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## EDITORIAL

# Referendums, Political Parties and Policies in Europe

Nanuli Silagadze\*

Referendums have become an established political practice in most European nations, and their use has been increasing over the last five decades. The distinctive feature of referendums is their focus on policies, even semantically the word 'referendum' refers to a popular vote on a policy issue. Historically, some policies have been more popular than others. For instance, half of all referendums in Europe were conducted on two topics – political/electoral system and interior policies. In sharp contrast, referendums on education, media and health amount to only 5% of all popular votes (Silagadze & Gherghina, 2020). The topic of a referendum is highly important since it shapes the campaign and determines the parties involved as well as the tone of discussion (e.g. abortion referendum vs. NATO membership).

Each referendum involves several stages – pre-referendum, campaign, polling day and post-referendum (Kersting & Grömping, 2022). Each of these stages brings its own challenges and peculiarities. Some stages of the referendum are more studied than others. Previous scholarship has explored, for instance, the pros and cons of direct democracy from the standpoint of the democratic theory, why referendums are initiated and what are their functions for the political parties and leader, the role of the campaign and other factors that influence the outcome of the ballot (de Vreese & Semetko, 2004; Geissel & Newton, 2012; Hobolt, 2009; Kriesi, 2005; Morel, 2007; Rahat, 2009; Silagadze & Gherghina, 2018; Smith, 2009).

Despite the increasing popularity of referendums and ever-growing academic interest in this topic, some aspects remain mainly underexplored – for instance, its effectiveness/impact as a policy-making tool. The impact can be measured in two ways. First, whether a referendum is successful or not. Second, if the decision is in fact implemented. However, the term 'success' is tricky in this context. For some, it is a mere adoption of a referendum question (Qvortrup, 2005; Williams & Hume, 2010); for others, the definition of a referendum's success depends on the functions and motives of its initiation (Luthardt, 1994).

There is a common understanding that once a popular vote is cast in favour of the question, this result should be reflected in real life. However, in practice, there is a great variation in the degree to which policies are implemented in the aftermath of referendums. Since political parties and governments play a central role in the

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subsequent stage of implementation of the people's will, we have witnessed a number of adopted referendums that have never been implemented due to complex inter-party/intra-party dynamics and calculi (Bassanini, 2012; Muntean et al., 2010). This development is potentially detrimental since the whole promise of direct democracy is to ensure citizens' direct and effective involvement in the decision-making process.

Furthermore, there is no consensus about how to conceptualise or assess consequences of direct democracy: is it the mere change of the public policy or its more long-term effect (for example, increased institutional trust or legitimacy)? In addition, we know relatively little about how citizens view the referendum process and how this affects their perception of the political system.

This special issue presents a rich collection of articles that walk us through all the stages of a referendum process and address various aspects of the highlighted scientific lacuna.

It starts with a literature review entitled: *Amending and Extending Referendum Ballots: Innovations in Referendum Literature and Practice* by Charlotte Wagenaar. This first piece offers a literature review of procedural innovation in the referendum process, mainly at the ballot stage. This state of the art on the topic addresses one of the dominant criticisms in the democratic innovations' literature – the nature of the referendum which mostly promotes a single proposal with a binary choice to either accept or reject. In this article, the author synthesises recent innovations to referendum processes which allow deviations from the traditional binary referendum on a predetermined proposal. In addition, this article reviews the applicability of these ballot innovations for referendums in the low countries and offers four general recommendations on the topic of implementing procedural innovations in referendums.

This literature review is followed by four original research articles. The first one, *The Democratic Potential of Community-Based Initiatives* by Kors Visscher, Menno Hurenkamp and Evelien Tonkens discusses the democratic promises and pitfalls of community-based initiatives (CBIs) from the perspectives of representative democracy and do-democracy. The authors develop an analytical framework for understanding how representative democracy and do-democracy provide different perspectives on key aspects of the democratic legitimacy of CBIs. The article demonstrates that both perspectives have their own criteria for democratic legitimacy which are largely incompatible and lead to tensions between active community members and civil servants due to unspoken assumptions about democracy. One of the main contributions of this article is the development of a vocabulary to prevent these tensions from rising.

The article, *Support for the use of direct democracy among voters and parties of BENELUX countries* by Emilien Paulis and Sacha Rangoni, employs representative samples of voters in Luxembourg, Belgium and the Netherlands to find out what is the role of ideology in citizens' views on the use of referendums and how (some) parties are trying to respond to this demand in their electoral manifestos. The authors show that support for direct democracy is linked to left-wing economic position as well as to right-wing cultural position and self-placement. Interestingly,

radical voters are more likely to support direct democracy, as well as to have their party aligned on their demand.

The third article, *Direct democracy integrity in modern authoritarian systems: The constitutional referendum in Turkey in 2017 and the Russian plebiscite of 2020* by Norbert Kersting, Margarita Zavadskaya and Tiphaine Magne explores the two plebiscites from the innovative lens of Direct Democracy Integrity Index throughout different stages of the referendum process. The authors highlight that both votes were Napoleonic plebiscitary referendums that served the purpose of strengthening their ‘sultanistic’ regimes characterised by strong autocratic presidential and weak party systems. A significant difference according to the authors lies in the implemented tactics: in Russia, the strategies are more propaganda-based whereas Turkey mainly relies on the strategies of repression.

Entitled, *Responsive or Responsible? On the policy implementation of popular initiatives under challenges of international law* by Laurent Bernhard, the final article investigates under what conditions legislators refrain from implementing policies of accepted initiatives in the face of challenges posed by international law. The article highlights the dilemma that political actors encounter between responsiveness (i.e., respecting the people’s will) and responsibility (i.e., complying with supranational obligations) when an initiative is in conflict with international law. With a case study of the Swiss deportation initiative, the author illustrates the balancing act of the Parliament to conform with mandatory provisions of international law while trying to follow the demands of the ballot.

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## LITERATURE REVIEW

# Amending and Extending Referendum Ballots

## Innovations in Referendum Literature and Practice

*Charlotte C.L. Wagenaar\**

### 1 Introduction

A dominant criticism in the democratic innovations literature with respect to referendums is their tendency to promote a single proposal that voters can only accept or reject. The inability to make compromises can aggravate rather than solve policy conflicts (e.g. Altman, 2018; Morel, 2018a). It also provides the author of the ballot proposal and the actor initiating the referendum – which may be the same or two different actors – with significant influence over referendum process and outcome (e.g. Hug & Tsebelis, 2002; Jäske & Setälä, 2019; Wagenaar, 2021). There are, however, ways in which referendum processes can be adapted to comprise improved or additional policy proposals, which are more in line with societal preferences than the sometimes narrow interests of the initiator or the author of the initial proposal. This article reviews innovations to referendum processes that deviate from the traditional binary referendum on a predetermined proposal. Such innovations have been proposed by various

academics and in diverse contexts. This article presents them alongside one another and reviews their applicability for referendums in the low countries, where referendums are being held predominantly at the local level and where offering a real choice to voters and interpreting how to adapt rejected legislation regularly poses challenges to local decision-making. At the same time, the decentralised level lends itself well to experimentation with alternative referendum procedures in diverse contexts and on diverse topics, and the proximity to citizens facilitates following up on how legislators deal with citizen input (Verhulst & Nijeboer, 2007). The proposed innovations in referendum initiation and ballot formulation described in this article are compared with empirical examples as well as suggestions emerging from society in the low countries aimed at increasing the constructive value of referendum processes as a tool of citizen participation.

Section 2 introduces two often-used dimensions to classify (1) who triggers – or in other words initiates – a referendum and (2) what the relationship of the triggering actor is to the author of the ballot proposal on which the referendum takes place – and therefore what the referendum vote intends to accomplish. Referendums thus differ according to their initiation (top-down

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or bottom-up) and their intention (proactive or reactive). Section 3 summarises the limitations of the traditional one-proposal binary referendum without provisions for societal input or amendment, signalling the relevance of analysing alternative ways to design referendum processes. Section 4 reviews the literature on proposed and implemented innovations that affect the options presented on the ballot. This article explores alternative referendum procedures that provide for feedback procedures, additions to the ballot or direct changes to the referendum proposal by actors other than the referendum initiator or author of the original proposal. The innovative variants discussed all address, in different ways, the common criticism that referendums enable citizens solely to approve or reject a predetermined policy proposal. Section 5 then considers the potential for applying the reviewed innovations in the low countries. After briefly introducing referendum experience and legislation in the three countries, this section discusses the potential for referendum innovation, describing concrete examples wherever applicable and discussing suggestions that have emerged in society to inspire innovation. The main focus is on the Netherlands, but the suggestions are largely applicable to the similar local referendums contexts in Belgium and Luxembourg. Section 6 concludes with several recommendations for practical experimentation.

## 2 Referendum Characteristics: Initiation, Intention and Ballot Authorship

The referendum literature distinguishes two main dimensions for classifying referendums: who initiates the referendum and what its intention is: to propose new legislation or to correct a legislative decision. Referendums are traditionally binary in nature. As a consequence, regardless of who triggered the referendum, the single referendum proposal author has a great deal of agenda-setting power (Altman, 2011; Hug & Tsebelis, 2002; Suksi, 1993; Wagenaar & Hendriks, 2021). Referendum triggering under traditional models impedes amendments being made to the proposal. Before looking into possible innovations, the next two subsections further explain the dimensions of referendum initiation and intention.

### 2.1 Referendum Initiation: Top-Down or Bottom-Up

Most referendums held around the world are facultative, meaning that they are not required by the constitution<sup>1</sup> but are voluntarily triggered by a particular actor (Altman, 2011; Suksi, 1993). General requirements for holding referendums can be regulated in legislation, but individual referendums require active triggering, as opposed to the mandatory category (Suksi, 1993: 28). Legislation specifies whether a referendum can be triggered by, for example, executives or a specified number of parliamentarians or citizens. Triggering by legislatives or executives is referred to as *top-down* (Papadopoulos, 1995). Particularly those triggered by executives (a head of state, prime minister or government) are also referred to as plebiscites in the referendum liter-



ature and are often viewed critically as a way of legitimising a government-preferred proposal rather than genuinely extending citizen influence over policymaking (Altman, 2011; Kaufmann & Waters, 2004; Morel, 2018b). When citizens can qualify a policy topic for a referendum vote by collecting a predefined number of supporting signatures, this is referred to as *bottom-up* triggering (Papadopoulos, 1995). The process is commonly spurred by an existing or newly formed interest group (Suksi, 1993). The literature is divided over the question of whether referendums triggered by an institutional minority (for example one third of parliamentarians) should be classified as bottom-up (e.g. Morel, 2018b) or top-down (e.g. Stefanini, 2018). If there are no explicit legal regulations specifying the conditions to initiate a referendum, referendums can still be triggered by a majority of parliamentarians by passing ad hoc legislation for a specific referendum, in a so-called non-pre-regulated referendum (Suksi, 1993).

