

# **Stabilising or destabilising? Direct-democratic instruments in different political systems – Liechtenstein and Switzerland compared**

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## **Abstract**

Democratic political systems can pursue different goals and follow differing design rules. The underlying concept of sovereignty may lean towards either the populist principle (popular sovereignty) or the constitutional principle (the limitation of power through the rule of law), whilst the regulatory system may be of the majoritarian or the consensus type. Direct-democratic elements would threaten the intended logic of the system if they were fundamentally opposed to the planned tendencies of the system. The examples of the neighbouring states of Switzerland and Liechtenstein, which represent different system types whilst at the same time having extensive and well-used direct-democratic rights, allow one to investigate whether it is possible to develop direct-democratic rights, both in theory and practice, so that they integrate well with the planned goals of the existing system. In order to do this, it is necessary to generate a typology of the existing direct-democratic instruments in respect of their systemic characteristics and according to the different concepts of sovereignty and differing regulatory systems. The evidence from the two countries examined shows, firstly, that the majority of the direct-democratic instruments conform to the prevailing system logic, and, secondly, that exceptions to this rule have very little practical impact. Thus, in the two cases studied, direct democracy does not lead to any destabilisation of the primarily representatively organised political systems, but on the contrary tends to contribute to greater stability in those systems.

## 1. Introduction

This paper aims to examine in greater depth the relationship between direct and representative democracy at a theoretical level. Chapter 2 develops the theoretical framework. In a first step, we present the major types of direct-democratic instruments and give an overview of the distribution of citizens' rights in Switzerland and in the Principality of Liechtenstein. There follows a historical review of the debate on the relationship between direct and representative democracy. We then present a typology which generates a systematic relationship between direct-democratic instruments and different types of democracy. It presumes that the functional logic of the individual citizens' rights in a state must be consistent with the fundamental normative principles of the corresponding type of democracy, in order to avoid dysfunctionality. The basic conclusions of this model for the countries in question have already been confirmed elsewhere (Marxer/Pällinger 2006); they serve as a reference framework for the following study, which examines in greater depth the further question as to whether the use of direct-democratic instruments which are in theory compatible with the type of democracy may not, after all – unintentionally – undermine the representative system. We present first a survey of the functions and intended effects of the direct-democratic instruments. We then examine the relationship between the frequency of use of these instruments and their effects on the overall political system. In Chapters 3 and 4, the theoretical assumptions are tested against actual practice in Liechtenstein and Switzerland. Chapter 5 presents our conclusions.

The empirical basis for this study is the comparison between Switzerland and Liechtenstein. These countries were selected for both theoretical and practical reasons. At the level of theory, it is of especial interest that they have a very similar set of direct-democratic instruments (most similar design), but differ considerably in terms of the system of government and the concept of sovereignty (most different design). Whilst Switzerland can be assigned to the type of a presidential consensus democracy – indeed it is widely seen as the model of consensus democracy – Liechtenstein is more difficult to classify: the parliamentary monarchy, in which power is divided between the Prince and the people, has both presidential and parliamentary characteristics. Moreover, during the last decade, Liechtenstein politics see-sawed between more consensus-oriented and more competition-oriented poles, returning latterly to a consensus model. If one uses the criteria developed by Lijphart (1999), it is clear that Liechtenstein is an example of a consensus democracy. This present study should also be seen in the light of a series of studies which used a comparative approach to examine direct democracy in Liechtenstein (Marxer 2007, Marxer/Pällinger 2006, Marxer/Pällinger 2007a, Marxer/Pällinger 2007b). There was thus a practical interest in presenting a comparison of the two countries in terms of the continuation of an ongoing research program.

## 2. Theoretical framework

Since the emergence of the concept of democracy in ancient Greece, the term has been understood to mean direct self-rule by the citizens. The theoretical and practical point of reference for democracy was the Greek polis. With the rise of the territorial nation-state, this

older concept of democracy was replaced by the newer model of representative democracy. This “second transformation of democracy” (Dahl 1989) involved a certain devaluation of direct democracy as the essential feature of democracy. This was now seen as being appropriate only for small, under-developed states (Dahl/Tufts 1974, 12). The principle of representation made it possible to extend ‘democracy’ to large, modern states such as the USA. The proponents of this new form of government were well aware of its contrast to ancient democracy, which is why they made a conceptual distinction between ‘democracy’ (in the sense of direct self-rule) and ‘representative government’ (Mill 1971) or ‘republic’ (Hamilton/Madison/Jay 2007). These two forms of government were seen as mutually exclusive alternatives. During the course of the 19<sup>th</sup> century, this stark opposition was modified by the radical democratisation of society; the irreversible mobilisation and involvement of the population resulted in individual members of society beginning to see themselves as *the* basic political unit (Gebhardt 2000, 13). This evolutionary development was embodied in the idea of popular sovereignty, which implies that the actions of the state have to be legitimated by the people. The people are sovereign in the sense that it/they represent the highest and non-reducible (in secular terms) basis of legitimacy for the apprehension and the exercise of state power (Fleiner-Gerster 1995, 175). It is a fact that in modern times all states have developed representative bodies in response to the increased complexity of the system context (Schiller 2002, S. 12). Despite this, most of them also have direct-democratic instruments,<sup>1</sup> which complement the representative structures.

## 2.1. Direct-democratic instruments

The modern debate distinguishes two differing conceptions of ‘direct democracy’: the first describes a specific type of political governance in which political power is exercised exclusively and directly by the entirety of the active citizenry – not by individual officials or representatives, or small groups of these. The opposing concept of direct democracy places it within the framework of representative democracy (Batt 2006, 11). In this second understanding, ‘direct democracy’ is the name for a political decision-making procedure in which the authority to make decisions on certain substantive issues is transferred by the representative organs to the electorate. However, these instruments are not seen as representing an alternative to the representative political system, but relate only to a narrowly defined institutional field of decision-making procedures which is embedded within the overall political system, whose structures it complements or supplements (Schiller 2002, 36). In this paper, we use the second of the two concepts of ‘direct democracy’. Thus, the relationship to representative democracy is complementary rather than exclusive.

In democracies, selection of representatives and other officials is normally carried out through elections held at regular intervals. Direct-democratic instruments, on the other hand, focus on direct decision-making on substantive issues by those entitled to vote on such issues. There are also intermediate forms which relate to the selection of individuals outside of the normal electoral cycle. Based on this analysis we can distinguish the following kinds of citi-

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<sup>1</sup> For a global overview of direct-democratic instruments cf.: <http://c2d.unige.ch/>

zens' rights: popular consultative ballots, referendums, initiatives, plebiscites and the right of recall:<sup>2</sup>

*Popular consultative ballots* are votes on substantive issues (e.g. draft laws, planning decisions etc.) whose outcomes are not binding on the authorities.

