Direct Democracy

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Overview

What?	• Direct democracy describes those rules, institutions and processes that enable the public to vote directly on a proposed constitutional amendment, law, treaty or policy decision. • The most important forms of direct democracy covered in this primer are referendums and initiatives.
Why?	• Direct democracy enables people to vote on important issues that may be excluded from, or cut across, representative party politics. The decision of the popular majority can be expressed beyond representative processes that are potentially distorted and elitist.
Why not?	• Mechanisms of direct democracy may become tools of majoritarian populism, by which leaders are able to bypass and weaken representative processes by appealing directly to the people. They raise questions of voter competence and governability, and run the risk of polarizing political opinions. There are also considerations of cost, time and logistics.
Where?	• Referendums are occasionally used throughout the world as an extraordinary measure, most often to ratify or amend a constitution or to decide on questions of statehood. • Some democracies make more extensive and regular use of referendums and initiatives, making these instruments complementary to representative democracy.

About this series

These constitution-building primers are intended to assist in-country constitution-building or constitutional-reform processes by: (i) helping citizens, political parties, civil society organisations, public officials, and members of constituent assemblies, to make wise constitutional choices; and (ii) helping staff of intergovernmental organizations and other external actors to give good, well-informed, context-relevant support to local decision-makers. The primers are designed as an introduction for non-specialist readers, and as a convenient aide-memoire for those with prior knowledge or experience of constitution-building. Arranged thematically around the practical choices faced by constitution-builders, the primers aim to explain complex issues in a quick and easy way.

About International IDEA

The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization with a mission to support sustainable democracy worldwide.

What Is the Issue?

Democracy means 'rule by the people'. In all but the very smallest and most local communities, however, the population is too large and the issues are too complex for 'the people' to be constantly engaged in decision-making. For this reason, modern democratic states are almost universally based on principles of representative government. This means that, although the people do not govern themselves directly, they do decide who should govern—and, critically, who should be removed from government—through free, fair, regular and competitive elections. However, there are several reasons why a representative assembly might not provide a faithful and accurate reflection of the people's views on every particular issue:

- In almost all democratic societies, elected representatives are typically drawn from the higher social classes, whose wealth, education or status differentiates them from the average citizen. Throughout the world, representative bodies usually under-represent women, marginalized minorities and those who stand outside of party politics.

- Representatives are chosen for their general stance across a range of policy issues, not all of which are equally important to the voters. Factors such as their record in office, character, local connections and competence can also influence election outcomes. It is therefore possible that a legislative majority elected, say, on its handling of the economy, may not necessarily be in agreement with the popular view on, say, a particular social- or foreign-policy decision.

- Representatives are typically chosen for a term of several years, and new issues may emerge that did not feature in previous election campaigns. The public's view of issues may also change between elections, such that the legislative majority and popular majority differ with respect to those issues.

- Representatives living in the capital and enjoying a privileged position can easily be influenced by special interests. They live in a world of expense accounts, foreign travel, official cars and high society—they can easily ignore the everyday needs and interests of those who elected them.

Constitution-makers may therefore wish to consider mechanisms of direct and participatory democracy that have been developed to complement the representative process.

Forms of Direct Democracy

In this primer, the term 'direct democracy' is used to designate mechanisms that enable the electorate to vote on a specific law, treaty, constitutional amendment, policy or other public decision. The main forms of direct democracy are **referendums**[1] and **citizens' initiatives**:

- *Referendums:* Referendums give the people a direct vote, which may be binding or advisory, on a specific political, constitutional or legislative issue that is *referred* to them by governing institutions (presidents, cabinets, parliaments etc.). The people's role is usually limited to ratifying or repealing decisions that have already been taken by such institutions or to accepting or rejecting propositions that these governing institutions have put forward.

[1] The alternative plural form 'referenda' is also widely used.

- *Citizens' initiatives:* These give the electorate a direct vote, which may be binding or advisory, on a specific political, constitutional or legislative issue that is *initiated* by the people. They precede the decisions of governing institutions, and in some jurisdictions may even enable new laws or constitutional amendments to be adopted without the consent of the elected legislature. They are typically proposed by a petition with a certain number of signatures.

- Some mechanisms are difficult to classify. For example, the abrogative referendum in Italy has many characteristics of an initiative, in that it can be triggered by a public petition, but it is usually classed as a referendum because new laws cannot be proposed; it only allows people to vote retrospectively on repealing a law that has been enacted by parliament.

The terminology for direct-democracy mechanisms is not standardized. Different terms are used in different counties to describe similar institutions and processes. Citizens' initiatives are sometimes also known as ballot propositions or citizen-initiated referendums, depending on the jurisdiction and context. Referendums conducted at the discretion of the government have often been called plebiscites, a term that may have negative connotations in some contexts. For clarity, this primer uses the terminology set out in *Direct Democracy: The International IDEA Handbook*.

