

**DEVELOPMENT OF DIRECT DEMOCRACY MECHANISMS:
UNDERESTIMATED APPROACH TO
MODERN DEMOCRACY PROBLEMS**

Submitted to

Central European University

Legal Studies Department

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Budapest, 2013

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Abstract

The research aims to elaborate on specific direct-democracy approach in the scope of the on-going problems of the modern democracies with evaluation of the risks and challenges and in the context of the correlation of the direct democracy with the representative democracy, with particular attention to the jurisdictions of Switzerland, Germany and United States. Although the field is largely explored, it seems that a lot more can be contributed or even reassessed in both theoretical and practical perspective.

The primary goal is to profoundly analyse the present use of direct democracy and to suggest effective mechanism for its further development.

Introduction

This thesis aims to highlight the existing problems of the modern democracies and the opportunities that direct democracy models suggest. It further examines the reasons for the negligence of the direct democracy and focuses on analytic elaboration rather than narrative description of the issues of direct democracy. Since many authors (Rourke, J.T. *et al.* 1992; Haskell, J., 2000; Altman, D., 2011) have already profoundly described and explain the nature of direct democracy and its use, the article stresses on plausible implementation of direct democracy. It will prove that models of direct democracy are not only possible but also necessary for the sake of democracy. The thesis has a clear goal, namely to synthesise specific model that is able to be applied. It does not go beyond the reasonable and does not come out with utopian universal solution, but merely with substantiated arguments in support of direct democracy and only in the context of representative democracy. Comparative analysis between direct and representative democracy will be made. Examples of on-going achievements and obstacles will be given.

The first chapter will examine the existing examples of direct democracy with retrospective historical view. Then it will further concentrate on the means of direct democracy that will be analysed and the theoretical concepts of direct democracy as well as the preconditions and applicability of these concepts.

The second chapter discusses the contradistinction between direct and representative democracy, stressing the main arguments for both sides. It attempts to reveal the clear but somehow suppressed power of direct democracy with a specific reference to the present

democratic problems. The current work does realize that the questions of the direct democracy and the contradistinctions with representative democracy is not a mutually excluding dichotomy and mere advocacy of direct democracy is neglected. Rather, it analyses the optimal correlation between them and argues for the increase use of direct democracy tools and not pure direct democracy.

The third chapter is going to show three distinctive jurisdictions with long term of democratic traditions and their approach to the direct democracy, namely: Switzerland, Germany and United States. All three of them in conjunction creates a representative view of a state with broad use of direct democracy (Switzerland), one with polarized attitude to direct democracy depending on the level – various direct democracy means on state level and close to none on a federal level (USA) and the most sceptic view of Germany, where the stage for direct democracy is even more narrowed down and again limited to provincial level and not federal.

The last chapter comes to synthesise the explored field and to suggest an innovative approach for future development of the direct democracy. It will emphasise specifically on the concept of electronic democracy with respect to the developing technology that challenge not only the everyday life but also fundamental concepts of social and political order.

The methodology that will be used is based mostly on elaboration of existing examples in the field through comparative analysis of different forms of direct democracy and their correlation with the representative democracy with focus on the three specific jurisdictions. An interpretation of “Situation-problem-solution – evaluation” approach will be used with some conditional peculiarities due to the particular field. Along with giving answers to some

questions, it is also relevant and not less important to stress the rights question, especially in the field of hypothesis where overhasty conclusion would be dangerous.

I. SOURCES AND CONCEPTS OF DIRECT DEMOCRACY

This chapter will focus on the expanding debates regarding the use of direct democracy in the modern democratic societies. It seems that a particular interest is generated during last years in the field. As democracy has a long history since the ancient times and as it concerns directly every single member of the society, it is no surprise that the elaboration on the topic is so intense. Respecting the broad scope on the topic the chapter will set the margins of the examination and emphasize only to these forms, concepts, examples and problems that will be later addressed in the thesis and that serve the main statement. It will also summarise the direct democracy instrumentation to the expedient level of discussion. Some main direct democratic concepts will be reviewed, which will be used later in the argumentation in support of their use. In addition, the theoretic foundations of these forms of direct democracy will be given.

1. Defining the Scope

Many of the philosophers (John Locke, Thomas Hobbes, Jean Jacques Rousseau. etc.) agree that the establishment of democratic society relies on the “social contract”, where the essential requirement is the unconditional equality of the citizen. That “pactum unionis” (as Thomas Hobbes calls the social contract in his landmark book *Leviathan*) delegates part of the personal freedoms to the State. Today validity of the orthodox definitions of democracy can be evaluated namely through this approach, which is test for the legitimacy of any democratic system.

The direct democracy is considered as a form of political organization, in which the decisions are taken and consequently applied directly by the citizens. There are number of forms and varieties of such organization. It could refer to different criterion being national or local.

