Zoltán Tibor Pállinger

Democratic Infrastructures in the Service of Citizens' Rights: the Swiss Experience

(Paper presented at the BUDAPEST FORUM 2006 TOWARDS A MORE DEMOCRATIC EUROPE – CONTRIBUTIONS FROM HUNGARY AND SWITZERLAND, 20 November 2006)

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Contents

1 Introduction

Switzerland is widely seen as the home of direct democracy, and rightly so: of the 888 popular referendums that were held worldwide between 1971 and 2003, 60% took place in Europe and more than half of the latter were held in Switzerland. Switzerland is the only country in the world in which popular rights are routinely used, are constitutionally prescribed, with fully developed procedural mechanisms, and form an integral component of the political system. Clearly, it is the country in which direct democracy has the profoundest effect on the political system.

But Switzerland has not always been a champion of direct democracy. Switzerland's first constitution of 1848 followed the principle of representation. It contained only two direct-democratic rights: the mandatory constitutional referendum and the popular initiative for a complete revision of the federal constitution. The other popular rights were introduced gradually in a process which took many years. We have to consider them as concessions which the political elite had to make to opposition forces.

The regular use of direct-democratic instruments requires their conceptual and practical integration into the representative institutions of the state. Using the Swiss example, this paper sets out to elucidate what organisational measures a state must put in place in order for the population to be able to exercise its direct-democratic rights. The historical genesis of the citizens' rights in Switzerland, and the Swiss concept of direct democracy are first portrayed. The individual instruments and their effects are then described. These two elements provide the basis for clarifying the nature of the infrastructure which the Swiss state makes available in order to guarantee the exercise of the citizens' rights. Finally, an attempt will be made to draw some general conclusions from the Swiss experience.

2 The Swiss Concept of Democracy

2.1 Historical background

Swiss people like to look upon their country as the original source and treasury of direct democracy. This self-image is undermined to some extent by the fact that the first constitution of the Swiss Confederation was predominantly representative in character and that the country's direct-democratic rights were wrung from that representative system only during the second half of the 19th century.[1]

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[1] For what follows cf. Kölz (1992), Kölz (2004), Linder (2005) and Vatter (2002).

The modern federal state emerged between 1798 and 1848 amidst frequent conflicts between liberal-progressive and conservative forces. After the short-lived "Helvetic Republic", which was meant to transform the loose confederation of states of the "Old Confederation" into a modern, centralised state on the French model, the old order was partially restored with the new Federal Treaty of 1815. The Democratic Movement grew in strength during the 1830s, resulting in the old order being replaced at the cantonal level by modern representative-democratic systems, in which the only direct-democratic right provided for was the obligatory constitutional referendum. The worsening dispute between the liberal-progressive and the Catholic-conservative forces resulted in armed conflict (the 'Sonderbund War' of 1847), leading in turn to the replacement of the Federal Treaty by a modern Federal Constitution in 1848. This constitution followed the cantonal models and was likewise based on the principle of representation. However, one further direct-democratic instrument was added: the popular initiative for a complete revision of the federal constitution.

Once again it was the cantons which played the pioneering role in the subsequent evolution of the constitution. In its clash with the established forces of Liberalism, the "Democratic Movement" succeeded, in several of the cantons, in adding direct-democratic institutions to the representative system. From about 1865 onwards, the cantonal movements were also joined at the federal level by revisionist forces seeking the same goals. The clash with the so-called "federal barons" ended successfully with the total revision of the constitution in 1874. The new constitution introduced the facultative (optional) legislative referendum. The popular initiative for the partial revision of the federal constitution was then added in 1891. During the course of the 20th century the direct-democratic armoury was continually expanded, the referendum on international treaties being introduced in 1921 and the 'resolutive referendum' in 1948. This expansion reached its provisional conclusion in 2003, when the 'general initiative' was approved in a national referendum.

2.2 Basic principles of direct democracy

Switzerland has an extensive range of direct-democratic rights. These supplement and complement the original representative system; they do not replace the representative organs. Swiss political science thus speaks of a system of "direct democracy"[2] The term refers to a system of political decision-making in which quite specific decision-making rights and competences are constitutionally prescribed for the various organs of the state: the people, the parliament and the executive.[3]

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[2] I am grateful to Andreas Gross and Bruno Kaufmann for pointing out that in Switzerland the term "direct democracy" has now replaced the previously used term "semi-direct democracy". The expression "semi-direct democracy" was used to indicate that the direct-democratic instruments were used within a representative context. Since all countries have representative organs and since the direct-democratic instruments are not designed as an alternative to these, but rather as being complementary, the term "semi-direct democracy" is superfluous. The contemporary view is that direct and representative democracy are no longer in opposition, but exist as a complementary pair.

[3] For what follows cf. Linder (2005), p. 242f.