When parliamentary decisions about laws or the constitution are subsequently subjected to a popular vote, the latter are referred to as *referendums*. If the right to launch such a referendum rests with the voters, this is termed a 'facultative referendum'. It is normally necessary to collect a specific minimum number of signatures to launch this kind of referendum. When a decision is subjected to a facultative referendum, and at the same time a representative organ has the right to organise a popular vote on the proposal, one speaks of an 'authorities' referendum'. If a popular vote is prescribed (by law or in the constitution), we refer to it as an 'obligatory referendum'.

*Initiatives* are direct-democratic decision-making processes which are launched, not by the authorities, but by the voters and which introduce citizens' proposals into the legislative or constitutive process. The initiative process is also usually launched through the collection of a fixed number of signatures.

If the right to launch a popular vote does not lie with the active citizenry, but is solely within the discretion of an organ of the state, one speaks of a *plebiscite*. This instrument allows the relevant organ of state to make use of a popular vote for strategic reasons (in political competition with other organs of the state), or as a 'vote of confidence' – and thus as a means of seeking legitimacy for its policy/ies. For this reason it is not counted as a direct-democratic right (IRI 2005, 229).

Votes on the de-selection of an elected individual or authority fall under what is known as the '*right of recall*'. This instrument makes it possible to correct "mistaken" or "inopportune" electoral decisions. To this extent it represents an absolute emergency measure.

Both Liechtenstein and Switzerland have the main types of direct-democratic instrument – the initiative and the referendum. Though Liechtenstein introduced direct democracy later than Switzerland, using the latter as a model, it has a wider range of instruments, including – in addition to the two citizens' rights already mentioned – also decisions on official appointments, public expenditure, and the right to convene and dissolve the Landtag (Parliament). Both countries have a well-developed/extensive set of direct-democratic instruments, which are comparable both in terms of content and design (cf. Table 1).

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<sup>2</sup> For the definitions of the direct-democratic instruments cf.: Batt 2006, 12f.

Table 1: Direct-democratic instruments in Switzerland (CH) and Liechtenstein (LI)

| Initiative   |          | Referendum   |    |   |       |
|--|----------|--|----|---|-------|
|  |          | Obligatory   |    | Facultative   |       |
| Constitutional initiative  | CH/LI    | Total or partial revision of the constitution;<br>To decide whether to undertake a revision of the constitution (when MPs are unable to agree) | CH | Constitutional referendum   | FL    |
| Legislative initiative   | (CH)/ LI | Federal laws declared to be urgent, which have no basis in the constitution and whose term of applicability exceeds one year                   | CH | Legislative referendum  | CH/LI |
| Initiative to convene Parliament   | LI       | Obligatory referendum on international treaties  | CH | Facultative referendum on international treaties                                    | CH/LI |
| Initiative to dissolve Parliament  | LI       | Republican constitution (definitive abolition of the monarchy)   | LI | Federal laws declared to be urgent and whose term of applicability exceeds one year | CH    |
| Motion of no confidence in the Prince                                      | LI       | Election of judges (where the constitutional organs are in disagreement)   | LI | Finance referendum  | LI    |
| Abolition of the monarchy (launch of the process)                          | LI       |  |    | Authorities' referendum (parliamentary proposal)                                    | LI    |
| Nomination of judges (where the constitutional organs are in disagreement) | LI       |  |    | Consultative popular vote (parliamentary proposal)                                  | LI    |

## 2.2. Direct democracy and types of democracy

The formal embedding of direct-democratic procedures into the political decision-making system requires the creation of appropriate rules governing the procedures and participation, which are designed to ensure that the operation of the political system is not hampered by non-congruent instruments. These procedural rules set out the permissible issues, determine the formal admission criteria, state who is allowed to launch the procedures, and govern the ballot rules. They may also stipulate which bodies are to monitor and check the processes and to which appeals may be addressed.<sup>3</sup>

In addition to the formal compatibility there is also the question of material compatibility. In recent years, various attempts have been made to clarify the systematic relationship between direct democracy and the various types of democracy (Vatter 1997, 2000, 2002; Jung 2001; Marxer/Pállinger 2006). If one accepts the premise that, despite all contingent influences, political systems can be viewed to a certain extent as the products of the human desire to create order, then it should be possible to discover the normative design principles on which they are based. The typology which is derived from this<sup>4</sup> is thus primarily defined, not

<sup>3</sup> In greater detail cf.: Marxer/Pállinger 2006, 5ff.

<sup>4</sup> Our typology is based on that of Jung 2001, 52ff.

by a particular set of institutions, but by a set of normative principles. These present a point of reference for constructing a relationship between types of democracy and direct-democratic instruments. But it is not sufficient merely to identify the normative principles. These have to be specified and elaborated in terms of their functional logic so as to enable specific statements to be made about institutions and about the incentives to action for the various players (institutional implications).

In order to determine the fundamental normative principles, one must ask the question: what are the most basic decisions which must be taken when designing modern democratic systems? If one starts from the assumption that neither the dominant representative constitutionality nor the basing of political power on the agreement of the active citizenry are available as options, then it is necessary to answer two questions: firstly, how power is to be shared out (*the idea of sovereignty*); and secondly, what are to be the ‘rules of the game’ (*regulatory system*) within this. The decision on the idea of sovereignty determines whether and to what extent limits (‘checks and balances’) are to be placed on the representative bodies in the exercise of their democratically legitimated powers of governance. The choice of the regulatory system defines the way conflicts of interest are to be resolved. Both questions allow of differing, perhaps mutually contradictory, answers.

With respect to the *idea of sovereignty*, populist and constitutional principles stand in opposition to each other.<sup>5</sup> Where the populist principle aims to maximise popular power and therefore allows no institutional restrictions on the democratically legitimate decision-makers (the people or their representatives), the constitutional principle states that all power – even that which is democratically legitimated – must be institutionally restricted in order to prevent tyranny. The primary goal here is to ensure individual freedom.

In deciding upon the *regulatory system*, there is a choice between the majority and the consensus principles.<sup>6</sup> According to the majority principle, the democratic ideals are best realised when the simple majority rule is used for decisions and electing representatives. The primary aim is to achieve the maximum equality of the vote in line with the principle “one person one vote” in the context of active political competition and a pluralistic society. The consensus principle, on the other hand, derives from the conviction that the democratic ideals are best realised by taking into account and representing the widest possible range of views and interests. This assumes that decisions are taken only after a process of negotiation and by common agreement – in which the majority rule is largely ignored or relativised. The primary aim is the greatest possible inclusiveness and the greatest possible degree of agreement.

