



Jos Verhulst & Arjen Nijeboer

# Direct Democracy

Facts and Arguments about  
the Introduction of Initiative  
and Referendum

With a contribution by Paul Carline



**Jos Verhulst & Arjen Nijeboer**

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“Direct Democracy: Facts and Arguments about  
the Introduction of Initiative and Referendum”

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# 1. The hidden power of democracy

The twentieth century will not go down in history as the century of information technology, space travel or nuclear power. It will not be remembered as the century of Fascism, Communism or Capitalism. Nor will it be the century of two world wars.

The twentieth century will be the century of democracy.

During the twentieth century, for the first time in history, democracy became a global *standard*. Make no mistake, the standard has not been really achieved anywhere, and democracy is continually crushed everywhere in the world. However, with a few notable exceptions such as Saudi Arabia and Bhutan, every kind of regime *lays claim* to its democratic legitimacy. And they do that because they know that democracy has become the standard for the world's population. That is a revolutionary fact.

In the 19<sup>th</sup> century, democracy was actually still only in its infancy. The universal single vote system appeared first in the United States of America, but until the mid 19<sup>th</sup> century that was generally restricted in most states to white men who owned property. Women and people of colour were not considered competent to participate in the elections. Only in 1870, after the Civil War, were people of colour granted the constitutional right to vote. American women had to wait until 1920. In the UK, workers rioted and fought hard for many decades until late in the 19<sup>th</sup> century to achieve the right to vote. Suffragettes demonstrated bravely from 1904 to 1918, before women over 30 and all men over 21 were given the right to vote. It was 1928 before this was revised to include all women over 21, and even this was ridiculed as the 'flapper vote'. In South Africa, too, disasters were predicted in the event that universal voting rights would be implemented! In hindsight, these objections to granting voting rights to workers, women and people of colour seem hollow and pathetic.

There is a hidden power that lurks in democracy. In recent history, democratic regimes repeatedly resisted apparently overpowering dictatorial systems. Time and time again, the more democratic societies ultimately seemed to have the greater vitality.

## Two sources of power

Democracy derives its superiority from two sources.

Firstly, a democratic regime is *legitimate*. In a real democracy, the form of the regime is, by definition, sought after by the people. It is logical that such a regime can rely on more internal support than a dictator.

Secondly, a democracy is *more productive*. In an authoritarian regime, the ideas of the majority of citizens have little opportunity to influence decision-making. In a democracy, there is a much broader base of ideas.

Moreover, the selection of ideas is more efficient in a democracy. Democracy is nothing more than the social processing of individual ideas. New ideas always originate with individuals, because only individuals can think. But the individual ideas have to be considered, weighed against each other and

adapted to the conditions in society. People need each other to correct the imperfections in each other's ideas. The heart of democracy is actually this process of the social shaping of perceptions, in which the idea or proposal of a single person, often already accepted by a smaller group (a political party, action group or pressure group), has its pros and cons weighed up by society as a whole. This perception-forming process leads to a choice. But the choice always has to be examined in an historical context; today's minority can be tomorrow's majority. The actual decisions in relation to the stream of image forming are like the timpani beats within an entire symphony.

In the medium to long term, democratic decisions will be socially superior to dictatorial decisions. Morally dubious goals, which do not serve the communal interest, will by their very nature seek their way via concealed channels that are shielded from the light of open, democratic decision-making. Under democratic conditions, the best ideas will be filtered out, so to speak, because we are better at recognising others' weaknesses than our own. The process of selection that occurs along the path of democracy can feed into society that which is beneficial to it. This does not mean that the presence of democratic instruments necessarily guarantees the quality of the moral initiatives of individual members of society. We can only trust that such initiatives will emerge. But it does mean that morally worthy aspirations cannot materialise without democracy. Politics can never *prescribe* morality. But politics can create democratic instruments that allow the moral potential that is dormant in individuals to be freed and put to work for the benefit of society.

## Evolving democracy

Democracy is never complete. The rise of democracy should be seen as an *organic* process. Democracy cannot stop developing and deepening, just as a person cannot stop breathing. A democratic system that remains static and unchanged will degenerate and become undemocratic. It is just such a process of ossification that causes society's current malaise. We have to face up to the fact that democracy in our societies is in dire straits.

Our current, purely representative democracy is in fact the response to the aspirations of more than a century ago. This system was suited to that time, because the majority of people could find their political views and ideals reflected in a small number of clear-cut human and social beliefs, which were embodied in and represented by Christian, socialist or liberal groups, for example. That time is long past. People's ideas and judgements have become more individualised.

The appropriate democratic form in this context is a parliamentary system complemented with the *binding citizens' initiative referendum* (direct democracy), because such a system provides a direct link between individuals and the legislative and executive organs. The greater the degree to which citizens incline towards individual judgements, and political parties lose their monopoly as ideological rallying points, the higher will be the demand for tools of direct-democratic decision-making.

Indeed, a majority of people in Western countries want the referendum to be introduced [see 1-1]. This fact alone should be decisive in also actually implementing it. Democracy literally means: 'government by the people' (Oxford English Dictionary). The first step towards authentic government by the people necessarily involves people being able to determine themselves how this government by the people is designed and put into practice.

Nevertheless, we see that the majority of politicians argue against the referendum [see 1-2]. It is striking that the higher the level of effective power they possess, the more vigorously do many politicians resist the referendum [see 1-3]. In doing so, they actually adopt the same arguments that were previously used to oppose the workers' and women's right to vote. It can also be shown that these arguments have very little merit. In chapter 6, we look closely at the main counter-arguments.

In fact, however, a glance at direct democracy in practice is sufficient to see that the objections are groundless. In Switzerland in particular, a very interesting – albeit by no means perfect – example of direct democracy has existed for more than a century (see chapter 5). The Swiss can launch citizens' legislative initiatives at all administrative levels. In certain instances, it is clear that the citizens are directly opposed to the preferences of the political and economic elite. In referendums on constitutional amendments and transferring sovereignty to international organisations, which are obligatory in Switzerland, the voters reject a quarter of the parliament's proposals; when a citizens' group collects signatures to force a referendum on ordinary laws, as many as half the legislative proposals are rejected. But the people have not used their democratic rights to turn Switzerland into an inhuman or authoritarian state! There is no death penalty in Switzerland and human rights are not threatened in that country. Moreover, Swiss citizens have no plans to surrender their superior democratic system. (The Swiss people's dislike of the European Union is also associated with the Union's undemocratic character.)

But direct democracy must not be idealised. It provides no solutions in itself. Direct democracy does however make available the essential mechanism for producing useful and useable solutions to modern problems. The introduction of direct democracy should not happen out of a mood of sudden euphoria, but in a spirit of 'active and conscious readiness to wait'.

Moreover, one should not underestimate the invigorating impact that will immediately result from a radical choice for the restoration and deepening of democracy. The decision for more democracy is always also a decision for the right of *the other* to have a voice. It is a declaration of faith in the moral forces and capacities that are latent in ones fellow citizens. In our societies, which are poisoned by mutual distrust, there is almost nothing else imaginable that can have such a healing effect. The commitment to more direct democracy is by definition a commitment to the other person, to their freedom of speech, to their intrinsic dignity. People who are only interested in achieving their own goals have nothing to gain from democracy. They would do better to put all their energy into proclaiming and propagating their own individual point of view. Real democrats are interested in the individual points of view of others, because they know that people need each other to hone and sharpen their ideas and intuitions, to improve them and elaborate them. This social process of the forming and shaping of opinions constitutes the real core of democratic life. The closer people are brought into contact

with each other in a kind of *federalism*, the more easily and effectively can shared perceptions emerge (the link between federalism and direct democracy is discussed in more detail in chapter 3). Direct democracy and federalism reinforce each other. Together they form a '*strong democracy*' (Barber 1984) or '*integrated democracy*'.

## "Our democracy is a nonsense"

We are currently a long way from such an integrated democracy. Political decision-making generally takes place beyond the influence and even beyond the cognizance of the citizens. This applies to almost all European states.

Hans Herbert von Arnim is Professor of Public Law and Constitutional Theory at the University of Speyer in Germany. He has written several books on democracy and politics and has acquired a reputation for exposing the often sordid reality that lies behind the "pretty face of democracy". In his book "*Das System*" (The System; subtitle: 'The Machinations of Power'), published in 2001, he lifted the lid on the German political system: "If representative democracy means government *by* the people and *for* the people (Abraham Lincoln), it quickly becomes apparent that in reality all is not well with the basic principles of what is supposed to be the most liberal democratic social system that has ever existed in Germany. The state and politics are on the whole in a condition that only professional optimists or hypocrites can claim is a result of the will of the people. Every German has the freedom to obey laws to which he has never given his assent; he can admire the majesty of a constitution to which he has never granted legitimacy; he is free to honour politicians whom no citizen has ever elected, and to provide for them lavishly – with his taxes, about the use of which he has never been consulted." The political parties that take decisions in this system have become monolithic institutions, according to Von Arnim. The political identification and satisfaction of needs, which in a democracy should proceed from bottom to top – from the people to the parliament – is completely in the grip of the party leaders. Von Arnim also lays blame on the system of party funding, in which politicians can personally determine how much of the tax revenues their parties – private associations just like any other – can collect. According to Von Arnim, it is not surprising that politicians continue to ignore the ever-increasing clamour for reform of the political system, because otherwise they would undermine their own very comfortable positions of power.

In Great Britain, the Power Inquiry, a committee set up by social organisations and consisting of both politicians and citizens, conducted a large-scale investigation into the state of British democracy, and especially into the reasons why so many citizens seem to be turning their backs on politics. They held hearings across the entire country, at which citizens were invited to put forward their opinions, and published the report '*Power to the People*', which noted: "The one factor felt to cause disengagement that runs through all the strands of our investigation is the very widespread sense that citizens feel their views and interests are not taken sufficiently into account by the process of political decision-making. The depth and extent of this perception among the British public cannot be stressed enough. Many, if not all, of the other accepted explanations presented here can also be understood as variations on this theme of weak citizen influence. (...) This view comes through very strongly in the many public submissions received by the Inquiry." (Power Inquiry, 2006, p. 72).

In 1992, Professor De Wachter carefully mapped out the political decision-making processes in Belgium. He concluded: "In Belgium, the development of formal democratic institutions has become stunted. More up-to-date designs which would allow citizens to have a lasting impact on decision-making are either denied or at best lead to the failure to take decisions at all." (p. 71) "The citizens or voters are weak players in the complex and utterly dense social network of political decisions in their country. They lack decisive means of access to the highest levels of the power hierarchy and to decision-making. Everything is decided for them in an extremely elitist manner. For people who are open to ideas of democratic legitimacy, this assessment is both a disappointment and an abdication." (p. 371)

In 2002, Dutch journalist Gerard van Westerloo interviewed Professor Daudt, a celebrated political scientist. Daudt is seen as the Nestor of Dutch political science; a complete post-war generation of political scientists was trained by him. Professor Daudt wiped the floor with the proposition that the Netherlands was a democracy, dismissing it as follows. Certainly, Daudt said, the fundamental rights are respected, but "let's not use buzzwords to dress it up as something that it is not: a democracy with people's representatives. (...) Our democracy is a nonsense." Because van Westerloo wanted to know what Daudt's colleagues thought about his views, he made a tour of the Netherlands, visiting dozens of social administration specialists and political scientists. Daudt's view was confirmed everywhere. In Tilburg, Professor Frissen stated: "In the Netherlands, we are ruled by an arrogant elite, which has nothing to do with democracy in the direct-democratic sense of the word." In Groningen, Professor Ankersmit said: "Politics in the Netherlands has been driven to the fringe. Democracy as such can longer be recognised in it." Professor Tromp from Amsterdam: "Politics in the Netherlands is walking down a dead-end street. A crisis is looming, which cannot be avoided. Political parties are nothing more than networks of people who know and support each other." Professor De Beus from Amsterdam: "The legitimacy of Dutch democracy is a large-scale form of self-deception and fraud." Professor Tops from Tilburg: "The political animal in the Netherlands is as good as tamed and domesticated." Director Voerman of the Documentation Centre for Dutch Political Parties: "The parliament has become nothing more than a rubber stamping machine." And according to political scientist Baakman from Maastricht: "We deceive ourselves that what we call democracy also works as democracy." (Van Westerloo, 2002)

## Loss of trust

The populace in most European states realises that decision-making is being exercised with little democracy and has largely lost its trust in the democratic nature of the institutions.

In Germany, research by TNS Emnid, commissioned by the Reader's Digest magazine, showed that citizens' trust in political parties decreased from 41% to 17% in the ten years from 1995 to 2005. Trust in the parliament decreased during the same period from 58% to 34%, and trust in the government from 53% to 26%. "Under the surface, there's a big storm brewing", commented the political scientist Karl-Rudolf Korte. "This is much more than the traditional lack of interest in politics and political parties. People now

despise their official representatives." (*Reader's Digest Online*, 10 August 2005). According to a Gallup poll, 76% of Germans consider their politicians dishonest. (*Die Zeit*, 4 August 2005)

A poll by SOFRES in 2003 showed that 90% of French people believe that they exert absolutely no influence on national political decision-making; 76% also believe this about local politics. (*Lire la politique*, 12 March 2003)

The Belgian sociologist Elchardus surveyed Belgians' views on democracy in 1999. He summarised: "A large majority of the voters have the impression that their opinion and their voice do not permeate through politics into the policies. (...) 58% of those questioned had the impression that politicians, once elected, 'believe that they are too good for people such as me'. All this leads to more than a quarter of the electorate voicing their absolute distrust: 'in fact there isn't a single politician who I would dare to trust'. Only 15% to 23% of the people questioned agreed with positive statements about politics and representation. It would appear to be no exaggeration to state that half to three quarters of the electorate feels powerless." (Elchardus, 1999, p. 36)

Polls held in 2004 by Maurice de Hond in the Netherlands show that the majority of the Dutch have little faith in the democratic content of their state. 70% disagreed with the statement: "Politicians currently listen better than five years ago". 51% disagreed with the statement: "In the Netherlands, the voter plays an important role in the functioning of the national government"; 47% agreed with this. 55% disagreed with the statement: "The Netherlands is a real democracy", while only 39% agreed with it. Another survey by De Hond in August 2005 was about corruption. Dutch people believe on average that 12% of the members of parliament and the government are corrupt, and 18% of municipal and provincial politicians. Of the national civil servants, Dutch people on average think that 17% are corrupt, compared to 18% of municipal and provincial civil servants. Moreover, a quarter of those questioned admitted to personal experience with corruption among politicians or, via acquaintances, having knowledge of specific cases ([www.peil.nl](http://www.peil.nl)).

In 2002, Gallup organised a mammoth poll on the degree of trust of those questioned in 17 social 'institutions' – from the army and trade unions to parliament and multinationals. This involved questioning 36,000 people in 47 countries. Of all institutions, parliaments appeared to enjoy the least trust: an average of 51% of people had little to no trust, whereas only 38% had a moderate to high level of trust. (*De Witte Werf*, Spring 2003, p. 11). In 2004, the international corruption watchdog, Transparency International, organised a similar survey in 62 countries, in which no less than 50,000 people were questioned about which social bodies they considered most sound and which most corrupt. Political parties were considered the most corrupt; in 36 of the 62 countries they were at the top of this problematic list; with parliaments in second place. (*Rotterdams Dagblad*, 10 December 2004)

One should not think, however, that this creeping process of loss of trust can simply carry on forever. A government that has lost the trust of the majority of the citizens has de facto already lost its legitimacy.

## **1-1: Do people want direct democracy?**

Yes. There is hardly a single Western country in which there is not a (usually large) majority of the people who want direct democracy.

In 1995, the ‘State of the Nation’ poll showed that 77% of the British people believed that a system must be introduced “...whereby certain decisions are put to the people to decide by popular referendum” (*Prospect Magazine*, October 1998). According to a poll published by *The Sun* (15 March 2003), 84% of British people wanted a referendum on the European Constitution. At the same time, a poll appeared in the *Daily Telegraph*, according to which 83% of the British people wanted to solve questions of sovereignty by means of national referendums; only 13% believed that this was the government’s job. The *Guardian* (29 February 2000) published a poll according to which 69% of British people wanted a referendum on the new electoral system proposed by Prime Minister Blair. This clearly shows that the British people want the last word on the organisation of their political system.

In Germany, more than 4 out of 5 citizens want the citizen-initiated referendum to be introduced nationally. From an Emnid poll in 2005, it became clear that 85% of Germans had been won over (*Readers Digest*, 10 August 2005), and comparable figures have come from dozens of other polls. In 2004, Emnid also asked Germans whether they wanted a referendum on the European Constitution; 79% answered in the affirmative. Previous polls showed that the German preference for direct democracy ran through all parties: of SPD voters, 77% were supporters, CDU voters 68%, FDP voters 75%, Green voters 69%, PDS voters 75%. (*Zeitschrift für Direkte Demokratie* 51 (periodical for direct democracy no. 51), 2001, p. 7)

According to a SOFRES poll, 82% of French people are in favour of the citizen-initiated referendum; 15% are against (*Lire la politique*, 12 March 2003).

In the Netherlands, according to an SCP poll in 2002, 81% of the voters support introducing the referendum. In 1997, an SCP survey showed that there was a large majority in favour of direct democracy in all four of the biggest political parties: 70% of the CDA Christian Democrat voters, 81% of PvdA Labour voters, 83% of VVD right-wing liberal voters, 86% of D66 left-wing liberal democrat voters (Kaufmann and Waters, 2004, p. 131). According to a NIPO poll in April 1998, 73% of the voters wanted a referendum on the introduction of the Euro, and a poll in September 2003 showed that 80% wanted a referendum on the European Constitution (which was actually held in 2005). (Nijeboer, 2005). Moreover, the Dutch people expect a lot from democracy. The *Nationaal Vrijheidsonderzoek* (national freedom survey) of 2004 shows that the “promotion of democracy” was selected most (by 68%) as an answer to the question: “What, according to you, is particularly necessary for world peace?”

Gallup polled Europeans in mid-2003 on the desirability of a referendum on the European Constitution. 83% of them considered such a referendum as “indispensable” or “useful but not indispensable”; only 12% thought a referendum “useless”. The percentage in favour was even higher among young people and those with higher education (*Witte Werf*, autumn 2003, p. 15)

The majority of people in the USA also want direct democracy. Between 1999 and 2000, the most extensive poll on direct democracy that has ever taken place in the USA was carried out. In all 50 states it was found that there were at least 30% more supporters than opponents; the average for the whole US was 67.8% for, and 13.2% against, direct democracy. It was striking that the more referendums there were in a state in the 4 years before the survey, the higher was the number of supporters of direct democracy. In states with few to no referendums, an average of 61% were supporters; in states with an average number of referendums, 68% were supporters; and states with more than 15 referendums had an average 72% support. “The 1999-2000 surveys conclusively demonstrate that the experience of voting on initiatives and referendums actually increases support for the process”, comments Waters (2003, p. 477). There was also a poll on the desirability of a citizen initiated referendum at federal level (the United States is, paradoxically, one of the few countries worldwide that never hold national referendums, although direct democracy is quite widespread at the state and local levels). In this poll, 57.7% were supporters and 20.9% opponents.

## **1-2: Does the political elite want direct democracy?**

No. From the opinion polls held among politicians, it generally becomes clear that a majority of them are opponents of direct democracy.

In Denmark, members of the national parliament were asked for their opinion on the proposition: “There should be more referendums in Denmark.” A large majority of the members of parliament was against this. In three parties – the social democrats, left-wing liberals and central democrats – there was even 100% opposition; in addition, 96% of the right-wing liberals and 58% of the conservatives were against. Only a (large) majority from the Socialists and the Danish People’s Party was in favour. (*Jyllands Posten* newspaper, 30 December 1998)

In 1993, political scientist Tops conducted an opinion poll in the Netherlands among municipal council members. Less than a quarter were in favour of the introduction of the binding referendum (*NG Magazine*, 31 December 1993). An opinion poll carried out by the University of Leiden found that 36% of all municipal council members were in favour of introducing the optional referendum, and 52% were against it. Council members from the VVD (right-wing liberals) and the CDA (Christian democrats) were even on average 70% against. Only the Green Left (greens) and D66 (left liberals) produced a majority of council members in favour of the optional referendum (*Binnenlands Bestuur* (domestic government periodical, 18 February 1994)).

In Belgium, the *Instituut voor Plaatselijke Socialistische Actie* (institute for local socialist action) conducted an opinion poll among local social-democratic politicians about the municipal referendum. Only 16.7% were unconditional supporters of a binding referendum. (*De Morgen* newspaper, 31 January 1998)

Research by Kaina (2002) provides an interesting insight into the dynamics of elite support. She examined the will-

ingness of various elites in Germany to introduce direct democracy. She divided them into a political elite, a trade union elite and an entrepreneurs' elite, among others. Of the total elite, 50% expressed a "high" or "very high" degree of support for direct democracy (among the general public, this is considerably higher, at 84%). There are large differences between the various elites, however. In the trade union elite, 86% expressed either a 'high' or a 'very high' level of support, but in the entrepreneurs' elite, the level of support was only 36%. Among the political elite we see a picture of extremes. In the post-communist PDS and the Greens, 'high-very high' support was no less than 100%; with the social democratic SPD it was 95%, and with the liberal FDP 78%, but in the CDU/CSU only 34%. (In fact, a majority in the German parliament has already approved an amendment to the constitution that introduces a fairly good direct-democratic system; unfortunately, a two-thirds majority is required and it is particularly the CDU politicians who have blocked it.) If we look at the voters, however, all the parties without exception have a large majority support for direct democracy. The conclusion: CDU politicians do not represent the people on this point and not even their own voters, but appear to be bowing to the wishes of the business elite.

### **1-3: Political power and direct democracy**

What many politicians think about whether and to what extent referendums are desirable is very much linked to their own proximity to political power. The more power they have acquired within a representative system, the more they seem to oppose direct democracy. Some examples of this follow.

In Sweden, only five referendums in total were held during the course of the 20<sup>th</sup> century. The positions of the most important Swedish parties – the Socialist party and the Conservative party – varied according to whether or not they were in power at the time. Before the Second World War, the Swedish Conservative party was strictly against the referendum; after the war, when this party was in opposition for decades, it became an advocate of referendums. With the Swedish Socialist party, things developed in exactly the opposite direction: this party began to reject the referendum from the moment they gained an absolute majority in the Swedish 'Rikstag'. Ruin (1996, p. 173) summarises it as follows: "Parties that belong to the opposition or occupy a subordinate position display the tendency to defend the referendum. Parties that sit in government or hold an executive position tend to display a dismissive attitude."

In Baden-Württemberg, the Christian Democrats (CDU) landed in the opposition after the Second World War. When the constitution for this German state was being drawn up in 1952-1953, the CDU argued for the introduction of the referendum. The ruling majority at that time, in which the socialist SPD was the most important partner, however,

was opposed to introduction. By 1972, the situation had changed: Baden-Württemberg was now ruled by a coalition of Christian democrats and liberals. When the prospect of a change to the constitution was presented, the SPD took the initiative to also introduce referendums. This created fierce opposition from the CDU. The peculiar situation emerged in which the SPD and CDU now adopted the very same positions their opponents had held twenty years earlier. There was ultimately a compromise: the referendum was introduced in principle, but with a gigantic threshold. In order to force a referendum, one sixth of the voters of Baden-Württemberg must register their signatures at the town halls or council offices within a period of two weeks. Predictably, of course, not a single referendum came about during the subsequent decades. In 1994, a citizens' group wrote very politely: "Unfortunately, in view of this shifting of position, one cannot help thinking that whether a party was for or against referendums in the past was primarily dependent on whether that party was viewing the issue from a government or an opposition perspective." (*Stuttgarter Memorandum*, 1994, p. 23).

It is not only the division between opposition and government parties that plays a role. In the Belgian opinion poll carried out in 1998 by the *Instituut voor Plaatselijke Socialistische Actie* mentioned above, it also appeared that local politicians with an executive mandate (mayors and aldermen) regarded the referendum even less favourably than politicians with a representative mandate (municipal councillors), regardless of whether the latter belonged to the opposition or the ruling coalition parties. (*De Morgen* newspaper, 31 January 1998)

Incidentally, the introduction of direct democracy is not the only issue on which political parties routinely change their standpoint depending on their share of power. The same phenomenon applies to the issue of limitations on the number of times a representative may hold the same office. Among American voters, approximately 75% advocate limited re-electability. By contrast, only 18% of the members of the individual state parliaments were in favour, with 76% being against any restriction. Among professional lobbyists, no less than 86% were in favour of unlimited re-electability. This is not surprising, because limited re-electability threatens the 'old boys' network that is so essential to a good lobbyist. One lobbyist even stated explicitly: "Lobbyists agree with the contention of the advocates of limited re-electability: this measure would sever the established links and interfere with the work of interest groups" (O'Keefe 1999). In Flanders, the system of limited re-electability was originally part of the core doctrine of the Agalev green party. This party believed that mandate holders should only be allowed to renew their mandate once. When it came to the crunch and some electoral heavyweights saw their positions threatened by this measure, the party position was immediately modified.

## 2. What is democracy?

Democracy varies from country to country, from age to age. A hundred years ago, the universal single vote system for men was disputed and votes for women appeared unthinkable. It now seems inexplicable that a time ever existed when women were not allowed to vote and a rich man might have more votes than a poor man. The same will happen with the referendum. The time will come when nobody will remember that there were earlier times when the people were not able to decide their fate directly.

Democracy evolves. What – after the diversity of forms of democracy in different countries – are currently the essential characteristics of democracy? What enables a democracy to be distinguished from a non-democracy? A dictator who calls himself ‘democratic’ is still a dictator. There have to be objective criteria to make the distinction possible. We call the entirety of these criteria the ‘archetype’ of democracy.

### In search of the archetype

Democracy means: ‘government by the people’. There are, of course, many other forms of ‘government’ or state power. In an ‘oligarchy’, for instance, a small elite group governs. In a ‘timocracy’, the rich people rule. In a ‘theocracy’, God is supposed to exercise the power.

The term ‘democracy’ gained a much more positive reception from the twentieth century onwards. Virtually all states refer in one way or another to the democratic ideal, even if their regime is totalitarian. Democracy has prevailed, at least at the ideal level. Things were different in the 18<sup>th</sup> century. ‘Democrat’ was a frequent term of abuse in those days.

Because state power is expressed via legislation, ‘democracy’ means that the people make the laws. In a democracy, the laws derive their authority from the fact that the people approve them in one way or another. The legislative power in an oligarchy relies on the approval of a minority, and on divine blessing in a theocracy. In a democracy, there is no authority higher than the people.

Laws impose obligations, not on the people as a whole, but certainly on individual citizens. The individual members of society are expected to recognise the authority of the law because in principle they also had the opportunity to help shape the law. This is how we arrive at Jean-Jacques Rousseau’s concept of the ‘social contract’: legislation is the result of a social contract between equal and responsible citizens. *In the democratic view, a law is only legitimate when those who are expected to comply with the law are also able to contribute to shaping that law.*

The concept of the ‘social contract’ is best approached ‘negatively’, so to speak – by a process of elimination. If the authority of legislation is *not* derived from the authority of God, of the nobility, of owners of land, money or knowledge, then the social contract is the only remaining possibility. Laws derive their authority from the fact that there are voluntary agreements made between the members of the legal community.

Politicians often refer to the ‘social contract’ as an agreement between the people and the politicians. The contract is then renewed at each election, so to speak. But the philosopher

Thomas Paine already refuted this view in *The Rights of Man* (1791): “It has been thought a considerable advance towards establishing the principles of freedom to say that government is a compact between those who govern and those who are governed; but this cannot be true, because it is putting the effect before the cause; for as man must have existed before governments existed, there necessarily was a time when governments did not exist, and consequently there could originally exist no governors to form such a compact with. The fact therefore must be that the individuals themselves, each in his own personal and sovereign right, entered into a compact with each other to produce a government: and this is the only mode in which governments have a right to arise, and the only principle on which they have a right to exist.” (Paine, 1791, 1894, part 2, p. 309). A ‘social contract’ is therefore a contract between citizens, and a political system only emerges as a result of this.

How can citizens enter into a social contract with each other? Obviously they must come together, discuss it and agree it. This creates the first specific instance of the democratic meeting: the public assembly.

These public assemblies are also an historical reality. In some small communities, for instance in the United States and Switzerland, public assembly still plays a role today [see 2-1]. It is clear that the public assembly as such cannot work in a modern constitutional state with millions of citizens. But, at the same time, the public assembly still provides an initial practical example of the democratic ideal. Therefore, let us first examine the essential characteristics of the democratic public assembly.

### The principles of the public assembly

Certain principles exist in every democratic public assembly.

#### The principle of equality

The principle of equality forms the basis of the public assembly: all mature (in the sense of accountable) members of the community can take part in the public assembly and are accorded equal weight in the decision-making.

It is not easy to base this principle of equality on a positive principle. It is, however, very easy to establish the principle of equality in a negative way. After all, the democratic ideal is based on the fundamental principle that there is no authority higher than the people. This principle means by definition that all appear as equals. If some of those attending have more weight than others in the decision-making, merely by virtue of who they are, we find ourselves back in the oligarchy.

So each mature person’s vote has the same weight. The history of democracy in the twentieth century was largely a battle for this principle, a battle that was conducted mainly on three fronts: the universal single vote system (in which each person, regardless of their possessions, age or competence receives an equal vote); women’s right to vote; and the right to vote regardless of distinguishing biological features (e.g. voting rights for the coloured people in South Africa).

## The right of initiative

The right of initiative means that every member of the public assembly has an equal right to submit proposals. Therefore, the public assembly's agenda is not set by an elite.

The right of initiative is nothing less than a special application of the principle of equality. It does not mean that the submission of proposals cannot be bound by rules. For example, such rules could specify that a proposal must be submitted 14 days before the meeting, or that a proposal must be signed by at least a hundred members of the meeting. What is essential is that the rules are the same for everyone.

## Majority rule

In the ideal situation, there is unanimity: everyone agrees with a proposal. However, unanimity will not usually be achievable. That is why majority rule is used. It is a consequence of the principle of equality and stems from the desire to minimise disorder: by applying majority rule one achieves the smallest number of dissatisfied people. One could also argue that any solution other than simple majority rule essentially denies the principle of equality. After all, if we work with a qualified (e.g. two-thirds) majority, this means that a minority can deny the majority its wishes – for example if 60 percent want option A and 40 percent want option B.

Majority rule has an existential dimension. By accepting this rule, we recognise human shortcomings. The existence of the minority shows that the discussion and perception-forming process has been incomplete. At the same time, the majority principle reminds us of the fact that democracy must always be perceived as an historical process. Today's minority may be tomorrow's majority. Most new ideas initially meet with resistance and rejection, but may later become generally accepted. Majority rule can actually only operate properly when it is sufficiently understood in the society or community in historical terms. When a decision made by a majority against a minority is perceived by that majority as an absolute 'triumph', outside of all historical perspective, the quality of democracy suffers.

The majority rule is at odds with all elitist tendencies. Authoritarian movements never recognise majority rule. They always foster one or other image of an 'avant-garde' or elite that can impose its will on the majority. Leninists will speak of the spearhead role of the communist party and of the dictatorship of the proletariat. National-socialists will point to elites based on racial characteristics. Religious fundamentalists will reject equal rights for women and dissidents, even if they constitute the majority.

In a mitigated, but even so still very real form, this elitist principle also exists among the supporters of so-called representative democracy. Dewachter (1992, p. 70) puts it as follows: "According to the basic concept of 'parliamentary democracy', the decisions are taken by a selection of 'philosopher-princes'. Representative distributed throughout the entire territory, a sample of representatives of the people is elected. Yet the elected members themselves are no longer representative; they are not average, but are the best. The parliament is the assembly of the best of the nation." The former Justice Minister of the Federal Republic of Germany, Thomas Dehler, expressed this like this: "In my opinion, it is a misapprehension of the nature of democracy to believe that parliament is the executor of the people's will. I think that the nature of representative democracy is something quite different: it is actually a parliamentary aristocracy. Members of parliament have the duty and the opportunity to act from

a greater insight, a superior knowledge, than that of the individual citizen". (Quoted by Dewachter, 2003, p. 30)

For this clear expression of the elitist idea behind purely representative democracy, Dehler was applauded not only by Christian Democrats, but also by Liberals and Socialists. The difference with totalitarian systems in this context is that, in a purely parliamentary system, the elite must obtain a formal majority from the people. What the pure parliamentary system and the totalitarian system have in common, however, is that they allow the implementation of laws against the will of the majority of the people.

## The mandate principle

Continuous unanimity is unachievable in a democracy. That is why majority rule is part of the democratic 'archetype'. But there is still another problem. Universal participation in the democratic decision-making process will also be unachievable. There will always be members of the community who do not want to take part in deciding on certain matters: because they don't have the time, because they believe that they have insufficient knowledge, or because they have other reasons for not doing so. So, in addition to majority rule, the mandate rule is also introduced: those who do not participate in the public assembly are considered to have given a mandate to those who do take part.

The mandate rule cannot be avoided by imposing compulsory voting or compulsory attendance (moreover, such compulsory attendance is undesirable; see inset 6-2). Even if it is decreed by law that all members of the community must participate in the public assembly, an arrangement must always be made for those who do not honour this obligation. The public assembly's decisions will always be binding on the absentees as well.

Thus, the mandate principle has nothing to do with the difference between representative decision-making and direct-democratic decision-making. The mandate principle is a direct consequence of the fact that, by definition, laws apply to everyone in the community. In other words: I cannot deny that a law applies to me personally by using the argument that I did not take part in the creation of the law. By forgoing participation in the decision-making on the law, I am automatically considered to have given a mandate to those who actually made the decision. Without this principle, every individual could withdraw from the applicability of laws at their own discretion.

In a direct-democratic decision-making process via a public assembly, therefore – from a formal perspective – there are always two decisions to be made:

- first a mandate decision is made: each citizen decides either that he or she will personally take part in the 'ad hoc parliament' that will make the decision, or that he or she mandates fellow citizens (which is done by not taking part);
- secondly, the public assembly then makes the decision about the issue under discussion.

## From public assembly to referendum

Up to this point we have assembled the following elements that are unavoidable components for the operation of the public assembly and which we can consider as elements of the 'archetype of democracy':

- the principle of equality
- the principle of popular sovereignty (there is no authority higher than the people);
- majority rule
- the mandate principle

The public assembly is not practical in a modern democratic state, except at the local level. But that is not a problem. The public assembly as a *type* of democracy can happily be surrendered. What is essential is that the fundamental elements of the *archetype* of democracy are retained. The public assembly is only one of the possible manifestations of the underlying archetype.

The public assembly model has its limitations. Beyond a certain size of population, the town square simply becomes too small. As a result, the public debate must take place somewhere else: via the media, via district meetings, etc. The debate will last longer and be of a less direct nature. This is more of an advantage than a drawback. There is more time for consultation, more opportunity to see through false arguments. Furthermore, we will no longer vote by a show of hands, but in 'the privacy' of the voting booth. This type of secret ballot is undeniably a great benefit: everyone can express his or her opinion free from social pressure.

Through these two changes, the public assembly is transformed into a referendum. A *referendum is essentially a public assembly in which the participants no longer come together physically*. But, at the same time, the citizens' initiative referendum still retains all the essential characteristics of the public assembly: the principle of equality, the right of initiative, majority rule and the mandate principle.

It is interesting that in historical terms – particularly in Switzerland – this transition from public assembly to referendum has also occurred by public initiative: "In many cantons, the referendum and initiative devices were viewed as an acceptable replacement for direct communal assemblies and cantonal 'Landsgemeinden'. Population growth was making this type of public assembly impractical. In some cantons, such as Schwyz and Zug in 1848, the substitution was immediate and direct, with the referendum introduced as the Landsgemeinde was withdrawn." (Kobach, 1994, p. 100-101)

## Representative democracy

But the referendum also has its limits. We cannot hold referendums on every issue: the costs to society of direct decision-making are just too great. Not only does each referendum cost money. More importantly, each referendum demands time and effort from the citizens: they must use their best capacities to form an opinion about the issue that is under discussion, and then cast their votes.

Of course, overtaxed citizens can refrain from voting in the referendum and, by doing so, provide a mandate to those who do vote. If there are too few people interested, however, this procedure is also unusable. It is absurd to organise a national referendum on a matter for which only a handful of voters eventually show up. Not only is the public assembly unworkable, but even the systematic use of the referendum becomes impracticable.

Thus another solution has to be found. The essential question in this context is: when the referendum is an unsuitable method for making decisions, who will then actually make those decisions? The mandate problem with the referendum normally solves itself: those entitled to vote and who actually do vote receive the mandate of society. Because everyone is free to accept this mandate or not, the principle of equality is not violated. But who is given the mandate if the referendum doesn't take place?

Representative democracy is essentially a technique for solving this mandate problem. Representative democracy must be implemented as soon as the citizens have too little time or interest to cooperate in a decision that still has to be made. The costs to society for a referendum on each separate subject are, at a certain time, *according to the citizens themselves*, too high in proportion to the democratic benefit (direct access to decision-making for every citizen). That is why the citizens appoint a fixed parliament for several years; it receives the mandate to make decisions on all the matters that the citizens do not want to decide directly. The election of the parliament is therefore a special type of direct-democratic decision: the citizens decide who will decide, and under what conditions, on the issues for which the people want to delegate the mandate.

*The mandate received by the parliament is, therefore, a special manifestation of the mandate given to the effective voters in direct-democratic decision-making by the entire community.* In direct-democratic decision-making (referendum), the effective voters form as it were an enormous ad hoc parliament that is mandated to decide on the subject. The only difference with representative decision-making (voting in the parliament) is that the parliament received its mandate some time before the vote, and the mandate is given for a specific period of time. It is clear that this separation of mandating and deciding is not fundamental. But it is, however, essential to understand that the parliament and the community of voters in a referendum have the same basis both logically and formally.

## The relationship between referendum and parliamentary decision-making

The introduction of the representative parliament raises a new problem. How does one determine which issues the citizens still wish to decide directly?

The supporters of the purely representative system have their answer ready. They argue that the parliament is all-powerful and they reject the referendum. This severely damages the principle of popular sovereignty included in the archetype of democracy. In the purely representative system it is once again possible to pass laws that are wanted by an elite, but which are rejected by the majority. As soon as the parliament is installed, it can act freely against the will of the majority. The right of initiative, which follows directly from the principle of equality, is rescinded.

The defenders of the 'purely representative system' justify this system with two main arguments.

### An imposed mandate is no mandate at all

First of all, the defenders of the 'purely representative system' state that the citizens give a mandate to those elected and that, as a result, the latter now possess the right to decide.

In doing so, they ignore the fact that this type of imposed mandate creates an internal contradiction. A legitimate mandate, just like a legitimate gift, can only be given voluntarily. This voluntariness also means that the citizen must be free *not* to provide a mandate, but to opt for direct decision-making via a referendum. *An imposed mandate is a sham mandate.*

An analogy can clarify this. Imagine that you are held up at night by five muggers who demand your wallet. They do, however, leave you the choice of which mugger you surren-

der your money to. You hand over your money out of sheer necessity to the least unpleasant, who is later arrested by the police. Then, during the confrontation, the man says to you: "I didn't steal your wallet at all; you gave me the wallet of your own free will. After all, you were entirely free not to give me the wallet." The perversity of this argument is clear. You were indeed free to either give or not to give the money to *this particular villain*. But you were, however, forced (by the villain concerned, among others) to surrender the wallet anyway – against your will. You were denied the freedom to keep the wallet yourself. Replace the robbers in this analogy by political parties, and the wallet by your right to participate directly in the decision-making process, and you get the argument in favour of purely representative decision-making. Just as your freedom to surrender your wallet was a sham freedom, the mandate in a purely representative system is a sham mandate, precisely because it is imposed. In this context, Friedrich Nietzsche wrote: "Parliamentarianism, i.e. the official permission to be allowed to choose from among five political points of view, is popular among the many who would like to seem independent and individualistic in fighting for their views to prevail. Ultimately, however, it makes no difference whether the herd has an opinion imposed on it, or that five opinions are permitted." (Nietzsche, 1882, 1999, p. 500)

The notion of 'purely representative democracy' is an internal contradiction (comparable with the term 'square circle'), especially if the majority of people want direct decision-making. If the majority of people want direct decision-making, a purely representative system is undemocratic by definition, because by its very nature such a system is contrary to the will of the majority (because 'being square' implies the presence of corners, a circle cannot be square by definition, because the circle – by its very nature – has no corners).

### **Setting up a party oneself**

Supporters of purely representative decision-making still have a second argument. They say that everyone is still free to set up a party themselves and to stand for a parliamentary seat.

However, this response ignores the principle of the people's sovereignty. Popular sovereignty starts with the people's opportunity to be able to determine how a decision is made. It is very possible that the large majority of the people want to express their opinion on a specific issue directly, while only very few people aspire to have a seat in parliament. In a democracy, this wish should be respected. Anyone who decrees, against the wishes of the majority, that direct decision-making is not permitted and that one must achieve changes by taking a seat in parliament, puts themselves above and in opposition to the people and violates the sovereignty of the people. If the people want to decide on a specific issue and this is made impossible, then the people are clearly not the ruling power. When an elite refuses the majority of citizens the desired opportunity to make decisions directly, and puts forward the setting up of a personal party as an 'alternative', then they are patronising the majority and there is no question of democracy.

Research into the motivation for voting behaviour shows in no uncertain terms that the majority of voters do not vote just because they want to grant a mandate [see 2-2]. The majority of the electorate vote strategically: given the existing system, which leaders appear to be least harmful? If the votes were actually to be cast in a spirit of granting democratic mandates, the current mistrust of the people towards their parlia-

ments – which polls across the whole of Europe repeatedly highlight – would be completely inexplicable. There are no mandataries in the real sense of the word sitting in parliament; there are leaders, however, who are elected in preference to others by the voters, simply because the electorate is now forced to elect someone and just votes for the person (or party) least likely to do any damage.

Thus there is a fundamental difference between political parties that support the binding citizens' initiative referendum and those that resist its introduction. The latter must really be considered as vested power interests. Only those parties which unconditionally support the introduction of the binding citizens' initiative referendum can be considered to be authentically democratic, in the literal sense that they strive for an authentic form of 'people power'.

### **Parliament and referendums**

The purely representative system, therefore, cannot be considered to be truly democratic. This system necessitates, a priori, the appointment of a decision-making elite and opens up the possibility for introducing laws that are contrary to the will of the people.

Nevertheless, the representative system can operate reasonably well in one special situation. When the large majority of the voters approves a purely representative system and if, moreover, the majority of citizens principally identify with one of the existing political parties, the purely representative system is reasonably legitimate (because it is desired by the citizens). This situation existed to a greater or lesser extent, perhaps, in many Western countries until approximately the 1960s.

But times have changed. The majority of citizens do want referendums and most people no longer clearly identify themselves with one political party or other (see inset 1-1). The system of political decision-making remains unchanged, but the democratic deficit is still drastically increasing, because in this system the people's ability to express their social convictions continues to be eroded.

This can only be resolved by introducing the binding citizens' initiative referendum. In conjunction with the representative system, the binding citizens' initiative referendum can provide a system that, on the one hand, contains the essential characteristics of the public assembly (equality, right of initiative, majority rule, mandate principle) and, on the other, is still usable in a modern society. However, we must then introduce some new principles that determine how representative and direct-democratic decision-making interact with each other. In particular, if we want to retain the essential advantage of representative democracy (no popular vote on every issue), the citizens must be required to demonstrate an active interest in direct decision-making. The parliament or representative body would be considered to possess a mandate for all those issues on which the citizens do not actively make known their desire for direct decision-making.

If a group of citizens wants to obtain a referendum on a certain matter, therefore, they must prove that a clear desire for direct decision-making does actually exist among the people. In practice, this evidence is provided through the collection of signatures to apply for a referendum. In Switzerland, for example, a referendum is held at the federal level if 2% of the electorate request it.

## Hierarchy of laws

A law that is approved by referendum must be higher in the legal hierarchy than laws passed by parliament. There is an additional provision that a law approved directly by the people cannot subsequently be scrapped by parliament. After all, if a referendum is held, this means that the people want to express their own opinions about the issue concerned. With the referendum, the democratic mandate is consequently placed in the hands of the voters and not in those of the members of parliament.

In Switzerland, this superiority of the people's law is regulated at federal level by including the people's law as part of the constitution. Because the Swiss constitution can only be changed via a referendum, this means that a decision by the people can only be abolished by another decision by the people. The disadvantage is, however, that the Swiss constitution has developed into a strange mixture of general provisions (such as those that usually tend to appear in a constitution) and very specific stipulations (that are normally regulated by ordinary laws).

That serious problems can arise on this point is shown by the example of Oregon. The binding citizens' initiative referendum exists in this US state but, by simple majority, the state parliament can abolish laws that are made by referendum. This has actually happened. In 1988, for example, a people's initiative was carried which provided for longer prison sentences for violent criminals. This law was subsequently repealed by the legislative chambers.

A popular initiative was later launched (Measure 33) in an attempt to prevent this type of occurrence. It proposed the following:

- laws created on the basis of a people's initiative can only be changed in the first five years by another people's initiative;
- after five years, a change can only be implemented if it secures at least 60% of the votes in both legislative chambers (Senate and House of Representatives).

However, the proposal was rejected by only a narrow margin in November 1996.

## Participation quorums

In view of the mandate principle, it is absurd to introduce participation quorums for direct decision-making. The citizens who do not take part in a vote are considered to have given a mandate to those who do. If one introduces participation quorums, one opens the door to boycott actions by minorities. Suppose, for instance, that there is a participation quorum of 40% and that 60% of the electorate want to vote. Within the group keen to vote, 55% support the proposal to be voted on and 45% oppose it. The opponents cannot win the vote if they take part in the referendum. But if they stay at home, however, they can 'win', because then the 40% quorum will not be achieved and the proposal will be rejected, against the will of the majority [see 2-2].

We have seen that the parliamentary mandate is only a derived form of the mandate which the effective voters receive in direct-democratic decision-making. A parliament contains on average only about 0.003% of the population and yet it can still make decisions. So it makes no sense to suddenly introduce participation quorums of 20% or 40% for the ad hoc parliament that is formed by a referendum. The mistake that

is made with participation quorums is that the people who stay at home are counted as either supporters or opponents (depending on the referendum). In reality, they have chosen *not* to voice their opinion. That must be respected.

Finally, we can also note that the turnout for a referendum must not be compared with the turnout for elections. In elections, all kinds of issues are on the agenda or in the party manifestos: the current ones and all the new topics that may present themselves in the next four or five years. A referendum has only one specific issue on the agenda, so it is logical that the turnout for this is lower than for elections.

Arguments are sometimes put forward for a low quorum, precisely to avoid possible boycotting. However, this standpoint is illogical. Either a quorum is so low that it is bound to be met: then, to be sure, boycotting is ruled out – but at the same time the quorum itself is pointless. Or the quorum is so high that it is unlikely ever to be achieved: then boycotting is possible. There is no third possibility.

It also needs to be remembered that participation quorums are basically impossible for parliamentary or municipal council elections. After all, if such a quorum were not to be met, the legislative and administrative system would just grind to a halt. There are no good reasons for not having a quorum for this kind of election but insisting on one for referendums. If the group making a decision by referendum is required to be 'sufficiently representative', then the same requirement must apply *a fortiori* (even more stringently) for parliamentary elections. Suppose that a participation quorum of 25% is set for a referendum and at the same time no quorum is set for parliamentary elections. A referendum in which 20% of the electorate votes will be declared invalid. But a parliament that is elected by only 5% of the electorate, however, can still make 'legitimate' decisions – decisions based on an indirect citizen participation of 5% – whereas the rejected referendum result can boast a direct citizen participation of 20%. That is illogical. Moreover, the mandate that is given to parliament is much more far-reaching than the mandate given to the voters by those who stay at home in a referendum. After all, nothing can be said with certainty about what far-reaching decisions will be made by all the members of parliament. During the course of a parliamentary sitting, new topics and draft legislation that could not have been foreseen are constantly being put onto the agenda.

Finally, some supporters of a participation quorum refer to the so-called danger of 'compartmentalisation'. By this they mean that citizens would only vote for the issues which their own group is concerned about. For instance, in a referendum on an action plan to deal with farmyard manure, only the small section of the population who are cattle farmers would vote.

This objection rests on the false premise that people only vote to defend their own group's interests. The reality is different (see chapter 6, point b). In countries or states without participation quorums, such as Switzerland and California, there is no evidence of 'compartmentalisation'. The practical progress of direct-democratic votes makes any 'compartmentalisation effect' improbable *a priori*. For example, on any one referendum voting day in Switzerland there are almost always several referendum issues to be voted on at the same time. These referendums are on the most diverse subjects and concern not only the federal and cantonal levels, but also the municipal level. Thus people are not normally called to the ballot box for the sake of one single specialised issue.

On the contrary, it is the parliamentary system that is highly exposed to the temptation of compartmentalisation. Interesting examples of this are precisely the farmyard manure action plan or the prohibition of tobacco advertising in Belgium. Economic interest groups can, via their contacts with a small group of 'specialised' members of parliament, exercise unprecedented pressure on the decision-making. Direct-democratic decision-making would make it much more difficult for such interest groups to play a winning hand.

### The quorum in the parliament

Sometimes the participation quorum for referendums is defended by making a comparison with the quorum that applies in many parliaments. Votes in the parliament are often only valid provided at least 50% of the members of parliament cast their vote. In the analogy, a popular vote could only be valid provided at least 50% of the people cast their votes.

The analogy is false, however. We have seen that the parliament is logically equivalent to those who vote in a referendum, not with the total number of people entitled to vote. A member of parliament has a current contract with the citizens: he or she has entered into this contract for a specific period to undertake the social decision-making insofar as the citizens themselves do not want to decide. The Member of Parliament (MP) must theoretically always be present at the votes in the parliament, therefore. If he or she intentionally stays away, this is a breach of the contract with the voters. The 50% quorum in the parliament is a weak reflection of this obligation. It is not a happy arrangement, because it works in favour of the polarisation between majority and minority in the parliament. In its turn, this polarisation is irreconcilable with the contract that exists between members of parliament from the minority, and their voters. If these members of parliament are part of the minority, they can justifiably claim that their presence in the parliament is pointless: they can never affect the decisions. These members of parliament are, therefore, unable to honour their contracts with the voters, which is not their own fault, but a result of blocking by their colleagues from the majority. It would be better to replace the 50% quorum in the parliament by a rule in which the absence of a member of parliament would be sanctioned by dismissal and replacement by an unelected candidate from a different party.

### The referendum's area of authority

It must be possible to hold a referendum on all the issues for which a representative decision is also possible. It is in conflict with the right of initiative to deny the citizens the right to direct decision-making on certain issues. However, direct decision-making must be subject to the restrictions that also apply to representative decision-making. Three points are especially important in this context:

- The decision-making must occur at the proper level. For example, one cannot reform the social security system at provincial level, or abolish the generation of nuclear power at municipal level.
- The proposals to be voted on must be in accordance with the basic rights and freedoms as established in the constitution and the international treaties concerning human rights.
- However, the people must have the right to change the constitution by referendum and must also be given direct-democratic control over entering into treaties. Treaties must always be subject to a time limit and be terminable. In any other case, the people's sovereignty would be restricted in an unacceptable manner.