How it is regulated in the specific legal framework, or what the binding power is of given direct democracy instrument. Regardless the legal provision in any modern democratic society, nowadays we face different attempts and struggles of the civil society to participate in the process of policy making.

2. Historical Review

In historical retrospective view, during the ages, philosophers, monarchs and communities had different perspective on the use of democracy, including direct democracy in particular. There is however certain asynchrony (Belov, M. 2009) by time and place which makes it hard to analyse of the democratic development in comparative context. There are nevertheless some milestones in the evolution of democracy that have to be mentioned. Ancient Athens democracy is always given as example and cradle of democracy, but we have to remember, that ancient Greek democracy is still paternalistic and existing in aristocratic environment. (Aristotel. Politika, Open Society 1995). Although the Greek model is far of the romantic understanding of democracy, there was quite interesting method of appointment of political actors by lottery. John Burnheim in his book “Is Democracy possible” (1989) argues that this demarchy, or appointment on the basis of lottery is an useful and functional tool to minimize eventual corruption, provoked by specific interest. In general, if we take the well-known examples of democracy before the XVIIIth century, Greek and Switzerland, we see that the only know tool of direct democracy is the assembly of population and that de facto exhausts the meaning of direct democracy. The development of the modern democracies arises from the age of enlightenment, and more specifically the end XVIIIth and the dawn of XIXth centuries. In that period, the influence of Montesquieu, Voltaire, Rousseau, Locke, and many others and the social-economy rapid changes gave incitement to the immediate participation of the civil society

in the process of decision making. A lot more instruments of direct democracies as referendum and imperative mandate were introduced. Still, the use of direct democracy was rather accidental and not properly regulated, containing different risks of compromising by being abused by oligarch communities. That period led the theorist to the understanding that the direct democracy is burden with the risk of “tyranny of the masses” and is only applicable in small local communities (Belov, M. 2009), especially with respect to the socialist revolutions in Eastern Europe, which diametrically contrast with the protestant ethics of capitalism in the west¹.

We can identify another major period of development of direct democracy between the two world wars. Again, the experience cannot be evaluated as “positive”. It was sometimes applied by manipulating the population to legitimise non-democratic government or class or to excuse the process of irredentism provoked by the developing doctrine of nationalism (e.g. even the Aeschylus was conducted by referendum). In spite of the mentioned apprehensions, that was the time which started the process of discussing the direct democracy in the frames of the constitutionalism doctrine. Soon after the World War II (WWII) a profound reconsideration of the normative frameworks was initiated and the development of direct democracy made progress as well. After several countries put at stake important constitutional matters on referendums Poland 1946, 1977; France 1946, 1958, 1962, 1969, 2000; Greece 1946, 1968, 1973, 1974² and the “introducing of its instruments in countries which will become later on leaders in terms of direct democracy like Australia and Ireland” (Belov, M. 2009) the floor was passed to the modern concepts of direct democracies.

¹ see Weber, M. “The Protestant Ethic and the Spirit of Capitalism (Protestantskata etika i duhat na kapitalizma), Prosveta, 2004).

² see Altman, D. 2010 “Direct Democracy Worldwide” Cambridge University Press. December 2010

3. Theoretical Concepts

The modern idea of participation of the citizen in the government is established by Habermas and it is traditionally supported by European and America “left” theoretical doctrines (Habermas, J., 1985). In clarifying the terms, direct democracy contains many connotations that can be confused with one another. It varies widely in the forms of direct democracy (functional referendum, constitutional referendum, abrogative referendum, advisory referendum, assembly of the people etc.) as well as the role of the certain form- binding or advisory. Additionally, direct democracy is never “direct”. Like in the representative democracy, some subjects of the society are excluded from exercising the power. Usually children, mentally ill people and others are justifiably excluded. In this matter, the direct democracy concern the way of taking decisions, the number and nature of the decisions that are to be taken and the enactment of these decisions compared to the conventional representative democracy. In other words, along with the representative democracy direct democracy is form of democratic government, but unlike representative democracy, in the direct democracy there is a an overlap between source, subject and beneficiary of the power (Tanchev, E. 2003).

Some of the most popular ideas of direct democracy alternatives are participatory democracy, including deliberative. Again, the theorists reasonably stress that any kind of direct democracy, no matter how useful and advance it would be, should be considered as additional or parallel tool to the representative democracy. (Gutmann, A. and Thompson, D. 2004) The idea of participatory democracy and deliberative democracy in particular suggests broad range of participants and embolden the dialogue and “deliberation” in the process of decision making. In fact, legally framed or not, any citizen forum that influence the decisions of the government is

form of direct democracy. Thus, even a protest that leads to certain decision is an example of direct democracy.