## 2.2 Referendum Intention: Proactive or Reactive

The intention of the referendum can be either to change the status quo by advancing new legislation, i.e. to be *proactive*, or to sustain the status quo by correcting new legislation that seeks to change it, i.e. to be *reactive* (Altman, 2011).<sup>2</sup> This dimension relates to the question of whether the referendum initiator also authors the referendum proposal. In proactive referendums, this is the case, whereas in reactive referendums initiators trigger a referendum on a proposal authored by another actor. In the case of bottom-up referendums, citizens can advance a citizens' initiative to propose new legislation

(proactive) or can collect signatures to correct a decision by policymakers (reactive). Suksi (1993: 30) also uses the terms active and passive participation to denote whether citizens can or cannot influence which issues or proposals are submitted to the referendum vote. Top-down referendums are predominantly proactive, as there is no logic in a corrective referendum if both the triggering actor and the author of the legislative proposal are the same entity (commonly the parliamentary majority), thus proposing to correct one's own proposal. Reactive top-down triggered referendums may occur when executives can trigger referendums, such as in presidential systems.<sup>3</sup>

The dimensions of initiation and intention, summarised in Table 1, serve as a basis for clustering referendums with a similar design, notwithstanding individual differences such as signature requirements and topical exemptions. These two dimensions form a useful basis for an exploration of innovations aimed at more constructive referendum processes, as the characteristics of initiation and intention may encourage or impede particular types of innovations.

**Table 1** *Dimensions of referendum initiation and intention*

		Referendum initiation	
		Top-down – triggered by legislators or executives	Bottom-up – triggered by citizen signatures
Referendum intention	<b>Proactive</b> – triggering actor authored the ballot proposal	Propositive referendum – referendum on a new legislative proposal authored by legislators	Citizens' initiative – referendum on a new legislative proposal authored by citizens
	<b>Reactive</b> – triggering actor reacts to ballot proposal authored by another entity	Corrective referendum – referendum to correct a legislative proposal authored by legislators	Corrective referendum – referendum to correct a legislative proposal authored by legislators

### 3 Ballot Limitations of Traditional Binary Referendums

Referendums have various advantages over other democratic innovations, such as their efficiency and inclusiveness (Michels, 2011; Taillon, 2018). Research consistently shows a high level of support for referendums as well as more diversity in regard to participating citizens compared with other instruments of citizen participation (e.g. Altman, 2011; Gastil & Richards, 2013; Jacobs, 2018; Mendelsohn & Parkin, 2001; Taillon, 2018). Opponents and critics of referendums have, however, pointed to various limitations of the referendum instrument, including the bluntness of binary choice: citizens are given decision-making influence but only on a specific proposal that they can accept or reject (e.g. Bochsler, 2010; Lupia & Johnston, 2001; Mac Ginty, 2003; Wagenaar, 2019). A yes/no vote discourages reasoned deliberation (Rein, 2008) and impedes democratic co-creation. This may force voters to express their preference for the lesser of two evils as opposed to a genuinely preferred policy alternative (Morel,

2018a). This lack of more nuanced options may oversimplify policy issues (Setälä, 1999; Taillon, 2018), polarise the electorate (Altman, 2018; Parkinson, 2001) and distort referendum outcomes (Şen, 2015). Because of their inability to incorporate compromises or concessions, binary referendums may aggravate conflicts rather than resolving them (Altman, 2011; Morel, 2018a). In ordinary top-down referendums, citizens have influence neither over the topic of the vote nor over the specific proposal to be voted on. In conventional reactive bottom-up referendums, initiators can only advocate rejection of a legislative proposal, with no power to propose improvements or alternative policy directions. In a proactive bottom-up referendum (a citizens' initiative), a small group of initiators does have influence over the proposal put forward, but segments of society may consider an alternative proposal more suitable. Although referendum processes are not designed to involve all citizens in elaborating on policy decisions together (Morel, 2018a), there are ways to provide for amendments and additional ballot proposals that can bring

referendum ballots and results more in line with societal preferences. The next section discusses innovations aimed at generating such more constructive referendum ballots.

#### 4 Innovative Developments: Extending or Amending Referendum Ballots

Research and experimentation are increasingly devoted to the question of whether referendums can be innovated to improve ballot choice for voters. This section reports on a number of variations on the standard one-proposal referendum in which either the legislature or a societal referendum initiator is the sole and final author of the ballot proposal. An ‘innovation’ is defined as the inclusion of one or several procedural steps that affect the content of the proposal or proposals offered on the referendum ballot. Some of the innovative referendum procedures discussed have been in use for several decades – notably in referendum-minded democracies – but nonetheless deserve attention as their use is still far from standard and they might serve as inspiration for application elsewhere.

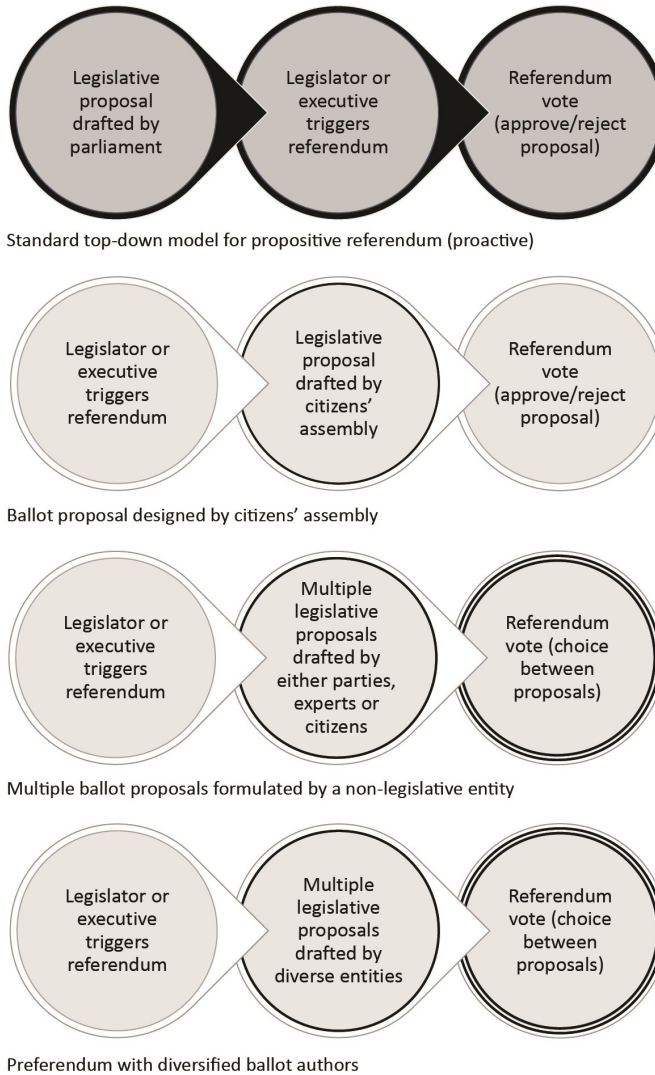
Broadly speaking, there are three non-mutually exclusive procedures through which referendum ballots can be innovated: (1) *delegating* the formulation of all or some ballot proposals to increase representativeness, (2) incorporating provisions for *amending* an initial proposal, resulting in a binary referendum on an improved proposal and (3) *extending* ballot choice by adding additional alternatives to the ballot. In the remainder of this section, various innovations applying such procedures, either empirically practised or theoretic-

cally proposed, will be discussed according to the referendum initiator (top-down or bottom-up) and, for bottom-up referendums, their intention (proactive/reactive). Their procedural steps are visualised in Figures 1-3 alongside the traditional prototype described in Section 2 and Table 1.

##### 4.1 Innovations in Propositive Referendums (Top-Down with Proactive Intentions)

The main criticism of top-down referendum ballots is their strategic use by elites, who can manipulate the ballot proposal to affect the referendum outcome in their favour (e.g. Hug & Tsebelis, 2002; Setälä, 1999). This subsection considers innovations that have been identified in the academic literature to bring ballot choice for top-down triggered, propositive referendums more in line with societal preferences (see Figure 1).

**Figure 1** *Innovations in ballot proposals for propositive referendums*



Note: Lined circles denote a delegation of the formulation of ballot proposals to actors other than the referendum initiator. Double-lined circles denote an extension of ballot choice.

#### 4.1.1 *Ballot Proposal Designed by Citizens' Assembly*

A first type of innovation aims to bring the content of a single proposal submit-

ted to the referendum ballot in line with societal preferences by involving a representative group of citizens in its formulation. In recent years, various countries have experimented with referendum proposals formulated by randomly selected citizens' assemblies representative of the electorate. Notable

examples include referendums on abortion legislation in Ireland (Farrell, Suiter & Harris, 2019), on constitutional change in Iceland (Landemore, 2015) and on the electoral system in the Canadian state of British Columbia (Warren & Pearce, 2008). The triggering of such referendums can be considered top-down, as legislators or executives explicitly delegate decision-making on a particular policy issue to citizens.<sup>4</sup> Authorising a citizens' assembly to draft a referendum proposal for approval by the electorate has also been suggested by Gastil and Richards (2013), particularly for issues that might pose conflicts of interest, such as electoral rules and campaign reform, or regulations on political speech (see also Ferejohn, 2008). Whereas the foregoing empirical examples required that parliament formally triggers a referendum on the proposal that has been developed by the citizens' assembly, Gastil and Richards (2013) propose a 'silent approval' process. This would entail a procedure in which the draft legislation formulated by the assembly is automatically submitted to a referendum vote *unless* legislators explicitly block this through a majority vote. Such a procedure links citizen authoring of a ballot proposal directly to popular approval, with more limited scope for parliamentary intervention.