The political elite has a strong tendency, prompted by distrust, to exclude direct-democratic decision-making for certain subjects. One finds this attitude not only among political leaders, but also among academics and professors. An example is the 'Recommendation issued by the scientific committee of the commission for political renewal' (2000) for the committee of Belgian members of parliament who are concerned with political renewal. In this we can read: "Tax matters are excluded from a popular vote in most countries; the reason is based on the justified fear that in the referendum or the popular consensus the people will almost always opt for a lowering of the expenses they bear, whereas at the same time they demand that the government provide the same or even better services". Following on from this, the professors advocate the exclusion of issues that exclusively or mainly concern tax or budgetary topics. Their argument is not only anti-democratic; it is also false to the extent that they do not mention the clearly contradictory example of Switzerland. Here there are no restrictions on referendums on tax issues, without this adversely affecting the national budget (see also chapters 5 and 6).

### Right of petition

Smaller groups of citizens (e.g. 0.1% of the electorate, about 45,000 signatures in Great Britain) must be able to put something onto the parliamentary agenda (right of petition), even if insufficient signatures were collected to obtain a referendum. This is a direct result of the nature of the parliament itself: it is the institution where decisions are made about socially relevant issues on which the citizens themselves do not want to decide. The fact that several thousand citizens submit a petition already makes the subject into a socially relevant issue.

The right of petition and the citizens' initiative referendum are linked in a multi-stage direct-democratic procedure. A citizens' initiative starts as a petition group. If, for example, 43,800 signatures are collected, the citizens' proposal enters parliament as a petition. If the parliament adopts the proposal, the initiative ends. In the other case, the citizens' initiative can force a referendum if it has a higher number of signatures (e.g. 2% of the electorate, around 900,000 in Great Britain). The voters must then also be informed of the parliament's recommendations or considerations, which will certainly form a significant part of the social debate. The parliament can also be granted the right to submit an alternative proposal in addition to the people's proposal. Then, in the referendum, the voters have the choice between three alternatives: the status quo, the people's proposal, or the parliamentary alternative (this type of system exists in Switzerland and Bavaria). This kind of measure can ensure that there is a closer bond between the parliament and the people (see also chapter 6, point e).

## 2-1: The public assembly.

The public assembly is the oldest and simplest manifestation of democracy.

In the Athens of Pericles (450 to 430 BC), the public assembly (*ekklesia*) was the highest authority, approving the laws and making decisions on war and peace. The Athenian public assembly permitted no representation that would take over its role or authority. The principle of equality had not yet appeared. Only 'citizens' (in the meaning of the word at that time) were admitted to the public assembly; slaves were excluded. In Pericles' time there were around 30,000 citizens, compared with 100,000 to 250,000 slaves. Not all the citizens had equal votes: possessions played a major role.

Similar public assemblies emerged at many places in Europe in the late Middle Ages. Lecomte (1995, 2003), for example, describes the practices in the small Belgian town of Fosses-la-Ville, when this belonged to the diocese of the principality of Liège. We know about the exact organisation of the local administration in Fosses-la-Ville from a charter of 11 December 1447. The day-to-day management of the town was performed by a municipal council that was elected once a year.

The heads of the town's households assembled for this purpose at the lower town gate of Fosses and appointed the members of the municipal council by a simple majority of votes. After the fifteenth century, these public assemblies were held in each district, but the system itself actually remained unchanged. Not only did the citizens in the town itself vote, but the 'bourgeois forains' (non-residents who nonetheless enjoyed citizenship rights) from the surrounding countryside voted as well.

The gathering of assembled citizens was called the 'généralité'. They not only appointed the municipal council, but also had powers to deal with all the important issues. The municipal council could not make decisions itself, but was required to convene a public assembly. Lecomte summarises the following powers, which inherently belonged to the prerogatives of the 'généralité':

- issuing new regulations and statutes
- selling or mortgaging municipal goods and properties
- important public works
- approving the end-of-year accounts
- imposing taxes

It was the mayor's job to convene the 'généralité' whenever a decision was needed in one of these areas. The municipal council's job was essentially executive: it was responsible for looking after ongoing affairs, but new principles and major decisions always needed to be directly approved by the citizens. Lecomte correctly emphasises the qualitative difference between the direct-democratic regime of Fosses and the current system, in which it is not the citizens but rather the municipal councillors who make the major decisions: "... there is an essential difference between the mediaeval community council of Fosses and the same council today. Nowadays, the council enacts local byelaws and sets communal taxes. None of this existed in the 15<sup>th</sup> century. The power to make local laws belonged essentially to the

'généralité' i.e. to the general assembly of those citizens called upon to express their views on all matters which affected the interests of the town community, over and above the day-to-day administration." (Lecomte 2003, p. 154).

At least 85% of Swiss municipalities are nowadays still managed through the public assembly (Kriesi 1992, p. 113). At the cantonal level, the public assembly (*Landsgemeinde*) now exists only in Appenzell and Glarus. These assemblies date from the late Middle Ages (the oldest document containing decisions made by a *Landsgemeinde* dates from 1294) and are possibly historically connected with the Old Germanic or Scandinavian tradition of the 'Thing'.

The *Landsgemeinde* of the Appenzell Innerrhoden canton meets once a year on Appenzell's central market square on the last Sunday in April. All citizens aged 18 and over can attend (until 1992, the minimum age was 20). Generally, 25% to 35% of the citizens entitled to vote turn out, which is some 3,000 people. If there are controversial issues on the agenda, this number usually increases. Voting is by a show of hands, in which the 'abmehren' (checking who has the majority) sometimes runs into problems.

Besides the election of the *Standeskommission* (governing council), the *Landammann* (a type of president of the council) and the *Kantonsgericht* (cantonal court), mandatory items on the agenda of the *Landsgemeinde* are the following:

- a possible change to the cantonal constitution
- all laws or statutory amendments that have been prepared by the *Grosser Rat* (literally the 'big council')
- all proposals for new public expenditure of more than 500,000 Swiss francs, or renewable expenditure of at least 100,000 francs a year for a period of at least five years (*finance referendum*, since 1976)
- laws or amendments to the cantonal constitution proposed by citizens, for which one signature is sufficient
- if at least one citizen requests it: a vote on any decision to spend at least 250,000 Swiss francs or at least 50,000 francs a year for a period of at least five years

Thus, no law can come into force in Appenzell Innerrhoden without it first being approved by the public assembly. Every citizen has the right to speak at the assembly. There are no restrictions on the number of speakers or on the speaking time. In practice, this does not cause any problems because speakers are brief and to the point, and do not repeat each other. (Hutter, 2001; Carlen, 1996)

In various states in north-eastern USA, an administrative tradition also exists that is based on the so-called 'Open Town Meetings' (OTMs), which can be traced back directly to the Pilgrim Fathers (Zimmerman 1999). The highest administrative body in the community is not an elected municipal council, but an open public assembly. The OTM basically meets once a year. All the registered voters from the community can speak and vote at the assembly. The assembly is convened by the 'Board of Selectmen'. This is a committee whose members were appointed at the previous sitting of the OTM, and which operates as a type of executive of the OTM.

Citizens can place items on the agenda for the OTM. This requires: either a hundred signatures of registered voters, or (in small municipalities) the signatures of one tenth of the number of registered voters. The selectmen can place

items on the agenda themselves, and include items that are brought up by the town administration and other committees and boards.

The OTM participants are provided with several recommendations. In some municipalities, the actual OTM is also preceded by an informative pre-Town Meeting, at which citizens can seek further information about the items on the warrant. In the warrant itself, one can find recommendations from various committees for many of the items to be voted upon. The ‘town counsel’, a lawyer specialised in municipal legislation, plays an important advisory role at the OTM itself.

Voting is by a show of hands or by standing up, but for delicate items there is a change to secret written ballots. One problem with the written ballot is its time-consuming character (typically three-quarters of an hour for voting and counting). Nevertheless, the opportunity for secret ballots is essential to avoid social pressure on controversial topics.

The OTM’s decisions can still be repealed via a referendum. In Massachusetts, the signatures of 300 registered voters are required, and the OTM’s decision will only be repealed if a majority of at least 20% of the registered voters opts for this. In special circumstances, additional OTMs can be convened.

How many citizens attend the Town Meetings? In the USA one has to register as a voter. The percentages indicated are for the four states with full OTMs: Maine: 28.17%; Vermont: 26.03%; New Hampshire: 22.60%; Massachusetts: 11.89%. In fact, these percentages should be increased by about 10%, because around one-tenth of the names on the lists are those of registered voters who have moved house in the meantime. According to the survey by Zimmerman (1999), the attendance level seems to depend heavily on the size of the community. In communities with less than 500 inhabitants, usually more than one third of them attend. In the Connecticut towns with more than 20,000 residents, attendance is around 1 percent (Zimmerman p. 165; figures for 1996). Seriously low attendances have also been noted in communities where the Town Meeting’s powers are limited.

Zimmerman (p. 173-174) polled municipal officials about the quality of the debate at the OTM. In Massachusetts, 82% rated the quality as ‘excellent’ or ‘good’, 16% as ‘reasonable’ and 2% as ‘dubious’. Zimmerman also asked them to rate the quality of the decisions. In Massachusetts, 86% of the officials considered the decisions ‘excellent’ or ‘good’, 14% ‘reasonable’ and 1% ‘dubious’. The figures are similar in the other states.

In the southern Brazilian city of Porto Alegre, a novel system for the direct-democratic preparation of the city budget has been operating via public assemblies since 1989 (Abbers, 2000). This system was introduced by the left-wing Partido dos Trabalhadores ('Labour Party'), which won a significant election victory in 1988. At public assemblies, neighbourhood residents decide their priorities for public service investment and then elect representatives who at a higher level – district and city – organise and follow up the decisions made with the municipal services. Besides local public assemblies, there are also thematic meetings, for example, about ‘education’ or ‘the economy and taxes’.

Public assemblies provide a very lively form of direct democracy, and are certainly very workable at a local level. Nevertheless, the public assembly also has some disadvantages compared to the referendum. The absence of the secret ballot is the most important basic objection. Moreover, the public assembly requires an individual contribution that is made at a single specific time and it therefore more easily excludes some voters from participating.

## 2-2: Boycott with participation quorums

The municipal referendums in Germany abundantly illustrate the destructive operation of participation quorums.

In Baden-Württemberg, the municipal referendum was introduced as early as 1956 (it was not introduced in the other German states until the 1990s). However, the Baden legislation is very restrictive. One of the most serious restrictions is the quorum rule: at least 30% of the electorate must vote in favour of the citizens’ proposal, otherwise the ballot is void.

This rule gives more weight to the votes of the opponents of the citizens’ initiative than to the votes of its supporters, because the ‘non-votes’ of the abstainers are added to the ‘no-votes’ of those opposed to the initiative.

The referendum in Reutlingen (1986), about the building of an air-raid shelter, illustrates this effect strikingly. On 20 March 1986, the municipal council (CDU majority) had decided to build a bunker for civil protection. A citizens’ initiative against this was swiftly set up, with supporters including the Greens and the SPD, and on 18 April the necessary signatures were submitted for holding a municipal referendum on the issue.

The municipal council and the CDU mounted a deliberate boycott against this initiative. Any participation in discussion evenings and suchlike was systematically refused. In the very last week before the vote, the CDU suddenly broke its silence with an advertisement and a pamphlet that was distributed as a newspaper supplement and was signed by the mayor, among others. This contained a barefaced encouragement to boycott the vote: “... professional and cool heads must now act sensibly – not emotional, but smart voting behaviour. So you can just stay at home this coming Sunday; after all, you are only being asked to vote against the building of the bunker. Even if you do not vote, you will be expressing your approval of the decision made by the municipal council. You have extensively placed your trust in the CDU for many years in the elections. You can also trust us on this question.”

The result was that only 16,784 of the 69,932 registered voters took part in the vote; only 2,126 voted in favour of the bunker. The citizens’ initiative came to grief on the 30% quorum, despite the fact that only 3.4% of the voters were in favour of the bunker. The quorum rule ultimately enabled a small minority of the people to have its way against a large majority. Various other municipalities in Baden-Württemberg held municipal referendums on similar plans for shelters. Overall there was a large majority against building such facilities, which people considered to be unnecessary. (An opinion poll showed that 70% of the inhabitants of Baden-Württemberg opposed the bunkers.) In Nürtingen,

a municipality close to Reutlingen, there was also a citizens' initiative against a similar bunker. The local CDU did not call a boycott there. The result was that 57% of the electorate took part in the referendum and 90% of the voters rejected the building of the bunker. The citizens' initiative was therefore successful in this instance. In another municipality, Schramberg, the citizens' initiative against the local bunker plans was also successful, despite a call from the CDU to boycott it. On this occasion, the text of the CDU's call for a boycott was prematurely leaked, so that the bunker's opponents still had time to respond and counter the manoeuvre. The local newspapers also published criticisms of the CDU's boycott call. In the end, 49.25% of the electorate in Schramberg participated in the referendum; the minimum 30% turnout quorum was achieved and 88.5% of the voters were against the bunker.

A boycott can also be conducted along organisational lines. A well-known example comes from the town of Neuss, where the first municipal referendum in Nordrhein-Westfalen was held on 3 September 1995. The subject was the building, close to the town hall, of a hotel which would destroy some of the town centre's green belt. The CDU majority succeeded in getting the public vote to fail because of the participation quorum of 25%. It is generally known that when referendums in large towns concern building plans in a single specific district, relatively few people will vote, because they do not feel personally affected by the issue or have the impression that a lack of knowledge of the local situation means they cannot judge properly (a referendum in Antwerp on the design of the municipal square in Ekeren, for instance, will attract very few voters from other districts such as the South or Hoboken, the majority of residents of which will have never even been to Ekeren in person). The municipal council of Neuss used a series of measures to discourage the voters. Postal voting was not allowed (although for the council elections 15% of the votes were submitted by post). Instead of the 100 polling stations that were provided for the council elections, only 30 locations were opened for this vote. Result: only 18.5% of the electorate took part in the referendum. Of these, it is true that almost 80% were against the municipal council's hotel plan, but because the quorum was not achieved, the citizens' initiative was declared void.

In Belgium, on 10 April 1995, a law was implemented that provided for non-binding and non-compulsory referendums at municipal level. A participation quorum was set at 40% of the electorate. If less than 40% of the electorate participate in the referendum, the ballots must be destroyed uncounted.

Although the referendums were non-compulsory and non-binding and, moreover, a very high signature threshold of 10% was imposed, this led to initiatives in a number of towns. In 1996, in the municipalities Genk and As in Limburg, the citizens requested a referendum on the construction of a commercial complex on the site of an abandoned mine. In the As municipality, the municipal council decided to decline the referendum, but a vote was held in Genk on 13 October 1996. Only 37.47% of the electorate turned out for the vote and, in the name of Belgian democracy, the ballots were not counted but were destroyed. Middle-class organisations and an extreme left-wing party had called on people not to vote. The first referendum held under the new law was immediately a victim of a successful call for a boycott.

In Gent, on 14 December 1997, a citizens' initiative referendum was held on the city council's planned construction of the so-called Belfort car-parking garage in the city centre. The city council had decided in advance that it would consider the result as binding, but the SP and the VLD, which formed the majority coalition in Gent, called on the voters to boycott the ballot. On this occasion the boycott failed by a small margin, because 41.12% of the electorate turned out and of these 95% voted against the car park.

In Sint-Niklaas, on 28 June 1998, a referendum was held on the construction of an underground car park. As in Gent, the quorum was just met: 40.28% of the electorate turned out. Of these 92% voted against the car park. The vote was a touch-and-go affair because the largest party in Sint-Niklaas, the Christian Democratic CVP and the local NCMV (traders' organisation), had called on people not to vote. "The referendum is a bad formula. Whoever votes 'yes' only ensures that those who vote 'no' achieve the required 40%. The 'yes' voter would do better to stay at home", according to local CVP chairman Julien Vergeylen (*Gazet van Antwerpen* newspaper, 17 June 1998). The socialist leader, Freddy Willockx, said: "The problem is that because of the CVP's call for a boycott we do not have an objective picture of what the people really want. There were probably some 70% to 80% of the Sint-Niklaas voters effectively against the car park, but we will never know that with certainty" (*Gazet van Antwerpen*, 29 June 1998).

Although the participation quorum was subsequently lowered (and the signature threshold raised), after these and other dubious experiences there have since been very few initiatives.

Italy has provided the most recent perverse examples. On 18 April 1999, a referendum was held there on reforming the electoral system. The reforms were supported by most of the political parties: 49.6% of the electorate turned out and of these 91% voted for the reforms. But the voters had taken all their trouble for nothing: because the participation quorum of 50% was not quite reached, the reforms did not go ahead. An interesting fact: in the south of Italy, the mafia had actively called for a boycott and the 40% turnout to the south of Naples was far below the national average. The mafia decided that their candidates were more easily elected using the existing electoral system, and manipulated the participation quorum so that the mafia won against a public majority of more than 90%.

Unhappily, such boycott campaigns occur regularly in Italy. The latest example is the referendum of 12 and 13 June 2005, in which four proposals for the liberalisation of the highly restrictive law on assisted fertility for women were voted on. With the support of Pope Benedict XVI, the president of the Italian bishops, Cardinal Ruini, aptly named in this case, actively called for a boycott. "Cardinal Ruini finds not voting the best way to reject the proposals. After all, a referendum is only valid when at least half of the electorate votes. Given the fact that it was already established that those who would vote 'yes' would clearly be in the majority, by voting 'no' Catholics would only help to achieve the quorum and thus unwillingly reinforce the 'yes' camp; this was the reasoning", as reported by the news website *KatholiekNederland.nl* ([www.katholieknederland.nl/actualiteit/2005/5/nieuws\\_568842.html](http://www.katholieknederland.nl/actualiteit/2005/5/nieuws_568842.html)). And Ruini's strategy

succeeded: the turnout was less than the participation quorum, so the referendum failed.

These types of examples lead to a simple conclusion: participation quorums are fundamentally wrong. They give unequal weighting to the votes of supporters and opponents of an initiative, provoke calls for boycotts and negate the role of the mandate in direct decision-making.

## 2-3: Frans van den Enden

For a long time, the Dutch philosopher Spinoza was held to be the one who had laid the first philosophical foundations for democracy – popular sovereignty and a radical freedom of speech. This makes him a typical representative of what the historian Jonathan Israel (2002) called the ‘radical enlightenment’. Some of the famous people who are considered to be the classic representatives of the *Age of Reason* – Newton, Locke, and Montesquieu, for example – are in fact representatives of the *moderate Age of Reason*. Locke’s beliefs are representative of this moderate Age of Reason. He argued for tolerance and freedom of religious belief for all kinds of Christian convictions, but not for atheists – because that would mean rejecting the basis of morality – and also not for Catholics, because they recognised a foreign authority, the Pope. The partisans of the moderate Age of Reason fought against the ‘radical enlightenment’ and the latter frequently had to operate underground.

In 1990, however, Spinoza expert Wim Klever discovered that Spinoza had in fact borrowed his ideas from his tutor, Franciscus van den Enden (1602-1674). Van den Enden was from Antwerp, but later fled to Amsterdam, where he founded a small private school at which he also taught Spinoza. Klever discovered that Van den Enden was the author of two revolutionary, anonymously published books: ‘*Kort Verhael Van Nieuw Nederlands*’ (*A Brief Account of New Netherlands*, 1662) and ‘*Vrije politijke stellingen*’ (*Free Political Proposals*, 1665, republished by Klever in 1992).

Van den Enden was the first to argue for political equality “between more and less intelligent people, more and less well-off people, the male and female gender, rulers and subjects, etc.” Van den Enden states explicitly that political equality does not mean ‘bringing into line’. He argues that each human being is a unique individual with specific talents and characteristics, and that political equality does nothing to alter this. Equality provides for freedom. The laws must provide everyone with the space to develop, to speak and to think in an equal manner – for which Van den Enden uses the term “equal liberty”. He formulated the principle of popular sovereignty in the strongest possible words. He warned – correctly, as we can now see – against the creation of a political class that would serve its own

interests. Van den Enden argued that the people are best able to take the political decisions themselves, and believed that public assemblies were the best format for achieving this. Van den Enden notes that as a result of the common deliberation and decision-making in such assemblies, the people’s knowledge and political skills would increase considerably. He did have a limited concept of “the people” in this context: only men who could provide for themselves were entitled to vote. Men who were unable to do so, and women, should not be allowed access to the public assembly (to that extent, his theory of equality was inconsistent). At the first public assembly, he argued, the citizens should make a show of burning all existing regulations and laws that granted special powers or privileges to the nobility and clergy. He believed that such genuine direct-democratic communities (then still cities) could enter into federative links with each other. All this makes him quite possibly the very first theorist of direct democracy. Van den Enden also argued for the free bearing of arms by citizens, so that other rulers would be not able to cheat them out of their democratic rights.

Van den Enden considered that democracy was inextricably linked to a free cultural life. “The most harmful thing in a state is that no freedom is left for people to be able to proclaim everything they consider to be in the best public interest...” No obstacles should be placed in the way of anyone, not even foreigners, where personal opinions or religious matters are concerned. Van den Enden also argued for the principle of mutual solidarity in relation to people’s physical needs. Central to his beliefs was the right to work. The state imposes state membership *de facto* on all those born within its boundaries; that is only justified if the state also provides equal levels of benefit to all its members. He also argued for the introduction of social and medical facilities and emphatically rejected the “humiliating giving of alms” by rich people and churches.

Nearly 125 years before the French Revolution, Frans Van den Enden had already espoused its celebrated trinity of ideals: liberty, equality, and fraternity. But whereas the French revolutionaries produced this rallying-cry in an entirely undifferentiated form, Van den Enden brought much greater discernment to it: he connects liberty with the cultural life (freedom of speech and religion), equality with the political and legal systems, and solidarity with people’s material needs (see also chapter 3).

Van den Enden later moved to Paris, where he was arrested for being involved in a plot against Louis XIV. On 27 November 1674, he was executed by hanging in the Place de la Bastille. If one compares the contents of the ‘Free Political Proposals’ with the situation today, it is clear that most of the goals formulated by Van den Enden nearly three and a half centuries ago are still waiting to be realised.

### 3. Federalism, subsidiarity and social capital

#### Church and democracy: the subsidiarity principle

The Catholic Church has never been a lover of democracy. Until far into the twentieth century, Catholic leaders defended their standpoint that the Church's divine status gave it the right and the obligation to be involved in shaping political activity. Christian democratic politicians in particular were expected to adhere to the directives from Rome. For example, Pope Pius X, in 'Fin dalla prima nostra enciclica' in 1903, wrote: "In fulfilling its responsibility, Christian democracy has the heaviest duty of dependence on religious authority and it is subject to and owes obedience to the bishops and anyone who represents them. It is neither praiseworthy diligence nor sincere devotion to undertake something that is essentially really beautiful and good, but which has not been approved by the authorised Church representative."

However, the Church also demanded obedience from society as a whole. In the encyclical letter 'Immortale Dei' (1885), Pope Leo XIII stated that it was wrong to place the various forms of divine worship on the same footing as the true religion. The Church has always remained steadfast on this standpoint. As self-appointed guardian of absolute truth, it could hardly do anything else. Experience has shown in Poland, Ireland and Italy that the Church also tries to impose its views on society as a whole through governments, if it feels it is in a position to do so. Not until 1944, with the encyclical letter "Già per la Sesta Volta" (Pius XII), did the Church adopt in principle a position in favour of democracy (Woldring, 1996). The Church's aversion to democratic ideals explains why Catholic politicians so strongly resisted the introduction of universal single voting rights (against which, incidentally, they used more or less the same arguments that are now levelled against direct democracy).

We should, therefore, treat with some caution the claim that the Catholic Church also formulated a theory of government based around the concept of subsidiarity. The encyclical letter 'Quadragesimo anno' (1931) formulated this as follows: "...it is true that on account of changed conditions many things which were done by small associations in former times cannot be done now save by large associations. Still, that most weighty principle, which cannot be set aside or changed, remains fixed and unshaken in social philosophy. Just as it is gravely wrong to take from individuals what they can accomplish by their own initiative and industry and give it to the community, so also it is an injustice, and at the same time a grave evil and disturbance of proper order, to assign to a greater and higher association what lesser and subordinate organizations can do. (...) The supreme authority of the State ought, therefore, to let subordinate groups handle matters and concerns of lesser importance, which would otherwise dissipate its efforts greatly. Thereby the State will more freely, powerfully, and effectively do all those things that belong to it alone because it alone can do them: directing, watching, urging, restraining, as occasion requires and necessity demands. Therefore, those in power should be sure that the more perfectly a graduated order is kept among the various associations, in observance of the principle of "subsidiary function," the stronger social authority and effectiveness will be, and the happier and more prosperous the condition of the State."

'Subsidiarity' is a key concept in Christian-democratic ideology. The basic idea is that the 'higher' levels delegate as many tasks as possible to the 'lower' levels in order to unburden themselves from less important work, which, moreover, can be more efficiently performed by those lower levels. A further premise is that the lower levels, right down to single individuals, are treated unjustly if there is no delegation. *However, the initiative of delegation is a top-down one.* It is the higher level which determines how much room for manoeuvre the lower levels shall receive, and when and if their freedom of action shall be withdrawn. This is also expressed in the term itself. 'Subsidiarius' means 'reserve' or 'auxiliary' (as of soldiers); the lower levels are effectively the auxiliary soldiers for the higher levels.

#### Subsidiarity and federalism

'Federalism' is the opposite of 'subsidiarity'. In a federalist society, delegation comes from individual citizens themselves. Federalists also maintain that injustice is created if tasks are not delegated, for people are social animals and depend on each other. Nevertheless, subsidiarity differs fundamentally in spirit from the principle of federalism. Federalism proceeds from the individual, because not only conscience and moral judgement, but also the experience of life's joys and sorrows, are individual traits. Groups do not suffer as such and, even more significantly, have no conscience. Subsidiarity, on the other hand, issues from a power which stands above the individual person and which 'benevolently' creates space for the activities of the lower levels and the individuals.

The federalist idea can be easily linked to the democratic ideal. But the connection is even closer than this: direct democracy and federalism are the two inseparable sides of the same fully democratic coin. The concept of subsidiarity, on the other hand, is irreconcilable with full democracy, because the former is based on a given *a priori* authority. In the theory of subsidiarity, the Church's hierarchically structured model is exported to the secular state. In the federalist concept, it is individuals who form the highest level, for it is ultimately individuals who determine what is delegated to which level. For the proponents of subsidiarity, this right of decision lies with the state (which from a Church perspective is still subordinated to 'divine' power) and the individuals find themselves on the lowest level.

The Catholic Church did not, perhaps, invent the term 'subsidiarity', but it has taken it over and propagated it with great success. The ideology of subsidiarity, for example, has taken root strongly in EU circles. In these circles there is often very ambiguous talk about the direction (from individual to society or vice versa) in which delegation occurs, so that a disastrous confusion has arisen between the terms 'federalism' and 'subsidiarity'. Many people nowadays use the term 'subsidiarity' when they actually hold federalist ideals. Even staunch federalists confuse the terms, often with significant consequences. They frequently forget that a federalist structure logically begins with the individual. They only allow the federalist argument to start at a much higher level, such as the community or even the entire nation. For the lower levels and the individual, they unwittingly adopt the old subsidi-

arity idea of the Pope and the Catholic Church. This strips the federalist argument of much of its appeal and inner consistency, and the logical link between federalism and direct democracy is lost.

## Federalism and direct democracy

For the consistent federalist, the individual represents the highest level. We submit two arguments for this view.

Firstly, the aim of politics is to minimise distress and disorder, insofar as these are attributable to social circumstances. Since distress is always experienced by individuals and never by groups or whole populations as such, it is logical that the individual appears as the highest political authority.

Secondly, political decisions are in essence always moral choices or value judgements. Only individuals have a conscience and the capacity for moral judgement. Groups or populations do not have a conscience as such. It is thus logical from this perspective, too, that the individual appears as the highest authority.

Nevertheless, federalists are not egocentrists. They know that individuals can only be real human beings, real individuals, within the fabric of society. People connect themselves to other people precisely because they are social beings.

Individuals form small justicial communities, within which various issues can be democratically regulated. Certain issues cannot be tackled at the level of one village, one town, one valley or one region. In such cases, the smaller communities can federate themselves: they join together to form a new, larger, community which is authorised to deal with these issues. This federation process may be repeated until all issues are dealt with at the appropriate level.

Federalism is the name we give to the structure which emerges when, in order to deal with certain issues, smaller communities mutually agree to form a larger community and delegate certain powers to it. Because the delegation takes place from smaller to larger, and because it is a free choice of the smaller level to delegate to the larger level, this delegation from the smaller level must in principle also be rescindable at any time. For the smaller level is at the same time the highest level. The individual is the smallest and also the highest level. ‘Higher’ and ‘lower’ must not be interpreted in this context in the sense of an administrative hierarchy. When communities transfer a power to a district or region, then the latter are ‘higher’ in technical administrative terms than the communities. Nevertheless, it is the communities – or the even higher level of the citizens – which have transferred that power and which can, in principle, also rescind it.

If we think the federalist idea through to its logical conclusion, we arrive at the autonomous individual as the smallest and at the same time most basic community. The individual person is thus the ultimate delegating body. This is also logical because a good measure always distinguishes itself from a poorer one by a more efficient avoidance of distress or disorder; and, as we have seen, distress or disorder are only ever experienced by individuals – never by communities. The fact that the individual is the highest authority should logically be reflected in direct-democratic decision-making at all levels.

## ‘Disentangled’ federalism

Democracy means that people can shape their own communities in discussion with each other. People must have the opportunity to choose for themselves the best ways of working together. Only a consistent federalism provides them with that space. Thus direct democracy and federalism belong inseparably together. They are two aspects of the same ideal: *strong* or *full* democracy (Barber, 1984).

The importance of the free formation of communities is illustrated by the Swiss example. Switzerland is not only the country with the most extensive direct democracy in the world. It is also a country with a fairly strongly developed federalism. Lower administrative levels in Switzerland, such as the cantons and municipalities, often have major powers (in respect of taxation, for instance; see inset 4-3 and chapter 5).

In 1847, Switzerland experienced a kind of war of secession in which the union of separatist Catholic cantons that wanted to dissociate themselves from the federated state were defeated. Nowadays, the combination of direct democracy with federalist structures enables these types of conflict to be resolved peacefully. For example, the Jura region decided to form its own canton in 1978. This took place via a referendum at national level, which approved the new federal structure with an extra canton. In 1993, several municipalities from the Laufental area decided to transfer from the Berne canton to the Basel-Land canton. This boundary adjustment was also peacefully implemented by means of a national referendum.

Frey and Eichenberger (1996 and 1999) plead for a radical federalism in which lower political units can federate as they wish. Citizens must have the right to decide by referendum which federative links will be implemented. A municipality, for example, could decide by referendum to transfer from one province to another one that the people believe is better managed.

Federative unions are not eternal. Locked unions, or unions that can only be rescinded if the other partners agree, are unacceptable. A federative union can be compared to a marriage: it can only be entered into and be maintained as long as both partners agree to it. If only one partner wants a divorce and the other does not, the marriage must be annulled. If the permission of both were to be essential for annulment, one partner could then hold the other hostage in the marriage against their will.

In an extension of this, moreover, each generation must have the opportunity to review and revise both the large and small unions and relationships in which they live. In recent decades we have learnt to accept that people today have ecological obligations towards future generations. In addition, the awareness that one generation must not saddle its successors with a mountain of public debt is slowly getting through. We still have to broaden this sense of accountability. Anyone who binds future generations into fixed conditions is mortgaging the future. They are solving current problems at the expense of the freedom of future generations. Federative unions are best described as a form of renewable contract of a specified duration.

However, there is another aspect to ‘disentangled’ federalism. It is important to realise that not all areas of life in society can be managed democratically. If an attempt is made to do so, it leads to an infringement of justice, to unproductiveness, and eventually to the demise of democracy.

Democracy is pre-eminently suited to deciding about rights, duties and juridical matters. On either side of the institutional democratic state there are two areas of society that must be independent of the state. On the one hand, there is the cultural life in its broader sense: the forming of opinion, the media, education, sciences and arts, and religion. In these fields, every individual must be able to act independently, without state intervention. Insofar as people work together in these areas, they freely determine the what, how and when themselves. This idea gained much ground in the 19th century with the introduction of the so-called classic fundamental rights: freedom of speech, freedom of education, freedom of assembly and demonstration, etc. The reasons for this are twofold. On the one hand, even if 99% of the citizens believe one thing, it is a fundamental right to be allowed to express a different opinion. The proper protection of minorities is largely safeguarded by means of this principle of the free cultural life. After all, minorities are frequently defined by cultural characteristics: different language, different religion, different customs, different concepts, etc. On the other hand, freedom in this area guarantees efficiency and productivity. In the cultural sphere, achievements are accomplished – new insights acquired, inventions realised, people educated – without which the broader society cannot function. And it is not practically possible to democratically make an original invention or to democratically determine whether a mathematical line of reasoning is correct. In this context, only the specific talents and insights of the individual count, and not which side has the majority. Individual must therefore have the space and freedom to develop and express their insights and creativity. Democracy undermines its own foundations when it imposes rules on cultural life through legislation, because, for example, legislation also comes about after new insights, discussions and exchanges that take place in the cultural-spiritual life. The state should be shaped by the products of the free spiritual life; if it attempted to regulate this, it would dry up its own source of innovation and creativity. It is important to realise that in principle it makes no difference whether it is a majority- or minority-based government that wants to impose its opinions via the state. In the first case, it is a large group which infringes the freedom of the individual, in the second case, a small group, but in either case it goes against the human rights of the individual and undermines productivity.

On the other hand, the area of the production of goods and services is also unsuitable for democratic decision-making. After the fiascos of Communism in the twentieth century, insight into this has also gained a lot of ground. Individuals and groups should have the freedom to enter into the necessary agreements about production and consumption. These agreements are based on the confidence that people have in the capabilities, the trustworthiness, etc. of the other party to the agreement. It does not matter what other people or society as a whole believe when two or more people want to enter into an agreement with each other to produce or consume something. The economy organises itself naturally within a bedrock or network of freely concluded agreements and contracts. Without this right to free agreement, similarly in the absence of the rights of free speech and association, democracy itself can no longer exist. The democratic legislature may, however, impose restrictions that prevent the activity ensuing from the agreement from producing unfavourable effects for third parties. Thus, for example, it is completely logical for the legislature to prohibit activities that damage the environment. But a legislature, acting out of whatever kind of political objective, cannot prohibit, sanction, impose or encourage

agreements between particular partners without violating essential citizens' rights at the same time. In the same way that the free voting right is essential in the democratic area, and free speech is a key freedom in the field of cultural and spiritual life, the right to free agreement should be considered as a basic freedom in the field of economic life. The free vote, free speech and free agreement are the three key freedoms around which a free democratic society is built.

We must remove two misunderstandings at this point. The first concerns the question of how democracy should be confined to the area where it is really effective. This can only be a voluntary restriction imposed by the collective will of the citizens themselves, and which they can also change at any time. The assembled citizens – the legal community – can therefore voluntarily decide not to interfere with the cultural life, nor with economic initiatives, by means of (direct) democracy, because they realise the benefits of non-interference. They can also incorporate this as a leading principle in the constitution. But they must also always be able to change the insights, because an insight developed in the future might perhaps lead to still better principles of government. The democratic legal community must remain sovereign. Therefore, we do not argue that one or other body imposes arbitrary limits to the (direct-)democratic decision-making from above, but that the citizens must always be able to do this themselves. Nor do we advocate that citizens take 'everlasting' decisions to which they subjugate future generations, because those generations are also sovereign and must be able to organise their society on the basis of their own insights.

The second misunderstanding concerns the nature of the three areas of culture, politics and the economy. Not everything that companies and schools do is, respectively, economic or cultural-spiritual by its nature. The working of a company or school also involves a considerable element which relates to laws and human rights and the issues concerned must be regulated through 'democratic' channels (i.e. channels in which all the people concerned have an equal vote). This practically always concerns the basic conditions for the economic activity: in themselves, economic initiatives belong in the area of free creativity, but they must not result in a residential area becoming poisoned or polluted, etc. Decision-making on legal matters within private organisations does not always need to proceed via the (local) state, moreover, but can also take place via 'democratic' bodies in these companies, schools and suchlike, in which all the people concerned have an equal vote. In fact, this is often far preferable.

Modern states have shortcomings in many respects: not doing things they actually should be doing. But in other respects, they take on too many tasks, acquiring too much power. On the one hand, democracy must be radically deepened and extended 'horizontally' by introducing direct-democratic decision-making. On the other, democracy must be restricted 'vertically', in the sense that it withdraws from areas where it does not belong.

Many arguments against direct democracy are disarmed by this perspective. When critics of direct democracy state that citizens are not competent to decide about issues on which the politicians currently make the decisions, they are generally wrong – see chapter 6 for this – but in some cases they are also right. The solution then, however, does not lie in the assumed right of the parliament to ignore the people, but in removing that topic from the scope of democracy. Because, if the citizens are not competent to decide something, then

neither are the politicians. Politicians are nothing more than the agents of the citizens and, just like most citizens, are typically generalists who – ideally – think and act on the basis of the same concerns and wishes as the citizens. Viewed in this way, direct democracy can act as an extra check to see whether a certain issue does indeed belong within institutional democracy.

The separation of different areas of life provides another benefit. Currently, economic and educational borders are usually the same as state borders, because to a large extent states determine economic and educational policy through legislation and regulations. But if these areas ‘privatise’ themselves, they can enter into cooperation agreements that cross political borders. Schools in the Dutch-speaking Belgian region of Flanders could cooperate much more closely with schools in the south of the Netherlands. The Dutch city of Maastricht and the German city of Aachen, which lie very near each other across the border, belong objectively to the same economic region and could standardise all sorts of strictly economic regulations mutually, while they nevertheless continue to belong to different political states.

Incidentally, in this respect Switzerland also plays a special, although sometimes dubious role. On the one hand, a type of separation between different functional areas exists in some places in Switzerland. In the canton of Zurich (1.2 million inhabitants), for example, in addition to the local authorities proper, there are also educational communities and church communities which organise themselves, levy their own taxes, and have different geographical demarcations than the municipalities. Furthermore, there are numerous so-called ‘Zivilgemeinden’ (‘civil communities’) which manage public utilities (water, electricity, radio and television services, etc.), which have direct-democratic forms of management and earn their income from user charges. On the other hand, decisions are often made democratically, while (as we argued above) this is not the appropriate manner at all. Everyone in Switzerland, for example, pays church tax, generally via the state, unless they declare that they are not members of a church. But a separation between political and spiritual-cultural life implies, of course, that the state should not levy taxes for any private body, whether it be for the billiards club or for the church.

It is this capability of being disentangled that fundamentally distinguishes federalism from subsidiarity. Subsidiarity is based on an already established supreme authority that delegates downwards. The result is inevitably a monolithic centralised entity. When the citizens are free to federate, it is possible for different overlapping unions and relationships to be created in the various areas of life. The latter thus become ‘disentangled’.

However, the fundamental principle of federalism means that this separation into federal structures cannot be imposed from above. It must be done by people themselves; and direct democracy is the essential tool for this. This kind of democracy will in any case always function the better, the more those areas of life in which democracy is naturally at home are clearly separated from those domains in which democratic decision-making is neither necessary nor desirable. A ‘separating’ federalism and direct democracy can thus mutually reinforce each other. An integrated democracy is a society in which this process of a reciprocal enhancement of democracy and federalist forms of association has been successfully set in motion.

## Social capital, democracy and federalism

In the first half of the 19<sup>th</sup> century, French author Alexis de Tocqueville made a journey through the United States of America. The report of his journey appeared in two parts: in 1835 and 1840. America’s top leaders, even now, still quote de Tocqueville when they want to describe the essence of the ‘American dream’.

De Tocqueville noted two aspects of American society that at first sight appear to be contradictory. First of all, he was surprised by the outspoken autonomy of the American citizens: “They owe nothing to any man, they expect nothing from any man; they acquire the habit of always considering themselves as standing alone, and they are apt to imagine that their whole destiny is in their own hands”. But, at the same time, he noticed that the social life in the young United States was unusually intense: “In towns it is impossible to prevent men from assembling, getting excited together and forming sudden passionate resolves. Towns are like great meeting-houses with all the inhabitants as members. In them, the people wield immense influence over their magistrates and often carry their desires into execution without intermediaries (...) Americans of all ages, all stations in life, and all types of disposition are forever forming associations. There are not only commercial and industrial associations in which all take part, but others of a thousand different types--religious, moral, serious, futile, very general and very limited, immensely large and very minute.”

In the lines quoted above, Alexis de Tocqueville describes nothing less than the combination of living, direct democracy with spontaneous federalism. This situation, in which independent people freely come together and take joint decisions, provides a social surplus for which the term ‘social capital’ was subsequently coined.

The creation of ‘social capital’ – the ‘mother of all other arts’ – has received an unusual amount of attention in recent years. Putnam’s book ‘Making democracy work’ (1993) was a milestone. This publication summarised the results of 20 years of sociological work in Italy. The original intention of Putnam’s team was to study the results of the regionalisation of Italy. Starting in the 1970’s, a decentralisation process had been set in motion in Italy and significant powers had been transferred to the regions. Over the years, the researchers gathered an impressive amount of information: polls were taken, hundreds of interviews were conducted, and mountains of statistics were processed.

Putnam discovered a remarkable and consistent difference between the regions in Northern and Southern Italy. The northern regions were economically wealthier and much more efficiently administered. Putnam’s group also conducted an experiment. Three requests for information were presented to the administrations of the various regions. The administrations of Emilia-Romagna and Valle d’Aosta were the quickest to reply: the researchers received complete answers within two weeks. Despite repeated requests, the administrations of Calabria and Sardinia never provided a complete answer to the same three questions.

Putnam tested the hypothesis that a difference in ‘civicness’ was the basis of the distinction between north and south. ‘Civicness’ can be defined in de Tocqueville’s words as ‘the evaluation of interests in the broad social context’. One’s own interests are not ignored or suppressed; they are considered

as coinciding with the communal interest in the long term. The opposite of 'civicness' is 'amoral familialism'. Someone with this latter attitude is only concerned with the short-term interests of the narrow family circle. A society in which this short-term familial focus predominates is atomised. The communal interest is left to those in power, which means that mainly opportunistic relationships are formed (clientelism).

In order to measure 'civicness', Putnam used an index based on the following indicators:

- the percentage of votes which are not cast for the leading candidate in an election: in a society in which amoral familialism predominates, there is generally a higher proportion of such votes (electoral clientelism);
- voter turnout in referendums: because direct clientelism cannot play a role in referendums, the level of participation in direct-democratic decision-making is a good indicator of 'civicness';
- the number of newspaper readers: reading newspapers indicates interest in society as a whole;
- the level of participation in social life (such as clubs etc): taking part in social life broadens horizons beyond the core family.

Putnam (1993, p. 97-98) characterised the difference between the two sorts of society he discovered in Italy as follows: "When two citizens meet on the street in a civic region, both of them are likely to have seen a newspaper at home that day; when two people in a less civic region meet, probably neither of them has. More than half of the citizens in the civic regions have never cast a preference ballot in their lives; more than half of the voters in the less civic regions say they always have. Membership in sports clubs, cultural and recreational groups, community and social action organizations, educational and youth groups, and so on is roughly twice as common in the most civic regions as in the least civic regions."

There appears to be a strong direct relationship between civicness, economic performance and the efficiency of public administration. In areas with more civicness, the economy prospers and the administration is efficient. Putnam examined and eliminated various alternative explanations and came to the conclusion that 'civicness' played a causal role.

Putnam also argued that the difference between the civic culture in North and South Italy is very old and may be traced back as far as the 11th century. At this time a feudal monarchy with Norman roots established itself in southern Italy. Whereas by the 15th century there were already republican city-states in the North with considerable opportunity for personal initiative and political participation by a relatively large number of citizens, in the South feudalism continued to exist with its hierarchical structures, into which organised crime could later effortlessly insinuate itself.

One cannot, of course, maintain that the level of 'civicness' remains constant throughout history. Civicness can also be eroded, for example, under the influence of economic factors. A shocking example is described in the book "The Mountain People" by the anthropologist Turnbull (1972, 1994) about the Ik, a small tribe that lived in north-eastern Uganda. The Ik were driven out of their original homeland after it was designated as a wildlife reserve. This devastated their traditional sources of existence and their social organisation. Collective hunting was no longer possible. All that was left was secret poaching by separate individuals. The Ik illustrate

an extreme example of social atomisation, deep mutual mistrust among individuals and the drastic loss of any form of social capital.

In a later study (1995), Helliwell and Putnam analysed how the causal chain of civicness (social capital) > efficient administration > social satisfaction operates. In the 1980s, the Italian regions were granted considerable powers in the economic field. As a result, economic policies were now no longer decided by a central authority, but mainly by the regional authorities. In the 1960s and '70s, the gap in prosperity between the North and South had been reduced due, on the one hand, to the fact that the central authority had made large transfers of money from North to South and on the other, that the northern regions were unable to operate more efficiently (due to their economic policy being determined centrally). It seems that as soon as the regions were able to set their own policies, the surplus of social capital in the North was immediately translated into an increase in prosperity. Public and private capital was spent more efficiently in the northern regions, so that the prosperity gap between North and South increased again from around 1983 onwards, despite the continuing transfers of public money from North to South.

Helliwell and Putnam's causal chain can be even further extended. Comparative research in a large number of countries shows that it is not civic culture that determines the substance and quality of democracy, but that the causal connection proceeds in the reverse direction: "Interpersonal trust appears clearly to be an effect rather than a cause of democracy." (Muller and Seligson, 1994). Democracy creates trust between people, and trust between citizens and the institutions of the state.

In another study, Putnam (1996a, b) surveyed the decrease in 'social capital' in the United States. Church attendance, work for political parties, membership of all types of clubs and associations had declined drastically during the preceding decades in the US. There was also a marked simultaneous decline in 'social trust' (trust in other people and in the authorities). After eliminating several other possible explanations, Putnam believed he had found the main culprit in television. In the 1950s, television made an explosive entry into American society: whereas only 10% of families owned a TV set in 1950, by 1960 it was already 90%. It is around this time that the collapse of American 'social capital' began.

An average American watches around 4 hours of TV each day. Research shows that TV viewers demonstrate a strong tendency to take less part in social life in all its aspects and develop a more negative view of their fellow men (heavy TV viewers, for instance, overestimate the impact of crime on society). Television is, in this respect, an unusual medium; newspaper readers, in contrast, have a higher than average tendency to participate in community life.

Over the same period, mutual distrust among people also increased. In 1960, 58% of Americans still believed you could trust most people. In 1993, that figure had dropped to 37%. Miller and Ratner (1998) pointed out that there was a strong ideological basis for this culture of mutual mistrust: "Evolutionary biology, neoclassical economics, behaviourism, and psychoanalytic theory all assume that people actively and single-mindedly pursue their self-interest (...). Mounting empirical evidence, on the other hand, tells a different story. Much of the most interesting social science research of the

last 20 years points to the inadequacy of self-interest models of behaviour. For example, we know that people often care more about the fairness of the procedures they are subjected to than about the material outcomes these procedures yield, that they often care more about their group's collective outcomes than about their personal outcomes, and that their attitudes toward public policies are often shaped more by their values and ideologies than by the impact these policies have on their material well-being."

Thus, people are much less fixated on their own interests than the theories claim. But at the same time, these theories have become a real force in society. The result appears to be that most people consider themselves to be much more altruistic than their fellow men. One of the experiments conducted by Miller and Ratner concerned the people's willingness to give blood, both with and without financial reward [see 3-2]. Of the people asked, 63% said they were prepared to donate blood for free. When a prospective financial inducement of 15 dollars was proposed, the figure increased to 73%. The effect of offering a financial reward was therefore not especially significant, the difference being fairly modest. The people surveyed, however, were also asked to give their own estimate of the percentages – with and without a reward. They thought that 62% of people would give blood if paid, and only 33% if not. Thus they clearly overestimated the role of money as a motive for their fellow humans.

Another survey looked at the introduction of anti-smoking measures. Non-smokers tend to hold stricter views than smokers. The survey showed 100% of non-smokers and 85% of smokers supporting smoking restrictions on aircraft. But the same people thought that 93% of non-smokers and only 35% of smokers would support such a measure. In other words: people seriously overestimated the role that personal interest would play in determining the smokers' views. Miller and Ratner found that at least 80% of smokers were in favour of smoking restrictions in places with a high risk of 'passive smoking' (restaurants, places of work, buses, trains and aircraft). The general public, however, thought that only 25% to 35% of smokers would support such measures.

This general lack of trust between people, which culminates in a distrust of the political institutions, is directly related to the problem of disintegrating social capital. Trust between people is social capital. The atomisation of society prevents people from perceiving each other's moral motives. People then consider each other more and more as automatons fixated on self-interest, which they are not. The more the ideology of man as *homo economicus* (man as an intrinsic egoist) spreads, the more people explain even their own behaviour in terms of self-interest. People who work socially out of genuine empathy still tend to offer egoistic rationales for what they are doing ("It gives me something to do." – "I found the other volunteers rather nice." – "It gets me out of the house now and then". See Wuthnow, 1991). The claim that people 'vote for their wallet' is not corroborated when their actual voting patterns are analysed; but it is when people's own explanations for their voting are studied (Feldman, 1984; Stein, 1990).

De Tocqueville was impressed both by the strong trend towards individual autonomy and by the intense social life of the Americans in the early 19th century. Putnam was struck by the polarity between 'civicness' and 'amoral familialism'. This shows that there are two types of 'individualism'. We must make a sharp distinction between the individualism of autonomous citizens (which does not prevent them from be-

ing in solidarity with others), who precisely because of their independence can produce social capital and who also like taking part in referendums; and the pseudo-individualism of the 'subject' citizen concerned only with the short-term interest of their own nuclear family and content to leave the rest of society to be governed by those who wield power. This distinction is fundamental, of course, because the agencies of power will praise this submissive clientelism as expressing 'social integration', while they will present themselves wherever possible as the 'centre' that mediates between the powerless client and those who hold the reins of power.

This type of 'centre' has nothing to do with the associational life created by people themselves that was described by de Tocqueville. Authentic social capital is created when people who have connections with each other see themselves as the co-creators and co-definers of their associations, at whatever level, from the smallest bridge club to the widest league of nations. Then what emerges is an authentic, 'disentangled' structure – made up of federations of independent individuals – into which people can put their energies and commitment and in so doing enhance their own and others' strengths and talents. The socio-political *gestalt* of the 'centre' referred to above is exactly the opposite: here all the diverse areas of life are wrapped into a kind of intertwined vertical structure, within which only the elites have access to the sources of power, while 'ordinary' members are essentially reduced to the status of clients. This kind of power-friendly centre lacks any federalist structure; in reality it obeys the principle of subsidiarity.

A centre also emerges in a federative, fully democratic society. But this centre is qualitatively entirely different. It does not force people into a condition of permanent political immaturity, in which they are allowed to vote at most every few years or so to give a virtually meaningless mandate to their 'representatives'. The federative centre that must gradually come into being in the 21st century will be the expression of people's desire for the life of societies to be shaped by the individuals who compose them. In such a federative centre, schools do not depend on a coordinating and controlling body that sits like a spider in the middle of the 'education web'. The school of the future will be shaped by the particular community of children, teachers and parents who inhabit it at any one time. Such schools will be funded by an education voucher that each school-going child receives as of right, and which is handed over by the parents to the school of their choice. In a federative society, the only thing that will be predetermined are the educational rights of the child; there will be no government-formulated 'education policy'. Such schools will not be entwined in a vertical column with trade unions, national or private health insurance schemes, banks and agricultural associations. They will be the continual creation of the efforts of teachers and parents to do the best for their children in the specific situation; and they will be linked with other schools, not in a centralised and hierarchical relationship, but in a horizontal network characterised by close consultation, feedback and cooperation.