Another mechanism that is frequently referred to as a form of direct democracy is the **recall vote**, which enables citizens, usually following a petition signed by a certain number of constituents, to vote on the removal from office of a representative or elected official. Recall does not, however, enable people to vote on a substantive legislative or policy decision, so it is best considered as a variation on the rules of a representative democracy; as such, it is not covered in this primer.

Think Point: What problems of representative democracy are evident in this country? Do political elites effectively serve and represent the people, or do they pursue their own personal or partisan interests? Are the majority of the people apathetic or dissaffected from public life? How would direct democracy help citizens overcome these problems? Could it make these problems worse or create new ones?

Institutions of direct democracy are found in a majority of the world's constitutions. Referendums, in particular, have become widely accepted and increasingly frequent instruments of government in many parts of the world, and it is now unusual for a new constitution to be drafted without at least some provision for direct democracy.

Think Point: How democratic should democracy be? Is it democratic—or even safe—to leave policymaking and legislation to specialized elites such as full-time politicians, civil servants and judges? What role should the citizens play in a democracy? How often, and by what means, should citizens take decisions? Is there such a thing as too much democracy?

Direct Democracy: Advantages and Disadvantages

Arguments in Favour of Direct Democracy

- *Promoting participation:* Many theorists see public participation in democratic politics as an intrinsic good that is essential to human flourishing. Others argue that participation has great instrumental value, in helping to protect democracy from public apathy. Either way, the experience of meaningful participation in public decisions helps people to transcend personal concerns and encourages citizens to take care of the public good. It has been argued that the mere act of choosing representatives every few years provides insufficient engagement in political decision-making to develop the qualities of good citizenship. More frequent and direct participation would enable citizens to become more engaged in public life.

- *Popular sovereignty:* Direct democracy is an expression of popular sovereignty—the right of the citizenry to decide on matters of fundamental importance, directly and authoritatively, without mediation by their representatives. This may be symbolically important, or may it be necessary for the legitimation of key decisions, such as establishing a new state or constitution.

- *Giving voice and control to ordinary citizens:* Elected representatives may, once in office, put the interests of privileged elites before those of ordinary citizens, treating their position as a personal entitlement rather than a public office. Representatives from different parties may collude to protect elite and incumbent interests at the expense of broader public interests. Direct democracy mechanisms have been adopted, in part, to counteract these tendencies. Depending on the precise rules adopted, referendums and initiatives may give direct voice to ordinary citizens, enabling the citizenry to protect general interests from betrayal by political elites. In Iceland in 2010, for example, a law on debt repayments that had been passed by parliament was referred to the people in a referendum and was defeated, with 98.1 per cent of the electorate voting against the measure.

- *Unpacking the range of choices offered by parties:* Parties competing in elections typically put forward manifestos or platforms that set out their priorities for government, specific policy commitments or at least their general approaches to political questions. The winners of elections then claim a mandate to govern in accordance with these commitments. In most cases, however, voters can only choose between parties as a package, with little scope for influencing the content of this bundle of policy options. A party might win an election on the basis of its economic policy, but its manifesto may contain a particular measure that is deeply unpopular. Referendums and initiatives potentially enable citizens to separate out their preferences, voting on particular measures on their own merits, decoupled from election manifestos. They therefore provide an additional channel of public control over decision-making, and can ensure that legislation and public policy conform more closely to citizens' preferences.

- *Forcing incumbents to confront difficult issues:* Minority-triggered referendums or citizens' initiatives may provide a way of forcing onto the political agenda an issue that the incumbent government or legislative majority would prefer not to confront.

- *Resolving unexpected questions, authorizing changes in direction:* The election manifestos or platforms of political parties cannot provide for unexpected circumstances that may require new policies or drastic changes of political direction. A representative system gives incumbents broad latitude to respond to such unexpected circumstances, subject to their responsibility at the next election. However, if a government has to deviate

substantially from its manifesto commitments or undertake a new and controversial policy without explicit electoral endorsement, this may result in a lack of legitimacy. Holding a referendum allows a government to seek popular endorsement and thus to legitimate a response to such changed circumstances. In Canada, for example, the Liberal government of Mackenzie King made an election promise in 1940 not to introduce military conscription, but later came under increasing military pressure to do so. A referendum was held in 1942 to release the government from its commitments and to authorize the introduction of conscription.

- *Settling controversy:* Referendums and citizens' initiatives enable the people to express their clear will on a controversial matter. In so doing, they may settle the issue: once the people have spoken, debate can move on to other topics. Even if the first referendum on a given topic does not settle an issue, a second referendum usually will. For example, the referendums on abortion in Portugal (1998 and 2007) and on electoral reform in Ireland (1958 and 1968) were able to settle these issues in an authoritative way.