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<sup>5</sup> The complementary pairing of the constitutional vs the populist principles relates to the variety of ways in which sovereignty is understood and expressed within democratically constituted states and is thus gradualistic. Constitutional states can also appeal to the idea of popular sovereignty in claiming legitimacy, but its power is much more restricted here, being realised only indirectly through the legitimation of the representative system. Populist democracies are also constituted according to the rule of law and the direct-democratic instruments are embedded in constitutional structures. The populist principle does not mean the arbitrary exercise of power, but the constitutionally authorized assignment of the right of final jurisdiction on constitutional and legislative matters to an organ of the state (the people).

<sup>6</sup> The division into majoritarian and consensus principles is also not to be viewed as absolute. Political power is regulated and limited to a certain extent in all democracies based on the rule of law (cf. Footnote 5). Even in majoritarian democracies, minorities are protected by constitutionally guaranteed human and civil rights and such constitutional provisions as the separation of powers and various checks and balances etc.

Based on the above-mentioned design principles it is possible to construct a typology of democratic systems, to which the institutional implications of those principles can then be attached.

*Table 2: Institutional implications of the different concepts of sovereignty and regulatory systems (after Jung)*

| Concept of sovereignty   |  | Regulatory system  |  |
|--|--|--|--|
| Populist principle   | Constitutional principle   | Consensus principle  | Majority principle   |
| <ul style="list-style-type: none"> <li>- No constitutional courts</li> <li>- No material limits to constitutional legislation</li> </ul> | <ul style="list-style-type: none"> <li>- Superordinate constitution</li> <li>- Independent constitutional courts</li> <li>- Material limits to constitutional legislation</li> </ul> | <ul style="list-style-type: none"> <li>- Proportional representation</li> <li>- Grand coalition</li> <li>- Proportional principle</li> </ul> | <ul style="list-style-type: none"> <li>- Majority electoral system ('first-past-the-post')</li> <li>- Minimal winning coalitions</li> <li>- Simple majority rules for parliamentary decisions</li> </ul> |

*Source: Jung (2001), pp. 64 and 67.*

The elaboration of the institutional implications makes it clear that this typology – derived from Jung (2001) – represents an extension of the idea of majority and consensus democracy presented by Lijphart (1999) and that the defining criteria for the different types of democracy largely coincide with those of Lijphart. The elucidation of the design principles and their institutional implications also makes it possible then to investigate to what extent individual direct-democratic instruments are compatible with the various types of democracy. However, before this can be done, it is first necessary to clarify the modus operandi of the separate direct-democratic procedures.

For this we turn to a classification of direct-democratic instruments developed by Adrian Vatter (2002, 307ff.), which differentiates citizens' rights according to who possesses the right to trigger the instrument, and to whether the effect of each instrument is pro- or anti-hegemonic (cf. Table 3):

*Table 3: Modus operandi of direct-democratic instruments (after Vatter)*

| Majoritarian instruments  | Consensual instruments   |  |
|---|--|--|
|   | Moderately consensual instruments  | Strongly consensual instruments  |
| <ul style="list-style-type: none"> <li>- Authorities' referendum without quorum</li> <li>- Consultative opinion poll</li> <li>- Obligatory referendum without quorum</li> </ul> | <ul style="list-style-type: none"> <li>- Facultative referendum without quorum</li> <li>- Citizens' initiative without quorum</li> </ul> | <ul style="list-style-type: none"> <li>- Obligatory referendum with quorum</li> <li>- Facultative referendum with quorum</li> <li>- Citizens' initiative with quorum</li> <li>- Authorities' referendum with quorum</li> </ul> |

*Source: Vatter (2002), p. 310f.*

We now have all the elements necessary to link the various types of democracy to the direct-democratic instruments. The primary question here is whether individual procedures are compatible with the basic design principles of a particular type of democracy i.e. whether they

contribute to the realisation of the relevant aims or not. In clarifying the question of compatibility, it is necessary to take into account both the concept of sovereignty and the regulatory system. Compatibilities are determined on the basis of the *actual* way (cf. Table 3) the direct-democratic instruments operate rather than on any *intended* results. Table 4 provides a summary of the compatibilities of the direct-democratic instruments which are to be found in Switzerland and Liechtenstein with the various types of democracy.

Table 4: *Compatibilities of direct-democratic instruments*<sup>7</sup>

| Concept of sovereignty<br>Regulatory system  | <b>Populist principle</b>  | <b>Constitutional principle</b>  |
|--|--|--|
|  | <ul style="list-style-type: none"> <li>- Binding popular decisions as the final level of jurisdiction</li> <li>- No protected areas of the constitution</li> </ul>   | <ul style="list-style-type: none"> <li>- Popular decisions not the ‘last word’</li> <li>- Some areas of the constitution protected</li> </ul>  |
| <b>Majority principle</b> <ul style="list-style-type: none"> <li>- Triggered by majority</li> <li>- Decision by simple majority</li> </ul>   | <b>Populist-majoritarian democracy</b> <ul style="list-style-type: none"> <li>- Obligatory referendum without quorum</li> <li>- Authorities’ referendum without quorum</li> </ul>  | <b>Constitutional-majoritarian democracy</b> <ul style="list-style-type: none"> <li>- Consultative opinion poll</li> <li>- Obligatory referendum without quorum</li> <li>- Authorities’ referendum without quorum</li> </ul> |
| <b>Consensus principle</b> <ul style="list-style-type: none"> <li>- Triggered by minority</li> <li>- Decision by qualified majority</li> <li>- Triggered by minority and decision by simple majority, but considerable potential for delay or strongly anti-majoritarian tendency</li> <li>- Triggered by majority and decision by qualified majority, but strongly anti-majoritarian direction</li> </ul> | <b>Populist-consensual democracy</b> <ul style="list-style-type: none"> <li>- Citizens’ initiative with quorum</li> <li>- Obligatory referendum with quorum</li> <li>- Facultative referendum without quorum</li> <li>- Citizens’ initiative without quorum</li> </ul> | <b>Constitutional-consensual democracy</b> <ul style="list-style-type: none"> <li>- Facultative referendum without quorum</li> <li>- Citizens’ initiative without quorum</li> </ul>  |

Source: Jung (2001) and Vatter (2002)/Combination of approaches by the authors.