Schools will be only one of the areas in which strong democracy will take shape. The direct-democratic framework must first be created within which the federative structuring of local life becomes possible. Such a democratic framework must not remain confined to the local level, however, but must be expanded up to the level of European institutions, because decisions with major consequences for the local level are often made at much higher levels.

## **Between the hammer and the anvil: how social capital is destroyed**

Why does social capital decline? In his recent and much discussed book *Jihad versus McWorld*, Benjamin Barber describes the battle between two opposing forces, both of which threaten the constitutional state and democracy in their own way. Barber calls these forces *Jihad* and *McWorld*. They form the anvil and the hammer between which social capital is pulverised.

### **Jihad**

The one force is that of local particularism, to the extent that it strives to achieve its own monolithic state power. Ethnic or religious groups or tribes fight for hegemony within their own state. Barber thus expands the original meaning of the term 'Jihad' (the 'holy war' of Muslims) to describe a phenomenon that appears in all parts of the world. In the West, Jihad can signify the struggle for regional identity (Ireland, the Basque country, Corsica). It is not the struggle for a cultural or philosophical or religious identity as such that is characteristic of Jihad. To the degree to which such a struggle is against a monolithic, hegemonic centralised state, it is a positive phenomenon. Jihad actually wants to introduce such a monolithic centralised state. Jihad aims for a cultural-philosophical hegemony over the state and assaults existing bourgeois nation states which do not exhibit the desired hegemony. Jihad aims to break up such states into culturally-philosophically homogeneous blocks organised on the principle of subsidiarity. Jihad lives from the struggle against Jihad.

The Quebec issue clearly illustrates the boundlessness of the fragmentation that is caused by Jihad: "The logic of Jihad does not necessarily stop with the first and primary layer of fragments. If Quebec leaves Canada, non-Quebecois francophones may lose their equal place in New Brunswick. And if Quebec leaves Canada, why should not the Cree leave Quebec? And why then should not anglophone villages leave Quebec or opt out of a self-determining Cree nation if it is such they find themselves inhabiting? And if a few francophones reside in the predominantly English villages in the predominantly Cree region in the predominantly French Quebec, what about their status?" (Barber, 1995, p. 179)

In Bosnia, Sri Lanka, Ossetia and Rwanda, Jihad reaches its logical conclusion. Because the fragmentation cannot be continued indefinitely, there is a resort to the weapons of 'ethnic cleansing' and genocide. Jihad does not recognise people as free individuals, but only as members of an ethnic or religious group. Jihad reduces people to members of a tribe: Jihad is tribalism. For Jihad, a 'people', a nation, a community, a body of persons held together by a common origin, speech, culture, political union, or by a common leadership' – Chambers Dictionary] is not a living form which free individuals give to their community. For Jihad, the 'people' is a mythical entity to which individuals must subject themselves. Jihad is of course not interested in democracy, because Jihad places the tribe, the people or the religion above the individual. Jihad does not aim for liberation, but for a mummification of 'the people'. Jihad has no interest in human rights.

### **McWorld**

The other force is that of the global market. It works by standardising. It reduces the individual to a consumer. Barber calls this force McWorld.

McWorld opposes the particularism of Jihad, but it also opposes the nation state. The globalisation that McWorld aims for does not have civil society as its driving force, but profit. It is an economic force, though not a traditional one. Barber sketches out the way in which goods are becoming increasingly international. What distinguishes an 'American' from a 'Japanese' car once you know that Toyota's Camry was conceived by an American designer and is built in the Toyota factory in Georgetown (Kentucky) using parts that are mainly American? In fact, it is not possible to define McWorld simply in terms of capital (in the sense of money), but only in terms of the optimised relationship between capital, labour and raw materials. "McWorld is a kind of virtual reality, created by invisible but omnipotent high-tech information networks and fluid trans-national economic markets, so the virtual corporation is not just a provocative turn of phrase." (Barber, 1995, p. 26)

One of Barber's basic propositions is that the centre of gravity of McWorld's activity progressively moves to less material sectors: from goods to services, from hardware to software, with the ultimate being the world of the electronic image. McWorld is becoming increasingly more virtual and the United States is invariably at the forefront of this evolution. When the United States was overtaken by Japan and Europe in respect of the production of traditional goods, it acquired tremendous dominance in new sectors, such as the manufacture of transistors. When other countries acquired production capability in hardware, American industry turned to software. At the end of the line is the world of advertising and the production of images – the fully virtual cosmos that doesn't actually need to be taken over by the USA, because it is already intrinsically American (and based on the English language). The increasing strength of trade in virtual products is illustrated by the growth of spending on advertising, which rose three times as fast as general global production in the period from 1950 to 1990. American dominance in infotainment is revealed by the US balance of trade: in 1992, this showed an overall deficit of 40 billion dollars, with a trade surplus of 56 billion dollars in the service sector offset by a manufacturing deficit of 96 billion. America owns 80% of the European film market; by contrast, Europe owns only 2% of the American market. Audio-visual products (3.7 billion dollars in exports to Europe alone) were in second place on the list of US exports in 1992, close to exports connected with air and space travel.

Another symptom of the increasing weight of the trade in virtual products which is so characteristic of McWorld is the fact that brand names are increasingly becoming more important commercially than the actual products. Barber describes the rise of Coca-Cola in some detail. What is being sold here is not a drink, in the sense of a physical product, but rather an image – a virtual, world-encompassing Coca-Cola theme park to which new elements are always being added. Coca-Cola associated itself not only with the Olympic Games and with the fall of the Berlin wall, but also with the renowned Rutgers University (where Barber is employed). Coca-Cola not only has a sales monopoly on the campus, where its competitor, Pepsi, is banned; Coca-Cola also has the right to associate itself with Rutgers in its advertisements. In new markets, Coca-Cola conducts aggressive campaigns to suppress the local culture. Barber quotes the 1992 annual report of the Coca-Cola Company, in which it was declared that Indonesia was 'culturally ripe' for the large-scale introduction of Coca-Cola products; being 'culturally ripe' meant, among other things, that the traditional consumption of tea had been sufficiently rolled back.

McWorld is thus not a merely economic force that emerges alongside the existing culture. McWorld takes over the existing culture and shapes it in its own economic interests. "Even where multinational companies claim to be interested exclusively in production and consumption figures, increasingly they can maximize those figures only by intervening actively in the very social, cultural, and political domains about which they affect agnosticism. Their political ambitions may not be politically motivated and their cultural ambitions may not be the product of cultural animus, but this only makes such ambitions the more irresponsible and culturally subversive." (Barber, 1995, p. 71)

### Jihad and McWorld versus democracy

Despite their contradictory, opposing characters, Jihad and McWorld also have one important element in common. Neither possesses "...[a] conscious and collective human control under the guidance of law we call democracy. (...) Jihad and McWorld have this in common: they both make war on the sovereign nation-state and thus undermine the nation-state's democratic institutions. Each eschews civil society and belittles democratic citizenship; neither seeks alternative democratic institutions. Their common thread is indifference to civil liberty." (Barber, 1995, p. 5-6). Moreover: "Antithetical in every detail, Jihad and McWorld nonetheless conspire to undermine our hard-won (if only half-won) civil liberties and the possibility of a global democratic future". (ibid., p. 19)

According to Barber, it is a myth that democracy and the free market are inseparable Siamese twins. This has been an often-repeated mantram, especially since the collapse of communism. In reality, the free market demonstrates a remarkable adaptability and the system flourishes even in despotic states such as Chile, South Korea, Panama and Singapore. China is currently one of the least democratic countries, but it is also the country with the fastest growing market. In fact, what McWorld needs for its development is stability, not democracy. McWorld is not interested in collective concerns, such as employment or environmental issues. On the contrary, McWorld is driven by the profit motive ("McWorld is nothing if not a market", p. 29) and actually exports its problems into the community. In 2005, to great applause from market analysts, General Motors fired 20,000 employees. Private profits were secured and the business became 'leaner and meaner', as intended. The costs of the dismissals had to be met by the local community and the local state. What McWorld wants is consumers who have access to the market, and political stability is needed for this. In McWorld's world, consumerism, relativism and corruption are the alternatives to the traditionalism of Jihad.

Barber argues against the followers of Milton Friedman, who maintain that markets are a kind of democracy because they allow us to 'vote' with our money (we buy what we find attractive): "Economic choices are private, about individual needs and desires; whereas political choices are public, about the nature of goods. As a consumer, one may buy a powerful car that can go 130 miles per hour, yet without contradiction the very same person may as a citizen vote for speed limits in the name of public safety and environmental preservation." (Barber, 1995, p. 296-297)

Barber also touches on the problem of bad taste in this context. It is a well-known phenomenon: magazines, TV stations, etc., that want to attract the largest numbers of readers or viewers are always forced in the direction of bad taste and

banality. The reason is simple: good taste is individual, bad taste is collective. Bad taste is characterised by the lack of individualism, of individual creativity. Good taste is predicated on the existence of elements of creativity that relate to the uniqueness of the individual who evinces good taste. Good taste is therefore hardly ever a mass product and is almost always commercially uninteresting.

It is impossible to combat bad taste: as long as there is a demand for it, the economy will act to meet it. If, however, the economy begins to dominate the whole of society, there will be no space left for the realm of good taste which expresses individuality. "The problem with Disney and McDonald's is not aesthetics, and critics of mass taste such as Horkheimer and Adorno (and me) are concerned not to interfere with the expression of private taste, but to prevent monopoly control over information, and to interdict that quiet, comfortable coercion through which television, advertising, and entertainment can constrict real liberty of choice." (Barber, 1995, p. 297). Democracy – and even science, for example – then come under pressure, because these areas do not express what all of us have in common as members of the same biological species, but what we produce as individuals as ideas, works of art etc.

Democracy always begins with the generation of individual ideas and concepts, which then confront each other on the ideational level. This is a commercially uninteresting process, but for democratic life the free production of ideas and the free confrontation of ideas is essential. Thus, an independent domain is needed within which such a confrontation of political ideas can take place. If the anti-democratic tendency of McWorld is to be opposed, then it is essential to create a free space in which ideas can confront each other and concepts be worked out, uninfluenced by economic forces. In such a free space, among other things, a genuine public broadcasting service – radio and television – could play a major role. The existence of independent media is becoming increasingly essential for the survival and, even more, for the further growth of democracy (see chapter 5, California).

According to Barber, a new type of capitalism has been created with McWorld. This new capitalism demands the same laissez-faire principles and argues just as much against state intervention as the old capitalism. The new element, however, is that McWorld operates globally, not nationally; at this global level it is confronted by no state which can defend the law against the market in the way that is still possible in national economies. This enables McWorld to have enormous dominance over the nation states. The free-market ideology is the battering ram that McWorld uses to demolish the walls of the nationally organised constitutional state. "Unfairness (...) turns out to be a crucial trait of McWorld."] (Barber, 1995, p. 42). The international trade in raw materials, for instance, leads to gross inequalities, through which the world becomes a playground for some, but a graveyard for others.

Because, on the one hand, McWorld promotes globalisation, but, on the other, this globalisation occurs without (social) justice – so that on a worldwide scale there are major violations of the principle of equality – McWorld opens the floodgates to Jihad. Oil production is an excellent example. The three richest countries in the world – the US, Japan and Germany – consume half of the total world production; but together they import more than half of all the energy they need. The majority of this oil comes from countries in the Middle East which are extremely susceptible to Jihad. These are countries

in which ethnically or religiously inspired conflicts can erupt very easily. "Better than three-fifths of the world's current oil production (and almost 93 percent of its potential production reserves) are controlled by the nations least likely to be at home in McWorld and most likely to be afflicted with political, social, and thus economic instability." (Barber, 1995, p. 48)

## The autonomy of the democratic centre

McWorld threatens to impose a one-sided economic and very undemocratic domination on the world, a world dominated by the 'Hollywood' ideology, a world also without justice. Barber's alternative to this is not a society dominated by a monolithic state, but rather an 'separated' world characterised by a wide variety of autonomous spheres of life: "We are governed best when we live in several spheres, each with its own rules and benefits, none wholly dominated by another. The political domain is 'sovereign' to be sure, but this means only that it regulates the many domains of a free plural society in a fashion that preserves their respective autonomies. The usurping domination of McWorld has, however, shifted sovereignty to the domain of global corporations and the world markets they control, and has threatened the autonomy of civil society and its cultural and spiritual domains, as well as of politics. The alternative (...) is not a state-dominated society in place of a market-dominated society, but a many-secctored civil society in which the autonomy of each distinctive domain – the economic market included – is guaranteed by the sovereignty of the democratic state. Only a democratic polity has an interest in and the power to preserve the autonomy of the several realms. When other domains wrest sovereignty away from the state, whether they are religious or economic, the result is a kind of totalitarian coordination – in the Middle Ages it was theocratic; in this age of McWorld it is economicistic." (Barber, 1995, p. 296)

According to Barber, we must aim for a disentangled society and the first step towards this is the creation of an autonomous political-democratic domain, because this domain is the only one that by its nature is concerned with the structuring of society as a whole.

The question then is: how can we take steps to create such an independent political-democratic domain? It is a formidable challenge for there is no global state of any kind to confront the global character of McWorld, never mind a global democratic state. Barber's basic principle is this: democracy is not an institution, it is a way of life based on individual responsibility and sense of community: "A people corrupted by tribalism and numbed by McWorld is no more ready to receive a prefabricated democratic constitution than a people emerging from a long history of despotism and tyranny. Nor can democracy be someone's gift to the powerless. It must be seized by them because they refuse to live without liberty and they insist on justice for all. To prepare the ground for democracy today either in transitional societies or on a global scale is first to re-create citizens who will demand democracy: this means laying a foundation in civil society and civic culture. Democracy is not a universal prescription for some singularly remarkable form of government, it is an admonition to people to live in a certain fashion: responsibly, autonomously yet on common ground, in self-determining communities somehow still open to others, with tolerance and mutual respect yet a firm sense of their own values. When John Dewey called democracy a way of life – it is the idea of community life itself, he insisted – rather than a way of government, he called

attention to its primacy as an associated mode of living in a civil society. A global democracy capable of countering the antidemocratic tendencies of Jihad and McWorld cannot be borrowed from some particular nation's warehouse or copied from an abstract constitutional template. Citizenship, whether global or local, comes first." (Barber, 1995, p. 279)

The big issue is, of course, how this active citizenship can be recreated. How is it that at the time de Tocqueville visited the United States there was such a closely-knit social fabric and so much social capital? There were two reasons.

First, the national state, over which the citizens had little control, was of only limited importance. Political life was basically structured federally: "Government, especially at the federal level, was a modest affair (probably too modest for some of the tasks it needed to accomplish) because the constitution had left all powers not specifically delegated to it to the states and people." (Barber, 1995, p. 282) A federal form of state is essential for the creation and retention of social capital, because it is here that the individual is considered to be the basic unit (any delegation to higher community levels proceeds from the individual) and because moral intuition and social commitment can, by definition, only be generated by individuals.

A second reason was that the impact of the market on the community was small: "Markets were also modest affairs, regional in nature and dominated by other associations and affections." (Barber, 1995, p. 282)

The result was that, in the America of de Tocqueville, the citizens played a real part in shaping their society. They decided what their society should look like in association with each other. There was therefore a powerful motivation for them to form efficient and effective associations. The network of mutual trust and the feeling of responsibility for the '*res publica*' thus created is what generates 'social capital'.

Attacks then came from two sides against this social capital – this fundamentally democratic, mainly locally structured social fabric.

On the one hand, the market began to take over. Citizens started to see themselves more and more as consumers: voluntary social inputs were supplanted by commercial interests. The replacement of voluntary blood donation in the USA by commercial blood collection services (where donors are paid) is a classic example of this process [see 3-2]. On the other hand, the government began to interfere more and more in social life. The increasing role of the markets made greater government intervention essential. The local community no longer had control of the market, and the state had to intervene in the public interest. But in the process the state simultaneously took over significant areas of social responsibility from the citizens.

"It was only when individuals who thought of themselves as citizens began to see themselves as consumers, and groups that were regarded as voluntary associations were supplanted by corporations legitimised as 'legal persons', that market forces began to encroach on and crush civil society from the private sector side. Once markets began to expand radically, government responded with an aggressive campaign on behalf of the public weal against the new monopolies, inadvertently crushing civil society from the state side. Squeezed between the warring realms of the two expanding monopolies, statist and corporate, civil society lost its pre-eminent place in

American life. By the time of the two Roosevelts it had nearly vanished and its civic denizens had been compelled to find sanctuary under the feudal tutelage of either big government (their protectors and social servants) or the private sector, where schools, churches, unions, foundations, and other associations could assume the identity of corporations and aspire to be no more than special interest groups formed for the particularistic ends of their members. Whether those ends were, say, market profitability or environmental preservation, was irrelevant since by definition all private associations necessarily had private ends. Schools became interest groups for people with children (parents) rather than forges of a free society; churches became confessional special interest groups pursuing separate agendas rather than sources of moral fibre for the larger society (as Tocqueville had thought they would be); voluntary associations became a variation on private lobbies rather than the free spaces where women and men practiced an apprenticeship of liberty." (Barber, 1995, p. 282-283).

The second proposition follows from this: citizens must be able to take their fate into their own hands again. Barber argues, for example (in his earlier book 'Strong Democracy'), for a series of measures, including the introduction of national referendums, which are currently completely unknown in the USA. One might say that a radical-democratic federalism is the natural biotope within which social capital can be created. The observations of de Tocqueville, backed up by countless other anthropological and psychological studies, show that people really do have the potential to generate social capital. However, two conditions must first be fulfilled. Firstly, federalism must be consistent in taking the individual as its starting-point: the conditions must be created which will allow people to take their fate into their own hands. A purely representative democracy (called 'thin democracy' by Barber) which, by delegating responsibilities, forces people to surrender control of their own fate, is wholly unsuitable for this.

Secondly, within such a democratic federal structure, the willingness must also be developed to roll back McWorld and Jihad. Only then can a democratic culture be created worthy of the name. That is not a simple task. The old type of social capital, so admired by de Tocqueville, came into being spontaneously and unconsciously in favourable circumstances. But precisely because it was unconscious, it was unable to offer any resistance later, when the circumstances were less favourable, and it disintegrated. The preconditions for the generation of new social capital must in future be very consciously created and maintained.

## **The domain of Jihad and McWorld**

However, Barber did not fully develop this final step in his argument. This is the weakness of his otherwise splendid book. Barber deduces from the picture outlined above that the bipolar thinking of 'state versus private sector' must be abandoned and, in its place, a tripartite structure must be adopted in which civil society can take its place again between the state and the private sector.

Barber's reasoning fails to take his analysis of the anti-democratic consequences of Jihad and McWorld to its logical conclusion. After all, why has social capital been crushed between the market and the state in the USA? Because McWorld extends its tentacles beyond the market, beyond the sphere of economics, to the constitutional state, with a simultaneous devastating effect on culture. But also because – an altogether more subtle point – Jihad strives to subject the state to one particular culture or one particular religion. At the heart of Jihad is always the aim of ideological dominance, a patronizing attitude which seeks to rob citizens of their independence and adulthood and reduce them to being subjects of a state that looks after their inner welfare. Jihad is the denial of the separation of ideology and state. The blending of religion and the state as is seen, for example, in Iran or Saudi Arabia, is merely the most striking form of this association between Jihad and the state. The 'dictatorship of the proletariat', the aim of communist regimes, is another extreme example.

Much less conspicuous, but all the more powerful in its effects is what happens in the countries of the West – the fusion of the state with the ideology of the free market, accompanied by the infantilization of the population under the banner of 'representative democracy'. McWorld is not interested in the nation state – but Jihad is. Jihad and McWorld cooperate in the sphere on which they are in agreement: the suppression of democracy. Jihad takes over the state, ideologically defending the domination of McWorld in combination with the most varied forms of tribalism. Nationalism combined with a defence of McWorld: that is the most efficient way for Jihad to maintain its grip on the population with the help of the state. This can lead to the strangest situations – such as that in Saudi Arabia, where close external economic cooperation with the West goes hand-in-hand with the most reactionary domestic treatment of women and non-Muslims: McWorld hand-in-hand with Jihad.

Barber was correct in asserting that civil society must regain the middle ground. Nevertheless, it is inaccurate to site this middle ground between government and the private sector. In a democratic society, the government should not form an autonomous centre of power ranged against its citizens: it should be nothing more than the democratic expression of the people's will. In fact, the creation of a genuine civil society would drive Jihad out of the government and force it back into the arena in which it plays its rightful role – the sphere of culture in all its aspects: the democratic forging of perceptions and the free clash of concepts, between which a 'holy war' can and must be waged. And McWorld must also be driven back into its original domain – that of economics. As Barber remarks in his book's epilogue, Jihad and McWorld are not bad in absolute terms. It is not Jihad and McWorld as such that must be opposed, but their tendency to take over civil society. There must be a fundamental separation of Jihad (the world of culture and cultural individuality), McWorld (the economic world) and the democratic constitutional state (see also Steiner, 1919, 1999). And that can only be achieved by means of a radical democratic federalism.

### 3-1: NIMBY – or citizenship and democracy

'Not in my back yard' (NIMBY) problems are the order of the day. The majority of people agree about the need for airports, incinerators, accommodation for asylum seekers and radioactive waste storage. It is just that people do not want this type of facility in their own back yard. A facility that everyone wants in theory, but which nobody would tolerate in his or her own neighbourhood, is saddled with a NIMBY problem.

Usually the site for such a facility is imposed on a local community by the government, possibly accompanied by financial or other compensation. An interesting situation exists in Switzerland, where local communities have a right of veto on the siting of such facilities (via a local citizen-initiated referendum or public assembly). In 1993, citizens in four villages were asked what their reaction would be if a storage facility for nuclear waste was to be built in their municipality. The four communities had been selected as the most suitable sites by the Swiss geological service. The answers given would not be without significance, because a decision on the siting was about to be made – and the result of the poll would be published before the decision was announced.

It turned out that 50.8% of those questioned said they would accept the facility, as opposed to 44.9% against. What was remarkable was that as soon as a proposal was made to offer financial compensation, support collapsed. With a proposed annual compensation level of between 2,500 and 7,500 Swiss francs (roughly 1,500-4,500 Euro or £1,110-£3,300 pounds sterling), support for the nuclear dump dropped from 50.8% to 24.6%. The percentage remained unchanged even when the amount of compensation was increased.

The survey showed that the fairness of the decision-making procedure played a crucial role in the potential acceptability of the site. People seemed able to accept the result more easily if they also accepted the way the decision had been reached. Offering financial compensation fundamentally changed the way the decision was made. Where there is a decision-making process with a direct-democratic local right of veto, there is a strong appeal to people's public-spiritedness and objectivity. If the issue is tied up with financial compensation, people begin to suspect that they are being bribed. The appeal is no longer to their civic sense, and the implicit message is that they are seen as 'family-centred amoralists' who have to be persuaded by external financial inducement. This kind of shift from intrinsic to external motivation leads to a serious loss of social capital. (Oberholzer-Gee et al, 1995)

### 3-2: Blood doing – paid and unpaid

Social capital is present when people do something – champion a cause, for example – for inner or intrinsic reasons. If people do something reluctantly and only for an external reason – just because they are paid to do it, for example – that affects the intrinsic motivation. The inner drive to do something is weakened and social capital is lost. In this sense, commerce displaces social capital [see also 3-1].

The Dutch economist Arjo Klamer (1995) described this effect as follows: "Some years ago, I took over part-time care of two children, then aged five and seven. I decided to apply the principles of economics and assign a certain value to good and bad deeds – fifty cents for helping to tidy up, twenty-five cents for taking the dog out without moaning; a one guilder fine for starting for starting a quarrel, thirty cents for a mess in the room, and so on. Everything was discussed with the children beforehand. Against the better judgement of my wife, I was convinced of the value of my approach. In this economic system I no longer had to be the perpetual ogre; responsibility was passed to the children. Exactly as it should be."

The approach seemed at first to be a success. The number of quarrels decreased and the children were helpful. However, Klamer soon discovered an unexpected 'loss-leader'. His children became less responsive to moral considerations. "When I tackled the younger one about his teacher's complaint that he frequently shouted in class, he responded completely in line with my economic approach. He proposed a deal: two guilders for the right to shout in the classroom. In complete negation of the principles I myself had proposed, I heard myself reply: 'No way. I just want you to stop doing it. If you carry on doing it, then you'll have me to deal with.' The economic approach had failed."

In 1970, the book *The Gift Relationship* appeared, in which Titmuss described the effects of the commercialisation of blood doing. During the 1960s, a commercial system of blood doing gradually became widespread in the USA (between 1965 and 1967 80% of the blood came from paid donors), whereas the system of voluntary blood donation remained in place in the UK. Titmuss found that the voluntary system was much cheaper and was less prone to problems with contaminated blood.

Titmuss asked voluntary blood donors about their motives and came to the conclusion that the majority of blood donors could not explain their motives without resorting to moral concepts in some way or other. In fact, it seems that voluntary blood doing is difficult to explain in any other way than arising out of an intrinsic sense of civic duty or sense of community in those concerned. Phenomena such as voluntary blood doing demonstrate that, contrary to what some assert, 'the citizen' really does exist.

Titmuss' research produced several other remarkable results. It seemed that the introduction of commercial blood doing had a very negative initial effect on voluntary blood doing. The motivation of the voluntary donors was apparently affected by the fact that elsewhere in society people were being paid for a service that they were providing freely. This phenomenon is also known as the 'spill-over effect'. If a person discovers that someone else is being paid for their input, they are less inclined to perform the service voluntarily themselves.

In the paid system, the quality of the blood collected was endangered, especially because people from all sorts of at-risk groups came to donate blood in exchange for payment. That is why the system of paid blood donation was wound down again in the US. Between 1971 and 1980, the volume of paid-for blood fell by 76%. Over the same period, the volume of voluntarily donated blood rose by 39%. The capacity

to donate for intrinsic reasons can, therefore, be restored. However, the recovery initially takes some time.

We believe we now know why Arjo Klamer's pedagogic approach failed. We also understand, perhaps, why it is best if blood doning remains unpaid. However, is it not possible that in many respects we now find ourselves in a situation similar to that which Klamers' children would have ended up in if he had continued with his disastrous educational project? Because it is not at all clear why what applies to the donation of blood should not also apply to the readiness to donate ones labour and social involvement for the collective good.

### 3-3: About Jorwerd

Countless books have been written about the transformation of village life. But the story of how "market forces began to encroach on and crush civil society from the private sector side" (Barber) is perhaps nowhere more grippingly recounted than in the book by Geert Mak which has already become a classic: *Hoe God verdween uit Jorwerd* ('How God disappeared from Jorwerd', 1996).

Jorwerd is a small farming village in the north of Holland, in the province of Friesland. Up until forty or fifty years ago, the farmers had the core elements of the agricultural economy under their control, even if that economy did not produce very much. It began right at the family level: "The typical rural families with lots of children did not have it easy most of the time, but they always had one advantage compared to families in the towns: they usually had their own vegetables, their own meat, milk, butter, cheese, eggs and potatoes, and thus they were more or less self-sufficient." (p. 22)

What was bought (coffee, tea, sugar, soap etc.) did not represent a major outlay. But the point is that they decided what they needed and whether and when to buy it. However, that changed: "Up until the 1960s, many farmers rarely went into a shop. The tradespeople came to the people at home." An elderly lady who lived in the village told the author: "We wrote down what we needed in a little order book, but nothing more. Coffee was coffee, tea was tea, and soap was soap. A week's shopping for the entire family never cost me more than about twenty guilders" (p. 22). This system finally disappeared irrevocably in the 1970s. People had become mobile, the traders in Jorwerd died out, advertising and low prices in the big shops in town, which had become accessible thanks to the car, completely changed their buying behaviour.

That is what happened in terms of consumption. But control of production also moved out of the village, because industrial technology increasingly took over agriculture. First of all came the milking machines, and the tractor replaced the horse. Investment in this technology was not yet a problem for the majority of farmers. But this, too, changed in the 1970s. The refrigerated milk storage tank became the norm, for example: "The farmers had to purchase big refrigerated tanks. Gone were the days of the old-fashioned milk churns that were left by the roadside at the farm gate every morning and evening; gone was the local milk lorry which came to pick them up; gone, too, the clatter and chatter of the many small dairies" (p. 87).

Control over economic processes shifted away from the local community; external factors, mainly technical inventions, began to play an increasingly significant role. The farmer also became dependent on the bank. "Sometime during the 1960s, there was a complete change of attitude" among the farmers of Jorwerd about getting into debt. "For some of them, the path to the bank started with the purchase of their first tractor at the end of the 1950s. The majority of farmers could still afford to buy one out of their own pockets. But more and more money was needed: for machines, for byres, for all sorts of new acquisitions. And then, around 1975, when the money from the dairy was no longer paid in cash on the kitchen table (...) the bank became a fixture in the farmers' lives" (p. 88).

The inhabitants of Jorwerd became less dependent upon each other and more dependent on strangers from outside the village. Take the village blacksmith, for example: "The blacksmith at Jorwerd was, like most village blacksmiths, a real jack-of-all-trades. He shod horses, repaired roof guttering, installed stoves and didn't balk at the complete overhaul of a tractor. On some ice rinks in Friesland, old Renault 4 cars which he had cleverly converted into ice-sweeping machines were still being driven around years later. His modified Harley-Davidson ice sweeper was a great success, too. He loved technology for its own sake – but technology finally went too fast for him to keep up." (p. 148) "Any village blacksmith could repair the most important machines on a 1970s farm without any difficulty: tractor, mowing machine, milking machine, manure spreader and much more besides. That was no longer the case for the tractors and milking machines that appeared on the market after the 1970s. They were so full of technology and electronics that only well-trained young mechanics could master them. As a result, an ordinary, old-fashioned blacksmith was out of his depth. In this respect, too, the farmers became increasingly dependent on intangible economic forces in the outside world" (p. 150). "In this way, something in Jorwerd that had been an essential part of the farmers' lives for centuries disappeared: their own small economy within the big economy. The boundaries between the two became unclear, more and more holes appeared in the dyke of trust and tradition, and suddenly the village economy was swept away as if it had never existed." (p. 151)

As control over the economy, both consumption and production, slipped away, the state began to intervene more and more with regulations, exactly as Barber describes. For the farmers in Jorwerd and elsewhere, the introduction of the milk quota had enormous consequences. In 1984, the European Agriculture Ministers decided to put the brakes on the overproduction of milk. Each farmer would only be allowed to produce a certain quota; every litre of milk produced in excess of the quota would result in a heavy fine. There was soon a roaring trade in milk quotas. A farmer who was allocated a milk quota of 250,000 litres was in effect given a million guilders' worth (around £300,000) of milk rights, which he or she could sell. Later, a manure quota was also introduced. A cattle farmer was not allowed to produce more than a certain amount of manure. Another roaring trade was created. Pig breeders were prepared to pay to be able to dump their surplus manure on someone else's land (p. 97). From the point of view of the social fabric, it is significant that these regulations were another element over which the individual farmer had absolutely no control, but which dras-

tically affected his or her life and, moreover, started to make that life more and more a kind of virtual reality. One farmer summed up the impact of these shifts as follows: "You're not a farmer any more, you're just a producer."

The loss of control over ones life has not been compensated for by more democracy. People's desire to shape their own communities has been neither recognised nor honoured. Governments chose patronising prevarication, even if it costs lots of money: "While the newspapers and the political world were overflowing with stories about 'self-help' and 'self-sufficiency', it was striking how little the administration took advantage of the opportunities that the sense of local community still offered in practice. Almost all the major changes – filling in the harbour, new buildings – had previously been proposed by the inhabitants themselves. Later, the administration did not appreciate this type of initiative anymore. The path to the playing field, for instance, was a big pool of mud, but when Willem Osinga proposed putting it right with a handful of men on a couple of Saturday afternoons – there were still some spare paving stones lying around somewhere, and the municipality only had to supply a load of sand – it just didn't happen. Later, the municipality did the work itself at a cost of 30,000 guilders. 'We could have used that money to do a whole load of other things in the village', Osinga grumbled." (p. 207)

### 3-4: The European Union

The European Union has extended itself in all directions during recent decades. It has gathered more powers for itself with each treaty amendment, and almost every government in Europe has decided in favour of accession, whether the citizens agreed with this or not. In most cases the decision on accession was made without a referendum.

Today, an estimated 50% of the national legislation originates in Brussels. This Brussels legislation amounts in total to some 100,000 pages. The EU budget of more than 100 billion euros per annum is bigger than that of many EU member states. "The European institutions currently exercise more day-to-day power than each of the member states does separately for itself", in the opinion of the German constitutional judge Udo di Fabio. At the same time, the EU is so undemocratic that the European Commissioner responsible for EU expansion, Günther Verheugen, once remarked: "If the EU itself were to apply for membership, we would have to say: 'democratically deficient'." (Oldag and Tillack, 2003, pages 17 to 19; see also Booker and North, 2005)

To the superficial observer, the EU seems to have solved many modern problems. According to its supporters, after two world wars, the EU can be credited with having prevented a new war in Europe. But that completely ignores how the First and Second World Wars arose. These were caused by elites who ruled in an undemocratic manner, developed their plans in secret and usually initiated war against the will of the majority, as surveys from those times show. What the EU has done is to place an even higher power elite above these older power elites, and it must now try to keep them under control.

The example of Switzerland shows an entirely different approach: since it began as a federation in the middle of the

19<sup>th</sup> century, incorporating elements of direct democracy from the start, Switzerland has been virtually the only state in Europe never to go to war (only Sweden has had a longer peace). The reason is simple: ordinary people rarely want a war. Democracies have better methods for solving conflicts than violence. Put another way: if states democratise internally they will become much more peaceful. There has already been a consensus among academics for a long time now that democracies (by which they mean states with free elections and the protection of human rights) do not make war against each other. On the other hand, however, academics have frequently observed that democracies are just as warlike against other states as authoritarian states are. Rummel (1995) shows, nevertheless, that this latter proposition is based on statistics of conflicts that make no distinction between a relatively small conflict in which there were a thousand deaths, and a war in which a million died. If the numbers of dead are examined, however, there is a very clear link: the more democratic a state is, the less deaths it causes in conflicts.

In short: if you want peace, you can strive to keep potentially troublesome powers under control by placing an even higher power over them (as the EU ideology desires); but permanent peace is much better achieved by dismantling such powers from the inside. It would therefore be a logical step to introduce direct democracy in the current states, instead of setting up transnational super-states into which the national states must be absorbed. There is no guarantee that these super-states will not turn into regional powers which could find a reason for attacking each other. If the logic is pursued, there is then a need for an even larger state that must try to keep the regional super-states away from each other's throats. We would then end up with a single authoritarian world state – not an attractive prospect.

The infamous "democratic deficit" in the European Union exists because the national governments (without authorisation from their citizens) have ceded power to the EU bodies to make laws that now prevail over their national laws and constitutions. National parliaments have no control over this. The national heads of government and ministers have (through their participation in the European Council) control over some key EU legislation, but because they meet behind closed doors, national parliaments never know how their head of government or minister has voted in Brussels. If ministers claim that they have done exactly what their national parliaments asked of them, the parliaments have no way of opposing this. The European Parliament cannot fill this gap, because it has hardly any powers. It has no right to decide on the most important issues and it is also unable to dismiss individual members of the European Commission (the quasi-government of the EU). The former President of the European Commission, Jacques Delors, once called the EU a "gentle tyranny". (Oldag and Tillack, 2003, p. 35) In fact, this involves a double democratic crisis: at a time when the people are no longer satisfied with a representative system (see 1-1), even the very limited say that citizens have via this representative system has once again been undermined on all sides.

The so-called European Constitution, which was prepared in Brussels but was rejected in May and June 2005 by the voters in the referendums in France and the Netherlands, would do little to solve these problems. The European Parlia-

ment would get more decision-making power, but would still have no right of initiative and would not be able to dismiss individual Commissioners. The European Constitution does indeed provide more openness in the EU Council of Ministers, but this openness is still limited and, even more significantly, it would not apply to the heads of government in the European Council. It is precisely there that the most important decisions are taken, such as: European treaties (which contain the most important agreements), the EU budget and the deployment of European forces outside the EU.

Another key problem in the EU is its centralism, which is even further reinforced by the draft European Constitution. EU laws are always fully valid in *all* EU member states, or they are valid *nowhere*. That creates much ado and smooth talking in practice, because the circumstances in each EU

member state are different and each government has different requirements. Often nobody is happy with the compromise, because all the member states (currently 27) have to be satisfied. A simple solution – which, among others, Frey (1999) has argued for – would be that European member states always stipulate for each subject with which other member states they will introduce joint legislation, as a result of which ‘overlapping jurisdictions’ are created. In each case, other states could then always decide which jurisdiction they would join. Moreover, Frey suggests that the citizens can decide directly-democratically within these jurisdictions, which is what already happens in Switzerland, as described above. This proposal of Frey contains exactly the mixture between federalism and direct democracy that, as we saw in this chapter, will prove to be crucial for genuine peaceful and productive coexistence in the 21st century.

## 4. The democratic person

### Democracy and motivation

A purely parliamentary decision-making system is not a democracy. In such a system, the people cannot prevent the implementation of an unwanted law. In a real democracy, where there is any doubt, the people always have the last word.

However, the opponents of direct democracy do not allow themselves to be persuaded by such a simple principle. Their resistance to direct democracy does not usually rely on purely rational grounds. Their opposition to the idea of full popular sovereignty also derives from a gut instinct rooted in a fundamental distrust of people. The universal franchise and women's right to vote also had to cope with similar irrational resistance before they were finally introduced.

Opponents of direct democracy believe that when people vote, they allow themselves to be swayed primarily by private and egocentric motives. According to this view, majorities would always mercilessly suppress minorities. Higher, universal-human objectives would never be aimed for in a direct democracy. Representative democracy, on the other hand, enables a moral elite to make the decisions. This elite is then required to recognise and serve the general public interest.

Opponents of direct democracy, therefore, have a very specific view of people and of society. They consider society in essence as a kind of jungle, a snake pit in which countless private interests are in conflict with each other. Opponents therefore implicitly adopt a particular motivational theory, according to which people are primarily motivated by self-interest. They reject the logical arguments in favour of direct democracy, and even the evidence from good practice in countries where direct-democratic systems have existed for centuries, because deep inside they consider the average person to be morally defective and incompetent.

In what follows, therefore, we wish to have a closer look at the phenomenon of human motivation. The impatient reader can, however, immediately skip to chapter 5.

### Good and evil as political core concepts

Morality is not to be found anywhere in the material world. The laws of physics do not explain the existence of consciousness (Searle, 1992; Penrose, 1994). Consciousness does not play any role in physics because the latter does not describe a single causal relationship that calls on the phenomenon of consciousness. Rather, one must say that consciousness is a prerequisite for being able to describe physical laws and relationships. Physics does not include consciousness, even if it is a prerequisite for physical research and discovery.

Because moral choice always presumes consciousness, physics can never provide a basis for any distinction between what is 'morally good' and what is 'morally evil'. But politics cannot operate without constant reference to good and evil, because it is about making a choice between several different measures. If one measure cannot be judged to be 'morally better' than another in some sort of fundamental way, politics is meaningless. On the contrary, the real existence of these moral distinctions must be taken as the basic principle of po-

litical activity. Because morals fall outside the boundaries of science, and yet are the basis of politics, politics is in principle independent of science. That is not an unscientific or anti-scientific viewpoint. It is nothing more than a confirmation of the fact that the natural sciences cannot fully describe human reality, because they are limited to material things.

The origin of morality is often explained by reference to Darwinian 'natural selection' (De Waal, 1996; Ridley, 1996). It is asserted, for example, that human tribes with a more strongly developed moral 'instinct' demonstrated better internal cohesion and were therefore superior to tribes with a less well-developed moral instinct. A tribe whose members are continually fighting each other due to a lack of moral instinct will weaken itself and be defeated in the struggle against a tribe whose members assist and support each other. This is how Darwin himself explained the origin of the 'moral instincts' of humans – an approach that is now widespread. However, there are fundamental problems with this explanation. Darwinian selection cannot explain the phenomenon of consciousness. That an antelope notices a lion and then takes flight can be fully explained in the causal-mechanistic interpretation (on which Darwinism is based) via a series of purely physical mechanisms. Light falls on the antelope's retina; a signal is transmitted across the optic nerves to the brain, where the stimulus is converted via particular mechanisms into a motor response, etc. The flight behaviour of the antelope and the selective advantage arising from this depend solely and entirely on the antelope's physical organism. The contents of the animal's consciousness, its feelings of fear or aggression, do not play the slightest role and thus cannot provide any selective advantage.

In the case of the antelope, therefore, the causal-mechanistic view falls short in two respects. Firstly, the laws of physics give no clues at all as to the phenomenon of consciousness. Secondly, this interpretation does not leave any room for the possibility that consciousness can provide some selective advantage.

The antelope's feeling of fear cannot therefore be explained by reference to physical mechanisms, nor does it give the antelope any advantage in the struggle for survival.

What is true for the antelope's feeling of fear also applies, *mutatis mutandis*, to the moral judgement of humans. This moral judgement is also a content of consciousness which cannot be explained physically, and which likewise cannot provide any selective benefit. If a human being is "a chemical process like any other" (the Dutch writer W.F. Hermans), then the selective advantage that comes from cooperation arises in a manner that excludes any role for consciousness or moral judgement. Because consciousness and moral judgement play no role in the creation of selective advantage, they themselves cannot be explained by a Darwinian selection process.

The mechanistic view of reality, moreover, results in a kind of logical short-circuit. If our thinking is entirely determined by physico-chemical processes in our brain, our search for truth and understanding is necessarily an illusion. We would never be able to find out whether a percept that appears to us as logical and correct is actually true in reality. We cannot rule out that possibility – but it could equally well be the case that

the appearance of logical correctness is false and is merely being generated by the succession of chemical and physical processes in our brains. If we believe that our thinking is entirely determined by these kinds of physico-chemical processes, we must also assume that every impression of logical correctness could in reality be an illusion conjured up by the chemical processes in our brains. This uncertainty applies to *all* our opinions – including our assumption that thinking is fully reducible to physico-chemical phenomena. As Popper (1982) rightly remarks, this mechanistic view of the origin of thinking is thus self-destructive.

Observation teaches us that sound brain function is without doubt an essential precondition for the emergence of human thoughts and judgements, as also for human actions. But this does not mean that the content of thinking can be fully reduced to chemical processes in the brain. In order for me to listen to a radio programme, it is essential that my radio is working properly. But that does not mean that the content of the programme is explained by the inner workings of the radio.

On the contrary: in following a scientific proof step by step, for instance, it is only intrinsic, purely mathematical or logical, considerations that take us from one step to the next in the reasoning. And intrinsic considerations as such can never be deduced from a purely physico-chemical configuration. The meaning of a road sign, for example, can never be deduced from its material components. The meaning of a word chalked up on a blackboard can never be deduced from the shape and composition of the chalk marks. The road sign or the chalk marks can in principle have very many different meanings; they do not in themselves lead to a single specific meaning or line of thought. A man from Mars could never deduce the meaning of a road sign from the physical and chemical analysis of that sign (e.g. a metal disc or triangle, painted white with a red border). In exactly the same way, the content element of a consideration or thought can never be deduced from a specific chemical configuration in the brain. The above-mentioned Martian would never be able to reconstruct the thought content of a brain from a physical and chemical analysis of it, because that content exists purely in the consciousness of the owner of the brain at that specific moment. In this respect there is no basic difference between the road sign and the brain.

Thus, we cannot consider thought contents as anything other than autonomous realities that are not reducible to material processes. If one wishes to demonstrate the correctness of a mathematical proof, there is no point in using a microscope to examine the brain processes of the mathematician in question. One must examine the mathematical logic using ones own faculty of discernment as the instrument of perception.

Equally, if we want to develop rational concepts of political or social action, we must likewise approach the distinction between good and evil from a non-deducible basic assumption: political and social issues are always ethical issues at heart, and political solutions are always ethical solutions. However much one might try to twist and turn the argument, ethics always ultimately concerns the distinction between good and evil. The concept of the ‘morally good’ is always central to political debate. Because moral judgements, just like all the contents of consciousness, cannot be reduced to physico-chemical processes, and because they are at the heart of all political activity, the latter cannot – as a matter of principle – be reduced to physico-chemical processes, as little as political science can be reduced to physics and chemistry.

Benjamin Barber (1984) attached great importance to this non-reducible character of political science and of political activity. Politics is more than the pragmatic search for the best possible solution to a given set of circumstances. There is a creative dynamic in politics, a dynamic of free moral choice. What constitutes a good solution does not follow automatically from the facts of the given situation. The right solution emerges because people add something entirely new to the given situation. The political sciences are independent of the natural sciences because they deal with ethical issues (which are not required to be considered in the natural sciences), and because an ethical solution always contains a creative element as well. Political actions are different from, for example, the actions of an engineer who is searching for the best possible solution to a technical problem. The engineer only applies natural laws to a given situation. What constitutes the best solution from a technical perspective follows unambiguously from the material facts. Politically active people add their own moral universe to the basic situation. This is a fundamental difference.

### **Three visions of the human being – three visions of democracy**

The most fundamental question – the key question of politics – is the question of what the ‘moral good’ actually means. And this question leads to an extraordinarily interesting paradox.

The concept of ‘moral good’ only makes sense if we accept that ‘the good’ transcends individual discretion. We cannot arbitrarily choose what we call ‘good’ and what not. The concept of ‘morality’ or the ‘moral good’ includes an element that transcends individual choice.

But individual freedom is an essential aspect of the concept of ‘moral good’. Freedom implies the possibility of choice. A deed or decision can only be ‘morally good’ to the extent that the deed is ultimately rooted in the freedom of choice of the individual. If a deed is ultimately the product of an external force, however subtle that may be, the categories of ‘good’ and ‘evil’ no longer apply.

There are two sides to morality. Morality transcends individual discretion: that is the *suprapersonal* aspect of morals. Yet morality can only come from the freedom of the individual who acts, and from nothing else: that is the *individual* aspect of morals. These two aspects have a paradoxical relationship with each other. How can morality be simultaneously individual and suprapersonal?

On this point, it is crucial to make a distinction between *freedom* and *licence*. Freedom distinguishes itself from licence through what can variously be termed *involvement*, *attachment*, *connectedness* or *commitment* [cf. below for more on the difficulty of precisely defining this concept].

We express our own individuality through the word ‘I’. Without an ‘I’, there is no moral freedom, no distinction between good and evil, and thus no politics either. But what exactly is this individuality, which we normally refer to as ‘I’? The ‘I’ must clearly be distinguished from its ‘possessions’. I ‘have’ a body, a gender, and a native language. I experience pleasure and pain. I have memories and ambitions. However, the word ‘I’ makes it clear that I am not all of this – but can place myself as subject in distinction to it. To begin with, then, the word ‘I’ indicates a kind of void, an empty space. This void

is identical in all humans – as identical as only two voids can be. In this fact we discover the objective basis for the principle of equal rights, for equality before the law, regardless of any differences people possess. *People have differences, but people are equal.*

However, the ‘I’ is not a ‘no-thing’. Like the ‘superposition’ of quantum theory, the human ‘I’ is a void full of potential, of expectancy and creative power; it is the emptiness of the moral will, before that moral will has yet brought forth a moral judgement. What lies dormant in the void is the as yet undifferentiated capacity for involvement. The human ‘I’ is nothing other than the manifestation of involvement in the world. And it is precisely involvement that distinguishes freedom from licence.

Without involvement, I am as free as an astronaut who alone, and with nothing to hold onto, tumbles slowly around his or her centre of gravity in the weightlessness of space. The astronaut can perform voluntary movements, but cannot affect the position of his or her centre of gravity relative to other objects, because all connection to the surrounding world has been severed. If I do not get involved with other people, even the most exalted deed will not touch me internally; it will leave me ‘disconnected’. Without commitment and involvement, I am not free to change. Only by virtue of my involvement do I change myself through what I do.

As human beings, we are only free when we are connected and involved. One can say that human involvement, or the moral warmth that the individual person can develop, is the way in which morality appears in the world. Morality is nowhere to be found in the world outside individual involved human beings. And it is precisely through involvement that humans can rediscover the real essence of their own being. As subject, we can separate ourselves not only from the outside world, but also from our own bodies, our habits and even our character (we can, for instance, try to lose weight, or change our character, or suppress a rising fit of anger). But, by definition, we cannot separate ourselves as subject from our involvement (e.g. with another’s pain). If we try to objectify our involvement, we cannot help – as subject – taking our involvement with us. Basically, we cannot look with complete detachment at our own feelings of affection for someone else. If we nonetheless try to do so, we must first create a phantasm of our affection, by making an abstraction of the essential fact that it is *our* affection we are dealing with. If we want to make a real image of the affection or involvement, including the fact that it is *our* affection, we cannot help but be filled by it. We *are* then our affection. The same does not occur, if, for instance, we closely examine one of our habits (including the fact that it is *our* habit). Our involvement, or attachment, is something from which we cannot distance ourselves, but with which we are at one in our deepest being. We *have* a body, habits, a character; we *are* our involvement.

We can understand this more clearly if we consider the most basic form of involvement – *attention*. Attention (paying attention to, showing interest in, empathising with) is the capacity of the human spirit to make space within ones own imagination for another person or object outside of oneself. By its very nature, attention aims at the truth. Attention is the precursor to thought. It provides space for both sensory impressions and for individual thoughts and trains of thought. We relate to ‘the other’ in the first place by focusing our attention on it. Because of its very nature, we

cannot separate our attention from our self. It is true that we can direct our attention to anything imaginable, including the characteristics and nature of the attention itself, but precisely because of this activity, we cannot be simultaneously detached from the attention. Our attention does have the capacity for self-reflection (it can be turned upon itself), but we cannot objectify our attention in the same way as we do with our character traits. We can, for instance, focus our attention on our laziness without being actually lazy at the same time. But we cannot focus our attention on our attention without being simultaneously attentive. Our laziness is something that we *have*; in a deep and fundamental sense, however, our attention is a manifestation of our very being. When we are attentive, then effectively we *are* this attention. And attention is involvement.

In involvement/attachment, the paradoxical character of morals is resolved. On the one hand, I am my involvement – involvement is hyperindividual and can only come from an individual human being. But, on the other hand, my involvement is always involvement with ‘the other’. Without the other, my involvement cannot exist. In this sense, I owe my existence at every moment to that ‘other’. Involvement or moral warmth can only exist between people. Real society is not the state, or the sum of all of the social structures and organisations. Real society is the fabric of connectedness and indifference, of moral warmth and coldness between people. It is not easy to capture the essence of involvement in a single term, because there is nothing in the material world (from which we derive most concepts and terms) that has at the same time the character of both object and relationship.

From this consideration of the dual nature of morals and of involvement, the following three perspectives on democracy emerge.

- Anyone who focuses mainly on the suprapersonal aspect of morals, and disregards the individual aspect, will tend towards a limited form of democracy in which people’s individual contribution is minimised. Benjamin Barber (1997) described these ‘communitarists’ as follows: “Because they assume that people are embedded in a network of communities and have ties with each other that take precedence over their individuality and these conditions, communitarists do not see ‘civil society’ as a playground for individuals and their voluntary ties and contractual organisations, but rather as a complex mixture of inescapable social relationships that bind people together into families, clans, neighbourhoods, communities and hierarchies.” Morals are seen in this communitaristic perspective as something that is decreed from above. People choose a subsidiary form of state, with, at most, representative forms of democracy and with the ruling elite having the maximum room for manoeuvre. This elite must then ‘educate’ the people. ‘Mid-field organisations’ (clubs, associations etc.) are mainly considered as instruments by means of which the elite can subtly control, guide and ‘educate’ the people.
- Anyone who considers only the individual aspect of morals will ignore the interaction between people or consider it as of little or no relevance. Barber (1997) characterises the ‘libertarian’ model as follows: “... the social relationships, both in the private sector and between the private and the government sector, are contractual relationships entered into by free individuals, in spite of their interests and goods and in defence of their freedoms. (...) By concentrating on the autonomous, solitary, egotist consumers, who have entrenched themselves in a fortress of rights, [and] only ven-

ture out to get something done by a state that operates like a service station (...), the liberal 'civil society' model can only represent a rudimentary type of social relationships that remain superficially instrumental. The concept of freedom in this model is therefore hyper-individualistic, negative and oppositional. It cannot respond to the desire to create communities and solidarity that overcomes modern people in mobile, post-industrial societies." From this so-called 'libertarian' position, one quickly comes up with ideas of 'push-button' direct democracy, televoting, etc. The personal opinions of the 'atomised' members of society flow directly into the decision-making, without there being any process of the communal formation of shared perceptions.