The absolute direct democracy as an omnipotence of the people is the radical view of the anarchism, who excessively deny the social contract. Mikhail Bakunin says that every individual accepts the “social contract” volens-nolens, only because he has not other options (Mineva, E., 2005). These radical concepts or separation of the two kinds of democracy is purely theoretic. The realistic and effective opportunities of the direct democracy which are about to be examined further on, are concentrated on the combination of representative and direct democracy. The scope is on the form of participation of the civil society in the process of decision making.

Direct democracy offers quite large number of opportunities that still are not rationally used. In their book *“The Civic Culture: Political Attitudes and Democracy in Five Nations. Princeton”* (1963) Gabriel Almond and Sidney Verba give many articulate arguments in support of direct democracy. They made number of research identifying what they call “civil culture” and came to conclusion that when a subject of the society can influence the process of decision making, he is substantially motivated to be informed and to take part in the decision. Thus, the focus of direct democracy that will be addressed in particular is the opportunity for participation in the process of policy making, legislative, executive, or judiciary. That is how participatory and more specifically - deliberative democracy comes on the scene.

It is true, that reading the landmark work of Montesquieu (Montesquieu, Charles de Secondat, 1984) we can reach the conclusion to justify the existing forms of representative democracy. However, the new era of social relations greatly contrasts with the time of Montesquieu and the modern democracies require new dimensions and perspectives. In

correspondence to the modern problems of democracy, the direct democracy is not the “Panacea” and this article does not advocate for using direct democracy in any form or by any mean.

II. CONTEMPORARY DEBATES ON DEMOCRACY

This chapter does not attempt to compete between the two systems, but to stress the advantages and disadvantages of both with special attention to the recent ideas of the opponents and defendants of each system. Furthermore it will reveal the problems of the modern democracies and the “open room” for direct democracies. To avoid being prejudiced, the article will pay additional attention to the risk of the form of direct democracy and the effective use of it.

1. Direct Democracy vs Representative Democracy

Although the theoretical arguments are at hand as well as social pressure it is hard to understand the worries of the governing bodies to unleash the direct democracy usage. That can arise some doubts in the scrupulosity of the government that they excuse themselves with the modest arguments against direct democracy, or by groundlessly and misleadingly attributing radicalism to the social thirst for direct democracy.

One of the most commonly used critics to the direct democracy refers to its functionality. It is argued that direct democracy is applicable only to small and homogeneous in cultural aspect communities. Examples of frightful experience as is the mentioned referendum for the annexation of Austria to Germany are given to argue that the risks of the direct democracy cannot be prevented and therefore direct democracy is almost totally inapplicable. Another key argument is that direct democracy in its essence is predominantly a populist tool that serves certain groups' interest, or in the worst scenario – authoritarian regimes. Other concerns arise with regard to the issues of funding, the consent of the voter and the risk of “tyranny of the

mass”. It should be taken into account however, that direct democracy can hardly exist outside the context of representative democracy. As will be shown in the third chapter, it can be useful and very effective additional tool for transparency and publicity of the governance. I dare to say that nowadays, the twin heading power of combining the conventional democracy with tools of direct democracy is not only possible but a mark of democratic societies.

On the other hand, the direct democracy is more relevant to the idea of the sovereignty (Belov, M. 2009). It presents the literal idea that power belongs to the people. Thus the sovereignty is no longer only legitimised in the face of the people, but also self-supportive.

Another important issue is the information of the voter. The lack of information is really very harmful to the democracy³ but it is also valid for any kind of democracy and elections. By contrast, with the means of deliberative democracy, large number of initiatives is given with specific focus on the information to the vote. In addition, the voter will not be any less informed than in representative elections. On the other hand, some authors like Mendelsohn and Parkin (2001) noted that the relation between competence and information is not as strong as it is believed, nor are the voters as incompetent as commonly portrayed.

As within the representative democracy, the most important role is the one of the elite. That very role will be narrowed by the intense use of direct democracy. As a result, the responsibility of the decisions will be taken by the public, legitimizing it as an actor on the political scene. To top it off, it has been argued that with no respect of the binding force of a

³ For more information on the issues regarding the importance of information see Thomas R Palfrey and Keith T. Poole 1987. "The Relationship between Information, Ideology, and Voting Behavior". *American Journal of Political Science* **31** (3): 511–530.

democratic measure as referendum, it is unlikely for any modern democracy to ignore to declared will of the sovereign (the people) (LeDuc 2003).

In the end, regardless the results of a certain direct democracy forum, it seems that barely anyone challenges its legitimacy. From the huge papers in the field, it is hard to find an argument that opposes a result of a referendum for example

2. Problems of the Modern Democracies

In this section some emphasis will be put on the words of Ronald Dworkin:

“It would be silly to deny that the political divisions among the Americans are unusually deep and angry now and that these divisions run along a fault line that can usefully be described as separating a red from a blue political world”

(Dworkin, R. p.3 2006)

Later on in the book he stresses a study, made by Bruce Ackerman and James Fishkin, where it turned out that in the environment of selecting a representative the outlook is more important than the ideas he shares, the shape dominates over the content. That makes the political competition “soap-opera standard” (Dworkin, R. p.128 2006). Moreover, in Dworkin’s book, he reasonably argues in support of the importance of political education referring to the problems of uninformative voters. But while he does that, he never distinguishes the process of selection representatives or voting in direct democracy forum.