The emergence of the two types of systems observed today in Switzerland and Liechtenstein is the result of complex, multilayered historical processes which defy a monocausal explanation. Switzerland has a long tradition of federalism dating back to before the creation of the modern federal state. This was the context within which the idea of popular sovereignty arose and was expressed in the creation of popular rights, especially in the facultative referendum. The use of this armoury of instruments in turn generated the pressure for consensus which finally contributed to the emergence of today’s ‘concordance’ or consensus democracy. This evolutionary path was facilitated by the fact that the management of the overlapping conflict areas, of the cultural-religious diversity, of the co-existence of different linguistic regions and of the special identities of the cantons (in other words: national cohesion) is easier to accomplish within a federal and consensus-oriented framework than a centralised one. By con-

<sup>7</sup> This table lists only the existing (abstract) types of popular rights in Switzerland and the Principality of Liechtenstein.



trast, the constitutional concept of sovereignty in Liechtenstein developed out of the tradition of monarchy, which within the general trend towards the constitutionalisation of monarchies during the course of the 19th century led to a balance of power between the rulers and the aspiring classes. The 1921 constitution finally allowed the entirety of the general public to be included in the institutional arrangements. The evolution of the consensus principle also happened in two stages. First of all, the 1921 constitution created a framework which generated a structural pressure for consensus due to the fact that the twin bearers of the supreme power of the state (the people and the Prince) both had the power to block change. Secondly, the transition from a first-past-the-post to a proportional electoral system during the 1930s reinforced the consensual element in politics, leading to the establishment of a permanent grand coalition and the rise of fringe corporatist (clientelistic) structures based on the two major parties. Both countries have witnessed a consolidation of the structures and political processes in line with the respective type of democracy (Switzerland: populist-consensual; Liechtenstein: constitutional-consensual).

The postulated compatibility between type of democracy and direct-democratic instruments refers primarily to the institutional and political structure of the present-day established states. To avoid a tautological line of reasoning, it is necessary as a first step to dispense with an analysis of what is referred to as ‘constitutional engineering’. Consequently, the focus of our study is not on the effect that the creation of new popular rights has on the goal of changing the system, but on the effect of the introduction and use of direct-democratic instruments within a system which basically aims to preserve its existing type of democracy. Only after answering this question are we potentially in a position to assess the implications for ‘constitutional engineering’.

If one assumes that in a fully conscious constitutive process only those instruments will be introduced which are compatible with the way the system is intended to function (design principles), then one can formulate the hypothesis that Switzerland should only have direct-democratic instruments which are compatible with the populist-consensual principle, whereas the instruments in Liechtenstein should conform to the constitutional-consensual principle.

Our earlier studies largely confirmed these hypotheses. However, they revealed that in the case of Liechtenstein there are instruments which at first sight were incompatible with the relevant design principles, but which had either never been used so far, were of an entirely exceptional nature, or which in practice generated outcomes which were contrary to their intended – the normatively desired – effect (Marxer/Pällinger 2006).

### 2.3. Direct democracy and the representative system

As already mentioned, direct democracy implies the case-by-case transfer of substantive political decisions from the competent representative organs to the electorate. The introduction of direct-democratic instruments has feedback effects on all aspects of politics. The instruments have structure-forming effects on the institutional structure (polity), determine the way that political conflict resolution and decision-making are carried out (politics) and also influence how the state performs its various tasks (policy).

In recent times there has been increased debate about introducing direct-democratic instruments as a means of removing functional deficits in representative democracy. Some re-

cent approaches go even further, postulating that direct democracy can actually improve the quality of representation by increasing participation (and thus also responsiveness) in the context of representative decision-making processes (Hager 2005, S. 89f.). In general it is argued in favour of direct democracy that it expresses the will of citizens in a purer way than representative democracy and that it provides greater opportunities for participation. It is held that this way of reaching political decisions promotes greater contentment and identification with the political system, helps the active citizenry to become better educated and informed and strengthens social cohesion. This positive view is opposed by some who point to problems and drawbacks which the insertion into the representative system of what Lipjhart (1984, 31f.) refers to as “foreign elements” might cause (Kranenpohl 2006). From the very beginnings of the theoretical debate about direct democracy in ancient times fears have been voiced that this form of government leads to the tyranny of the majority and to inconsistency and instability. In this reading, structural minorities and disparate interests which are unable to organise themselves effectively run the risk of being permanently dominated by the majority. It is argued, moreover, that direct democracy undermines the representative institutions and parties, thus promoting populism and strengthening special interest groups. Doubts are also expressed about the role of the media in direct-democratic processes and about the ability of citizens to make accurate and timely judgements on complex political issues. Some see the often lengthy decision-making processes of direct democracy as a further problem (Möckli 1993; Schmidt 2003).

It would be wrong, however, to make sweeping judgments about the effect of direct-democratic procedures. The effect of these instruments and institutions on the political process is primarily an indirect one: within the framework of the given preferences and predispositions of the players in the ‘game’ of politics – who interact with each other according to the principle of maximizing individual benefit – they mark out the available space for political action (Abromeit/Stoiber 2006, 64). But this means that political institutions do not produce the same effects in every case; the effects are dependent on the varying given circumstances of each individual case (Marxer/Pällinger 2006, S. 10). We therefore proceed now to a closer examination of the major instruments of direct democracy – the obligatory and facultative referendums and the popular initiative – in the light of this understanding.

*Obligatory referendums* are triggered automatically by constitutional or legal provisions when the parliament makes a decision on a matter covered by these provisions. As a result, they fall under the control of the governing majority. The latter’s agenda-setting powers allow it to place the decision within the area governed by the obligatory referendum and thus to invite the use of this instrument. A government or governing coalition will normally only pass such a law or amendment if it is fairly certain that it can win the referendum. The introduction of obligatory referendums creates additional possibilities for the use of a veto – over and above those that are already available in the representative system (Bogumil 2001, 10). They generate pressure for cooperation and force the elites to search for a consensus solution. The wider support base this creates leads to a strengthening of legitimacy for the actions of the state.

*Facultative referendums* are to be seen as ‘anti-hegemonic’ instruments, because they are triggered, not by the governing majority, but by minorities.<sup>8</sup> Their target is the correction of decisions which have already been reached. They give ‘outsiders’, who occupy only marginal positions in the official decision-making process, extra opportunities for influencing policies (Papadopoulos 2001, 37). It is important to also take into account their indirect effects, quite apart from any direct effect they may achieve – the retroactive correction of parliamentary decisions. The use of the facultative referendum can delay, or even block, the political decision-making process, so that even the credible threat of a facultative referendum can prompt the governing majority to meet halfway those opponents who are capable of mounting a referendum and so to avoid a possible stalling of the decision-making process. For this reason, established elites and representatives of special interest groups will try to limit the use of this oppositional instrument.

*Initiatives* have an even more anti-hegemonic character than referendums. As an instrument of ‘popular lawmaking’, they are a way of getting new ideas onto the political agenda. Proposals are fed into the decision-making process ‘from outside’, circumventing the established parliamentary channels. The primary aim of the popular initiative is to achieve the direct implementation of a request or demand to the government and parliament. In this sense, it functions as a kind of safety valve in relation to the established decision-making system. Its indirect effect is to bring to the attention of the politicians and institutions issues which they have forgotten or ignored: it serves on the one hand as a kind of secure pledge (ensuring a response from the authorities), and on the other as a means of articulating issues and concerns which are not being taken up within the formal political process.