- Barber (1997) argues for 'strong democracy': "In the strong democratic view, citizens are seen as members of a 'civil society' because they are active, responsible, involved members of groups and communities. (...) Citizens (...) understand that democracy is precisely that type of state in which not politicians and bureaucrats, but rather empowered people use their legal powers to put flesh on the bones of their freedom; within which freedom implies both the obligations of social responsibility and citizenship, and the rights of legal entities. In this type of state, rights and responsibilities are two sides of a single citizens' identity, which belongs neither to the government bureaucrats nor the private consumers, but exclusively to the citizens."

If we include both poles of morality (the individual and the suprapersonal) as harmonious equals, we arrive at a democratic process of collective perception-formation, followed by individual decision-making. We see again here how radical direct democracy and radical federalism organically complement each other. The suprapersonal aspect of morals naturally works itself out *between* people. In a democratic society, it cannot be imposed from above – neither by a king, a president or a cabal of party leaders. It appears in the discussions and the interactions of people who do not confront each other as atomised individuals, but who, forming bonds with each other, have organised themselves federatively into a social network. In a strong democracy, people listen to each other, there is social debate, and people modify each other's opinions. But the final decision, the moment of voting, is a personal matter – because, ultimately, one has to vote out of one's best insights and conscience, for only individuals have an intellect and a conscience. This is where the individual pole of morals and involvement is found. Only direct democracy properly allows for this kind of individual judgement. And since in a federative society that individual judgement (in the vote) is preceded by the shared perception-forming process, the individual decision is able to transcend the limitations and one-sidedness of the isolated individual.

## Maslow: a phenomenological theory of motivation

It remains for us still to examine whether in the course of the democratic decision-making process, people actually do take into account the interests of the community. What motivates drive people in their actions, including their political decision-making? In forming a picture of this, we will make use of the influential theory of motivation propounded by Abraham Maslow (1943a).

According to Maslow, there is a hierarchy of human needs and desires. As long as a more primary need remains un-

satisfied, this need continues to determine motivation and other needs scarcely come into play, if at all. Maslow distinguishes two types of needs: basic needs (so-called 'deficiency needs'), which are satisfied from outside; and the need for fulfilment or self-actualization ('meta-need'), which is met by inner activity. Of these, the basic needs come first. Only when they have been largely satisfied will the need for self-fulfilment become the main motivator.

Maslow makes a distinction between the following basic needs:

### Physiological needs

The need for food, light, etc.: "For the man who is extremely and dangerously hungry, no other interests exist but food. He dreams food, he remembers food, he thinks about food, he emotes about food, he perceives only food and he wants only food." (Maslow, 1943a, p. 374) As long as these needs are not met, they dominate human motivation, but once they are satisfied, different needs surface: "What happens to man's desires when there is plenty of bread and when his belly is chronically filled? At once other (and 'higher') needs emerge and these, rather than physiological hungers, dominate the organism. And when these in turn are satisfied, again new (and still 'higher') needs emerge and so on. This is what we mean by saying that the basic human needs are organized into a hierarchy of relative pre-potency". (Maslow, 1943a, p. 375)

### Safety needs

The physiological needs relate to immediate necessities. Someone wracked by hunger and thirst is not really worried about the future. They want to eat and drink now. But once this immediate need for sustenance has been satisfied, concern about future supplies will arise. Then a need arises for guaranteed food supplies, for a permanent roof over their head, for protection from the cold and against dangers. We want to survive and we need safety and security to do so. The physiological needs are linked to the immediate situation; the need for security relates to our continuing future. It includes a need for order and a certain routine, and for the absence of unforeseen threats. According to Maslow (1943a), children especially have a strong need for a regular pattern of life, in which they feel safe and secure.

### Belongingness and love (social) needs

"If both the physiological and the safety needs are fairly well gratified, then there will emerge the love and affection and esteem needs (...) the person will feel keenly, as never before, the absence of friends, or a sweetheart, or a wife, or children. He will hunger for affectionate relations with people in general, namely, for a place in his group, and he will strive with great intensity to achieve this goal." (Maslow, 1943a, p. 381). An important point, according to Maslow, is that this concerns both receiving and giving affection. At the level of direct consciousness, where our emotional life is to be found, the experience of indifference plays the same role as does hunger at the level of the physiological body. It is worth noting that Maslow does not consider sexual desires as basic needs: physiological and belongingness needs can operate to varying degrees as motives here.

### Esteem needs (recognition by others and self-esteem)

These needs are naturally closely connected with the previous needs, but are distinguished by the desire for continuity.

People need food, but also the longer-term assurance of a food supply (safety needs). People also have a need for direct and immediate affection (belongingness and love) and for a wider social belongingness that assures them of being able to maintain relationships with others into the future as well.

### The need to know and to understand

Maslow states, "The desire to know and to understand (...) are as much personality needs as the 'basic needs' we have already discussed." (Maslow, 1943a, p. 385) One often sees that the attempts to satisfy this need are pursued despite enormous costs and risks. However, Maslow remains unclear about the exact place this need occupies relative to the other needs. He frequently omits the need for knowledge and understanding when summarising the hierarchy of needs. In his 1943 article, he discusses the need for knowledge and understanding extensively and stresses that it is a basic need. However, he remains uncertain about the position this need occupies in the hierarchy of needs. In my opinion, the 'need to understand' must be seen logically as a fifth basic need. The need to know and to understand will only emerge with full force when the needs for affection and social connectedness are at least partially satisfied. Any knowledge will be perceived as hollow and irrelevant if it is not acquired against the background of a worthwhile emotional and social life. But the need to know and understand must still be considered as a basic need, in the sense that people must turn to the outside world to satisfy this need (whereas the need for self-fulfilment is satisfied by inner activity – see below). One could also say that a certain degree of knowledge and understanding must be acquired before self-actualization can take place. To that extent, therefore, the need for knowledge and understanding stands at a more fundamental level in the hierarchy than the need for self-actualization.

### The meta-need: the need for self-actualization

One of Maslow's central propositions states: *every talent is also a need, and it is actually a need for fulfilment of that talent*. A person who develops normally does not stop at the higher basic needs, such as the need for social recognition and the acquisition of knowledge. When these needs have been adequately satisfied, a new need immediately appears: the desire to validate one's own aptitudes and talents. This new need is fundamentally different from the previous five, in the sense that it cannot be satisfied from the outside world, but only by the person's own inner initiative. That is why Maslow talks of a 'meta-need' in this context.

The dividing line between this meta-need and the basic needs, which have to be satisfied by elements from the outside world, coincides with the dividing line between intrinsic and external motivation [see 3-1 and 3-2]. At the moment that the meta-need becomes the main motivating force, people manifest themselves as involved beings. The relationship to the outside world is, as it were, turned inside out. As long as the basic needs operate as motivators, the outside world exists as a means of satisfying those needs. When the meta-need becomes the main motivating force, people themselves become a means of meeting the needs of the outside world. Whereas the basic needs arise from what the 'I' has (a body and emotions), the meta-need arises from the connectedness that manifests itself in the 'I'.

The need for self-actualization, therefore, must not be seen as hedonistic. It is not about ego-tripping, but rather about a need for meaning, which can only be found in the service

of 'the other'. The meta-need is a need for meaningfulness. The question of whether existence has meaning cannot be answered with either a 'yes' or a 'no' at a purely rational-intellectual level. Meaningfulness arises in the existential service of 'the other', where that service is perceived as a supremely personal affair. A politician, an artist, a carpenter or a shop assistant who is driven by the need for self-actualization will always rediscover this idea of service to another at the heart of what drives him or her. This drive to serve is part of human nature, and a person creates meaning for his or her existence in the measure in which this urge is turned into deeds.

### Gratification

In people who have been able to develop in a healthy and harmonious way, there develops a kind of state of gratification in relation to the basic needs. "What this means is that, e.g., a basically satisfied person no longer has the needs for esteem, love, safety, etc. (...) If we are interested in what actually motivates us, and not in what has, will, or might motivate us, then a satisfied need is not a motivator. It must be considered for all practical purposes simply not to exist, to have disappeared. This point should be emphasized because it has been either overlooked or contradicted in every theory of motivation I know. The perfectly healthy, normal, fortunate man has no sex needs or hunger needs, or needs for safety, or for love, or for prestige, or self-esteem, except in stray moments of quickly passing threat (...) a healthy man is primarily motivated by his needs to develop and actualize his fullest potentialities and capacities. If a man has any other basic needs in any active, chronic sense, then he is simply an unhealthy man." (Maslow, 1943a, p. 393-394)

The gratification of a basic need must therefore be distinguished from the response to a need that occasionally arises. Everyone will normally eat every day, for instance, but as long as food supplies are not a problem, hunger will not be a final motive. In a situation where the need for food and drink is constantly satisfied, then one can say that these basic needs are *gratified*. The needs do not arise as motivators, even though they must be satisfied from time to time. One can also say that the basic needs only continue to play a role as derived motivations. Of course, there will still be striving for security or acquisition of knowledge, but in essence this occurs against the background of, or relative to, the need to fulfil one's potential as an involved being – a need which is perceived as deeper and of greater importance.

According to Maslow, several needs are already gratified in the very early years of life. Maslow was impressed by the fact that, as adults, certain people appeared to be mainly motivated by the desire for self-actualization, even if this was accompanied by serious deficits in the area of the basic needs. This seems to be an exception to the hierarchical order in which the needs act as motivators: "Perhaps more important than all these exceptions are the ones that involve ideals, high social standards, high values and the like. With such values people become martyrs; they will give up everything for the sake of a particular ideal, or value. These people may be understood, at least in part, by reference to one basic concept (or hypothesis), which may be called 'increased frustration-tolerance through early gratification'. People who have been satisfied in their earlier years seem to develop exceptional power to withstand present or future thwarting of these needs simply because they have a strong, healthy character structure as a result of basic satisfaction. They are the 'strong' people who can easily weather disagreement or opposition, who can

swim against the stream of public opinion and who can stand up for the truth at great personal cost. It is just the ones who have loved and been well loved, and who have had many deep friendships who can hold out against hatred, rejection or persecution. (...) It seems probable that the most important gratifications come in the first two years of life. That is to say, people who have been made secure and strong in the earliest years, tend to remain secure and strong thereafter in the face of whatever threatens." (Maslow, 1943a, p. 388)

In the self-actualizing person, therefore, a sort of inversion of the Maslow pyramid appears: in the series of needs and motivations, those that manifest themselves last now become primary. What was initially the top of the pyramid becomes the new base. In this respect also, therefore, there is a 'turning inside out' in the transition from the basic need to the meta-needs [see 4 - 1].

An important element of Maslow's theory of motivation is the proposition that the basic needs can indeed be fully gratified. These needs are not inexhaustible. The logical conclusion is that the approach to the basic needs has to be from a 'negative' direction, since what we are essentially talking about is the removal of deficiencies and annoyances – not the fulfilment of the unlimited cravings of 'homo economicus'. Once these deficiencies are removed, the inversion occurs and the meta-needs then become the driving force of our actions.

### **The authoritarian character according to Maslow**

According to Maslow, the key to the authoritarian personality can be found in a specific view of mankind and the world: "Like other psychologically insecure people, the authoritarian person lives in a world which may be conceived to be pictured by him as a sort of jungle in which man's hand is necessarily against every other man's, in which the whole world is conceived of as dangerous, threatening, or at least challenging, and in which human beings are conceived of as primarily selfish, or evil and stupid. To carry the analogy further, this jungle is peopled with animals who either eat or are eaten, who are either to be feared or despised. One's safety lies in one's own strength and this strength consists primarily in the power to dominate. If one is not strong enough the only alternative is to find a strong protector. If this protector is strong enough and can be relied upon, then peace of a certain sort is possible to the individual (...) Once granted this world-view, everything that the authoritarian person does is logical and sensible. (...) If the world is actually jungle-like for an individual, and if human beings have behaved to him as wild animals behave, then the authoritarian is perfectly justified in all his suspicions, hostilities, and anxieties. If the world is not a jungle, if people are not completely cruel, selfish, and egocentric, then, and only then is the authoritarian wrong." (Maslow, 1943b, 1973, p. 141) However, Maslow states that only a small number of people (in particular, pronounced psychopaths) match the image of the human being portrayed by the authoritarian personality.

Maslow includes the following in his characterisation of the differences between the 'authoritarian personality' and the 'democratic personality':

- The authoritarian personality shows a preference for hierarchy. "People are ranked on a vertical scale as if they were on a ladder, and they are divided into those above and those below the subject on this ladder. The democratic person in contrast tends (in the pure case) to respect other human beings in a very basic fashion as different from each other, rather than better or worse. He is more willing to allow for

their own tastes, goals, and personal autonomy so long as no one else is hurt thereby. Furthermore, he tends to like them rather than dislike them and to assume that probably they are, if given the chance, essentially good rather than bad individuals." (Maslow 1943b, 1973, p.142)

- The authoritarian personality shows the tendency to generalise 'superiority' and 'inferiority'. Stronger people are considered superior in all domains. In its most caricatured form, we recognise this in the personality cults surrounding dictators like Mao or Kim il Sung. Propaganda slowly converts such characters into capable leaders or outstanding writers, artists, scientists and sportsmen [or women]. This type of personality cult takes advantage of the tendency for authoritarian-minded people to generalise. The democratic-minded individual does not show this tendency to generalisation, but sees superiority or inferiority only in specific, functional domains and in relation to the capacity for tackling tasks efficiently.
- The authoritarian personality shows a strong craving for power (power is essential to survival in a jungle). The democratic personality seeks strength rather than power.
- The authoritarian personality shows a strong tendency to see others "... as tools, as means to his end, as pawns on his chessboard, as objects to be exploited." (Maslow, 1943b, 1973, p.145) Here we find another reason why an authoritarian person will usually be opposed to direct democracy.

An important element, which Maslow also addresses, is the tendency of authoritarian people to reinterpret in an authoritarian sense attitudes and beliefs which are diametrically opposed to the philosophy of the jungle. Maslow gives as an example: "... the Christian ideal [that] has been corrupted and perverted into its very opposite by various churches and other organized groups." (Maslow 1943b, 1973, p. 147)

### **Inner motivation and democratic disposition**

Maslow's 'self-actualizing' person is one whose daily activities and feelings about life are not dominated by basic needs that have remained ungratified. Self-actualizing people act out of very strong, personalised inner motives: "Just as the tree needs sunshine, and water, and food, so do most people need love, safety, and the other basic need gratifications which can come only from without. But once these external satisfiers are obtained, once these inner deficiencies are satisfied by outside satisfiers, the true problem of individual human development begins, i.e., self-actualization." (Maslow 1950, 1973, p.188)

One of the most surprising characteristics that Maslow emphasizes with this type of person is their 'democratic character structure': "All my subjects without exception may be said to be democratic people in the deepest possible sense. (...) These people have all the obvious or superficial democratic characteristics. They can be, and are, friendly with anyone of suitable character, regardless of class, education, political belief, race, or colour. As a matter of fact, it often seems as if they are not even aware of these differences, which are for the average person so obvious and so important. They have not only this most obvious quality, but their democratic feeling goes deeper as well. For instance, they find it possible to learn from anybody who has something to teach them – no matter what other characteristics he may have. In such

a learning relationship, they do not try to maintain any outward 'dignity' or to maintain status or age prestige and the like. It should even be said that my subjects share a quality that could be called 'humility' of a certain type. They are all quite aware of their own worth, so that there is no humbleness of the cringing or of the designing and calculating type. They are equally aware of how little they know in comparison with what could be known and what is known by others. Because of this it is possible for them without pose to be honestly respectful, and even humble, before people who can teach them something that they do not know, or who have a skill they do not possess. (...) These individuals, themselves elite, select for their friends elite, but this is an elite of character, capacity, and talent, rather than of birth, race, blood, name, family, age, youth, fame, or power. Most profound, but also most vague, is the hard-to-get-at tendency to give a certain quantum of respect to any human being just because he is a human individual..." (Maslow 1950, 1973, p. 193-194)

Maslow considers the 'self-actualizing person', therefore, as an essentially democratic being. By contrast, the authoritarian disposition is an attitude that springs from the lack of gratification of the basic needs.

Maslow's characterisation of democratic and authoritarian personalities corresponds with Putnam's distinction between 'civicness' and 'amoral familism'.

It is noteworthy that people and societies of both types seem to perpetuate and reinforce themselves. Democracy and civic sense generate more democracy and civic sense. On the other hand, according to Maslow, authoritarian personalities will cause society to become less democratic. They transform society into the image of the social jungle in which they believe – in which the strong take unrestrained advantage of the weak.

### Aristotle on happiness

Neither democracy nor economic activity are goals in themselves. They are only important to the extent that they serve human happiness and human welfare. Good politics does not have to make people happy, but politics does have the duty to remove social barriers to the creation of happiness. But what is happiness?

Aristotle gave one of the oldest definitions in his *Ethica Nicomachea*. The *Ethica Nicomachea* is his maturest work in the area of ethics, and its very first book is devoted to the question of happiness. Aristotle begins with the straightforward observation that human beings perform a very wide range of different actions, with very diverse goals. A medical treatment is, for example, aimed at healing; the saddler's work is intended to manufacture a saddle etc. But the immediate aims are, in their turn, subordinate to other, wider or higher objectives. The saddler makes the saddle for the same higher reason as the horse-breeder rears a horse: specifically, to make [horse] riding possible. But why do people strive to ride horses? Aristotle asked himself: is there not some highest, ultimate goal behind all these intermediate aims? Is there something that we strive for because it is simply good in itself? For Aristotle, the ultimate goal was happiness. Money and riches, for example, are not desired for their own sake, but because they are believed to bring happiness. Happiness, on the other hand, is a goal that needs no further explanation.

In what does this happiness consist? In order to discover this Aristotle goes in search of what it is that makes us human;

what it is that distinguishes us from animals or plants. Happiness is to be found in those acts which are in harmony with the true nature of the human being and which therefore need no further justification. And because humans are in essence social and moral beings, Aristotle arrives at the definition of happiness as "...a certain activity of the soul in harmony with virtue." In a deeper sense, virtuous acts – which are always ultimately one or other form of readiness to help others – are gratifying in themselves. Our real connectedness to and involvement with 'the other' is our happiness. Aristotle's view accords with Maslow's theory of meta-needs: the happiness of the fulfilled (in Maslow's terms: 'gratified') human consists in the readiness to help (Aristotle's 'virtue').

However, Aristotle also knew that many people hold other views, and that the same person can hold different views in different situations. Aristotle was perfectly aware of the importance of what Maslow calls the 'basic needs': "Yet (...) [happiness] needs the external goods as well; for it is impossible, or not easy, to do noble acts without the proper equipment. In many actions we use friends and riches and political power as instruments; and there are some things the lack of which takes the lustre from happiness, such as good birth, goodly children, beauty; for the man who is very ugly in appearance or ill-born or solitary and childless is not very likely to be happy, and perhaps a man would be still less likely if he had thoroughly bad children or friends or had lost good children or friends by death. (...) then, happiness seems to need this sort of prosperity in addition; for which reason some identify happiness with good fortune, though others identify it with virtue."

Aristotle's concept can be reformulated in Maslow's terminology as follows: as long as the basic needs are not gratified, the pleasure that ensues from satisfying these basic needs can be experienced as a substitute for the real happiness which results from the gratification of the meta-needs, i.e. from the striving for connectedness.

Aristotle did not believe that happiness ensues from satisfying the basic needs. Adequate satisfaction of the basic needs is an essential but not sufficient prerequisite for happiness. People also have the meta-need to behave virtuously and to strive for 'the good'. This means that at a general societal level they need democracy, because people must be able to strive for 'what is beautiful in themselves' in this area of life too (see 4-2). Frank (1997) is quite correct in observing that the majority of people would rather be a dissatisfied Socrates than a fully satiated pig. The pig does not know happiness because it cannot strive for 'the good'; but it certainly knows the pleasure of satiation. In 1954, Olds and Milner discovered that the stimulation of certain parts of the cerebral cortex of rats seemed to cause an intense feeling of pleasure in these rodents. The rats lost their interest in everything else if they were enabled to create this stimulation for themselves. Ng (1997) suggests that we could make a substantial leap forwards in realising 'happiness for all' by providing people with the technical possibility for such continuous cerebral cortex stimulation. Such mass production of 'happiness' would be inexpensive and very environmentally friendly. There's only one problem: human happiness has very much less to do with such guaranteed pleasure than much advertising would often have us believe. Happiness is not the same thing as pleasure. Being happy means: being able to be creative and helpful. Frank's and Ng's questions clearly show that Aristotle is correct in his concept of happiness, regardless of how idealistic and utopian his assertion may appear at first sight.

Perhaps there are two reasons why Aristotle's ideas about happiness (of which more below) were not generally shared. On the one hand, failure to satisfy the basic needs leads to fixation on the gratification of those needs, which means that the 'inversion' towards the gratification of the meta-needs does not take place. Striving for pleasure then becomes a surrogate for the striving for happiness. On the other hand, there is also the reality of evil. Maslow speaks of the 'Jonas complex': the wilful clinging to the basic needs and the conscious waiving of the meta-needs as motivators for our actions. That seemed to him to be the key to the evil behaviour of humans. Aristotle also knew about evil: "...there is found [in men] another element naturally opposed to the rational principle, which fights against and resists that principle. For exactly as paralysed limbs, when we intend to move them to the right, turn on the contrary to the left, so is it with the soul; the impulses of incontinent people move in contrary directions. But while in the body we see that which moves astray, in the soul we do not. No doubt, however, we must nonetheless suppose that in the soul too there is something contrary to the rational principle, resisting and opposing it."

The reality of evil demands *courage* from politicians. The expression 'political courage' usually suggests a situation in which 'unpopular measures' have to be implemented against the will of the people. This is not courage, but the undemocratic abuse of power. It is not courage, but cowardice, to avoid a confrontation with an idea that you consider wrong. Such ideas can only be defeated in an open democratic debate, in a contest of ideas. Those who avoid the contest, and instead seek to ensure victory by a show of force, only succeed in the long run in strengthening the malevolent forces in society. A political culture, in which the use of power by one person over another is accepted, is the natural biotope for evil. Real political courage does not consist in dealing with ideas thought to be wrong or harmful by using power, but rather by conducting open contests of ideas. People who have real political courage learn to recognise evil, but do not allow themselves to be frightened off by it. Opposing evil, political courage strives for a society in which the human desire for strong democracy and real involvement are satisfied.

## Democracy and happiness

Happiness has also been studied quantitatively. Frey and Stutzer (2002) provide a good overview of the most significant findings.

Happiness can be measured, of course, in the sense that you can just ask people how happy they are. Asking people to rate their general feeling of happiness on a scale from 'entirely unhappy' to 'perfectly happy' produces consistent and very useful results. People who consider themselves more than averagely happy are also rated by other people as happier. They smile more, are healthier, have fewer days off work, make social contacts more easily, etc. (Frey and Stutzer, 2002, p. 33). There are many different factors that have an effect on happiness.

Absolute wealth does not affect happiness, once a certain minimum has been achieved that allows the primary needs to be satisfied. In Japan, for example, real per capita income increased sixfold during the second half of the twentieth century, but this did not cause any increase in Japanese people's average sense of happiness. Relative wealth, on the other hand, does have an effect on the feeling of happiness. People who are poorer than their neighbours will, on average,

be less happy. On average, women are happier than men, married people are happier than unmarried people, people who believe in God are a bit happier than disbelievers, people who watch television a lot are on average unhappier than occasional viewers, and inhabitants of richer countries are usually happier than inhabitants of poorer countries.

Unemployment induces a very considerable loss of happiness. On a scale from 1 (not at all satisfied) to 4 (very satisfied), unemployment causes an average drop of about 0.33 [units]. This is the decline in the feeling of happiness due solely to unemployment i.e. after adjustments have been made for other factors, such as loss of income (Frey and Stutzer, 2002, p. 97). We can understand this effect in the light of the theories of Maslow and Aristotle. Work is an important opportunity for self-actualization for many people. It offers the opportunity, in the Aristotelian sense, to practice virtuous behaviour. This is confirmed by other studies, which indicate that people who are self-employed feel happier than people who work for an employer and who consequently have less control over the circumstances of their work. It is not only a person's own unemployment, but also that of other people that affects the feeling of happiness: "...a one-percentage-point increase in the general rate of unemployment from 9 percent (the European mean) to 10 percent reduces the declared level of satisfaction with life by 0.028 units on the four-point scale applied." (Frey and Stutzer, 2002, p.101).

Do citizens feel happier on average when they have the opportunity to decide on issues directly by referendum? A comparative study of the 26 Swiss cantons, which offer significantly different levels of opportunity for citizens to participate directly in legislation, provides an answer to this question. Frey and Stutzer reduced the extent to which direct decision-making is possible to a single parameter, the values of which can vary from 1 (not democratic) to 6 (very democratic). The canton of Basel-Landschaft (the predominantly rural area around the city of Basle) had the highest score (5.69) and the canton of Geneva the lowest (1.75). As well as using all sorts of other factors that reflect the demographic and economic differences between the cantons, Frey and Stutzer also applied another scale with ten gradations, which mark the degree of municipal autonomy in each canton.

The results show that citizens in the more democratic cantons are significantly happier on average. An increase of a single point on the 1 to 6 scale corresponds to an increase in the feeling of happiness by 0.11 units, which matches the effect of a transition from the lowest income category (below 2000 Swiss francs a month) to the next higher income category (from 2000 to 3000 Swiss francs a month).

More municipal autonomy also leads to an increase in reported happiness. However, Frey and Stutzer found that the two parameters are not independent of each other: it appears that in cantons with more direct democracy, greater municipal autonomy also seems to have arisen over time. This corresponds with the overall finding that politicians generally tend to aim for less local autonomy and more centralisation, whereas citizens usually desire more local autonomy.

The increase in the feeling of happiness has a general character: "The positive effect of direct democracy on happiness applies to all income classes, and is not restricted to a particular one (...) The benefits are distributed rather evenly among social classes." (Frey and Stutzer, p. 145, 149).

The availability of the citizens' initiative referendum can lead to more happiness in two ways. On the one hand, direct decision-making can lead to measures and laws that better reflect the citizens' wishes ('outcome utility'). And on the other hand, the opportunity to participate can itself be a source of happiness. In this latter case, the benefit is known as 'procedural utility' (benefit resulting from the decision-making procedure itself). It was possible to measure the effects of the two components separately by examining the happiness scores of foreigners who live in the various cantons. Until they have acquired Swiss citizenship, these people cannot vote in referendums and therefore do not benefit from 'procedural utility'; but they do have to live with the effects of a more or less efficient administration. The research showed that the non-Swiss citizens also reported a greater degree of happiness in the more democratic cantons, but the increase was less marked than with the Swiss citizens. The comparison of the effects in both Swiss and non-Swiss citizens leads to the conclusion that the largest proportion of the increase in happiness results from the simple fact of being able to

participate in the decision-making. The fact that the decisions reached are more in line with the citizens' wishes produces a real benefit, but it is not as great as the procedural utility: "...two-thirds of the positive effect of more extended direct-democratic participation rights is due to procedural utility. (...) The positive effect of participation rights is three times larger for citizens than it is for the foreigners – that is, a major part of the welfare gain from the favourable political process is due to procedural utility." (Frey and Stutzer, 2002, p.161-162, 167)

It should come as no surprise that democracy in itself works as a promoter of happiness. This is to be expected in the light of Maslow's theory. After all, people do not live by bread alone. They also have the meta-need to take their common fate into their own hands in solidarity with their fellow humans and be able to play their part in the shaping of society as individual moral beings. In Aristotelian terms: people need democracy so that they can strive to behave virtuously at a social level as well, and in this way find happiness.

#### **4-1: Not by bread alone**

How the Maslowian need for self-actualization can guide behaviour is illustrated by the following anecdote (published in the *Süddeutsche Zeitung* newspaper in Southern Germany on 22 January 1997; see Schuster et al, 1997, p. 581): "Manuel Lubian, a Mexican taxi driver, has returned the equivalent of some 44,000 Euros that a passenger had left in his cab. Lubian spent two days hunting through the hotels in the Mexican capital in order to find the owner of the bag containing cash, jewels and important papers. He refused the reward that the owner – a Bolivian senator – wanted to give him: "I thought that if I accepted the reward I would lose what is beautiful in myself."

Kohn (1990) quotes two examples of life-saving interventions by people who were not directly involved. A man who jumped onto the track in the New York subway to rescue a child from an approaching train told a reporter: "I would have died inside if I had not acted immediately. I would have considered myself worthless from then on." In another case, a man who dived into the Potomac River to rescue a driver from a sinking car said: "I just couldn't watch the guy drown. I think I jumped into the water out of self-defence. I wouldn't have been able to live with myself if he had drowned and I had done nothing." (p. 243)

These explanations point to a sometimes intensely experienced need to respond to an inner call to help another person. The extraordinary significance of Maslow's meta-need was already pointed to in the New Testament: "Man shall not live by bread alone, but by every word that proceeds from the mouth of God." (Matthew 4:4). People really live from responding to this call and 'die inside' if they ignore it.

Oliner and Oliner (1988) interviewed 406 people ('rescuers') who assisted Jews in going into hiding during the Nazi occupation in the Second World War, as well as a control group of 126 people who were not involved in such activities. In the majority of cases, the period of hiding lasted for several years. The Oliners' study revealed that the rescuers showed one special characteristic: they had no difficulty

in forging human relationships with people outside their own circles ('extensive relationships'). "What distinguished rescuers was not their lack of concern with self, external approval, or achievement, but rather their capacity for extensive relationships – their stronger sense of attachment to others and their feeling of responsibility for the welfare of others, including those outside their immediate familial or communal circles." (p. 243)

The Oliners' survey led them to conclude that this 'extensive personality' blossomed in a specific family environment, which they characterise as follows: "Parental discipline tends towards leniency; children frequently experience it as almost imperceptible. It includes a heavy dose of reasoning – explanations of why behaviours are inappropriate, often with reference to the consequences for others. Physical punishment is rare; when used, it tends to be a singular event rather than routine. Gratuitous punishment – punishment that serves as a cathartic release of aggression for the parent or is unrelated to the child's behaviour – almost never occurs. Simultaneously, however, parents set high standards they expect their children to meet, particularly with regard to caring for others. They implicitly or explicitly communicate the obligation to help others in a spirit of generosity, without concern for external rewards or reciprocity. Parents themselves model such behaviours, not only in relation to their children but also toward other family members and neighbours. Because they are expected to care for and about others while simultaneously being cared for, children are encouraged to develop qualities associated with caring. Dependability, responsibility, and self-reliance are valued because they facilitate taking care of oneself as well as others. Failures are regarded as learning experiences, with the presumption of eventual mastery, rather than inherent deficiencies of character, intellect, or skill. Out of such benevolent experiences, children learn to trust those around them. Securely rooted in their family relationships, they risk forming intimate relationships outside it." (p. 249-250)

The background of the opposite type (the 'restrictive' personality) is, according to the Oliners, usually characterised by weak family relationships, much more corporal punish-

ment (often indiscriminate), family values that rely heavily on conventions, and few relationships with outsiders, who are often judged in stereotypes.

Although there was no question of a deterministic link, the division into ‘extensive’ and ‘restrictive’ personalities produced a 70% certainty of accurately identifying whether or not a particular person had acted as a rescuer during the persecution of the Jews. Using Maslow’s terminology, one could say: lack of gratification of the basic needs in the early years produces authoritarian personality traits, which lead to behaviour that produces the same traits again in the next generation. We find again here the contrast described by Putnam between ‘civicness’ and ‘amoral familialism’. Both civicness and amoral familialism have the tendency to perpetuate themselves from generation to generation. Whether ‘what is beautiful in myself’ (Manuel Lubian) will come to expression depends largely on the social capital in the society in which one grew up.

## 4-2: Direct democracy, welfare and social capital

One of the few countries in which the effects of direct democracy on social capital can be directly studied is Switzerland. The extent and form of direct democracy differ – sometimes markedly – from canton to canton. Some of the 26 cantons have a well-defined system of direct democracy, while others have a type of administration that is much closer to the purely representative system, with far fewer opportunities for participation.

Frey (1997b) looked at a number of cantons to see whether there was a connection between the system of democracy and the citizens’ attitude to tax. In cantons where the citizens have extensive rights of participation in decision-making, the annual undeclared income per taxpayer was 1,600 Swiss francs (around 1,000 Euros) lower than the average for the 26 cantons; in cantons with less direct democracy, the undeclared income was actually 1,500 Swiss francs (about 900 Euros) higher than the overall average. The difference in undeclared income between the two types of cantons thus amounted to around 1,900 Euros a year per taxpayer. At a marginal tax rate of 30 to 35 percent, the figures meant an average difference in tax paid of some 625 Euros per taxpayer. In the UK, which has 35 million income tax payers, this would work out at some 21.9 billion Euros per year.

Frey investigated whether other factors, such as the level of fines or differences in average wealth between the cantons, could explain the effect. This appeared not to be the case. There is a high probability that the differences in the levels of tax evasion can be accounted for by the fact that taxpayers in cantons with a strong direct-democratic tradition are able to develop a stronger feeling of social solidarity and a greater sense of responsibility towards the administration.

The Swiss observations are confirmed by the findings of Abers (2000) in the Brazilian city of Porto Alegre, where in 1989 a direct-democratic system was introduced, in which the inhabitants themselves prepare the annual budget (see inset 2-1). The introduction of the participation process led immediately to a spectacular increase in efficiency. Whereas in the preceding years a maximum of 17 kilometres of

sewers were laid per year, this figure rose to an average of 46 kilometres a year during the period from 1989 to 1996. In the three years prior to the introduction, around 4 kilometres of roads were built per year. This became 20 kilometres a year afterwards and, moreover, the roads built then were of much higher quality. According to Abers, the participation process leads to a ‘culture of asking questions’. Participants at the budgeting meetings put questions about facts and figures, statements and decisions to the officials. The latter have to provide answers and are usually able to do so, but the constant possibility of having to account for their decisions publicly persuaded the administration to adopt measures that they could really justify. Transparency and accountability in the public domain improved considerably. It was no longer possible for money to just disappear, contracts were no longer overpriced, and promises were no longer forgotten. Before the introduction of the ‘Orçamento participativo’ there were close links between the construction companies and the local politicians: lucrative contracts were granted in exchange for support in the election campaigns. When the ‘Partido dos Trabalhadores’ (PT, Labour Party) first came to power, the building companies boycotted the public administration: they formed a cartel and refused to submit quotations for public work. Later, the cartel fell apart and the companies discovered that they no longer needed to pay bribes to get a contract. One extraordinarily interesting phenomenon was the rise in income the city began to enjoy from 1992 onwards, due to the decrease in tax evasion. People were much readier to pay their taxes. Abers saw two reasons for this: on the one hand, the taxpayers saw that their money was being spent efficiently and on things which were really necessary; and, on the other, the more the popularity of the PT increased, the more hardened evaders lost hope that a different administration would come to power that would grant them a tax amnesty.

## 4-3: Naïve cynicism

Naïve cynicism is an important term for direct democracy. The naïve cynic believes that other people attempt to take as much credit for themselves as possible and shift the responsibility for negative matters onto others as much as possible.

Indeed, research shows that people do not have a very clear perception of their contribution to the production of positive or negative achievements. There is a classic study by Ross and Sicoly (1979) on the attribution of responsibility by married couples. You could, for example, ask both partners what is their share of the task of walking the dog. The husband and wife might answer 70% and 50% respectively. The answers are incompatible, because the sum of the real percentages must of course be 100%. Almost always, however, the sum of the two answers proves to be more than 100%.

One could imagine that this is because both partners want to exaggerate their merits, but this is not correct. The sum of the estimated contributions for negative actions also usually appears to exceed 100%. A more probable explanation is that people remember their own performance better than the performances of others. Their own contribution – positive or negative – seems relatively larger as a proportion of what was achieved in total.

Another question is: how do people interpret this phenomenon? The danger lurking here is that one interprets the other person's inclination to overestimate his or her own positive contribution as an inclination to unfairly take the credit themselves. This interpretation is called 'naive cynicism'.

The study of phenomena such as naive cynicism is very important for direct democracy, because opponents of radical democracy generally refer to the alleged self-centred behaviour of most people as a justification for refusing the right of self-determination. A series of new studies (discussed by Kruger and Gilovich, 1999) identifies this phenomenon of naive cynicism more clearly.

An initial study examined the assignment of positive and negative activities by married couples. Both partners were allowed to estimate their own contribution and the contribution of their partner for ten activities – five positive and five negative. Positive activities were, for instance, 'energy saving at home, e.g. by turning off unnecessary lights' or 'resolving conflicts between the two of you'. On the other hand, 'breaking household goods' or 'causing an argument between the two of you' were typical negative activities.

Both partners were then also allowed to predict what the other partner would state as his or her own contribution. The result – in line with previous research – was that their own contributions were systematically overestimated. For the positive activities, the overestimate amounted to an average of 5.2% and for the negative activities 3.8%.

More important, however, is how each partner predicts the other's estimates. The partners predict of each other that they will exaggerate their own positive contribution and play down their negative contribution. On average, the estimate of the level of exaggeration for positive contributions was 9.7% higher than the actual level, and for negative contributions 16.1% lower than the actual.

People do not themselves behave selfishly, therefore, but they do have an ideological picture of the other as a selfish being (see also the research on this by Miller and Ratner, 1998, which is discussed in chapter 3). Also interesting in this context is recent research referred to by the authors, from which it appears that in couples who are happier with their relationship, partners tend to rate each other as less selfish than average.

Kruger and Gilovich conducted this research not only with couples, but also in a range of other situations. The result was the same each time, but one important difference emerged. In situations where people cooperate actively on the same goal, they not only appear not to overestimate their own merits, but also do not expect overestimates by other people. In competitive situations, on the other hand, a strong bias emerges: the inclination is very strong to suspect self-overestimation by someone with whom one is in a competitive relationship. Both situations can also occur in combination. Kruger and Gilovich studied, for example, '*vogelpik*' players who played in teams of two against two ('*vogelpik*' is a form of darts). It appeared that the players who were in the same team not only showed no tendency to overestimate or underestimate their own merits and shortcomings respectively; they also accurately predicted the estimates by their co-players, thus not suspecting them of selfish claims. The players from the opposing team, on the other hand, were suspected of overestimating their own merits by an average of 24.8%.

These kinds of research results are important for the issue of direct democracy in two ways.

First, they once more illustrate that most people show an inclination to attribute lower moral standards to other people than to themselves. There is therefore an undeserved mutual mistrust, which opponents of direct democracy rely on to defend the current patronising system.

But, secondly, this research also shows that the mutual mistrust is overcome by shared activities. On this point, then, a logical bridge appears between the research by Kruger and Gilovich and Frey's research on the impact of direct democracy on tax fraud, mentioned in inset 4-2. Active democracy boils down to a shared activity of the citizens in shaping society. This activity enables citizens to observe each other more closely and better assess each other, and the mutual mistrust ebbs away. The rather undemocratic and competitively oriented society that we currently know, on the other hand, is a breeding ground for mutual mistrust.

## 5. Lessons from direct democracy in practice

### Switzerland

Switzerland is the only country, except for the tiny principality of Liechtenstein, which has a highly structured system of direct democracy at the national level. A similar system of direct decision-making by the citizens exists only in certain states of the United States, with California as the typical example. But there is no direct democracy at federal level in the United States, which means that a whole range of powers there lie beyond the reach of the referendum.

“Switzerland is the only nation in the world where political life truly revolves around the referendum. The country of 6.5 million shuns popular leaders, and the division of executive authority among the seven members of its Federal Council further discourages the politics of personality. When individual political figures do happen to rise above the multitude, it is almost always on the shoulders of a referendum campaign. Legislation in the Federal Assembly is an intricate dance of avoiding or winning a popular vote. The great political moments of modern Switzerland have occurred not in the following of bold statesmen but in the national debates that have drawn the masses to the polls to decide their country’s future.” (Kobach, 1994, p. 98)

Direct democracy in Switzerland comes from various sources. First there was the tradition of local and cantonal public assemblies in a part of what is now Switzerland, in which the male citizens met annually in the market square to make the most important decisions (see 2-1). This dates from at least the 13<sup>th</sup> century. Secondly, there was the effect of foreign revolutions. Similarly to other parts of Europe, the first national referendum in Switzerland was held in 1802 on a new constitution under the protectorate of the invading French. The third factor was new political movements. In the first half of the 19<sup>th</sup> century, it was mainly the ‘radical’ liberals – who distinguished themselves from the ordinary liberals because they did not believe that representative democracy was sufficient – who expanded the use of referendums in Switzerland. Then, however, the socialists and the Catholics noticed that the liberals certainly did not represent the majority of citizens on all subjects and so they became the most important driving force for the further expansion of direct democracy (Kobach, 1993). An important person in the socialist movement was the German Moritz Rittinghausen. He was the first to elaborate the concept of the citizens’ initiative referendum, in the *Neue Rheinische Zeitung* newspaper, when Karl Marx was publishing it. When the newspaper was banned, Rittinghausen took refuge in France, where, from 1850 onwards, he wrote a series of articles that promoted direct-democratic decision-making. His views met with great approval, especially with the followers of Fourier. Via this French detour, Rittinghausen’s ideas reached the Swiss workers’ movement. (Weihrauch, 1989, p. 15-16) The socialists played a significant role in the ‘Democratic Movement’, which agitated from 1860 onwards for the further expansion of direct-democratic rights in large parts of Switzerland. A binding popular initiative referendum (where citizens can initiate a referendum on proposals they have written themselves), was held for the first time in the canton of Zurich in 1869.

The ideal of direct democracy was also popular with socialist movements in many European countries. For example,

‘Volksgesetzgebung’ (people’s legislation) had already appeared in the founding programme of the German Sozialdemokratische Arbeiterpartei (social democratic workers’ party) in 1869. In the programmes of Gotha (1875) and Erfurt (1891), direct democracy occupied a key position as well. Karl Marx, on the other hand, expressed strong criticism of the direct-democratic ideal.

### Instruments

At the federal level in Switzerland, with around 4.8 million people entitled to vote, the following three direct-democratic instruments are the most important. All Swiss referendums are binding at every level.

The *obligatory referendum* was introduced in 1848. With each amendment to the constitution, the government is obliged to call a referendum, as well as for Switzerland’s accession to international organisations and urgent laws for which the optional referendum is not valid.

The *optional referendum* dates from 1874. If 50,000 citizens give their signatures within 100 days after the official publication of a parliamentary act, they can force a referendum on the law. Initially this did not apply to laws that the parliament had pronounced as urgent. But when the parliament started to misuse this facility and began to declare all kinds of laws urgent, a referendum determined that urgent laws may come into effect immediately, but must always be subject to an obligatory referendum afterwards.

The *constitutional popular initiative* (abbreviated to *popular initiative*), introduced in 1891, enables citizens to obtain a referendum on their own written proposals if they collect 100,000 signatures within 18 months. This proposal can either be generally formulated, and must be then be converted into legislation by a parliamentary commission, or be in the form of precisely defined paragraphs of law to which the parliament cannot make any amendment. If adopted, the proposal becomes part of the constitution. In practice, however, citizens can also use this instrument for subjects that are usually regulated by ordinary legislation. For this reason, the Swiss constitution is a remarkable mixture of national principles and ‘ordinary’ policy. The Swiss are attempting to overcome this problem by introducing the *general popular initiative*. This was approved by referendum in February 2003, but only entered into force in 2006. This allows citizens, after collecting 100,000 signatures, to submit a general proposal to the parliament, which then has the freedom to decide whether to make it into a bill or an amendment to the constitution. This is then subject to a referendum.

The popular initiative enables the Swiss to call for a referendum on virtually any issue. The only substantive exceptions are some binding provisions of international law, such as the prohibition on genocide and slavery. Furthermore, the popular initiative must meet the requirements of unity of form and content (for example, a popular initiative cannot contain two subjects). Finally, the customary law applies that practically unfeasible proposals can also be refused; a popular initiative was once declared invalid because it proposed reducing expenditure for years that would have already ended before the referendum was to be held. The parliament reviews all

these issues. But popular initiatives on, for instance, taxes, state expenditure, military issues and even the form of government are commonplace in Switzerland.

The popular initiative is the cornerstone of direct democracy. After all, in the optional referendum, citizens only respond to actions of the parliament that are still being debated. With the popular initiative, however, they actively determine the political agenda.

Switzerland does not hold referendums that have been drawn up by the parliament or the government – also known as plebiscites. In Switzerland, referendums are either prescribed by the constitution, or initiated by citizens using the method of collecting signatures. With ever-increasing numbers of referendums being held in Europe, the most common form internationally is unfortunately still the plebiscite. These are generally non-binding ‘referendums’ that are drawn up by politicians in power in order to provide their policy with extraordinary legitimacy, or because coalitions or parties have internal disagreements. The rules of the game are frequently adapted in each case, in the manner that seems best for the politicians at that moment. This has very little to do with real direct democracy.

### **Direct democracy in practice**

From 1848 to the end of 2004, 531 referendums were held at federal level: 187 obligatory referendums, 152 optional referendums and 192 popular initiatives. Turnout averaged more than 50 percent (with exceptions of up to 80 percent) and, moreover, for some time now has been around 10 percentage points higher than the turnout for parliamentary elections. A vast archive of these referendums is maintained on the government website at [www.admin.ch](http://www.admin.ch). At all levels – municipal, cantonal and federal – more than 200 referendums are held each year in Switzerland.

To illustrate, we will examine the federal referendums of 2005. In Switzerland, all referendums and elections are bundled into two to four national voting days each year. Citizens then vote not only in municipal, cantonal and federal elections, but also on referendums. There were three voting days in 2005.

- On 5 June 2005, there were two optional referendums on the ballot sheet. The first contested the approval by the parliament of the Schengen/Dublin Accords. The Schengen Agreement abolished systematic passport controls. The Dublin Accords seek to prevent asylum hopping, because asylum seekers are now allowed to seek asylum in only one participating country. The parliamentary decision was approved by 54.6 percent of the voters. The second referendum contested an act of parliament that made a registered partnership possible for gay and lesbian couples. The act was approved by 58.0 percent of the voters.
- On 25 September 2005, a single optional referendum was held. The parliament wanted a treaty with the European Union, which controls the free movement of people within the EU, to be extended step-by-step to the 10 new EU member states. At the same time, measures were proposed to prevent low wages and social dumping in Switzerland. This was contested by four committees, which were afraid of uncontrolled immigration and bad working conditions. The citizens approved the extension of the treaty, however, by 56.0 percent.
- On 27 November, there was both a popular initiative and an optional referendum. The popular initiative sought a 5-year

prohibition on cultivating plants and keeping animals that had been genetically modified. The government and parliament recommended a ‘no’ on the grounds that these issues should already be sufficiently covered by existing legislation. However, the popular initiative was adopted by 55.7 percent of the population.

- The optional referendum wanted to block an act of parliament that was aimed at increasing the possibilities for the sale of goods at railway stations and airports on Sundays. The trade unions started an initiative for a referendum on this issue. They were afraid that Sunday was increasingly becoming an ordinary working day. The act of parliament was nevertheless approved by an extremely narrow majority of 50.6 percent.

Laws that were approved by the Swiss parliament and subsequently contested by an optional referendum had about a 50 percent chance of surviving the popular vote during the period from 1874 to 2004. This means that in one out of every two cases the parliamentary act proved to be against the wishes of the majority of the people. There is no reason to assume that the Swiss parliament diverges more strongly from the will of the people than the representative bodies in other countries. The contrary is more likely to be true: precisely because Swiss members of parliament know that optional referendums are possible, they are very prudent in their legislative work. The parliament’s proposals for constitutional amendments or membership of international organisations were approved in 73% of cases. Popular initiatives, on the other hand, had only a 10% chance of succeeding during the same period. On the smaller number of occasions when the parliament used its right to make a counter proposal, this was accepted in six out of ten cases. The Swiss are cautious and would not accept proposals that clearly showed weaknesses. At the cantonal level, a higher percentage of popular initiatives is approved.

However, on the basis of these figures, it would be incorrect to state that the popular initiative is only window dressing. In particular, popular initiatives often have an effect, even when they do not gain a majority of the vote. One of the functions of the popular initiative is, for example, the opportunity for a minority to make a subject an issue of national attention. This results in issues being discussed in Switzerland, which, elsewhere, would not receive any serious discussion in the debates dominated by the political parties. In Switzerland, this frequently leads to indirect responses from politicians. Even when an issue has been unsuccessful, the parliament or government will still meet the initiators half-way by granting some of their demands. Kaufmann et al. (2005, p. 49) speak of “the country of the satisfied losers” in this context. This is further encouraged because the initiators of a popular initiative have the right to withdraw the initiative prior to the vote. After submission of the signatures, there is quite regularly a negotiation process between parliament and applicants, which leads to popular initiatives being withdrawn by the applicants in a third of all cases. “Anyone who questions initiators, studies sources and analyses the political playing field, reaches the conclusion that approximately half of all initiators of popular initiatives believe that they have achieved something that made the effort worthwhile, and which would not have been possible without the popular initiative.” (Gross 1999, p. 93)

One example of the above is the popular initiative concerning the total abolition of the Swiss army, which was started at the beginning of the 1980s and came to the vote in 1989.

Until then, the ubiquitous army had been something of a sacred cow in Switzerland. Almost all men were subject to military service, there was no alternative civil duty and refresher exercises were arranged up until middle age. The popular initiative was started by some young social democrats, not so much because they believed that they could acquire a majority, but because they believed that there was much more resistance to the army than could be inferred from the official debates, and they wanted to prove this. In the beginning, everyone thought that only a handful of the Swiss would vote for this proposal. When the debates in the run-up to the referendum became increasingly heated, the government stated that it would be a disaster for the nation if more than 10 percent of the citizens voted for abolition. All the important parties, except for the social democrats, who refrained from issuing any voting recommendation, spoke out against the initiative; only the extreme left, a very fringe group in Switzerland, supported the proposal. Even the most important socio-economic partners (except for the abstentionist '*Schweizerische Gewerkschaftsbund*' – the Swiss trade union confederation) and the government and parliament, of course, opposed the initiative. When the referendum was held on 26 November 1989, the 35.6% of 'yes' votes in favour of abolition, combined with the high turnout of almost 70%, caused a shock throughout the country. The pacifists celebrated exuberantly, because they had achieved their goal. Various measures were swiftly introduced to soften the now public opposition to the army, such as the introduction of alternative civil duties, which was approved by referendum with an exceptional majority of 82.5% in December 1991. The army was also considerably scaled down during the following years. These actions probably contributed to the opposition to the army diminishing and when, in December 2001, there was another vote on a popular initiative for abolition of the army, the number of supporters of abolition had fallen to 21.9%. The topic of a total abolition of the army would never have been placed seriously on the agenda in a representative system.