Arguments Critical of Direct Democracy

- *Citizen information and competence:* Direct democracy demands from citizens a relatively high level of knowledge of issues that are sometimes complex. Concerns are often expressed that voters may not always have the capacity or necessary information to make well-informed decisions about the issue at stake. These objections, however, could arguably be made against *all forms* of democracy, not just direct democracy. In a democracy, people need to be informed about, and interested in, public affairs.

- *Voter irrationality:* Although direct democracy lets the people speak, it is not always clear what they are trying to say. Referendums and citizens' initiatives both address a particular question and are usually intended to settle that question in a clear and decisive way, but people do not always vote with that question alone in mind. Many unrelated factors, such as the standing of the political parties or their leaders, can have an influence on outcomes. For example, a 2011 referendum on electoral reform in the United Kingdom was defeated by a large majority, in part because many voters associated the proposed reform with the leader of the junior coalition partner, who was widely perceived to have lost the trust of the public.

- *Voter fatigue:* If direct democracy mechanisms are used too often, and in particular if they are used to decide relatively complex and technical issues rather than important matters of principle, there is a risk of voter fatigue. Many voters, having neither the time nor the knowledge to make so many decisions for themselves, may disengage from the political process. Even in Switzerland, which has a very deep tradition of participatory democracy, it is rare for more than half of eligible voters to cast a ballot in referendums and initiatives; those with no strong view on an issue will typically abstain. This leaves decisions in the hands of the small (but intense) minorities who turn out to vote. Voter fatigue can be mitigated by holding direct democracy ballots at the same time as other elections and (up to a point) by effective public information campaigns, but it is also worth considering turnout quotas (see below) in order to prevent situations where an intense minority can decide on behalf of the majority.

- *Shifting or avoiding responsibility:* Politicians may use referendums to avoid responsibility for deciding difficult issues, especially issues on which the governing party or coalition is internally divided. By referring such matters to the people, politicians may seek to absolve themselves both from the obligation to provide leadership and from public accountability for the consequences of decisions taken. This may be criticized as a lack of principled leadership.

- *Short-term vs. long-term policies:* Direct democracy expresses public opinion on one issue at a particular time. It does not require voters to consider issues holistically, judging a party or coalition by its record over a course of several years. Excessive reliance on direct democracy may therefore encourage policies that are popular in the short term (e.g. tax cuts) to the detriment of long-term goals (e.g. reducing the public debt or investing in public services), as California's experience has demonstrated.

- *Governability and policy coherence:* Frequent use of direct democracy mechanisms may overload the political system, increasing expectations and placing more demands upon the state than it is able to respond to, thus weakening the legitimacy of the democratic system as a whole. If the people make a series of mutually incompatible decisions, it may also lead to policy incoherence. It is important therefore to consider the capacity of the state and the need for coherent policies in determining who can initiate a referendum and on which subjects a referendum can be held.

- *Lobbying and special interests:* Referendums and citizens' initiatives may sometimes be proposed by rich and powerful interests, acting to promote their own financial or social interests at the expense of the common good. The process of holding a referendum or citizens' initiative may also unduly favour those with the money and resources needed to mount a strong campaign. In the United States, in particular, a growing literature is critical of California-style initiatives because of concerns regarding distortion of the process by well-funded, well-organized special interests. In order to mitigate this tendency, careful consideration needs to be given to the rules surrounding the use of referendums and initiatives, particularly those regarding signature gathering and campaign financing.

- *Conservative bias:* Some scholars have argued that referendums and citizens' initiatives disproportionately favour conservative policies over progressive ones. Non-elite citizens are typically less educated and less cosmopolitan than elites, and may maintain more traditional or even reactionary values: transferring decision-making from (relatively elite) politicians to ordinary citizens can therefore hinder progressive reforms. Moreover, in a referendum campaign, the 'no' side, favouring the status quo, typically has a structural advantage over those who are advocating change (the 'yes' side is usually seen as having the burden of proof). Evidence for the regressive tendency of direct democracy is, however, disputed, as popular majorities have in many cases embraced progressive change at the ballot box.

- *Authoritarian and populist abuse:* Historically, authoritarian rulers such as Napoleon in France, Franco in Spain, Pinochet in Chile, Marcos in the Philippines and Park Chung Hee in South Korea have used uncompetitive referendums to create a false veneer of democratic legitimacy. Referendums may also enable populist leaders to bypass legislative, judicial or constitutional restraints on their power by appealing to the masses. Referendums have been used in this way to justify a so-called self-coup, to marginalize domestic political opposition or to overturn constitutional prohibitions on re-election. Sometimes, however, the authoritarian abuse of referendums can backfire. In 1988, for example, Pinochet unexpectedly lost a referendum to extend his term of office, and his regime collapsed shortly thereafter.

