

Establishment, Evolution and Interaction of Modern Direct Democratic Traditions

LÁSZLÓ KOMÁROMI

Introduction

In the following overview the term “direct democracy” is used in its perhaps most simple meaning: decision-making processes in which people decide different political matters directly without the medium of elected representatives. Practices of direct democracy can be traced back to Ancient Greece, its modern forms and institutions, however, first appeared in the 18th and 19th centuries in some North American and European polities and only spread throughout other countries in the 20th century.

When talking about “traditions”, the meaning of the Latin term shall serve as a starting point: *trans-dare* (= to give across), *tradere* (= to deliver, hand over, hand down something). Accordingly, tradition is often mentioned as a “transmission of customs or beliefs from generation to generation”, or a “long-established custom or belief that has been passed on from one generation to another”¹.

“Direct democratic traditions” are therefore customs, practices and ideas that relate to direct popular decisions throughout several generations and which – sooner or later – take shape in the legal regulation as well. The pioneers in this respect were some colonies of New England, revolutionary France and Switzerland. The question of the present study is how these traditions were established, what circumstances contributed to their succeeding development, how and to what extent they exerted an influence on each other.

1. *The American tradition*

Traditions do not come into existence overnight, even if the beginning of a recurrent practice can be identified. This was the case in certain American colonies of New England as well, considering that political communities where direct democrat-

ic votes – referendums on the adoption of constitutions – allegedly occurred for the first time in modern history.

The roots of these occurrences can be traced back to different ideological and practical factors². First we must mention the *political legacy of Protestantism*. It is widely known that already John Calvin considered it important to submit the Ecclesiastical Ordinances of the Genevan Church to the General Council (the assemblage of all full male citizens of the church community) for ratification³. Later adherents of Protestant thoughts adapted this idea on state government as well, as did for example the independent puritan settlers who signed the Mayflower Compact in 1620 when they decided to found their own colony⁴. A couple of years later another group of settlers proceeded similarly: they established an own plantation in Massachusetts and adopted their basic rules thereon, the Fundamental Orders of Connecticut in 1639 by means of a direct popular vote in the common general assembly of the cities of Windsor, Hartford and Wethersfield⁵. As their pastor and leader, Thomas Hooker pointed out: «the foundation of authority is laid, firstly, in the free consent of the people»⁶.

In addition to Protestant ideas, the example of *guilds* also contributed to the direct democratic practice that evolved in the New World's first political communities. These voluntary associations decided every important matter of their operation on the basis of "common assent": the establishment of their organization, the adoption of statutes, the enrolment of new members were debated and decided by the general assembly of existing members. Congregational church communities in Great Britain

and the companies formed by the Pilgrims before their emigration to America also followed this democratic model in their internal relations⁷.

This practice of the members' participation in the decisions of common importance continued in most plantations of New England in the form of so-called "*town meetings*". These assemblages – the gatherings of grown-up male inhabitants – originally came together on an informal basis in order to discuss and decide the most important matters that concerned the whole community. In addition to Protestant ideology, practical reason might also have contributed to the formation of this custom: the first colonies could only overcome the difficulties and avert the dangers they were faced with in the New World at the beginning of their settlement if they acted hand in hand in almost every situation⁸. This could only be achieved if decisions were based on the widest consensus and if nobody could withdraw himself from the common action saying that he had no part in the decision.

Notwithstanding, as the colonies grew and their circumstances rendered possible to create a stable and mostly peaceful life, representative governance gradually superseded the forms of direct popular participation. At first sight one could think that consolidated conditions have stopped the evolution of this direct democratic tradition. However, the ideas and customs, that were present in the beginning of the formation of American political communities were revived in times of the American Revolution when the colonies declared their independence and began to adopt their own constitutions. In addition to the idea of written basic laws the importance of the free

consent of people concerned also emerged again. Certain colonies adopted their constitutions by means of normal legislation. Others elected special assemblies, constitutional conventions which were vested with a special authority to elaborate and pass the new constitution⁹. In some cases, however, the idea that the new constitution must be ratified directly by the people also broke through. For example in Massachusetts, the draft constitution, which was elaborated by the ordinary legislative assembly (the General Court), was submitted to the town meetings and the freemen rejected it because they held it necessary to elect a constitutional convention for the elaboration of the new fundamental law¹⁰. Subsequently, this special convention was elected and its draft directly approved by the town meetings in 1780. The example was followed in 1783 in New Hampshire, in 1816 in Connecticut, in 1819 in Maine and in 1821 in New York. This practice led to the birth of the constitutional referendum, the first instrument of modern direct democracy which also spread in other US member states from the 1830s¹¹. It is certainly no accident that the first appearance of this institution can be observed in those former New England colonies which already had an experience with direct popular participation in political decision-making. This former experience now came to the surface as an underground stream and contributed to the establishment of a constitutional tradition. In Georgia, in 1777 it was also enacted that constitutional amendments could only be proposed by the majority of voters in each county, thus enabling citizens to launch bottom-up constitutional initiatives¹².