Table 1: Swiss Concept of Direct Democracy

Popular Sovereignty
Most important decisions People: Constitution
Second-level decisions Parliament: Laws ⇒ But: Possibility of a referendum
Third-level decisions Government: Ordinance
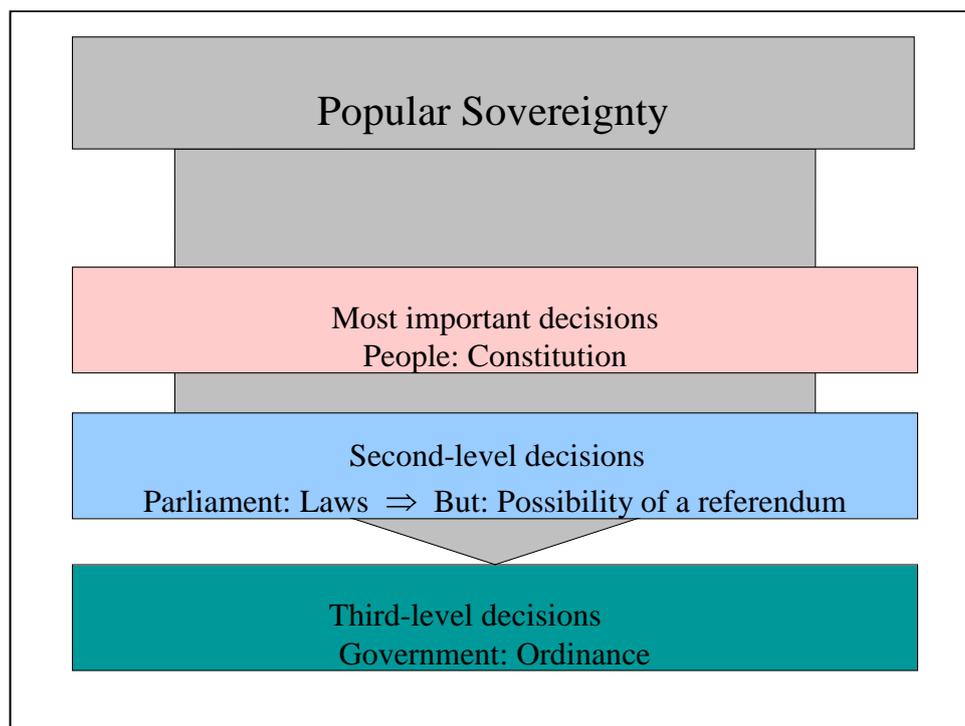
The Swiss version of direct democracy is based on the principle that the level of popular involvement in decision-making is graded according to the material significance of the political decisions to be made. Consequently, that entity which has the greatest democratic legitimacy i.e. the people, must be able to participate in, and also have the last word on, the most important matters of the state, where the decisions to be taken are governed by the constitution. This requirement is fulfilled by means of the popular initiative and the obligatory referendum. The entity which can claim the second highest level of democratic legitimacy – the Parliament – decides on the next most important matters through legislation. In most cases these decisions are final, but they are in principle always open to subsequent challenge by the people if it is successful in launching a facultative referendum. The government, finally, which has the least democratic legitimacy, is responsible for issuing ordinances and for less important individual decisions; in this it acts within its own powers, independently of the people and the parliament (cf. Table 1).

Thus in the Swiss system, it is the constitution which determines which entity has the final say on specific political issues. This clear determination of the rules of play creates a stable framework for the political process and gives a high security of expectation. The demarcation of decision-making is fundamental to the orderly use of the direct-democratic instruments. The direct-democratic system strengthens the position of the people in the political process and ensures a wide-ranging implementation of the principle of popular sovereignty.

3   The individual instruments

The system of democratic rights at the Swiss federal level is relatively complex.[4] In Swiss political practice, a basic distinction is made between ***popular initiatives*** and ***referendums***.

The purpose of the popular initiative is to introduce something new into the system. Using this instrument, Swiss eligible voters can demand a complete revision of the constitution (has not happened to date) or the revision of part(s) of the same. Popular initiatives can be submitted either as fully worked out proposals, or in a more loosely formulated form. If 100,000 eligible voters[5] express their support for the initiative by giving their signatures, it is held to have been formally validated (zustandegekommen). The Federal Council (the executive) then prepares a statement setting out its understanding of the effects of the initiative and forwards this to the two houses of parliament (the National Council and the Council of States) for deliberation. They can recommend that the initiative be either accepted or rejected – or they can put forward a counter-proposal.[6] The final decision is reached in a referendum ballot on the initiative (and on the counter-proposal, if one has been presented).[7] The initiative is approved if it secures a majority both of the overall votes cast (the popular vote) and of the 'states' i.e. the cantons – the so-called 'double majority'. The course the popular initiative has to take makes it clear that even this most markedly direct-democratic instrument is not an expression of arbitrary popular power, but is at all times subject to the rule of law and matched to the representative organs. The right of both government and parliament to present their own responses to the initiative and, if desired, for the latter to put forward its own counter-proposal, ensures that 'citizen lawmaking' does not undermine Swiss constitutionality and the rule of law: initiatives which do not satisfy the requirement of "unity of subject matter" or which contravene binding international law will be declared invalid by the Federal Assembly.

The referendum, on the other hand, allows parliamentary decisions which have already been taken to be struck down or modified.[8] Referendums can be subdivided into those which are obligatory and those which are facultative i.e. optional. Obligatory referendums relate to issues which must be submitted to a popular vote i.e. where no popular request is required. A facultative referendum only comes to a vote if a proportion of the voters (50,000) has demanded it. The referendum is a means whereby important state

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[4] Linder (2005), p. 247.

[5] This corresponds to approximately 2 % of the electorate.

[6] In practice, there is also the so-called 'indirect counter-proposal'. Here the government and parliament declare that they will incorporate the initiative proposal into future legislation.

[7] If both the original initiative and the counter-proposal are approved, there is a deciding question to determine which of the two will be adopted.

[8] Marxer (2005), p. 15

decisions are made subject to popular approval. In the case of obligatory referendums, the double majority rule applies – approval must be by a majority of both 'the people' and the cantons – whereas a simple majority of the votes cast decides facultative referendums.