- *Cost and logistics:* Holding a poll is expensive. It can place considerable logistical burdens on electoral management bodies, local authorities, security services and other state agencies. It also demands a lot in terms of civic education and engagement from political parties and campaign groups. In developing countries, where resources are scarce, and where voting may be prone to violence, frequent reliance on direct democracy may be impracticable.

- *Social conflict and minority rights:* Referendums and initiatives, particularly with a simple-majority adoption requirement, may deepen divisions in society, threaten the

rights of minorities and increase racial, ethnic, linguistic or religious tensions. In 2012, for example, Latvia held a citizens' initiative to amend the constitution to recognize the linguistic rights of the country's Russian-speaking minority. The campaign further increased tensions between the Latvian-speaking and Russian-speaking sections of the population. In a fragmented and weakly consolidated democracy, or in situations where a constitutional settlement involves delicately balanced compromises, the majoritarian effect of referendums could undermine agreements and undermine attempts to promote inclusive arrangements. Rules requiring supermajorities (e.g. a two-thirds majority of votes cast for a valid decision) or double majorities (e.g. a majority of votes cast overall, plus a majority of votes cast in a required number of constituent units) may, in some circumstances, help to overcome such concerns. Another approach is to constitutionally entrench minority rights and to exclude them from the scope of direct democracy, e.g. a proposed referendum might have to be certified by the Constitutional Court to ensure it does not violate minority rights before being voted upon.

- *Polarization:* Direct democracy mechanisms usually require people to vote yes or no to a specific and often very controversial issue. Once the question has been set and the options have been decided upon, nuance may be lost, and opportunities for compromise may be limited. As such, direct democracy can polarize debate, exacerbate political divisions and increase the potential for destabilizing reactions such as boycotts or violence. Kenya's constitutional referendum of 2005 is an example of a vote that had such a polarizing and damaging effect.

Think Point: How might direct democracy affect expected policy outcomes? Who stands to gain? Can direct democracy lead to better policy decisions in the long term or hinder them?

The Role of Direct Democracy in the Political System: Occasional Supplement or Regular Feature?

In most jurisdictions, direct democracy provides an occasional supplement or corrective to a system of representative government. For example, Luxembourg has held only four referendums since 1919. In Sweden, only six referendums have been held in 80 years. In some countries, however, direct democracy has become a more integral part of the political system, enabling the citizens to share policymaking with their representatives on a much more frequent basis. Switzerland, to cite the most famous example, has held well over 100 national referendums and citizens' initiatives in the last century, and it is not uncommon for several national, cantonal and local referendums and initiatives to be held at stated intervals throughout each year. Likewise, the US State of California makes regular use of referendums and citizens' initiatives, and it is not unusual for Californians to vote on 10 or more propositions each year. Between these extremes, there are several countries where mechanisms of direct democracy are neither very rare nor very frequent: Italy has held around 20 referendums since the restoration of democracy in 1946; Ireland has held almost 40 referendums since independence in 1922. A key question for constitution builders to consider, therefore, is whether direct democracy is intended to be an occasional supplement and complement to representative democracy, or whether it is intended to be used as a regular part of ordinary policymaking and legislation. The answer to this question will determine the approach to the subsequent constitutional-design questions, such as who can trigger a direct vote, the issues on which a direct vote may or must be held, whether the results are advisory or binding and much else besides.

Institutional Choices and Design Considerations

- *Mandatory referendums:* A mandatory referendum is a vote of the electorate that is called automatically under particular circumstances. Most typically, mandatory referendums are required to approve some or all constitutional amendments (e.g. in Australia, Botswana, Denmark, Ghana and Ireland). Other examples of mandatory referendums can be limited to very specific issues. In Iceland, for example, a mandatory referendum must be held on any proposal to change the established status of the Lutheran Church. Mandatory referendums may also arise from certain situations or decisions. In Latvia, for example, a referendum must be held if the president orders the dissolution of parliament (the decision being that either parliament is dissolved or the president is dismissed). About half of all countries have provisions for mandatory referendums of some sort (International IDEA 2008: 42).

- *Optional referendums:* An optional referendum is a vote of the electorate that does not have to be held under a mandatory rule but that can be initiated at the option of political actors—most usually by the executive or legislature. The Constitution of Spain, for example, allows the government, with the consent of the lower house of parliament, to call a consultative referendum on any 'political decision of special importance'. The explicit constitutional provision for optional referendums may be minimal. For example, the Constitution of Luxembourg states simply: 'The electors may be requested to pronounce themselves by way of a referendum in cases and under conditions to be determined by law.' Countries whose constitutions make no special provision for direct democracy may nevertheless hold optional referendums under ordinary legislation. For example, Norway's Constitution makes no mention of referendums, but several referendums have been held under ordinary law. A characteristic of optional referendums is that they are usually held only when it suits the government to do so, although governments may use this to beneficial effect, either to legitimize controversial policies or to settle a politically divisive issue: an example would be the 1992 referendum in South Africa, which enabled the government to show public approval for ending apartheid.