2. *The French plebiscitary tradition*

The idea of direct popular participation in modern French constitutionalism is traceable to the Enlightenment, first of all to Jean-Jacques Rousseau. According to his theory on the social contract, sovereignty is the exercise of the general will (*"volonté générale"*). It is inalienable, indivisible and cannot be represented. As it acts by means of laws, it can work only if the people assemble and so collectively adopt the laws. These assemblies come together regularly from time to time in accordance with the regulation and in cases when it is deemed necessary by order of the competent authority. «Any law that has not been ratified by the people is null and void – and is, in fact, not a law»¹³. Rousseau does not propose a concrete method for people gathering in large and densely populated countries, he only relates to the ancient Roman Empire and to the assemblies of other old monarchic states and says that if it was possible to come together in the old times then it is possible today as well¹⁴. Also, he does not provide infallible rules of how to proceed in establishing the general will. The more unanimous the vote is in the assembly, the more the general will prevails; long debates and confusion indicate the rise of individual interests¹⁵. He does not take into account that misinformed citizens can also give a nearly unanimous vote and that a formal and superficial understanding can hide contradictory intentions¹⁶.

A quarter of a century later, in times of the French Bourgeois Revolution it became possible to realize the idea of popular sovereignty in political practice. However, Rousseau's radical view on direct popular law-making did not go through first. When



Swiss Landsgemeinde, XVIII Century painting

in 1789 the representatives of the Third Estate pronounced themselves a National Assembly they declared also that – as verified deputies – only they are entitled to express and interpret the general will of the nation¹⁷. The Assembly was – contrary to Rousseau – obviously of the opinion that the “*volonté générale*” can be represented. The idea of popular representation itself was a revolutionary notion in the system of estates and absolute monarchy. The fact that Rousseau’s view on direct popular law-making did not fall entirely into the background is shown by the Declaration of the Rights of Man and of the Citizen, which was adopted two months later by the National Constituent Assembly. The document declared namely – in accordance with Rousseau’s idea – that the law is to be the expression of the general will and added that every citizen is entitled to take part

in its formation *either personally or by way of representatives*¹⁸. This alternative formulation can presumably be traced to former constitutions of American states and to John Locke¹⁹. However, the final work of the Assembly, the Constitution of 1791 (3rd September) did not contain any rule on direct popular participation in law-making processes. Although it pronounced that the sovereignty appertains to the nation and it is inalienable, the constitution also declared expressly that the nation can exercise the power only by delegation. «The French Constitution is representative: the representatives are the legislative Body and the King»²⁰.

Different factors – the approaching Prussian and Austrian troops, the King’s attempted flight and his vetoes in the Legislative Body – led to a significant change of public feelings and political climate. The

second wave of the French Revolution in 1792 did away with the monarchy and the newly elected French National Convention changed course to head towards a direct democracy. On 21st September 1792 it laid down in a resolution that the expressed consent of the whole nation is required to adopt a new constitution²¹. Upon the appeal of the Convention more than 300 draft constitutions were brought in. The most impressive project was that of the Marquis de Condorcet who led the Constitution Committee of the Convention. His draft contained several rules concerning direct popular voting because he declared the constitution- and law-making to be “*pouvoirs retenus*” of the people²². Although after the Jacobins’ takeover the draft was notably reframed and abbreviated, the new version itself broke through the exclusiveness of the representative power and institutionalized the direct popular participation in deciding public affairs. On the one hand it empowered the so-called primary assemblies to set a veto on proposed laws adopted and proclaimed by the legislative body. A draft only became an effective law if forty days after it was sent to the communes, in one-half of the districts plus one, one-tenth of the primary assemblies did not protest against the proposal²³. On the other hand the draft constitution of the “*Montagnards*” involved the right of the initiative for a total or partial revision of the constitution. If in one-half of the districts and one, one-tenth of the primary assemblies requested the revision of the constitutional act, the legislative body was obliged to convoke all the primary assemblies to decide whether a national convention shall be called together²⁴.

This draft constitution of the Jacobins was adopted by the National Convention

in the summer of 1793 and – following the rules of the above mentioned decree (21st September 1792) – was put to a referendum and approved by an overwhelming majority of the voters²⁵. However, the National Convention suspended its application out of respect to the emergency situation and confirmed the revolutionary regime. The country sank into terror and the direct democratic institutions of the constitution were never realized in practice. The Jacobin dictatorship killed its own followers and was defeated by the Thermidorian reaction.

Nobody knows how the direct democratic instruments of the Montagnard Constitution would have worked if they had been tried out in reality. Both the popular veto on parliamentary bills and the popular initiative for constitutional amendments were based on the cooperation between the legislative body and the primary assemblies. In case of a veto (“*droit de réclamation*”) the draft would have been worked out by the parliament and the voters in the assemblies would have been entitled to reject the bill. The right to initiate this process was given to the minority of the assemblies and the final decision would have been made by the majority at a second stage. The constitutional initiative would have postulated an inverse process: a minority of the assemblies should have launched the initiative and if it had turned out that the required quorum was reached, the legislative body would have been forced to convoke all the assemblies. If the majority of them supported the initiative, the amendment or the new constitution should have been worked out in detail by a representative national convention. It is not clear whether the activity of the assemblies would have been able to influence the work of their parliamentary

deputies on its merits. The right of a direct democratic control over constitution- and law-making processes was granted but the leading role was given to the representative power in the legislation²⁶. Notwithstanding, both primary assemblies and the requirement that the constitution shall be accepted directly by the people evokes the two institutions which played a great part in the constitution-making processes in New England during the American Revolution: the town meetings and the constitutional referendum.