Table 2: Direct-democratic instruments in Switzerland - Overview

Initiative (and Counter-proposal)	Compulsory Referendum
Target: Drafting of an entirely new constitution Changing parts of the constitution Changing or abolishing parts of the constitution or laws (new – not yet in force)	**Target:** Complete or partial revision of the constitution Joining supranational organizations or organizations of collective security
Signature requirement: 100,000 ~ 2 % of the adult citizenry within 18 months	**Signature requirement:** Automatic – no signatures required
Approval: Majority of popular vote and majority of cantons	**Approval:** Majority of popular vote and majority of cantons
	Facultative Referendum
	Target: Federal laws Urgent federal laws, lasting more than 1 year, without constitutional basis Others, including international treaties
	Signature requirement: 50,000 ~ 1 % of the adult citizenry within 100 days
	Approval: Majority of the popular vote
Impact: Innovation (accelerator)	**Impact:** Brake

It remains finally to mention that all the direct-democratic instruments in Switzerland are binding and relate solely to substantive issues. This is why there are no consultative opinion polls or decisions on "personal matters" (i.e. the selection of public officials) in the Swiss direct-democratic repertoire.[9] In respect of the popular initiative for complete revision of the federal constitution, the popular initiative in the form of a general proposal, and the general initiative i.e. in those cases in which the end result of the 'citizen lawmaking process' is not known in advance, the right of final decision rests with the people alone, or with the people and the cantons. We now turn to a description of the individual instruments.

3.1 Obligatory referendum

The scope of the obligatory referendum includes (a) amendments to the constitution; (b) federal laws declared to be urgent, but without a constitutional basis and whose period of validity exceeds one year; (c) accession to organisations of collective security or to supranational communities. Important proposals of this nature are subject to a qualified majority requirement (majorities of both the people and the cantons). This gives minorities and interest groups some veto possibilities. As the *status quo* actually reflects the prevailing balance of power between conflicting social groups, the chances of success of particular proposals are reduced, the more they depart from the current balance of power; they could potentially increase the benefits for a narrowly circumscribed group, but in doing so would affect the interests of more numerous minorities.

The fact that – despite the high hurdles – four-fifths of obligatory referendums are approved i.e. are decided in favour of the government/parliament line, means that the proposals enjoy broad support. In order for this to happen, all the socially relevant groups must be brought into the drafting of the proposals and sufficient account must be taken of their various interests. Since the lines of conflict in Swiss society criss-cross and overlap, changing majority and minority constellations emerge. In these circumstances the obligatory referendum has an integrative effect, since it ensures that in the long term no larger social group is excluded from influencing decisions and that even the most powerful interest groups cannot always get their own way at the cost of others. By favouring policy options which are closer to the *status quo*, the obligatory referendum tends to block far-reaching reforms and changes. In Switzerland, this damping effect on innovation is revealed in particular through (a) the historically late and modest appearance of major federal involvement in the fields of economic and social policy; (b) the low proportion of public expenditure in relation to overall GDP by international comparisons; (c) the low level of centralisation; (d) the modest size of the federal administration by international standards; and (e) the relative reticence in terms of international political collaboration.[10]

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[9] The idea of a non-binding public opinion poll runs counter to the Swiss conception of popular sovereignty.

[10] Gabriel/Rybach 2002, p. 38.

3.2 The facultative referendum

Subject to the facultative referendum are (a) federal laws; (b) federal laws declared to be urgent, whose period of applicability exceeds one year; (c) the majority of federal decrees; and (d) international treaties which are of no fixed duration and which cannot be revoked, or which provide for accession to an international organisation, or contain important legislative provisions, or whose implementation would require the passing of a federal law. A referendum on these matters is launched if requested by 50,000 eligible voters (by giving their signatures), or eight cantons[11], within 90 days of the official publication of the law or provision. If the formal requirements are met, the issue must be put to the people in a national ballot. The law, decree or provision can only enter into force (or remain in force) if a simple majority of those who voted approves it (simple majority rule).

The aim of a facultative referendum is to prevent the implementation of a parliamentary decree which is viewed as detrimental by some group. As with the obligatory referendum, the tendency of this instrument is also to favour the status quo. Proposals which diverge significantly from it carry a higher risk of being subjected to a referendum. Facultative referendums occur when the majority coalition in parliament underestimates the threat of a referendum – or the strength of the opposition – or when the (parliamentary) minority overestimates its own strength, is forced for reasons of principle to use the threat of a referendum (which it is unlikely to win) so as not to lose credibility, or wishes to send out signals for the future handling of certain issues. But the facultative referendum can also be used by 'outsiders' who were not involved in the negotiation process, or who did not use the threat of a referendum during that process.

Table 3: Approval rate for facultative referendums in Switzerland (1874-2004)

	1874-2004			1980-2004		
	Number of ballots	Approved	Approval rate	Number of ballots	Approved	Approval rate
Proposals	152	79	52 %	62	41	66 %

Source: Swiss Federal Chancellery (2005)/Author's calculations.

The facultative referendum is an instrument which is relatively easy to use. The progressive forces originally saw it as performing a plebiscitary function, uniting the people and the authorities and thus giving greater legitimacy to majoritarian politics. In fact, it has developed entirely contrary effects: after its introduction in 1874 it was used first by Catholic-Conservative circles to break up the Liberal power cartel. To date, the systematic use of the facultative referendum has not always been able to block the legislative proposals of the majority parliamentary coalition, but it has succeeded in imposing considerable delays on them.

The facultative referendum is an efficient instrument of the opposition. Between 1874 and 2004, just under half of the legislative proposals which went to referendum were rejected by the people i.e. the decision went against the majority parliamentary

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[11] The so-called cantonal referendum has been used only once in its 130-year existence (in 2003; BBL 2003 7269) and can thus be ignored for the purposes of this essay.

coalition. However, if one looks at the last 25 years, it is interesting to note that the proportion of approved proposals actually rose, to 66%. This appears to have been the result of learning processes on the part of the political elite.[12] The facultative referendum has made a major contribution to the emergence of the Swiss consensus model of politics. In order to prevent the systematic obstruction of political decision-making by groups capable of launching a facultative referendum, the latter were brought into the process, where necessary co-opted into government or at least taken into account in the parliamentary process. This is clear from the fact that 93% of parliamentary rulings are implemented without being challenged by a facultative referendum. As the facultative referendum is often used by political outsiders, the pre-parliamentary process was also expanded. When important measures are being worked on, the cantons, the political parties and all interested circles are brought into the discussions at an early stage. This consultative procedure (known as the "Vernehmlassungsverfahren"), which initially came into being informally, is now enshrined in the Swiss federal constitution (Art. 147 BV). Its effect is reinforced by the fact that much of Swiss politics still operates on what is called the 'Miliz' system (a system in which most public positions – in military service, government, etc. – are part-time and held in addition to a private job): the committees of experts which are responsible for drafting legislation routinely include numerous representatives of various organizations who function as external experts.