- *Who can call a referendum or initiative?* Although most optional referendums are called by the government, there are also some jurisdictions in which a legislative minority of a sufficient size may demand a popular vote on an issue. In Denmark, one-third of the members of the Folketing (parliament) can demand a referendum on an issue, even when it has already been decided by a majority of the assembly. In Iceland, the decision to call a referendum rests with the (non-executive) president, who does not necessarily reflect the government's view. The number of signatures required for a citizens' initiative or petition-triggered referendum can vary considerably from one jurisdiction to another. Setting a high minimum will make it more difficult for the process to be used, and will give disproportionate influence to those campaigns with effective signature-gathering power. A lower threshold, in contrast, is likely to result in more initiative votes or recalls being held, but it does not ensure that such efforts will be successful. Generally, the threshold should be low enough for the process to be accessible to citizens but sufficiently high to discourage their frivolous use. In Latvia, for example, the threshold is set at 10 per cent of electors. This figure would be very high in a large jurisdiction, but in a country the size of Latvia it allows about 100,000 people to initiate a referendum. In California, the threshold is 5 per cent of the votes cast at the latest gubernatorial election. Owing to California's large population, this means that more than half a million signatures must be gathered—a figure that is difficult to reach without professional signature-gatherers. This has led to the complaint that California's system favours rich and well-organized interests who can afford to pay for professional canvassers (Smith 2009).

- *Rejective (veto) or abrogative:* The process by which a referendum or citizens' initiative might be held varies according to whether the issue in question has already been passed into law. If a referendum is held on pending legislation, it is a rejective or veto referendum (in these cases, citizens are usually given an opportunity within a certain period of time to reject a law, after which, if they do not reject it, it comes into force). Where a referendum is held to repeal a law that has already come into force, it is known as an abrogative referendum.

- *Binding or advisory:* The result of a referendum or citizens' initiative may be legally binding, as determined by the law or constitution under which it is called, or it may be used by the authorities for advisory purposes only. In practice, advisory referendums are usually treated as *politically*, if not *legally*, binding, especially if the result is decisive, as governments will not wish to be seen to oppose the will of the people.

- *Exclusion of certain subjects:* Certain subjects may be constitutionally or legally excluded from being the subject of a referendum. In Uruguay, direct democracy instruments cannot be used in relation to laws concerning fiscal policy or laws applicable to the executive power (e.g. pension laws for civil servants). In Italy, tax and budget laws, amnesties and pardons, and international treaties cannot be submitted to a popular vote, and the Constitutional Court is empowered to determine whether a request for such a vote is legal. The purpose of these restrictions is to protect the financial integrity of the state (in particular, with respect to the interests of its creditors and the responsibility of the government for management of the budget), to protect the state's reputation in foreign relations or to uphold due process in the determination of individual rights. Moreover, budgets require complex trade-offs and carefully negotiated bargains between various state and societal interests: the general public is incapable of meaningful participation in these trade-offs.

- *Turnout quotas:* A turnout quota is a rule specifying that the result of a referendum is not valid, binding or affirmative unless at least a minimum percentage of those entitled to vote in the referendum actually vote or unless the votes cast amount to a certain percentage of those entitled to vote. Turnout quotas exist in many jurisdictions. In Denmark, for example, referendums on constitutional change require approval by a majority of votes cast and at least 40 per cent of the electorate. Turnout quotas can prevent intense minorities (small groups who care very strongly about an issue, and who are therefore highly motivated to vote) from imposing their will on silent majorities (who, feeling less passionate about the issue, are less inclined to vote). As such, turnout quotas may increase the legitimacy of the result. However, a very high turnout quota (e.g. above 50 per cent) may make it unduly difficult to change the *status quo*.

- *Referendum provisions in federal constitutions:* Countries with federal, regionalized or highly decentralized constitutional systems may have additional referendum requirements that reflect the theory of dual sovereignty between the people of the country as a whole and the people of the constituent states or provinces. In Switzerland, for example, national constitutional proposals must be supported by a majority of citizens nationally and by a majority of the cantons in order to be successful. In Australia, likewise, a referendum on a constitutional amendment is passed only if it achieves an overall majority of the national vote and a majority in at least four of the six Australian states. Referendums may also be required to confirm any change in state boundaries (e.g. the Baden-Wurttemberg boundary vote in Germany in 1951) or to change any special privileges given to particular jurisdictions (e.g. changes to the Statutes of Autonomy in Spain). Federations can also permit considerable variation in the scope of direct democracy at the federal and state/provincial level. German provincial constitutions and US state constitutions, for example, often make extensive provision for direct democracy at the state and local level despite the absence of federal referendums.