The Thermidorian Republic mopped up the terror regime and tried to establish order. The national convent therefore adopted a new constitution in August 1795 instead of putting that of the Montagnards into force. It also called the primary assemblies together which ratified the new constitution. The majority was predominant in this case as well but the participation was lower than in 1793: only 18,3%²⁷. The constitution itself preserved the institution of primary assemblies but their direct democratic rights were curtailed. Only the mandatory constitutional referendum remained but in a construction which was unlikely to be realized. Namely, in order to modify the constitution the upper house (Council of Elders) had to make a proposal to the lower house (Council of Five Hundred) every three years within a period of nine years. If the latter ratified the proposed amendment in each case, a revising assembly was entitled to adopt the modification. Finally it had to be approved by the primary assemblies as well²⁸. Thus the whole process was launched by state organs and the voters were only empowered to reject or accept the result of a nine-year procedure of representative bodies.

Setting aside the possibility of initiatives coming from society indicate the beginning of a new period which resulted in a particular manner of popular participation. It is often called plebiscitary democracy and is attributable to the activity of the Napoleons: Bonaparte, the political leader of the last phase of the French Revolution, later emperor of the First Empire, and his nephew, Charles Louis, president of the Second French Republic and the emperor of the Second Empire. The former, seizing the power after the coup of 18 Brumaire concealed his autocratic reign – referring to the ancient Roman Republic – with the denotation of Consulate, but in reality it was a dictatorship. He also used the popular vote to legitimize his autocracy. In November 1799 he set aside the Thermidorian Constitution and issued a new one by a decree. Article 95 prescribed to offer it to the French people for acceptance²⁹. The popular approval was organised subsequently. The citizens could vote not collectively in the scope of primary assemblies, but individually in the communes by signing registers opened for the “Yes” and “No” answers. The registers were placed at the seats of local authorities (mayors and courts), thus the vote took place before the very eyes of the officials. This intimidating manner of voting led to a relatively low participation (around 25%) but the government added several hundreds of thousands to the total number of real votes and in the end proclaimed more than three million participating voters (a participation of around 50%) and only around one thousand five hundred “No” votes³⁰.

During his reign, Bonaparte Napoleon “asked the people” again to approve his person as first consul for life (1802)³¹, two years later to consent to the hereditary

transmission of the imperial dignity in the family of Napoleon (1804)³². In both cases the overwhelming majority answered the question with "Yes" but opposing forces did not get the opportunity to give voice to their opinion before the public. The participation remained under 50% and the approval was a subsequent confirmation of decisions already made by state organs³³. The same happened in 1815 when Napoleon returned for a short time from Elba from his exile and restored and amended the imperial constitution of 1804. This "Additional Act" was also put to the vote, although the participation was low (ca. 20%)³⁴.

Bonaparte's example was followed later by his nephew, Charles Louis Napoleon. He ordered popular votes three times. In 1851, after his coup d'état a plebiscite approved his prolonged presidency and empowered him to work out a new constitution. In 1852, after having built up his one-person power, he got the senate to proclaim him emperor. The decree of the senate was put to a referendum and ratified by the voters with convincing enthusiasm. Owing to the strengthening of the opposition the autocratic character of the regime was mitigated in the 1860s and Napoleon III again felt it necessary to consult the people. In 1870, he ordered a popular vote on the liberal amendments of the constitution. Among other modifications it was prescribed that the constitution cannot be modified but by the people, on the proposition of the emperor³⁵. Finally, due to the strong campaign the proposition was approved by the vote. The French citizens could consider themselves constituent power again³⁶.

3. *The Swiss direct democracy*

A significantly different practice of popular rights and participation has been worked out during the 19th century in Switzerland. The idea of popular sovereignty as a new theoretical paradigm was first transported to Switzerland during the Helvetic Republic (1798-1803) by French troops of Napoleon. The first Helvetic Constitution of 1798 was based on the French Constitution of 1795 and adopted by the reluctant cantons only under military threats. It dissolved the Old Swiss Confederacy and imposed a central authority over the united cantons. It declared further the citizens' collective to be sovereign but restricted the direct influence of people to the elections and to the mandatory constitutional referendum³⁷. The latter – similarly to the French Constitution of 1795 – meant that the primary assemblies could only reject or accept constitutional amendments which have already been approved twice by the Senate and once by the Grand Council as well³⁸. However, neither the idea of a centralized unitary state nor that of inalienable natural human rights had support from a majority of the Swiss population; only a narrow circle of intellectuals was able to receive the thoughts of the French revolution³⁹. It turned out very soon that the constitution wasn't operational. In 1802, after a series of coups d'état a second constitution succeeded and was put to a popular vote. This was the first nationwide referendum in Switzerland. Based on Rousseau's principle that the general silence of the people speaks of their consent⁴⁰, electors who did not register before the plebiscite and therefore did not cast a vote were regarded as "Yes" voters. This way the majority of "No" answers could be turned into

a majority of "Yes" votes⁴¹. But this constitution couldn't restore peace between the "Unitary" and the "Federalists" either.

After the withdrawal of the French army and a subsequent series of revolts against the Helvetic Republic, in 1803 Napoleon tried to reconcile the opposing parties by means of a "federal" constitution, the so-called Act of Mediation. Instead of creating a federal unity, this fundamental law rather integrated the cantons into a confederative unity and secured the French hegemony until the end of the Napoleonic era, without giving any kind of direct democracy the opportunity to rise on the state level. However, in the cantons some old direct democratic instruments were allowed into practice again. In Appenzell, Glarus, Schwyz, Uri, Unterwalden and Zug the so-called "Landsgemeinde" was revived. Since the 13th and 14th centuries every grown-up male citizen gathered in scope of this cantonal assembly at least once a year in order to decide legislative and judicial matters as highest authority, and supervised the executive power. In Graubünden the "federative referendum" was put into practice again. In this large canton (the former Free State of the Three Leagues since the 16th century) the smaller territorial units, the judicial communities (Gerichtsgemeinden) sent deputies to a federal assembly with detailed instructions. However, in case of incomplete instructions the decision of the federal assembly was put "ad referendum" to the meetings of all adult citizens in the judicial communities⁴².