#### 4.1.2 *Multiple Ballot Proposals Formulated by a Non-legislative Entity*

Rather than focusing on the content of a single referendum proposal, this innovation diversifies the choice presented on the ballot, thereby directly addressing the dominant limitation of conventional referendums in offering a single proposal for approval or rejection. Referendums can be designed

such that they offer multiple proposals: several variations on a policy or alternative scenarios for dealing with a policy issue. Such referendums have been hailed in the literature under various names, such as multiple option referendums (Gallagher, 2014; Orr, 2001), multi-choice referendums (Barber, 1984) and multi-option referendums (Mitchell, 1992; Tierney, 2013; Wagenaar, 2021). Referendums with multiple ballot options can encourage constructive voting (Mendelsohn & Parkin, 2001) and reduce elite control over the referendum process (Lupia & Johnston, 2001; Tsebelis, 2018) while maintaining the aggregative benefits of referendums, as long as provisions are in place to ensure an unequivocal winning option (Wagenaar, 2021). In top-down triggered multi-option referendums, legislators initiate the referendum but usually delegate the formulation of the ballot options. The ballot options can be designed, for example, by different political parties or coalitions, as has been practised in Sweden (Bjørklund, 1982; Ruin, 1982; Suksi, 1993). Alternatively, the task can be delegated to a committee of experts, which can either be an existing expert committee such as an electoral commission, as practised in Jersey (Wagenaar & Hendriks, 2021) or a specially instituted committee, as in New Zealand (Levine & Roberts, 1993; Nagel, 1994). A designated committee can also be tasked to select alternatives from societal inputs – rather than drafting alternatives themselves – as was the case in the 2015 flag referendum in New Zealand, where ballot options were selected from over 10,000 designs submitted by citizens (Tudor, 2016). Instead of a committee of experts, the task of exploring and selecting multiple policy proposals for the

ballot could also be delegated to a representative citizens' assembly, as suggested by Wagenaar and Hendriks (2021). The procedure, which has not been practised to date, would be an adaptation of the previously discussed innovation, except that instead of seeking consensus on a single proposal, the assembly would formulate multiple proposals and delegate the final decision to the electorate.

#### 4.1.3 *Preferendum with Diversified Ballot Authors*

The term *preferendum* is used ambiguously in the literature, sometimes as a synonym for any referendum with multiple ballot alternatives, although mostly referring to a specific variant of it, in which voters decide on the options using preferential voting procedures. It was initially envisioned as a consensual voting method using the Borda count system, which allocates points to different ballot alternatives depending on the rank they receive from voters (Akkerman, 2004; Emerson, 1993, 2021; Morison & Newman, 2001; Orr, 2001). Others have proposed applying preferential voting methods other than points systems (Lundberg, 2007; Mackerras, 1994; McLean et al., 2003; O'Flynn & Levy, 2020). The original intention of the *preferendum* method is that diverse entities propose the various alternatives, thus diversifying the ballot drafting process compared with other types of multi-option referendums (Morison & Newman, 2001). A similar idea is coined by Tsebelis (2018), who proposes that after a referendum has been triggered – either top-down or bottom-up – other actors should be able to propose alternative proposals, to which lower signature requirements apply. This would

encourage the original initiators to submit a well-supported proposal as opposed to a highly ideological plan. Such diversification could help to reduce the manipulation of referendum procedures by political or societal elites.

#### 4.2 *Innovations in Bottom-Up Initiated Referendums*

The previous subsection discussed suggestions to innovate ballot formulation procedures for referendums triggered by a parliamentary majority or the executive. This subsection describes innovations that can be applied to referendums triggered by citizens. Some innovations bear similarity to those described previously, but an important difference between bottom-up and top-down triggered referendums is the role of the initiators. Whereas parliamentarians have more leeway to trigger ad hoc referendums and then delegate ballot formulation to, for example, a citizens' assembly or an expert committee, citizen initiators tend to trigger a referendum either on a specific proposal of their own (proactive) or on parliamentary legislation that they contest (reactive). The steps that can be incorporated to innovate the resulting referendum ballot therefore differ from those identified previously. Rather than formulating it from scratch, the focus is on supplementing or improving the referendum proposal that formed the basis for triggering the referendum.

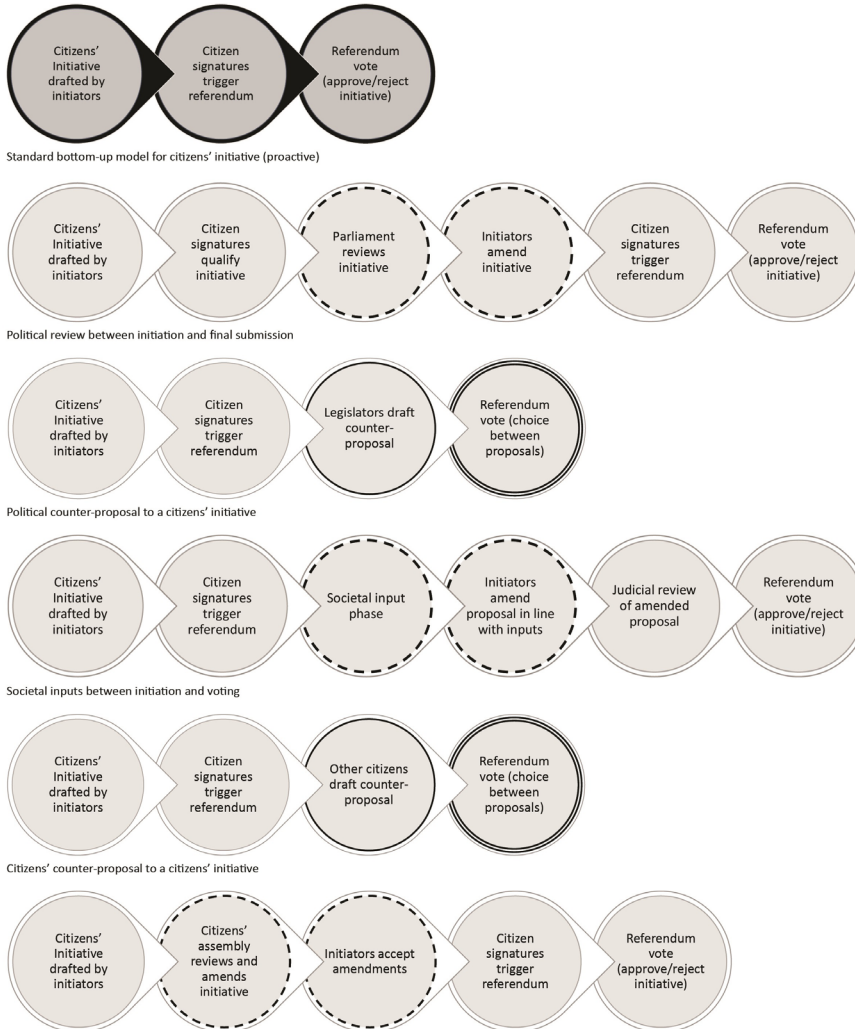
##### 4.2.1 *Innovations in Citizens' Initiatives (Bottom-Up with Proactive Intentions)*

The main criticism on the bottom-up, proactive practice is that initiatives benefit mostly well-organised societal groups or individuals with financial and

political resources. The initiative process (from drafting the initiative to qualifying it for the ballot and campaigning for it) can be strategically abused to serve special interests (Altman, 2014; Broder, 2000; Schacter, 1995; Staszewski, 2003). Particularly in the US, the literature tends to be critical of what is called the 'initiative industry' (Altman, 2018; Magleby, 1995). For example, in California, referendums have been triggered by billionaires and powerful organisations such as the Realtors Association, who have spent as much as 2 million US dollars to qualify initiatives for the ballot. The money is spent, for instance, on lawyers and on paid signature collectors (McCarthy Carino, 2018). The academic literature also points towards increasing professionalisation in signature collection and strategic initiative drafting (Broder 2000; Magleby, 1995; Staszewski, 2003), and financial and organisational resources are said to largely influence which initiatives qualify for the ballot and succeed (Jäske & Setälä, 2019). It is therefore questionable whether initiatives serve the interests of the electorate as a whole (Magleby, 1995; Staszewski, 2003). Smith (2007: 265) describes how the initiative process tends to promote 'quick, unthinking voter signatures rather than sophisticated public education and discussion'. Voters may favour a change in legislation but might prefer a different kind of policy amendment than the one proposed by the initiators. Under the traditional initiative model, they are unable to affect the content of the initiative (Magleby, 1995). Five innovations are discussed in which additional procedural steps involve either legislators or citizens in suggesting amendments or al-

ternatives to the initial ballot proposal (see Figure 2).

**Figure 2** *Innovations in ballot proposals for citizens' initiatives*



Note: Dashed circles denote room for amending an initial proposal. Lined circles denote a delegation of the formulation of alternative ballot proposals to actors other than the referendum initiator. Double-lined circles denote an extension of ballot choice.

#### 4.2.1.1 Political Review Between Initiation and Final Submission

Although Germany has very limited provisions for national-level referendums, binding referendums are possible at subnational levels in all states, including both proactive and reactive bottom-up referendums (Geissel, 2016). Proactive citizens' initiatives



can occur according to two models, a two-tier and a three-tier model (Kampwirth, 2004; Rohner, 2011), depending on the state. The three-tier model provides for mid-process amendments by the initiators. After submitting the initiative with the required number of signatures, the eligibility of the initiative is determined by the competent authority, which is usually the state ministry, government or parliament, or, in exceptional cases, the state-level constitutional court (Rohner, 2011). If eligible, the state-level parliament debates the initiative and decides to either accept it, in modified or unmodified form, or to reject it.<sup>5</sup> The intention of this additional step in the process is to avoid referendums on initiatives that enjoy support from the legislature and could thus be introduced without requiring popular approval. In the case of a rejection or of modifications not accepted by the initiators, initiators can decide to qualify the amended proposal for the ballot by meeting a higher signature threshold (Rohner, 2011).<sup>6</sup> Initiators are allowed to amend their proposal in response to the reasoning provided by parliament, and the state parliament can also submit a counter-proposal (see next innovation). The ultimate decision rests with the electorate.