Furthermore, other authors question the very survival of the parliamentary democracies like Paul Warwick (1994) argue that the ideology still has a basic role in empowering the

government, and the participation of the citizen in that government can replace the vacant place of the ideologies of the past. It is proved by empirical research; especially on a local level the government more often than not “loses” in referendums, meaning that the officially declared position of the government is overruled (Rourke, J.T. *et al.* 1992).

One of the strongest contrary arguments is that direct democracy provisions can be found in most of the democratic constitutions (Belov, M. 2009). And yet, in practice even if we accept that there is increased use of direct democracy, it is far beyond the existing preconditions and opportunities. The dangerous question is: is it because the decision makers make the best to approach the topic most rationally and with the necessary precautions, or it is because the direct democracy give a lot more tools for civil control over the government, which is one of the founding principle of constitutionalism? (Bliznashki, G 2001). Over more, direct democracy fully corresponds with the main ideas of the philosophers in the Enlightenment Age that came to inspire the birth of the modern constitutionalism. Was not Abraham Lincoln, who said: “Government of the people, by the people, for the people” (Lincoln, A., 2005). Even today most of the constitutions provide that direct democracy is truly in exact compliance with that.

One disadvantage that has to be accepted is that the government and the media would be in a position to influence on the results of any direct democracy form. That is true. However, the more direct democratic actions are implemented, the more “training” in that process the civil society will experience. Moreover, when thinking of how a process can be abused or twisted, it is crucially important to stress, that the mere use of direct democracy, as mentioned above, can be easily used to legitimise unlawful actions or even non-democratic regimes. Nowadays democracy faces different issue. It is beyond imagination that any modern society state would declare dictatorship or any other form of autocracy. In the same time, public opinion can be a

target of manipulation regardless the democratic approach. The emphasis is on the fact that the law should regulate already existing social relations and to create such relations. That is why this article addresses modern democracies, where there is already struggle for increased participation of the civil society in government and the methods of direct democracy are the proper answer to that call.

By contrast, as it has been shown, the modern democracies face perhaps more problems than any other time. Along with that, economy related issues of democracy cannot be left aside. The US supreme court decision in *Buckley v Valeo* (424 U.S. 1, 1976) where the Court ruled that “money is speech” is only one example of commercialization of the democratic values. Vilfredo Pareto (1984) carefully estimated how every elite becomes plutocratic, and the real “democratic” tendency is the one that includes “power of wage earners”, namely, the middle class, which benefits most from the direct democracy. He perspicaciously noted how the democracy is in transformation do to the cultural changes, leading inevitably from time to time to the accumulation of capital in the minority. Some similar questions arise from the documentary movie “Encirclement - Neo-liberalism ensnares democracy” (*L'encerclement - La démocratie dans les rets du néolibéralisme* (2008)) by Richard Brouillette, where it is stated that the modern society is in the entrapment of the neo-liberal economy and where the market is stronger than constitutionalism

Another landmark book- “The Decline of the West” by Oswald Spengler (1994) also warns on similar issues. Similarly to Vilfredo Pareto (1984), although not in economic but in context of civilization, he predicts that any form of government will become plutocratic and if the money dominates, the culture is doomed. Spengler claims that any exercise of political rights

can serve their essence only if the exercise is direct without the intervention of elite. Regarding that decadent predictions a lot of elaboration can be made, but it is true that the Protestants' "ratio" and the capitalistic economy is closely related to the modern democracies where undoubtedly the money has central place. That may rise another interesting question, the one from the Erich Fromm's homonymous book "To have or to be", again containing a prophecy that a civilization that chooses "to have" is fated to collapse.

In the light of the United States political doctrine, John Haskell gives strong arguments in opposition of the use of direct democracy (Haskell, J., 2000). He accuses the forms of direct democracy as simply populism and defends the representative democracy as passionately as the federalists once did:

"Most important, unlike direct democratic institutions, representative institutions are based on an achievable, coherent and meaningful theory of voting" ... "Representative institutions are designed in such a way as to tame the passions of the moment and to consider legislation from a variety of perspective"

(Haskell, J., 2000 p.17)

We have to admit that the direct democracy is a perfect weapon in the arms of the populists. However, Haskell gives really conservative point of view that concentrates on the "pure" use of direct democracy. As it was repeatedly shown, the deliberative democracy comes to assist the representative democracy and not to replace it. Secondly, based on the specific cultural traditions, he argues that the Americans are not interested in taking participation in the decision making. Well, the direct democracy tools, widely used on state level prove the opposite. And not last, one political system is not only about pragmatics, but more about sharing

commonly accepted values. Otherwise, as there is no guarantee that people will not live better in non-democratic society, then why to sustain such social order. And yet, no matter how criticism there is directed to the modern democracies, I have never met any prominent author to entirely oppose the democratic order.