It is debatable to what extent these old democratic institutions contributed to the formation of Switzerland's modern direct democracy. Some scholars think that medieval cantonal democracies, their ideologi-

cal background and instruments developed continuously from times of the Old Swiss Confederation until now (Kontinuitätshypothese). Others suppose that old Germanic and later confederate ideas mixed with modern theories of democracy and this medley resulted in a specific Swiss democratic tradition (Verschmelzungshypothese). According to the third point of view the Helvetic Republic was a real breach in Swiss political history and modern Swiss democracy was established by means of fundamentally different ideological motives compared to the old confederation (Bruchhypothese). Each of these opinions is for the most part right depending on whether one examines the practice or the ideological background. As for the former, a certain continuity is presumable, however the paradigms of the 19th century are new, they originate from the Enlightenment and the idea of natural law⁴³.

It can therefore be considered a fact that the formation of *modern* Swiss direct democracy began on the cantonal level in the first half of the 19th century. The so-called "Regeneration" (1830-1848) was set off by the 1830 July Revolution in France. It meant the revival of the revolutionary ideas of the Helvetic Republic, the renewal of the cantonal legal systems. At the end of the year the leaders of this liberal movement called together mass assemblies which demanded constitutional reforms in the cantons. At the turn of 1830 and 1831 newly elected constituent assemblies amended the cantonal constitutions or adopted new ones and put them to popular votes⁴⁴. As a result the idea of *mandatory constitutional referendum* was realized in practice. Except Fribourg and Neuchâtel, every cantonal constitution adopted this fundamental instrument before

1848. Constitutional amendments cannot take effect without popular approval. The citizens' right to initiate such modifications, the *constitutional initiative* was introduced much more cautiously. Only six cantons adopted this institution until 1848 (Aargau, Basel-Landschaft, Luzern, Schaffhausen, St. Gallen and Thurgau) and five of them required an absolute or two-third majority of all registered voters for the initiative⁴⁵.

The liberals first of all intended to introduce free and universal suffrage and thus a representative government. However in a short period of time radicals appeared as well who clamoured for direct participation not only in constitutional matters but also in normal legislation: they demanded the right of popular statutory initiatives and the possibility to recall parliamentary deputies. The peasant movements claimed the right of *popular veto* against parliamentary statutes⁴⁶. On the 13th January 1831 about six hundred peasants gathered armed with sticks around the constituent assembly (Verfassungsrat) of St. Gallen. The assembly giving in under pressure accepted to introduce the statutory veto (Gesetzesveto), an instrument similar to the "droit de réclamation" of the 1793 French Constitution⁴⁷. Within 45 days after the promulgation of a statute the majority of the registered voters of the communes could set a veto on it. 50 voters of each commune were entitled to launch the process by demanding the convocation of the communal assembly. If the majority of all registered voters in the canton explicitly reject the statute it does not enter into force. Non-voters are to be considered as supporters of the statute in question⁴⁸. During the next two decades five further cantons, Basel-Landschaft (1832), Wallis (1839), Luzern (1841), Thurgau

(1849) and Schaffhausen (1852) introduced the statutory veto in a more or less similar form. In the middle of the century this instrument developed in the most cantons into the *facultative legislative referendum*. A part of the registered voters of the canton were given the right to initiate a popular vote on a law adopted previously by the cantonal legislative body. Those who were absent were not considered "Yes"-voters; the majority of the votes decided the matter. In other cantons which already had a considerable amount of practice with popular rights the *mandatory legislative referendum* was introduced – an instrument realizing the idea of popular sovereignty in its actuality (Schwyz 1848; Graubünden 1854; Basel-Landschaft 1863; Zürich, Solothurn, Thurgau and Bern 1869)⁴⁹.

However, this last wave of new direct democratic instruments indicates a second revolutionary period after the "Regeneration". Despite the first movement in the 1830s and 1840s and the gradual development of popular rights, the political decision-making was still predominantly the business of parliamentary deputies. Both on the level of the confederation and in the cantons the government was based on the principle of representation. From the middle of the century Switzerland experienced significant industrialization and economic growth. This process had its consequences in its political life as well. Big industrialists and companies gradually occupied the most important political positions. The parliaments were dominated by representatives of the upper middle class. On the other hand questions concerning social security came to the surface more and more powerfully. The working class and the lower bourgeoisie sought state interven-

tion. These circumstances led to the next democratic movement in the 1860s which renewed the demand on more popular participation in political decision making. In 1869, the movement enforced a new constitution in Zurich that guaranteed a variety of popular rights. It declared that the people themselves exercise the legislative power and the cantonal council can only collaborate on the legislation⁵⁰. 5000 citizens were entitled to initiate legislation either in form of a general proposal or a draft formulated in detail. It had to be put to a popular vote; the cantonal council could only make a counter-proposal which was also subject to the referendum (*legislative initiative*). The constitution further prescribed to put to the referendum every constitutional amendment, parliamentary statute and any other decision including one-time outlays exceeding 250 000 francs (*mandatory constitutional, legislative and financial referendum*)⁵¹. The example was followed by other cantons as well. The intention was clear: narrow down the parliament's competencies and control the executive power⁵².

