

## Direct Democracy and Referendum

The notion of *direct* democracy (DD) is not necessarily the best semantic choice to describe a democratic system in which referendums and citizen’ initiatives come into play in order to *complement* the political processes within the institutions of representative democracy. Therefore, some scholars refer to “semi-direct democracy” while others propose to abandon the adjective “direct” altogether and speak of “popular vote processes in democratic systems”. Nevertheless, the notion of direct democracy is still widely used in the literature and, as long as we know what we are referring to, we can keep it for the time being.

**Forms of direct democracy.** DD can take various forms. The two most important criteria to distinguish them are to ask (1) who is legally entitled to initiate the process (government, parliament, or citizens); and (2) whether or not the outcome of the popular vote is binding. The following Table offers a basic overview of the various instruments of DD.

	Binding	Non-binding
Top-down (decided by parliament/government)	<i>Obligatory referendum</i> <i>Plebiscite</i>	<i>Consultative plebiscite</i>
Bottom-up (it is necessary to collect signatures)	<i>Facultative referendum</i> <i>Citizens’ initiative Recall</i>	<i>Consultative plebiscite</i>

Table 1: A basic overview of direct democratic instruments

Yet the reality is more complex than this overview suggests. For example, some non-binding direct democratic instruments are *de jure* non-binding but, due to a specific context or to political pressures, they are (or they become) *de facto* binding. Think of the role of government-initiated referendums in the United Kingdom (UK) (e.g., Brexit) that are legally non-binding – and hence fall into the category of “consultative plebiscites” – but whose results have politically binding effects. On the other hand, the result of some *de jure* binding tools, such as popular initiatives in Switzerland, can be put aside if a majority of parliament comes to the conclusion that their implementation would produce major negative drawbacks for the country. See, for example, the non-implementation of the 2014 popular initiative “against mass immigration” in Switzerland; its implementation would probably have ended the bilateral agreements with the European Union (EU) that are considered of vital importance for the Swiss economy. The top-down vs. bottom-up distinction can also be questioned because citizens’ initiatives are on occasion launched by political parties and/or interest groups and not by citizens’ committees or grassroots movements.

In addition, it is evident that the tools of DD typically imply that, at the end of the process, a popular vote should take place. But sometimes the initiators – for example, a citizen’s committee that has successfully launched an initiative – can stop the process if some of their demands are met by parliament.

For the sake of parsimony, two direct democratic tools will be developed in further detail: the *facultative referendum* (also called “optional referendum”), and the *citizens’ initiative* (also called “popular initiative”). This focus is justified by these being the two most used forms of DD worldwide. Importantly, the dominance of these two instruments “worldwide” is strongly driven by their dominance in Switzerland, where six out of ten popular votes held in the world at national level since the late 18<sup>th</sup> century have taken place. If we include sub-national popular votes, the predominance of the Swiss case would be even stronger.

**Facultative referendum.** In Switzerland, most bills, acts, and regulations adopted by parliament can be fought via a facultative referendum. “In these cases, a parliamentary decision becomes law unless 50,000 citizens or eight cantons, within 100 days, demand the holding of a popular vote. If a popular vote is held, a simple majority of the voting people decides whether the bill is approved or rejected (...).” Schematically, the process can be summed up as follows:

Various inputs suggest the necessity to adopt a new bill or to reform an existing one → the executive drafts a bill proposal → consultation (pre-parliamentary) procedure in which relevant political actors (parties, interest groups) but also ordinary citizens can provide comments and input → the bill is submitted to parliament (parliamentary procedure) → the bill is approved by parliament (post-parliamentary procedure) when the collection of signatures for a referendum can start → if the requested number of valid signatures is collected, the referendum campaign (of both sides) starts → several weeks before the popular vote, all enfranchised citizens receive an official booklet informing them about the topic of the vote → popular vote (the bill is approved or rejected by citizens) → if approved, the implementation of the bill (by the government and public administration) can start.