The effectiveness of direct-democratic instruments does not depend only on the way they are defined in law, but also on the frequency of their use: 1) in states in which direct democracy is an *exceptional procedure*, there is usually only a very low level of use of direct-democratic decision-making in the form of plebiscites, which are employed on a very infrequent basis, often with years between applications, and which have no intrinsic power to affect the political system; 2) in other states, direct-democratic instruments exist as a constitutionally-guaranteed option for decision-making and are used regularly, but not necessarily frequently. They represent a *complementary procedure* to representative democracy and tend to have only a modest influence on the the development of the political system; finally 3), there are countries in which popular rights are applied as a *rouine procedure*, are constitutionally prescribed, with fully developed procedural mechanisms, and form an integral component of the political system. Clearly, it is in such countries that direct democracy has the profoundest effect on the political system (Gebhardt 2000, 16).

In reality, only Switzerland qualifies as a full representative of the third type. However, a number of American states – among them especially California – can be assigned to this category. Many other countries, including Italy and Liechtenstein, belong to the second type. France is a classic example of type 1 (Gebhardt 2000, 16). In accordance with this ranking, it

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<sup>8</sup> The signature quorum for launching a facultative referendum in Switzerland is 50,000 signatures (1 % of the eligible electorate). In the Principality of Liechtenstein the quorum is not dependent on the instrument itself but on whether the instrument is being used to affect the constitution or a law: in the former case the quorum is 1,000 signatures, in the latter 1,500 (6% and 9% respectively of those entitled to vote). Cf. Marxer/Pällinger (2006).

can be broadly assumed that Switzerland is the country in which direct democracy has the most marked effect on the political system. According to Papadopolous, however, it is not possible to make simple generalizations about the effects:

“Political actors do modify their behaviour in response to the challenge of direct democracy. There is by no means a simple, deterministic ‘iron law’ of direct democracy. There is no mechanistic process whereby universal constraints dictate a single appropriate response by political actors ... Consequently, similar pressures exerted from below, by virtue of direct democratic mechanisms, can be interpreted very differently and can trigger diverse responses by actors socialised in different settings, as is shown by comparative research on the issue.” (Papadopoulos 2001, 37)

Despite these reservations, it is possible to identify some general patterns of behaviour of the actors involved in direct democracy. Since the political elite has only limited control of the use of popular rights, it runs the risk of having its decisions overturned and of changes being made to its setting of the political agenda. It is extremely likely, therefore, that the actors involved will do whatever they can to influence the outcome of citizen-initiated referendums in their favour. They thus involve themselves actively in the opinion-forming process - publishing their own recommendations, running their own campaigns etc. Based on the Swiss example, Papadopolous also identifies three main strategies for minimizing the risks from the possible use of citizens’ rights: 1) increasing the government majority, 2) preventative negotiations (before the referendum), and 3) concessional negotiations (after the result is known). Whilst the aim of the first two strategies is to prevent the instrument from being used, the third one represents an attempt to retain control of the decision-making process triggered by the direct-democratic instrument (Papadopoulos 2001, 38).

## 2.4. Hypotheses

The foregoing allows us to deduce the basic hypotheses relating to the interplay of direct democracy and the representative system:

1. The direct-democratic instruments must in principle be compatible with the prevailing type of democracy. Where these are not compatible, dysfunctional effects can arise.

2. The concept of sovereignty determines the extent to which the use of direct-democratic instruments aims to circumvent the representative organs. The number of direct-democratic decisions tends to be higher in populist democracies than in constitutional ones.

3. Direct-democratic instruments have effects both at the level of representation and at the overall system level. The weakening of the representative system in populist democracies is an intentional effect designed to accommodate the concept of sovereignty. At the same time, the use of popular rights is intended to give greater stability to the overall system. In constitutional systems, the use of direct-democratic instruments is not intended to restrict the representative system in any substantial way, but to complement it in the sense of acting as a safety valve.

4. The impact of direct democracy depends on the overall frequency of use of all the instruments. Direct-democratic instruments have the greatest effect in political systems in which

they are used routinely. In countries where they are used only as complementary or exceptional procedures their impact is diminished.

5. The impact of individual direct-democratic instruments depends both on their institutional form and on their frequency of use. Thus, dysfunctional instruments which are not used have no destabilising effects.

6. In addition to their institutional form, the impact of direct-democratic instruments is also determined by the strategic calculations of the political/social actors. The effects can be either direct or indirect.

7. Established political elites react to the use of direct-democratic instruments in the first place by attempting to block their use (preventative negotiations and increase of ruling majority), or by subsequently seeking to manage and steer the decision-making process triggered by the direct-democratic instrument.

In the next chapter we examine whether the above hypotheses can be corroborated using the examples of Switzerland and Liechtenstein. We first present a short overview of the genesis, usage and impact of the range of direct-democratic instruments in both countries.

### **3. Direct democracy in Switzerland**

#### **3.1 The genesis of direct democracy**

The first constitution, in 1848, of the modern Swiss federal state was oriented towards the principle of representation.<sup>9</sup> Other than the obligatory constitutional referendum, it provided for only one further direct-democratic instrument: the citizens' initiative for a complete revision of the federal constitution.

As indeed was the case even before the creation of the modern federal state, it was the cantons which, over the course of the following centuries, were the pioneers of constitutional development. In the clash between the established forces of Liberalism and the "Democratic Movement", the latter was successful in adding further direct-democratic devices to the representative system in several cantons. From around 1865 on, paralleling the movements in the cantons, like-minded forces began to organise themselves at the federal level. The clash with the so-called "federal barons" ended successfully with the complete revision of the federal constitution in 1874. The new constitution now introduced the facultative legislative referendum. The progressive forces which had campaigned for this popular right took the view that it would fulfil a plebiscitary function: by uniting the populace and the authorities, it would bolster the legitimacy of majority politics.

In 1891 the popular initiative for a partial revision of the federal constitution was added. Those campaigning for the introduction of this instrument hoped that a considerable portion of the legislative activity of the parliament would be transferred to the general public (popular lawmaking).<sup>10</sup> In the course of the 20<sup>th</sup> century the direct-democratic armoury was continually

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<sup>9</sup> For what follows cf.: Kölz 1992, 2004; Linder 2005; Vatter 2002.

<sup>10</sup> Popular initiatives aim to make changes at the constitutional level. They must obey only the rules of unity of form, unity of subject matter, and the binding provisions of international law. There are otherwise no restrictions

expanded at the federal level. The referendum on international treaties was introduced in 1921, the ‘resolutive’ referendum in 1948<sup>11</sup>. The expansion of direct-democratic instruments reached its provisional conclusion in 2003, when the people approved the introduction of the ‘general citizens’ initiative’. However, due to its complex design, this instrument appears to be stillborn: there are currently efforts in the federal parliament to find a way of abandoning the step of legislative implementation which would normally take place.

