. Actually, it was not until 1990 that the Federal Supreme Court forced the last canton – Appenzell Innerrhoden – to abide by the federal law and grant women the vote on local issues at the *Landsgemeinde*.

Most agree that democracy is simply the government of the majority while respecting the rights of minorities, but others warn about the risks of majorities bypassing minorities' rights and behaving as steamrollers in society, as one might infer from social-choice theorists. This is especially problematic when we take into consideration some elements of the very same social-choice theory, such as the Arrow's paradox or, going further back, Condorcet's paradox of voting (Arrow 1963 [1st ed., 1951]).¹⁷

It has been argued from social and rational choice perspectives that there is not one universal and fair system of aggregation of interests; thus, the use of majority rule can lead us down the road toward cycling decisions and, consequently, a road of instability. The basic tenet is that

a vote by members of the same population among several options can yield different results depending upon whether a series of pair-wise votes is taken or voters assign weights to each of the options, called, respectively, a "Condorcet" vote and a "Borda" count (. . .) This is because an option could be knocked out of the running in an early vote in a Condorcet series even though it had more points on a Borda count than one that survived the pair-wise voting (Cunningham 2002: 66).

The literature on the problems of preference aggregation is amazingly large and too diverse for the scope of this book; however, this literature has made us think in a cleaner, more parsimonious, and more ordered manner.¹⁸ Nonetheless, the question is how useful these theories are in understanding real-world politics – how often is this circulation of votes in the direct democracy game seen (and why not in representative democracy as well)?¹⁹ Mechanisms of direct democracy are majoritarian institutions par excellence. If there is any place where we ought to find cycling, it is within the realm of direct democracy, yet we have not. Even in countries where CI-MDDs are comparatively easy to trigger, such as in Switzerland, we have not witnessed any indication of cycling. One of the plausible reasons is that a decision taken through a direct democratic procedure enjoys a large legitimacy that hardly anyone wants to immediately

¹⁷ See also Downs (1957) and Riker (1982).

¹⁸ For examples of uses of formal modeling in regard to direct democracy, see Ingberman (1985) and Hug (2004).

¹⁹ Setälä does a great treatment of theoretical dilemmas of social choice applied to direct democracy (1999a: chap. 2).

erode.²⁰ The closest example we have seen is the reiterated use of direct democracy procedures for decades to decide certain issues such as alcohol prohibition in New Zealand, which has been voted on dozens of times since the late nineteenth century. However, this does not imply a circulation of majorities at all; rather, it highlights the impossibility of finding any.

b. Erosion of the Power of Elected Officials

It has been also argued that CI-MDDs abate the power of the representatives elected by the citizens (Butler and Ranney 1978) and temper the role of political parties in the policy-making process. This opens the potential for the production of inconsistencies and incoherence because the legislature pushes for one aim while the citizenry pulls in the opposite direction. However, if this is the case, we should not be questioning direct democracy per se but rather the political parties in a given democracy. I am not claiming, however, that political parties must be perfectly reflective of citizens' preferences at all times and in all policy spaces. I simply mean that without somewhat stable (i.e., institutionalized) political parties with a reasonable degree of established, programmatic commitments to the electorate, it is impossible to articulate the cycles of accountability that characterize representative democratic governance (Kitschelt, Hawkins, Luna, Rosas, and Zechmeister 2010).²¹

In a democratic context, CI-MDDs can be used to threaten the government and ultimately to force a change in the status quo. In this case, evidence of the success of a potential CI-MDD is provided by a change in the government's political actions. Logically, the lack of a CI-MDD could mean a positive reaction by the government in the direction of the issue sought by the CI-MDD organizers. Therefore, the potential for use of a CI-MDD alone can make it unnecessary to follow through. Paradoxically, in this scenario, evidence of

²⁰ Anthony Downs (1957) delivered a model of political competition of candidates with respect to their ideological position in a single-issue dimension. Along a single-issue dimension, a two-party competition is expected. Parties will experience strong pressures to converge upon the position of the median voter if they wish to avoid electoral defeat. Important works have been devoted to showing that this predicted convergence is only partial in real life given that Downs's theory relies on highly restrictive assumptions; for example, much of this literature has been centered on direct democracy or voting in committees, where very few players are involved. The median-voter theorem produces a Nash equilibrium, in which no player has anything to gain by changing strategies unilaterally. The literature that emanated from Downs's seminal work was strongly influenced by Duncan Black's median-voter model (1958), probably one of the founding texts of social-choice theory, and by Kenneth Arrow's discussion of the dilemmas of aggregating single-peaked individual preferences into a collective choice (1963 [1st ed., 1951]). All of them were predated by Harold Hotelling's model of spatial competition – the location of different sellers in a market with respect to one another, probably the pioneering paper in public choice (1929). When a policy space has three or more dimensions, no Condorcet winner will exist under majority rule. Even in a two-party contest or a two-sided debate, competition is enormously unstable, as McKelvey-Schofield shows (1986).