Even thou, many of the concepts of the modern democracies are influenced by are taken by the Jean Jacques Rousseau, he says, that the idea of representatives is relatively new, while the appointment of executives is an archaic reminder of the process of taking away the power from the monarch, because it was the legislative power that was first to limit (Rousseau, Jean, Jacques. 1996) That is a hint how the democracy should stretch not only over the legislative bodies, which is the case with most of the democratic models, but also over the executives.

Furthermore, it has to be admitted, that the people can be exhausted by direct democracy and as any other form of participation, it should be implemented carefully and rationally. The direct democracy shall be considered not as an idealistic and flatulent political rhetoric, but as applicable, real and effective concept that can exist in the context of representative democracy with all advantages and disadvantages as any other social concept. As pointed by Parkinson and Mansbridge (Parkinson, John and Mansbridge, Jane. 2012). There is a clear sense in which any deliberative system cannot do without appropriate claims to representatives (Parkinson, John and Mansbridge, Jane. 2012 p.76). In support to these problems on democracy, it can be said that one of main concerns in the European Union is the “democratic deficit” (Marquand, David 1979). Meanwhile, again in the EU perspective, the levels of support constantly go down while the will for participation increases.

All in all, in the end of the chapter, with a certain risk to speculate, I would say that it is obvious that there is a room for direct democracy, but “someone” holds the door closed, as even with consideration of the risks, it seems that direct democracy should have bigger role in the democratic theatre.

III. DIRECT DEMOCRACY IN PRACTICE

(Comparative analysis of Germany US and Switzerland)

In the previous chapter certain forms of direct democracy were introduced along with problems of modern democracies and the correlation between representative and direct democracy. Based on that, this chapter will review three of the modern democracies with long term traditions in democratic government to visualise the current theoretical discourse in practical terms. It should give clear notion on the on-going democratic processes and the different approach to the democracy, although pursuing one common purpose and sharing one value systems.

1. Switzerland: the best practice

Switzerland is considered for a good reason as the best practice of direct democracy. It is derived not only by the detailed legal regulations of number of direct democracy instruments but also to the frequent, active and effective implementation. Not surprisingly, Switzerland outruns any other state in use of direct democracy several times (Altman Direct democracy worldwide) As defined by Evgeni Tanchev (2003) the Swiss model is a model of Consociationalism (Lijphart, A., 1999). That system, unlike the conventional systems of empowered and opposition provides widely differentiated group that takes the decision throughout consensus. As defined by Brendan O'Leary (2005) "consociationalism is synonymous to power-sharing". That consensus principle is a key element for the Swiss democracy. It is a result of a complex correlation of specific culture and social factors that influenced the use of direct democracy and in the same time were influenced by the use of direct democracy. One of the main function of that type of democracy is to challenge the otherwise strong contrast between power and opposition and to act

accordingly the definition of Prof. Georgy Bliznashki (2005) identified in his book Functions of the constitution: “a constitution is an act of mistrust, as it provides the boundaries of the power”

By these principles the use of factitive referendums or even by the possibility to initiate one, big part of the executive branch is taken by the opposition. It leads to forming a unique executive body that consists of representatives of all parliamentary groups. And yet, Switzerland is a representative democracy and not majoritarian one, It comes to show how the effectiveness of any democratic approach is strongly dependent on the specific social and cultural factor. This partisan and representative democracy with intense domination of direct democracy reduces the competitiveness of the political actors. Another element of great importance is that the wide coalition of the government encourages the deliberation on substantial problems as long as there is no clear distinguishing between winners and losers unlike the United States, where the Duverger’s law “winner takes all” is valid (Duverger, M. 1972) The political discourse prevented from polarization of opinions as it is generally the situation with two-parties model as United States for example. On the next place, the Swiss democratic model is characterised as model of corporatism (Clarke, Paul A. and Foweraker, J. 2001). It gives chance to different non-political actors to influence the legislative process. By the abovementioned we can conclude that to some extent the people are not the power, but the opposition power in Switzerland. However it does not correlate to the problems of sovereignty mentioned in chapter one as it is rather functional differentiation.

In the same time, some of the referendums require qualified vote on both level-population and cantons as a measure against populist initiatives. Nonetheless, the opportunities to react on laws in Switzerland are limited to abrogative functions ex post and there is no provision for legislative initiative, which slightly contradicts with the Swiss concept (Belov, M.

2009). Additionally, there is an institute for obligatory referendums concerning international issues (Rourke, J. *et al* 1992.). It embraces international treaties for joining in military alliances and joining in supranational organizations.