The facultative referendum, like its obligatory counterpart, has effects which strongly promote integration and also put a brake on innovation. At the same time, it also contributes to a reduction in transparency and to a certain 'informalisation' of politics, as the handling of social conflict and clashes of interest is removed from the public arena of parliament and relocated in the semi-public arena of a pre-parliamentary process. This favours the creation of cartels of elites who can potentially steer politics in certain directions – a process over which the public has virtually no control. The facultative referendum can thus be used to protect special interests, favouring a case-by-case, 'floating' opposition in contrast to the systematic opposition of the minority parties in parliament.

3.3 Popular initiative and Counter-proposal

A popular initiative acquires preliminary formal recognition (validation) if 100,000 eligible voters have given their signatures in support of it within 18 months of its launch. Parliament then rules on its conformity with certain prescribed requirements and produces its own recommendation in response. It may also put forward a counter-proposal. Finally there is a popular ballot. A double majority (people and cantons) is required for adoption of the proposal.

Although the signature threshold for launching a popular initiative is twice as high as that for the facultative referendum, it is the former instrument which more often succeeds in reaching its qualifying hurdle. However, of all the direct-democratic instruments, it is the one with the lowest chances of success. The outcome of the ballot favours the initiators in only around 8% of cases. The hope of the progressive democrats that a significant proportion of all legislation would be "lawmaking by the people" has thus not come to pass.

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[12] Cf. Trechsel 1999, p. 77.

The aim of the popular initiative is to bring about change; it serves in the first place as a means of directly forcing through a demand made to the government and parliament. There are almost no restrictions on subject matter. It thus functions somewhat as a safety valve within the strongly consensus-oriented decision-making system. But the same law applies here too: the more the subject of a popular initiative diverges from the status quo, the lower are its chances of success. The electorate tends to vote conservatively, in line with the views of the bourgeois elites. In general, the popular initiative is an instrument of the opposition. It thus tends to be used mainly by 'the Left' in an attempt to offset its weaker political position by resorting to a popular vote.

The indirect effect of the popular initiative must not be forgotten. It is sometimes used as a kind of bargaining tool in negotiations with the government and parliament, in order to force them to submit a counter-proposal by means of which at least some of the demands of the initiative committee can be realised. It is frequently the case that the debate and activation of public opinion around the initiative issue can result in some of its elements being converted into legislation even when the initiative proposal has been rejected in the public vote. Research estimates are that around one-third of all popular initiatives leave either a direct or indirect mark on legislation.[13]

It is also possible that the initiators actually have other aims in mind than a direct success at the ballot box. The expenditure of time, energy and money involved in launching an initiative can help to increase the mobilisation and motivation of ones own supporters. Taking up popular issues can potentially win a political party new members or supporters for its agenda. A popular initiative may thus be used to improve a party's electoral chances, enhance its public profile or bring about an increase in its social or political influence.

In the long view, the popular initiative has two main effects: it compensates for the innovatory weakness of an over-restrained consensus system[14] and by acting as a safety valve it helps to integrate those who are dissatisfied with the political status quo.[15]

3.4 Summary

In the Swiss context, the instruments of direct democracy produce consensus-oriented effects and thus contribute to the integration of the major groupings in society. Both the obligatory referendum and the popular initiative incorporate strong elements of minority protection through the double majority requirement. Although – or perhaps even because – the facultative referendum is easy to use as a blocking tool, it has also come to generate a marked pressure for consensus. In order to prevent the actions of the state from being blocked, important opposition groups are brought into the legislative process at an early stage. These effects are reinforced by the underlying conflict structure: the crossing and overlapping of lines of conflict works against the permanent subjection of certain social groups to the 'tyranny of the majority'.

Direct democracy gives people wide-ranging possibilities of participation. The popular political rights represent real tools by means of which opposition forces can

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[13] Joye/Papadopoulos 1994, p. 260.

[14] Hertig 1984, p. 254.

[15] Linder 2005, p. 269.

exercise some control over the decision-making elites and secure a public voice for their concerns and differing points of view. Since the pressure for consensus leads to over-sized coalitions with a correspondingly weak political opposition, the people take on the role of the (extra-parliamentary) institutional opposition.[16] The increased control of the elites and the extended possibilities for having an influence on decision-making result in the political system becoming more responsive overall. In addition, the use of direct-democratic instruments favours the decentralisation of the structure of public spending. This ensures that public sector activity is linked far more closely to citizens' wishes and genuine local needs.[17]

The consensus-oriented design of direct democracy, added to the rather bourgeois-conservative views of the majority of the population, result in politics being strongly oriented towards preservation of the status quo. In general, few decisions are really innovative and progressive. In crisis situations, or when new kinds of challenge emerge, the decision-making system can rapidly hit the buffers. An eloquent example of this danger is the far-reaching withdrawal of direct-democratic procedures during both World Wars. To a large extent, the government and parliament were forced to resort to emergency law in order to retain their capacity to act. Retaining the direct-democratic procedures would have prevented them taking rapid or timely action.