²¹ See also Aldrich (1995); Cain, Ferejohn, and Fiorina (1987); Cox (1987); Mayhew (1974); and Freidenberg (2003).

failure is provided by the CI-MDD's presence. If a CI-MDD is deployed, it means that, as a mechanism of threat, it did not work. Yet do legislators really take into consideration potential MDDs when they legislate? Empirical research supports this tenet: More than 70 percent of Uruguayan legislators consider that the presence of a potential referendum is a sufficient reason to look for a broad consensus within the political parties (for further discussion, see Chapter 8 and Appendix 2). Evidence suggests that this potential influence is also robust in other latitudes, for example in the Swiss experience. "In Switzerland, when a deliberative consultation is effectively requested, it is already a sign of failure of 'Konkordanz'" (Papadopoulos 1995: 430). Indeed, "ironically, the blunt majoritarianism of the referendum has done much to foster the politics of consensus" (Kobach 1994: 151). For this reason, a proper study of CI-MDDs ideally should not only analyze the CI-MDDs held but also take into account the successful attempts at holding CI-MDDs without their actual occurrence (see also Gerber 1999).

The presence of this type of mechanism usually opens the door for cooperation between branches of government and more fine-tuned legislation with regard to citizens' preferences (closeness with median voter [Hug 2004] or even "inducing sitting legislatures to govern more effectively" [Lupia and Matsusaka 2004: 463]). Regardless, Ladner and Brändle (1999) advance a series of arguments about why we may see some negative impacts on the relationship between political parties and direct democracy – some of them already found in work by Kobach (1993). It is clear that even in Switzerland, by far the world champion of direct democracy, most legislation and governmental activity is run as in the purist representative democracy (Serdült 2007). Thus, the evidence demonstrates that we should not infer any downgrading in the crucial role played by political parties or any other representative institution should they coexist with direct democracy.

Although there is no universal pattern of relationship between parties and MDDs, evidence does not suggest that direct democracy necessarily undermines parties' power more than it normally would in its absence. Indeed, Altman shows that when Uruguayans go to the polls to vote on a CI-MDD, their vote choice is motivated primarily by party loyalty rather than by their reaction to economic conditions (2002b). In Switzerland, political parties are also crucial players in the direct democratic game (Kriesi 2006) and elsewhere (Hobolt 2006b). This gives parties a greater role in mediation in parliaments (Lutz 2006). In Italy, "parties were the main actors in referendums as far as the mobilization of voters was concerned. Indeed, the parties gave birth to a variety of alignments, some supporting mobilization and competition, while others encouraged abstention and effective demobilization" (Uleri 2002). In Ireland, although voting behavior at referendums has been heavily conditioned by the positions taken by the political parties, parties' advice on voting at referendums carries less weight than it did in the past (Gallagher 1996b: 94), while "the Austrian experiences make clear how the instrument of the

initiative has an in-built advantage for the party employing it" (Müller 1999: 303).²²

These examples of the role of political parties regarding MDDs contrast to a considerable extent with their roles in other realms. In California, because party labels and incumbency are lacking, "the general willingness of the electorate to adopt new policies varies with economic conditions" (Bowler and Donovan 1998: 69). For that matter, across the United States, parties play a much less relevant role than in other democracies because of their "ideological unprincipledness, weak and undisciplined parties, and locality centered politics" (Sartori 1997: 89).

It is important to emphasize that there is an argument against the uses of MDDs that is closely related to the erosion of the power of elected officials, albeit in an indirect manner. I am referring to the claim that opening the lawmaking process to other actors, such as the citizenry, through MDDs makes the lawmaking process more complicated, longer, and more uncertain. Let me provide a graphic display of this argument.