As an example of federalism, it is quite interesting how Switzerland incorporates the direct democracy on local level. The legislation provides almost all of the known democratic tools for direct democracy and wide autonomy of the cantons and municipalities. In fact, it is the Swiss municipalities that are closest to the optimal unity with direct democracy government. It cannot be refuted even by the fiercest opponents of the direct democracy. As mentioned in the first chapter, there is common agreement in the direct democracy debates concerning the effectiveness of the direct democracy in small communities with relatively simple social relations. All the provided measures and even more than on a national level are integrated in the local level with the logical exception of constitutional referendums.

If we justifiably assume that the Swiss model is not only a perfect example of the effectiveness of the direct democracy, but also better than other democratic models, we cannot suggest that it can be simply shifted in another legal reality. The 7 century tradition has to be taken into consideration, which predefined the use of direct democracy “from bottom to top” that precludes misappropriation that is still a reasonable uneasiness in other states.

All in all, the Swiss model is a “guarantee for the balance and independence of the legislative and the executive branch” (Belov, M. 2009). That also minimizes the opportunities for effective parliamentary control as it is simply seized by the consensus model.

2. United States: somewhere in-between

United States is an interesting example in terms of direct democracy. As part of the common law system it is in the very founding of their political doctrine that the representative

democracy shall prevail on a federal level. Meanwhile, the means of direct democracy are so widely used on a state level that it could be used as example in support of direct democracy. By the time of the framing the United States Constitution, there was a strong criticism to the direct democracy and it was never introduced on a state level. Like the case in Germany, there was never a federal referendum in United States (*Altman, direct democracy worldwide*). Madison in his Federalist paper №10 explicitly stigmatized the direct democracy as alternative in the process of government. As he noted:

“A pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit no cure for the mischiefs of faction. A common passion or interest will be felt by a majority, and there is nothing to check the inducements to sacrifice the weaker party. Hence it is, that democracies have ever been found incompatible with personal security or the rights of property; and have, in general, been as short in their lives as they have been violent in their deaths”.

In addition to that, Alexander Hamilton argued:

"That a pure democracy if it were practicable would be the most perfect government. Experience has proved that no position is more false than this. The ancient democracies in which the people themselves deliberated never possessed one good feature of government. Their very character was tyranny; their figure, deformity."

(Zagarri, R. 2010)

It is therefore visible why the entire political doctrine in the United States is reserved to the direct democracy. The main argument against direct democracy was the fear of “tyranny of the

masses”. Referring to this break point “majority against minority” half a century later, Alexis de Tocqueville will dedicate a chapter on that “tyranny of the masses” in his eminent Democracy in America. Along with the positive evaluation of the American model, he will say:

“I consider dishonourable the dictum that in government the majority has the absolute power, but I put the will of the majority in the basis of every government”

(de Tocqueville, A. 1996)

On the other hand, Thomas Jefferson claimed that sovereignty resided with the people **in the states** and thus Jefferson established a populist position that could coexist with and even complement, however uneasily, the constitutionalist position”-p/25 – (dispelling the populist myth)

Furthermore, a huge number of examples can be given on local level for the intense use of direct democracy. In 2003 in California the governor Grey Davis was recalled and replaced by Arnold Schwarzenegger by the will of the people. It was the first recalled governor for the last 82 years. (Davis, A. 2007) It became possible on the basis of ar. 2 of the California constitution. Based on that contrast between local and federal level, we might say that United States represents a unique “hybrid model” of democracy (Garrett, E. 2005). Again, the representative republic as already mentioned is one of the fundamental concepts of the American constitutionalism. It is forged in Section Ar.4, S.4 of the US constitution, which provides: The United States shall guarantee to every State in this Union a Republican Form of Government...”

In a decision of the Supreme Court Pacific States Telephone and Telegraph Company v. Oregon (223 U.S. 118) the court upheld that implementing of direct democracy measures on state level is not forbidden by the constitution and is even theoretical possible on federal level. While we have already clarified that direct democracy was never introduced and perhaps never

will be, on state level, direct democracy was introduced in order to achieve political transparency and publicity as well as to fight corruption. (Belov, M. 2009) That period is commonly related to the term Jacksonian democracy (Arthur M. Schlesinger, Jr., *The Age of Jackson*. Boston: Little, Brown and Company, 1945). In that period the measures that have been taken concern the suffrage, the patronage and others in terms of encouraging civil participation in politics. Almost a century has had to pass before the populism and progressivisms (Haskell, J. 2000) to bring additional push to the implementation of direct democracy. It has been shown already the current dichotomy of the representative democracy-direct democracy correlation in United States and the means of direct democracy on a state level. That stresses the fact that the both democratic models can be combined, in contrast of many sceptics' views.