**Citizens’ initiative.** The second instrument of DD, the citizens’ initiative, is triggered from below. In Switzerland, 100,000 citizens can sign, within 18 months, a formal proposal demanding an amendment to the constitution. If the collection of signatures is successful, the initiative is discussed by the executive and parliament. “This can involve drawing up an alternative proposition or, if the popular initiative is couched in general terms, formulating precise propositions. Initiatives and eventual counterproposals are presented simultaneously to the people. As with all constitutional changes, acceptance requires majorities of both individual voters and cantons”. The process can be summed up as follows:

Various inputs suggesting the necessity to have a political reform that the government and/or parliament are hardly likely to adopt → an initiative committee is set up in order to elaborate a written proposal → the proposal is officially adopted and the collection of signatures can start → if the necessary number of signatures is collected, the government recommends that

parliament approve or reject the initiative, or make a counterproposal → the executive and parliament deliberates on the content of the initiative and decide to approve or reject the initiative, or adopt a counterproposal → the initiative committee decides whether or not to withdraw the initiative (in the light of the outcome of parliamentary deliberations and/or the current political context) → if the initiative is not withdrawn, the campaign (of both sides) in view of a popular vote starts → several weeks before the popular vote, all enfranchised citizens receive an official booklet informing them about the topic of the vote → popular vote (the initiative is accepted or rejected by citizens) → if accepted, the procedure concerning its implementation (by the government and parliament) starts → decisions on the implementation are carried out by public administration and possibly the courts.

**The fear of populism vs. multiple majorities and minorities.** Surveys show that citizens of established democracies want more direct participation in political decisions. However, this has hardly led to an upsurge in direct democracy in the respective countries. Indeed, their political, economic, and academic elites fear that referendums and popular initiatives might open the doors to populists and end up undermining democracy itself. Scepticism towards direct democracy is further nourished by the fact that populists themselves are actually calling for more direct democracy. In 2014, for example, parties such as the UK Independence Party, the Swedish Democrats, and Alternative for Germany (AfD) founded the “Alliance for Direct Democracy in Europe.”

Yet an essential characteristic of populists is that they are not only anti-elitist but also anti-pluralist. “Their claim is always ”We – and only we – represent the true people”. The “true people” is thereby represented as a unitary, homogeneous community. The key insight, here, is that a *frequent and regular* use of direct democracy *structurally* undermines populist ideology based on “the people’s will” and a unified, non-pluralist conception of the people. Of course, we know that this conception is fiction but it is easier to unmask in a political system in which direct democracy is commonly used.

To see this, it is of crucial importance to underline that a frequent use of direct-democratic tools creates a context of unstable and ever-changing majorities and minorities. While mainstream theorists of democracy consider this fact as a significant *disadvantage* of DD (Schmidt 2010: 188), it is crucial to a non-populist account as it increases the likelihood that members of minorities will be parts of political majorities on some issues (Rothchild and Roeder 2005: 17). This insight also contributes to relativising the charge that DD can exacerbate the danger of majority tyranny and the twin problem of persistent minorities. Yet it is in purely representative democracies, especially if the representatives are elected according to majoritarian rules, that minority groups can be systematically outnumbered by the majority. In a system of frequently employed DD – where people can vote on ordinary policy issues such as pension reform, healthcare, a new motorway tunnel, or environmental regulations – the chances are high that a citizen belonging to a minority group will quite often be on the winning side, that is, in the *majority*. This effect of DD confers legitimacy on the political system and allows it to counter the populist rhetoric of real or potential ethnonationalist leaders and movements.

**Direct democracy in Bosnia and Herzegovina.** The definition of a referendum in Bosnia and Herzegovina (BiH), as a form of direct democracy, is present only in the Law on Referendum and Citizen Initiative of the RS. The normative part of Annex IV of the Dayton Peace Agreement, i.e., the Constitution of BiH, does not contain provisions on any form of direct democracy. There is only a provision on democratic principles, which defines BiH as a democratic state that functions as a legal state based on free and democratic elections. This points only to the existence of indirect democracy. Also, the European Convention on Human Rights and Fundamental Freedoms (ECHR), which is directly applicable in BiH, does not contain provisions on forms of direct democracy. Article 3 of Protocol I to the ECHR defines only the right to free elections with secret ballots when electing legislative bodies, that is, it guarantees the right to apply indirect democracy. The legal basis can hardly be sought in the provisions of the International Covenant on Civil and Political Rights (ICCPR) or the very idea of democracy, as some authors suggest.