Figure 2.1(a) represents a decision-making tree in a typical presidential regime without any form of direct democracy, and Figure 2.1(b) the same but in a presidential regime with the most commonly seen MDDs. Because 60 percent of all national MDDs between 1985 and 2005 transpired in presidential democracies (28 percent in parliamentary and 12 percent in semipresidential regimes), my examples are based on presidential regimes. In both figures (a and b), the first move is made by the legislature. To simplify, I decided to start with the legislative because, despite the fact that the executive is a major proactive player in the lawmaking process, the executive's bills have to be approved, modified, or rejected by Parliament.²³ This occurs even in cases when presidential decrees' control the legislative process (on this topic, see Negretto 2004).

In simple terms, in a typical presidential regime without any potential formal involvement of the citizenry in the process (Figure 2.1[a]), the legislature approves a bill, which may be accepted or partially/totally rejected by the executive. If the bill is rejected by the executive (partially or totally), the legislature either accepts the executive's observations or it overrides the presidential veto. Alternately, if the bill is accepted by the executive, it becomes a law. If the legislature overrides the veto, the executive usually has no recourse other than

²² See also Kriesi (2006); Donovan and Karp (2006); de Vreese (2006); Scarrow (1999); and Ladner and Brändle (1999). It is possible to relate MDDs with almost any aspect of the political life, so the list presented here could be endless. Nonetheless, another issue that gained much attention, and deserves at least to be mentioned, is the relationship among the will of political elites, the media, and MDD outcomes. On this relationship, see Trechsel and Kriesi (1996), Kriesi and Trechsel (2008), and Trechsel and Sciarini (1998).

²³ It would be perfectly reasonable to suggest starting the figures with the executive sending a bill to Congress and continuing the game from that point. After all, even in cases where legislatures are supposed to play a much more significant role than is the continental average, such as in Chile, Costa Rica, and Uruguay, the executive constitutes a crucial player, impacting the legislative agenda by sending bills to the parliamentary floor or vetoing laws.