As the major decisions must in any case be put to the people, neither elections, nor parliament and government are as important as in purely representative systems. The result is a certain undermining of political responsibility. Members of parliament who lose important initiative or referendum ballots are not required to resign. The political parties are also relatively weak, since organisations and other groups are not reliant on them as intermediaries to defend and promote their interests, since they can intervene directly themselves thanks to the popular rights. The fact that the relevant interest groups are brought into the decision-making process as early as possible makes politics more informal. Important preliminary decisions are no longer made in parliament, but in pre-parliamentary processes from which the general public is excluded. Last but not least, interests and groups which cannot easily organise themselves, and thus may be incapable of launching a referendum, run the risk of becoming permanent minorities without political influence.

4   Democratic Infrastructure

We are familiar with the term 'infrastructure' from daily life. In this context, it is most commonly used to denote the system of streets, railroads etc., which is needed to make traffic or transport systems work. In more general terms, 'infrastructure' can be defined as follows:

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[16] Ibid., p. 246.

[17] Cf. Freitag/Vatter 2000; Matsusaka 1995, 2000.

"Infrastructure is a set of interconnected structural elements that provide the framework supporting an entire structure."[18]

From this definition we can deduce that infrastructure is not an end in itself, but something that forms the basis for one or more other structures. Thus infrastructure is functional to the achievement of the goals of other systems (e.g. railroads are one of the bases of the transport system).

In modern democratic polities we can differentiate between 'democratic infrastructure' and 'direct-democratic infrastructure'. The first encompasses the institutions, instruments and procedures provided by the state which enable the exercise of democratic rights. For example, a 'democratic infrastructure' makes (regular) elections possible. In so doing, it becomes one of the main organisational prerequisites of democracy itself. The second aspect – a 'direct-democratic infrastructure' – encompasses the institutions, instruments and procedures provided by the state that make the use of direct democratic rights possible. In simple terms, a 'direct-democratic infrastructure' enables the exercise of direct-democratic rights, meaning factual decisions made by the people (e.g. through initiatives and referendums).

Table 4: Infrastructure – definition

In general:
Infrastructure is a set of interconnected structural elements that provide the framework supporting an entire structure.

Democratic infrastructure:
Institutions, instruments and procedures provided by the state that render the use of democratic rights possible ($\rightarrow$ elections).

Direct democratic infrastructure:
Institutions, instruments and procedures provided by the state that render the use of *direct* democratic rights possible ($\rightarrow$ initiatives and referendums).

In Switzerland, both democratic and direct-democratic infrastructures are provided on all three levels of the state: federation, cantons, and municipalities. In what follows we will concentrate on the federal level and especially on the infrastructure for the direct democratic instruments. From the organisational point of view, the Swiss Federal Chancellery, the government's Staff Department, is - in collaboration with the ministries (Departments) - the main provider of the direct-democratic infrastructure (see Table 6).

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[18] Cf. Wikipedia (2006).

Table 5: Swiss Government: Organisation

			Federal Council			
				Federal Chancellery		
Department of Foreign Affairs	Department of Internal Affairs	Department of Justice and Police	Department of Defence, Civil Protection, Sports	Department of Finance	Department of Economic Affairs	Environment, Transport, Energy & Communication
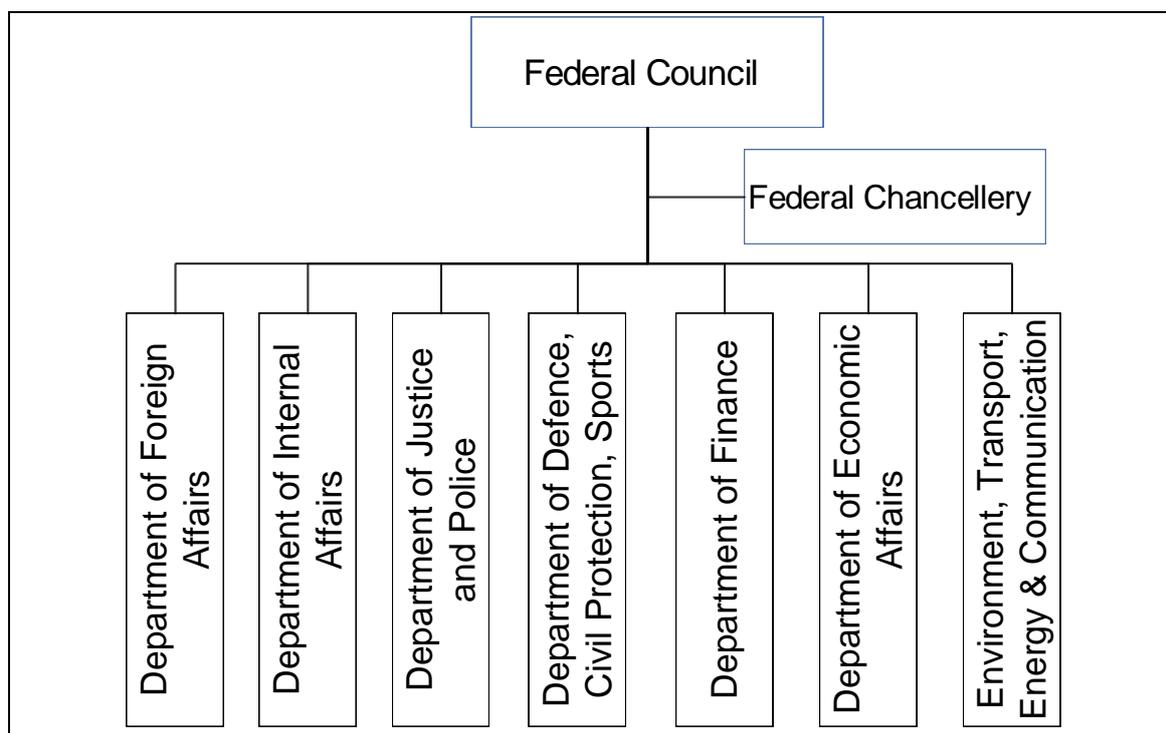
Several sectors or sections within the Federal Chancellery are involved in the provision of the direct-democratic infrastructure (see Table 7). The Information and Communications Sector handles the business of day-to-day information about the government's proceedings and its decisions. In addition, this sector is also responsible for producing - together with the Departments - the official information material for the national ballots (initiatives and referendums). The Federal Council Sector is also involved in providing democratic infrastructure through its Central Language Services and by producing the Federal Bulletin and other publications. Last but not least, the Popular Rights Section in some sense represents the 'opposition' within the administration. It is responsible for organising the national elections and ballots. It provides advice to citizens, political parties and other organisations which intend to make use of the popular rights.