#### 4.2.1.2 Political Counter-Proposal to a Citizens' Initiative

Once a citizens' initiative qualifies for the ballot, some jurisdictions allow for the formulation of a political counter-proposal. This is relatively common practice in various German states (under both the two-tier and the three-tier models, see Rohner, 2011), in Switzerland (both at federal and at state levels) and in Liechtenstein (Hendriks et al.,

2020). The counter-proposal is usually formulated by a parliamentary majority, but regulations can also attribute this right to minorities, such as a two fifths minority of parliamentarians in Uruguay (Wagenaar & Hendriks, 2021) or a parliamentary minority or upper chamber in Slovenia (Nikolenyi, 2011). Both proposals are then included on the ballot, providing the electorate with a choice between the status quo, revisions proposed by the societal initiators and revisions proposed by parliament. In case of counter-proposals, it is important that voters can accept both proposals (the so-called 'double yes' provision) and highly preferable that they can also indicate their relative preference in a deciding question. This deciding question (termed 'Stichfrage' in Swiss and German referendum terminology) pits the change proposals directly against each other in a separate question, allowing all voters, including those approving or rejecting both proposals, to indicate their relative preference. Double-yes and deciding-question provisions prevent strategic use of counter-proposals to split votes over two proposals in order to favour the status quo option (Rohner, 2011; Wagenaar, 2021). Whether legislators initiate a counter-proposal depends on various factors, including the perceived relevance of the topic, the numerical thresholds and the ideological positioning of the initiative vis-à-vis the median voter and legislators (Altman, 2014, 2018). In Switzerland, initiators may withdraw their proposal in response to a political counter-proposal, resulting in a referendum ballot posing a binary choice between the legislative counter-proposal and the status quo (Wagenaar, 2021).

#### 4.2.1.3 Societal Inputs Between Initiation and Voting

Staszewski (2003) suggests the incorporation of a deliberation phase between the appeal for a citizens' initiative and the final approval of the initiative for the ballot. His proposal is situated in the US context, where in most states citizens can collect signatures for an initiative and where judicial review of initiatives takes place prior to the vote. In this process, there are no formal requirements for initiators to engage with citizens and other interested parties to collect alternative ideas or make compromises. This promotes lobbying for the initiators' most favoured outcome, rather than investing efforts to improve the policy proposal and align it with societal interests. Staszewski proposes to introduce a mandatory phase between signature collection and judicial review in which opponents, elected officials and interested citizens can submit comments on the content of the initiative. Initiators would be required to respond to the comments and suggestions in an amended proposal, accompanied by a written statement, or can decide to withdraw their initiative in response to criticisms. Judicial review then assesses whether initiators engaged reasonably with submitted comments. Jurors would be authorised to invalidate the proposal if important aspects of the issue are ignored, arguments run counter to evidence or public comments are not convincingly addressed. The new procedure would hold initiators accountable for the legislative process, increase societal deliberation and limit the scope for utilising the initiative process for self-interested purposes. Smith (2007: 301) agrees that requiring initiators to consult public officials, experts and in-

terested parties can improve ballot drafting, decrease unforeseen consequences and create a 'deliberative check' on the initiators by forcing them to take societal perspectives into account and to respond to criticisms. He favours the consultation procedure proposed by Staszewski but prefers the involvement of interest group representatives over direct input by voters and proposes to require a mandatory public hearing on the ballot proposal.

#### 4.2.1.4 Citizens' Counter-Proposal to a Citizens' Initiative

In a variation on the political counter-proposal discussed in Section 4.2.1.2, alternative groups of civic initiators could propose a counter-proposal to an initiative that has qualified for the ballot. Whereas in the previous innovation, a single proposal is considered for the referendum ballot and its initiators remain in charge of adapting it according to received inputs, the citizens' counter-proposal allows for direct qualification of a competing ballot alternative. This procedure is regulated for in Uruguay, where initiators can propose a counter-proposal in response to another citizens' initiative (Wagenaar & Hendriks, 2021). The ballot thus consists solely of a variety of citizens' proposals competing against the status quo. This procedure is also advocated for by Tsebelis (2018), as discussed in Section 4.1.3. He considers diversified ballot option formulation desirable for both top-down and bottom-up triggered referendums. In his view, signature requirements ought to be lower for subsequent proposals, which differs from the current regulations in Uruguay, where requirements are the same for all ballot proposals. Altman (2018: chapter 7) suggests delegating the for-

mulation of the counter-proposal to a deliberative citizens' assembly of around 23 allotted members under compulsory and paid participation. Their counter-proposal would be voted on by the electorate as part of a two-stage referendum procedure.<sup>7</sup> Random selection and internal deliberation would avoid the counter-proposal from being seized by those with private interests.

#### 4.2.1.5 Citizens' Assembly between Drafting and Signature Collection

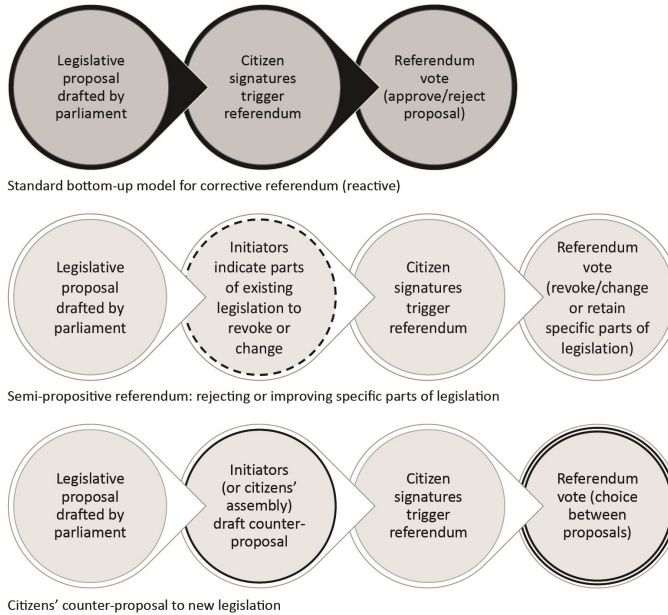
Also in response to criticisms on the utilisation of initiatives by special interest groups, Ferejohn (2008) proposes to institute a citizens' assembly each time an initiative is fielded. The assembly would take time to get acquainted with the issue, deliberate the initiative and propose amendments. The amended initiative is expected to be closer to the preferences of the median voter than the original. Ferejohn further expects a Sword of Damocles effect: since initiators are aware that the proposed content and language of their initiative will be reviewed by a representative assembly, they would be less likely to frame it in terms of narrow special interests. Altman (2018), however, is critical, noting that no matter how outstanding the deliberation and the resulting amended proposal, altering a citizens' initiative betrays those citizens whose signatures qualified the initiative for the ballot. This could be forestalled by not collecting signatures until after the citizens' assembly has taken place, as suggested by Gastil and Richards (2013). They propose a Design Panel, which would be instituted – and paid for – by the initiative petitioner on a voluntary basis after drafting the ini-

tiative but before submitting it to signature collection. The representative panel would convene for five days to discuss the initiative and make suggestions to improve or reject it. If the initiators accept the proposed amendments, the signature requirements to qualify the proposal for the ballot are substantially lowered.

#### 4.2.2 *Innovations in Corrective Referendums (Bottom-Up with Reactive Intentions)*

Binary referendums on approving or rejecting challenged legislation can polarise the electorate and aggravate conflict within society and between citizens and politicians (Morel, 2018a). Majority rejection in corrective referendums can, moreover, generate uncertainty about whether to abolish legislation altogether or pursue an alternative (Taillon, 2018; Wagenaar, 2021). In response to the inability to make compromises in traditional corrective referendum procedures, two types of innovations seek to introduce opportunities for referendum initiators to more concretely address the perceived legislative obstacles, either by pointing out specific parts of legislation to be amended or by formulating a concrete policy alternative (see Figure 3).

**Figure 3** *Innovations in ballot proposals for corrective referendums*



Note: Dashed circles denote room for amending an initial proposal. Lined circles denote a delegation of the formulation of alternative ballot proposals to actors other than the author of the initial proposal. Double-lined circles denote an extension of ballot choice.

#### 4.2.2.1 Semi-propositive Referendum: Rejecting or Improving Specific Parts of Legislation

In abrogative referendums, used in Italy and Malta, active legislation can be submitted to a repeal procedure in which the initiators can indicate whether the legislation ought to be revoked as a whole or in part (Capretti, 2002; Uleri, 2002). Gallagher and Uleri (1996: 109-110) refer to the Italian abrogative referendum as ‘quasi-propositive’, since these procedures also allow for the correction of specific parts of legislation, rather than revoking legislation as a whole. Morel (2018b: 31) similarly distinguishes what he terms ‘semi-propos-

itive’ referendums as an intermediate form. In his view, referendum initiators should be able to propose a replacement policy, which must be approved by another entity, usually the parliament, before being submitted to voters. Capretti (2002) has suggested a similar application to the Italian context of abrogative referendums: rather than ‘creatively deleting’ parts of legislation, citizens should also be able to suggest provisions to replace these parts. These suggestions all address the limitation inherent in traditional corrective referendums that legislation can only be rejected in its entirety, regardless of possible alterations considered sufficient by the referendum initiators.

#### 4.2.2.2 Citizens’ Counter-Proposal to New Legislation

Rather than indicating specific parts of legislation for repeal or alteration, a cit-

izens' counter-proposal could be submitted by the initiators of a corrective referendum in which they detail a fully developed alternative policy proposal. Diverting from the semi-propositive referendum promoted by Morel, citizen signatures qualify the proposal for the ballot without requiring legislators' support. Moreover, both proposals are voted on by the electorate. Several Swiss cantons have experience with such a citizens' counter-proposal (Lagerspetz, 2016), which has also been termed the 'constructive referendum' (Glaser et al., 2016). As in the semi-propositive referendum, a citizens' counter-proposal empowers citizens to engage constructively with the referendum topic in what is otherwise a mere reactive process (Wagenaar & Hendriks, 2021). In some cases, multiple citizens' counter-proposals can be added to the ballot, as long as each meets the signature requirements, as has been practised in Zurich and Nidwalden (Glaser et al., 2016). International guidelines for good practice stipulate that if citizens can self-organise to draft a counter-proposal, it is desirable that they may submit the proposal in general terms as opposed to a fully specified draft. This encourages citizens without extensive legal skills to participate in the process (Venice Commission, 2007: 19). Nonetheless, similar to the issues raised with citizens' initiatives in Section 4.2.1, the citizens' counter-proposal can be vulnerable to hijacking by well-organised special interests. Altman's proposal for the formulation of a citizens' counter-proposal by a deliberative citizens' assembly, as discussed in Section 4.2.1.4 for proactive citizens' initiatives, in his view thus also applies to counter-proposals for reactive corrective referendums.