- *Durability of the outcome:* Whether binding or advisory, it is not always clear for how long the result of a referendum is considered valid and applicable. Swedish voters rejected a proposal to switch from driving on the left-hand side of the road to the right-hand side in a 1955 referendum; in 1963, however, the Swedish Parliament passed a law that enacted this change without a further referendum. A related question concerns how often a proposal can be put to the people. It is not uncommon for referendums on the same issue to be held two or more times. Portugal voted twice on very similar abortion law proposals (1998, failed; 2007, passed). Scotland voted twice on the creation of a devolved legislature (1979, failed; 1997, passed). In Palau, a referendum on an agreement with the United States was voted upon seven times between 1983 and 1990 before being passed (under different and easier rules) on the eighth attempt in 1993—this sort of *'neverendum'* may be regarded as undemocratic, since the initiator of the proposal 'will not take no for an answer'. It may be good practice, for the avoidance of uncertainty, to address this kind of question in advance in the constitution or in a general referendum law, rather than resolving it only when a specific issue is under debate.

- *Single-subject rule:* Governments have sometimes attempted to manipulate referendum results by joining together two or more unrelated issues and asking the voters to accept or reject them as a package. In France, for example, a referendum was held in 1961 on a bill that granted independence to Algeria and at the same time regulated interim governance arrangements during the transition to independence. This frustrated certain parties in France who supported the principle of independence for Algeria, but did not support the institutions of interim governance proposed by the President. To avoid this problem of bundling two or more issues together, the constitution may restrict referendums to just one subject. This ensures that the public is voting only on one issue at a time, enabling public preferences to be assessed more clearly and reducing the scope for manipulation of the outcome. Defining what a single subject is can be difficult but not impossible: an impartial arbiter, such as the Constitutional Court or Electoral Commission, may be authorized to rule on this.

- *Timing:* The timing of a referendum or citizens' initiative can affect the voter turnout. For example, if a referendum is scheduled at the same time as a major (parliamentary or presidential) election, turnout is likely to increase. Conversely, if the referendum is held as an isolated event, turnout might be low (especially if the vote is on an obscure matter). It is important that sufficient time be allowed for a free and fair campaign to take place, and for voters to inform themselves of the issues involved. In some jurisdictions, especially those that make frequent use of direct democracy, it is usual to hold votes on two or more different questions on the same day. For example, in the 2003 referendum called by President Álvaro Uribe of Colombia, 19 separate issues were to be decided by the voters. The advantage of this procedure is that the voters are involved more efficiently in the decision-making on a wider range of public affairs, which may increase democratic legitimacy. The drawback is that the voters have to be informed about a large number of issues that may not be related to each other. Obtaining sufficient information for deciding how to vote on so many issues is time-consuming and intellectually demanding; public debate cannot penetrate deeply into all subjects, and the campaign tends to be less focused. If votes on several issues at the same time result in less informed decisions or a sense of voter confusion, the democratic legitimacy of the process may be undermined.

- *Multi-option ballots:* Usually, referendums and citizens' initiatives give the voters the possibility to vote for or against a specific proposal. In some cases, voters have been given a choice between three alternatives, e.g. in Sweden in 1980 on the issue of nuclear power. The clearest result is obtained if the voters are asked to choose between two alternatives. If they have to choose between three or more alternatives, it may be difficult to interpret the referendum result. If a choice between more than two alternatives is really desired, however, a vote where the alternatives are rank-ordered could be applied, or the issues could be split up into two or more questions, each with two alternatives, as in the Republic

of Ireland, where policy on abortion was split up into three separate questions in the 1992 referendum dealing with that issue.

- *Question setting:* The wording of a referendum question can greatly influence the result and the legitimacy of the outcome. If those proposing a referendum or citizens' initiative have the right to set the wording of the question, this will strengthen their ability to get their preferred result, but at the cost, perhaps, of not having that result recognized by opponents. In some jurisdictions, an electoral management body may have oversight over the formulation of the referendum question, so that this responsibility is placed in the hands of a more politically neutral body. The question of appeal should also be addressed. Should there be a possibility of appeal against the way in which the ballot text has been formulated? If this option is adopted, who has the right to appeal must be precisely established, for instance, a governmental institution different from the one that wrote the ballot text or a certain number of citizens, and within what period of time. Consideration should also be given to which body shall be called upon to decide upon the matter. In the same way, there should also be a clear regulation about the period of time the body will have to resolve the conflict.

- *Electoral integrity:* The principles of credible and legitimate elections—freedom, fairness, secrecy of the ballot, transparency, accountability and so on—also apply to direct democracy. Is there an independent elections commission? Are there robust rules on transparency, campaign financing and so forth? If so, is it made clear that these rules also apply to referendums and initiatives? What special provisions, if any, need to be made?