In the following chapters we will take a closer look at the specific services (i.e. information, language, procedures, support), which are part of the direct-democratic infrastructure provided by the Swiss Government.

Table 6: Swiss Federal Chancellery: Organisation
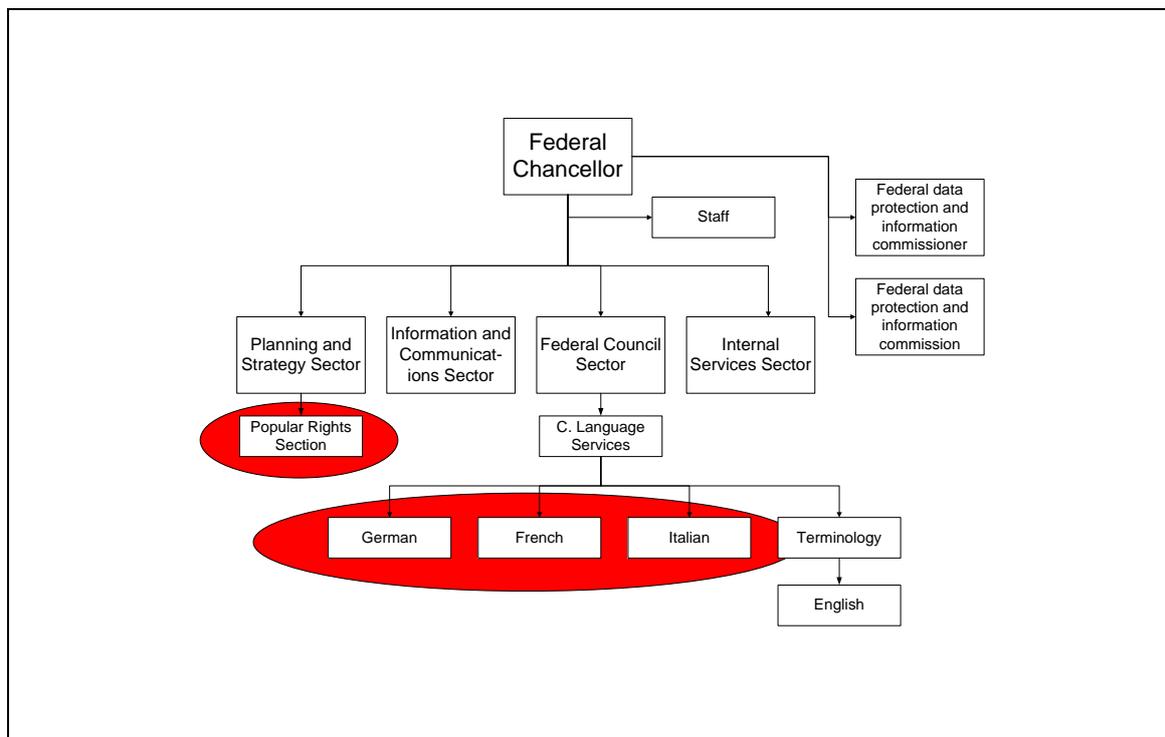
4.1 Information

A well-informed citizenry is in general one of the main preconditions for the proper functioning of direct-democratic procedures. Since the citizens play a very important role in the Swiss system of direct democracy, the Swiss authorities offer a vast array of information. Access to official documents is guaranteed by law (Freedom of Information Act).

The Swiss Federation has an online portal, through which all the branches of government are made accessible to the public. It is important to mention in this context that practically all official documents are available online and that these online documents are free of charge. An overview of the most important publications is given below.

The Federal Bulletin is the main organ of publication of the federal authorities. This weekly publication, which is also available on the Internet, embraces on the one hand all the bills, the corresponding draft decisions and the explanatory material presented to the parliament by the government. On the other hand, it also includes all the parliamentary decisions on laws and resolutions which are subject to either the facultative or the compulsory referendum. Besides the aforementioned information, the Federal Resolutions, the results of the validation process for proposed referendums and initiatives, the Federal Council's decisions about the ballots (validation etc.) and the Federal Council's report on the national elections to the National Council (lower chamber), are also published in this paper.

All laws, decrees and international treaties which are currently in force are published in the Systematic Collection and in the Official Collection and are available online. Furthermore, there is a vast array of reports, White Books and brochures which are available online or can be ordered for a small fee from the Federal Publications Office.

4.2 Language

It is common knowledge that language is power. In a system which tries to enhance the potential for participation of its citizenry, it is crucial that people should understand politics in general and the content of the legal texts in particular. As Switzerland is a country with four official languages (Art. 70 §. 1 FC) and three working languages (German, French and Italian), there is a legal obligation on the state to ensure that every single citizen may communicate with the authorities in her or his own language. This principle holds true even within the federal administration. According to the principle "chacun/chacune sa langue", Swiss federal officials have the right to use their own language in their place of work, but they must also understand at least one other official language.

It is a long established policy of the federal authorities that all official texts should be easily intelligible for the – so-called – 'ordinary citizens'. In order to implement this policy, language experts participate in the drafting process of official documents such as ballot recommendations or brochures etc. Swiss laws are 'state-of-the-art' in terms of intelligibility. There are established procedures for guaranteeing the linguistic quality of the Swiss laws:

- The Language Services take part in the drafting of the laws from scratch.