Similarly, both McKay (2018) and Wagenaar and Hendriks (2021) suggested the implementation of deliberative citizens' assemblies to formulate a counter-proposal in bottom-up reactive referendum processes.

## 5 Scope for Referendum Innovation in the Low Countries

Belgium and the Netherlands are among a worldwide group of under 40 countries without national-level provisions for referendums (Morel, 2018b). Parliamentary opinion on the introduction of national-level referendum legislation in the Netherlands has been rather adamant over past decades. Despite various parliamentary commissions advising their introduction, and occasional parliamentary attempts to introduce referendum legislation, parliamentary majorities have rejected most draft laws (Hendriks et al., 2017). Legislation for a non-binding reactive referendum was briefly in place between 2015 and 2018, before being abolished after two referendum experiences (Van der Meer et al., 2020). In 2018, an advisory state commission on the parliamentary system recommended, among other things, the institution of a binding referendum (Staatscommissie parlementaire stelsel, 2018: 135-154). Recent attempts to introduce binding referendum legislation at national and/or sub-national levels were, however, rejected by the Dutch parliament in July 2022.<sup>8</sup> Similarly in Belgium, federal referendum legislation appears to be a distant possibility (Caluwaerts & Reuchamps, 2020). Belgium last experienced a national-level referendum in 1950 on the post-war return of the king.

Both the Netherlands and Luxembourg held ad hoc top-down triggered referendums in 2005 on the EU constitution. In contrast to the Netherlands and Belgium, the Luxembourgian constitution explicitly legislates for a top-down triggered referendum. In 2015, the parliament initiated three national-level constitutional referendums – on lowering the voting age, voting rights for foreigners and term limits for government ministers. Back in 1919, a multi-option referendum was held in Luxembourg on the head of state, offering voters four options: maintain the current grand duchess; elect a new duchess under the existing system; retain the monarchy but replace the dynasty; or switch to a republic (Wagenaar, 2020).

At the local level, the Netherlands, Belgium and Luxembourg have similar provisions for non-binding referendums, which can be triggered either by citizens or politicians (Scarrow, 2001). Their use is most frequent in the Netherlands, with over 200 referendum experiences, although scattered and varied (Van der Krieken & De Graaf, 2015; Van Holsteyn & Vollaard, 2015). Municipalities and provinces can autonomously decide whether to adopt referendum legislation and have significant influence over the general rules of the game, including the initiator, signature requirements, number of options, voting method and use of quorums. Municipal referendum ordinances can specify that the municipal council can trigger referendums (the *raadplegend* referendum in Dutch), that a specific number of citizens' signatures can qualify a proposal for a referendum (*raadgevend* referendum) or both (Hendriks et al., 2017). Around one third of Dutch municipalities have a referen-

dum ordinance, as do around half of all provinces – although no provincial referendums have been held to date (Van der Krieken, 2015 – none were held since). On all government levels, a legislative majority can trigger an ad hoc referendum in the absence of referendum legislation.

In Belgium, general regulations for referendums at local and provincial levels were introduced in 1995. Contrary to the Netherlands, the competence to regulate referendums is not decentralised to individual municipalities, and top-down as well as bottom-up triggered referendums, both reactive and proactive, are possible in all municipalities (Buelens, 2009). Of around 40 municipal referendums held by 2018, around half were triggered bottom-up – albeit predominantly in Flemish municipalities – and half were triggered top-town – albeit predominantly in Walloon municipalities (Goethals, 2018). Similarly to the Netherlands, no provincial referendums have been held under existing legislation (Bauwens, 2007). In updates to the legislation in 1999, signature requirements were diversified according to the number of inhabitants, de facto setting them higher. The 40% participation quorum was lowered to match the signature quorum – down to 10% in larger cities – and meeting the signature requirements now automatically qualifies a proposal for a referendum, as opposed to prior leeway for the municipal council to avert the vote. Regulations determine that referendums must involve a dichotomous (yes/no) question. Multiple questions can, however, be proposed. Municipal councils have the right to change referendum questions submitted by initiators or to add additional questions (Beckers & Billiet,

2009). In some instances this essentially produced political counter-proposals. The possibility for the political elites to determine the referendum question is subject to critique. Municipal councils sometimes alter the intent of the referendum initiators, such as in the 1999 local referendum in Gent, where a citizens' initiative for free public transport was replaced by a ballot question on 'better public transport' (Bauwens, 2007). Besides not matching the intention of the initiators, the altered proposal also largely provided a quasi-choice to voters, as it would be hard to argue against better transportation. The same absence of two realistic competing alternatives applies to referendum votes on proposals that were unlikely to yield significant support, such as the construction of an incinerator in the municipality of Ciney in 1996 (Beckers, 2005).

In Luxembourg, depending on the municipal size, 20–25 percent of the electorate can trigger a municipal referendum, but no bottom-up referendums have been initiated so far. Up until 2011, nine top-down referendums were triggered by municipal councils (Dumont et al., 2011). Seven of these referendums focused on municipal mergers, making this a popular topic for top-down referendums, similarly to the Netherlands.

Considering the unlikely manifestation of national-level referendums in the Netherlands and Belgium in the near future, on the one hand, and the larger scope for innovation and experimentation at the local level, on the other, the remainder of this section will focus predominantly on existing and conceivable referendum innovations at the municipal level. Several suggestions made by advisory committees and indi-

viduals pioneering democratic innovations at national levels could nonetheless inspire the innovation of local referendum procedures in ways similar to those described in the previous section. The focus is on proposals that lead to a referendum vote, although creative proposals in the realms of delegating, amending or extending policy options in an informal voting process are also considered, as they could be adapted for application in a referendum process.

### *5.1 Emerging and Potential Top-Down Referendum Innovations*

About 40% of municipal referendums in the Netherlands have included either more than two ballot options or multiple ballot questions (Van der Krieken, 2015). Most concerned votes on municipal mergers, with various merger scenarios presented to voters (Van der Krieken & De Graaf, 2015). Other examples include referendums on diverse harbour designs (in Arnhem in 2007), city centre redevelopment (in Duiven in 2008) and a new city hall (in Den Helder in 2013). In Flemish Belgium, just over half of all local referendums have entailed multiple ballot questions (Beckers & Billiet, 2009). In Wallonia, multiple scenarios were offered, for example, on art installations in Liège in 1995, redevelopment of the central square in Ath in 1995 and city development projects in Spa in 2007 (Beckers, 2005; Goethals, 2018).

In the Netherlands, ballot options for top-down triggered referendums were either designed by politicians or delegated to experts or an external design panel. In some cases, societal inputs were included in the ballot design process. For example, in Arnhem, citizens could attend debates, participative events and target-group sessions to

provide input on a longlist of possibilities. Based on the input, a shortlist was compiled for the referendum vote (Boogers & De Graaf, 2008). In an informal referendum in Borne, four visions for the future of the municipality, varying, among other things, in terms of population growth to be pursued, were presented to voters in a consultation with online, postal and physical voting opportunities. The four scenarios were derived from societal inputs through individual citizen interviews, focus groups and an online consultation. The inputs were filtered by a steering group in which 20 societal organisations were represented (Denters & Klok, 2015). Despite not involving an official referendum, the success of this experiment could inspire municipalities to design multi-option referendums based on citizen input. Consensual traditions in Dutch democracy provide fruitful experimentation opportunities for the incorporation of deliberative elements in referendum processes.

Citizens' assemblies (as discussed in Sections 4.1.1 and 4.1.2) could be instituted to prepare one or several scenarios or policy solutions for decision-making by the local electorate. Assemblies could be created ad hoc or follow a more institutionalised model. Useful lessons of such hybrid democratic innovations can be drawn from practices abroad, such as the Irish citizens' assembly (Hendriks et al., 2020). The recent Dutch advisory state commission on citizen participation in climate policymaking concluded that, under the Irish model, the incorporation of citizen perspectives through deliberation and referendum voting culminated in policy innovation not deemed possible within the conventional deci-

sion-making process (Commissie Brenninkmeijer, 2021: 15). Inspiration can also be drawn from other innovations within the Netherlands and Belgium, which to date have not been linked to referendums. An example is the cooperative neighbourhood council in the Oosterpark neighbourhood in the city of Groningen (2017-2020), in which eleven randomly selected citizens and six local politicians were jointly responsible for decision-making in the neighbourhood. During each decision-making process, a panel of 400 randomly selected residents was consulted (Westervel, 2021). A similar format could also involve referendum voting on preliminary ideas or final proposals. In the German-speaking part of Belgium, the Ostbelgien model employs a permanent council of randomly selected citizens, which are regularly rotated. The council is tasked with agenda-setting and delegates selected issues to topic-specific temporary citizens' assemblies that formulate concrete policy recommendations. The recommendations are then discussed in a mixed committee of citizens, representatives and the responsible minister (Niessen & Reuchamps, 2022). This model could be elaborated to include the possibility to delegate the resulting proposal to a referendum, either directly (through top-down or even mandatory triggering) or indirectly, following the example of the German three-tier model.

The application of multi-option or preferendum-style voting (see Sections 4.1.2 and 4.1.3) has also received attention in the Dutch and Belgian contexts.<sup>9</sup> The Commissie Brenninkmeijer (2021: 34) recommended the investigation of the possibility of a preferendum – to be formally be triggered by the parliament – on the proposals formulated by a citi-



zens' assembly, as offering multiple options would fit the plural nature of the assembly's recommendations. An early-stage referendum posing multiple policy scenarios on EU-related legislation had previously been advocated by the Netherlands Scientific Council for Government Policy (WRR, 2007) as a way to stimulate citizens to actively consider policy options and to result in more concrete policy consequences for policymakers. A proposal to legislate for a national-level referendum triggered by parliamentarians was briefly on the agenda of ruling party VVD in the run-up to the most recent parliamentary elections but was revoked from the party manifesto by party members (NOS, 2020). The use of referendums has more recently been promoted by Belgian cultural historian David Van Reybrouck. His conceptualisation of a referendum takes a more elaborate form than voting on competing policy proposals contained within a single ballot question. He suggests a format in which citizens express their level of agreement and their top four priorities on a number of non-mutually exclusive proposals within the same topical realm (Van Reybrouck, 2021). A similar initiative is thematic voting, promoted by innovation researcher Rudy van Belkom, in which voters select their most preferred policies on a variety of policy domains from among five options each. In the spring of 2022, around the time of the municipal elections, the municipalities of The Hague and Breda experimented with thematic voting (De Jonge, 2021; Boonstra, 2022). While perhaps too elaborate to be translated into a formal referendum ballot, these initiatives can provide inspiration for either extending ballot choice beyond a single pro-

posal in top-down referendums or for more informal applications of multi-option balloting as a tool for citizen participation and input. The essential question remains who designs the alternatives for the ballot.