A referendum must never be viewed in isolation as something absolute. Referendums are like the beats of the timpani in a symphony. If the vote goes against a proposal at a specific point in time, this can still initiate a process of debate and contemplation that contributes to the same proposal actually being able to obtain majority approval many years later. A social learning process has taken place, and the power of persuasion has turned a minority into a majority. The policy then has broad support. The circumstances may also have changed, so that a proposal that was initially unacceptable now seems to offer good prospects. An example of this is membership of the United Nations. In March 1986, a referendum was held on membership of the United Nations. The government, the parliament and all the significant parties and interest groups argued in favour of membership. But only 24.3% of Swiss voters voted to join. At that time the Cold War was still at its height and the Swiss, who very fiercely defend their independence and neutrality concerning military blocks and conflicts, were afraid that membership of the UN would lead to Switzerland taking sides in conflicts. Years later, supporters started a popular initiative and, when it came to the vote in March 2002, support had grown to 54.6% and Switzerland became the 190<sup>th</sup> member of the UN. What played a part in the public debate was not only that the Cold War had ended, but also that the Swiss understood that globalisation meant that they could not remain aloof from everything, and that UN membership did not mean surrendering any important democratic rights to an undemocratic

international body. The latter is the case with the European Union, however, and therefore there is currently a large Swiss majority against membership of the EU.

Popular initiatives have also played a role in the history of Switzerland by improving and deepening democracy. A very important popular initiative was the one "*Für die Proporzwahl der Nationalräte*" ('For proportional representation in the parliament'), which was adopted by 66.8% of the citizens in November 1918 (the *Nationalrat* is the larger of the two houses of parliament). This replaced the majority electoral system (in which, within each electoral district, the candidate with the most votes represents the entire district, as in Great Britain or the United States) with a proportional electoral system (in which the entire country is considered as a single electoral district). A majority electoral system leads to large distortions, because minorities then have much less representation. After all, because minorities live spread throughout the country, they always come off worst within their electoral district, and they have no representatives in the parliament. The introduction of the proportional electoral system has, together with direct democracy, made a great contribution to the Swiss '*Konkordanz*' (consensus) system. In this system, all the political parties of any size have a permanent seat in the seven-person strong government. The government has no permanent premier; the chairmanship of the government rotates annually among the seven members. The small parties in the parliament can nevertheless take part in government thanks to the popular initiative. Even if they only represent a smaller group for their entire manifesto, they can still have some individual manifesto issues for which they do have majority support. By threatening a popular initiative they can draw attention to these issues. Up until the Second World War, urgent federal laws were not subject to the corrective referendum. In order to still push through regulations that were contrary to the will of the people, the government and parliament quite often stated that the laws concerned were 'urgent' even though that was not actually the case. A popular initiative was launched against this practice: henceforth, 'urgent' laws would be subject to a compulsory referendum within the year. Government and parliament argued very strongly against this popular initiative, which would significantly restrict their power. But the proposal was nevertheless adopted in 1946. A referendum in 2003 approved the introduction of the 'general popular initiative', with which citizens only submit a general proposal and leave it to the parliament to decide whether to convert this into legislation or into an amendment to the constitution. At the same time, the optional referendum was also made applicable to international treaties that contain important provisions which, in order to be implemented nationally, require new laws or amendments to existing laws.

Because all the referendum rights, including the signature thresholds, the absence of participation quorums, and the specific subject exclusions, are set out in the constitution, and because the constitution can only be changed by a referendum, Swiss citizens are in charge of their own democracy. According to surveys, nine out of ten Swiss people are against any infringement of their direct-democratic rights (Kaufmann et al., 2005, p. 51). The trend in Switzerland is therefore towards an expansion of direct democracy and a lowering of the thresholds. The number of referendums continues to grow. Between 1980 and 1989, there was an average of 6.2 federal referendums per year; an average of 10 referendums a year from 1990 to 1999; and an annual average of 11.4 referendums from 2000 to 2004.

Do citizens by definition always vote for an expansion of direct democracy? No. In 1995, the population of the canton of Berne, which also contains the Swiss capital Berne, approved a reform of direct democracy which meant that the number of obligatory referendums (on, among other things, amendments to the constitution) was considerably limited. There were so many proposals of minor importance on the agenda that the citizens approved a reduction in these. They preferred to concentrate on the most important issues.

### **Some peculiarities of Swiss direct democracy:**

- It can take a very long time before voting on a popular initiative actually takes place. Once the necessary signatures have been collected, the '*Bundesrat*' (the Swiss government) has two years to prepare the referendum. If the '*Bundesversammlung*' (both houses of the Swiss parliament) prepares a counterproposal, another six months is added. Moreover, calculating from the time the popular initiative is submitted, the parliament has no less than four years to decide whether or not it accepts the popular initiative. The parliament can, of course, simply approve the legislative proposal for which a popular initiative is submitted. In that case, the initiators have achieved their goal and can withdraw their initiative. If the parliament draws up a counterproposal, the voters can vote for the original popular initiative or for the parliament's counterproposal. These long times are seen as an advantage by many supporters of direct democracy. They enable sufficient time for a thorough social debate about the pros and cons of the proposal.
- There is no check on the constitutional nature of popular initiatives, neither by the parliament, nor by a court of law. It is true that the parliament does check the popular initiative on a small number of binding provisions of international law (see above), but this is very limited. In Swiss history, only one popular initiative has ever been declared invalid because of such a conflict (as it happens, because of conflict with the 'non-refoulement' principle – the sending back of a refugee to a country where he or she would be in danger). It is quite possible to introduce the death sentence by means of a referendum in Switzerland, but this has never been tried. Direct democracy has not led to more violations of human rights than in other European countries. There is a considerable list of rights for minorities that were actually approved by means of referendums.
- Popular initiatives at the federal level, as well as constitutional changes, are only accepted if there is a double majority in favour: there must be a majority for the proposal from both the individual voters and the cantons. The reason for this is that Switzerland is a country of minorities: there are, for example, German-speaking, French-speaking, Italian and Rhaeto-Romance cantons. The double majority means that a few large cantons cannot easily outvote the smaller ones.
- Switzerland does not provide any financial support from the government for groups of citizens who launch a referendum. These citizens' groups also do not have to open their accounts for public inspection.
- All Swiss people entitled to vote, however, do receive a referendum brochure in their letterbox well before each polling day. This includes, among other things, the complete text of the law on which they will vote, plus a factual summary on a single A4 page, and arguments from both the government and the citizens' committee that initiated the referendum.

The citizens' committee has the right to supply its own text. These texts are also always available to read on the federal government's website at [www.admin.ch](http://www.admin.ch). A large proportion of this website is dedicated to direct democracy.

- With popular initiatives, citizens have the right to assistance from civil servants with the exact formulation of their proposal.
- Since the general introduction of postal voting, a large majority of Swiss voters use this system. All Swiss people receive their polling cards by post and can decide for themselves whether they will hand them in on the voting day (always a Sunday) in the polling station, or send them in advance by mail. There is a special procedure for this, with two envelopes to safeguard the secret ballot.

### **Recall**

Besides the popular initiative, there is also the recall or '*Abberufung*', which is an interesting direct-democratic procedure. Recall means that an elected or public official (such as a judge, for instance) can be removed from office by a popular initiative. This system does exist in several Swiss cantons, but not at federal level. In Berne, Lucerne, Schaffhausen, Thurgau and Ticino, citizens can recall the cantonal parliament. Recalling the cantonal government is possible in Schaffhausen, Solothurn, Thurgau and Ticino. After the recall, new elections take place. In practice, however, this has never happened yet.

### **Local democracy**

Besides the federal level, it is chiefly the cantonal and municipal levels that are important in Switzerland.

The cantons levy more or less the same amount of tax as central government does. Their powers are very extensive. Section 3 of the Swiss federal constitution states that the cantons are sovereign; all powers that are not explicitly delegated to the federal level by the constitution automatically belong to the cantons. Among other things, this includes: the police, most education, economic policy legislation and a large proportion of social security.

The direct-democratic institutions vary quite considerably from canton to canton [see 4-2].

In Zurich, the largest canton, 10,000 signatures are sufficient for a popular initiative. An optional referendum only requires 5,000 signatures. Furthermore, all amendments to the constitution, as well as all expenditure of more than 2 million Swiss francs (approx. £900,000) must be approved by the citizens by referendum. During the last decade, there was an annual average of more than nine cantonal referendums (besides the federal and municipal referendums, which are always held simultaneously). The top year, with 19 cantonal referendums, was 1999. Sometimes there are major economic interests at stake, as was the case in the 1996 referendum on the extension of Zurich airport at a cost of 873 million Swiss francs (£400 million).

An unusual institution in the Zurich canton is the so-called individual initiative (*Einzelinitiative*). A single person has the right to submit a proposal to the cantonal council. When such a proposal receives the support of at least 60 council members, a referendum can be held. In 1995, for instance, citizen Albert Jörger was able to use this process to initiate a change in the way teachers were appointed in the canton's schools.

The municipalities levy their own taxes on income and property. In Switzerland, the municipalities spend a little less per resident than central government does. Beedham (1996) gives the example of the municipality of Kilchberg (7,000 residents) on the shores of Lake Zurich. The village arranges its own education, has its own fire brigade, an old people's home, and its own policemen with two police boats on the lake. The municipality gives its few very poor people 3,000 Swiss francs per person a month (more than £1,300 a month), and also helps a handful of refugees, mainly from Sri Lanka. There is a municipal council of seven elected councillors, who monitor the work of the small number of municipal officials. The real power of decision, however, lies with the public assembly that meets four times a year. The public assemblies are usually attended by some 400 municipal residents; sometimes several hundred more when there is something special on the agenda. These meetings set the tax rates, approve new municipal byelaws, discuss the municipal accounts, consider construction plans, etc. These quarterly public assemblies constitute the highest level of municipal authority; the seven-person municipal council presents its recommendations to the meeting. Decisions are made by a show of hands. A written secret ballot can be asked for by one third of the people present, but this option has never been used to date. The citizens who attend have great powers. Fifteen signatures are sufficient to obtain a municipal referendum via the public assembly, but this seldom occurs.

Kilchberg's public assembly once more illustrates the absurdity of participation quorums (chapter 2). A supporter of the quorum system would probably say that a public assembly at which 400 of the 7,000 residents were present is 'not representative'. In reality, the public assembly constitutes a super-representative municipal council. This large municipal council has a mandate, just like a traditionally elected municipal council. Anyone who goes to the meeting is a mandatory; anyone who stays at home gives a mandate to the meeting. And Kilchberg is well managed. The allegation that direct popular management leads to failures is disproved there in practice.

### **Effects of Swiss direct democracy**

The many referendums that have been held over more than 150 years in Switzerland provide a goldmine of information on what happens if the people are able to take their destiny into their own hands. A group of economists and political scientists from the universities of Zürich and St. Gallen – Bruno S. Frey, Reiner Eichenberger, Alois Stutzer, Lars P. Feld, Gebhard Kirchgässner, Marcel R. Savioz and others – have for some time been systematically studying direct democracy's effects on policy and society. To this end, they make use of the fact that large differences exist in the degree of direct democracy that Swiss cantons have. Because the cantons also have major powers – Switzerland is in fact a confederate cooperation between sovereign cantons – it is possible to measure the specific effects of direct democracy in many areas. This means, of course, that in their statistical calculations they always discounted the other factors that could influence the studied relationship (the *ceteris paribus* principle [other things being equal]). In 1999, Kirchgässner, Feld and Savioz summarised a large number of studies in the study *Die Direkte Demokratie: Modern, erfolgreich, entwicklungs- und exportfähig* ('Direct Democracy: Modern, successful, expandable and exportable'). But a lot of new studies have also been published since then. Several of the most striking research results are shown below:

- Feld and Savioz (1997) took an accurate index of the degree of direct democracy in all the Swiss cantons and correlated this with the economic performance of the cantons at various times between 1982 and 1993. After having performed extensive processing and excluding alternative explanations, they concluded that, depending on the point in time, the economic performance in the cantons with direct democracy was between 5.4 and 15 percent higher than in the representative cantons. "The coexistence of representative and direct democracies in Switzerland raises a natural question: if direct democracy is more efficient than representative democracy, why do the representative democratic cantons not adopt the successful strategies of their neighbours?" asked Feld and Savioz (1997, p. 529).

- Pommerehne surveyed the 103 largest towns and cities of Switzerland on the link between direct democracy and the efficiency of the government, with the treatment of waste as the example. In the towns and cities with direct democracy, the treatment of waste was – other things being equal – 10 percent cheaper than in the towns and cities without direct democracy. Moreover, Pommerehne found a considerable cost saving if the treatment of waste was contracted out to a private company. The towns and cities with direct democracy and private treatment of waste had costs that were 30 per cent lower – other things being equal – than in the cities with a representative system and public treatment of waste. (Kirchgässner, Feld and Savioz, 1999, p. 98–100)

- Kirchgässner, Feld and Savioz (1999, p. 92–98) examined 131 of the 137 largest Swiss municipalities to determine the link between direct democracy and public debt, using data from 1990. In the municipalities where referendums on public expenditure were permitted (an example of direct democracy), other things being equal, the public debt was 15 percent lower than in municipalities where this was not the case.

- Feld and Matsusaka (2003) studied the link between public spending and direct democracy. Some Swiss cantons have a finance referendum (*Finanzreferendum*), with which the citizens must approve all local government decisions on expenditure above a certain amount (the average is 2.5 million Swiss francs). In cantons that have such a referendum, public spending between 1980 and 1998 was an average of 19 percent lower than in those without this instrument.

- Benz and Stutzer (2004) studied the link between direct democracy and the level of citizens' political knowledge, both in Switzerland and in the EU. For Switzerland, they gathered information from 7500 inhabitants and correlated this with the 1 to 6 index of the level of direct democracy for the 26 cantons. The highest level of direct democracy was found in the Basle canton, with an index of 5.69; the lowest level was in the Geneva canton, its index figure being 1.75. Other relevant variables were checked, including gender, age, education, income and whether or not the people were members of a political party. They concluded that, other things being equal, the difference in political knowledge between an inhabitant of Geneva and Basle was considerable and amounted to the same as the difference between being a member of a political party or not, or between the monthly income groups of 5000 and 9000 Swiss francs. For the EU, in which 15 European countries were studied, of which six had held a national referendum in the last four preceding years, they discovered similar results.

- Frey, Kucher and Stutzer (2001) studied whether the ‘subjective well-being’ of citizens is affected by direct democracy. Subjective well-being can be measured straightforwardly, in the sense that you can just ask people how happy they consider themselves to be. Frey took the same index of the Swiss cantons as Benz and Stutzer, and correlated this with 6000 Swiss people’s answers to the question: “How satisfied are you with your life as a whole today?” Frey tested for numerous other variables, and level of satisfaction was given a rating on a scale of 1 to 10. Inhabitants of Basle (the most direct-democratic canton) scored 12.6 percentage points higher on the well-being scale than inhabitants of Geneva (the canton with the most representative form of democracy). Frey also examined the difference between the subjective well-being that arises because the policy is more in accordance with the wishes of the citizens (outcome), versus the subjective well-being that arises through participation in voting itself (the process). He did this by including a group of foreigners, who cannot vote at the cantonal level, but who do reap the benefits of the referendum results. The non-voting foreigners were also happier in the direct-democratic cantons, but less so than the Swiss who could vote. Frey concluded from this that taking part in the voting was responsible for two-thirds of the increased subjective well-being, and greater accordance of policy with the people’s wishes for one third.
- In Chapter 4, box 4-2, we have already discussed the considerably lower tax evasion that occurs in the direct-democratic cantons.

Frequently-heard objections to direct democracy are discussed in Chapter 6.

## United States: California

The United States has no federal referendums. The constitutional assembly of 1787, persuaded by Adams and Madison, accepted the principle that the elected people represent the entire nation and not just their own supporters. Direct democracy was not provided for.

Since the last decade of the 19th century, however, the Progressive and Populist Movements have been conducting campaigns to have the citizens’ initiative referendum introduced. They are mainly inspired by the Swiss example. The first state to make a change in this direction was South Dakota in 1898, followed by Utah in 1900 and Oregon in 1902. Interest in direct democracy was created in Oregon shortly after the state was founded, spurred on by a group of Swiss immigrants who had settled in Clackamas County. Another 16 states were to follow these initiatives up to 1918.

Currently, 27 of the 51 states have a form of direct democracy at state level. The regulations differ from state to state, because each state is sovereign on this point. The initiative, comparable with the Swiss citizens’ initiative, is available in 24 states; the popular referendum – the optional referendum with which parliamentary laws can be blocked – is also available in 24 states, mainly the same states that allow the initiative. At local level, direct democracy is even more widespread. Almost half of all US cities have the citizens’ initiative referendum. All in all, 70% of Americans live in a state, town or city in which the citizens’ initiative referendum is available. Furthermore, except for Delaware, all states have the compulsory referendum for constitutional amendments, which means that constitutional amendments must always be submitted to

the people. There are very few subjects excluded, and in many states actually none. (Waters, 2003; Matsusaka, 2004)

This has led to an impressive number of referendums being held. Almost 2,000 citizens’ initiative referendums were held at state level between 1904 and 2000. In the peak year of 1996, in the 24 states that have citizens’ initiatives, at least 96 citizens’ initiative referendums were put to the vote. In comparison, the representatives of these states passed more than 14,000 laws and resolutions in the same year. Optional referendums are less important than citizens’ initiatives in the US. On the other hand, very many compulsory referendums are held. The total number of referendums held at state level amounted to some 19,000 up to 1999. Besides these, some 10,000 referendums are held at local level each year. (Efler, 1999)

Although the rules appear to be generally similar to each other, there are considerable differences in the number of citizens’ initiative referendums held in the various states. More than half of all referendums initiated by citizens were held in only 5 states: Oregon, California, Colorado, North Dakota and Arizona. Even though Oregon, with 318 up to 2000, held more citizens’ initiative referendums than California, which held 275 in the same period, we will take the latter state as the example below. The reasons are that California is not only the most important American state – being the most highly populated state and culturally and economically very successful – but also because Californian direct democracy is controversial.

In California, the introduction of direct democracy is closely linked with the name of Dr. John Randolph Haynes, who founded the California Direct Legislation League in 1895. Thanks to his efforts, the opportunity for direct democratic decision-making was introduced in the city of Los Angeles in 1902. At state level, the introduction of the referendum was mainly a response to the stranglehold that one specific company, the Central Pacific Railroad, had acquired on political life in California at the end of the 19<sup>th</sup> century. In 1901, the book entitled ‘Octopus’ appeared, in which Frank Norris describes the vice-like grip that this railway company had on politics in California. In fact, the company was not only in the business of transport, but also in land speculation, for instance. Almost all the legal rulings at the time were to its advantage. Norris wrote: “They own the ballot box (...) They own us.” When this grip of the ‘octopus’ on public life became known, it was resisted. Hiram Johnson, a public prosecutor, supporter of Haynes and leader of the progressive wing among the Republicans, became Governor in 1910. He conducted his campaign (“the Pacific must keep its dirty paws out of politics”) by car and refused to take the train. In 1911, Haynes, Johnson and their supporters succeeded in introducing the citizens’ initiative referendum. At the same time, the possibility of ‘recall’ – the dismissal by the voters of elected representatives and high-level officials – was introduced. The California Direct Legislation League still had to fend off various attacks on direct democracy. In 1920, opponents of the citizens’ initiative attempted to use the instrument itself to nip it in the bud. This proposal, which contained a heavily increased signature threshold for citizens’ initiatives on tax issues, was nevertheless rejected by the voters (Waters 2003).

### Some characteristics of Californian direct democracy:

The legislative citizens’ referendum (‘initiative’) differs from the Swiss system in various aspects. The rules have actually remained unchanged since 1912.

- People who launch a citizens' initiative can call upon certain government services at an early stage. They can be assisted by the Legislative Counsel in getting the wording of the proposal into the proper legal form. The subject prepared in this way is then passed to a senior judge, the attorney general, who composes the official title and the summary of the proposal. The title and summary are important because they appear in the official ballot pamphlet. Furthermore, in cooperation with the Ministry of Finance, among others, an analysis is made of the fiscal consequences of the new proposal. This all takes four to six weeks. The proposal can then be circulated for the collection of signatures.
- All matters that are within the power of the state can be the subject of a citizens' initiative, thus including the budget, taxes, immigration, etc. There is only one formal requirement: there must be unity of subject – a citizens' initiative may not contain two unrelated subjects.
- Both constitutional initiatives and statute law initiatives are possible. The signature threshold for the first of these is equal to 8% of the turnout at the last election for the state governor; for the second it is 5% of this turnout. The maximum collection period is 150 days. An approved constitutional initiative cannot be subsequently amended by the state's house of representatives, but only by a new referendum. Approved statute law initiatives, however, can be amended by the state's house of representatives.
- Californian citizens' initiatives are direct initiatives. In contrast to indirect initiatives, these are not enacted through the parliament. The parliament, therefore, cannot launch a counter proposal against the citizens' initiative. Citizens' initiatives are swiftly submitted to the ballot: if the formal thresholds are achieved in the summer, the citizens' initiative will already be put to the vote in the November of that year. In principle, there is only one election day every two years, to which a maximum of one additional voting day may sometimes be added. This means that there are frequently very many citizens' initiatives put to the vote on a single election day. These points, each of which differs from the Swiss system, are criticised by some supporters of direct democracy. According to them, longer periods and the spreading out of citizens' initiatives across several voting days each year are good for the public debate. The absence of a parliamentary process and a possible counterproposal provides the public with less information and fewer options.
- A proposal that is approved by the public can nevertheless still be annulled by the law courts. The risk that a legislative proposal approved by referendum may nonetheless still be annulled by the courts is quite considerable: between 1964 and 1990, this happened to 14 of the 35 citizens' initiatives that achieved a majority in the ballot box. A successful citizens' initiative can thus see the results of long, hard work be lost in court. It is clear that the checking of the proposed legislation after the vote has been held is a distinct disadvantage of the Californian system. This problem could be elegantly solved by introducing an intermediate petitionary step: a citizens' initiative that has gathered a relatively small number of signatures, for instance 10,000, acquires the right to a parliamentary debate on the proposal and to a check by a constitutional court. This provides the people submitting the citizens' initiative with the right to then revise their proposal in the light of the parliamentary debate. Moreover, the early constitutional check prevents a discouraging legal defeat of the proposal after the entire referendum process has

taken place. The annulment of a proposal approved by the people is bad for democracy: the people must not only have the final say, but they must also see that their say is final. An annulment, often on formal grounds, creates the frustrating and frequently justified impression that a powerful elite still ultimately awards itself the final say.

- The Ballot Pamphlet: three to six weeks before the vote – the same as in Switzerland – the voters receive a booklet containing the essential documentation about the referendum. This booklet contains, in addition to the official title, summary and analysis mentioned previously:
  - the complete text of the initiative;
  - arguments for and against from the supporters and opponents, which must be submitted four months before the vote. Supporters and opponents have the right to 500 words; after another two weeks, both sides can submit a further text of no more than 250 words in response to the other party's text;
  - a concise summary of the arguments from both sides.

The fate of referendums in California is variable. Between 1912 and the 1930s, the voters had to deal with an average of more than four referendums a year. In the 1950s, 1960s and 1970s, the citizens' initiative was rarely used. The people had great faith in the representative system. In the 1960s, only nine initiatives in total were launched. However, thereafter the citizens' initiative began to gain in popularity, when remarkably enough both progressive and conservative initiatives seemed to have chances of success. 'Conservative' initiatives included the introduction of the death penalty, via a referendum in 1972. In the same year, the environmental movement booked a huge success with a bill about protection of the coastal zone which was approved by referendum. Even the threat of a citizens' initiative was sufficient to force certain important changes, such as the moratorium on nuclear power stations that was approved in 1976.

In 1977-78, the notorious 'Proposition 13' initiative was drawn up, which called for a halt to the increase in tax on real estate. The preceding years had seen steep inflation taking hold and the price of land and houses rising even higher than the depreciation in the value of the dollar. The result was that average families were confronted with a double tax explosion. Local taxes that were linked to the value of their homes shot up. And the inflation caused their incomes to move into higher and higher tax brackets, without a commensurate rise of purchasing power in real terms. This mechanism provided the state of California with 2.6 billion dollars extra income in 1976. In 1977, the consensus increased in the Californian parliament for using the additional income to lighten the burden of the small homeowners. However, the politicians just could not agree on a precise scheme. Democrats argued in favour of a scheme that mainly benefited people with lower incomes, while Republicans, such as Reagan, proposed measures that provided high earners with the most benefit.

Nothing happened during the entire spring, and in July two conservative anti-tax activists, Howard Jarvis and Paul Gann, announced the launch of a citizens' initiative. Their proposal made short shrift of the uncontrolled tax increases that were driving the small homeowners to despair. But Proposition 13 had another hallmark: it made no distinction between homes and businesses, but lumped all real estate into the same category. This meant that the proposal provided the business community with an enormous benefit, where they had not even requested it. This aspect did not attract any attention

in the autumn of 1977, when the campaign to collect signatures for Proposition 13 was in full swing, while in the political world every path to a solution still seemed to be thoroughly blocked. In December, Jarvis and Gann submitted the signatures for the initiative, more than twice the required number. In the winter, after a whole year of arguing, the parliament had still not reached a consensus about what should happen. In January 1978, the members of the parliament were under tremendous pressure to come up with a solution. Meanwhile, Proposition 13 had already built up tremendous popular support. It was not until around March 1978 that the parliament finally presented an alternative proposal, which would be put to the voters in June as Proposition 8, together with Proposition 13 from Jarvis and Gann. Despite, or perhaps precisely because of the massive support from all the politicians for Proposition 8, the campaign-weary citizens chose Proposition 13 with a crushing majority. Shultz wrote about this in 1997: "Twenty years after the fact, it is important to realise how the tax revolt in California arose. It was about people who lived in small houses, purchased in the 1950s for perhaps 15,000 dollars, and who were suddenly confronted with taxes based on ten times that value. They grabbed at Proposition 13 to protect themselves, and 20 years on they still cling to it steadfastly."

The breakthrough of Proposition 13 produced two consequences. Tax revolts also arose in other states where forms of citizens' initiative existed. The success of Proposition 13 made public opinion once more aware of the possibilities provided by the referendum. "Towards the mid-1980s, the citizens' initiative began to replace representation as the main stage for resolving the major political debates. Outside the representative system, both left- and right-wing activists were inspired by the example of Proposition 13. For good or bad reasons, many dreamed of becoming the next Howard Jarvis. Organisations began to acquire the resources and skills needed to present their goals for direct voting. During the 1980s, the efforts to obtain a citizens' initiative doubled and the people had already voted on more than 48 measures by the end of the decade. In addition, a citizens' initiative's chance of success became greater. Prior to 1980, the Californian voters only approved one in three proposals. Between 1980 and 1990, almost half were approved." (Shultz, 1996, p. 3) In the 1990s, interest continued to increase. In November 1996, the voters had to decide more measures than during the entire period from 1960 to 1969.

Proposition 13 is often cited by opponents of the referendum to illustrate the irresponsibility of public voting behaviour. In fact, it was the irresponsible passivity of the Californian parliament that caused the tax revolt among the voters.

Criticism was also voiced against the Californian recall regulation as a result of the removal in 2003 of Governor Gray Davis, who was replaced by the actor Arnold Schwarzenegger. The media created the picture that it was much too easy to request a recall and that the sitting politician did not have the slightest chance in such a case. There was further criticism of the fact that the sitting governor could be voted off by a simple majority, whereas his successor could be elected with fewer votes. Furthermore, it was claimed that the recall campaign was a 'grass roots' campaign in appearance only: in fact, 'big business' was really behind it. And the circumstance that a 'serious' politician was being exchanged for 'just an actor' showed the type of abuse to which direct democracy leads.

That is mostly incorrect. First, it is not easy to request a recall: at least 900,000 signatures were needed out of an electorate

of 15 million in 2003. Nor is it something which happens very often; in fact, only once before has a Governor been forced to resign in the US – in 1921. At local level, the recall is used more often (36 states have local recall), but in the large majority of cases, the politicians survive the recall: councillors survive in 70.8% of cases and mayors in as many as 82.4% of cases.

The reason why a group of citizens collected 900,000 signatures was that Davis – who had earlier been re-elected as Governor by the narrowest of majorities – had already lost considerable authority by his poor response to a severe and long-lasting energy crisis, and subsequently appeared to have lied about an enormous budget deficit. During his re-election campaign, Davis painted a rosy picture of the financial situation, attacked everyone who spoke about a budget deficit, and categorically excluded any new tax increases. Shortly after his re-election, however, Davis revealed a record deficit of 32 billion dollars (more than the combined deficits of all the other US states put together, while two years earlier there was still a budget surplus), and decided on a tax increase worth 8 billion dollars. In addition, it was apparent that Davis was being backed by 'Big Business': during the recall, the two most important mouthpieces of Californian business – the California Business Roundtable and the Los Angeles Chamber of Commerce – supported Davis.

The fact that an actor replaced Davis has nothing to do with direct democracy. At federal level, the US does not have a single form of direct democracy – the US is one of the few countries worldwide that has never held a national referendum – and yet the actor Ronald Reagan was able to become President.

It is certainly not good that under the Californian recall system a sitting governor who was elected with 40% of the votes can be forced to stand down, while his successor can be elected with only 30% support. This is because the voters must elect the successor in a single round from a list of more than two candidates. It therefore seldom occurs that the candidate with the most votes also gains an absolute majority. But this is not an inherent element of the recall. This aspect could easily be changed by having more rounds of voting in which ultimately the two candidates with the most votes must stand against each other – exactly the same as in French presidential elections. The people who have previously voted for third and lower-placed candidates must still choose between the two most popular candidates in the last round. Then there will always be an absolute majority for one candidate. (Nijeboer, 2003)

Direct-democratic decision-making has enjoyed more confidence among the voters than indirect decision-making for several decades already. Recent polls in the U.S. confirm this. Half of those questioned have confidence in the people as direct legislators. By contrast, 78% of the people questioned consider that the parliament is managed by a handful of 'big interest' representatives, whereas only 15% believe that the parliament keeps the general welfare in mind (Baldassare 2005).

### **The effect of the citizens' initiative on taxes and expenditure**

In respect of California it is often claimed that direct democracy has led to budgetary disruption, because the people systematically reduce taxes by direct-democratic means to the point at which the state can no longer operate as it should. Proposition 13 is often quoted in evidence (see, for example, Daniel Smith's book 'Tax Crusaders').

Following this criticism, the US political scientist Matsusaka, in his study 'For the many or the few' (2004), carefully examined the effect of the referendums on taxes and expenditure in the United States. He gathered an enormous quantity of data from all the American states and some 4,700 American cities about the last 100 years – "in essence, all the data that is currently available" (p. xi). He discovered three effects:

- (1) overall public expenditure by states and local councils decreased
- (2) expenditure is transferred to a more local level
- (3) there is a shift from general taxation to payment for specific services supplied

This means that the people, if they have a chance to do so, demonstrate a tendency to slim down the state – especially the central state – and that they are also inclined to let people pay more for their own consumption. In the US, the government spends approximately 36% of the GNP; about half of this is spent by local councils and states. If the citizens' initiative referendum is available in a specific state, this leads to an annual average tax reduction, for a four-person family, of \$534 and to a drop of \$589 in the state's public spending. This corresponds to around 4% of the state's income and public spending. It is a significant, but not dramatic, difference in absolute terms.

Matsusaka discovered another remarkable finding. The arrangements for the citizens' initiative referendum are not the same in all the states concerned. The main variable is the signature threshold that must be achieved, and this can vary from 2% to 10% of the registered electorate. The impact of the citizens' initiative referendum increases systematically with the decrease in the signature threshold. In states with the lowest signature thresholds, the impact of the referendum on public revenue and public spending is within a range of up to 7%, whereas the impact is insignificant in states with a high threshold (p. 33-35). The easier it is to launch a citizens' initiative referendum, the lower the level of tax.

The tendency to reduce taxes does not impact on all levels of public administration in the same manner. The overall reduction in tax is the result of a strong trend to reduce spending at state level by approximately 12%, combined with a less marked trend to increase spending at the local level of counties and cities. This trend to decentralisation seems to be statistically very solid. This does not mean, however, that the taxes increase at local level. The higher spending in the cities (to the extent that there is a direct correlation with the provisions of the popular referendum), is paid for by charges for services supplied: "At the state level the initiative led to about a 5 percent reduction in taxes and no change in charges. At the city level, the initiative led to about 14 percent more charges and no change in taxes." (p. 52).

Finally, one more remarkable finding. The data above concern the period from 1970 to 2000. Most of the states introduced the referendum around the beginning of the twentieth century and the conditions under which referendums take place have been modified very little since then. At the start of the twentieth century, public spending was approximately 6% of GNP (Gross National Product), whereas a hundred years later this figure is approaching 40%. Matsusaka also studied the effect of the referendum during the period from 1902 to 1942, from which it appeared that the referendum led to an *expansion* of public spending. Matsusaka also found that public spending in that period increased more sharply as the signature threshold for obtaining a referendum fell.

One therefore cannot unconditionally say that the referendum always leads to tax reductions. The only thing one can say is that the citizens' initiative referendum ensures better implementation of the will of the majority. Apparently the 6% public spending around 1900 was too low in the eyes of most people (Matsusaka relates this to the rapidly increasing urbanisation at that time, which caused demand to increase for all kinds of collective infrastructure), whereas the current approximately 40% is clearly considered too high and too centralised.

Matsusaka devoted an extensive chapter to the question of whether the three shifts that occurred under the influence of the citizens' initiative referendum also reflect the will of the people. For this purpose he consulted the results of a large number of opinion polls that have been held during the course of the last three decades. Millions of dollars are not needed for opinion polls – a couple of thousand dollars is sufficient to hold a representative opinion poll in the US – and no campaigns costing millions are conducted. Thus there is no distortion as a result of one-sided financing. From the opinion polls it becomes clear that most Americans are indeed supporters of *smaller government* (which corresponds with the trend to overall tax reduction), that they support decentralisation (spending power shifts to more local governing authorities) and that they generally consider taxes as the least attractive source of public revenue. Even more forcefully: "For every policy I am able to examine, the initiative pushes policy in the direction a majority of people say they want to go. I am unable to find *any* evidence that the majority dislikes the policy changes caused by the initiative". (Matsusaka, 2004, p. xi-xii; italicised).

Matsusaka's conclusion is clear: "Some thoughtful observers (...) have argued that the initiative allows individuals and groups to bring about policies contrary to the public interest. Their argument is based on the observation that the initiative is expensive to use, and appears to be dominated by rich individuals and groups. The evidence here, however, shows that even if wealthy interests are prominent players in initiative politics, their efforts ultimately redound to the benefit of the majority. There is no mystery how this could happen. Without the initiative, voters are forced to accept the policy choices of the legislature. With the initiative, voters are given choices. If the alternative on an initiative is worse than the legislature's policy, the initiative can be rejected and no harm is done. If the alternative is better, the voters can accept the initiative and are better off. In short, even if there is unequal access when it comes to proposing initiatives, the ability of voters to filter out the bad proposals and keep the good ones allows the process to work to the advantage of the majority (...) I want to emphasize that the evidence is value neutral; it does not tell us whether the initiative process is a good or bad form of government. The evidence simply shows that the initiative promotes the will of the majority" (p. 71).

### **The role of 'special interests'**

The above is closely linked to the theme of 'special interests'. A lot of money has been involved with direct democracy in California from the beginning. In the 1922 elections, the total amount invested was already more than a million dollars. During the 1970s, '80s and '90s the amount of money spent on campaigns exceeded this many times over. In 1992, campaign committees in 21 states spent an estimated 117 million dollars on campaigns and in 1998 this had already risen to 400 million dollars in 44 states. Of this 400 million, California took the lion's share with 256 million dollars spent. (Garrett and Gerber, 2001, p. 73) Since the end of the 1980s, more money

has been spent in California on citizens' initiatives than on lobbying in the parliament. The business community provided around 66% of the money in 1990 (individuals: 12%; political parties: 7%; trade unions: 1%). (Shultz, 1996, p. 81)

The citizens' initiatives were professionalised at an early stage. At the time of the First World War, Joseph Robinson had already set up a business that collected signatures for a remuneration. Currently such firms ask for around one million dollars for collecting the required signatures for a Californian citizens' initiative. In 1930, the first firm was founded that actually designed campaigns (Whitaker & Baxter's Campaigns Inc.). Meanwhile, several dozen professional 'consultants' are active in the state, who supervise both the campaign for professional politicians and the campaigns around citizens' initiatives. These consultants usually focus on a single ideological segment of the 'political market'.

One thing and another leads to a frequently invoked argument: financially powerful special-interest groups would abuse the binding citizens' initiative referendum to push through their own agenda, to the prejudice of the 'general interest', which is considered as being served by the people's representative system. This argument is not usually thought through consistently. We have already quoted above Matsusaka's fundamental argument that the referendum proposal that is submitted as an alternative to the intentions of the 'representative system' also increases the options for the voters and thus offers them more room to make decisions that best match their preference. Matsusaka compares this with a family in which the father (= 'representative system') unilaterally 'proposes' what flavour pizza is to be eaten. When the mother (= 'special interests') can also suggest a pizza, after which everyone (also the children = the voters) can vote on the proposals, then this can never make the children's situation worse, even if they cannot suggest a pizza themselves. The option proposed by the father is always available, but if mother has an even better idea, that can be given preference in the voting. "So we can see that allowing everyone in the family to make proposals generally works to the advantage of the majority. The conclusion stands even if the right to make proposals is reserved for certain family members. (...) As long as proposals are filtered through a majority-rule election, the only way initiatives make the majority worse off is if voters can be persuaded to approve policies contrary to their interest." (Matsusaka, 2004, p. 12).

In her study 'The populist paradox' (1999), the political scientist Elisabeth Gerber systematically examined the extent to which 'special interests' can push through their own agenda by using a lot of money. She analysed the cash flows of 168 citizens' initiatives in eight American states. In contrast to what critics claim, powerful commercial interests appear to have relatively little success in obtaining approval of a law they desire by means of popular referendum. Initiatives that were financially supported mainly by individual citizens were almost twice as often adopted as initiatives that were financially supported mainly by economic special-interest groups (in reality, the number of citizens' initiatives that are supported entirely by economic special-interest groups or individual citizens is very small). The large majority of the popular votes relate to citizens' initiatives. (p. 111-112). Gerber concludes: "The empirical evidence provides further basis for rejecting the allegation that economic interest groups buy policy outcomes through the direct legislation process." (p. 138)

Gerber shows that economic special-interest groups, however, do have some success in forcing the failure of citizens'

initiatives by other people, by launching a counter-initiative. When a citizens' initiative seems to be very popular and even using large amounts of money does not seem able to turn the tide, wealthy opponents attempt to sow confusion by launching an alternative proposal, a counter-initiative, which appears very similar to the original if viewed superficially. This happened for the first time in 1978, with the anti-tax initiative Proposition 13 already discussed. Several politicians launched a 'moderated' counter-initiative at the last moment, which however was unsuccessful.

A key year was 1990, when several progressive initiatives were high fliers. There was the 'Nickel per drink' initiative, which proposed a higher tax on alcohol (Proposition 134); there was the 'Big Green' initiative, a major environmental initiative drawn up by environmental groups in cooperation with democratic politicians; and there was 'Forests Forever' (Proposition 130), that was specifically aimed at the preservation of the Californian forests.

A leaked confidential memorandum revealed the chemical and petrochemical industry's awareness that the 'Big Green' initiative in particular could not be directly prevented because of its tremendous popularity, so a counter-initiative was launched: 'Big Brown' (Proposition 135). The timber industry countered 'Forests Forever' with 'Big Stump' (Proposition 138). To counter the 'Nickel per drink' initiative, the alcohol industry launched two of their own initiatives: 'Penny a drink' (Proposition 126), which proposed a lower alcohol tax, and a second initiative that would make any subsequent tax increase, including tax increases on alcohol, depend on a two-thirds majority instead of a simple majority.

All these counter-initiatives were designed to sow confusion. The voters were finally confronted with a cluttered list of 27 complicated initiatives and counter-initiatives, which resulted in what became known as the 'Big NO': 23 of the 27 proposals were rejected, also including the original, progressive proposals that could actually count on a lot of public sympathy. This is an example of a common phenomenon: voters are cautious and, if in doubt, will reject a proposal. "Voters simply throw their hands up in despair and vote 'no' on everything." (Shultz, 1996, p. 84)

These experiences teach us an important lesson: if business is able to invade democratic life, democracy breaks down. During the course of the democratic decision-making process, the citizens must decide the legal boundaries within which the commercial sector can operate. These must be just as inflexible as geographical or geological boundaries, for example; they must protect people's dignity and prevent attempts to corrupt them. The debate or image-forming process is the true centrepiece of democracy and should therefore be played out in an open forum and should not be able to be bought out.

It is not the voters' fault. There have been various attempts to hold at bay the effect of money on the progress of the debate. In 1974, Californians approved a citizens' initiative (Proposition 9) that limited the campaign expenditure for referendums. Two years later, however, this provision was overturned by the US Supreme Court, which argued that putting money into a campaign was part of the freedom of speech guaranteed by the first article of the US constitution. Thus it is currently impossible to impose a limit on campaign expenditure for direct-democratic decision-making in the USA, unless the federal constitution is amended or interpreted differently.

The Supreme Court did accept limits for representative candidate elections, because they are open to the risk of corruption, but corruption cannot play a part in popular voting on a public issue, because it is the voters themselves who decide. On 18 December 1996, the opponents of 'big money' gained a surprising victory with the approval of Proposition 208: 61.8% of the turnout voted in favour of the introduction of a ceiling to expenses for representative elections. Up until that time there was no such legal limitation in California. The initiative takers cited the example of a candidate in the Californian parliamentary elections who, having been handed another 125,000 dollars from a tobacco company a week before the vote, finally won by the tiny margin of 597 votes. The Ballot Pamphlet (information booklet) for Proposition 208 stated: 'When big-moneyed special interests win, the people lose!' However, Proposition 208 was also subsequently contested in court. During the proceedings, another group launched Proposition 34, wanting to withdraw Proposition 208 and setting less stringent limitations on campaign donations. This was accepted by more than 60% of the voters in November 2000.

Publication of the sources of funding was also targeted. In 1988, the Californian voters accepted Proposition 105, which stipulated that the major financiers must be disclosed in advertisements for an election campaign. This statute remained in force for several years and was extremely effective. For example, advertisements against the 'Nickel per drink' initiative always reported: "... funded by the Beer Institute, the Wine Institute and the Distilled Spirits Council". The industry nevertheless succeeded in having Proposition 105 declared legally void. It seems that the industrial financiers of political advertisements often conceal themselves behind meaningless or misleading names (see below). In 1997, however, the Californian senate passed a law (SB 49) that stipulates that each campaign committee that spends more than 100,000 dollars on its citizens' initiative – in practice that is every committee – should submit an electronic account of its spending, which will be published on the website of the Californian authorities.

An example of the efficiency of objective advertising was provided in 1988, when the tobacco industry came up with an initiative that was aimed at relaxing the restrictions on smoking, which are very extensive in California. However, the tobacco barons presented their initiative as a proposal to limit smoking that came from a fictitious organisation, which was called 'Californians for Statewide Smoking Restrictions' (CASSR). When it became clear that a large proportion of the public was threatened with deception, the California Wellness Foundation and the Public Media Center published a plain advertisement that only contained quotes from the Ballot Pamphlet plus the list of the most important sponsors for and against. The Ballot Pamphlet stated: "The proposed measure would lead to less restrictions for smokers than is currently the case under the existing legislation." Important financiers of the initiative identified included: Philip Morris USA, Reynolds Tobacco Co, and a few other tobacco manufacturers. The most important financiers of the resistance against Proposition 188 identified in the advertisement were: The American Cancer Society, The American Lung Association, The American Heart Association and The American Medical Association. The publication of these plain facts in a clear, graphically well presented full-page advertisement enabled the Californian voters to realise immediately what was going on, and Proposition 188 was squashed with a humiliating 70%/30% defeat. This example demonstrates that a serious danger of deception can arise specifically coming from commercial interests. Exposing the financiers

via the Ballot Pamphlet, and distributing this document itself in a neat, readable format by means of newspaper advertisements was an efficient remedy.

Up until 1992, citizens' initiatives could still rely on the 'Fairness doctrine' that was adopted by the Federal Communications Commission in 1949. According to this doctrine, radio and television should provide reasonable opportunities to the representatives of opposing viewpoints on controversial public issues to publicise their points of view. This fairness doctrine was contested for many years by the owners of broadcasting stations, and the FCC finally relented in 1992: the Fairness doctrine was no longer legally applicable to citizens' initiatives. The 'ballot pamphlet', which every voter receives before the citizens' initiative is voted on, currently remains the only reliable source of reasonably balanced information and the question can be asked whether this is sufficient.

### **The enactment of approved initiatives**

In California (just like in Switzerland) most of the citizens' propositions are rejected by the voters. Only 34% of the initiatives meet with success.

Remarkably enough, this does not mean that in 34% of cases the approved proposal is also actually enacted. A proposal that has been approved by a majority of the citizens can still be entirely or partially sunk subsequently. Politicians have various means of achieving this. In the first place, a proposal approved by referendum can be contested afterwards in the courts. This frequently happens in California, and in more than a few cases such a legal action results in the whole or partial setting aside of the approved proposal. In other cases, the approved proposal is simply not carried out by the authorities. Elisabeth Gerber and others, in the book "Stealing the initiative" (2001), examine the phenomenon whereby those in power nevertheless emasculate or get round undesirable popular decisions by the use of various manoeuvres. The authors studied the implementation of ten propositions that were approved by the people in California by referendum, in order to conclude: "It is clear that government actors retain a great deal of discretion over what happens to initiatives after they pass" (p. 110). In fact, many popular decisions are only partially converted, and in some cases their execution is even effectively withheld entirely.

A striking example is the 'English only' initiative (Proposition 63), which wanted to declare English as the only official language of California, and which was approved by 73.2% of the voters in 1986. Yet the proposal was never implemented. Official election documents in San Francisco remained multilingual, with Spanish and Chinese in addition to English. In 1987, the Democratic Party even launched a legislative proposal which would drastically hamper lodging a complaint on the basis of the approved proposition. However, this legislative proposal was not approved after opponents of it sounded the alarm on the issue and the Democrats, fearing a loss of votes, backed down. The related Proposition 227, also called 'English only', was approved by 60.9% of the votes in 1998. Fundamentally, this proposition proposed that the '*bilingual education*' in many of the state's public schools must be terminated and that the children who did not speak English (most of whom speak Spanish), must undergo an '*English immersion*' in the school. In school districts where this measure could count on broad support it was also implemented. But in other places the initiative had absolutely no impact. In San Francisco, for example, only 38.3% of the voters agreed with

the proposition and the highest official responsible for the local public school network coolly declared that the proposition would not be implemented. This was despite the fact that the initiative was approved at state level and the equality principle requires that the proposal be equally applied throughout the entire state. In fact, the fate of Proposition 227 shows that the legislator should not meddle with internal education issues. If the state leaves such choices to the schools, they can select for each issue what seems the best for themselves, and the state does not need to impose a uniform regime.

In 1990, the voters approved Proposition 140. This proposal introduced, on the one hand, *term limits* for members of parliament and, on the other, also scaled back the funds for the members of parliament to approximately 80% of the previous level. The objective of the initiative was to combat the creation of a class of lifelong professional politicians. Term limits limit the time during which a person can occupy a legislative and/or executive political office. Proposition 140 imposed a maximum term of six to eight years. Of course such a proposal cannot count on the approval of the members of parliament themselves. It is, however, effectively impossible to actually circumvent term limits once they have been approved. The political leaders in California have exhausted all possible legal remedies without success in the hope of reversing the term limits. The last judgment was finally handed down in 1997. In the meantime, thanks to the approved proposition, the members of parliament and those in top positions had already been entirely replaced. The established powers had more success with their attempts at reversing the financial restrictions introduced by Proposition 140. Via the courts they succeeded in overturning of the reduction in excessive pension provisions for top politicians that had been approved by the people. Other restrictions from Proposition 140 were left untouched by the courts, but the political class swiftly succeeded in circumventing the law by changing their accounting methods: "By reclassifying agencies and moving their budgets outside the realm of formal legislative spending, the legislature largely circumvented the intent behind Proposition 140's spending limits. In doing so, they not only managed to maintain their political staffs, they also retained the services of the agencies whose funding they cut." (Gerber, 2001, p. 54-55)

A recent example (not treated in Gerber's book) of the arrogance that politicians can demonstrate with respect to democratically taken decisions was provided when the Californian parliament approved a law that wanted to recognise same-sex marriages in that state. A referendum (Proposition 22) on this question was held in March 2000 and a majority of 61.4% decided that a legal marriage could only take place between a man and a woman. Despite this, the Californian parliament subsequently did approve a law that allows same-sex marriages. Governor Schwarzenegger, however, used his veto against this parliamentary act, saying that the will of the people must be respected. Naturally, he was branded as 'extreme right-wing' for this by his opponents. However, Schwarzenegger left the possibility open that popular decisions could still be reversed by the courts.

## Germany: Bavaria and beyond

October 1<sup>st</sup> 1995 was an important day for European democracy. On that day, the citizens of Bavaria voted to grant themselves many more rights to direct decision-making at the levels of cities, municipalities and administrative districts (*Landkreisen*) (Seipel and Mayer, 1997).

A limited form of direct democracy already existed at state level in Bavaria prior to 1995. Citizens could launch legislative initiatives and force a referendum on them. The threshold for using this system was exceptionally high, however. In an initial phase, 25,000 signatures had to be collected. Only then could an application for a referendum be submitted. If the Ministry of Internal Affairs [*Innenministerium*] formulated objections to the initiative, the Constitutional Court had to give a ruling on it. If the court saw no objections, there was a further stage, during which 10% of those entitled to vote (around 900,000 citizens) had to go to their local government offices within a two-week period to record their signatures as supporters of the popular initiative. This second threshold was virtually unachievable, so that referendums almost never took place in Bavaria at the state level. The 1995 referendum was only the fourth to be held since the Second World War. Moreover, politics in Bavaria was and remains dominated by one political party, the Christian-democratic CSU (Christian Social Union).

The story of '*Mehr Demokratie*' (More Democracy) – the movement that created a breakthrough for direct democracy in Bavaria, including that via the 1995 referendum – is the story of a double success. '*Mehr Demokratie*' succeeded in clearing the highest hurdles required to obtain a referendum in Bavaria. But '*Mehr Demokratie*' also succeeded in winning against the opposition of the CSU, which stubbornly resisted the introduction of direct democracy at the municipal level. It was the first CSU defeat at the state level in 40 years.

The introduction of direct democracy in Bavaria can be considered as being like an oil slick spilling over from Switzerland. The fact that referendums were possible in Bavaria at all, even if with far too high a threshold, is quite likely due to the fact that the first Bavarian Prime Minister, Wilhelm Hoegner, was in exile in Switzerland during WWII and learned to appreciate the system there. Afterwards, he was instrumental in putting the referendum into the Bavarian constitution. Hoegner said in 1950: "The referendum is the cornerstone of modern democratic municipal legislation". (Meyer and Seipel, 1997, p. 12)

### The campaign for the 10% signatures

Between 6 and 19 February, '*Mehr Demokratie*' had to surmount an enormous hurdle. Within these two weeks, 10% of the people entitled to vote had to hurry to their local government offices, during opening hours, to add their signatures to support the application for the municipal citizens' initiative. This very high threshold was comfortably exceeded: 13.7% of the Bavarians entitled to vote (or nearly 1.2 million people) made the effort. The result is even more remarkable when one considers the resistance from the official side that existed in many places. For instance, many citizens were not able to register their support because their local government offices appeared to be closed during the legally stipulated opening hours.