- There is a special training for the people who draft legal texts (Murten seminars on drafting legislation).[19]

- There are published special guidelines for drafting legal texts.[20]

4.3 Procedures

Switzerland is the only country in the world in which popular rights are applied as a routine procedure.[21] Their use is constitutionally prescribed, with fully developed procedural mechanisms (detailed in the federal law on political rights). Thus the standard procedures are functional prerequisites for integrating direct-democratic instruments into a representative system and rendering their use an integral component of the political system. These mechanisms ensure that what is at issue is the content of the (initiative or referendum) ballot, and not the procedure.

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[19] Cf. http://www.admin.ch/ch/d/bk/sp/andere/index.htm.

[20] Handbook: "Gesetzgebungsleitfaden"; Journal on Legislation: "LeGes - Gesetzgebung & Evaluation".

[21] Gebhardt (2000), 16.

In Switzerland every single step of the ballot process is formalised and standardised. The process is initiated when a law which is subject to referendum or the text of a popular initiative is published. Then the required signatures for the referendum or the initiative have to be gathered by the respective committees. After this, the Federal Chancellery declares whether the initiative or the referendum is 'qualified' or not. In the case of the popular initiatives there is also a preliminary check. Initiatives which violate the principles of unity of subject-matter or unity of form, or which are incompatible with binding international laws (ius cogens), are declared invalid, which means that they will not proceed to a popular vote (Art. 139 Abs. FC). At first sight, it may seem strange that the preliminary check (of formal validity) takes place only after the signature collection. But the principle of popular sovereignty means that it is assumed that people are able to judge for themselves whether a proposed initiative is valid or not. Moreover, the debate about an initiative's validity is part of the whole direct-democratic discourse. Since the introduction of the popular initiative in 1891, only three initiatives have been declared invalid.[22]

Once the referendum is qualified, the Federal Council arranges the popular ballot. In the case of the popular initiative, the Federal Council prepares a position statement (known as the 'Botschaft') for presentation to the Parliament, in which it outlines the consequences of the initiative for the Swiss legal system and federal policies. Based on its assessment, the Federal Council makes a recommendation either to accept or to reject the initiative. Parliament then debates the Federal Council's statement and produces its own recommendation. There is also the possibility for the Parliament to propose a direct or indirect counter-proposal to the initiative. In any case, the authorities have to meet the time limits prescribed by law (Art. 74: Federal law on political rights). These are 39 months for "simple initiatives", or 51 months for initiatives with counterproposals.

The final step of the direct-democratic process is the popular vote. After the ballot has taken place the result is validated by the Federal Council. Thereafter the changes to the constitution or the new or modified law can enter into force.

Besides the direct-democratic procedures in the strict sense there are also regular consultations on important issues before a decision is reached by the Federal Council. These consultations first evolved informally. The government wanted to avoid being defeated in the referendum and therefore began to consult with those opposition groups which could mount a credible threat to launch a referendum against the governing parties. This practice eventually led to the Swiss policy of 'concordance' or consensus, since all major groups were included in the grand coalition at the national level. Today these consultation processes ("Vernehmlassungsverfahren") are prescribed in the constitution (Art. 147 FC). Every interested group has to be consulted, but the process is also open to the general public. The introduction of this instrument is a direct consequence of the popular rights (especially the facultative referendum), which force the political élite to take more account of the people's opinions, thereby enhancing the legitimacy of the system.

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[22] Cf. http://www.admin.ch/ch/d//pore/vi/vis_2_2_5_6.html.

4.4 Support

The Swiss government's dedication to fostering the use of direct-democratic rights is demonstrated by the fact that it has created an organisational unit in the Federal Chancellery, the Popular Rights Section, which, among other tasks, provides direct support to citizens, political groups or parties who wish to exercise their popular rights. This unit is sometimes – somewhat ironically – called the "opposition within the government".

The Popular Rights Section has a kind of a help desk where interested persons can receive direct answers to questions about the direct-democratic instruments. The section also provides manuals and popular brochures about the use of popular rights. Generally speaking, one of the main aims of the Popular Rights Section is to facilitate and encourage the use of the direct-democratic instruments.

5 Conclusions

In this final chapter we attempt to generalise the conclusions from the Swiss experience of how to make direct democracy work in a political system:

- Political decisions should be taken close to the citizen. Decentralised decision-making ensures that people's needs are reflected in the political agenda. Furthermore, the proximity of citizens to the political decision-making process also ensures that they are familiar with the policy questions and the procedures.

- There should be clear rules and procedures. The clearer the procedures, the greater is the likelihood that direct-democratic instruments are used regularly in a manner that is functional for the political system as a whole.

- The results of the ballot should be both legally and politically binding, in order to emphasise the importance of the popular element in the polity.

- The threshold for the use of the direct-democratic instruments should be low.

- The political actors should inform the public about policies on a regular basis. The information has to be comprehensive and easily accessible.

- Language is also an important enabling factor for the use of the popular rights. Information should be available in the mother tongue of the citizens. Legal texts as well as informational material should be easily intelligible.

- Last but not least, it is important to create a support infrastructure in order to disseminate knowledge of the popular rights and to facilitate their use.

In short: it is essential to have clear rules of the game and it is also very important to create a supportive environment for the use of the direct-democratic instruments.

6 References

Sources

Bundesverfassung der Schweizerischen Eidgenossenschaft vom 18. April 1999 (Stand am 8. August 2006), cited as CF.