### 5.2 *Emerging and Potential Bottom-Up Referendum Innovations*

The advisory state commission on the parliamentary system recommended allowing reactive referendums to target separate elements of legislation, as opposed to legislation in full (Staatscommissie parlementair stelsel, 2018: 147). Bottom-up referendums in Dutch municipalities, both proactive and reactive, currently tend to have a binary nature. Replacing binary corrective referendums with semi-propositive referendums (see Section 4.2.2.1) could prevent legislation being abolished over dissent with specific elements. Randomly selected citizens' assemblies could also play a role in articulating the discordances with public opinion that ought to be addressed (Hendriks, 2021) or in formulating a citizens' counter-proposal (see Section 4.2.2.2).

The city of Amsterdam renewed its referendum ordinance in 2022 to include amendments and counter-proposals. Similarly to the German three-tier model (see Section 4.2.1.1), a citizens' initiative with the initial support of 1,000 citizen signatures can be adopted by the municipal council, in which case no referendum is held. The council can also propose amendments to the initiative, which are discussed with the initiators. If accepted, the amended initiative is turned into legislation. If the initiators do not accept the amendments, 10,000 citizen signatures qualify the initiative for a referendum vote, to which the municipal coun-

cil can propose a political counter-proposal (see Section 4.2.1.2). For reactive referendums, initiators can collect signatures either to abolish a legislative proposal or to support their citizens' counter-proposal (see Section 4.2.2.2). In the latter case, the same three outcomes are possible: adoption by the council, a compromise between council and initiators, or the collection of 10,000 signatures for a referendum vote.<sup>10</sup> The first city-wide referendum under this new legislation is yet to be held, but the legal provision for counter-proposals can be considered innovative in the Dutch context. Amsterdam has some prior experience with a counter-proposal referendum, although it was not legally regulated as such. A 2014 district referendum in central Amsterdam posed a municipal proposal for redevelopment of a street against a rival proposal formulated by residents. The referendum was organised after 4,000 residents petitioned for a citizens' initiative under district-level referendum legislation valid at the time.<sup>11</sup> The council decided to pose both proposals against each other in a single referendum. The municipal proposal received a 55% majority of votes. The relatively narrow margin in votes indicates the relevance of including two competing options.

Existing critiques on Belgian bottom-up referendum procedures (e.g. Bauwens, 2007; Beckers, 2005), in which the referendum question can be altered by the municipal council, could be addressed by legislating that changes to the question must either be accepted by the initiators – similarly to the three-tier model (see Section 4.2.1.1) – or take the form of a municipal counter-proposal (see Section 4.2.1.2), thus presenting an

additional ballot option. Already in 2009, Belgian advocacy group Meer Democratie suggested the introduction of a three-tier model in Belgium.<sup>12</sup> Another benefit of this model would be the possibility for the municipal council to adopt the initiative without a referendum vote. This could have avoided referendums in several Flemish municipalities where the municipal majority supported and actively campaigned for the policy proposal (Beckers & Billiet, 2009). Improving the quality of ballot questions could also help to ensure a realistic choice between different alternatives and to prevent distortion of the referendum question by political elites. Beckers (2005; see also Beckers & Billiet, 2009) recommends the implementation of a multi-step procedure in which referendum initiators work towards a suitable referendum question in consultation with the advisory committee for referendums (the *Vlaamse Adviescommissie voor Volksraadplegingen*, VAV).<sup>13</sup> In both Belgium and the Netherlands, existing advisory committees of independent experts could fulfil a supporting role in optimising the proposal presented on the referendum ballot in the absence of judicial review procedures common to the US context (see Section 4.2.1.3). Involving independent experts could curtail the issue of double agendas for the municipal council as both legislator and responsible body for referendum organisation (Van Praag, 2009).

The advisory state commission on the parliamentary system suggested the linking of a citizens' assembly to new requests for what is called the popular initiative at the Dutch national level.<sup>14</sup> The assembly would develop policy options in consultation with society (Staatscommissie parlementair stelsel,

2018: 167-168). Although the commission advises against following up with a referendum at the national level considering the lack of experience, this procedure could be worthy of experimentation at the local level as a variation on the citizens' assembly situated between drafting and signature collection (see Section 4.2.1.5). Also providing inspiration is a parliamentary initiative to introduce a citizens' amendment procedure.<sup>15</sup> With 70,000 signatures, citizens could propose changes to legislation currently being discussed in parliament. Such a procedure would bear similarity to a citizens' counter-proposal or semi-propositive referendum (see Sections 4.2.2.1 and 4.2.2.2) if it were combined with a referendum vote.

In 2016, a newspaper competition for democratic innovations featured Jan Veneman's proposal for 'Voters' choice', with citizen signatures initiating a procedure in which the electorate votes on a policy domain in between parliamentary elections. Experts and stakeholders would design three policy scenarios for this domain. The most supported scenario would form the basis for parliamentary policymaking. This process – similar to thematic voting but triggered bottom-up and on a single policy domain – would facilitate the continuous adjustment or redirection of policies (Veneman, 2016). Veneman's proposal does not directly fit any of the models presented in Section 4, being triggered bottom-up yet bypassing initiators in formulating ballot options, though it does contain elements of various suggested innovations (for example those discussed in Sections 4.1.2, 4.1.3 and 4.2.2.1). Alternatively, the procedure could be adapted to include various citizen-designed propos-

als (see Section 4.2.1.4). Having been dismissed as difficult to implement at the national level, the procedure can provide inspiration for local level innovations, where such initiatives are more practical to organise.

In conclusion, the bottom-up referendum is a commonly practised referendum type in Dutch and Belgian municipalities that, despite its general popularity, can pose challenges to local decision-making, especially when referendum questions do not pose a genuine choice to voters or when uncertainty prevails over whether and how to adapt rejected legislation. Partial rejection, citizens' amendments and counter-proposals could make the corrective referendum process more constructive and enhance dialogue between initiators, legislators and the wider electorate, particularly when a randomly selected citizens' assembly is embedded in the referendum process. Likewise, by incorporating stages of political or societal feedback and room for amendments in the process, proactive citizens' initiatives could build on broader support than the interests of their initiators. The low countries have no tradition with judicial review of initiatives, but municipal referendum commissions or regional referendum authorities like the VAV could take up a reviewing role of initiatives, amendments and the incorporation of societal feedback.

## 6 Conclusion

This article reviewed innovations to referendum processes, in which delegating authorship, integrating feedback and amendments and admitting additional ballot options are expected to improve ballot choice in line with societal pref-

erences. By innovating referendums in such a way that ballot proposals are not immutable after triggering but can be amended, or supplemented with additional alternatives, citizens can exert influence over not just the topic but also the direction of new policy. This reduces the power of initiators to formulate referendum proposals in line with their own interests and decreases instances of legislation being rejected over amendable objections. Local and international experiences as well as theoretical and practical suggestions by academics, advisory committees, parliamentarians and individuals, as discussed in this article, could all provide inspiration for experimentation with innovative referendum procedures in the low countries and beyond.

Implementing procedural innovations in referendums would benefit from four general recommendations. The first is to take into account the context, such as prior experience with referendums, the institutionalisation and prevalence of societal deliberation and provisions for judicial or expert review. The second recommendation is to properly regulate referendum procedures. For more innovative referendum procedures, particularly when bottom-up triggered, legislation specifying the conditions, actors and procedural steps is essential and must be communicated to actors within the legislature and society. Third, new procedures for referendums require new skills from those involved and take time to become embedded in the democratic system. By experimenting with innovations, they can be improved to include unforeseen procedural and contextual details. The fourth recommendation is to evaluate experiences and satisfaction among citizens and legislators in order to further

improve the process. Experiences can be shared with other legislative entities for inspiration. Academic research also plays a role in disseminating innovative procedures and their evaluations, comparing different models and building a broader knowledge base of what works in different situations or contexts.

Bearing in mind these recommendations, the referendum innovations discussed in this article could provide new impulses to citizen participation and referendum voting in the low countries and elsewhere. They could be supplemented by other innovative instruments, for example in the realms of societal deliberation, voter education and outcome monitoring of referendum results. Allowing amendments to, and extensions of, ballot content could be fruitful steps in making referendums more constructive instruments and engaging larger segments of society in the policymaking process.

## Notes

- 1 Facultative referendums contrast with mandatory referendums. In some countries, such as Ireland, the constitution stipulates that the electorate must approve any changes to the constitution in a referendum. The referendum is thus said to be triggered automatically, contrary to the facultative, i.e. voluntary, triggering of a referendum by particular actors (e.g. Breuer, 2008). Since mandatory triggering does not actively involve referendum initiators, such referendums fall outside the scope of the theoretical framework for this article.
- 2 Others have used different terminologies for proactive or reactive characteristics, such as propositive versus