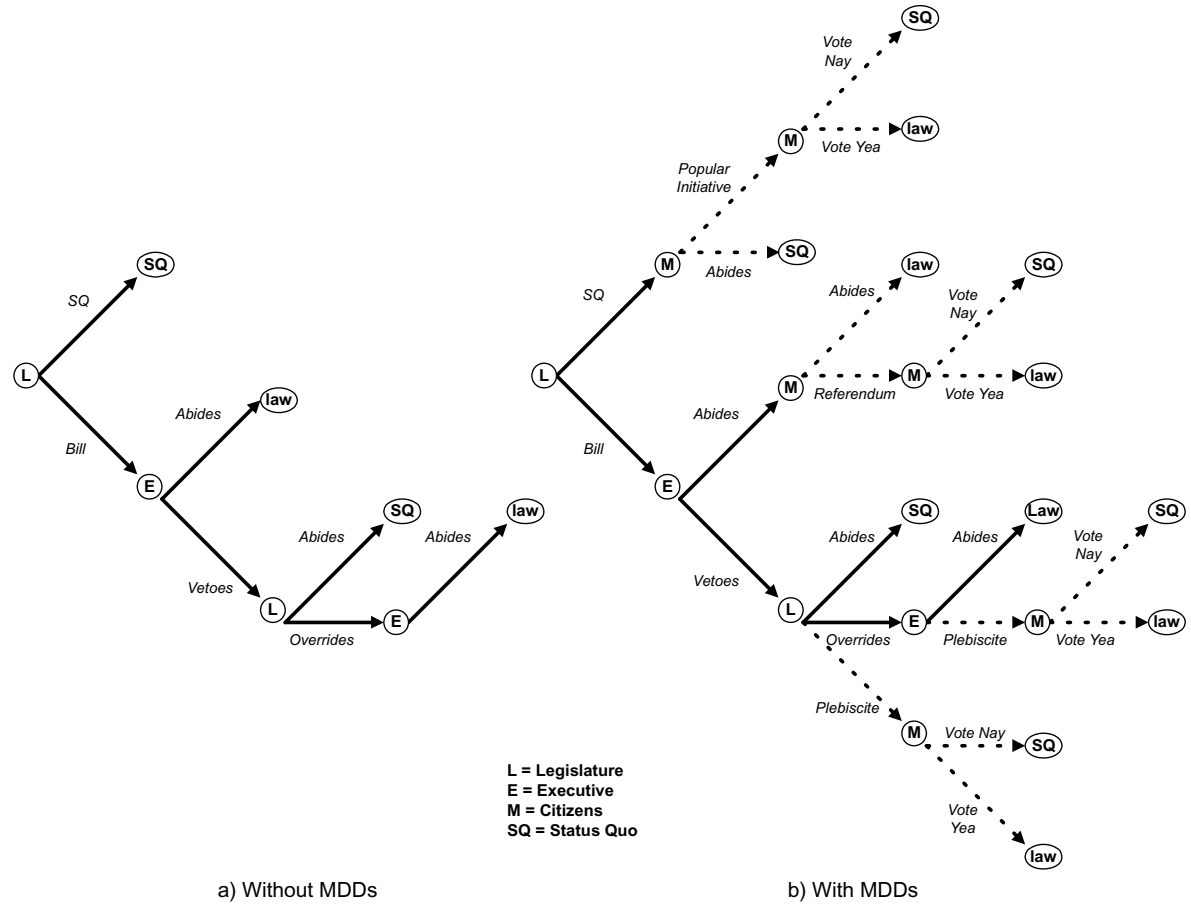


FIGURE 2.1. Decision-Making Process in a Typical Presidential Regime with and without Mechanisms of Direct Democracy.

promulgating the law. Note that in these figures, I am not referring to all of the movements (back and forth) that a bill usually makes between legislative commissions or the lower or upper chambers of Congress.²⁴

In a presidential regime with MDDs, the lawmaking process is evidently more complex than in the previous scenario. All of the players move basically in the same way as before. However, if the bill is accepted by the executive, it becomes a law or, if the president is not satisfied with the enacted law, he may call the citizenry to make the final decision on the matter with an executive facultative plebiscite, if such a prerogative exists. If the president is satisfied with the enacted law, the citizenry still has the opportunity to have the final word, calling a facultative referendum opposing the new law. If the referendum is approved, the law is derogated by the citizenry; otherwise, it is sustained.

In the case that the legislature is reluctant to change the status quo on certain topics, the citizenry can bypass Parliament by gathering enough signatures to force a vote on the issue via popular initiative. If the popular initiative is approved, no matter how unattractive the law or constitutional reform is in the eyes of the executive or legislative, it becomes law. Otherwise, the status quo prevails. Note that in these figures, I avoid making any assessment of players' potential payoffs in adopting a particular strategy because the costs and benefits associated with each move, for each player, for each particular case, would have to be taken into account.²⁵

The elongation of the decision-making process with MDDs is a powerful argument because there are very few counterarguments. One simple question remains: Is a longer and more uncertain lawmaking process necessarily worse than a short and executive process? It could be argued that in the contemporary world, where some decisions need to be taken in matters of minutes at times, it is. Yet, overall, the entire discussion about whether MDDs attenuate the powers of elected representatives could be viewed as a consequence rather than a disadvantage – actually, having a second chamber weakens the power of the first chamber, but that is not necessarily a disadvantage.

c. Populist Policies and the Role of Money

California's Proposition 13 of 1978 constitutes a landmark in the study of direct democracy. In the proposition, Californians voted for drastically cutting property and other taxes in an act that, for many, appears to have been an act of selfishness by the homeowners.²⁶ This measure concomitantly spilled

²⁴ Starting with the legislature does not mean that the legislature is not reacting to a popular initiative campaign that could change the *SQ*. In other words, *L* is reacting in order to deactivate a measure that presumably is farther away from the *L* ideal point than the *SQ* or a bill that would pass presidential veto.

²⁵ For example, the number of legislators needed to override a presidential veto varies from country to country. Also, the popular support for certain decisions varies concomitantly with the issue at stake. Obviously, this is not a viable option in a large-*N* account such as the one presented.

²⁶ This proposition was officially titled the "People's Initiative to Limit Property Taxation," and popularly known as the "Jarvis-Gann Amendment."

over into several other states. The effect of this vote was enormous in the American literature dealing with direct democracy, important sections of which claim that direct democracy produces populist and irresponsible policies. “Who would be as insane as voting against her own interests?” it questions. Yet what this portion of literature does not emphasize enough is that California’s Propositions 99 (1988) and 108 (1990) increased taxes and public spending.

Generally, the literature on the policy effects of direct democracy highlights two broad conclusions. First, “states with the initiative spent and taxed less than states without the initiative, they decentralized spending from state to local government, and they raised more money from user fees and less from taxes” (Matsusaka 2004:3). In that sense, these institutions exert leverage on policies toward a fiscally conservative direction. Second, “opinion surveys throughout the period show that a majority of people supported each of these policy changes” (Matsusaka 2004:3). Thus, policies adopted more closely reflect the policy preferences of the median voter (Hug 2004).