The reaction of the press was mainly positive, except for those newspapers which traditionally backed the CSU. The *Münchner Merkur* (Munich Mercury) newspaper of 21 February 1995 wrote condescendingly: "Jubilation about the fact that the '*Mehr Demokratie in Bayern*' popular initiative achieved the threshold would be inappropriate. In principle, Bavaria has enjoyed democratic rights for a long time. Every citizen can withdraw support from a municipal councillor or a municipal council group at the next elections if they don't like the decisions coming from the administration..." On the same day, the

Main-Post newspaper prophesied: "After the successful '*Mehr Demokratie in Bayern*' initiative, the CSU will use its well-known tactics: they will adopt the citizens' initiative proposals as their own motto, but will come up with a counter proposal that in practice doesn't do any damage to the ruling party".

### Ruling by fear

In 1991, a previous citizens' initiative in Bavaria, '*Das bessere Müllkonzept*', which proposed a reform of the waste disposal policy, actually managed the 10% threshold, but nonetheless narrowly lost the battle against the CSU in the resulting referendum. Now that the signature threshold had been achieved, '*Mehr Demokratie*' began to examine how the previous citizens' initiative was brought down by the CSU.

One of the conclusions was that the CSU ultimately achieved the result thanks to its grassroots support in the rural areas. In the towns and cities where the citizens' initiative campaign was active, it often achieved a majority; but in the rural areas there was frequently no counterbalance against the CSU propaganda. The most important conclusion, however, was that the CSU systematically played on fear. Prepared speeches were part of a campaign package distributed by the CSU to their municipal council groups that held ruling majorities in all the 2,000 municipalities, towns and cities in Bavaria. In these speeches, statements such as the following could be found: "... if your small kitchen has no room for six dustbins, you can start knocking down half the walls right away", while the segregated refuse collection was portrayed as making it essential that the municipalities set up intermediate storage areas, which were depicted as "... a fine stinking mess with fires, poisonous effluent and thousands of rats".

Bavarian legislation provides that, if a citizens' initiative achieves the 10% threshold, the Bavarian parliament may submit a counterproposal, which will then be put to the vote together with the citizens' initiative. The CSU had, and still has, an absolute majority in the state parliament and is therefore able to submit a counterproposal that effectively waters down the citizens' initiative and around which the party propaganda is then organised. In this way, the CSU was ultimately able to torpedo the new waste disposal initiative. The Christian Democrats launched a seriously watered-down counterproposal, steered it through the parliament and, after a cunning campaign, obtained a majority of 51% in the referendum (against 44% for the original proposal from the '*Das bessere Müllkonzept*' initiative).

The CSU now used the same tactics against '*Mehr Demokratie*'. Once again, the CSU launched a counterproposal. This counterproposal excluded numerous issues from citizens' decisions (for example, no municipal citizens' initiatives concerning construction projects would be possible); the CSU proposal required a 25% participation quorum for the citizens' referendums (with a lower than 25% turnout, the referendum result would be void; see chapter 2 about the negative effects of participation quorums); the signatures could not be gathered freely in the CSU proposal, but the citizens would have to go to the local government offices to sign, etc. The intention was clear: by introducing as many hurdles and limitations as possible, they wanted to make it as difficult as possible for direct citizens' decisions to be achieved.

At the same time, the CSU started to fan the flames of fear. Their slogan was: "Don't let a minority block everything". According to the CSU, the '*Mehr Demokratie*' proposal would

open the door to the rule of demagogues and vociferous minority groups. The CSU even suggested that the '*Mehr Demokratie*' proposal would pose a threat to the ringing of church bells or to the popular '*Oktoberfests*'. The CSU predicted permanent electoral conflict and continuous uncertainty, making it impossible for the authorities to carry out long-term planning (with job losses as a result) and introduce 'unpopular' measures, etc.; all this would be the result of allowing the '*Mehr Demokratie*' proposal to be upheld. At local level, the power of the party machine came into play (e.g. by refusing to make municipal premises available for meetings).

In essence, '*Mehr Demokratie*' was able to neutralise the CSU campaign because it knew what the CSU was up to. The most significant factor in their counter-offensive was that they were able to find all sorts of organisations (political parties, social organisations, youth groups, even CSU members in favour of *Mehr Demokratie*), which were trusted by large groups of citizens and which were prepared to speak out publicly in favour of the citizens' initiative and against the CSU counterproposal.

An important lesson from the '*Das bessere Müllkonzept*' defeat was that they must not allow the CSU to take the initiative in the debate. One of the CSU tactics consisted of constantly harassing the opponent with allegations which had to be disproved time and time again, so that they could never speak about the real reason for the referendum. The CSU attempted, for instance, to accuse '*Mehr Demokratie*' of financial fraud. This occurred at a strategically selected moment: just two weeks before the referendum. If, during these last two weeks, the CSU had succeeded in focusing the public debate on the finances of '*Mehr Demokratie*', this could have been fatal to the citizens' initiative. Citizens' donations to '*Mehr Demokratie*' were paid into an account in Munich, from which, because of the internal organisation of the bank concerned, the money was then transferred to Cologne. '*Mehr Demokratie*' had nothing to do with this, but the CSU suggested in the press that the funds were being drained out of Bavaria and were therefore being used for other purposes. The citizens' initiative countered this attack by immediately opening all its books to inspection. As they were completely in order, the CSU allegations backfired. The press then goaded the CSU to come up with rather more professional arguments before voting day.

The referendum vote took place on 1<sup>st</sup> October 1995. The '*Mehr Demokratie*' proposal gained 57.8% of the votes, against 38.7% for the CSU counter-proposal. That victory is what made it possible to organise citizens' initiative referendums at the local level.

### Flourishing democracy

In the 10 years that followed, a flourishing system of direct-democracy emerged in Bavaria (Rehmet and Wenisch, 2005). In the municipalities, 1371 citizens' initiatives were registered up to September 2005, which in 835 cases (60.9%) led to a referendum. In the remaining cases, the citizens' initiative was not allowed for a variety of reasons (14.2%), was adopted by the municipal council (12.5%), was withdrawn by the citizens, or not submitted (10.1%). The highest number of citizens' initiatives was launched in the Bavarian capital Munich (15), with Augsburg (12) in second place. The annual number of citizens' initiatives peaked at 318 in 1996, gradually decreasing to settle at a stable average of around 100 per year between 1999 and 2005. There was obviously some overdue maintenance required that caused the enormous wave of citizens' initia-

tives immediately after the introduction of the new system. (In Germany, one speaks of citizens' initiatives at municipal level and of popular initiatives at state and federal level.)

In terms of the subjects of these referendums, three emerge head and shoulders above the rest:

- public infrastructure and public utility companies (23%)
- development plans (23%)
- road and traffic projects (20%)

In the period from 1995 to 2005, a municipal council's position was more often ratified by the citizens (49%) than rejected (45%); the remaining cases could not be classified as either one or the other. A municipal proposal therefore has an almost one in two chance of not surviving the citizens' vote. The average turnout during this period amounted to almost 50 percent; turnout is proportionately higher the fewer residents a municipality has.

As stated previously, in some cases, the threat of a referendum was sufficient for an undesirable council decision to be scrapped. Rehmet and Wenisch (2005, p. 5) give an example from Augsburg, where a coalition of professors, teachers and bookshop owners collected signatures for the opening of a new town library. When they submitted a collection of many more signatures than the minimum requirement, the municipal council rapidly adopted their plan.

### Resistance from the courts

However, the ruling class does not simply allow this situation to exist unchallenged. In addition to the opposition from the CSU politicians, *Mehr Demokratie* had to face even greater resistance from the Bavarian Constitutional Court. In Bavaria, judges are appointed by the (CSU-dominated) state parliament (*Landtag*), so 80 percent of the judges are CSU supporters or sympathisers. Constitutional Court rulings are final because there is no possibility of appeal.

At the same time as the popular initiative to improve the referendum system at the municipal level was launched, *Mehr Demokratie* had also started a second popular initiative to improve direct democracy at the state level. These were both submitted within a short space of time in 1994. The second popular initiative was challenged by the Bavarian senate on far-fetched legal grounds and therefore had to be presented to the Constitutional Court. Everyone expected that the parliament's objections would be rejected, or in any case that most of the components of the popular initiative would remain intact. But in an unparalleled argument, the CSU judges declared the entire popular initiative to be invalid. "Utterly incomprehensible", the south-German newspaper *Süddeutsche Zeitung* wrote in an editorial on 15 November 1994, and voiced the suspicion "that the Constitutional Court, with the majority of its judges nominated and appointed by the CSU, hands down judgements that it believes will meet with the approval of the CSU-controlled state government."

In 1999, *Mehr Demokratie* once again submitted a popular initiative for the improvement of the referendum at state level. This time they had formulated their initiative in such a way that it would not be subject to the same veto. This time the Constitutional Court wheeled out Section 75 of the Bavarian Constitution, which reads: "Proposals for amending the constitution that are contrary to the basic democratic principles of the constitution are not allowed." This section had once been introduced to protect the population against the intro-

duction of a new dictatorship. In this case, however, it was used to protect the domineering politicians against greater democratic rights for the population. In March 2000, the Constitutional Court ruled that "democracy" was the same as the representative system and that it could be damaged, because the popular initiative was asking for the abolition of some exceptions, and for a reduction of the signature threshold, etc. Previously, in September 1999, the Constitutional Court had already seized on a citizen's complaint about a referendum result in order to set a higher approval quorum of 25% for referendums at the state level (promptly introduced by the *Landtag*), again referring to the "basic democratic principles" of Section 75.

But the Constitutional Court also pursued its attack at the local level. In 1999, again following a citizen's complaint, the Court had ruled that "basic democratic principles" also demanded the introduction of a participation quorum for the municipal referendum, which had been abolished by the referendum that *Mehr Demokratie* had won. The quorum had thus been re-introduced. When *Mehr Demokratie* launched the popular initiative 'Protection of the municipal referendum' to reverse the reintroduction of the participation quorum, the Constitutional Court was not able to (mis)use the "basic democratic principles" argument again. After all, they would have needed to use this reason to reject *Mehr Demokratie*'s first popular initiative in 1994. This time, therefore, the Court had the principle of municipal autonomy up its sleeve: the abolition of a municipal participation quorum via a state law. The perversity of this argument should be clear. In Germany, the federal states have the power to organise local democracy. Democratic rules, including those for citizens' initiatives and referendums, must always be regulated in state laws. The Constitutional Court – a state institution – was therefore intervening in the municipal state of affairs itself with its decision on municipal approval/participation quorums. But if a citizens' initiative wants do this, there is suddenly talk of a serious violation. The situation is even more depressing if we consider that the principle of municipal autonomy was originally introduced to give local citizens as much control as possible over their own community. The same principle was now being used high-handedly by politicians in order to actually reduce that control.

In all, out of the five popular initiatives launched by *Mehr Demokratie* between 1995 and 2000, three were blocked by the Constitutional Court, and one – without the support of any relevant legislation – was subjected to far-reaching obstruction by cutting it into two popular initiatives and subsequently requiring citizens to go to the town hall on separate occasions to add their signatures. *Mehr Demokratie* only had the capacity to persevere with one initiative and that failed to achieve the sky-high second signature threshold.

### Germany: Hamburg

Hamburg was the second place in Germany where *Mehr Demokratie* succeeded in allowing citizens themselves to decide about their direct democracy (Efler, 2001). Hamburg, with 1.7 million inhabitants and Germany's second largest city, is a city-state: a city with the status of a state.

In 1996, the Hamburg parliament, inspired by the emergence of referendums everywhere in Germany, had introduced the binding citizens' initiative referendum at city level. The thresholds and exceptions were so extensive, however,

that the system could hardly be used. More or less anything concerning finance was excluded, as were town planning proposals and one-off development proposals. The latter excluded, for example, major projects such as the expansion of the port or the construction of an additional tunnel under the Elbe river. In order to obtain a referendum, no less than 10 percent of the people entitled to vote had to go to the town hall to submit their signatures within 2 weeks. At city level there was a virtually unachievable approval quorum: citizens' initiatives which contained an ordinary legislative proposal must, besides gaining a simple majority of the votes, also be approved by 25 percent of all the people entitled to vote, while citizens' initiatives that wanted to change the constitution not only had to secure a two-thirds majority of the votes, but also be approved by 50 percent of all the people entitled to vote.

*Mehr Demokratie* then decided once again to use the bad referendum instrument to obtain a better referendum. Together with several local partners, it drew up two citizens' initiatives: one for the introduction of direct democracy at the district level, and a second for improving the existing system at the city level. Because the second citizens' initiative required a constitutional amendment – and thus the sky-high authorisation quorum had to be obtained – the activists aimed to combine their referendum with the national parliamentary elections of 1998. The beginning was laborious; there were only a couple of thousand marks (about one thousand euros) as initial capital and some of the partner organisations wanted to postpone the entire campaign to the future. Collection of the first 20,000 signatures required could only commence in May 1997, and the activists had to hurry if they still wanted to combine the initiative with the elections. This time pressure actually seemed to work to their advantage. The majority of the signatures were finally collected in the second half of the campaign. By autumn 1997, no less than 30,000 signatures had been gathered for submission. At the discussions in the parliament, several members of the parliament said that they considered the citizens' initiatives to be contrary to the constitution. But the stipulated period within which the initiatives should have been presented to the Constitutional Court for its ruling was allowed to expire.

Thus the initiative moved into its second stage, in which 10 percent of the eligible voters (120,000 people) had to go to the town hall or the municipal offices to give their signatures in the two weeks from 9 to 23 March 1998. *Mehr Demokratie* was helped because the municipal authorities sent a postcard to all those entitled to vote announcing the citizens' initiatives and saying where and when the signatures of support could be given. On the back of the postcard was an example of how to express support by post. This provision had, incidentally, been approved in the 1996 law and was completely unique in Germany. The atmosphere was quite tense because the municipal authorities only wanted to make a single announcement of the intermediate position at the end of the first week. However, the second stage was a resounding success: by the first intermediate position (after 5 days), 85,000 citizens had already supported the initiatives and at the close of signature collection on 23 March, the number had risen to more than 218,000 (18.1% of the people entitled to vote) for the first initiative (for referendums at the district level) and more than 222,000 (18.4%) for the second initiative (direct democracy at the city level).

At first, the city council had wanted to hold the referendums shortly after the national parliamentary elections. This was initially a setback for the people at *Mehr Demokratie*, but they

recovered rapidly and lobbied the members of parliament to combine the elections and the referendums on the grounds that a lot of citizens' time and public money (because of the higher costs) would otherwise be wasted. The lobbying was successful and the referendums were eventually combined with the parliamentary elections of 27 September 1998.

In the meantime, as in Bavaria, *Mehr Demokratie* had put together a large coalition of all kinds of – mostly small – social organisations. Nevertheless, they had to take on the two major parties in Hamburg – the SPD and CDU – as well as the chamber of commerce and the powerful *Bild-Zeitung* newspaper belonging to the Springer group. The combined opposition beat their big drums with slogans such as: "Minorities will be bullied", "Referendums with low turnouts lead to sham democracy", "The port and airport will be paralyzed by tighter noise legislation" and "The beginning of a fatal development". Newspaper advertisements warned that an 'activists' dictatorship' would be introduced if the *Mehr Demokratie* proposals were to be adopted. "No 'argument' was too primitive not to be brought out", writes Efler (2001).

In Hamburg, the parliament has the right to put a counter-proposal to the vote at the same time as the citizens' initiative. The parliament presented its counter-proposal only four weeks before the referendum. The citizens' initiative wanted referendums on ordinary laws to be decided by a simple majority and constitutional amendments by a two-thirds' majority, with no further turnout requirements. In the parliamentary counter-proposal, the high thresholds mainly remained intact: ordinary laws had to be adopted by a majority that constituted at least 20 percent of all those entitled to vote, and amendments to the constitution by a two-thirds' majority that constituted at least 40 percent of all eligible voters. Thus if 70 percent voted for an amendment to the constitution, the turnout would have to be almost 60 percent to reach the 40 percent minimum share of the total eligible electorate. The citizens' initiative wanted to partly abolish the taboo on financial matters, whereas the parliamentary counter-proposal wanted to exclude all subjects that had an effect on the budget. "What important issue nowadays has no effect on the budget?", Efler asked (2001). Because the subject and the differences between the two proposals were quite technical, and there was little time for a full campaign because of the parliament's delaying tactics, *Mehr Demokratie* focussed on highlighting the differences and comparing the two proposals point for point, adding the question: Why would politicians surrender power voluntarily? *Mehr Demokratie* also made its campaign very visual: it used images of ballot papers marked in support of the initiatives in its newspaper and cinema advertisements and on posters which were put up on referendum day in front of all the polling stations. On voting day, 27 September 1998, 74.0% of the voters voted for the *Mehr Demokratie* proposals at the city level, and 60.0% for the same at the district level. The turnout was 66.7%. This meant that the high approval quorum was reached for the referendum at the district level, because it would be introduced by means of an ordinary law, but not for the referendum at the city level, for which the constitution had to be amended. The parliament's delaying tactics meant that voters received their referendum material – which could also be used for a postal vote – much later than that for the simultaneous parliamentary elections. *Mehr Demokratie* subsequently calculated that if the referendum material had been sent at the same time as the election material, the approval quorum would also have been obtained for the proposal for the city level.

Partly thanks to its successes in Bavaria and Hamburg, the *Mehr Demokratie* movement has spread throughout the whole of Germany. The movement now has branches in 13 of the 16 German states. Its campaigns, publicity and lobbying played a major role in the introduction of the binding citizens' initiative referendum in all states and municipalities in Germany, even if the rules governing them vary enormously in quality. In addition, *Mehr Demokratie* has managed to win over a majority of the German parliament to the idea of introducing direct democracy at the federal level in Germany, though it does not yet have the two-thirds' majority that is necessary for an amendment to the constitution. For more information see: [www.mehr-demokratie.de](http://www.mehr-demokratie.de).

## Germany: Schönau

After the environmental disaster with the nuclear power station at Chernobyl in April 1986, a citizens' initiative called the 'Parents' initiative for a nuclear-free future' was launched in Schönau, a Black Forest village with 2,500 inhabitants. The aim was to promote more moderate consumption of power without the use of atomic energy. There were some small successes, but the campaigners soon realised that they could achieve very little without controlling the power supply themselves. After all, the regional power supplier, KWR, set the electricity rates, and energy saving and decentralised energy production would be unprofitable for it.

When the contract between the municipality and the electricity company came up for renewal, the power struggle began. The citizens' initiative had developed its own plan for environmentally friendly energy production and distribution, and therefore wanted to take over the local electricity grid from KWR. To do this, they set up the '*Netzkauf Schönau*' (Schönau Grid Purchase) umbrella organisation. However, the municipal council still decided to renew the contract with KWR.

In order to win the right to acquire the local electricity grid, '*Netzkauf Schönau*' launched a referendum in 1991, which they won with 55.7% of the votes. The acquisition of the grid and the installation of an ecological energy policy appeared to be possible. Citizens not only from Schönau, but from the whole of Germany, collected the four million marks needed to buy the local grid. In 1994, the local company "*Elektrizitätswerke Schönau GmbH*" (EWS – Schönau Electricity Works) was established, which then received the concession from the municipality.

However, a broad front of resistance to this change came into being. It included, naturally enough, the power company KWR, but also the Christian Democratic CDU and large parts of the socialist SPD. It was also joined by the largest employer in the district, who warned of power cuts and higher electricity prices if the 'power rebels' were allowed to push ahead with their plan. The opponents of the local energy

rebels launched a second citizens' initiative. KWR supported the opponents of the alternative energy initiative with substantial funds and a specially arranged 'information office'. But the power rebels were victorious a second time, though by a narrower margin: in March 1996, 52.4% of the voters agreed that the cooperation between the Schönau municipality and KWR should be ended.

The power company then played its final trump card: it asked for 8.7 million marks for the sale of the local infrastructure, instead of the 4.5 million marks which the citizens' initiative experts had estimated. In November 1996, after two years of denial, KWR admitted that Schönau actually only had 22 kilometres of cabling rather than the 33 claimed, and the asking price dropped from 8.7 million to 6.5 million marks. The power rebels from Schönau then conducted a campaign across the whole of Germany to collect the rest of the money, under the slogan: "*Ich bin ein Störfall*" ("I am a hazardous incident"). At the same time, they continued their legal battle against the company to get the unreasonable price lowered. On 1 July 1997, the electricity company set up by the citizens officially took over the local electricity grid for a price of 5.8 million marks.

Since then, EWS Schönau has proven itself to be a professional and reliable energy supplier, even in the eyes of former opponents. The managing director of the company is Ursula Sladek, one of the original initiative group. The amount of solar energy produced per head of population is the highest in Germany and nuclear power has been entirely banned. Among other buildings, the roofs of the town hall and the Lutheran church in Schönau are completely covered with solar panels. Due to the liberalisation of the power market, EWS can now supply customers throughout Germany. Since 1998, the Schönau power rebels have also been providing support to initiatives in the rest of Germany that want to switch to eco-power. They have cooperated in the creation of a network of no less than 697 German eco-power producers. For every kilowatt of eco-electricity produced, between a half cent and two cents is put into a fund for new eco-power producers. This has enabled EWS to donate 900,000 euros over the last three years. And in July 2005, a court ruled that even the reduced KWR sale price of 5.8 million marks was too much: the real value of the local grid was only 3.5 million marks (1.8 million Euros) and KWR had to refund the difference to EWS.

The Schönau example shows that citizens possess significant latent social capital and are prepared to make the effort. At the same time, it also demonstrates that direct-democratic decision-making is indispensable in order to cash in on this moral capital. If the decisive citizens' initiative at municipal level had not been available to the citizens of Schönau, the KWR power company, in collaboration with the municipal council, could have simply continued to impose its own will. (For more information see: [www.ews-schoenau.de](http://www.ews-schoenau.de))

## 5-1: The art of the citizens' initiative

Below is a checklist of some basic rules that must be taken into account when launching a citizens' initiative. The most important sources are: Jim Shultz, 'The Initiative Cookbook', and Michael Seipel & Thomas Maier, '*Triumph der Bürger!*' (The Citizens' Triumph!).

### General rules

- Usually, the side that convinces the undecided or floating voters wins.
- The strongest force behind the politics of the referendum is public discontent. One should carefully establish whether there is discontent and whether this can be mobilised.
- Referendum initiatives usually have majority public backing to begin with. This tends to drop off during the campaign under pressure from the opponents. A slide from a 70% to a 51% support position can happen quite easily; a move in the reverse direction is far harder.
- Referendums are lost on the weakest point in the proposal. If the proposal has a weak point somewhere, the opponents will focus on that and exaggerate the weakness. Voters have very little inclination to vote for a proposal that has an obvious weak point, even when the main body of the proposal is sound.
- Polarisation is inevitable. The voters must clearly see who is for and against the proposal and why.
- Being able to show that ones opponents have a financial interest in the outcome is an extraordinarily effective way of winning support.

### Questions at the outset

- Is there sufficient public support? Opinion polls can be used, but remember that public opinion is fickle and can change.
- Is there a simple, winning message? Compare the opponents' possible message or key slogan with your own.
- How strong is the support base? Are there enough organisations that can step into the spotlight? Are the organisations that the public would naturally expect to support the initiative also actually in favour of it?
- Is there any money? Fundraising must start early. The funding must be clear and understandable. It must also be realistic and the accounts must always be up to date and readily available (e.g. for the media).
- Is there expertise readily available? Ensure that there are enough people capable of dealing with technical problems or political disturbances during debates and speeches.
- Is it possible to take advantage of any general or local elections? Holding the referendum at the same time as elections can help to increase turnout – important if there are turnout quorums.

### Phrasing the question

- The initiative/referendum proposal must be clear and precise. The wording must be unambiguous and the proposal must be made public as early as possible.
- The proposal must be drawn up with all the potential allies in mind. Do not include irrelevant aspects that might frighten off possible allies. The opposite is also possible: 'fence sitters' (organisations that tend to adopt a neutral position) can take part in the coalition if certain aspects that are important to them are included.

- The proposal must be drawn up with the public in mind. Does the proposal have a broad appeal? Does it have an Achilles heel?
- Will the authorities accept the referendum result as binding? If not, then tying political parties to it can be an option: get them to promise to accept the result well before the referendum.
- If there is a victory in the referendum, can the result be contested in the courts? (Obtain legal advice)

### Coalition

- A coalition which includes unusual allies strengthens the credibility of the initiative (e.g. 'conservative' and 'progressive' political parties, employers and employees, etc.)
- The core partners of the coalition must be available from the start.
- Good agreements between coalition partners about funding, a common public position, the division of duties and the appointment of spokesmen and -women are essential.

### Signature collection

- Shultz writes: "The Zen of signature gathering is, don't argue with anyone." Signature collection and campaigning are therefore best done separately. Being tempted into a discussion lasting a quarter of an hour or more with one or more passers-by is not an efficient use of time during a signature gathering campaign. You have to try to maximize productivity when collecting signatures.
- Make the link to the next step in the campaign. Signature collection enables the volunteers to build up some reserves of effort and commitment. If these reserves are neglected when the signature threshold has been achieved, it makes it more difficult to remobilise the real campaign some months later.
- Monitor the validity of the signatures. Signatures can be obtained from people with the wrong place of residence or nationality, or names and addresses can be unreadable or wrong. You should take an invalidity rate of 10% to 20% into account.
- Arrange a media event for the submission of the signatures.

### The campaign

- "Keep it simple and repeat the central message over and over again."
- Also appeal to people's emotions. Someone who appears both expertly and emotionally committed comes across well.
- Retain a strong hold on the initiative during debates. Anyone who gets pinned down by their opponent on a side-track has lost. Beware of sneak attacks, particularly on the campaign's integrity.
- In particular, established parties with power almost always play on public uncertainty and fears and drag up unrelated issues. You have to consciously anticipate this. References to foreign precedents in connection with the proposal can be effective in disarming fear scenarios.
- Parties in power will also address the public as individuals ('Your social security' instead of 'Our ...') and link this to an appeal for confidence in 'solid values', meaning the parties in power and their leaders. Remedy: address the public as a group of responsible people seeking common ground with each other.

- Provide the media with documentation: announcement of the initiative, submission of the signatures and suchlike are good moments. Maintain good contacts with interested press people.

#### **Ballot brochure**

- The space on the official brochure is limited. Keep the arguments simple and reiterate the key phrases that reflect the essentials.
- Quoting clear statements by scientific authorities or other people in whom the public have faith, for instance, can be very effective.

## **5-2: Referendums and plebiscites in several European countries**

Below is a brief summary of the regulations concerning national referendums and plebiscites in several European countries. The most important sources are: B. Kaufmann et al (editors), "Guidebook to direct democracy in Switzerland and beyond" (2005), and B. Kaufmann and M.D. Waters (editors), "Direct democracy in Europe" (2004).

#### **Belgium**

Binding referendums are constitutionally excluded in Belgium. Since 1945, only one plebiscite (referendum at the government's initiative) has been held. Schemes for citizens' initiative referendums only exist at municipal level, but apart from the fact that these are not binding, the municipal council can also dismiss a request for a referendum. For some years, however, there has been a debate about further implementation of referendums and support among the political parties has grown – particularly in Flanders.

#### *Examples*

In 1950, the Belgians voted on the return of King Leopold III. With a 92.9% turnout, 57.7% voted in favour and 42.3% against.

#### **Denmark**

The Danish constitution stipulates that a referendum must be held in a number of situations, including amendments to the constitution and the transfer of sovereignty to international bodies such as the European Union. If one third of the members of parliament request it, a referendum must be held, too. But this right has never been used. All national referendums are binding. However, the country does not have a citizens' initiative referendum at any level. At the local level, more than 160 non-binding plebiscites have been held since 1970.

#### *Examples*

The Danes approved accession to the European Community in 1972 (63.4% Yes). In 1992, the Maastricht Treaty was rejected by 50.7% of the votes. The following year, however, Denmark obtained an opt-out on four issues (economic and monetary union, Union citizenship, common defence, and justice and home affairs) and the Maastricht Treaty was then accepted with 56.7% yes votes. In 1998, 55.1% also approved the Treaty of Amsterdam. However, in 2000, 53.1% voted against adopting the euro.

#### **Germany**

Germany has no form of direct-democratic decision-making at the national level. Although section 20 of the German constitution reads: "All state power emanates from the people; it is exercised by the people in elections and referendums ...", the required implementing legislation is lacking. No plebiscites have been held since 1945. As described in chapter 5, however, all states and municipalities have introduced the popular and citizens' initiative referendum, mostly during the 1990s, and these are used extensively in some places. These referendums are binding. A majority in the parliament has also been won over for the introduction of direct democracy at national level, but the necessary two-thirds' majority for a constitutional amendment has not yet been achieved.

#### **France**

Section 3 of the French constitution – adopted in 1958 via referendum – reads: "National sovereignty belongs to the people, which exercises it by means of its representatives and referendums". However, there is no popular or citizens' initiative referendum in France. Amendments to the constitution, as well as territorial amendments, must in principle be subject to a plebiscite. The initiative for this, however, can only be taken by the French president or, to a lesser extent, by the parliament (the power of the French parliament is weak). The president can also decide to use a plebiscite on a 'legislative concept', which needs parliamentary approval. The vote is not on a fully drafted legislative proposal, only on a general idea. National referendums are binding. French politicians have regularly promised more direct democracy; for example, during his re-election campaign of 2002, President Chirac proposed the introduction of popular or citizens' initiatives at national and municipal levels as a future possibility.

#### *Examples*

The direct election of the president was approved by a majority of 62.3% in 1962. In the same year, voters approved Algerian independence by 90.8%. The expansion of the European Community was approved by a majority of 68.3% in 1972. The Maastricht Treaty achieved only a narrow majority of 51.0% in 1992. In 2000, the reduction of the president's term of office from seven to five years was approved by 73.2%.

#### **The United Kingdom**

The UK has no single written constitution – the 'rules of the political game' are contained in laws, conventions and 'understandings'. Historically, there was perhaps a fear that a formal constitution might challenge parliament's claim to sovereignty and limit its powers. In recent years, the role of parliament has been significantly weakened in comparison to that of the government. There is no national popular initiative referendum, but the government does sometimes hold plebiscites. At the municipal level, a citizens' initiative referendum allowing citizens to choose the option of directly electing their mayor was introduced via the Local Government Act (2000). The Scottish Parliament introduced a public petition system in 1999. Nearly 1000 petitions have been submitted to date (March 2006). In February 2004, a revolutionary online e-petition system, including online signature collection, was launched. In its first year

it received 90 petitions. There is a clear public demand for more direct participation (cf. the separate chapter on direct democracy in the U.K.).

#### *Examples*

In 1973, there was a plebiscite on Northern Ireland. 98.9% of the voters were in favour of retaining the union with the United Kingdom (a boycott by the Catholics produced a low turnout of 58.1%). In 1975, joining the European Community was approved by a majority of 67.2%. In 1979 and 1997, plebiscites were held on Scottish and Welsh devolution. The 1997 plebiscites approved a separate parliament for Scotland and an assembly for Wales. Northern Ireland was granted its own assembly in 1998 as part of the plebiscite on the 'Good Friday' agreement. There have been 33 local referendums on directly-elected mayors and in 2005 there was a local plebiscite in Edinburgh on introducing a congestion charge (74% 'No'). Prime Minister Tony Blair has promised that the European Constitution and the euro would only be adopted if approved by referendum (plebiscite).

### **Hungary**

The Hungarian constitution provides for the optional referendum and the popular initiative. However, there is a long list of exceptions: the budget, national and nationally established local taxes, public rates, international treaties, dissolving the parliament and local authorities, the coalition agreement, declaring war or a state of emergency, deploying the army abroad and within (!) the country, and granting amnesty. Furthermore, the popular initiative cannot be used to change the direct-democratic instruments (a subtle means of the elite having the last word on the democratic system). Referendums are sometimes binding, sometimes 'consultative' (non-binding). In 1997, the participation quorum was reduced from 50% to 25% of the voters. Without this change, the referendums on NATO membership (1997) and accession to the European Union (2003) would both have failed because of too low a turnout. Since 1989, nine national referendums have been held. At the local level, the referendum is compulsory in a number of cases and, in other cases, citizens can request a referendum with signatures of between 10% and 25% of the voters (a planetary record!). Here too, several important subjects are excluded. Local referendums are binding.

#### *Examples*

In 2004, 51.6% of the voters approved the introduction of dual nationality for certain groups of people. On the same day, a second referendum was held in which 65.0% voted for the reversal of the privatisation of hospitals and care facilities that had already begun. In 2003, 83.8% approved accession to the European Union.

### **Ireland**

Together with Denmark, Ireland provides a typical example of compulsory referendums in Europe. Since 1937, every amendment to the constitution has been compulsorily put to the people. A simple majority of the votes decides, with no participation quorum. 28 national referendums were held between 1937 and 2002. Furthermore, the president can hold a plebiscite if he rejects a law that has been passed

by the parliament. However, the procedure is complex and has never been used yet. As in the majority of European countries, Irish voters cannot initiate referendums.

#### *Examples*

Joining the European Community was approved by 83.1% of the votes in a referendum in 1972. Twenty years later, the Maastricht Treaty was also approved by referendum with a majority vote of 69.1%. Three referendums took place in 1992 on abortion legislation. Through these referendums, the right to travel abroad with the aim of having an abortion was agreed, as well as the right to distribute information about opportunities for abortion. The legalisation of divorce was approved by referendum with a narrow majority of 50.3% in 1995. In 2001, the Treaty of Nice was rejected, with only 46.1% of the votes in favour. When the other EU countries then put Ireland under pressure, Ireland obtained certain opt-outs and the same treaty was then accepted by 62.9% of the voters in 2002.

### **Italy**

Since 1970, Italy has had the binding corrective referendum and this is used extensively. After Switzerland and Liechtenstein, Italy has the most extensive experience with direct democracy within Europe. The corrective referendum allows citizens to put a law approved by parliament, or a part of such a law, to a popular vote. The signature threshold is relatively low at 500,000 (1% of the people entitled to vote) and the signatures can be collected on the street. In addition, five regional parliaments can together force a popular vote. The major problem with the Italian referendum is the high authorisation quorum: a law is only rejected if a majority votes against it and, at the same time, this majority represents at least 50 per cent of all those entitled to vote. Because of this rule, no less than 20 of the 42 national referendums which took place from 1990 to the end of 2003 were declared invalid. Furthermore, a number of important subjects are excluded, such as taxes, the budget and international treaties. The Constitutional Court has considerable freedom to interpret the vaguely formulated provisions for exceptions. This results in a large number of blocked referendum initiatives. It is primarily the more important initiatives which fail; on less important or more technical subjects, the Constitutional Court is much more likely to allow a popular vote. The absence of a real popular initiative represents a severe restriction on the people's sovereignty. One peculiarity in Italy is the differing voting behaviour between the North and the South. In the South, turnout is on average 20% lower than in the North. In the referendum on the abolition of the monarchy in 1946, the northern vote was predominantly republican, the southern one predominantly monarchist.

#### *Examples*

Laws approved by parliament, which made divorce impossible and performing an abortion more difficult, were rejected by the Italian voters. The 1974 referendum on divorce (40.7% wanted to ban divorce) and the 1981 referendum on abortion (32% of the voters supported tightening up abortion legislation) are examples of corrective referendums on ethical issues. In 1995, an initiative aimed at weakening Berlusconi's control of the media failed. Only 43.0% of the voters supported the proposal to limit private media company ownership to a single TV channel.

## Lithuania

This Baltic republic has good provisions: it has the compulsory constitutional referendum, the optional referendum and the popular initiative. From 1991 to the present (March 2006), 18 national referendums have been held. However, because of the high participation quorum – 50% of the voters – many referendums have been declared invalid. In 2002 and 2003, referendum law was amended: the participation quorum was reduced for referendums on membership of international organisations to which sovereignty is transferred. The opportunistic reason was that the political elite wanted the referendum of May 2003 on accession to the European Union to succeed at all costs. For all other subjects, the participation quorum remains unchanged. There is no form of direct democracy at regional and local levels.

### Examples

In 1996, no less than five national referendums were held (of which four were on the same day). The sale of farmland to certain parties was approved by 52.0% of the voters; 79.6% voted for compensating citizens who had lost possessions under communism; 78.7% voted for the lowering of the number of seats in parliament from 141 to 111; 77.3% voted for holding parliamentary elections every four years on the second Sunday in March; and 76.9% approved a measure by which at least half the annual budget is spent on social policy. In 2003, 92.0% of the voters supported accession to the European Union.

## The Netherlands

Within Europe, the Netherlands probably has the least experience with referendums. The Constitution – which is very difficult to amend – does not allow any binding popular votes. At the municipal level, however, some 125 non-binding referendums have been held since 1912 – a majority of them plebiscites. During the 1990s, a number of municipalities introduced the citizens' initiative corrective referendum. In the capital, Amsterdam, seven referendums have already been held since 1992. Under the pressure of public opinion, more and more political parties are now in favour of introducing a corrective referendum based on the Italian example. But this requires a change to the constitution, which failed by a hair's breadth in 1999. Following the referendum on the European Constitution, this will be attempted again.

### Examples

In 2005, the first national plebiscite since 1815 took place. On a turnout of 63.3%, the European Constitution was rejected by 61.5% of the voters.

## Norway

The Norwegian constitution dates from 1814, and does not provide for any form of direct democracy. The parliament (the 'Storting') can, however, hold a non-binding plebiscite. Since 1905, six national plebiscites have been held in this way. There is also an extensive tradition of plebiscites at municipal level, where about 500 plebiscites have taken place since 1972. In 2003, the parliament introduced the citizens' initiative referendum at the municipal level. This enables 300 citizens to put a specific subject to a popular vote.

### Examples

In 1972, membership of the European Community was rejected by 53.5% of the voters; in 1994, there was a new vote on membership of the European Union with a similar result: 52.2% against.

## Austria

Austria has a compulsory and binding referendum for complete revisions of the constitution. Partial constitutional revisions are subject to a referendum if at least one third of the '*Nationalrat*' (parliament) or the '*Bundesrat*' (representatives of the federal states) request such changes to the constitution. The '*Nationalrat*' can also hold a binding plebiscite on an ordinary law. Two national plebiscites have been held since 1945. There is no popular initiative referendum at the national level. By collecting 100,000 signatures, citizens can, however, submit a petition to the parliament ('*Volksbegehren*'). The option is regularly used, but it does not lead to a referendum. In two of the nine states (*Upper Austria* and *Steyermark*), however, there is a popular initiative referendum, as well as citizens' initiatives in all municipalities.

### Examples

In 1978, a plebiscite was held on the commissioning of the nuclear power station at *Zwentendorf*. Start-up was rejected by a narrow majority of 50.5%. In 1994, the people approved accession to the European Community by a majority of 66.6%.

## Poland

The Polish constitution, adopted by plebiscite in 1997, does not include the popular initiative referendum. However, the country does have a scheme for plebiscites and these are regularly held. Plebiscites are valid if 50% of the registered voters take part. Since 1996, seven plebiscites have been held, of which the last two were binding.

### Examples

On one day in 1996, no less than five plebiscites were held. The votes concerned three privatisation proposals (all rejected, by respectively 96.2%, 91.3% and 76.8% of the voters) and two pension proposals (both also rejected by 95.1% and 96.0% of the voters). In 2003, membership of the European Union was approved by 77.5% of the voters.

## Slovakia

Slovakia has several direct-democratic instruments. With 350,000 signatures, citizens can launch either an optional referendum or a popular initiative. 'Fundamental citizens' rights', taxes, the budget and levies are excluded. Accession to an international association of states is subject to a compulsory referendum. The government or the parliament can also hold a plebiscite on a subject of their choosing. There have been nine national plebiscites since 1994. The high participation quorum of 50% of the voters often causes referendums to fail. The referendum of 2003 on accession to the EU was heavily criticised as being unfair for its opponents.

### Examples

In 1998, 84.3% voted against the privatisation of 'strategic industries', especially electricity companies. In 2000, 95.1% voted for holding snap elections. In 2003, 92.7% approved

accession to the European Union. In 2004, 86.8% voted in favour of snap elections once again.

## **Spain**

The Spanish constitution stipulates that the government and the parliament can hold a plebiscite on a matter of national importance. However, there are many exceptions: amendments to the constitution, taxes, the budget, and matters on which the parliament has absolute authority. In addition, 75,000 citizens can submit a type of petition. This can lead to a referendum, but as it needs the approval of the president, it is not a fully-fledged popular initiative referendum. An interesting aspect is that the initiators of a petition can obtain repayment of a part of their costs. This referendum money is subject to a participation quorum of 50% of the voters. There have been six national plebiscites since 1945. At the regional level, there is no form of referendum; at municipal level, the municipal council can hold a local plebiscite.

### *Examples*

In 1978, a constitutional amendment was approved by no less than 91.3% of the voters. In 1986, the Spaniards voted on whether or not to remain a member of NATO: 56.9% voted in favour. In 2005, the European Constitution was approved by 76.7% of the voters.

## **Sweden**

As in France, the Swedish government also makes use of plebiscites. The Social Democratic Party had dominated Swedish politics since the 1920s, but in 2006 a Conservative government was elected. Five plebiscites have been held since 1945. Plebiscites are only binding under certain circumstances. At the local level, there is only a right to submit an agenda item.

### *Examples*

In 1980, a triple choice plebiscite was held on nuclear policy. The middle option – constructing 12 nuclear power stations that would be replaced after 25 years by alternative energy sources – received the highest share of the votes (40.5%). In 1994, 52.9% of the voters approved accession to the European Union. In 2003, 55.9% voted against the introduction of the euro.

## 6. Possible objections to direct democracy

The following objections are often raised against direct democracy.

- a. Incompetence: in a modern society, the problems are far too complex for well-considered decision-making to be left to the man in the street.
- b. Lack of a sense of responsibility: people do not consider anything except their own interests. For example, they would abolish taxes without realising the consequences of such a measure, or demand higher government spending that would derail the budget. Politicians can always be called to account for their decisions, but no-one is accountable for decisions made by referendum.
- c. Threats to minorities: direct democracy could be a means of approving proposals that violate human rights and fundamental freedoms. Minorities would be particularly threatened in this way.
- d. In connection with point c: in a direct democracy demagogues have the freedom to launch crudely populist proposals.
- e. Power of money: well-funded ‘special interests’ dominate the debate and use referendums for their own ends.
- f. Lack of possibilities for refining and qualifying the issues: voters can only say ‘yes’ or ‘no’ to a proposal in a referendum; there is no opportunity for greater discrimination and subtlety. Moreover, with referendums there is the issue of linking: all sorts of issues not directly concerned with the actual subject of the referendum play a role in the voters’ decisions.
- g. Conflict with representative democracy: parliament is discredited by referendums and the primacy of the ‘official’ political sphere is undermined.
- h. Overburdening the voters: voters don’t want referendums at all; they want to be left in peace and not be obliged to go to vote.
- i. Manipulation of the way the question is presented: the question can be suggestively phrased so that voters are misled into voting against their real convictions.
- j. Conservatism: the referendum ensures that essential renewals are blocked, because people tend to vote for retaining the status quo. Others claim the exact opposite: that enthusiastic activists can take over democracy via the referendum, because the silent majority doesn’t take part in referendums.
- k. Referendums are unnecessary because there are better ways of allowing the people to discuss political issues.
- l. Finally, in some states, such as Belgium, it is argued that the referendum threatens the unity of the country.

This chapter discusses these objections one by one. A note in advance: in assessing the objections, direct democracy must always be compared with the purely representative system

and not with an impossible abstract ideal. Many objections levelled against direct democracy are actually objections to democracy as such. Furthermore, objections must be tested against actual practice in places where forms of direct democracy have already been in operation for a century or longer (particularly Switzerland and a few American states, see chapter 5). This is now possible, because in recent years a great deal of empirical research has been carried out in this area, covering almost every aspect of direct democracy.

### a. Incompetence

This argument rejects direct democracy because the voters are not considered to be competent to form a well-considered opinion. The argument has an unattractive history. It was used against the universal single vote system, against votes for women, and against votes for black people in South Africa, etc.

In 1893, the Belgian Catholic politician de Neef opposed universal voting rights by invoking the incompetence argument: “Those who demand the right to vote must, of course, also demonstrate that they are competent to exercise the function they demand. Do unfortunate people who have been unable to acquire an elementary education, who have been unable to raise themselves above the most primitive living conditions, nevertheless have the right to decide things for other people, and vote on the country’s weightiest issues? In reality, universal voting rights lead to the rule of the slickest, because those who are unable to discriminate will be fully dependent on the smooth operators.” (Coenen and Lewin, 1997, p. 84). In 1919, his parliamentary colleague, the socialist Hubin, used the ‘incompetence’ argument to oppose voting rights for women. Interestingly enough, it appears that Hubin now accepted that in the meantime working-class *males* had actually acquired the necessary competence: “The right to vote is a dangerous weapon. Nothing is more valuable than this weapon for an organised and educated class, who are aware of their rights and responsibilities. But are you going to grant this right to a gender that is not prepared to make use of it?” (Coenen and Lewin, 1997, p. 95; it should be noted that both women’s right to vote and direct democracy had been included in the Belgian socialist Gotha programme, approved in 1875.)

In practice, each time the group concerned had received voting rights, the argument had turned out to be completely false. The same applies to direct-democratic decision-making: Swiss practice demonstrates that the argument is also invalid in this context. Switzerland is clearly one of the better-governed countries of Europe, with a very small executive, efficient public services and an above-average economy that runs well.

The argument fails for several reasons: morals are always the key to a political decision, and a moral decision is always personal. No-one can make a moral decision for someone else, and every responsible person is by definition capable of making a moral decision. “The voters (...) do not need to have detailed knowledge of the issues, but rather of the main questions at stake. These, however, are not of a technical nature, but involve basic decisions (i.e., value judgements), which a voter is as qualified to make as a politician.” (Frey and Bohnet, 1994, p. 156)

In this context, one must not forget how demanding life is for people today. It is (rightly) assumed that under normal circumstances they stand entirely on their own two feet in a fast-moving and competitive society. Via school, work and in all other aspects of their daily life, they continually encounter on a smaller scale the problems which are also the issues of the day in the wider political sphere. This is only logical, because, ideally, politics is really about the problems that people encounter in their day-to-day lives.

In making their choices, citizens usually use ‘information shortcuts’, such as the opinions of acquaintances and ‘natural authorities’ that they trust: for example, the voting recommendations of political parties and public organisations, information that is provided by media and experts etc. In Switzerland, the voting recommendations of numerous organisations (political parties, trade unions, churches, professional associations and pressure groups etc.) are included in the referendum information packages. Incidentally, members of parliament make just as much use of shortcuts: they must make decisions about so many laws and regulations that it is frequently not feasible for them to study all the sources of information themselves (this became clear from a survey showing that Dutch MPs read only a quarter of all the memorandums that they are expected to read (Dutch newspaper NRC Handelsblad, 28 February 1997), so that they regularly make use of ‘shortcuts’. Lupia (1994) has shown that the use of ‘information shortcuts’ by citizens in referendums has hardly any effect on the final decision. In his analysis of a number of Californian citizens’ initiatives from 1990, it appeared that there was only a 3% difference in voting behaviour between the group of voters who were well-informed and the group of voters who based their vote solely on shortcuts.

Moreover, the argument cannot be used selectively against direct democracy: it is actually an argument against democracy itself. If the citizens are not competent to decide on specific issues, by definition they are certainly not competent to elect people who make good decisions. In order to elect someone who makes good decisions, after all, one must not only be competent to distinguish between good and bad decisions, but also be competent to judge the trustworthiness and moral and intellectual integrity of the candidates, or be competent to see through the hidden agendas of the political parties. “It is (...) not clear why the citizens are trusted to be able to choose between parties and politicians in elections, but not between issues in referendums. If anything, the former choice seems to be the more difficult one, because electors must form expectations about politicians’ actions in the future.” (Frey and Bohnet, 1994, p. 157)

The incompetence argument also includes the concealed twin assumptions that the elected representatives *are* actually competent, and really do have the public interest at heart. “Critics of direct legislation frequently have a view of state legislators that borders on the mythical: highly intelligent; extremely well informed; as rational as a virtuous, wise, and deliberative statesman; and as competent as corporate presidents and university professors. These same critics tend to view the people as a ‘mob’, unworthy of being trusted. Yet the people, or so-called mob, are the same persons who elect legislators. How is it that they can choose between good and bad candidates but cannot choose between good and bad laws?” (Cronin, 1989, p. 87)

Finally, it is a fact that citizens’ ‘social knowledge’ increases as a result of participating in referendums. Benz and Stut-

zer (2004) examined this by comparing Switzerland and the European Union, where a number of countries held referendums on European integration, and others did not. During the period examined, seven of the EU states held a referendum on European integration (Denmark, Ireland, France, Austria, Sweden, Finland and Norway). There were no EU referendums during this period in the other eight countries (at that time only 15 countries belonged to the EU). Inhabitants of countries which held referendums appeared to score considerably better on 10 general questions about the EU than did inhabitants of countries where no referendum was held: the effect was just as great as the difference between people with an average income versus people with a low income. In Switzerland, Benz and Stutzer took an index of the degree of direct democracy at cantonal level (which, as stated previously, differs considerably from one canton to another), and compared this with the answers from Swiss citizens on three questions about general Swiss politics. Here too, the Swiss who lived in cantons with greater direct democracy had considerably more knowledge than the Swiss living in cantons with more representative systems. The impact was just as large as the difference between members of political parties and non-members, or the difference between people with monthly incomes of 5,000 versus 9,000 Swiss francs.

## b. Lack of a sense of responsibility

According to this argument, people will mainly approve proposals that serve only their own interests, showing a lack of responsibility for the whole community or society, with destructive consequences. They will, for example, vote to abolish taxes and at the same time increase public spending.

In reality, from a financial perspective, citizens are more responsible than politicians. The large public debts that now exist in most Western countries, for example, have been accrued against the wishes of the people. Surveys conducted over several generations in Germany and the US show that a stable two-thirds majority of the population are in favour of a government budget that remains balanced also in the short term (‘balanced budget’, von Weizsäcker, 1992). Thus, the accumulation of a mountain of debt is the result of a policy that is contrary to the wishes of the majority. People are also unwilling to be burdened with measures that would be required to reduce such mountains of debt (Blinder and Bagwell, 1988; Tabellini and Alesina, 1990).

Research has shown that the accumulation of a government deficit is closely connected with the party-political line-up in a country. Here are a few empirical observations:

- the greater the polarisation within a multi-party coalition, the greater the tendency to accrue a debt;
- the more probable it is that a government will lose the coming election, the greater the tendency to accrue a debt;
- the shorter a government’s average term in office, the greater the accrued debt;
- the more coalition partners there are in a government, the greater the tendency to accrue a debt.

(cf. Roubini and Sachs, whose research concerned the OECD countries during the period from 1960 to 1985; other references in von Weizsäcker, 1992).

These observations demonstrate that the political elite’s short-term thinking plays a pivotal role in the accrual of the

national debt: debt is incurred to buy votes, so to speak. Von Weizsäcker (1992) therefore argues for the implementation of a compulsory referendum before national debt is incurred.

As we have also already shown in chapter 5, Feld and Matsusaka (2003) examined how voters decide at referendums on public spending in Switzerland. In a number of cantons, public spending is subject to compulsory ‘finance referendums’. Each individual public-sector expenditure above a certain amount (the average for this is 2.5 million Swiss francs) must be separately approved by means of a referendum. Feld and Matsusaka found that cantons with this type of compulsory referendum spent 19% less than cantons without this type of referendum (the figures relate to the period 1980 to 1998).