- non-propositive (Morel 2018b) or decision-promoting versus decision-controlling (Uleri, 1996).
- 3 For example, in various Latin American countries, both the president and parliament have legislative as well as referendum-triggering powers, which can result in a top-down triggered, reactive referendum on a proposal formulated by the other entity (Breuer, 2008). These less common referendum types are not the main focus of this article but could arguably be subject to similar innovations as those discussed for bottom-up triggered reactive referendums.
  - 4 In the case of Ireland, referendums on constitutional changes are mandatory. In order to revoke the prohibition of abortion from the constitution and to allow parliament to legislate on abortion, popular approval in a referendum was obligatory. Since the citizens' assembly could, however, not formally pass legislation, the parliament acted as an intermediary by formally proposing to change the constitution and to legislate for abortion in line with the assembly's proposal.
  - 5 This step is skipped under the two-tier process. Initiators can proceed to the second stage, collecting the additional signatures required to qualify the proposal for the ballot as soon as the initial request is declared admissible. This procedure is similar to bottom-up referendum procedures in, for example, the Netherlands, where the signature collection process is split into two phases, allowing for a determination of the admissibility of the referendum proposal before all signatures are collected. Under such a model, there is no possibility for the legislative to adopt the initiative or suggest amendments.
  - 6 This distinguishes the German three-tier model from so-called 'referendum motions', which are used, for instance, at local levels in Finland, Norway and Iceland. Referendum motions obligate a municipal council to consider organising a referendum on a policy topic if proposed by a specified number of citizens, but initiators cannot force the vote if legislators decide against it. They are also referred to as 'soft' forms of direct democracy (Jäske, 2017).
  - 7 The staging would entail a first round of voting on whether to retain or change the status quo, in case of majority support for change, a second stage in which the alternative proposals compete for support.
  - 8 Parliamentary vote: [www.tweedekamer.nl/kamerstukken/stemmingsuitslagen/detail?id=2022P13194&did=2022P13194](http://www.tweedekamer.nl/kamerstukken/stemmingsuitslagen/detail?id=2022P13194&did=2022P13194).
  - 9 In societal discussions, the term 'preferendum' is often used for referendums entailing multiple options, not all of which necessarily entail preferential voting procedures and/or diverse ballot authors, as intended in the original definition of preferendums (as discussed in Section 4.1.3). Several of the suggestions discussed in this part thus bear more similarity to referendums with multiple ballot proposals as discussed in Section 4.1.2.
  - 10 Referendum ordinance city of Amsterdam 2022: <https://lokaleregelgeving.overheid.nl/CVDR671705/1>.
  - 11 Referendum ordinance district of central Amsterdam (2013-2015): <https://lokaleregelgeving.overheid.nl/CVDR74030/3>.
  - 12 Press release on their proposal: [www.meerdemocratie.be/persbericht-van-democratienu](http://www.meerdemocratie.be/persbericht-van-democratienu).
  - 13 This Flemish body advises, on request, on the referendum question for local

referendums and on various organisational aspects (Beckers & Billiet, 2009). Its role bears similarity to Dutch referendum commissions, except that the latter are decentralised at the local level (Van Praag, 2009). Such commissions of external, independent referendum experts are hailed by the Association of Netherlands Municipalities (VNG) as an important contribution to decent referendum processes: [https://vng.nl/sites/default/files/2019-12/20191210\\_ledenbrief\\_nieuwe\\_vng\\_model\\_referendumverordening.pdf](https://vng.nl/sites/default/files/2019-12/20191210_ledenbrief_nieuwe_vng_model_referendumverordening.pdf).

- 14 Contrary to citizens' initiatives as defined in Section 2, the national-level Dutch popular initiative is an agenda-setting instrument, in which a minimum number of 40,000 citizens can request parliament to discuss a proposal. See parliamentary website: [www.tweedekamer.nl/kamerleden\\_en\\_commissies/commissies/verz/burgerinitiatieven](http://www.tweedekamer.nl/kamerleden_en_commissies/commissies/verz/burgerinitiatieven).
- 15 Parliamentary website: [www.tweedekamer.nl/kamerstukken/detail?id=2019Z22328&did=2019D46412](http://www.tweedekamer.nl/kamerstukken/detail?id=2019Z22328&did=2019D46412).

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## ARTICLES

# The Democratic Potential of Community-Based Initiatives

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### Abstract

*As governments in Western Europe have retreated from providing public services over the past decades, they have stimulated communities to take over many of these services. This has resulted in, among other things, a plethora of community-based initiatives (CBIs). CBIs are heralded by some for their innovative potential: they would address new problems. CBIs are also criticised for being undemocratic, as their activities can marginalise or overrule elected politicians and the citizens active in CBIs are not representative of the population. We argue that these different praises and criticisms implicitly depart from different democratic perspectives, specifically the representative and do-democratic perspectives. These different perspectives need to be explicated and compared in order to judge in what ways CBIs can and cannot be said to have democratic legitimacy, when assessed from different perspectives on democracy.*

**Keywords:** community initiatives, democracy, participation, do-democracy, legitimacy.

## 1 Introduction

One of the more prominent pushes towards innovation in welfare states often takes the form of community-based initiatives (CBIs), local initiatives of community members to provide goods or services for the community, without commercial interests (Blok et al., 2022; Igalla et al., 2019; Ubels, 2020). We define CBIs as a form of self-organisation from communities to provide a public service where members of the community control the aims, means and actual implementation of services, based on the definition by Igalla, Edelenbos and Van Meerkerk (2020: 603). The democratic legitimacy of these initiatives can be questioned, because of, among other reasons, their supposed lack of representativeness and sustainability

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(Binnema & Michels, 2022; Dekker, 2019; Uittenbroek et al., 2019; Staatscommissie Parlementair Stelsel [Government Committee on Parliamentary Democracy], 2018).

But as Hendriks and Dzur (2021: 2-3) recently stated, the debate between the proponents and critics of CBIs has grown predictable. The proponents, the ‘neo-tocquevillians’, argue that these initiatives are a “testament to the capacity of communities to self-organize and solve collective problems outside of the formal political process” (Hendriks & Dzur, 2021: 3). The neo-tocquevillians emphasise that participating in these initiatives might increase social capital, representational capacity and trust in society: in a word, that these initiatives are beneficial for democracy. The opponents, the sceptical ‘critics of neoliberalism’, view these initiatives “as symptomatic of how states and markets off-load collective responsibilities” (Hendriks & Dzur, 2021: 3). These critics point to risks of increasing inequality, increased competition between groups in society and the lack of representation these initiatives tend to display. With this article, we want to move beyond these back-and-forth of well-trodden arguments, by investigating how these initiatives can be assessed as (un)democratic, depending on different conceptions of democracy. We will discuss the democratic promises and pitfalls of CBIs from the perspectives of representative democracy and do-democracy.

The practical and scientific value of this article are inherently interwoven: trying to understand in what ways people with differing conceptions of democracy view various aspects of CBIs differently, gives an impulse to the academic debate and provides clarity in public policy. If governments keep retreating from public and create increasing budgets for these citizens, being able to think through the implications for the democratic system is no longer a purely academic pursuit (Sociaal Cultureel Planbureau, 2019; Tjeenk Willink, 2018).

In this article, we present an analytical framework for understanding and differentiating democratic legitimisation from the perspectives of representative democracy and do-democracy. Our focus is on representative democracy and do-democracy because these fit best with the conceptions of democracy held by the relevant actors surrounding CBIs: the participants, who often hold a do-democratic conception (Dzur, 2019), and the civil servants, who work within a representative framework (Barber, 2003). Representative democracy is the perspective that underlies modern democracies, and therefore useful to understand the behaviour of civil servants and politicians (Dahl, 1989; Røiseland, 2022: 1501). Even if an individual civil servant is sympathetic to a different conception, the municipal government as an institution is founded on a representative democratic conception of democracy.

Among active citizens, however, democracy gains a different meaning. Instead of a focus on deliberation (or talk), clear procedures and carefully weighed interests, democracy is about freedom (Dalton et al., 2007), collective problem-solving (Hendriks & Dzur, 2021: 9) and knowing what problems to solve through proximity, rather than complex procedures (Dzur, 2019: 6). This fits well with the conception of “do-democracy” most commonly held by participants in CBIs, according to Dzur (2019: 6). While other conceptions of democracy are potentially interesting, representative and do-democracy are the most urgent and the most fitting to

contrast in regard to the legitimacy of CBIs. Deliberative democracy, for example, is more relevant when discussing the legitimacy of democratic innovation more focused on talking, rather than doing, which is the core of CBIs.

Our article is a theoretical exercise, based on the existing literature. Our framework demonstrates how representative democracy and do-democracy provide different perspectives on key aspects of the democratic legitimacy of CBIs. In addition, we provide a synthesised account of clashing conceptions of democracy, to guide readers through our analytical framework and to emphasise the practical use of this analytical device. We argue that political and societal reliance on CBIs necessitates the reintroduction of a seldom expressed function of democracy: democratisation of the *implementation* of collective decisions. Thinking on “democratizing the executive” has had an impulse in the past few years, all be it particularly from the perspective of the liberal strand of representative democracy and the important role of civil service as a bulwark against populism (Zacka, 2022: 27). We want to now draw attention to democratising the executive from a more radical democratic perspective, the do-democracy.

*Our aims are to show that 1) CBIs can be understood and legitimised from the representative and do-democratic conceptions of democracy and 2) public tensions can be mitigated by communicating clearly about one’s conception of democracy.* Conceptions of democracy are abstract and complex academic constructions, but they do have consequences. Trying to hold CBIs to an ideal that the members do not share, will lead to frustration for both civil servants and active citizens. Just as holding a CBI to varying conceptions of democracy at once is a recipe for conflict. By adding to the understanding of CBIs, we hope to overcome this. Our data and analysis stem from a Dutch background, but the implications are relevant for twenty-first century welfare states in general (Smits, 2022; Soares da Silva et al., 2018). In many modern democracies, democratic innovations, such as CBIs, are being used to give a democratising impulse to the representative systems that are often considered lacking in democratic merits or appeal.

## 2 Defining Community-Based Initiatives

CBIs are a varied genus of local initiatives, which can range from informal, semi-structured initiatives to nearly professional and highly formalised organisations. These initiatives often take the form of an association or foundation, with a board, statutes and a bank account, though sometimes they have only a few or none of these formal elements (Igalla et al., 2020: 604). Many different terms are used for these kinds of initiatives. The term most closely related is citizens’ initiative, which implies the exclusion of non-citizens, where community-based implies that any member of the community can be part of the initiative. Two other related concepts that we want to discuss are output-based co-creation as used by Røiseland (2022) and citizens’ governance spaces as coined by Hendriks and Dzur (2021). We want to respond to their recent articles on the topic of the democratic legitimacy of this type of initiative, as both take interesting steps forward in this field. However, the articles also point to each other’s weaknesses, without

mentioning each other by name. The similarities and differences between CBIs and their concepts are discussed here, as we will turn to both Røiseland, and Hendriks and Dzur for our analysis on the democratic legitimacy of CBIs.

Røiseland sees CBIs as part of ‘output-based co-creation’: which concerns participation in service delivery itself, for example “where citizens do create value for other citizens through voluntary work carried out in close cooperation with public professionals and leaders” (Røiseland, 2022: 1500). Røiseland defines co-creation as

the process through which public and private/civil actors attempt to solve a shared problem, challenge, or task through a constructive exchange of different kinds of knowledge, resources, competences and ideas (Røiseland, 2022: 1497).

Røiseland contrasts this with more policy-oriented co-creation, input-based co-creation, but these are more comparable to neighbourhood councils. CBIs focus on the implementation of policy, and on shaping policy through this implementation, rather than policy formation through conversation.