Nevertheless, it is important to note that in some countries of comparative interest, for example in Belgium, referendums are not held at state level, because the possibility of holding such a referendum is not prescribed in the constitution.

**How to apply direct democracy in deeply divided societies?** Clearly, caution is warranted if DD is to be introduced in a political system that has hardly ever used it, especially in countries such as BiH with structural minorities. For this reason, here are some ideas of recommendations that could be useful if institutional designers should want to introduce direct democratic tools in “deeply divided societies”.

*Think of DD as a slow, gradual, and long-term process.* The possible introduction of direct democracy to deeply divided societies should not be rapid and abrupt. In Switzerland, direct democracy was introduced gradually, step by step, and it has taken decades before its centripetal effects became visible. In other words, do not expect to see its effects immediately, and do not be discouraged by one negative experience. Furthermore, do not end the experiment too early, as the authorities of the Netherlands did in 2018 after two national referendums that had not produced the results they had hoped for.

*Start at the local level.* Citizens should get accustomed to direct democracy first and foremost at the local level. If citizens see that they can decide on the construction of, say, a new bridge in their local community, or vote on the local budget or start an initiative for eliminating a disliked parking place, they might be more open to extending direct democratic tools to higher levels of government. The federal set-up of BiH, which grants important autonomy to the cantons (in FBiH) and municipalities (in both entities), is particularly inviting in this context.

*Exclude “communitarian” issues from the reach of DD.* In order to prevent DD from becoming a (further) source of ethnic division, instead of centripetal integration, some highly divisive issues should be put out of reach of popular vote, at least in the initial phase. In the context of BiH, such issues are typically related to territory and the education system. Of course,

there will likely be many borderline cases so it might be difficult to clearly distinguish communitarian from non-communitarian issues.

*Provide a qualified majority for votes on constitutional amendments.* The Constitution (or an equivalent set of norms and documents) is of central importance in every democracy. Hence, in many democratic systems, a constitutional amendment is subject to a qualified majority. In some cases, depending on the exact nature of the qualified majority and the size of minority groups, this can reassure minorities that important reforms will not be adopted without their consent. In direct democratic procedures, this implies that pure majoritarian rule (50 percent plus one always wins) should be abandoned in favour of a more complex majority rule. In Switzerland, as already noted, any change of the constitution is subject to a “double majority” of the people and the cantons. Of course, the Swiss solution is hardly transferable to countries such as Belgium or BiH, but it could become a source of inspiration and could lead to the adoption of a specific rule of qualified majority. For example, constitutional amendments could require the approval of the majority of voters of BiH and at least 35 percent of citizens in each entity.

*Complement DD with deliberative mini-publics.* Deliberative mini-publics – composed of a randomly selected group of lay citizens – can be put in place in order to provide citizens with the necessary information on the topic of the upcoming popular vote. This is, in a nutshell, the Citizens’ Initiative Review (CIR) model that has already been experienced in Oregon and other US states and cities, as well as in Finland and Switzerland (see [www.demoscan.ch](http://www.demoscan.ch)). What makes the CIR model special is that its conclusions are not simply sent to the government and/or parliament, with these being free to decide what to do with them, but are distributed to all enfranchised citizens of the respective polity. While the empirical evidence is still not conclusive, some studies have found that populist proposals have a harder stance in a deliberative mini-public. The first experience with a mini-public at national level in BiH – held in February 2022 (see: Citizen’s Assemblies in Bosnia and Herzegovina) on the topic of electoral reform – showed that lay citizens coming from all regions and ethnic groups could deliberate without tensions even on very complex and politically sensitive issues (such as the implementation of the Sejdić and Finčić ruling) and propose innovative solutions.

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