Most instruments of the cantonal direct democracies were introduced on the federal level as well, with a certain delay. The Swiss Federal Constitution of 1848 involved only the mandatory constitutional referendum and the constitutional initiative for a total revision. After the results of the democratic movement in the 1860s the facultative legislative referendum (1874) and the constitutional initiative for a partial revision (1891) were also incorporated into the federal constitution⁵³.

Contrary to the French plebiscitary tradition which is dominated by referendums ordered by the head of state, the Swiss direct democracy is based on "bottom up" initia-

tives. Facultative referendums are weapons of parties and other interest groups. If they are able to gather enough signatures against a law, the parliament's decision will be subject to the vote of the citizens. This "constant threat" motivates governments to involve possible challengers into the pre-parliamentary decision-making process to avoid a subsequent veto ("negotiated democracy")⁵⁴. Popular initiatives are also means of agenda-setting; they can express various interests of a pluralist society and give voice to problems which otherwise get lost on the table of party politics. Not anyone is able to formulate such questions. Interests can often be represented by alliance of concerned parties. But the right to ask citizens is not monopolized by one single political actor or by a narrow circle of state organs. The relative frequency of such punctual "bottom-up" intervention into political decision-making does not force the representative power into a merely executive role. Referendums can influence the parliamentary decision-making but they do not shed doubt on the fundamentals of the political system.

4. *Later American and French development*

At the turn of the 19th and 20th century, an interesting impact of Swiss direct democracy could be seen in the constitutions of some US American member states. At that time, the American Populist Movement strove to break the corrupt power of large monopolies and trusts that controlled representative governments and parliaments. The aim of the movement was to eliminate this corrupt influence by curtailing the leg-

islative power which stood behind the companies. As weapons for this endeavour instruments of Swiss direct democracy were also taken into consideration and popularised in the press, party meetings and through other media⁵⁵. After the People's Party had won the elections in South Dakota in 1896, the two most important Swiss direct democratic devices were included in the constitution: the popular initiative and the facultative referendum (1898). (The revision was approved directly by the people in a subsequent constitutional referendum.) This example was followed by Utah and Oregon in a short time (1900 and 1902) and later by a series of other US member states as well which have been using these instruments since that time⁵⁶.

As regards France, the practice of the Napoleons shaped the development of popular participation for a long time. Although it did not come to same popular votes during the decades of the Third French Republic, the old custom was revived by Charles de Gaulle again after the Second World War. The main feature of this tradition is that popular votes are ordered by the head of state, he is entitled to formulate the question and set the date. Accordingly, the vote serves the political goals of the president. He can consolidate his position, solve political crises, weaken oppositional forces and circumvent the parliament⁵⁷. Popular initiatives are not allowed; the head of state monopolizes the right to ask the people who hold the answer to the question. The presidential decree on the referendum is an "appel au peuple" as it was already formulated by the Constitution of 1852: the president is responsible to the French people to whom he can always appeal⁵⁸. This tradition is often called "plebiscitary democracy". It is a

snappy answer both to Jean Jacques Rousseau's ideas on convening and deliberating groups of citizens who pronounce the general will, and to the cautious attempts in the first phase of the French Bourgeois Revolution to realize these ideas by means of primary assemblies which can propose revisions of the constitution and set a veto on parliamentary statutes upon their own initiative. People are governed from above and asked only if the highest state authority considers it important.

5. Concluding remarks

As regards the *establishment* of direct democratic traditions we have seen that in case of the American and Swiss traditions, both *ideas* (in America: Protestant political thoughts, or, in case of Switzerland, the ideas of the French Enlightenment during the Regeneration) and *preceding practice* of popular participation (America: church communities, guilds, town meetings; Switzerland: "Landsgemeinde" assemblies) have played a major role. Practical experience seems to be more influential as in the case of France we can observe that this factor was obviously missing before the revolution and this certainly contributed to the fact that bottom-up instruments, even if they were enacted during the reign of the Jacobins, were never used later in practice. Rousseau's ideas were not enough to establish a long-lasting direct democratic practice in France.

As for *later developments*, own historical antecedents and current internal political circumstances seem to have the greatest significance. Both in American colonies

and in the Swiss cantons the adoption of direct democratic instruments was connected with internal conflicts, certain power relations and partly with a struggle between dominant and more or less oppressed political forces⁵⁹. This might also be true for France, however, in this case the most influential power factor was the head of state (the two Napoleons and later on President de Gaulle) who was able to shape the practice of popular participation according to his own liking.

Foreign ideas, solutions and patterns could only exercise their influence within the confines of internal political conditions. For example, the American practice of constitutional conventions and referendums was taken into consideration in France but

also immediately adjusted to the internal political necessities. In Switzerland, the Napoleonic attempt to introduce a plebiscitary democracy was not successful and even if the French enlightened ideas and solutions were taken into account during the Regeneration, further development proceeded according to the relations of domestic politics. This was the case at the turn of the 19th and 20th centuries in US American member states as well, where Swiss instruments of direct democracy were adopted as weapons to fight out internal political conflicts. Thus, foreign examples seem to play a subordinate role in the development of direct democratic traditions.

¹ Oxford Dictionaries, Language matters, <<http://www.oxforddictionaries.com/definition/english/tradition>> (October 2015).