Both Swiss and American literatures on the policy effects of direct democracy have shown no patent evidence of an irresponsible use of direct democracy to reduce taxes; neither is there any vestige of a suicidal policy of reducing revenues with a simultaneous increasing of expenditures (Matsusaka 2004). In other words, the citizenry is capable of balancing (short-term) costs against (longer-term) benefits with regard to public finances (Kaufmann, Büchi, and Braun 2007: 82). Indeed, “policy outcomes are more efficient in direct than in representative democracies” (Feld and Kirchgässner 2001: 362). For example, in Swiss cantons where citizens have an impact on budgetary policy in direct legislation, they also have lower tax evasion levels than in cantons where they do not have such institutional prerogatives (Pommerehne and Weck-Hannemann 1996), and gross domestic product is, *ceteris paribus*, higher in more directly democratic cantons (Feld and Savioz 1997).

At the same time, some scholars argue that powerful groups could easily use direct democracy for their own particular benefit. According to Broder, “the experience with the initiative process at the state level in the last two decades is that wealthy individuals and special interests – the targets of the Populist and Progressives who brought us the initiative a century ago – have learned all too well how to subvert the process to their own purposes” (2000: 243).²⁷ Because “large sums of money can be used to shape and confuse voters’ attitudes on specific ballot measures . . . those who can afford access to the mass media can unduly influence the outcome of direct ballot lawmaking”

²⁷ There is a consensus that the origins of direct democracy in the United States are strongly related to the Populist and the Progressive eras (late nineteenth century and beginning of the twentieth century, respectively). But the push toward greater involvement in direct legislation during these two eras had different motivations (Cronin 1999). The Populists sought to increase the power of the people as a way of returning to a simpler (less industrialized) way of life. In turn, the Progressives sought greater popular involvement as a way to minimize corruption, to counteract the concentration of wealth and the manipulation of the political apparatus by narrow economic interests (Gerber 1999), and to foster an “enlightened citizenship” (Smith and Tolbert 2004).

(Cronin 1999: 90). The concern regarding “the alleged transformation of direct legislation from a tool of regular citizens to a tool of special interests” has been called the *populist paradox* by Gerber (1999: 5) and is repeatedly raised in the U.S. literature on direct democracy (see, e.g., Magleby 1984). This is unsurprising.

Unlike presidential and legislative campaigns in the United States, where strict legislation in regard to contributions and expenditures exists, there is no limitation on contributions to and expenditures on direct legislation campaigns. The reasons for such uncontrolled campaigns come from a series of decisions by the U.S. Supreme Court: *Buckley v. Valeo* [424 U.S. 1 (1976)],²⁸ *First National Bank of Boston v. Bellotti* [435 U.S. 765 (1978)],²⁹ and *Citizens Against Rent Control v. City of Berkeley* [454 U.S. 290 (1981)].³⁰ Thus, critics of direct democracy should throw their darts in a reliable and valid manner: Popular votes are not to be avoided because money plays a role; rather, legislation controlling such influences should be reformed. Examples of the “big money” involved in the game include a record-setting \$154 million that was spent on a single proposition (California’s Proposition 87 in 2006 that would have placed a bonus profits tax on oil corporations), and \$55 million that is likely to set the record for spending on a social issue (California’s Proposition 8 in 2008 on same-sex marriage) (Initiative & Referendum Institute 2008).

Although it is reasonable to expect corporations and powerful citizens to try to maximize their benefits using all of the legal tools they have available, the inconsistency with which the U.S. legal system treats spending in national elections on the one hand and direct democratic elections on the other is nonsensical. However, even considering the legal inconsistencies on contributions and expenditures in both types of electoral campaigns extant in the United States, empirical research indicates that money definitely plays a role in the game of direct democracy, but a rather nuanced one. The literature also suggests that money matters if spent by opponents – but not proponents – of the political outcome (Gerber 1999).

In many states of the union, signatures are collected in what Magleby calls the “initiative industry,” which buys – literally – citizens’ signatures (at the time he wrote his book, each valid signature earned the collector one dollar; today, it may reach ten dollars per signature). This industry was stimulated in 1988 when, in *Meyer v. Grant* [486 U.S. 414 (1988)],³¹ the U.S. Supreme Court struck down Colorado’s law that made it a felony to pay petition circulators based on the argument that the Colorado ban violated the First Amendment.³²

²⁸ See the full text of the case at <http://supreme.justia.com/us/424/1/case.html> (for greater detail on these judicial decisions, see Gerber 1999: 43–44).