- *Campaign finance:* National constitutions vary in the extent to which they regulate campaign finance for elections and referendums. The effectiveness of referendums and citizens' initiatives as tools of democracy, rather as a means of manipulation by elites, depends partly on whether poorer groups can have equal campaigning opportunities.

- *Extent of constitutional provisions:* Constitutions vary in the extent to which they specify the process and organization of direct democracy mechanisms in the constitutional text. The Constitution of Ghana (1992), for example, includes many important rules governing the conduct of referendums, specifying the role of the Electoral Commission and the turnout and majority rules applicable to various types of referendum. The Constitution of South Africa (1996), in contrast, makes very sparse reference to referendum rules, and leaves much of what has been discussed above to ordinary legislation. Defining such matters as the timing of referendums, the turnout and majority requirements, the organization of the referendum and the rules for campaigning in the constitution may protect the neutrality of these rules and ensure that referendums are less likely to be abused by incumbent majorities. If it is decided to omit these from the constitution, it might be advisable to pass a general referendums act that separates discussion about the rules from discussion of the substantive issue being decided by the people. Failure to do this may undermine the neutrality of the referendum process and weaken the legitimacy of the result.

- *Referendums and the distribution of powers:* The power to call a referendum is potentially one of great importance. A person or institution with this power will be able to use it—or threaten its use—in order to influence the policy agenda. Where can this power be most safely and effectively placed, and how does it fit into the political system as a whole? If there is a need to prevent the excessive concentration of presidential power, it might not be wise to give the power to call referendums to the president, especially in new, fragile or divided democracies. Alternatively, if there is a need to provide external checks on the power of an otherwise omnipotent parliament, it might be advisable to enable an extra-parliamentary actor, such as a non-executive president, to call referendums under certain circumstances. Giving the power to the legislature may be advisable, but this creates risks of its own: legislators may have an incentive to throw difficult questions to the public to avoid political blame.

Think Point: How strong are the foundations of democracy in this country? Will more direct democracy help to strengthen those foundations, or could it undermine them? What precautionary rules and procedures would help ensure that direct democracy supports, and does not hinder, the consolidation of democracy?

Alternatives to Direct Democracy

There are various alternatives to direct democracy that might be considered as alternative means to pursue similar goals such as promoting participation or acting as a check on elected governments:

- *Bicameralism:* Some forms of bicameralism may be an effective substitute for direct democracy if the aim is to place an additional democratic check on the power of elected majorities. This will usually require a contestatory second chamber that is equipped with strong veto powers and is likely—because of its electoral system—to have a different partisan condition from the primary chamber. Electing a second chamber does not, however, allow voters to express their opinion on—and so to approve or reject—a particular issue. A second chamber is also likely to over-represent elites in the same way as the first chamber.

- *Dissolutions and new elections:* If direct democracy is used to ratify important decisions on which the will of the sovereign people ought to be expressed, such as amendments to the constitution, one solution is to require the decision to be approved twice by two successive parliaments, with an intervening dissolution of parliament and a general election. This is used in the Netherlands and Norway. The limitation of this method, however, is that the question of importance being referred to the people may be obscured in the election campaign by other issues—such as who will form the next government—and that the decision of the newly elected parliament may not reflect public opinion on the specific issue in question.

- *Participatory democracy:* In countries where elections are difficult to run, or where a referendum may be divisive, the participatory measures discussed at the beginning of this primer may provide an alternative means of enabling people's views and opinions about political issues to be heard, especially if the government is obliged by the constitution, statute, or convention to make use of participatory measures and is required to do so in a way that is open, transparent and makes a deliberate attempt to reach out to non-elites.[2]

- *Opinion polls and focus groups:* Another approach that is widely used in established democracies is for governments to conduct opinion polling and focus groups. These techniques may be privately funded, and usually lack the openness, decision-making power and legitimacy of either a nationwide popular vote or a public participatory process, but they may nevertheless help to keep the government in touch with public opinion. Of course, whether and how the government responds to this will depend on other political and electoral factors: in many cases, governments use this information to sell their preferred polices to the public rather than to reshape their policies in accordance with expressed public preferences.

[2] See the primer on Participatory Democracy.

Think Point: Might these alternatives to direct democracy be more appropriate in your context? Would instruments of participatory democracy that engage smaller groups of people in a more collaborative and discursive way provide a suitable alternative? What do these alternatives to direct democracy NOT provide?