### 3.2 Use of popular rights

Between 1980 and 2004, 222 issues were voted on in referendums at the national level. On average, Swiss voters can potentially decide on just under nine proposals a year. This places Switzerland at the top of the worldwide referendum league table (IRI 2005). Direct-democratic procedures form a routine part of the political decision-making process. However, it is worth noting that only around 7% of the decisions potentially subject to the facultative referendum (laws and federal rulings) are actually challenged by the citizens (Federal Office of Statistics 2004; Linder 2005, 249ff.). The figures show that the instruments of direct democracy are used within a fundamentally representative context.

There is considerable variation in the frequency of citizens’ referendums. Overall, there was a general increase in the use of direct-democratic instruments in the period 1980 to 2004 (IRI 2005). The popular initiative is the most frequently used instrument, accounting for 39% of all referendums. The facultative and obligatory referendums come next, at 28% and 27% respectively, while the counter-proposal is relatively seldom used (6%).

### 3.3 Effects of direct democracy

Direct democracy opens up low-threshold possibilities for participation. In Switzerland, it takes only 1% of the eligible voters to trigger a facultative referendum, 2% for an initiative. Thanks to what is in principle an open structure of participation, the political process has a more diffuse profile (Neidhart 2002, 360). Swiss popular rights are consonant with the populist concept of sovereignty and rate as routine procedures.

Direct democracy subjects the authorities to a permanent check by the active citizens; this reduces the importance of the representative organs and of elections and ensures that politicians take into account the interests of the general public (more precisely: the interest groups which are capable of organising themselves), resulting in greater responsiveness of the political system. It is striking, however, that there are large differences in the success rates of the various direct-democratic instruments (cf. Table 5).

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on their content. This means that the failure of a popular initiative at the legislative level has no significant consequences since the desired change can simply be requested at the (higher) constitutional level.

<sup>11</sup> The resolutive referendum is used for the partial or full repeal of an existing ruling. The resolutive referendum was introduced in order to bring the (governmental) right to declare a law urgent – which until 1949 provided a means of avoiding a referendum – back within the scope of referendum democracy.

Table 5: Success rates<sup>12</sup> of the direct-democratic instruments in Switzerland (1980-2004)

| Instrument             | Success rate  |
|------------------------|---------------|
| Citizens' initiative   | 8.2 %         |
| Counter-proposal       | 50.0 %        |
| Facultative referendum | 66.1 %        |
| Obligatory referendum  | 78.7 %        |
| <b>Average</b>         | <b>50.8 %</b> |

Source: IRI (2005)/Authors' calculations.

In the Swiss situation, the instruments of direct democracy produce consensus-oriented effects and thus contribute to the better integration of the major social groups. The double majority requirement of both the obligatory referendum and the citizens' initiative – approval by a majority of the actual voters *and* by a majority of the cantons – represents a strong element of protection for minorities.

That, despite the high hurdles, four-fifths of the *obligatory referendums* are approved (i.e. decided in line with the proposals of the government and parliament), indicates that there is generally broad support for the proposals. In order for this to happen, all the relevant social groups have to be involved in working out the proposals and sufficient account has to be taken of their 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.

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 (Neidhart 1970). 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, which in Switzerland includes not only the parliamentary opposition, but also parties within the 7-member executive which hold minority views on certain specific issues. 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 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 (Trechsel 1999, p. 77). The facultative referendum has made a major contribution to the emergence of the Swiss consensus model of politics. In order to prevent the systematic

<sup>12</sup> By 'success rate' is meant that a proposal (an initiative proposal, a constitutional or legislative decision reached in parliament, a parliamentary counter-proposal) has achieved the required majority for acceptance in a popular ballot. In the case of a referendum this means that the proposal from the authorities gains the majority of the votes, while the referendum committee fails to achieve its aim.

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).

Although the signature threshold for launching a *popular initiative* is twice as high as that for the facultative referendum, the former instrument is more frequently used. However, of all the direct-democratic instruments, it is the one with the lowest chances of success. Only around 8% of popular initiatives are approved by the voters. 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. However, in that the popular initiative functions as a safety valve within the strongly consensus-oriented decision-making system, it does represent an instrument of the opposition and thus can be seen as a partial fulfilment of the earlier expectations. It is also important not to ignore the indirect effects of the popular initiative. It is sometimes used as a bargaining chip in negotiations with the parliament and executive, pressurising them to present a counter-proposal which includes at least some of the original demands. It frequently happens that the public debate and mobilisation of voters which occurs when an initiative is launched results in some elements of the initiative proposal being adopted in law even when the whole proposal has been rejected in the referendum. Research estimates suggest that around one-third of all popular initiatives have some direct or indirect effect on legislation (Joye/Papadopoulos 1994, 260). On the other hand, the fact that the (average annual) number of popular initiatives has doubled since the 1970s may suggest that the capacity of the political system to integrate new, particularistic demands – arising from the growing diversity of Swiss society – is actually diminishing (Papadopoulos 2001, 49).

As the most important decisions have to be put to the people in any case, neither elections, nor government and parliament, are as significant as in purely representative systems. Moreover, the political parties are relatively weak because associations and other groups are not reliant on them as intermediaries to defend and promote their interests, but can intervene directly themselves thanks to the popular rights (Ladner 2006, 397). Getting the relevant interest groups involved at an early stage in the political decision-making process means that politics becomes more informal. Important preliminary agreements are reached in closed-door negotiations rather than publicly in parliament. It must be said that this creates the risk that interests and groups which cannot easily be organised into effective political forces may indeed be subjected to a kind of permanent tyranny of the majority.

Summarising, we can say that where direct-democratic instruments feature as routinely used procedures, they have a significant impact on the overall political system. The structural interlacing of direct democracy and the representative system has so far been a harmonious one; however, this relationship now seems to be coming under increased pressure.



## 4. Direct democracy in Liechtenstein

### 4.1 The genesis of direct democracy

The direct-democratic armoury was introduced much later on in Liechtenstein than in Switzerland.<sup>13</sup> Up to the end of WWI, the political system of Liechtenstein was primarily hierarchical and authoritarian. The 1862 constitution had given the people of Liechtenstein only very rudimentary rights.

During World War I, a strong opposition emerged in the Landtag (parliament), which demanded greater democratic rights. The collapse towards the end of WWI of the Austro-Hungarian Empire – with which the royal house of Liechtenstein had traditionally maintained strong relations – also contributed to strengthening the democratic movement in Liechtenstein. The consequence was a new constitution, which came into force in 1921, and a shift in foreign relations towards Switzerland, confirmed by new customs, mail and currency treaties.