²⁹ See the full text of the case at <http://supreme.justia.com/us/435/765/case.html>.

³⁰ See the full text of the case at <http://supreme.justia.com/us/454/290/case.html>.

³¹ See the full text of the case at <http://supreme.justia.com/us/486/414/case.html>.

³² According to the U.S. Supreme Court, circulating petitions involves “core political speech,” and prohibiting the payment of petition circulators by sponsors severely burdens this speech – that is, violates their First Amendment rights – in two ways: “First, it limits the number of voices

“Without preexisting public support, the financial resources of business groups are ineffective in changing the status quo, and the financial resources of most citizen groups are too scarce to bring about much change” (Lupia and Matsusaka 2004: 472).

In 2006, the situation became worse when Governor Arnold Schwarzenegger vetoed a bill that would have banned paying petition circulators according to the number of signatures they collected. For the promoters of this law, paying on a per-signature basis was a strong incentive to dupe potential supporters of a cause. Also in 2005, he rejected a bill that would have forced the initiators of a petition to declare whether the signatures had been obtained by volunteers or paid workers and account for the five largest contributors to the campaign’s account. The governor justified his stand on the basis that both measures have made it tougher to meet the requirements for petitions (Lawrence 2008).

Still, in terms of the “initiative industry,” the American experience differs substantially from evidence gathered in other countries, such as Switzerland and Uruguay. In these two countries, there are no signs of a signature-gathering industry; however, in other nations, such as Colombia, this is not the case. During the winter of 2008, a campaign to allow the president a second consecutive reelection was carried out by the movement *Primero Colombia* (“Colombia First”). One of its officials, Luis Guillermo Giraldo, stated that the cost of the signature-gathering campaign for the constitutional reform was about \$180 million (without considering nonmonetary contributions). The well-known Colombian weekly magazine *Semana* reports that at least one company received as a minimum \$400 million for about 1,200,000 signatures (*La Semana*, November 8, 2008). Considering that more than 5 million signatures were gathered, the whole campaign would have cost at least 2 billion Colombian pesos.³³

In short, the literature has offered important nuances about both the role that money plays in direct democracy and the potential populist syndrome affecting these mechanisms. Evidently, these arguments contradict each other: Either the few rich/wealthy/powerful advance their interests using these tools, or the many impose their will through voting on their preferred (majoritarian) desires. Contradictory arguments do not mean that both are similarly weak or empirically unjustified. They simply cast a shadow of doubt on those arguments by using both simultaneously. The problem of the involvement of money in direct democracy can be minimized by legislation and judicial acts, as it has been in many countries in regard to general elections. The question that persists

who will convey [the petition sponsors’] message and the hours they can speak and, therefore, limits the size of the audience they can reach. Second, it makes it less likely that [the petition sponsors] will garner the number of signatures necessary to place the matter on the ballot, thus limiting their ability to make the matter the focus of state-wide discussion” (Gloger 2006: 1–2). For the full text of the case, see <http://supreme.justia.com/us/486/414/case.html>.

³³ Controlling for the American versus the Colombian purchasing power parity in 2008, it would be approximately U.S. \$3.50 per signature.

concerns citizens' competence in making wise decisions when faced with a choice at the fork in the road.

d. Competence and Alienation of Citizens

Some scholars argue that to avoid potential CI-MDDs, populist policies will flourish in an environment of direct democracy. This conjecture has led to concerns about rampant populism or instability. The basic principle of this idea is that correspondence between popular preferences and political outcomes does not mean necessarily that wise decisions have been made. The crucial point raised here is whether simple, normal, and mortal citizens are sufficiently able or competent to decide wisely on the matter of a given subject.

The incompetence argument has been a classic in the literature against direct democracy and, until recently, against representative democracy (e.g., regarding the extension of enfranchisement to certain groups in society). Assuming for the moment that citizens are incompetent, how can we explain, from a macro perspective, the survival of Switzerland after one hundred and fifty years of systematic use of direct democracy? One can easily argue that Switzerland's survival is due to the nation's extreme wealth, but this argument does not hold. When Switzerland began to develop MDDs, it was one of the poorest countries in Europe, and currently it performs quite well in GDP per capita, unemployment, competitiveness, human development, and many other aspects of social life. I am not claiming that such outstanding performance is a result of direct democracy but rather maintaining that direct democracy has not been as disruptive as some scholars would argue.