² I partly rely here on my former study: *Representation, participation and popular sovereignty: The role of citizens in the constitution-making processes at the turn of the 18th and 19th century*, in D.R. García (ed.), *Las Cortes de Cádiz y la Historia Parlamentaria*, Cádiz. Servicio de Publicaciones de la Universidad de Cádiz, 2012, pp. 753–764. Chapter 2 and 3.

³ J.K.S. Reid (ed.), *Calvin: Theological Treatises*, London. S.C.M. Press, Philadelphia, Westminster Press, 1954, pp. 56 ff.; I. Révész, *Kálvin élete és a kálvinizmus [Calvin's Life and the Calvinism]*, Debrecen, Révész Imre Emlékalap Bizottság, 1909³, pp. 100–101.

⁴ W. Walker, *A History of the Congregational Churches in the United States*, New York, The Christian Literature Co., 1894, pp. 66 ff.;

G. Jellinek, *Allgemeine Staatslehre*, Berlin, O. Häring, 1914³, pp. 509–510.

⁵ Ch. Borgeaud, *Établissement et Révision des Constitutions en Amérique et en Europe* (1893), tr. en. *Adoption and Amendment of Constitutions in Europe and America*, New York, Macmillan, 1895, p. 11.

⁶ *Collections of the Connecticut Historical Society*, vol. I. Hartford, 1860, p. 20.

⁷ Ch. Borgeaud, *Premières constitutions de la démocratie Américaine*, Paris, Alcan, 1891, pp. 8 ff.; C.S. Lobingier, *The people's law or popular participation in law-making from ancient folk-moot to modern referendum*, New York, Macmillan, pp. 41–48.

⁸ H.K. Heußner, *Wurzeln und Durchsetzung direktdemokratischer Verfahren in den USA*, in H.H. von Arnim (hrsg.), *Direkte Demokratie. Beiträge auf dem 3. Speyerer Demokratieforum vom 27. bis 29. Oktober 1999 an der Deutschen Hochschule*

für Verwaltungswissenschaften, Berlin, Duncker & Humblot, 1999, p. 201.

⁹ G.S. Wood, *The Creation of the American Republic 1776–1787*, New York, Norton, 1972, pp. 306–310.

¹⁰ Lobingier, *The people's law*, cit., pp. 164–167.

¹¹ Ivi, pp. 169–179, 182–187; A. Auer, *Le référendum constitutionnel*, in A. Auer (ed.), *Les origines de la démocratie directe en Suisse*, Bâle et Francfort-sur-le-Main, Helbing & Lichtenhahn, 1996, pp. 85–87; Heußner, *Wurzeln und Durchsetzung direktdemokratischer Verfahren in den USA*, cit., pp. 201–203.

¹² W.B. Fisch, *Constitutional Referendum in the United States of America*, in «The American Journal of Comparative Law», LIV, 2006, pp. 487–488, 491–492, 494.

¹³ «Toute loi que le peuple en personne n'a pas ratifiée est nulle; ce n'est point une loi», J.-J. Rousseau, *Du Contrat Social ou*