An aspect of this new-found openness to Switzerland found expression in the recourse to Swiss models for the constitutional revision of 1921. The influence is especially noticeable in the inclusion of direct-democratic rights and the way these were formulated. In essence, the 1921 constitution drew on the constitution of 1862 and the monarchical tradition, despite being in many respects modernised and democratised. The organs of the state were essentially retained in their 1862 form, but there were marked changes in the way they were appointed and in the powers they enjoyed. Where there had previously been a strongly monarchical system, there was now a mixed constitution in which state power was based equally on the Prince and the people, a situation which exists to this day. The political system had thus been transformed from a constitutional monarchy into a form of parliamentary monarchy in which the monarch (the Prince) retained and still retains wide-ranging powers.

Nonetheless, what was fundamentally new – and at the same time foreign – in the Liechtenstein constitution were its direct-democratic articles. These had come neither from the Austrian nor the Liechtenstein constitutional tradition, but were a modified import from the Swiss political culture. The insertion of these elements into Liechtenstein's monarchic-democratic, dualistic political framework gives this country's direct democracy a very different character from that of Switzerland. Where the Swiss system is rooted in the primacy of popular sovereignty, and the whole structure and design of the political system – in particular in respect of the direct popular rights – obeys this principle, direct democracy in Liechtenstein must be understood as something of a fringe element of the mixed constitution with its combination of representative democracy and hereditary monarchy. This is expressed especially in the Prince's right of veto, which applies not only to parliamentary legislation, but even to the outcomes of popular referendums. In addition, the constitutional court in Liechtenstein has the power to carry out normative checks and repeal laws which it deems unconstitutional. In practice, therefore, popular sovereignty is effectively restricted in favour of the constitutional principle. The character of direct-democratic rights as exceptional, fringe instruments is also reflected in the much higher signature quorums for initiatives and referendums which obtain in Liechtenstein (6 - 9% of the eligible electorate) when compared with Switzerland.

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<sup>13</sup> For the following cf.: Marxer/Pällinger 2006, 31ff.

The direct-democratic rights which still exist today were set out for the first time in the 1921 constitution, which contained binding provisions for both the initiative and the referendum. The right of initiative is not limited to constitutional initiatives, but also includes legislative initiatives. In contrast to Switzerland, a referendum against parliamentary finance decrees was also introduced, in addition to the referendum on new legislation. During the course of the succeeding decades, the only change was to the signature quorum in line with the increase in the size of the electorate. It was not until towards the end of the 20<sup>th</sup> century that any significant changes were made to the instruments and the procedures. In 1992 came the introduction of the referendum on international treaties and in the same year also the introduction of a preliminary check on initiatives to ensure their compatibility both with the constitution and international treaties. In 2003, as the result of a popular initiative launched by the Prince, large parts of the constitution were amended. New direct-democratic instruments were added: the initiative for abolition of the monarchy; initiative for the appointment of judges; and the motion of no confidence in the Prince.

## 4.2 Use of popular rights

Between 1980 and 2004, Liechtenstein's eligible voters voted on a total of 39 proposals. Since the introduction of the instruments of direct democracy, roughly one national popular vote has been held each year on average. In other words, only a vanishingly small proportion of all issues which could potentially be subject to a referendum are in fact voted on. There is considerable variation in the frequency of popular votes. It is not possible to identify any uniform trend in the use of direct-democratic instruments for the period from 1980 to 2004 (Marxer/Pállinger 2006, 39).

The popular initiative is the most frequently used popular right, accounting for 41% of all the issues presented for the popular vote. Then come the referendum (31%) and the authorities' referendum (26%). The counter-proposal (2%) plays a very minor role (Marxer/Pállinger 2006, 39).

## 4.3 Effects of direct democracy

Although Liechtenstein has a broader, more varied range of options for direct-democratic involvement in decision-making than Switzerland, these instruments are used much less than in its larger neighbour. Liechtenstein can thus be classed among those countries in which direct democracy – in line with the concept of sovereignty belonging to the constitutional principle – is used as a complementary procedure. In consequence, therefore, the effects on the overall system are less significant than in Switzerland. However, as in Switzerland, the success rates of the various direct-democratic instruments vary considerably.<sup>14</sup>

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<sup>14</sup> For the following cf.: Marxer/Pállinger 2006, 41ff.

Table 6: Success rates of direct-democratic instruments in Liechtenstein (1980-2004)

| Instrument              | Success rate                 |
|-------------------------|------------------------------|
| Popular initiative      | 31.2 %                       |
| Counter-proposal        | [0.00 %] low number of cases |
| Facultative referendum  | 33.3 %                       |
| Authorities' referendum | 70.0 %                       |
| <b>Average</b>          | <b>33.6 %</b>                |

Source: Official statistics Liechtenstein.

The low number of cases means that it is only possible to make very limited generalisations about the individual instruments and the effect of direct democracy at the overall system level.

The *authorities' referendum*, which represents the functional equivalent of the obligatory referendum in Switzerland, has a high success rate. This instrument is strongly oriented towards consensus. As a rule, only those issues are submitted to a popular vote which have secured broad support among the political elite and other involved actors after preliminary in-depth consultation. Although the mechanisms of consultation are just as extensive in Liechtenstein as in its neighbour, the *facultative referendum* – with a roughly 1-in-3 chance of success – tends to express strong support for the authorities. On the other hand, the chances of success for *popular initiatives* are much higher in Liechtenstein (31%) than in Switzerland (8%). These tendencies support the hypothesis that, as complementary procedures, the Liechtenstein instruments are designed more as an emergency brake or as measures with an oppositional character.

The majority of the instruments – the initiative without quorum (initiative, nomination of judges, motion of no confidence in the Prince, initiative to abolish the monarchy) and the facultative referendum without a quorum – belong as expected to the system-compatible type of constitutional-consensual democracy. However, there are also popular rights which are a kind of foreign body in the Liechtenstein system of direct democracy. The election of judges in the event of disagreement in the constitutional organs, as well as the second stage of the process for the abolition of the monarchy must be classed as populist-majoritarian (1). By contrast, the obligatory referendum without a quorum (for increases in tax), the authorities' referendum without a quorum (parliamentary proposal) and the consultative referendum (parliamentary proposal) belong to the type of constitutional-majoritarian popular rights (2). There is, finally, also the direct-democratic instrument for the convening and dissolution of the parliament, which belongs in the populist-consensual category (3).

Do these incompatible instruments have a destabilising effect on the representative or overall systems? – A glance at the constitutional facts permits us to give a clear negative answer to this question. The first group of divergent instruments was only introduced in the constitutional revision of 2003 and has so far never been used. Nor has there so far been a direct-democratic request for the convocation or dissolution of parliament, or for the nomination of a judge. The obligatory referendum for tax rises has also not been used to date. It seems clear that these instruments represent an emergency brake for extreme cases. Their exceptional

character means that these divergent instruments have no impact on the actual compatibility of the complete direct-democratic armoury, and thus no impact either on the stability of the system.