Ronald Dworkin in his book "Is democracy possible here" ("here" refers to United States) uses the metaphor of a raft that resembles the Raft of Medusa by Géricault, where an eventual vote will never give equal opportunities for the drowned as there will be personal feelings and preferences. That is why, he discusses the model of demarchy- if someone has to be drawn, and lottery will guarantee the equal chances. He continues to debate by saying:

*"We use lotteries to make some faithful political decisions as well. When we draft soldiers, we do not hold referendums on who should be drafted. We choose by lot. Perhaps we should make more use of chance in politics. The Athenians selected their leaders by lot, and it is not vividly clear that the quality of our legislators would decline if we chose them in the same way"*⁴

⁴ Dworkin, R. "Is democracy possible here?", Princeton University Press, c2006, p.138

3. Germany: sceptical view

In contrast with Switzerland, Germany seems to be reluctant to the means of direct democracy, especially on national level. It is one of the few states where there was not a single referendum after the WWII (Altman, direct democracy worldwide). One may say that it clearly contradicts with the trends of increase of the use of direct democracy, but it is not hard to guess that the reasons behind that attitude are in the historical events and the WWII in particular. The negative historical connotation regarding the central role of Germany in the world war and the negative experience from the Weimar republic explain the present negligence of the direct democracy.

The common strive for democracy in the early 20s brought to the Weimar constitution, which provided number of direct democracy measures. It can be considered as a reaction to the strongly representative democracy of Germany during Bismarck. (Belov, M. 2009). By introducing certain direct democracy instrument, the Weimar constitution attempts to activate the civil society transforming it from object to a subject of the policy making. According to some authors (Belov, M. 2009) it was far too democratic for that time or perhaps it could have worked a lot better if it was implemented in different and not so “warlike” time. On the other side, it is hard to believe that the direct democracy itself was the reason for the collapse of the constitution, but the negative aspects can be assumed as reaction and consequence rather than reasons. Whenever an autocratic regime takes the power regardless the used measures (because Hitler came into power after undisputed election) every model of government can be twisted to legitimise illegal actions.

Regardless the reasons, it is well known that Weimar constitution has not succeeded to establish a stable democratic system. Today German political system is representative democracy and party centred system that considers the direct democracy as incompatible. Furthermore,

direct democracy is seen as a potential risk of compromising the system. It would give an opportunity for the head of state for example to encircle the parliament by initiating referendum, which is considered unacceptable (Belov, M. 2009)

In Germany, like Switzerland, the political system can be defined as consensus democracy with respect to the forming the government and the process of policy making. There is also an executive with opportunity for the executive for wide range of representatives, but unlike Switzerland it is not permanently the case, as it is now with the government of Angela Merkel for example (Belov, M. 2009)

We may divide the German legal framework with respect to direct democracy by dividing three different levels of approach – national, provincial and local. On a national level, as already has been mentioned, the Basic law is strongly reserved and provides only a form of plebiscite for reorganization of the “Lander”⁵. Although it is placed in the Basic law, it is explicitly corresponding with regional level.

On a Provincial level, however, a number of direct democracy means are provided. Some of the constitutions provide imperative mandate of the whole provincial parliament. It serves as a vote of no confidence by the people. (Belov, M. 2009). It is one way to increase the civil control over the public authority. Again, like in Switzerland, the mere opportunity can have controlling effect even it is not used. According to the particular province, there are some functional differences in the provided means of direct democracy, but all of them share the imperative power of the referendums. (Belov, M.) The local level in Germany is the one that gathers the biggest recruitment of direct democracy measures. It includes not less opportunities for participation of the civil society than other not so reluctant to direct democracy states.

⁵ ar. 29 of the Basic law URL: <http://www.iuscomp.org/gla/statutes/GG.htm>

In conclusion, the German political debate gradually approbates the practical effectiveness of the direct democracy on a local level in contrast with the reservations when it comes to federal level. Nevertheless the direct democracy on a local level can encourage its use on a federal level.

IV. THE ALTERNATIVE OF DIRECT DEMOCRACY

Here, the last chapter aims to elaborate on the possible solution to the problems of democracy as well as to investigate the opportunities of inevitable combination of direct and representative democracy based on the made reasoning, analysis and examples

1. Innovation: E-democracy

In 1970 Zbigniew Brzezinski introduced the idea of “global society” (Zbigniew, B. 1970). The technocratic development influences among many other social relation and the standards of the political systems and government procedures. Internet made communication different by transforming the consumer to be a source himself (see chapter 2). These changes passed the floor for electronic democracy, where the old-fashioned problems of organizing elections and funding them became groundless. This idea of communication may be easily transferred to the concept of deliberative democracy, as a system of taking political decisions, based on wide public consensus on the most important and actual matters in combination and as addition to the representative democracy. That combination and the specific means of internet can radically overrule the “iron law of oligarchy”. (Michels, R. 1915), which postulates that in any organization, the democracy inevitably, will be replaced by oligarchy. In the representative democracy, the delegation of rights and even sovereignty to the representatives inevitably creates political elite. When this elite stops to follow the interest of represented for the sake of its own interest, the elite is transformed into oligarchy. I would even say, that in a region of quasi-democracy, which has no well determined and long established traditions in democracy (developing countries with formalistic democratic constitutions) it will be ochlocracy sooner than oligarchy. Even if we imagine endlessly scrupulous elite, big part of the representation

would be no longer needed due to lack of functionality. This ideas and principles were embraced by A. Gutmann, D. F. and Thompson (2004). There is no other possible interpretation of the electronic democracy but direct one