- Principles du droit politique* (1762), book III, chapter 15, in C.E. Vaughan (ed.), *The Political Writings of Jean Jacques Rousseau*, vol. II, Cambridge, Cambridge University Press, 1915, p. 96. See further book II, chapters 1-2, book III, chapters 12-13, 15.
- ¹⁴ Book III, chapter 12.
- ¹⁵ Book IV, chapter 2.
- ¹⁶ M.G. Schmidt, *Demokratietheorien. Eine Einführung*, Wiesbaden, VS Verlag für Sozialwissenschaften, 2008⁴, pp. 88-89.
- ¹⁷ See the Declaration of 17 June 1789. A. Ray (ed.), *Réimpression de l'ancien Moniteur*, vol. I, Paris, Henri Plon, 1858, p. 82.
- ¹⁸ «La Loi est l'expression de la volonté générale. Tous les Citoyens ont droit de concourir personnellement, ou par leurs Représentants, à sa formation», Ray, *Réimpression de l'ancien Moniteur*, cit., p. 368.
- ¹⁹ M. Fridieff, *Les origines du referendum dans la Constitution de 1793. (L'introduction du vote individuel)*, Paris, Presses Universitaires de France, 1932, pp. 79, 155. See for example the Constitution of Massachusetts (1780) – relating to taxes, art. XXIII: «No subsidy, charge, tax, impost, or duties, ought to be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people or their representatives in the legislature», The Constitution of New Hampshire (1784) formulated more generally, art. XII: «[...] But no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the Representative-body of the people. Nor are the inhabitants of this State controllable by any other laws than those to which they or their Representative-body have given their consent», H. Dippel (ed.), *Constitutions of the World from the late 18th Century to the Middle of the 19th Century*, America: Vol. 1, Part IV: Massachusetts-New Hampshire, München, K.G. Saur, 2007, pp. 22, 360. John Locke's ideas probably lie in the background: «It is true, governments cannot be supported without great charge, and it is fit every one who enjoys his share of the protection, should pay out of his estate his proportion for the maintenance of it. But still it must be with his own consent, i. e. the consent of the majority, giving it either by themselves, or their representatives chosen by them: for if any one shall claim a power to lay and levy taxes on the people, by his own authority, and without such consent of the people, he thereby invades the fundamental law of property [...]» (My italics), J. Locke, *Two Treatises of Government* (1689), book II, chapter XI, § 140. Edition used: London, A. Millar et al., 1764, p. 322.
- ²⁰ Title III, art. 1.: «La Souveraineté est une, indivisible, inaliénable et imprescriptible. Elle appartient à la Nation; aucune section du Peuple, ni aucun individu, ne peut s'en attribuer l'exercice», Art. 2.: «La Nation, de qui seule émanent tous les pouvoirs, ne peut les exercer que par délégation. – La Constitution française est représentative: les représentants sont le Corps législatif et le Roi», L. Duguit, H. Monnier, R. Bonnard, *Les constitutions et les principales lois politiques de la France depuis 1789*, Paris, Librairie générale de droit et de jurisprudence, R. Pichon & R. Durand-Auzias, 1952⁷ (par G. Berlia), p. 6.
- ²¹ *La Convention nationale déclare, 1^o qu'il ne peut y avoir de constitution que celle qui est acceptée par le peuple...*, in J.B.H. Duvergier (éd.), *Collection complète des lois, décrets, ordonnances, réglemens, et avis du Conseil-d'État*, vol. 5, Paris, Guyot et Scribe, 1825, p. 1.
- ²² A. Kölz, *Neuere schweizerische Verfassungsgeschichte. Ihre Grundlinien vom Ende der Alten Eidgenossenschaft bis 1848*, Bern, Stämpfli-Cie AG Bern, 1992, pp. 79-80. C. Frei, *Direkte Demokratie in Frankreich. Wegmarken einer schwierigen Tradition* [Vorträge am Liechtenstein-Institut, Kleine Schriften 22], Vaduz, Verlag der Liechtensteinischen Akademischen Gesellschaft, 1995, pp. 8-9.
- ²³ Art. 58-60. Duguit, Monnier, Bonnard, *Les constitutions et les principales lois politiques de la France depuis 1789*, cit., p. 68.
- ²⁴ Art. 115, ivi, p. 72.
- ²⁵ But only about nearly one-third of all qualified voters took part on the referendum. R. Baticle, *Le plébiscite sur la Constitution de 1793*, in «La révolution française», LVII, 1909, pp. 496-524; LVIII, 1910, pp. 5-30, 117-156, 193-237, 385-410. For the result see the table attached to page 144 (LVIII, 1910). See further: J.-M. Denquin, *Référendum et plébiscite. Essai de théorie générale*, Paris, Librairie générale de droit et de jurisprudence, R. Pichon et R. Durand-Auzias, 1976, p. 40; P. Gueniffey, *Le nombre et la raison. La Révolution française et les élections*, Paris, Éditions de l'École des Hautes Études en Sciences Sociales, 1993, p. 179.
- ²⁶ Cfr. Kölz, *Verfassungsgeschichte (bis 1848)*, cit., pp. 84, 88-90.
- ²⁷ Gueniffey, *Le nombre et la raison. La Révolution française et les élections*, cit., p. 181. Alphonse Aulard qualifies the vote simply a "comedy" – A. Aulard, *Histoire politique de la Révolution Française. Origines et Développement de la Démocratie et de la République (1789-1804)*, Paris, Armand Colin, 1921⁵, p. 571.
- ²⁸ Art. 26: «Les assemblées primaires se réunissent: -1^o Pour accepter ou rejeter les changements à l'acte constitutionnel, proposés par les assemblées de révision [...]», Duguit, Monnier, Bonnard, *Les constitutions et les principales lois politiques de la France depuis 1789*, cit., p. 78. See further title XIII, ivi, pp. 105-106.
- ²⁹ Art. 95: «La présente Constitution sera offerte de suite à l'acceptation du peuple français», Duguit, Monnier, Bonnard, *Les constitutions et les principales lois politiques de la France depuis 1789*, cit., p. 118.