[Constitution of the Swiss Confederation, dated 18th April, 1999 (correct as of 08.08.2006), cited as CF]

Bundesgesetz über das Öffentlichkeitsprinzip der Verwaltung

vom 17. Dezember 2004 (Stand am 20. Juni 2006)

[Federal Act on Freedom of Information in the Administration of 17th December 2004]

Bundesgesetz vom 17. Dezember 1976 über die politischen Rechte, cited as LPR.

[Federal law of 17th December 1976 on political rights, cited as LPR]

Literature

Borner, Silvio/Rentsch, Hans (Hrsg.) (1997) Wieviel direkte Demokratie verträgt die Schweiz? Beiträge zur aktuellen Reformdebatte. Referate und Diskussionsbeiträge der Tagung „Direkte Demokratie in der Schweiz" vom 11./12. Juli 1996 in Zug. Chur/Zürich. Rüegger.

Brunetti, Aymo/Straubhaar, Thomas (1996) Direkte Demokratie – „bessere" Demokratie? Was lehrt uns das Schweizer Beispiel?, in: Zeitschrift für Politik, Nr. 6. S. 7-26.

Bundesamt für Justiz, Gesetzgebungsleitfaden (2002): Leitfaden für die Ausarbeitung von Erlassen des Bundes. Bern [2., überarbeitete Auflage].

Bundesamt für Statistik (2004) Politischer Atlas der Schweiz. Daten und Karten zu den Nationalratswahlen und den eidgenössischen Volksabstimmungen 1866-2004. Neuchâtel, BFS (CD-ROM). [Zitiert als BFS (2004)].

Church, Clive C. (2004) The Politics and Government of Switzerland. Houndmills, Palgrave.

Feld, Lars P./Savioz, Marcel R. (1997) Direct Democracy Matters for Economic Performance: An Empirical Investigation, in: Kyklos, vol. 50, no. 4, S. 507-538.

Fossedal, Gregory A. (2002) Direct Democracy in Switzerland. New Brunswick/London, Transaction Publishers.

Freitag, Markus/Vatter, Adrian (2000) Direkte Demokratie, Konkordanz und Wirtschaftsleistung: Ein empirischer Vergleich der Schweizer Kantone, in: Schweizerische Zeitschrift für Volkswirtschaft und Statistik, Jg. 136, Nr. 4, S. 579-606.

Frey, Bruno S. (1994) Direct Democracy: Politico-Economic Lessons from the Swiss Experience, in: American Economic Review, vol 84, no. 2, S. 338-342.

Gabriel, Jürg Martin/Rybach, Manuel (2002) Die Schweiz in der Welt, in: Klöti, Ulrich et al. (Hrsg.): Handbuch der Schweizer Politik. Zürich, Verlag Neue Zürcher Zeitung, S. 35-51. [3., überarbeitete Auflage]

Gebhardt, Jürgen (2000): Das Plebiszit in der repräsentativen Demokratie, in: Arnim, Hans Herbert von (Hrsg.): Direkte Demokratie. Beiträge auf dem 3. Speyerer Demokratieforum vom 27. bis 29. Oktober 1999 an der Deutschen Hochschule Speyer. Berlin, Duncker & Humblot, S. 13-26.

Hertig, Hans Peter (1984) Volksabstimmungen, in: *Klöti, Ulrich* (Hrsg.): Handbuch Politisches System der Schweiz. Band II (Strukturen und Prozesse). Bern, Haupt, S. 247-277.

Joye, Dominique/Papadopoulos, Yannis (1994) Votations moteurs: les logiques du vote blanc et de la participation, in: *Papadopoulos, Yannis (Hrsg.)*: Elites politiques et peuple en Suisse. Lausanne, Réalites sociales, S. 245-276.

Kölz, Alfred (1992) Neuere Schweizerische Verfassungsgeschichte: ihre Grundlinien vom Ende der Alten Eidgenossenschaft bis 1848. Bern, Stämpfli.

Kölz, Alfred (2004) Neuere schweizerische Verfassungsgeschichte. Ihre Grundlinien in Bund und Kantonen. Bern, Stämpfli Verlag.

Kirchgässner, Gebhard/Feld, Lars P./Savioz, Marcel R. (1999) Direkte Demokratie. Modern, erfolgreich, entwicklungs- und exportfähig. Basel/Genf/München, Helbing & Lichtenhahn.

Kriesi, Hans-Peter (2005) Direct Democratic Choice. The Swiss Experience. Oxford, Lexington Books.

Linder, Wolf (2005) Schweizerische Demokratie. Institutionen, Prozesse, Perspektiven. Bern, Haupt.

Marxer, Wilfried (2004) „Wir sind das Volk" – Direkte Demokratie: Verfahren, Verbreitung, Wirkung. Beiträge Liechtenstein-Institut Nr. 24. Bendern.

Matsusaka, John G. (1995) Fiscal Effects of the Voter Initiative: Evidence from the Last 30 Years, in: Journal of Political Economy, vol. 103, no. 3, S. 587-623.

Matsusaka, John G. (2000) Fiscal Effects of the Voter Initiative in the First Half of the Twentieth Century, in: Journal of Law and Economics, vol. XLIII, October, S. 619-650.

Neidhart, Leonhard (2002) Die politische Schweiz. Fundamente und Institutionen. Zürich, Verlag Neue Zürcher Zeitung.

Trechsel, Alexander/Serdült, Uwe (1999) Kaleidoskop Volksrechte. Die Institutionen der direkten Demokratie in den schweizerischen Kantonen 1970-1996. Basel, Genf & München: Helbing & Lichtenhahn.

Vatter, Adrian (2002) Kantonale Demokratien im Vergleich. Entstehungsgründe, Interaktionen und Wirkungen politischer Institutionen in den Schweizer Kantonen. Opladen, Leske + Budrich.

Wittmann, Walter (2001) Direkte Demokratie. Bremsklotz der Revitalisierung. Frauenfeld/ Stuttgart/Wien. Huber.