The idea of internet democracy is further developed by the concept of “collaborative democracy” (Williamson, John 1990)It takes an example from Wikipedia as a common and actively developing sharing of knowledge and elaborates on the idea of implementing that model into process of government and leads the political dialogue to ultimate level. Based on the facts, examples and analysis, there could be elaborated a syncretic model of democratic approach giving opportunities to combine different forms of direct democracy and still to be in the paradigm of representative democracy.

2. Key elements in elaboration of the ultimate model

One key element for the development of the direct democracy is the understanding that it is indispensable with the active and equal participation. That means that the dialogue and deliberation in the process of decision making will include equally the citizens. However, that understanding is unthinkable without the milestones of democracy in general, namely the equal social and economic opportunities. Thus, the eventual result of competitive economy where the success of one is equal to the failure of others, twisted to oligarchy precludes the essence of democracy. As we saw in the Swiss model, combining direct democracy in representative democracy is possible and effective. There should be mentioned, that the mere use of direct democracy does not guarantee effectiveness. In addition, Switzerland has always been an exception rather than example. The division of the political life “outside” the society should be

abolished. If now the understanding of radical direct democracy will most probably bring some form of autocratic regime, in a future society it might be even a possible solution

On the second place, what is substantial is to introduce wherever it is possible the principle of immediacy in appointment and in the taking of decisions. All the branches of the power have to be potentially affected by means of direct democracy.

It has been already mention how important is the access to information and the role of the informed participant. Along with that, the direct democracy can guarantee transparency and publicity of the political process by which to encourage itself the citizen to get information

On the last place, we can put the significance of the independence of the process of implementing direct democracy. That simply designs a continuous process that develops permanently on the account of the constant institutions. It gives flexibility and functionality of the process.

The decisions have to be made in wide and open dialogue after deliberation and participation. Of course, every one of these measures has to be predefined in the specific context. It is crucially important that the distance between the citizen and the institutions to be minimized as well the mediators in the policy process has to be as few as possible, in order not to impair the process

It would be naïve to think that in environment of direct democracy all questions will be raised in some kind of gathering and decided by vote. It is more about participation in the process of decision making. If a subject to the law is affected by it, there is no reasonable relation between his choice on the elections and his personal evaluation on the respective law. Especially

in the conditions of the modern democracies where the political spectre left-right is strongly disturbed.

Furthermore, the parties become more and more “slow” and unable to act fast enough and adequately enough to the rapid changes in the society. With the development of the technologies, the people can easily gather highly specified information and it will not surprise anyone if group of people with specific interest in a particular field are far better prepared as experts than the one in “their” party. The technologies on the next place minimize the role of mediators. Communication and information can be done radically directly by the interested party.

Conclusion

We might say that in the western democratic systems there are two opposite directions. The one embraces the will of the civil society to take part in the decision making and the second one, which not only defends reasonably the representative democracy, but also stubbornly denies the use of direct democracy and therefore attributing to itself the qualification of oligarchy.

There is no doubt about the complexity of the issue concerning the political structure and the “Civil Culture” requires and demands for experts with special competences to take decisions referring to a particular field of knowledge. It is true that the relation majority-minority also influences the political process. In the light of the discourse related to the forms of democracy, it is also true that the trust in the voters in their representatives and from there – the trust in the governing body and the democratic model in whole is greatly compromised in the recent years and this trust rapidly decreases (Altman, D. Direct democracy worldwide). That creates social

apathy a frustration from the helplessness regarding political processes which personally affects the individuals. This undoubtedly brings immediate dangers for the realization of the democratic consensus.

The passive majority is faced with well informed and competent experts, who have limited contacts with the people. That can lead to reactions of the part or the whole community that does not even understand the taken decisions. It is because the democracy has to be interpreted in the sense of the classic definitions as a system of principles which *inter alia* guarantee the participation of the individual in the political life. To give the individual the right to vote once in few years cannot be defined as active participation.

There should be further and never-ending debate about the increase role of public participation in the decision making. Direct democracy is not a goal itself. It is a tool, that can be extremely effective when properly used in addition to the representative democracy and the vast majority of facts and examples prove that.

To draw the end line, a genius quotation by Tocqueville can perfectly close this article:

“To love democracy well, it is necessary to love it moderately” (de Tocqueville, A. 1996p.26)

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