This point highlights the importance of taking into account actual political practice (application, frequency of use etc.) when considering what effects direct-democratic instruments have. Political practice determines whether logically incompatible instruments will ever be used at all, and if so, whether they will have effects in line with or contrary to their intended effect and thus, perhaps, end up being compatible with the overall system after all. It is only at first glance that both of the last-mentioned divergent instruments – the authorities' referendum without quorum (parliamentary proposal) and the consultative popular vote (parliamentary proposal) fail to fit into our scheme. If one considers their *modus operandi* and their success rate, it is clear that both of them lead to an expansion of consultative mechanisms and thus are consensus-oriented. In this case the intended effects are contrary to the actual ones. Thus in the case of Liechtenstein, the authorities' referendum without a quorum and the popular consultative ballot can be classed as consensus instruments, allowing our hypothesis to be maintained.

Finally, those instruments which we have designated as moderately consensual (the facultative referendum without quorum, the popular initiative without quorum) also deserve a closer look. During referendum campaigns these lead to a confrontation which has majoritarian characteristics. However, this does not result in the basically consensual nature of the political system being undermined. If we take into account their anti-hegemonic character (triggering by a minority, emergency brake function) and their delaying potential (agenda-setting aspect), which in our view rate higher than the confrontation over the popular vote – especially in the context of actual practice in Liechtenstein – then their classification among the constitutional-consensual instruments appears to be justified.

The existence of direct-democratic rights which can be taken up not only by individuals, but also by political parties, interest groups and others, brings about – especially indirectly – consensus-oriented effects. Proposals prepared by the government and processed through parliament undergo in most cases a consultation process which leads finally to a viable and broadly supported compromise. The result is a relatively high level of acceptance of the decisions of the representative organs. On the other hand, however, the direct application of direct-democratic rights may also accentuate conflict: irreconcilable points of view clash in the public debate and the battle ultimately leaves winners and losers. Popular votes can thus also act as a litmus test of social conflict: a large number of ballots would tend to suggest the existence of smouldering and open conflicts, while a small number of votes would suggest broad satisfaction with the system and active consensus. An empirical verification of this hypothesis is scarcely possible in Liechtenstein, due to the small number of popular votes, which gives every cluster something of a random character, especially as the few votes are also spread among a number of different initiators (parliament, voters) and types of vote (referendum, initiative, parliamentary proposal).

## 5. Conclusions

Both Switzerland and Liechtenstein have a long tradition of direct democracy with established rules of play, and the political culture in both countries is primarily oriented towards consensus. The two countries possess a set of direct-democratic instruments which are comparable both in terms of content and design (cf. Table 1). Both countries have the main types of direct-democratic instrument: the initiative and the referendum. Although Liechtenstein used Switzerland as a model when it introduced direct democracy, it possesses a broader range of instruments. It is noteworthy that the direct-democratic armoury in both countries has been continually expanded, even into recent times.

As one would expect, the functional fit of the direct-democratic procedures into the overall political system of both countries is assured. Both Switzerland and Liechtenstein have a pre-check procedure which decides on the admissibility of initiatives. In Switzerland, however, in accordance with the populist principle, the grounds for rejection are relatively narrowly defined, including only contraventions of the international *ius cogens*, and of unity of subject-matter. By contrast, and in accordance with the constitutional principle, the powers of validation of the Liechtenstein parliament are much broader and extend in particular to conformity with the constitution and with existing international treaties. While in Switzerland minorities are protected by the inbuilt consensus mechanisms (the double majority and the facultative referendum), limitations on the power of the majority in Liechtenstein are provided for by constitutional arrangements (the constitutional court, the veto power of the Prince). The particular adaptive form of the direct-democratic instruments is compatible in both cases with the basic principles of the respective concept of sovereignty in each country i.e. – in accordance with our first hypothesis – with the idea of popular sovereignty in Switzerland, and with the constitutional principle in Liechtenstein. In this connection it is important to point out that the practical application of the direct-democratic instruments also occurs in conformity with the basic system logic of each type of democracy. The example of Liechtenstein is especially illustrative here, in that the incompatible popular rights have never been used – despite this being theoretically possible. This fact appears to corroborate our fifth hypothesis.

During the period covered by this study, the direct-democratic instruments were far more intensively used in Switzerland than in Liechtenstein. The figures for the frequency of popular votes – in line with our second hypothesis – indicate that in Switzerland the direct-democratic instruments are clearly to be classed as routine procedures which reflect the principle of popular sovereignty. In Liechtenstein, by contrast, they are clearly complementary procedures which perform – far more than is the case in Switzerland – the function of an emergency brake or a safety valve for the general public in relation to the political elite.

In both countries, the direct-democratic procedures have broadly similar effects: the general trend of politics is towards consensus. Both in Switzerland and Liechtenstein, the members of the established elites – in line with hypothesis number seven – try to minimize the risks to themselves presented by the direct-democratic processes. In both countries, potential veto players are drawn into the legislative process – in the context of preliminary consultative mechanisms such as the ‘*Vernehmlassungsverfahren*’ (consultation) – with the aim of preventing a possible referendum. Nonetheless, it is clear that in Switzerland the use of direct-

democratic procedures has a significant effect on the political decision-making process – much more so than in Liechtenstein (cf. hypothesis 4).

In Switzerland it is the facultative referendum in particular which has led to an expansion of consensus-oriented mechanisms of consultation and negotiation. This has, however, led to a reduction in the transparency and formality of politics, as the handling of social conflict and clashes of interest has to some extent been removed from the public arena of parliament and transferred to the semi-public arena of pre-parliamentary processes. This favours the creation of elite cartels which 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, thus favouring a case-by-case, ‘floating’ opposition in contrast to the systematic opposition of the minority parties in parliament. In this event the representative system and the innovative potential of the overall system are weakened. The growing number of popular initiatives in Switzerland might be an indication that the system is having increasing difficulty in performing its integrative function. In this area (hypothesis 3) the effects of direct democracy are ambivalent. It is not possible to determine with complete certainty whether the quite intentional weakening of the representative system in Switzerland will continue to be balanced by stabilising effects at the overall system level. By contrast, direct democracy in Liechtenstein has not placed restrictions on the dominant representatively-designed process of political decision-making, but has complemented it through the option of a safety valve and has thus made an entirely positive contribution to the stability of the overall system.

This study has enabled us to settle a number of open questions about the relationship between direct and representative democracy. We believe that in terms of future research priorities, the primary need is for further investigation into the determinants of the application and frequency of use of political rights – involving in particular a clarification of the relationship between political culture and direct democracy (cf. Marxer/Pällinger 2007b). It would also be necessary to determine whether and to what extent it is possible to generalize the present findings, and examine whether they can be applied to majoritarian systems. Preliminary comparative studies at the level of the U.S. federal states give conflicting answers to this question (Heussner 2001). It should be the goal of future research to make it possible to evaluate the potential of direct democracy to reform representative democracies.

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