Examples

COUNTRY	TYPES OF DIRECT DEMOCRACY	INITIATOR	SUBJECT MATTER	RULES: EFFECT, MAJORITIES ETC.
Sweden Democratic since 1917	**Consultative referendums**	Optional, at discretion of parliament	Any subject	Advisory
Parliamentary unitary, multiparty.	**Constitutional referendum**	Mandatory if requested by one-third of members of parliament	Relate only to constitutional amendments that have already been approved by parliament but not ratified by successive parliament	Results are binding if no, advisory if yes (referendum can only ***veto*** a proposed amendment, final approval rests with the parliament)
Latvia Democratic since 1991	**Constitutional referendums**	Mandatory if parliament amends certain provision of the constitution	Certain fundamental constitutional amendments	Binding: adopted if at least half of the qualified electorate votes in favour
Parliamentary, unitary multiparty	**EU treaty referendums**	Optional, at discretion of parliamentary majority	On substantial changes to relationship between Latvia and EU	Binding: adopted by majority vote provided the turnout is at least equal to the previous parliamentary election
	Citizens' initiatives	One-tenth of electorate, by petition to the president	Any law or constitutional amendment, but excluding budget and finance laws, mobilization/ conscription, declaration of war, treaties, and states of emergency	Binding: in the case of ordinary laws, adopted by majority vote provided the turnout is at least equal to the previous parliamentary election; in the case of constitutional amendments, adopted if at least half of the qualified electorate votes in favour
	Minority- or presidential-veto referendums	One-third of members of parliament or president may suspend a new law for two months; a referendum must be held if 10 per cent of voters so petition during this time	Any law, subject to the same restrictions as above	Binding: if the number of voters is at least half of the number of those who turned out in the previous election; if the majority votes to reject the law, it is rejected
	Dissolution referendums:	president	Dissolution of parliament (unicameral).	Binding: If more than half the votes are cast in favour of dissolution, parliament is dissolved and new elections held; if not, the president is dismissed

Uruguay	**Rejective referendums**	25 per cent of the electorate	To reject a law passed by the legislature during the previous year; excludes laws that impose taxes, and certain other financial matters	Note that in Uruguay the president does not have the authority to propose referendums—that power belongs to the people, except where it is mandated for constitutional amendments
	Legislative initiatives	25 per cent of the electorate	To propose a law (restricted as above)	
	Constitutional citizens' initiatives	10 per cent of the electorate	Constitutional amendments	Referendums and initiatives on constitutional amendments are binding; approved if passed by a majority of those voting, being at least 35 per cent of the electorate; constitutional referendums are held at the same time as the next legislative election (unless this would result in a vote being held within six months of a proposal being made, in which case the vote is held at the same time as the next legislative election)
	Constitutional referendums	Mandatory on approval of an amendment by legislature or by constitutional convention	Constitutional amendments	
Ghana Democratic since 1992	**Referendums on changing regional boundaries**	Mandatory	Changes to regional boundaries	Binding, but passed only if approved by 80 per cent of votes cast, with at least 50 per cent turnout; for merger of regions, approval of 60 per cent of people entitled to vote is required
Presidential republic; two-party system	**Constitutional referendums**	Mandatory	Certain parts of the constitution that are entrenched	Binding, but passed only if approved by 75 per cent of votes cast, with at least 40 per cent turnout
	Other referendums	Optional: legislature may pass law calling for referendum	Any issue—no restrictions	Not stated whether binding or not; must be passed by 70 per cent of votes cast, with at least 35 per cent turnout
Botswana Democratic since 1966 Hybrid system, dominant party	**Constitutional amendments**	Mandatory	Certain constitutional amendments	Binding: must be passed by simple majority of those voting; (note: turnouts in referendums have historically been very low: the 1997 referendum on electoral reform had a 17 per cent turnout, while the 2001 referendum on reform of the judiciary had a turnout of less than 5 per cent)

Decision-making Questions

(1) What role is direct democracy supposed to play in the political system as a whole? Is it intended to be an occasional addition to a representative system or a regular feature of political decision-making?

(2) How does the answer to the first question shape the direct democracy provisions of the constitution in terms of who may trigger a direct vote and for what purposes?

(3) How do the direct democracy provisions reflect the distribution of powers in the political system? Do they make any one institution or actor too powerful?

(4) How divided and polarized is the political system? Will direct democracy mechanisms exacerbate such divisions? What restrictions, if any, need to be placed on the subject matter of referendums and initiatives to prevent this?

(5) Who will set the question and determine the timing of direct democracy votes? Should these matters be regulated in the constitution, or should a body to regulate them (e.g. an elections and referendums commission, a constitutional council, etc) be created for that purpose?

(6) Is it clear from the text of the constitution who has the right to initiate direct votes, on what subjects they can be held and who gets to decide whether the subject matter of a proposed vote is valid? Does the text contain ambiguous rules that could be a future source of conflict?

(7) Is it clear from the text of the constitution whether direct democracy mechanisms are to be advisory or binding? Can the same question be put multiple times?

(8) How broad have consultations been? Are direct democracy measures supported by all relevant actors? Does anyone want to sabotage the process? If so, why? Can their objections reasonably be met?

References, resources and further reading

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