Matsusaka examined the same effect for the American states, systematically analysing all the available data for the whole of the 20th century. States with the citizens’ initiative appear to spend 4% less at state level than states without it. Furthermore, it appears that the easier it is to launch a citizens’ initiative, the larger the impact is: in states with the lowest signature threshold, public spending was 7% lower than in states without the citizens’ initiative, whereas the impact in states with the highest signature thresholds was almost zero. At local level, the citizens’ initiative led to higher expenditure, but overall the net-effect was a fall in public spending (Matsusaka, 2004, p. 33-35).

Direct democracy also leads to lower taxes. If the citizens’ initiative referendum is available in a certain state, this led to a reduction in tax of US\$ 534 for a family of four people, which corresponds to approximately 4% of the public revenue. The difference is significant, but not dramatic in absolute terms and one cannot say, on the basis of this alone, that the state becomes unmanageable (Matsusaka, 2004, p. 33-35).

Therefore, although both public spending and taxes decrease, the net effect is a decrease in budgetary deficits. Feld and Kirchgässner (1999) surveyed the effect of compulsory referendums on the budgets in 131 of the largest Swiss cities and municipalities. They chose to compare municipalities rather than cantons, because municipalities have more room for manoeuvre in the area of budgets even than cantons, where it is already considerable. They found that the availability of compulsory referendums on the budget had a strong effect of reducing budget deficits. Kiewit and Szakaly (1996) had previously drawn the same conclusion for the United States.

Moreover, it is certainly not true that if tax issues are on the agenda, citizens by definition choose lower taxes. Piper (2001) mapped all citizens’ initiatives relating to taxes in American states from 1978 to 1999; in the US, optional referendums do not play a significant role. There were 130 citizens’ initiatives on taxes, of which 86 sought a tax reduction, 27 a tax increase, with 17 being neutral about the rate of tax. Of the citizens’ initiatives to reduce taxes, 48% were approved, i.e. less than half. Of the citizens’ initiatives to increase taxes, 39% were approved. The difference between these two is therefore small, and the percentages vary around the average chance of success for citizens’ initiatives in the United States, which is 41%. In Switzerland, voters also regularly approve necessary tax increases. In 1993, an extra tax on fuel of 0.20 Swiss francs a litre (approximately 0.14 euro) was approved, after an earlier increase in 1983 had also been accepted by referendum. In 1984, new taxes were approved by referendum for motorways and for the use of trucks.

California is frequently referred to specifically as a place where citizens have taken irresponsible financial decisions by means of referendums. It has been claimed, for example, that citizens’ initiatives have fixed so large a part of the Californian budget and at the same time frozen the possibility of introducing new taxes that, as a result, politicians have no longer had enough room for manoeuvre. Matsusaka (2005) examined this claim and concluded that, after almost a century of direct democracy, 68% of the Californian budget was entirely dictated by the representative system, and that the possibility of introducing new taxes had hardly been restricted at all.

Despite the politicians’ heavy responsibility for the poor financial situation in the majority of Western countries (apparent from the discussion above), they still succeed in reversing the roles. The Belgian Senator Hugo Vandenberghe defended his opposition to the referendum in the following words: “The people do not have to carry any responsibility for their decisions. They can perfectly easily decide to scrap taxation and two weeks later increase social security benefit payments.” (Belgian newspaper De Standaard, 19 December 1992). The truth is exactly the reverse, of course: at the end of the day it is always the people who must pay the bill for a derailed budget, in the form of increased taxes and degraded public services, etc. The individual politicians in representative systems, who are the only ones who decide on the level of taxes and national debts, never take the consequences of their decisions personally, of course. They have never paid back a single cent of expenditure for which the citizens never asked or that led to national debts. After their mandate expires – possibly being rewarded with a golden handshake or a generous retainer – they simply move on to their next party-political job. Afterwards they can trot out plausible-sounding arguments for their decisions, but then the harm has already been done, without any guarantee that their successors will do any better.

In fact, Senator Vandenberghe draws attention to a key argument *in favour* of direct democracy: because the people *always* have to take the consequences of the budgetary and taxation decisions, it is only logical that the people must also have the final word on these decisions.

### c. Threats to minorities

According to this argument, direct democracy would become a weapon in the hands of majorities to oppress minorities and to establish a dictatorship.

This is another argument against democracy itself – or actually against any political system that allows any freedom of choice – not against direct democracy. A parliamentary regime can equally fail in its duty to minorities, or establish a dictatorship. The takeover of power by the Nazis in 1933 is a good example of the installation of a dictatorship via the parliamentary route. The German parliament not only elected Hitler as Chancellor in 1933, but also granted him unlimited power by means of the ‘*Ermächtigungsgesetz*’ (‘enabling law’), even though the Nazis represented less than half of the electorate in all the elections held up to that time. A form of limited direct democracy also existed in Germany at that time, but it was the parliamentary system that introduced the dictatorship [see 6-1].

In principle, a direct democracy actually provides more opportunities for minorities to have an effect than representative systems. “In a direct democracy, each issue must find its own majority. Each time there are different issues on the

agenda and each time the coalition that forms the majority is made up differently. One time you will be part of the majority, another time of the minority. And in a direct democracy minorities also have more opportunities to put issues onto the public agenda. If [in Switzerland] they collect 100,000 signatures, a vote is held on their issue. Then their opponents must also explain exactly why they are against the proposal. Through this new insights can be acquired and opinions can change. Direct democracy is more than a simple survey. It provides dynamics through which minorities have the possibility of becoming majorities. In a purely representative system, on the other hand, particular parties oppose each other. If you sit in the rank and file of an opposition party, in fact you have no effective vote, because the parties of the governing coalition have a permanent majority in parliament and in principle they can obtain everything they want", according to Swiss Member of Parliament Andi Gross (2000).

It is not for nothing that, when they are asked directly, minorities always include themselves in the majority who are in favour of direct democracy. A 1999 Rasmussen survey among Texans found that 72% of blacks and 86% of Hispanics were in favour of direct democracy, compared to 69% of whites ([www.initiativefortexas.org/whowants.htm](http://www.initiativefortexas.org/whowants.htm)). Surveys carried out by Field at three different times (1979, 1982 and 1997) among inhabitants of California found a large and consistent majority for the setting-up of direct democracy among all ethnic groups. In 1997, 76.9% of Asians, 56.9% of blacks, 72.8% of Hispanics and 72.6% of whites considered Californian direct democracy to be a "good thing", whereas the proportion that found this a "bad thing" was highest among the whites (11.5%) and the lowest among the Asians, at only 1.9% (Matsusaka, 2004, p. 118).

Empirical research shows that if referendums are held on minority rights, these result in large majorities in favour of such rights. Frey and Goette (1998) took the civil rights from the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights as their points of departure and then examined all Swiss referendums on minority rights in the period from 1970 to 1996 at federal level, in the Zurich canton and in the municipality of Zurich. In more than two-thirds of the cases (70%), the outcome was support for minority rights. At federal level, support was even higher, at 80%. It also appeared that referendums which threaten minority rights have much less chance of being adopted than referendums on other subjects. Of the citizens' initiatives at federal level, 10% on average are approved; of 11 citizens' initiatives (1891-1996) that sought to reduce minority rights, not one was successful. By contrast, minority groups are frequently successful in referendums. On average, 50% of the compulsory referendums are adopted. Of the 11 compulsory referendums that supported minority rights (1866 to 1996), no less than 73% were adopted. Again, on average, 63% of the optional referendums are adopted. The two optional referendums (1866 to 1996) that supported minority rights were both adopted.

On 24 September 2000, the *Volkskrant*, probably the most influential newspaper in the Netherlands, published a critical and tendentious article about the citizens' initiative referendum to be held the following day in Switzerland. This sought to limit the number of foreigners residing in Switzerland, which has always been very high (around 20%), due in part to Switzerland's strong humanitarian tradition and to its thriving economy. The newspaper suggested that this type of proposal was socially acceptable within Swiss direct democracy, and inferred that the referendum represented a violation

of human rights. The newspaper forgot to mention that the Swiss had already voted directly-democratically on six earlier occasions on similar proposals, and that these had all been rejected with generally large majorities. When, on the day following the *Volkskrant* article, this latest proposal suffered the fate of the earlier ones, the newspaper was silent.

For the United States, the political scientist Gamble (1997) attempted to prove that referendums on minority rights frequently produced negative outcomes for such rights. Her conclusions were, however, strongly criticised by her colleagues (including Donovan and Bowler, 1998, and Matsusaka, 2004). Firstly, Gamble had not systematically examined a series of referendums over a specific period, but based her conclusions on reports in the media and other subjective sources. Her data set was therefore not arrived at randomly. Distortions are obvious in such cases, because the media are more inclined to report sensational cases. Secondly, Gamble had not made a distinction between referendums in small municipalities and referendums at state level. When Donovan and Bowler reanalysed her data, it appeared that the degree to which minority rights were violated was much more a function of the size of the political unit (small municipalities versus large cities) than of the citizens' initiative. Thus there is no difference from the results in a representative system. Finally, Gamble had arbitrarily characterised various citizens' initiatives as examples of "tyranny by the majority" – such as a proposal that English be the official language of California, or that people convicted of serious sexual offences be subject to a mandatory AIDS test. It rather depends on ones personal point of view. Is it really so strange to have English as the official language in an American state; and must we actually consider it a human right for someone to be allowed to rape a person without subsequently having to undergo an AIDS test?

Whites are still the largest ethnic group in California, at almost 50%. Other major groups are blacks, Asians and Hispanics. Hajnal, Gerber and Louch (2002) studied how the various ethnic populations in California vote in referendums. They examined no less than 51 popular votes. It appeared that the difference in voting behaviour between the various ethnic groups was very small: voters from ethnic minority groups have an average of only 1% less chance of being on the winning side than white voters.

Meanwhile, what is the attitude of elected representatives to the constitutional state? Cronin (1989, p. 91-92) quotes the historian Commager, who had looked into the trustworthiness of the representative authorities on civil freedoms and minority rights: "A cumulative list of these might well dishearten even the most optimistic Jeffersonian. Censorship laws, anti-evolution laws, flag-salute laws, red-flag laws, anti-syndicalist, anti-socialist, anti-communist laws, sedition and criminal-anarchy laws, anti-contraceptive information laws – these and others come all too readily to mind. The New York legislature purged itself of socialists; the Massachusetts legislature imposed loyalty oaths on teachers; the Oregon legislature outlawed private schools and the Nebraska legislature forbade the teaching of German in public schools; the Tennessee legislature prohibited the teaching of evolution; the Pennsylvania legislature authorized the requirement of a flag-salute for school children; the Louisiana legislature imposed a discriminatory tax upon newspapers... The list could be extended indefinitely."

A much-quoted example of the discriminatory use of the referendum is the late introduction of women's right to vote in Switzerland. Swiss women only won the right to vote in

1971 – through a referendum in which only men took part, of course. In Belgium, the female franchise was introduced in 1948. That difference of 23 years, however, has not so much to do with the fact that direct democracy existed in Switzerland, but more with the fact that Switzerland remained outside the turmoil of the Second World War (though being entirely surrounded by the Axis powers). The trauma of war and occupation appears to significantly ease the introduction of political changes. In Belgium, for example, women's right to vote was introduced after the Second World War and the universal single vote system was introduced after the First World War. That the spirit of the times in the 1960s was rather different to that in the 1990s becomes clear from matrimonial law, for example. Up until 1976, Belgian women had to promise to obey their husbands when getting married. Only in that year did the purely representative system in Belgium provide equal rights for spouses in line with the changing social views.

In the United States, direct democracy preceded representative democracy in respect of women's right to vote. Legislative citizens' initiatives at the start of the 20<sup>th</sup> century granted women the right to vote for the first time in Colorado and Oregon. Arizona followed later, and then Wyoming, where a referendum on its new Constitution provided for women's voting rights. All these successful attempts had been preceded by a series of failures, not only in Oregon and Colorado, but also in Missouri, Nebraska and Ohio. The citizens' initiatives were used in the United States at state level to force the question of women's voting rights, and only when this had happened was the Federal Constitution of the United States amended in line with this in 1920 (Cronin, 1989, p. 97). The fact is that the opponents of direct democracy routinely mention women's voting rights in Switzerland and, in all languages, are silent about the contrary examples in America, which illustrates how selectively they choose their examples.

The death penalty is also referred to frequently. It is claimed that direct democracy would lead to the introduction or re-introduction of the death penalty, and should be rejected for this reason. First of all, this argument is fundamentally flawed. The unacceptability of the death penalty is taken as an inviolable premise, and it is then assumed that direct democracy leads to the death penalty: "therefore" direct democracy must be rejected. But that assumed unacceptability is certainly not a given, but is something which must emerge as a fundamental value from an open debate between free, equal citizens. Anyone who argues that one should go against the majority on this (or any other) point is pleading for the politics of power and dictatorship. Note also that this is another argument against democracy as such. The introduction of the death penalty is also very possible in a purely electoral system – are we therefore also going to abolish elections?

Moreover, the facts tell a different story. There are two countries in Europe where the population could introduce the death penalty by means of a citizens' initiative: Switzerland and Liechtenstein. However, no death penalty exists in these countries, nor has there ever been an attempt to introduce it by means of direct democracy. Very much to the contrary: in Switzerland, the abolition of the death penalty was approved by referendum, firstly in 1935 for peacetime, and subsequently in 1992 also for times of war (abolition was always part of a broader package of legal measures). A further explicit prohibition of the death penalty in the Swiss Constitution was approved by referendum in 1999. (Heussner, 1999)

In the United States, approximately half of the states still retain the death penalty (the states have jurisdiction on this point). A very complete treatment of this topic by the lawyer Heussner (1999) shows a balanced picture. American states with and without direct democracy appear to have the death penalty to an approximately equal extent: of the 24 states with direct democracy, 19 have the death penalty (79%); of the 27 states without direct democracy, 20 have the death penalty (74%). It appears, however, that all the states without the death penalty are in the north and east of the United States (with the exception of Hawaii) and all the states with a death penalty are in the south and west. It is thus mainly a difference in political culture: in the west and south support for the death penalty – as well as for other related political issues – is larger both among the public and among the politicians, and in the north and east there is similarly much less support from both public and politicians. We see similar north-south disparities in Europe.

It is true that the death penalty has been introduced or re-introduced in a number of states by means of citizens' initiatives, but in many cases this was a response from the people to the abolition of the death penalty by courts (because of incompatibility with the Constitution or other legal principles), and at the same time a majority of the elected representatives was also in favour of the death penalty. There was therefore no disparity between the representative system and direct democracy. In other states there is no direct democracy, but the death penalty exists (still) because of the constant support of the elected politicians. In the state of Oregon, the death penalty was abolished by means of citizens' initiative in 1914, whereupon it was reintroduced in 1920 at the initiative of the parliament. (Heussner, 1999)

## d. Influence of demagogues and populists

In an extension of the claim discussed above – that direct democracy would violate minority rights – it is also frequently suggested that direct democracy would offer a broad platform to populists and demagogues (see inset 6-2 among other references).

In reality, demagogues have rather more opportunities in a purely representative system, in which a small group of top politicians dictate what happens and citizens are banished to the sidelines. This almost always leads to dissatisfaction amongst the population. The only way in which they can express that dissatisfaction is by voting for populist politicians who promise that they really will clean up 'the mess' in the country if they can only get sufficient support in the elections. In a direct democracy, citizens have little need of such 'strong leaders', because the citizens themselves can propose their own solutions and seek to have them adopted through citizens' initiatives and referendums. In Switzerland, political personalities play virtually no significant role (see the quotation at the beginning of chapter 5). A direct democracy is much more issue-oriented, whereas a purely representative system is more person-oriented.

It is certainly true that all kinds of dictators – Hitler, Saddam Hussein, Pinochet etc. (as well as a lot of governments in Europe which like to call themselves democratic) – have used plebiscites. Plebiscites are popular votes that are arranged by the governing majority or the head of state, generally with the intention of creating a special legitimacy for their plans. In general, the results of plebiscites are non-binding,

the conditions for validity are adjusted from case to case by those in power (after all, they want a valid result), and quite often all kinds of separate issues are compressed into one defined question to which the voters can only say ‘yes’ or ‘no’ as an all-in package. The plebiscite in Lithuania in May 2003 on EU accession (in which the normal turnout quorum was dropped), and the plebiscite on entry to NATO that was held in Hungary in November 1997, are examples of turnout thresholds being modified. The plebiscite held by the Austrian government in the autumn of 2000 (as a result of the sanctions which European countries had imposed on Austria after the right-wing FPÖ entered the government) is an example of the compression of many issues into a single defined problem. Six questions were asked to which the voters could give only one answer. The first question asked whether the sanctions must be ended, the second and third questions asked rhetorically whether other countries would not do better to refrain from interfering with the Austrian government, and the other three questions concerned specific regulations in a future European Constitution. A single answer to six separate questions is not possible. The government and parliament can interpret the result in any way they want, and in any case the result is not binding. Since the citizens’ initiative referendum does not exist in Austria, the citizens themselves are powerless.

Plebiscites, however, have nothing to do with direct democracy. In a genuine direct democracy the *general public* can always use the collection of signatures to force the governing majority to hold a referendum, and the conditions are regulated by law and are the same for everyone – politician or not. Moreover, democracy always implies freedom of speech, freedom of association, freedom of demonstration, etc., so that anyone can conduct a public campaign, which was never the case under the dictatorships mentioned. A strong governing majority does not need to hold popular votes: they already have a mandate for action. The Swiss Constitution does not allow for any plebiscites.

### e. Power of money

According to this argument, anyone who has a lot of money can set up a massive media campaign and use this to control the public debate and win the battle with sophisticated marketing techniques. The former mayor of Amsterdam, Schelto Patijn, put it this way: “A referendum against the policy on drugs? The underworld is certainly prepared to invest several million guilders in an unchanged policy. Buy 700 hours of TV. That’s the way to buy a referendum.” (De Telegraaf, 13 January 1997)

It is not disputed that in some places lots of money is spent on direct democracy. In 1998, a record amount of \$400 million was spent on referendum campaigns in the US. Of this, at least 250 million was spent in one state alone: California (Smith, 2001; more on this in chapter 5). In the US there are both very professionally run campaigns with extensive use of TV commercials, and paid signature collection.

In this case, too, direct democracy must not be compared with a non-existent and unachievable ideal situation, but with the purely representative system that currently exists. Financially powerful groups also spend large amounts on the election campaigns of political parties and presidential candidates, and on lobbying to influence legislators and civil servants. The Swiss parliamentarian Gross (2000) correctly

states that “the power of money in a direct democracy is basically always less than in a purely representative system. In the latter, groups with money need only to influence a small number of politicians. In a direct democracy they must influence the entire population and do so publicly.”

Secondly, simply spending lots of money does not guarantee a favourable outcome. Critics, such as the journalist David Broder (2000), quote, in an anecdotal manner, examples of campaigns in which economic interest groups – sometimes a company or other commercial special-interest group – have staked a lot of money. However, there needs to be systematic and rigorous research carried out into a complete series of citizens’ initiatives over a longer period before it is possible to determine what the effect of the money is.

The political scientist Elisabeth Gerber (1999) did this. She analysed the cash flows of 168 citizens’ initiatives in eight American states. In contrast to what critics claim, powerful commercial interests appear to have relatively little success in obtaining approval of a law they desire by means of popular referendum. Of the initiatives that were mainly financially supported by individual citizens, 50% were adopted; of the initiatives that were mainly financially supported by economic special-interest groups, only 31% were adopted. Gerber identified several types of ‘special-interest groups’, and the chance of adoption of citizens’ initiatives plummeted as the percentage of campaign funds from industry increased. Gerber found that the topics that were promoted by economic special-interest groups were simply less popular and it was therefore also more difficult to recruit volunteers. Citizens’ groups have less money, but can find volunteers much more easily and compensate themselves in this way.

Political scientists Donovan, Bowler, McCuan and Fernandez (1998) found that, whereas 40% of all Californian citizens’ initiatives were adopted in the period from 1986 to 1996, only 14% of the citizens’ initiatives from financially strong ‘special interests’ were adopted. “Our data reveals that these are indeed the hardest initiatives to market in California, and that money spent by proponents in this arena is largely wasted.” Another survey by the political scientist Anne Campbell into citizens’ initiatives in Colorado showed that during the period from 1966 up to 1994 (almost 3 decades), only one citizens’ initiative coming from a ‘special interest’ was successful at the ballot box (IRI, 2005). As we noted in chapter 5, commercial special-interest groups have actually been more successful in undermining the citizens’ initiatives of others by launching counter-initiatives.

But even when special interests are the only groups that are in a position to launch a citizens’ initiative, the voters are better off than in a situation without any citizens’ initiative referendum. Matsusaka (2004) compares this with a family in which the father (= ‘representative system’) unilaterally ‘proposes’ what flavour pizza is to be eaten. When the mother (= ‘special interests’) can also suggest a pizza, after which everyone (including the children = the voters) can vote on the proposals, then this can never make the children’s situation worse, even if they cannot suggest a pizza themselves. The option proposed by the father is always available, but if mother has an even better idea, that can be given preference in the voting. “So we can see that allowing everyone in the family to make proposals generally works to the advantage of the majority. The conclusion stands even if the right to make proposals is reserved for certain family members. (...) As long as proposals are filtered through a majority-rule elec-

tion, the only way initiatives make the majority worse off is if voters can be persuaded to approve policies contrary to their interest." (Matsusaka, 2004, p. 12).

Matsusaka highlights a key issue here: many critics of direct democracy retain the tacit assumption that citizens can be easily persuaded to vote against their own convictions and interests. But in fact this is no different to the implicit reasoning that lurks behind the purely representative system: that politicians know better what is good for the people than the people themselves. That is a dangerous assumption, because it opens the door to political dictatorship.

There is still another way to approach the problem of big money. Matsusaka systematically compared the outcomes of referendums in the United States to the outcomes of opinion polls. Whereas launching a referendum campaign can incur expenditure of millions of dollars, an opinion poll can be carried out for as little as a couple of thousand dollars. In the latter case, there is no distortion as a result of the input of 'big money'. Matsusaka analysed an enormous quantity of data covering the entire 20th century. His conclusion: "For every policy I am able to examine, the initiative pushes policy in the direction a majority of people say they want to go. I am unable to find *any* evidence that the majority dislikes the policy changes caused by the initiative". (Matsusaka, 2004, p. xi-xii; italicised in the original).

All the information above relates to the United States. In Europe, hardly any research has been carried out into the role of money in direct democracy, because money clearly plays a much smaller role in Europe. In Switzerland there have been a number of referendums in which a relatively large amount of money was spent, but the level is not comparable with the United States.

Experience shows over and over again that two elements are important: the source of the campaigners' funds must be open to public inspection, and all the parties to the issue must get sufficient opportunity to have their say. The importance of openness in respect of finances is illustrated by innumerable examples. For example, an anti-nuclear citizens' initiative in Montana (1978) had only 10,000 dollars with which to campaign. The opponents of the citizens' initiative spent 260,000 dollars. Nevertheless, with a 65% share of the votes, the citizens' initiative gained a sensational victory. During the course of the campaign, the public's attention was constantly drawn to the fact that the opponents' money came almost entirely from outside Montana and likewise almost entirely from the nuclear industry. A similar initiative against nuclear power took place somewhat later in Oregon (1980). Here too, the citizens' group obtained a victory against the financial supremacy of the industry, because it had sufficient opportunity to make its voice heard. The 'fairness doctrine' was properly applied and so, despite its restricted financial resources, the group was able to reach the voters sufficiently by means of radio and television (see Cronin, 1989). It is striking that organisations with a lot of money are seldom enthusiastic about direct democracy: "Financially powerful groups have put up dogged resistance against the introduction of the referendum: in Minnesota, in New Jersey, in Rhode Island. The AFL-CIO, business groups, chambers of commerce during recent years have again and again fought against the citizens' initiative, frequently with the argument that, ironically enough, a citizens' initiative costs a lot of money and that only the richer organisations can therefore make use of it." (Cronin, 1989)

It is clear that money always has an impact on direct-democratic decision-making. But this impact is at least equally great for representative democracy, and can be offset by equalizing campaign funding. For this reason, Californian 'progressives' such as Shultz argue for absolutely no return to the traditional representative system, but they do ask for specific measures to restrict the role of 'big money'. Frey and Bohnet (1994, p. 158) write: "It cannot be denied that financially strong parties and special-interest groups are better able to start initiatives and produce propaganda than interest groups that are not or are only poorly organised. There is no sense, however, in aiming to achieve a totally egalitarian democracy; there will always be differences in the capacities of individuals and groups to influence the direction of policy. It is always true that rich and well-organised groups are more powerful. The important question is not, however, whether there are such differences, but under which rules and with which bodies do the benefits weigh the heaviest organisationally and financially. However, lobbying becomes all the more efficient as the system becomes less democratic. Even without elections, for example in a dictatorship, special-interest groups exert influence. In the European Union, interest groups are able to exert more influence than in separate member countries, because the European Union is less democratic (Andersen and Eliassen, 1991). In Switzerland, even with a coalition between the interest groups and the political elite, it appears that this front does not always get its own way, certainly not if it concerns important matters."

The problem of manipulation by media campaigns and monopolies on the distribution of information is not a problem of direct democracy; it is a problem of democracy itself. Two realities collide with each other in this context. On the one hand, the mass media are mainly privately owned and, on the other, the dissemination of views through the mass media falls under the principle of the freedom of the press. This restricts the freedom of speech in both directions. The mass media have the tendency to defend the points of view of their owners, and wealthy people or groups can address the public by buying advertisements and television spots. On the other hand, citizens' initiatives with no funds have little opportunity to have their voices heard.

Attacking the freedom of the press cannot solve this problem. Thus the constitutional state should first and foremost organise its own forum, the chief function of which is to serve as an arena for discussion and creating awareness. Such a forum could be created around the following three considerations, among others:

1. There is absolutely no reason why public radio and television, which are mostly funded from taxes, should be occupied with the production of 'entertainment'. Entertainment is pre-eminently a commercial activity, and can be carried out much better by commercial broadcasters. The constitutional state has no more reason to produce mere entertainment than it has, for example, to make sunglasses or dog food.

The tasks of the constitutional state derive from its goal of achieving equality before the law and the protection of fundamental rights and freedoms. From this perspective, it is the duty of a public broadcasting system to ensure free access to information and cultural products that the citizens need to fully take part in public life.

This duty must undoubtedly be considered in a broad sense: it comprises thorough newsgathering, access to relevant cultural events that are not offered on commercial channels, and programmes of analysis. The key mission, however, is to support the democratic opinion-forming process. By organising carefully prepared and balanced debates, in which supporters and opponents of an initiative receive equal opportunities to speak, the impact of economic imbalance on the opinion-forming process can be radically reduced.

The state should take measures to enable a balanced opinion-forming culture. The public broadcasting service can play a key role in this, provided that it remains entirely independent of political and commercial forces. This independence must also be visible. For this reason it is absolutely necessary that direct and indirect advertising is kept out of public broadcasts.

2. There should be no direct intervention in the print media. Mayer (1989, p. 118) cites the proposal of the '*Aktion Volksentscheid*' (in Achberg, south-west Germany) to oblige the mass media (radio, television, publications with a circulation of over 100,000 copies) to publicise citizens' initiatives and provide equal opportunities to speak for supporters and opponents. This proposal screams out against press freedom. The mass media must also have unrestricted opportunity to express a preference for or against an initiative. The state can, however, utilise the large amounts of money which are currently used for subsidizing (public) media and government propaganda to fund space for informative advertising at times of referendums and elections. In such a 'Public Democratic Speaking Space' in the newspapers, the principle of the equal right to speak should be legally guaranteed for supporters and opponents alike. The design must clearly show that this 'public speaking space' is of the nature of an advertisement. Any confusion with editorial pieces must be prevented.
3. Some weeks before the referendum, every voter should receive an information leaflet in which the essence of the proposal is explained, supporters and opponents briefly list their arguments, and political parties, trade unions, professional bodies, special interest groups, etc. announce their voting recommendation. This type of brochure has been standard for a long time in Switzerland and various US states.

Besides these positive measures, negative measures are also necessary. Election expenditure must be limited, not only for elections of representatives, but also for referendums. The budgets of supporters and opponents of the citizens' initiative must be made public. (In the section of chapter 5 about California, we have shown why US judges rule that unlimited spending on referendums falls under the freedom of speech principle, whereas they do accept restrictions on campaign spending for elections because of the danger of corruption. In Europe, however, this subject is usually viewed quite differently.) Both the names of the major financiers of the campaign and the amount of funding must be made public, which is already the case in many US states, including California. It is also possible to guarantee a minimum level of funding. A citizens' initiative that has collected the necessary signatures for a referendum has in any case proven that it has struck a chord on a socially relevant subject. This can be rewarded by providing the initiative committee with a basic level of funding, so that initiatives with very little financial backing also get an

opportunity to make themselves heard. The same principle applies in many European states for political parties, which usually receive government grants based on their membership numbers or number of parliamentary seats. There is absolutely no reason to give government grants to political parties, but not to citizens' committees that have achieved a signature threshold for a referendum. After all, both have shown that they enjoy a certain level of public support.

This parcel of measures would create a space for a balanced forming of opinions. Whether a democracy succeeds or fails depends to a large extent on the quality of its freedom of debate. It is not generally the job of the state to actively provide the means of speech and debating forums for the citizens. Citizens should have the full freedom to set up special forums for debate and the forming of opinions, and these forums can be freely regulated by the founders. Otherwise, it is the same as the democratic debate that immediately precedes the taking of legislative decisions. In this context, besides the private forums, a special forum should be created by the constitutional state itself that is available for all citizens to be heard equally, regardless of their financial resources and background.

## f. Lack of possibilities for refining and qualifying the issues

According to this argument, referendums should be rejected because they are too 'crude' and simplistic, offering only 'yes' and 'no' options. This argument was used, for example, by the former Belgian premier Dehaene ("I know of few problems that you can resolve with a yes or no") on the Belgian RTBF French TV channel, 4 October 1992.

However, from the people's perspective a direct democracy provides much greater possibility for subtlety and discrimination than a purely representative system. In the latter, voters can only choose between a limited number of total packages of political opinions (generally no more than 10): the political parties' programmes. In practice, these virtually never agree with the choices the voters would make themselves if they had to decide on the same issues.

A recent Gallup poll illustrated how serious this problem is. The poll questioned 1,000 American voters about twenty current political issues. It appeared that the people's majority preferences showed a mixture of so-called 'conservative' and so-called 'progressive' points of view. This mix was not reflected in a single party programme. For example, Americans generally support a higher minimum wage (82%), the compulsory registration of firearms (72%), and the re-establishment of diplomatic relations with Cuba (56%). These are 'progressive' issues. But preferential racial treatment in schools and businesses (so-called 'positive discrimination') is rejected by 85% of the people, 78% want a general reduction in taxes, and 69% want the saying of prayers in public schools to be legalized. These are more typically conservative or liberal aims. There are also proposals that can count on a majority among the general public, and on only very little sympathy among the political class. Gallup found that 56% of Americans were in favour of the introduction of 'school vouchers'. This means that families receive the money to finance their free choice of school instead of the government directly financing education. Such far-reaching educational freedom is not popular among politicians, who consider education as one of their most important means of exercising social influence.

Suppose that a citizen supports a cross-section of the majority points of view mentioned above. There is no chance that he or she will find any party that expresses this combination of views. And even if such a party did actually exist, it is still quite uncertain what will happen with the point of view concerned. After all, the party might end up in the opposition, or if it does actually become part of the government, it may abandon its point of view in exchange for the other coalition parties' support for its other proposals, even if all the time a majority of the voters was in favour of the point of view involved. In the majority of European 'democracies', the voice of the people is 'a ripple in the water'. They can only utter a single crude expression of support for the one party or the other – 'socialist' or 'liberal' or 'conservative'. They are not permitted, however, as rational, discriminating beings, to decide on each issue on its own merits. In that context, it is fairly absurd for sitting elected representatives to claim a lack of subtlety and refinement in direct democracy.

It is true that in the majority of referendums (not all; see below) there is only a choice between being for or against a proposal. But every parliamentary decision is also made because the members of parliament vote for or against a proposal. However, what the critics mean is that the opinion-forming process in direct-democratic decision-making ceases more rapidly than in parliamentary decision-making. In principle, this is a realistic objection. In traditional referendums, the initiators come forward with an elaborated proposal, around which a public discussion then ensues; but the voters can no longer change the proposal, only accept or reject it. In parliament, the representatives can propose amendments, in many cases up until just before the vote is taken. (Incidentally, this is not by any means in all cases: for example, with international treaties, including EU treaties, parliaments cannot usually make any further amendments.)

To refine this image, we must note that the opinion-forming phase of a citizens' initiative often occurs before the public launch. In many areas, a citizens' initiative only has a chance of succeeding if it is supported by a broad coalition of organisations. As a result of this, the proposal already bears the hallmark of the discussion and the consultation between the partners in such a coalition. Extreme proposals without broad public support virtually never succeed. On the other hand, the opinion-forming phase in current parliamentary practice is often seriously corrupted by enforced party discipline (by the so-called 'Whips' in the U.K., for example) and by political horse-trading. In general, it is the leaders of political parties who dictate how the party or faction should vote, and this is quite frequently based on fairly crude horse-trading between the political parties. If the MPs would actually vote honestly, following their consciences, the dividing line between supporters and opponents would hardly ever run exactly along party lines, whereas this is currently the case for the majority of votes.

Moreover, it is eminently possible to design referendum systems so that there is indeed space for interim adjustment and multiple-choice options. There is continually increasing experience with such referendums. One possibility, which is used in some German states, is the link between the right of petition and a referendum. If a citizens' group wants to launch a legislative proposal, it can first submit the proposal as a petition to the parliament with a relatively small number of signatures, e.g. 0.2% of the electorate. The representative body must then either accept the proposal from the citizens' initiative or reject it, giving reasons. If the representative body

accepts the proposal, the citizens' initiative has achieved its goal. If not, the initiative can still go ahead, with either the unaltered proposal or with a proposal that has been amended in the light of the parliamentary comments. It can then proceed to referendum provided that the initiative obtains a higher signature threshold, e.g. 2% of the electorate. This combination of right of petition and referendum is defended in California by the American 'League of Women Voters' and in Germany by the '*Mehr Demokratie*' (more democracy) association (see chapter 5, Bavaria).

In addition, two further options can be enabled:

- If it does not approve the citizens' proposal, the parliament can formulate an alternative proposal. This system exists, for instance, at national level in Switzerland and at state level in Bavaria. The voters then have three options: choose the citizens' initiative, choose the parliamentary counter-proposal, or reject both proposals (choose the status quo).
- The citizens' initiative can even withdraw its own proposal in favour of the parliamentary counter-proposal. This approach can be useful for the citizens' initiative if the parliamentary counter-proposal contains many elements of the citizens' proposal and retaining both proposals risks having both rejected, leaving a majority in favour of the status quo. This happened, for example, with the Swiss popular initiative 'Farmers and consumers in favour of eco-friendly agriculture'. This popular initiative aimed to grant farming subsidies only to companies that adhere to strict ecological standards. The parliament formulated a counter-proposal, which nevertheless preserved the essentials of the popular proposal. The initiators then withdrew their own proposal and, on 9 June 1996, the parliamentary counter-proposal was approved by 77.6% of the voters.

The integration of the right to petition and the legislative citizens' initiative, possibly supplemented with the two measures mentioned above, enable the parliament's capacity to produce well-considered proposals to be used to best effect. The democratic productivity of the parliament would be improved considerably by such teamwork with legislative citizens' initiatives. The right to petition, sometimes (erroneously) called citizens' initiative, which exists in some European countries, is meaningless on its own. The members of parliament are not obliged to do anything with the people's proposal and the citizens' initiative has no means of responding if parliament rejects or ignores its proposal. But as a prelude to the citizens' initiative, the right of petition undoubtedly has great significance. It provides the initiative with the opportunity to refine its proposal in the light of the parliamentary contribution and creates a special bond between the popular initiative and parliament, which also reinforces the legitimacy of parliament.

An additional possibility, which was also proposed by the Californian 'League of Women Voters', is to hold hearings for the citizens' initiative. At an early stage of a citizens' initiative, when only a relatively small number of signatures has been collected, hearings can be held within a specific statutory framework, which can lead to the re-working and refining of the proposal.

In Switzerland, moreover, there are various interesting experiments taking place at cantonal level with multiple-choice voting. The canton of Berne is playing a pioneering role in this area; for example, voters were able to choose between five different proposals for the reorganisation of the canton's

hospital system (Beedham, 1996). Also in Berne, there are experiments with a system in which the voters were not limited to a 'yes' or 'no' on a legislative proposal, but could also submit amendments. It is too early to be able to draw any conclusions about this system yet. There are other possibilities that have not so far been tested anywhere. For instance, Benjamin Barber (1984) suggested allowing voting on a scale from 'emphatic no' to 'emphatic yes'.

Sometimes opponents of direct democracy formulate their objection in yet another way. They argue that in referendums citizens allow all sorts of issues to play a role that have nothing to do with the referendum proposal, a phenomenon known as linking. "The referendum lends itself as an instrument to mobilise general dissatisfaction. Expansion will then run aground on reasons that have nothing to do with the expansion", explained former EU Commissioner Frits Bolkestein, for example, about a possible Dutch referendum on the expansion of the European Union (NRC Handelsblad, 9 September 2000). However, it is mainly within the representative system that linking is the order of the day. In elections, after all, all sorts of issues are mixed up with each other, and the tangle is only artificially resolved when the voter makes his single mark on the ballot paper or presses the voting button. What Bolkestein was targeting was not referendums initiated by citizens, which are still not possible in the Netherlands, but one-off plebiscites drawn up by the government (the only 'referendum' that the Dutch Constitution allows). In such a situation it is more than likely that other issues will get dragged into the public debate. After all, as citizens themselves cannot initiate referendums, they then have to wait until the next opportunity they get to decide directly about an issue. By then dissatisfaction has had time to grow and is only waiting for an opportunity to be unloaded onto something. However, we are not arguing in favour of plebiscites in this book, but for valid direct democracy in which citizens themselves can launch initiatives for referendums at any time. The phenomenon of linking is unknown in Swiss direct democracy, the simple reason being that at all times citizens can decide on every issue and can launch citizens' initiatives themselves.

In short, if politicians are really concerned about the 'linking' of unrelated issues, they must permit more direct democracy.

## **g. Conflict with representative democracy**

This argument is sometimes underpinned with the argument by some that the authority of parliament is undermined by referendums, and by others that the primacy of politics is threatened by referendums.

First note the fallacy: democracy is equated with 'representative democracy', as if representation were the essence of democracy. Referendums would then threaten 'democracy'. In reality it is not representation, but popular sovereignty that is the essence of democracy. It is not only dictators such as Hitler and Stalin who have depicted themselves as representatives of the people, but also various absolutist kings throughout history. We have shown in chapter 2 that a purely representative system is a correct interpretation of democracy only under one specific circumstance – if the citizens have agreed to it. However, surveys uniformly indicate that this has never been the case since the 1970s: the majority consistently supports the introduction of direct-democratic decision-making.

In other words, the argument that parliamentary authority is undermined by referendums is not relevant. Parliament is not a goal in itself – the parliament is there for democracy; democracy is not there for the parliament. One cannot therefore ask that democracy be limited out of respect for the parliament.

In a certain sense, however, if direct democracy were introduced, it would actually restore the value of parliament, because the citizens would be implicitly invited to demonstrate their confidence in every parliamentary decision. If citizens do not launch an initiative after the parliament passes a law, this can always be interpreted as an implicit motion of confidence. In the purely representative system, the people cannot speak out against the parliament; consequently they also cannot express their confidence in the parliament, not even implicitly. They can at most stay at home on election day; but non-participation can be interpreted in very different ways.

If there is always the possibility of a citizens' initiative being launched, the parliament will be under pressure to legislate in accordance with the will of the people. The opportunity for the parliament to contribute to the refinement of referendum proposals, including the parliamentary right to submit an alternative proposal, has already been mentioned.

Those who claim that referendums damage the public credibility of the parliament must realise that the public long ago lost its faith in parliament – long before the majority of countries introduced serious direct-democratic rights at the national level. In 2002, Gallup conducted a huge poll in which 36,000 people from 47 countries were questioned on their level of trust in 17 'institutions'. This little list included the army, the government, the education system, the mass media, the trade unions, the IMF, the multinationals, etc. In the league table of trust, parliaments were at the very bottom. 51% of those asked had little or no trust in their parliament, and only 36% had a moderate to high level of trust. Parliament scored particularly low in European countries. Two thirds of the people questioned agreed that their country was not governed according to the will of the majority. When asked: "Are things mainly going well with the world?", in most countries only a minority answered in the affirmative: only 13% of Germans, 14% of Italians, 23% of Dutch and 25% of British. In other words: those who are happy to retain parliaments as they are, are busy keeping up appearances. In reality, the majority has long since lost its trust in parliaments under mainly representative systems.

Some opponents of referendums formulate this another way: that the primacy of politics is undermined by referendums. Their tacit assumption is apparently that 'politics' is the same as 'parliament and government'. However, in the ideal case, politics is a forum in which all citizens participate. Considered in this light, direct democracy will never detract from the importance of politics, but actually give it a powerful boost. Direct democracy can lead to a thriving and creative political forum.

Incidentally, the *direct* impact of the citizens' initiative referendum must not be over-estimated. In 1996, a top year for direct democracy in the US, a total of 102 citizen-initiated referendums went to the vote across all the American states, whereas in the same year the elected legislators adopted more than 17,000 laws in all states. (Waters, 2002, p. 6) Half of all American states enjoy fairly extensive and frequently used direct-democratic rights, so we can assume that even in one

of these states with a relatively extensive level of direct democracy more than 99.9% of the laws are still adopted by elected politicians. In this context, it is fairly absurd to talk of a ‘disruption’ of the legislative system by direct democracy. What the critics are probably referring to is the *indirect* effect of referendums: politicians cannot just force legislation through for which no support exists among the citizens. They must take into account the current opinions among the various groups in the population and start building support for their proposals in advance. But who could possibly object to this?

## **h. Overburdening and voting fatigue**

According to this argument, referendums ask too much of the voters. Too much is demanded of them and they become less inclined to vote. As a result they forfeit representation, because it is usually the economically weaker people who pull out soonest.

In Switzerland, the turnout for parliamentary elections has for decades been around 40% (the turnout for referendums around 50%); that is lower than the parliamentary elections in Germany (approximately 80%), or the presidential elections in France (70% to 80%) or the United States (50% to 60%).

A relatively low voter turnout level is often attributed to referendum fatigue. If that causal connection actually existed, it might be resolved by increasing the signature threshold, which in Switzerland is very low (100,000 for a citizens’ initiative, or 2% of the electorate). This would make it more difficult for relatively small groups to launch citizens’ initiatives that do not appeal to most of the people.

One must be careful with such conclusions, however. In a purely representative democracy, the citizens have virtually no opportunity to influence policy in any way whatsoever. They only have the opportunity to vote every few years, which many then eagerly grasp. In a purely representative system, after all, there is a frustrating lack of opportunity to have ones say. In a well-developed direct-democratic system, supply and demand in respect of possibilities to express a view are more in balance and the people feel they have more freedom to choose between taking part in decision-making directly or mandating others with the responsibility.

We also know of no studies in which a large proportion of people answer in favour of fewer referendums. On the contrary, the large majority of citizens who never vote are still supporters of direct democracy (Möckli, 1994, p. 184).

High levels of participation in referendums and elections should always be encouraged, of course, but a referendum turnout of 10% to 20% is not necessarily a problem. The mandating principle plays the same essential role in direct-democratic decision-making as in parliamentary elections (see chapter 2). Even if only 10% of the voters actually vote in a plebiscite, the resulting decision is still much more widely supported than in the case of a parliamentary vote, in which only 0.005% of the electorate make the decision. The 10% of voters in the direct people’s vote have just as good a mandate as the parliamentarians, with the advantage that they are much more numerous. On the other hand, the mandate that is given by the non-voters to the voters in a referendum is much more restricted than in an election, because there is only one specific decision on the agenda and not a potentially infinite series of decisions about all sorts of different issues.

That the mandating concept is not pure theory, but is also intuitively recognised by the general public, is clear from the fact, just mentioned, that the large majority of those who never vote themselves are nevertheless still supporters of direct democracy. In a genuine democracy, every citizen must have the freedom at every election to determine whether he or she wants to give a mandate to fellow-citizens or wants to vote him- or herself. It is perfectly conceivable that a citizen considers that he or she has too little expertise in social decision-making and systematically mandates others. It is essential that he or she, and nobody else, judges his or her own competence. Both the absence of elections (open dictatorship), and a system of compulsory voting rob individuals of their freedom to fully judge for themselves.

The political scientist Kriesi has shown that knowledge of the issue to be voted on, together with a general interest in politics, are by far the most important factors for participation in referendums in Switzerland. The level of education, income and social class proved to have only a minor effect on participation in referendums (for participation in Swiss elections, this effect is even zero). It also appears that women tend to vote less often than men in referendums (this applies more to older women than younger ones). Participation also seems to increase with age to a certain point, after which it tends to decline again, though not uniformly. Those who said that they were ‘fully aware’ of the referendum issue participated four times as frequently as people who ‘were not aware’ of the issue. The disparity was only slightly weaker when the level of interest in politics was the main variable. When the two variables were combined i.e. for people who were both ‘fully aware’ of the referendum subject and admitted to being ‘very interested’ in politics, the participation level was eight times as high as for people who were ‘not aware’ of the subject and said they were ‘not interested’ in politics (Kriesi, 2005, pp 118-122). Summarising: the most important reason for not participating is that citizens believe that they do not have sufficient knowledge of the issue.

## **i. The phrasing of the question can be manipulated**

According to this objection, the question in a referendum can be asked in a misleading manner. As a result, voters can vote against their actual convictions. Prof. Jan Gijsels (Belgian newspaper *De Standaard*, 5 November 1992) put it like this: “There is no referendum that is not disputed because of how the question is asked.”

In fact, the phrasing of the question is mainly a problem in plebiscites, not in direct democracy. Plebiscites are non-binding popular votes that are formulated by the ruling politicians and in doing so they often include different issues in a single question, and manipulate other conditions as well (see point ‘d’ for more information and examples).

In a genuine direct democracy, politicians cannot indiscriminately change the phrasing of the question or the rules to suit themselves. The law stipulates the conditions for direct democracy and these are the same for all citizens, whether they are politicians or not. Moreover, direct democracy is difficult to reconcile with plebiscites that are drawn up by a ruling majority; on the one hand, they always lead to political abuse and, on the other, they are also unnecessary, because the parliament and the government already have a mandate to act. In Swiss direct democracy, plebiscites by the ruling

majority are not permitted. The law defines the circumstances under which a referendum is held and lays down binding rules for this. All changes to the constitution are subject to a compulsory referendum. In addition, there is the optional or facultative referendum, by means of which citizens can challenge a law that has already been passed, and the citizens' initiative, which can result in a referendum if all the conditions have been met. The referendum question must always be stated simply and objectively – whether it is the proposal adopted by parliament accompanied by the simple question as to whether one is for or against it (in this context, standardised, neutral wording is always used in Switzerland and California), or the citizens' initiative (supported by the required number of signatures). With citizens' initiatives is it simple to establish legally (as is done in Switzerland) that the initiative relates to only one issue. Since in Switzerland the title of the citizens' initiative is part of the referendum question, the 'Bundeskanzlei' (the ministry of general affairs) can reject a citizens' initiative if it clearly has a misleading title.

Examples of conflict on all these issues are extremely rare. That is not only a question of regulations, but also of democratic culture. Since referendums and citizens' initiatives are part of the order of the day in states such as Switzerland, California, Oregon, Bavaria, etc., they represent business as usual for politicians and civil servants who are used to dealing with them in a transparent, citizen-friendly manner, just as ordinary elections are generally unblemished proceedings in European countries that have long experience with them. It is almost unimaginable that a governing political party in, for example, the Netherlands would use its position to manipulate the elections by tampering with the rules. Someday it will be just as unthinkable that Dutch political parties would abuse the direct-democratic decision-making process to get their own way.

Difficulties can arise with the phrasing of the question, especially in situations where people have to vote 'yes' if they are 'against' a subject, or vice versa. For example, this was the case with the first referendums in Italy: in 1974, the opponents of divorce had to vote 'yes' (Budge, 1996). The Belfort referendum in Gent (1997) is another example: the municipal council had phrased the question so that opponents of the Belfort car park had to vote 'yes'. The initiators protested about this. Ultimately, however, their fears turned out to be unfounded: the voters really did know how to cast their votes. There appears to be no convincing example of a referendum in which the majority view did not prevail because the voters misunderstood the question.

Finally – at the risk, perhaps, of our narrative becoming monotonous – we should also reiterate here that the opponents of direct democracy use entirely different criteria for representative decision-making and direct decision-making. In representative decision-making, voters are generally left completely and frustratingly in the dark about the implications of their vote. They do not know the hidden agenda of the parties; they do not know which government coalition or which government programme will emerge. Party manifestos say little. For example, they do not state which points will be swiftly dropped during coalition negotiations. International treaties, taxes such as the tax on diesel fuel, the abolition of conscription to the armed services etc. (Dutch examples) are simply imposed on citizens after the election: the often intricate details of these issues remain completely invisible in the representative 'phrasing of the question' – the election manifesto. In the case of direct-democratic decision-making,

the picture is much clearer: people almost always know fairly precisely what they are voting for or against. Despite this, opponents of the popular referendum dishonestly claim that they have to cope with 'ambiguous phrasing of the question' in direct-democratic decision-making.

## j. Conservatism, or enthusiastic activists

According to some, a referendum system ensures that essential innovations are blocked, because the general public tends to want to preserve the status quo. Others claim exactly the opposite: that committed activists can use referendums to take over a democracy, because the 'silent majority' doesn't usually go out to vote.

However, exactly what is meant by 'innovation', and which points of view can be accurately labelled 'left' or 'right', is a political judgement that should not be left to technocrats. The Green parties in, for example, Germany and the Netherlands are in favour of far-reaching European integration, based on what they consider to be 'progressive' arguments, whereas their sister parties in Scandinavia and the UK, for equally 'progressive' reasons, are actually very Eurosceptic. If 'progressive' parties try to block the scaling down of social security – considered as a 'necessary modernisation' by ruling conservatives – is that a 'progressive' or a 'conservative' response?

If we examine the behaviour of politicians, however, it is of course also true that in some instances they obstinately resist modernisation. Direct democracy is itself an example, as is the introduction of school vouchers that free the education system from the grip of the state. It is easy to argue that these are modernisations without which society in the 21st century can only function with difficulty. A large majority of the population has been won for both measures, but politicians block them because in this instance it is they who have an interest in preserving the status quo. In other respects, politicians are actually 'more progressive' than citizens, but this can clearly have negative results. For example, we saw under point 'b' above that politicians generally want a larger public sector than citizens (also out of self-interest, because this increases their power). As a result, purely representative systems lead to larger budgetary deficits than direct-democratic systems.

An integrated democracy has both instruments for applying a brake to slow down politicians who run too far ahead of the public (the optional and the compulsory referendum), and instruments which the public can use to press the accelerator if elected politicians do not want to change course fast enough (the citizens' initiative). We argue for the introduction of both the brake and the accelerator. Occasionally, it is the opponents of referendums – when, for example, they are forced into a government coalition – who allow some direct democracy by introducing a form of referendum (preferably limited to the relatively innocent optional referendum), with which citizens can only say 'no' to laws already adopted by the politicians.