Yet it may be the case that a citizen, alone in the secrecy of the ballot, feels fear and incompetence in deciding particular issues. The incompetence argument was elegantly advanced by Montesquieu and revitalized by Schumpeter, Sartori, and other scholars. They claimed that "ordinary" citizens have only the capability to select people to decide on their behalf, not more. According to Sartori's prediction, direct democracy should be self-destructive and should have come to a rapid and catastrophic end on the reefs of cognitive incapacity (Sartori 1987). Nonetheless, it remains to be clearly demonstrated why a misguided choice about policy should be more destructive than a misguided vote for a party or president every four or five years.

Theoretically, the question on voter competence is crucial, but evidence – gathered thanks to advances in methodological instruments designed to answer it – seems to suggest that the people are capable of finding information and remaining consistent with their beliefs when faced with complicated issues in an MDD.³⁴ People behave differently and think differently; thus, "stereotypes about voter incompetence rely on shaky theoretical and empirical foundations"

³⁴ For a good treatment of the effect of information on voting behavior regarding direct legislation, see Gerber and Lupia (1995); Gerber (1999); Lupia and McCubbins (1998); Nadeau, Martin, and Blais (1999); and Clarke, Kornberg, and Stewart (2004). See also Christin, Hug, and Sciarini (2002) and LeDuc (2002).

(Lupia and Matsusaka 2004: 470). As a matter of fact, if there is an empirically oriented literature that has clearly evolved from a rather pessimistic view of citizens' abilities to decide (see the classic work of Campbell, Converse, Miller, and Stokes 1960), a much more positive view of our capabilities also exists (see, e.g., Lupia and McCubbins 1998).³⁵

Current research suggests that citizens use simple pieces of information – heuristics – to make decisions on complicated matters (Lupia 1994). For Bowler and Donovan, citizens “vote in predictable ways, in ways that respond to information demands, and in ways that often are consistent with their ideology and . . . their interests. At a basic level, then, direct-democracy voters appear sufficiently competent to make informed choices” (1998: 41–42). They add that voters “appear able to figure out what they are for and against in ways that make sense in terms of their underlying values and interests. Failing that, others appear to use a strategy of voting *no* when information is lacking or when worries about general state conditions are greatest. Just as legislators do, these voters make choices purposefully, using available information” (Bowler and Donovan 1998: 168).

The fact that citizens use several types of information and do not necessarily respond uniquely to the question of the MDD, but that their votes are a mixed bag of reasoning, has been a topic for discussion as well, particularly with regard to votes that go beyond national borders, such as those related to the EU. It is interesting to note that it was the wave of national rejections on further European integration that triggered these concerns rather than the previous wave of support for Europe.³⁶ There is sufficient evidence that a citizen's vote is a complex combination of the voter's beliefs regarding the question addressed, the environment of the economy where that person lives, and political parties' advice, among other factors. According to Franklin and colleagues, the bottom line is whether citizens' votes represent “second order” elections or not (Franklin, Eijk, and Marsh 1995). If they are right, as Svensson (2002) argues, there may be negative implications for the use of popular votes at the transnational level.³⁷ As expected, they are only partially correct, as the work of Hobolt (2008) shows.

³⁵ See also Benz and Stutzer (2004).

³⁶ Danish citizens in 1992, already a part of the Common Market of Europe, rejected the Maastricht Treaty and rejected Euro accession in 2000. In 2001, the Irish rejected the Treaty of Nice, but authorities succeeded in passing the same issue a year later. In 2003, the Swedish followed their southern neighbors, rejecting the Euro accession, and in 2005, both the French and the Dutch rejected the European Constitution (Schuck and Vreese 2008). The last and soundest rejection occurred in the June 2008 referendum when the Irish rejected the Lisbon Treaty, which caused many to express their concern about how it was possible for 4 million Irish men and women to halt a process that affected 400 million EU inhabitants. The Lisbon Treaty was once more submitted to a direct popular vote on October 2009, but this time was approved by two-thirds of the vote.

³⁷ For the use of national MDDs in the process of European interaction, see also Kaufmann, Wallis, Leinen, Berg, and Carline (2006). On the potentially (ir)responsible uses of these MDDs, see Auer (2005, 2007).