- ³⁰ Aulard, *Histoire politique de la Révolution Française. Origines et Développement de la Démocratie et de la République (1789-1804)*, cit., p. 709; Gueniffey, *Le nombre et la raison. La Révolution française et les élections*, cit., pp. 183-184; C. Langlois, *Le plébiscite de l'an VIII ou le coup d'état du 18 pluviôse an VIII*, in «*Annales historiques de la Révolution française*», XLIV, 1972, pp. 44-51.
- ³¹ Decree of the consuls of the 10 Floréal of the year X (10 May 1802). S. Diémert (éd.), *Textes constitutionnels sur le référendum*, Paris, Presses Universitaires de France, 1993, p. 8.
- ³² Decree of the Senate of the 28 Floréal of the year XII (18 May 1804), art. 1, 142. Diémert, *Textes constitutionnels sur le référendum*, cit., p. 9.
- ³³ Gueniffey, *Le nombre et la raison. La Révolution française et les élections*, cit., pp. 185-186.; Denquin, *Référendum et plébiscite. Essai de théorie générale*, cit., pp. 46-47.
- ³⁴ F. Bluche, *Le plébiscite des Cent-Jours (Avril-Mai 1815)*, Genève, Librairie Droz, 1974, pp. 36-37.
- ³⁵ Decree of the Senate of the 21st May 1870, art. 44. Diémert, *Textes constitutionnels sur le référendum*, cit., p. 11.
- ³⁶ Denquin, *Référendum et plébiscite. Essai de théorie générale*, cit., p. 62.
- ³⁷ Art. 2: «L'universalité des citoyens est le souverain [...]», A. Kölz, *Quellenbuch zur neueren schweizerischen Verfassungsgeschichte. Vom Ende der Alten Eidgenossenschaft bis 1848*, Bern, Stämpfli-Cie, 1992, p. 126.
- ³⁸ Art. 106, *ivi*, p. 149.
- ³⁹ A. Riklin, S. Möckli, *Werden und Wandel der schweizerischen Staatsidee*, in A. Riklin (hrsg.), *Handbuch politisches System der Schweiz*, Grundlagen, Bern, Paul Haupt, Vol. I, 1983, pp. 29-30.
- ⁴⁰ Du Contrat Social, book II, chapter 1: «En pareil cas, du silence universel on doit présumer le consentement du peuple», Rousseau, *Du Contrat Social ou Principes du droit politique* (1762), cit., p. 40.
- ⁴¹ 92.423 "No" votes; 72.453 "Yes" votes; 167.172 did not cast a vote, Kölz, *Verfassungsgeschichte* (bis 1848), cit., pp. 141-142.
- ⁴² Kölz, *Verfassungsgeschichte* (bis 1848), cit., pp. 145-146; A. Vatter, *Kantonale Demokratien im Vergleich. Entstehungsgründe, Interaktionen und Wirkungen politischer Institutionen in den Schweizer Kantonen*, Opladen, Leske-Budrich, 2002, pp. 228-230.
- ⁴³ Riklin, Möckli, *Werden und Wandel*, cit., pp. 39-41.
- ⁴⁴ Kölz, *Verfassungsgeschichte* (bis 1848), cit., pp. 219-223.
- ⁴⁵ Vatter, *Kantonale Demokratien*, cit., p. 234, footnotes 204-205.
- ⁴⁶ Kölz, *Verfassungsgeschichte* (bis 1848), cit., p. 285; Vatter, *Kantonale Demokratien*, cit., pp. 234-235.
- ⁴⁷ Art. 59-60 (See above.) S. Möckli, *Das Gesetzesveto und-referendum. Ein Stolperstein wird zum Grundstein*, in Auer, *Les origines de la démocratie directe en Suisse*, cit., pp. 209-212.
- ⁴⁸ See Art. 135-141 of the constitution of St. Gallen (1st March 1831). Kölz, *Quellenbuch zur neueren schweizerischen Verfassungsgeschichte. Vom Ende der Alten Eidgenossenschaft bis 1848*, cit., p. 290.
- ⁴⁹ Möckli, *Das Gesetzesveto und-referendum. Ein Stolperstein wird zum Grundstein*, cit., pp. 213-217.
- ⁵⁰ Art. 28 «Das Volk übt die gesetzgebende Gewalt unter Mitwirkung des Kantonsrates aus», A. Kölz, *Quellenbuch zur neueren Schweizerischen Verfassungsgeschichte. Von 1848 bis in die Gegenwart*, Bern, Stämpfli+Cie AG, 1996, p. 66.
- ⁵¹ Art. 30-31, Kölz, *Quellenbuch* (bis in die Gegenwart), cit., pp. 67-68. Cf. A. Kölz, *Neuere schweizerische Verfassungsgeschichte. Ihre Grundlinien in Bund und Kantonen seit 1848*, Bern, Stämpfli, 2004, pp. 62-63.
- ⁵² M. Schaffner, *Die demokratische Bewegung*, in Auer, *Les origines de la démocratie directe en Suisse*, cit., p. 155.
- ⁵³ A. Vatter, *Direkte Demokratie in der Schweiz. Entwicklungen, Debatten und Wirkungen*, in M. Freitag, U. Wagschal (hrsg.), *Direkte Demokratie. Bestandaufnahmen und Wirkungen im internationalen Vergleich*, Berlin, Lit, 2007, p. 75. See further A. Trechsel, H. Kriesi, *Switzerland: the referendum and initiative as a centrepiece of the political system*, in P.V. Uleri, M. Gallagher (eds.), *The Referendum Experience in Europe*, Basingstoke, Macmillan, 1996, p. 187.
- ⁵⁴ Trechsel, Kriesi, *Switzerland: the referendum and initiative as a centrepiece of the political system*, cit., pp. 202-204.
- ⁵⁵ T. Goebel, *Direct Democracy in America, 1890-1940. A Government by the People*, Chapel Hill, The University of North Carolina Press, 2002, pp. 10-11, 29-35.
- ⁵⁶ E.P. Oberholtzer, *The Referendum in America: Together with Some Chapters on the Initiative and the Recall*, New York, Charles Scribner's Sons, 1911³, pp. 392-397; A. Auer, *Le référendum et l'initiative populaires aux États-Unis*, Bâle et Francfort-sur le Main, Helbing & Lichtenhahn – Paris, Economica, 1989, pp. 85-87.
- ⁵⁷ On the French practice of referendums since the Second World War see U. Kempf, *Die Referendumsdemokratie in der V. Französischen Republik. Ein Überblick*, in W. Merkel, A. Busch (hrsg.), *Demokratie in Ost und West. Für Klaus von Beyme*, Frankfurt am Main, Suhrkamp, 1999, pp. 225-248, on the main features pp. 241-243.
- ⁵⁸ Constitution of 14 January 1852, art. 5. Diémert, *Textes constitutionnels sur le référendum*, cit., p. 9.
- ⁵⁹ T. Schiller, *Origins of Direct Democracy – Conflict, Independence, Democratic Transformation*, in «*Iustum Aequum Salutare*», IX, 4, 2013, pp. 14-15.