A glance at the referendum practice in Switzerland and American states shows that conservative and progressive groups have varying success with referendums. For many decades in Switzerland, the citizens' initiative was mainly used by progressive groups, while the optional referendum was more the instrument of choice for conservative groups; however, this distinction has become less marked in recent years. Progressive groups gained majorities in recent decades in initiatives which include those for supplying heroin

to drug addicts, the protection of employees from the effects of the 24-hour economy, joining the United Nations, support for environmentally safe agriculture, the 1994 provision that trans-Alpine freight must be transported by train with effect from 2004, the inclusion of an anti-racism article in the Swiss Constitution, an increase in the tax on petrol, making rape within marriage a punishable offence, restrictions on the genetic modification of organisms, the creation of a civilian service alternative to compulsory military service, a moratorium on the building of nuclear power stations, several taxes on the use of cars and lorries, and the abolition of the death penalty also in wartime. Conservatives obtained approval for measures which include the following: lifelong prison sentences for sex offenders considered by experts to be extremely dangerous and untreatable, several rules for reducing budgetary deficits, the termination of several government grants, as well as the rejection of several progressive proposals coming from the government or from citizens' initiatives (Butler and Ranny, 1994; Kaufmann et al., 2005).

In recent decades, 'progressive' groups in California have successfully used referendums for proposals including those for better environmental legislation, the legalised use of marihuana for medical purposes, raising the minimum wage, limiting the effect of campaign funding in elections, increasing the tax on cigarettes, prohibiting various toxic substances, securing several measures for the protection of animals, setting minimums for school budgets, and introducing various freedom-of-information disclosure requirements for the benefit of consumers and voters. 'Conservatives' obtained majorities for, among other things, reducing income tax and real-estate tax, stricter sentences for recidivists, termination of bilingual education, termination of 'positive discrimination', the closing down of certain government services for illegal immigrants, allowing paid work for prisoners, and introducing a compulsory referendum for proposed increases in local taxes and tariffs (Allswang, 2000). Hajnal and Louch (2001, p. vii) concluded that during the 1980s, supporters of the Democrats and the Republicans both had exactly the same chance (62%) of being on the winning side in popular votes; in the 1990s, Republican supporters were on the winning side only 2% more frequently than supporters of the Democrats. Thus they keep each other virtually in balance.

The reverse claim that committed activists can hijack direct democracy to get their extremist proposals put through has equally little substance. Swiss and American practice makes it clear that the voters are extremely cautious. If activists want to get a proposal adopted, they have to use the citizens' initiative. We already saw in chapter 5 that in Switzerland only 10% of citizens' initiatives are approved by the voters; in California, the figure is 40%, but since a lot of citizens' initiatives are subsequently struck down by the courts, the final number also comes down to around 10%. When they are unsure, voters tend to vote against citizens' initiatives.

In some respects, small, passionate groups actually have greater chances in strictly representative systems. After all, in those systems they only have to persuade a small number of politicians. The European supranationalists are a typical example of a small, activist group, which has had a much larger influence on the undemocratic development of the European Union by means of representative systems (evidenced in the project of the European Constitution, for example) than they would have had in a direct democracy. The only reason that the European Constitution has been provisionally shelved is as a result of the referendums held in the Netherlands and France.

## k. Better instruments than the referendum

The first response of politicians when they are confronted with the clamour for direct democracy is simply to ignore it. If the clamour continues and grows, however, there comes a moment at which ignoring it no longer succeeds. Politicians, together with those who identify with them, often then go on to propose alternative measures that, on the one hand, are intended to show that they are not deaf to the public demand for more democracy, but, on the other, are not as threatening to those in power as citizens' initiative referendums. This is then presented as an attempt to find instruments that operate 'better' than referendums. This was the case, for example, in Belgium, where direct democracy was placed high on the political agenda under the pressure of massive demonstrations (the 'white marches') in the second half of the 1990s, but where politicians are currently returning to their old positions and withdrawing their previous support for citizens' initiative referendums.

In this context, the journalist Filip Rogiers quotes the argument of Belgian politician Dirk Holemans for 'dialogic' instead of 'direct' democracy: "Dialogic democracy", says Holemans, "differs fundamentally from direct democracy. In the latter, the market model enters politics. It starts out from the idea that, if you conduct a survey, you also obtain an insight into what issues are current in a society – whereas democracy actually means that you provide people with an opportunity to question their own vision and possible change it. Only in this way do you create social support for necessary changes." Dialogic democracy "is not direct democracy, it is a long way from noting and adding up opinions, yes's and no's. Nor is it a shamefaced way of giving representative democracy legitimacy. It is just a very prosaic word for democracy. A classic example is the formula for the citizens' panels. In a city or a municipality, a representative group of citizens is brought together around a specific issue. They are given all possible opportunities and resources to form a thoroughly considered judgement. They can hear witnesses and experts. At the end of their sitting, they deliver a judgement and propose a solution. It does not have to be a consensus; there is no need of unanimity. Even citizens who have had to eat humble pie at least understand the reason for the final decision. There has been a dialogue, and confrontation, opinions have been changed." (Knack, 19 February 2000).

The tactic of this line of reasoning against direct democracy is clear. Direct democracy by means of citizens' initiative referendums is first presented as a type of market survey, free of any social discussion or forming of opinions. Obviously no-one can find that really attractive. Then the alternative of a 'dialogic' democracy is presented, in which the citizens do actually obtain information, discuss things with each other and possibly change opinions. The confusion of concepts that is carried out here is that between two pairs of opposing positions: 'actual social opinion forming' versus 'no opinion forming', and 'popular sovereignty' versus 'no popular sovereignty'. Holemans and Rogiers reject the citizens' initiative referendum on the basis of the first pair, arguing that social opinion forming is essential and is incompatible with the referendum, and then promote an alternative that guarantees much so-called opinion forming but, unfortunately, surrenders the people's sovereignty.

However, it is absurd to claim that a citizens' initiative referendum cannot be coupled with an intensive process of social opinion forming. Put even more forcefully, there is an *a pri-*

*ori* case that social debate will be much more intensive with binding referendums than with citizens' panels, because in the first case many more citizens are taking part in the process, and they are more motivated to discuss the issue because they know that they will be taking the final decision. Neither Rogiers nor Holemans makes any effort whatsoever to support their premise. They simply assert the incompatibility of the popular referendum and social opinion-forming as something obvious, and hope that the reader will blindly concur. Then 'alternatives' (such as citizens' panels) are presented as working methods that really do guarantee social opinion forming, whilst the undermining of sovereignty that is attached to this 'alternative' receives as little attention as possible and is stealthily presented as something acceptable. Rogiers implies that the citizens do not come together on their own initiative, but that "a representative group is brought together". By whom? Rogiers does not say so, but the answer is, of course: by the elected politicians. The citizens do not constitute themselves as a sovereign body, no: "...they are given all possible opportunities and resources to form a thoroughly considered opinion". Are given? By whom? Again the explicit answer is long overdue. And at the end of the ride the citizens do not make a sovereign decision, no, they "... propose a solution". To whom? And who adopts or rejects the solution? The implicit answer, once again, is: the politicians.

The political scientist Van Prague (2000) systematically compared the optional referendum to two other instruments of 'participative democracy' that are popular among Dutch politicians: the citizens' survey (also called citizens' forum or citizens' monitor), and interactive policy-making (also called the open-plan process). In the citizens' survey – on the instructions of civil servants or politicians – a fixed, representative group of citizens is regularly questioned about all kinds of issues. In interactive policy-making, people are asked to attend meetings at which citizens, together with civil servants and/or politicians, draw up plans for resolving a specific problem identified by the administration.

Van Praag points out that the citizens' survey and the interactive policy-making process are held at the initiative of the authorities, whereas the referendum is held at the initiative of citizens; that there is a much less intensive public debate with the citizens' survey and interactive policy-making, and far fewer citizens are involved than with the referendum; and that the position of the civil servants and politicians is much more dominant with the citizens' survey and interactive policy-making than with the referendum. Van Praag thus concludes that for these reasons the referendum is an instrument to serve the citizens and that the citizens' survey and interactive policy-making are instruments in the service of the official policy-makers.

It is worth noting, incidentally, specifically in relation to the proposal of Rogiers and Holemans, that Van Praag, who carried out studies on the level and quality of public debate for several municipal referendums in the Netherlands, correctly points out that the opinion-forming process for citizens using the citizens' surveys is much less in-depth than with referendums: "It is, moreover, interesting that in a survey citizens are asked for their opinion on issues that they have usually considered only rarely or not at all. There is thus a danger that the recording of citizens' views only by means of an inquiry represents merely a snapshot, which can easily change again under the influence of new arguments. This even applies, although to a lesser extent, to a multiple-choice survey, in which citizens are encouraged to think about alternative policy ideas.

This objection is much less valid for a referendum result. The benefit of a public debate provoked by a referendum is that all the citizens are confronted by several arguments over a longer period of time. Opinion-forming among the citizens has generally crystallised better after a few weeks and will change less easily under the influence of new information."

The referendum therefore turns out to be the most popular administrative innovation among the people. In 1998, the Dutch Social and Cultural Planning Board (1999, p. 37) polled popular support in the Netherlands for five proposed innovations. The referendum, with an 80% support level, scored highest, followed closely by the introduction of elected mayors (71%), the constituency system for parliamentary elections (55%), the introduction of an elected Prime Minister (54%), and making Holland a republic (10%). The survey produced virtually identical results as a 1972 survey with the same questions, when the referendum also came out on top, with 62% support.

## I. Danger to the country

This argument is often cited in Belgium, among other places.

Here too it should be noted first and foremost that the state is there for the people, and not the people for the state. If a state can only continue to exist by suppressing the development of democracy, then that state has no right to exist (in its present form), because that is clearly not what the people themselves want.

The Belgian 'Royal Controversy' – the debate about the return of King Leopold from exile after the Second World War – can under no circumstances be quoted as an argument against direct democracy. One must make a sharp distinction between binding citizens' initiative referendums and so-called 'plebiscites' or 'popular referendums'. The latter are held by those in power to create a special legitimacy for their own plans (see point 'c' for further information and examples).

In the case of the Belgian Royal Controversy, the plebiscite was a last resort for the political elite to escape from the stalemate that had arisen within the representative system. After this system had become bogged down completely, an appeal was made to the *deus ex machina* of the plebiscite.

The 1950 plebiscite in Belgium was an evil caricature of direct-democratic decision-making in every respect. In the first place, the outcome of the ballot was not binding (and ultimately it was a minority that got its way on the issue). Secondly, this plebiscite did not come about at the initiative of the people, but rather at the initiative of the political class, after they themselves had allowed the situation to become completely confused. Thirdly, all the political parties, and the King himself, used different criteria to interpret the result. "During the forming of the first Eyskens government in the summer of 1949, the Socialists presented the 66% demand, but the Liberals made a distinction: for them, 70% or more meant an immediate return of the King, less than 55% would require abdication, and a figure in between would serve as an indicator for the parliament. (...) For Paul-Henri Spaak, 66% was sufficient counted nationally, but the Belgian Socialist Party chairman Buset demanded at least a 60% majority in the Walloon provinces, in Brussels, and in Flanders. Then the debate on the plebiscite became even more intense, and new thresholds were formulated." (De-wachter, 1992) The King himself set the threshold at 55%,

but ultimately no generally accepted agreement on the interpretation of the result emerged within the political class. No wonder that the entire thing ended in chaos. In the whole of Belgium, 58% of the voters were in favour of a return, but whereas a majority voted for return in Flanders, there was a majority against return in the Walloon provinces. The outcome was subsequently rejected by a number of social groups and parties, and these tried to block the return of the King. Leopold agreed to abdicate anyway when his son reached the age of 21, and Baudouin was proclaimed king the day after Leopold's abdication.

The Royal Controversy is quoted as an example to show that different language communities can vote differently and that this can tear a country apart. Two fundamental observations must be made here. First, it is not true that differing voting results within different language groups automatically threaten federal unity. In Switzerland, there are many examples of such divergent voting results. For instance, the majority of French-speaking Swiss voted for their country's ac-

cession to the European Economic Area in December 1992, whereas most of the majority German-speaking population voted against (ultimately producing an overall majority nationally). In September 1997, most German-speaking Swiss approved a reduction in unemployment benefit, whereas the French-speakers rejected the law by a large majority (which ultimately produced a narrow majority nationally). These results did not lead to 'community tensions'. Secondly, such problems will occur much less if there is a consistent federal state structure within which to work. Only those issues that must be decided at a wider level, due to the nature of the issues themselves, must also be voted on at that level. Within a federal context, the logical outcome of the Royal Controversy would have been that Flanders would retain the monarchy and the Walloon provinces would not, because in the case of the Royal Controversy there is absolutely no practical reason why one community would have to cede this point to the majority in another community. The problem arose, therefore, because the decision-making took place in the context of an authoritarian and unitary state.

## 6-1: How direct democracy was silently removed in Germany after the Second World War

After the First World War, the German empire became a republic and Berlin became its capital. In 1919, the constitution of the Weimar Republic came into effect and it contained the principle of the referendum copied from the Swiss example. In practice, however, the referendum could not work, mainly because a 50% participation quorum was imposed. Strictly speaking, according to the constitution, this quorum only applied to the corrective referendum and not to the citizens' initiative. Nevertheless, in practice the quorum was also demanded for citizens' initiatives.

Ultimately only two referendums were held, both of which failed because the participation quorum was not reached. There was an initiative in 1926 concerning the expropriation of the property of members of the nobility. The major landed aristocrats had asked for extremely high levels of compensation for the properties that were expropriated after the First World War. At a time of explosive inflation, the state could only raise the money by heavily taxing the ordinary citizens. The popular initiative to oppose this measure was started by the communist party; the socialists and many citizens' groups supported it. Against this initiative 'the mother of all boycott campaigns' was run: the powerful supporters of the nobility called openly for a boycott, supported by a majority of the press. Because, under these circumstances, only the supporters of the initiative went to vote, it meant *de facto* that the secrecy of the vote was compromised. In the rural areas in particular, many workers stayed at home after threats from landowners and factory owners. In the end only 39% of the electorate voted, of which 98.5% voted for the initiative. The 50% threshold was not reached, therefore, and the landed aristocracy won its battle thanks to the high participation quorum. In 1929, a second referendum was organised by right-wing parties on the question of the compensation payments. At the end of the day only 14.6% of the voters turned out for this referendum, and the result was therefore also declared invalid.

In 1932, the Socialists launched another citizens' initiative which asked for a rise in the rate of pay. By that time, parliament had already been paralysed and the government was operating using emergency statutes. The government responded to the socialist initiative with a pay rise, whereupon the citizens' initiative was prematurely abandoned.

Citizens' initiatives were therefore never rewarded with formal success under the Weimar republic. All legislative power remained in the hands of the parliament. This parliament transferred all power to Adolf Hitler in March 1933, by means of the notorious '*Ermächtigungsgesetz*'(enabling law), even though the Nazis had never obtained the support of a majority of the German citizens in any election.

The facts actually undermine the claim that the Nazis came to power by means of democracy. The Nazis actually came to power by means of the *representative system*. The majority of the citizens had never voted for the Nazis at a time when the Nazis had still left most of their real plans vague or secret. If the Nazis had presented their real plans – including committing genocide and the launching of wars of aggression – to the population in a referendum, it is virtually unimaginable that they would have gained a majority of the votes. What Hitler himself believed about (direct) democracy must be evident from his argument against 'parliamentary democracy' in '*Mein Kampf*': "Opposed to this is the true Germanic democracy, with its free choice of a leader who commits himself to accept total responsibility for whatever he chooses to do or not to do. In this [Germanic democracy] there are no popular votes by a majority on individual issues, but only the determinations [Hitler uses a word which has overtones of 'destiny'] of a single individual who must then stand behind his decisions with all his powers and his whole being." (Hitler, 1943/1925, p. 99). In a speech about the "Führerstaat" to 800 party members on 29 April 1937, Hitler spoke his mind even more clearly: the state "has the right to assume dictatorial power, and the duty to force others to obey it. That is why our state, too, has not been built on referendums at all – something I wish to emphasise – but rather it is our aim to persuade the people of the necessity for whatever happens. (...) Now people might say to me: 'Yes, but you also held a ref-

erendum.' But first I acted. I acted first, and only afterwards did I then want to show the rest of the world that the German people supported me. That was the reason for it. Had I been convinced that the German people would not perhaps have been able to go along with us on the matter, I would still have acted, but then I would not have held a referendum." (speech reprinted in *Frei*, 1987, p. 190-195). The Nazis briefly flirted with the idea of the public assembly. In many places in Germany from 1933 onwards, they built so-called "*Thingplätze*" ("thing squares", "Thing" or "Ting" being the ancient name for public assembly parliaments in Scandinavia and parts of Britain), which nevertheless had nothing to do with direct-democratic decision-making, but were where the population was supposed to passively watch the Nazis' propaganda meetings. But from 1935 onwards, the Nazis decided to put an end to this, and they prohibited the further use of the 'thing squares' (<http://de.wikipedia.org/wiki/Thing>).

In 1948, a 'Parliamentary Council' was appointed in Bonn (not elected by the people), which had to design a new constitution for West Germany. It is striking that this Council used 'the experience of Weimar' as a reason for not introducing direct democracy in Western Germany. The first President of the Federal Republic of Germany after the Second World War, Theodor Heuss, in particular promoted this absurd interpretation of pre-war German history. Heuss had been a member of the 1933 parliament and, though not a Nazi sympathiser, had nonetheless approved the '*Ermächtigungsgesetz*'. In an introduction to the post-war West-German Constitution Heuss wrote: "The plebiscitary form of democracy, with its popular initiative and referendum ('Volksbegehren' and 'Volksentscheid'), which the Weimar republic copied from the Swiss tradition, has also been removed from the repertoire of German legislative instruments. This led for a time to the cheap reproach that the Parliamentary Council had deprived the people of a fundamental element of democracy. But, in the light of past experiences, it was its fundamental duty to protect the still insecure state from the depredations of lurking demagogues and to ground binding responsibility in the representative system". (Weihrauch, 1989, p. 40).

In other words: the results of the failure of parliamentary democracy were used to remove direct democracy. The consequences for European history were immense. If, after the Second World War, a direct-democratic political practice could have developed in Germany, more or less following the Swiss example, the democratic map of the world at the end of the 20th century might have looked very different.

What is particularly remarkable is that the constitutions of the former DDR (communist East Germany), and of Berlin did initially provide for the citizens' initiative referendum. Shortly after the war, the SED – the united party that emerged from the enforced merger of the socialist and communist parties in the Soviet zone – even campaigned actively for the direct-democratic ideal. In fact, this party was simply seeking to achieve a goal that had previously been set out in the socialist programmes of the 19<sup>th</sup> century. Some popular referendums were actually held, for example on the dispossession of war criminals. After Germany was divided, the SED came to power in East Germany and interest in direct democracy disappeared without trace. Despite this, direct democracy remained provided for in the DDR Constitution until 1968, the year of the Prague spring, when the provision was removed without public debate.

Direct-democratic decision-making was also constitutionally provided for in West Berlin after the Second World War. All the political powers in Berlin kept quiet about this constitutional option, and the provision was finally scrapped in 1974 with no public debate.

Opponents of direct democracy clearly lived on both sides of the Iron Curtain.

## 6-2: About compulsory voting

Belgium and Greece are the last two European countries to retain compulsory voting. Both these countries also have an exceptionally high public deficit, with a relatively strongly developed black economy, and lack any form of decisive referendum (situation as of summer 2006).

The Christian Democrats and the Socialists defend compulsory voting. The first argument is that, without compulsory voting, it is particularly the socially weaker people who would not turn out to vote, which would seriously weaken the representativeness of the outcome. With compulsory voting, all the social classes have equal representation in the (indirect) decision-making process.

This argument is questionable for several reasons. Compulsory voting does not create the competence to cast a responsible vote, but encourages the casting of protest votes and blank ballots. It can be shown that abolition of compulsory voting actually focuses attention on the groups which tend to participate least in voting. Precisely because the passive group can in many cases make the difference between a majority or a minority, they can attract the full attention of the political parties, because their votes can be won (this argument was used, for example, by the Agalev green group politician Boutmans, *Gazet van Antwerp* newspaper, May 1997). In Switzerland, approximately 30% of the electorate always vote, approximately 45% vote selectively, and approximately 25% are rarely persuaded to vote (Möckli, 1994, p. 206). There is therefore a large group of voters who can potentially be mobilised, and on whom the politicians can focus their powers of persuasion. It is far from clear whether the effect predicted by Boutmans does in fact play a role in countries without compulsory voting. However, there is just as little proof that compulsory voting leads to better representation of the groups that tend to participate least in voting. Extreme right-wing parties, for example, obtain a large proportion of their votes from voters in the weaker social groups, even though in practice they are least good at defending the economic and social interests of those groups.

An argument against compulsory voting is that it removes the intrinsic motivation for taking part in voting. Someone who is compelled to vote no longer does it of their own free will and insight. Voluntary participation in voting is not based on selfish calculations. For the individual citizen, the economic benefit of voting is, after all, nothing compared to the expense of taking part in voting – such as the time it costs. So voting is not a rational act for a 'calculating citizen'. Nevertheless, people do go out to vote and evidently do so with unselfish motives. Perhaps they miscalculate the benefit to themselves, but much more probably they vote from solidarity with a group, from a sense of citizenship,

or on principle. Voluntary participation in voting is already a form of social capital, and that social capital is destroyed when voting becomes compulsory.

Defenders of compulsory voting also consider participation in voting as a civic duty. Our society has various duties of this type. Thus every citizen is expected to offer assistance to someone who is in need, or – if he or she is called to do so – to accept jury duty, or perhaps help out in a polling station at election time. From this point of view, compulsory voting reflects our moral duty to concern ourselves with the ins and outs of society, to form an opinion to the best of our ability about possible solutions to society's problems, and to express this opinion prudently.

This argument must be taken seriously. There are some forms of mutual assistance that citizens cannot reasonably withhold from each other, and one can argue that the collective demands in a society require everyone's time and attention. In practice one notes, however, that the parties in Belgium that pronounce themselves in favour of compulsory voting simultaneously resist the introduction of direct democracy. This totally undermines the argument in favour of compulsory voting. The combination of compulsory voting and a purely representative system is perverse. People are compelled to express an opinion, because this is their so-called civic duty. But absurd restrictions are placed on their opportunities for doing so – according to these supporters of compulsory voting, the citizens are only allowed to choose parties; even worse, they are required to surrender their rights, even if they would prefer to exercise these rights themselves directly. Expressing ones views directly

is forbidden, even if the majority of the people want this. If making social judgements is considered a civic duty, it must also be a civic duty to directly express the judgements made. This is not possible in the purely representative system: one can then only choose complete party programmes, which almost never correspond with ones own views. The representative system thus causes all sorts of distortions, such as the 'cross-pressure effect': voters who cannot find any suitable party to represent them find it easier to abstain from voting. In the Netherlands, for instance, this impact is seen among Christian workers: if they vote Christian Democrat (*CDA*), they are not voting for a party which supports the workers, yet if they vote for the Labour Party (*PvdA*), they will not be furthering Christian values. As a result, Christian workers show a significantly higher tendency not to vote (Smeenk, 1996, p. 236). One does not solve this group's problem by compelling them to vote. Their real problem is that they cannot say what they actually want to say by means of purely representative elections. Only direct democracy can properly solve the problem of this group of voters, and we all belong to such groups in one way or other.

Anyone who advocates compulsory voting, but simultaneously rejects direct democracy is not credible. Compulsory voting, hand in hand with direct democracy, is basically defensible. But then one must also accept that the citizens themselves must ultimately be allowed to decide – in a direct-democratic way – on the possible retention of compulsory voting,. As long as that does not happen, compulsory voting can only be considered as an instrument of certain political parties to cloak themselves in a cheap aura of 'representativeness', in which, ultimately, only they still believe.

# 7. Direct democracy in the United Kingdom

## A brief history of British democracy

The full title of this geographically small, but historically extremely powerful, country is “The United Kingdom of Great Britain and Northern Ireland”. ‘Great Britain’ is composed of England, Scotland and Wales. Wikipedia has a useful summary definition: “The United Kingdom is a political union made up of four constituent countries: England, Scotland, Wales, and Northern Ireland. The United Kingdom also has several overseas territories, including Gibraltar and the Falkland Islands. The Crown has a relationship with the dependencies of the Isle of Man and the Channel Islands; they are part of the British Isles but not part of the United Kingdom and are a possession of the Crown. A constitutional monarchy, the United Kingdom has close relationships with fifteen other Commonwealth Realms that share the same monarch – Queen Elizabeth II – as head of state.”

That political union was only finally agreed in 1921. Today, the ‘united’ Kingdom is under severe strain, with considerable centrifugal forces in evidence. Where devolution of power in Scotland, Wales and Northern Ireland helped to strengthen the sense of identity in these regions/nations, the majority English portion of the UK has been undergoing an identity crisis, asking itself: ‘What does it mean to be English?’ and re-discovering older symbols such as the flag of St. George.

### England

The nation at the core of the union is England. First unified under Roman occupation in 55 BC, England was later carved up into seven separate kingdoms before being reunited in 1016, only to fall to the invading Norman army in 1066. Ever since 1016, England has been a single country under a single Crown. By international standards, this makes it a remarkably old nation. Between 1016 and 1707, England was a sovereign nation-state. However, it ceased to be a nation-state in 1707 when it joined with Scotland in a new, merged state. Ever since then, England has been one constituent nation in the United Kingdom.

### Wales

Wales was never a unified state. The country consisted of fragmented chiefdoms until the English Crown annexed half of it in 1277, with the remainder following in 1536. Today Wales is one of four nations that make up the United Kingdom. Never having been an independent kingdom, but being an annex of England, it was subject to English law; it was run from Westminster; the Church of England was imposed as its official Church; and the English language was imposed as the official language. Wales did not ‘join’ England; it was unified by England and became England’s first conquest.

### Scotland

Unlike Wales, Scotland was once an autonomous and unified state under a single Scottish Crown. For several centuries, the English and Scottish kingdoms skirmished. Gradually, however, Scotland fell under the growing economic and political influence of its more powerful south-

ern neighbour. In 1603, the two Crowns were unified. In 1707, the two states joined together in an Act of Union which established the United Kingdom of Great Britain. Scotland was clearly the weaker partner but the Act of Union preserved key aspects of Scottish autonomy. Scotland retained its own Church, its own legal system and its own education system. Joining with England, however, meant that Scotland lost its parliament, although it secured a new one in 1999.

### Northern Ireland

Ireland, like Wales, was never a single state. It was divided into various Catholic clan chiefdoms until England defeated two of the big Ulster clan chiefs and seized their lands in 1607. This land was then reallocated to settlers from Britain, most of whom were Scottish Protestants. Protestant ascendancy was consolidated in 1690 when William of Orange followed James II to Catholic Ireland and defeated his forces at the Battle of the Boyne. William set up a Dublin parliament. But following yet another Irish rebellion an Act of Union was passed by the Westminster parliament in 1801. Ireland was absorbed into the United Kingdom and was governed directly from London. The four nations of England, Wales, Scotland and Ireland were now fused together into a single state – the United Kingdom of Great Britain and Ireland.

Opposition to British rule never went away and the Catholic population never accepted their subordination. Various bills for Irish Home Rule (what today we would call ‘devolution’) were introduced in the Westminster parliament, but all were lost. Irish nationalists led an uprising in Dublin in Easter 1916. After the First World War, Catholic rebels based in the south continued to fight for independence while Protestants in the north armed themselves in readiness to resist their absorption into a new, Catholic, Irish state. Faced with an impossible dilemma, Britain set up separate parliaments for Dublin and Belfast in 1920.

In 1921 the twenty-six southern counties were allowed to leave the United Kingdom and form the Irish Free State. The remaining six counties in the north, most of them heavily Protestant, remained part of the UK, which now became the United Kingdom of Great Britain and Northern Ireland.

Unlike the Welsh, the Scots and the English, the people of Northern Ireland retained their own parliament. The Protestant majority had permanent control of this parliament at Stormont and they used it to further their interests. In the late 1960s, Catholics launched a series of civil rights protests. Gradually, as the protests escalated, the Catholic and Protestant communities began to fight, and troops from Britain were sent in to restore order.

In 1972, Britain closed the Stormont parliament and imposed direct rule from Westminster. After years of ‘troubles’ and endless talks, a peace deal was struck in 1998 between the British and Irish governments and various Northern Ireland parties. It is, however, a very fragile peace. (Acknowledgement: this section is based in large part on Dearlove and Saunders (2000), “Introduction to British Politics”).

## The parliamentary system

The name ‘Westminster’ is often used as shorthand for the primary parliament of the UK, consisting of the two ‘houses of parliament’ (since 1999 there has also been a separate Scottish Parliament in Edinburgh, and parliamentary Assemblies in Wales and Northern Ireland). Some claim for Westminster the title of ‘mother of parliaments’, but although it is certainly old – its origins lie in the 13<sup>th</sup> century – the Westminster parliament is not the oldest parliament in the British Isles. The small but historically significant Isle of Man (between the UK and Ireland) has a claim to have the oldest continuous parliament in Europe – the Tynwald, descended from the Norse Thingvöllr (= assembly field) founded there in the late 9<sup>th</sup> century (the Icelandic ‘Althing’ was established in 930 AD).

But there was also a much older tradition of (possibly open-air) councils in Britain, going back to the Anglo-Saxon period (5<sup>th</sup>-11<sup>th</sup> centuries). There is a record from the 7<sup>th</sup> century of annual meetings of the king’s councillors at the so-called ‘witenagemot’ (literally ‘wise man/councillor meeting), and there were forms of decision-making by popular assembly at the local level.

William of Normandy’s victory over the English in 1066 brought a feudal system, in which the king sought the advice of a council of tenants-in-chief and ecclesiastics before making laws. In 1215 the tenants-in-chief secured the Magna Carta from King John, which established that the king could not levy or collect any taxes (except the feudal taxes to which they were hitherto accustomed), save with the consent of his royal council, which slowly developed into a parliament. In 1265, Simon de Montfort, 6th Earl of Leicester summoned the first elected Parliament. The franchise in parliamentary elections for county constituencies was uniform throughout the country, extending to all those who owned the freehold of land to an annual rent of 40 shillings. In the boroughs, the franchise varied across the country; individual boroughs had varying arrangements. This set the scene for the so-called “Model Parliament” of 1295 adopted by Edward I. By the reign of Edward III (1327-1377), Parliament had been separated into two Houses: one including the nobility and higher clergy, the other including the knights and burgesses, and no law could be made, nor any tax levied, without the consent of both Houses, as well as that of the Sovereign.

The Laws in Wales Acts 1535-1542 treated Wales as part of England and brought Welsh representatives to Parliament. When Elizabeth I was succeeded in 1603 by the Scottish King James VI, who became also James I of England, the countries both came under his rule but each retained its own Parliament. James I’s successor, Charles I, quarreled with Parliament, dissolving it no less than three times. The tension between king and parliament finally led to the English Civil War (in fact three wars). Estimates suggest that around 10 percent of the three kingdoms’ population may have died during the civil wars. Ultimately, the parliamentary forces under Cromwell triumphed and, to the horror of large parts of Europe, Charles was publicly beheaded in 1649. Thus it was Britain which experienced the first anti-monarchical revolution, 140 years before the more famous revolution of 1789 in France. After Cromwell’s death the Restoration of 1660 restored the monarchy and the House of Lords.

Amidst fears of a Roman Catholic succession, the so-called Glorious Revolution of 1688 deposed James II (James VII of Scotland) in favour of the joint rule of Mary II and Wil-

liam III, whose agreement to the English Bill of Rights introduced a constitutional monarchy, though the supremacy of the Crown remained. For the third time, a Convention Parliament, i.e. one not summoned by the king, was required to determine the succession.

The House of Commons evolved at some point during the 14th century and has been in continuous existence since. The House of Commons (the “lower house”) was once far less powerful than the House of Lords (the “upper house”), but is now by far the dominant branch of Parliament. The House of Commons’ legislative powers exceed those of the House of Lords; under the Parliament Act 1911, the Lords’ power to reject most bills was reduced to a mere delaying power. The Government of the United Kingdom is nominally answerable to the House of Commons; the Prime Minister stays in office only as long as he or she retains the support of the lower house.

### No written constitution – no popular sovereignty – few direct-democratic rights

In Britain, as in most nominally representative democracies – especially those which have been, or still are, monarchies – representative and participatory rights have always had to be prised out of the hands of kings or other rulers. Even when, as in Britain, the real power of the monarchy has almost completely gone, the old hierarchical attitudes often remain, leaving their imprint on supposedly democratic ‘representative’ systems. So the British Government is ‘Her Majesty’s Government’ and there is still a ‘House of Lords’ (finally undergoing radical reform, but still containing a proportion of hereditary peers). There is still a ‘Royal Prerogative’ which gives the monarch certain powers – but only at the request of the Prime Minister, in effect giving the latter the ability to bypass parliament (Tony Blair threatened to use the Royal Prerogative in 2003 to declare war on Iraq if parliament opposed his plans to support Bush).

“The liberal state was democratized [by the 1867 and 1884 Representation of the People Acts] but those in authority and power who recognized the inevitability of democracy were nevertheless eager to manage democratic politics, to limit it, and to entrench a conservative democracy. There was a concern to rule out direct participation; ‘popular government’; the struggle for equality; and ‘collectivism’ and socialism, in favour of a pattern of limited, liberal, democracy that would work with and within the prevailing economic system”. (Dearlove and Saunders, 2000, p.51)

Britain is unique in Europe in not having a written constitution. What passes for a constitution is a collection of laws, conventions and ‘understandings’. One constitutional writer defined it as “what the people who work it think it is”, and the current monarch, Queen Elizabeth II, is quoted as saying that “the British Constitution has always been puzzling and always will be” – scarcely a satisfactory state of affairs for a 21<sup>st</sup>-century country. Though there may be some advantages in such lack of definition, it means in practice that governments with a comfortable majority can in certain respects ‘make it up as they go along’. Under New Labour, for example, there has been a clear weakening of Parliament and a centralisation of power in the Cabinet and the person of the Prime Minister. Dearlove and Saunders (Introduction to British Politics, 2000, p.58) comment: “At one time, the prime minister was regarded as primus inter pares – first among equals – but it has been argued that the power of the Prime Minister has in-

creased to such an extent that it makes better sense to talk of prime-ministerial government and a quasi-presidency”.

Former Tory Party minister Lord Hailsham’s description of the British political system as an “elective dictatorship” comes from a lecture he gave in 1976. In that lecture he criticized the constitution and called for ‘nothing less than a written constitution for the United Kingdom, and by that I mean one which limits the powers of Parliament’.

“Britain’s democracy has always been incomplete. We have never enjoyed firm guarantees of basic human rights. Our voting system has never been fair. Our system of government has always been highly centralised. Parliament has been far too subservient to the Executive. We live under a political system which, by its nature, produces arrogant and unrepresentative government”. (Policy statement at the launch of the Social and Liberal Democrats in 1988.)

Politics is party-based and confrontational rather than issue-based and consensual. The victorious party forms ‘Her Majesty’s Government’, and the next largest party the ‘official Opposition’. The form of the debating chambers in both Houses reinforces the confrontational style. The system exists primarily to maintain a monopoly on power by the three main parties, so that Britain could legitimately be termed a ‘partyocracy’ rather than a democracy. The primary motivation appears to be the preservation or enhancement of the party’s ‘market share’, achieved by a focus on the delivery of identifiable and measurable ‘products’ and ‘quality of service provision’ amounting to little more than bribery of the electorate. Recently, it has emerged that both New Labour and the Conservatives have received very large amounts of money from backers (totalling around £30 million for both parties). The money was given in the form of ‘loans’ rather than ‘donations’ in order to circumvent the rules on the disclosure of all large sources of money. There is a suspicion that certain ‘honours’ (including membership of the Lords) have been awarded as a result of the lenders’ largesse.

Two-thirds of the constitutions of the countries of Europe endorse the principle of ‘popular sovereignty’: “all power derives from the people”. The British Parliament (effectively the House of Commons) traditionally claims sovereignty for itself, though given the absence of a formal constitution and the simple fact that the parliament is elected by the people and is therefore technically subservient to it, the claim lacks a sound logical basis.

Former Foreign Secretary Robin Cook wrote in 1989 (in an article for the *Guardian*) “The appalling insight supplied by the Thatcher experience is that there are no real checks and balances in the British Constitution. The doctrine of the sovereignty of parliament means that the tyranny of the parliamentary majority is absolute. Yes, the first-past-the-post system has given us strong government and I, for one, have had strong government up to the back teeth.”

A significant number of MPs in the current parliament appear to contest the claim: a so-called ‘Early Day Motion’ has attracted nearly 60 signatures of support for a change to the voting system. The motion declares: “This House believes that the essence of democracy is the sovereignty of the people, and that the people are entitled to choose how that sovereignty is ceded to Government on their behalf; ...” There is little chance that the motion will be debated, let alone accepted, but it represents a significant sign of a shift in perception which might one day lead to the universal acceptance of popular sovereignty. It is also

significant that there is a much stronger sense of the principle of popular sovereignty in Scotland; about which more later.

## UK ‘referendum’ history

There are no direct-democratic rights at the national level in the U.K. As a result of an Act passed in 2000, there is now a local right of initiative leading to a binding referendum, but only on a single issue: the option of directly electing a local mayor. To force a referendum, the initiative group needs to collect the signatures of 5% of the local electorate. This meagre initiative right has been used a total of six times to date. All other referendums are more properly termed ‘plebiscites’, as they are initiated by the government. There has been only one national ‘referendum’ (in 1975, on joining the EEC; approved). There have been eight regional ‘referendums’, mostly on the devolution of power to the ‘old kingdoms’ of Scotland, Wales and Northern Ireland:

- 1973: should Northern Ireland remain in the UK? Majority ‘yes’
- 1979 (2): should Scotland and Wales have their own devolved assemblies? ‘No’
- 1997 (2): Scottish Parliament and Welsh Assembly? ‘Yes’
- 1998: Greater London Authority and directly elected mayor of London? ‘Yes’
- 1998: ‘Good Friday Agreement’, including an assembly for Northern Ireland. ‘Yes’
- 2004: should there be a regional assembly in the North-East of England? ‘No’

There have been 31 mayoral referendums/plebiscites (11 approved, 20 rejected). Only six of these were genuine referendums launched by a citizens’ initiative. Average turnout was only 29%, with a high of 64% and a low of 10%. There has also been an increase in the use of advisory ‘referendums’ at the local/city level e.g. the decision by the Bristol Council in 2001 to hold a local referendum on the level of council tax. Four options were presented: no increase; 2% increase; 4% increase; 6% increase, and the council announced that it would accept the result as binding. The turnout was 40.2% and a majority voted for no increase. This was the first referendum at which e-voting was used, in addition to postal and ‘freephone’ voting. (E-voting was also used in a similar referendum in Croydon).

The conduct of all national and European elections and national and regional referendums is overseen by an independent Electoral Commission, whose website states: “We are an independent body that was set up by the UK Parliament. Our mission is to foster public confidence and participation by promoting integrity, involvement and effectiveness in the democratic process.” The main functions of the Commission in respect of referendums are to: comment on the intelligibility of the question (set by government or local authority); register campaign organizations as ‘permitted participants’; appoint lead campaign organizations on both sides of the referendum question; monitor referendum expenditure limits and donations; designate the Chief Counting Officer at each referendum.

Although the Electoral Commission’s role is currently relatively restricted, its importance lies in it being independent of government and in having a structure which could fairly easily expand to meet possible future demands for more direct democracy. That it is not entirely toothless has been shown by the fact that it involved itself in the dispute over ‘loans’ mentioned above and made a clear call for transparency and accountability.

An older Act (the 1972 Local Government Act), which has only recently been 'rediscovered', permits elements of direct democracy. It applies in small communities (parishes) of England and Wales, but does not appear to apply to cities, or to Scotland and Northern Ireland. The Act states that if 10 or more people attending a parish council meeting vote for a poll on a subject of their choosing, the governing district council must agree to organize what is in effect a local referendum within the boundaries of the parish. This Act has now been invoked on a number of occasions, for example to oppose trials of genetically-modified crops.

Tentative moves in the direction of a greater acceptance of a popular right to be involved in decision-making include the introduction in 1999 of a 'public petition' system in Scotland, followed the next year by the addition (in Scotland) of a e-petition system and the introduction of e-petition systems in two English municipalities: Bristol and Kingston-upon-Thames.

Around 1000 petitions (including more than 90 e-petitions) have been submitted in Scotland to date (April 2006). Bristol has recorded 121 petitions, including 24 e-petitions; Kingston 24 petitions, including 21 e-petitions.

Whilst petitions (with no guarantee of being considered, and no possibility of a referendum vote on the issue) can hardly qualify as direct democracy, in terms of the very rigid and archaic British political system these developments are nonetheless significant. Perhaps from such small acorns oaks may eventually grow. They give at least some members of the public an experience of presenting a substantive issue to parliament or the local authority, and in some cases backing this up with a collection of signatures. Though it remains a carefully controlled part of a top-down representative system, the Scottish petition system is admirably 'user-friendly'. Any person or group may submit a petition; there are very few restrictions on subject-matter (issues must be within the competence of the devolved parliament); petitions can be posted free of charge at any post office, or even handed in formally, by arrangement, for publicity purposes! Information on the scheme is available in six languages and petitions may in fact be submitted in any language, including Braille. There is excellent coverage of the scheme online, including an archive of all petitions submitted. Petitioners may be able to make a personal presentation to the Public Petitions Committee (a cross-party group of MSPs dealing only with petitions).

The committee has full and final discretion to deal with petitions as it sees fit. There is no right of appeal. The committee may consult the Scottish Executive (government) or other relevant body; it may request a minister or a representative of a body to give evidence; it may decide that the issue merits further action and formally refer the petition to a subject committee of the Parliament or other body; it may recommend to the Parliamentary Bureau that the petition should be debated at a meeting of the parliament; it may decide that the issues raised do not merit further action; or it may decide to take any other action as appropriate.

The Scottish Parliament is clearly proud of its petitions system. It is pro-active in publicising it, and its website lists some of its achievements: it has resulted in a change to laws (e.g. a ban on the spreading of untreated organic waste on land); petitions have been included in wider reviews and inquiries; petitions may initiate parliamentary debates, prompt action by the Executive and other public bodies (e.g. in the speeding up of the compensation process for victims of as-

bestosis) and help in the scrutiny of legislation (e.g. land reform, criminal justice, national parks).

Both standard and e-petitions can be submitted by individuals or groups. E-petitions are hosted on the Parliament's website for an agreed period, providing an opportunity to attract a much wider audience and gather more names in support of the petition. Each e-petition has its own discussion forum, where visitors and supporters can discuss and debate the petition and related issues. When the agreed period for hosting a petition on-line ends, the petition is then formally submitted to the PPC for consideration in the usual way. The following issues have been the subject of e-petitions: a campaign to save the 7:84 theatre company (so-called to reflect the fact that at the time of its founding 7% of the Scottish population owned 84% of the land); renewable energy; rights for people with autism; parliamentary standards; parental access rights for children; a new Forth Road Bridge; a moratorium on the 'Public-Private-Partnership' model for building new schools; ecovillages; local authority democratic accountability; the provision of affordable housing – a typical cross-section of public concerns which in Switzerland and other places could be the subject of a formal initiative and binding referendum system.

In November 2006, the Prime Minister's office considerably expanded its e-petition system, which was introduced in 2001. The figures are remarkable: from November 2006 to February 2007 (four months) more than 3,381 petitions were filed, with more than 2,500,000 signatures. The managers of the system are apologizing for delays because the system is overloaded – they have had a peak of 150 hits per second!

## Power to the people

The original definition of democracy by Thucydides makes clear that it is essentially about the apportionment of the power of decision-making in society ("Our Constitution is called a democracy because power is in the hands, not of a minority, but of the greatest number"). That recognition may have been the reason for the naming of the 'Power' inquiry – an independent inquiry into British democracy, funded by the charitable Rowntree Trust and launched in 2004 under the chairmanship of the redoubtable Helena Kennedy QC, a Labour peer. Its report, entitled "Power to the People", was published in February 2006. It makes very interesting reading.

Helena Kennedy summarised the key findings of the report in an article for The Independent newspaper on 27<sup>th</sup> February 2006: "The people are not the problem. They are interested in politics. They care about the bread-and-butter issues that affect their lives. They care about their communities and neighbourhoods, their country and the world – but they are totally alienated from the political system. Formal democracy is failing the people."

The political class does not realize how deep the alienation runs. Fundamental reform is needed if we are to re-establish a democracy fit for a 21<sup>st</sup>-century People. 'Power to the People' calls for three essential shifts: more power to the people; more power to parliament; more electoral choice.

There has to be a new emphasis on public engagement in politics. All public bodies should be required to involve citizens in their decision-making processes. Clear processes are needed which allow people to challenge decisions and set the agenda. That is why we recommend the use of a far-reaching Citizens'

Initiative, through which people can launch their own local and national referendums, public enquiries and hearings.

The overweening dominance of the Executive has to be checked. Our voting system allows parties to maintain a monopolistic grip on political power. We need electoral reform that will widen the choice for voters and let new voices and alliances emerge. These three shifts, involving 30 recommendations ... will blow open the cosy Westminster consensus that citizens require little more out of democracy than a choice between two broad political programmes once every four years. The shifts will download power, and that is what the people want". (The report can be downloaded at [www.powerinquiry.org.](http://www.powerinquiry.org/))

Moreover, in 2006 the Our Say campaign, chaired by actress Saira Khan, has started a petition asking for introduction of binding citizen-initiated referendums. It is supported by prominent people from several sectors of society.

It remains to be seen what effect these initiatives will have on a system essentially dedicated to preserving the status quo, whilst making token gestures in the direction of 'participation'. In the days after the Power report was published, all the major party leaders made verbal commitments to greater public participation in decision-making. This is nothing new: in the 1979 Conservative party manifesto, Margaret Thatcher stated: "All energy developments raise important environmental issues, and we shall ensure the fullest public participation in major new decisions." Nothing more was heard of this after the election and there has never been a full public debate on the country's overall energy policy – a matter of increasing concern to all states in the era of Peak Oil.

## Future prospects

What are the prospects for more direct democracy in Britain? The future is uncertain. A move in the direction of decentralisation of power was made with the creation of the Scottish Parliament and the Welsh and Northern Ireland Assemblies. All of these have introduced fairer voting systems, allowing a wider spread of representation, but the hopes of a more radical shift away from the 'Westminster model' have not so far been realized. Polls show that citizens do not believe that devolution has brought significant change in the political modus operandi. The petition system in Scotland is a welcome innovation, but, as noted above, it remains tightly controlled within the representative system, despite Scotland having a historical political culture which implicitly endorses the principle of popular sovereignty – as reflected in the 'key principles' outlined by the Consultative Steering Group in its recommendations for the form of the new Scottish Parliament:

- the Scottish Parliament should embody and reflect the sharing of power between the people of Scotland, the legislators and the Scottish Executive;
- the Scottish Executive should be accountable to the Scottish Parliament and the Parliament and Executive should be accountable to the people of Scotland;
- the Scottish Parliament should be accessible, open, responsive, and develop procedures which make possible a participative approach to the development, consideration and scrutiny of policy and legislation;
- the Scottish Parliament in its operation and its appointments should recognise the need to promote equal opportunities for all.

These principles were "fully endorsed" by both Parliament and Executive in 1999, but the implicit acknowledgement of popular sovereignty was explicitly undermined a year or so later by a parliamentary committee tasked with assessing how well the 'key principles' had been implemented. The committee effectively downgraded the importance of the first principle – the sharing of power. In the 2003 report of the Procedures Committee we read: "It was clear to us that the CSG principles did focus very much on the Parliament, and were based heavily on a model of 'participative democracy'. The traditional model of 'representative democracy' seemed to the CSG to be breaking down as a workable model in Scotland prior to devolution, and indeed to be under pressure all across the western world, as electoral turnouts and active citizen involvement in political parties and electoral politics declined. Devolution on its own would not reinvigorate politics. The CSG model of participative democracy was meant to win legitimacy for the new devolved institutions, to empower civil society and the people of Scotland directly, and to rebuild active engagement between the people and those charged with legislation and government. It seemed to us that the CSG's aspirations were tempered by a recognition of the need to compromise in 'the real world'." In effect, the Committee (composed solely of parliamentarians) was renouncing effective power-sharing.

Britain remains at heart a conservative nation, still locked to a high degree into past 'glories' (the Empire, being on the 'winning side' in two world wars) which, together with its status as a major economic power, help to make its politicians pretentious, arrogant and unwilling to take a leaf out of anyone else's book – except perhaps the USA, towards which it is often very imitative.

As things currently stand, there is a slim chance that the next general election (probably 2008) might produce the first 'hung parliament', with the Liberal Democrats holding the balance of power. There would then be a chance of the unfair first-past-the-post system for Westminster elections at last being consigned to history – though it would take another four years or so for such a change to produce a wider spread of representation. It remains to be seen whether the 'Power Inquiry' and the Our Say campaign will produce any real momentum for change, especially given the considerable influence on popular thinking of a grossly unbalanced and distorted media coverage of political issues.

"Only recently have we awakened to see not only that 'regular citizens' have the capacity for self-governance, but that without their engagement our huge global crises cannot be addressed. The changes needed for human society simply to survive, let alone thrive, are so profound that the only way we will move toward them is if we ourselves – regular citizens – feel meaningful ownership of solutions through direct engagement." (Frances Moore Lappé)

"If diverse ordinary people are given adequate information and a chance to deeply hear each other and reflect together about public affairs ... there is a natural tendency to come to see a larger picture together, through each others' eyes, and to then wrestle in good faith with the implications of that larger picture ... so that in the end they find that their diversity is a resource, stimulating each other into remarkable creativity. Suddenly options that make sense to all or most of them emerge – possibilities often unseen by any of them when they began talking." (Tom Atlee)

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# About the publishers of this work

## **Democracy International**

Democracy International is a network of movements for direct democracy that was set up in Brussels at the start of 2005. It aims to promote direct democracy both in the countries of Europe and at the level of the EU. It embraces both critics and supporters of the European Union who, despite their differences, are united in their desire for more direct democracy in Europe. Democracy International has successfully conducted campaigns to obtain referendums on the European Constitution in as many countries as possible: some 10 EU member states have announced such a referendum. Its campaign for the inclusion of direct-democratic rights in the European Constitution was partially successful: the European Citizens' Initiative was included in it. After the rejection of the European Constitution, Democracy International was one of many organisations campaigning for the separate introduction of the European Citizens' Initiative, as well as for a new Convention, directly elected by the citizens, to seek new ways for European cooperation.

[www.democracy-international.org](http://www.democracy-international.org)

## **Democratie.nu (Democracy now)**

This Flemish movement for direct democracy was founded in 1995 as WIT ('White'). Its change of name in 2005 to Democratie.nu reflects the better understanding that a political system with no possibility of binding referendums on all political issues cannot be called real democracy. In Belgium, the movement has significantly contributed to the inclusion of direct democracy in the manifestos of many political parties and in the public debate generally. From 1995 to the end of 2003, WIT published the most interesting magazine on direct democracy, *de Witte Werf*.

[www.democratie.nu](http://www.democratie.nu)

## **Referendum Platform**

The Referendum Platform was founded in 2000 to promote the introduction of direct democracy in the Netherlands. It campaigned successfully for a referendum on the European Constitution and for introduction of the popular initiative in the city of Amsterdam. It advises citizen groups which initiate local referendums, conducts research and publishes books, reports and articles on direct democracy in the Netherlands and abroad.

[www.referendumplatform.nl](http://www.referendumplatform.nl)