The competence argument is emphasized by most critics of direct democracy, but it is usually accompanied by another argument: the potential alienation of citizens. Some scholars would claim that an excess of CI-MDDs may generate voter fatigue and alienate citizens (Hill 2003: 505–6). Certainly, this has been a recurrent argument for explaining the very low turnout in Swiss national elections (Bühlmann, Nicolet, and Selb 2006). Yet so far, the evidence only partially supports this claim. On the one hand, it is argued that a culture of active CI-MDDs stimulates citizens' political interest (Hajnal and Lewis 2003), knowledge (Mendelsohn and Cutler 2000; Smith 2002), and participation (Tolbert and Bowen 2008; Tolbert and Smith 2005; Wernli 1998). According to Tolbert and Smith, "turnout effects of ballot propositions are well established both in the US and cross-nationally" (Tolbert and Smith 2006: 33). Tolbert and Smith find that there is a positive association between the number of state ballots and electoral participation in both midterm and presidential elections.³⁸

On the other hand, this positive view of the side effects of MDDs is challenged by other studies on direct democracy. For example, revising how different degrees of the use of MDDs at the cantonal level in Switzerland impact electoral participation, Freitag and Stadelmann-Steffen (2008) show a negative relationship between direct and representative democracy due to voters' fatigue and explain this by arguing that intensive direct democracy use makes regular national elections less significant than they would be without direct democracy. This argument on significance was first used by Jackman and Miller (1995) and constitutes a "classic" explanation for the extremely low rate of electoral participation in Switzerland; see also Bühlmann and Freitag (2006). In short, the literature has been rather eclectic on this topic.

3. Summary

Political institutions not only interact among themselves, they also influence and shape the attitudes, behaviors, identities, and preferences of individuals (Mainwaring 1993: 198). They also frame the choices available to individuals through incentive mechanisms (Hall and Taylor 1996; Schofer and Fourcade-Gourinchas 2001). Yet political representative institutions are far from perfect. In the typical representative democratic process, candidates may manipulate citizens to get elected (Maravall 1999) and leaders may cheat once in office (Stokes 2001) or advance their narrow, selfish interests (Pettit 2003). There is no vaccine against these risks.

³⁸ They assess an increase of one percentage point in turnout for the presidential race per initiative appearing on a state's ballot and two percentage points of turnout increase in midterm elections (Tolbert and Bowen 2008). See also Tolbert and Smith (2005). However, Schlozman and Yohai (2008), on the one hand (2008), and Cebula (2008), on the other, claim that voter initiatives in American states have restricted effects on turnout. Grummel (2008), conversely, finds that ethical policy ballot measures generate higher turnout in midterm elections but not in presidential elections.

From a neo-institutionalist point of view, CI-MDDs act as an “opportunity structure” (Freitag and Stadelmann-Steffen 2008). The bottom line of this chapter and, indeed, of the book is that CI-MDDs serve as an intermittent safety valve against the perverse or unresponsive behavior of representative institutions and politicians. On the flip side of the coin, with the coexistence of direct and representative democracy, politicians are subject to an additional, strongly binding external constraint on their behavior (Frey, Kucher, and Stutzer 2001).

Nobody can ensure that CI-MDDs are not risky insofar as they can embrace irresponsible results. However, this also can be claimed with regard to representative democracy itself. As we have seen, some crucial points within the discussion about direct democracy are based on stereotypes of how it is used, as well as on how representative democracy works. Thankfully, as scientific research progresses, many questions intimately related to CI-MDDs are starting to acquire evidence, fill in the blanks, or at the very least, provide partial answers.

About one hundred years ago, democracies were embroiled in ferocious discourses about the extension of suffrage. That discussion partially resembles the current debate on CI-MDDs. At that time, the debate took many diverse shapes, sizes, and degrees in different latitudes across the globe and usually turned focus to the levels of education and property ownership of those to be enfranchised. Those arguments employed ideas such as the following: “[I]ncluding those without property is going to produce irresponsible policies” (because, they claimed, *responsibility* was something that only those with property and wealth acquired). Other arguments touched on gender, race, and education. Currently, some would say that CI-MDDs would also produce irresponsible policies.

However, the irresponsible results of direct democracy, in the context of a liberal democracy, can be minimized, as with any other institution within a legal context that limits its potential scope of action. In other words, any CI-MDD should be constrained by the rule of law reigning in a given polity, which, of course, also includes the international conventions and agreements each polity has signed.

Democracy is, at least theoretically, the definitive distribution of political power, political authority, or “sovereign authority,” in the words of Rousseau. Nevertheless, as we know, “this ultimate dispersal of power has never been realized” (Walzer 2004: 22) and may well never be.