Hendriks and Dzur use the term ‘citizens’ governed spaces’ for their discussion of democratic innovation. Citizens’ governed spaces are a specific subset of CBIs: they are led and driven by citizens, who “form a group, project or organization to undertake a practical initiative” (Hendriks & Dzur, 2021: 4), independently from market and government, often in response to a gap in public services as provided by these institutions (Hendriks & Dzur, 2022: 5-6). Citizens’ governed spaces define the problem, form feasible plans, implement solutions and make evaluations and refinements (Hendriks & Dzur, 2022: 6). They are typically innovative, experimental and disruptive; they can work so far out of the box that they clash with established government programmes, or even challenge vested ideas and power structures.

We look at CBIs as local initiatives that spring from the community and are for the community, sometimes with help from the government, to *do* something: provide a service or a public good. We therefore consider the ways in which CBIs can be democratically legitimated from the representative perspective (the perspective that underpins the government) and do-democracy (which centres doing as a core democratic activity). We will outline first the existing debate on the democratic legitimacy of CBIs, and introduce the ways in which Hendriks and Dzur, and Røiseland try to move the debate forward. We show which parts of their work we find useful and where we see room for improvement.

### 3 Debating Democratic Legitimacy

Expectations of the democratic, innovative character of CBIs are generally high. Already in 2011, Fung and Warren maintained that CBIs

tend to evoke the language of participation and citizen engagement, often in response to specific kinds of resistance or veto. They tend to be single-issue focused or single problem focused rather than broadly programmatic or general-purpose. They are often innovative in design and utilize a variety of techniques such as random selection of participants, facilitation, deliberation, and new communication technologies. They tend to be respectful of the everyday knowledge of interested people. They sometimes provide venues for inclusion of people who have little if any voice in standard political processes. Finally, they are often highly pragmatic, focused on results (Fung & Warren, 2011: 344).

Apparently, CBIs know what is going on in their neighbourhood, and know how to translate this into action. This optimism is echoed in Ianniello et al. (2019: 21) more recent argument that

CBIs enhance the quality and legitimacy of policy decisions, thus overcoming the problems faced by representative democracy, especially when dealing with wicked problems, multi-faceted issues, and fragmented policy environments.

Similarly, Hendriks and Dzur (2021) maintain that CBIs create democratic innovations by allowing average people to participate in politics on a local level and thus bridge the gap between citizens and politics (see also de Graaf et al., 2015; Häikiö 2012; Nikkhah & Redzuan, 2009; Warren, 2017).

Another strong voice that lauds the democratic merits of CBIs is Dzur (2019). Dzur (2019: 16) argues that academics and politicians can and do debate the democratic legitimacy of different conceptions of democracy and of different democratic practices, but that laypeople – active citizens, neighbourhood councils, teachers and caretakers – do not care about these cerebral discussions. They just want to foster democratic values by ‘doing democracy’: working together, helping each other, fostering a sense of community and (re)empowering laypeople in an increasingly complex and professionalised world. Dzur points to CBIs as spaces where this doing occurs (Hendriks & Dzur, 2021).

However, there is also reason to be sceptical about the democratic contribution of CBIs. As Verhoeven, Wijdeven and Hetze (2014: 8) state:

Time and again the democratic legitimacy of do-ocracy is challenged: it is not transparent, representative, there are no checks and balances, the actions are not serving the public good but merely a small local group of people, what is the public good is not defined in a struggle of interests but determined by a group of outspoken citizens (Tonkens, 2013).

The most common criticism is that they exacerbate inequality between communities (e.g. Almond & Verba, 1980; Mees et al., 2019; Visser et al., 2021) because most citizens active in CBIs are white, upper class, well-educated, older people, while young people and citizens with an immigrant background are underrepresented (van Schelven et al., 2021; Verhoeven & Tonkens, 2018). Only representative



democratic institutions would be able to ensure equal and fair distribution of public goods (de Souza Briggs, 2008; Martinelli, 2013).

However, as we shall show in this article, this criticism stems from a representative perspective on democracy, and does not necessarily sit well with Dzur's laypeople who also consider their actions to be democratic. It is striking that both academics and political actors often fail to make their perspective on democracy explicit, and instead presuppose that everybody acts from their own (often implicit) view on democracy (Hoskins, 2013; Hurenkamp & Tonkens, 2020).

In this article, we juxtapose representative and do-democratic views on the (lack of) democratic legitimation of CBIs. We do not intend to promote a single, normative point of view, but instead aim to explicate different views and concomitant criteria for democratic legitimation and hence further the debate. We demonstrate how conflicts (between CBIs and other citizens, local civil servants or politicians) occur because people do not mean the same thing when they say that a CBI is (not) 'democratic'.

We build on Warren (2017) by looking at how these two views of democracy indeed focus on different aspects of CBIs. Warren claims that democracies have three main functions: 1) empowered inclusion, 2) collective agenda and will formation and 3) collective decision-making (Warren, 2017: 44-46). We argue that CBIs can only be understood by introducing a fourth function of democracy: the *implementation* of collective decisions. This fourth function of democracies might be understood as democratising the executive branch of the *trias politica*. So where voting for parliament democratises the legislative, and jury-duty democratises the judicial, empowering people to shape their environment democratises the executive branch of the *trias politica*. Where first a civil servant provided a service, the active community member now takes over. This has long been an under-researched aspect of democracies, with a few exceptions (Fung, 2004; Verhoeven et al., 2014).

In the last few years, implementation has received more attention, specifically from U.S.-based scholars, who were interested in the role the executive branch could play by "serv[ing] as a bulwark against populism ..." (Zacka, 2022: 24). Literature discussing public administration from the perspective of democratic theory either implicitly or explicitly uses a representative democratic perspective (e.g.: Heath, 2020; Zacka, 2022), or an output-based claim to legitimacy, by explaining that "governance-driven democratization can harness the potentials of civil society for knowledge, organization, energy and creativity for government policymaking and decision" (Warren, 2014: 41). We will return to the notion of democratising the executive over the course of the article.

#### 4 Responding to the Debate

As Connelly, Bryant and Sharp (2020: 396, emphasis theirs) point out: "what counts as democratic legitimacy depends very much on the theory of democracy in use". Røiseland (2022) also takes the impossibility of evaluating democratic legitimacy without explicating one's democratic perspective as a starting point. He develops a schematic approach to understanding the potentials and pitfalls of

“co-creation for democratic legitimacy”. He looks at the democratic legitimacy of output-based co-creation from the perspectives of three distinct conceptions of democracy: deliberative, participative and representative democracy (Røiseland, 2022: 1502). Røiseland explains both the potential and pitfalls of output-based co-creation from these perspectives, by looking at co-creation from these perspectives.

Røiseland sees the legitimacy of output-based co-creation as mostly existing as output-based legitimacy, rather than input-based legitimacy (2022: 1502). He finds the legitimisation of this co-creation by arguing that it will lead to better services and reduced burdens on the budget from a liberal representative perspective, and similarly that it will lead to more accurate help through micro-deliberation from the deliberative perspective. From the participatory perspective, co-creation is almost obviously legitimate, as it allows both more people to participate and allows people to participate more directly in policy (1506). While Røiseland creates a clear analytical model to consider democratic legitimacy from different perspectives, he does so from the perspectives of democracy that are most strongly embedded in the literature (2022: 1501), rather by considering the legitimacy that could be gained from democratising the executive. Røiseland necessarily limits the legitimacy of CBIs, because he does not consider their unique democratising aspect.

This is precisely what Hendriks and Dzur warn against in their 2022 article. They argue that most scholarly literature on initiatives of citizens fundamentally misses what makes ‘citizens’ governed spaces’ different from other democratic innovations and provide an analysis of the potential and pitfalls based on an empirical account of these spaces (Hendriks & Dzur, 2022). Hendriks and Dzur (2022: 9-12) see five potential (overlapping) democratic benefits of citizens’ governed spaces, namely: 1) fostering civic agency, 2) reframing political structures, 3) gaining experiences with politics, 4) enacting inclusion, advocacy and representation and 5) strengthening vital connections between citizens and the democratic systems they live in. However, the democratic perspective behind these choices, why the benefits are benefits, is not explicated. Hendriks and Dzur (2022) thus fall into the pit that both Røiseland (2022) and Connolly et al. (2020) warn against: evaluating the democratic merits of an innovation without discussing from which democratic perspective this is done and how it relates to other democratic perspectives.

In what follows, we create an analytical framework like that of Røiseland, in which we compare the representative and do-democratic perspectives on the democratic legitimacy of CBIs. We thus follow Røiseland in his attempt to make a structured theoretical model, which Hendriks and Dzur forgo. We do so while considering a democratic perspective that is developed explicitly to correspond to how active community members understand themselves and their actions (Van de Wijdeven, 2012: 13), thus following Hendriks and Dzur in their emphasis on the unique democratising nature of CBIs. Finally, we do so while explicating the perspectives of democracy, following Røiseland and Connolly et al. But first we will provide an example narrative to illustrate how these two perspectives on CBIs can clash in practice.

## 5 Example Narrative

Before getting to the theoretical analysis, we find it helpful to provide the reader with an example narrative, as inspired by Jeanette Pols (2015). An example narrative is a collated ideal-typical narrative that demonstrates how our theoretical concepts look in a synthesised case study. While we base our example narrative on 20 interviews with active community members and 5 interviews with civil servants and social workers from 2 cities in the Netherlands, we mostly want to provide an ideal-typical example of the different conceptions of democracy in action. In “Towards an empirical ethics in care”, Pols similarly collated “the stories and practices of many into two narratives”, in order to “bring the cases to life for the reader, at the cost of particular nuances and perspectives, and at the favour of others” (2015, 84). Likewise, the aim of our example narrative is to enliven a theoretical analysis, but also to synthesise various experiences and stories into a single coherent narrative to illustrate a theoretical issue without hopping from example to example.

### ***K's garden***

*A mid-sized municipal government has been trying to get more community initiatives off the ground. It offers subsidies for community initiatives and employs a social worker ('participation broker'), to connect local communities and civil servants. Inhabitant K. wants to start a communal vegetable garden. His goals are to give vulnerable people access to meaningful and healthy activities and to improve a barren lot of land between high-rises and train tracks, that as of now is only in use at night by youth at risk. K. has brought together a group of likeminded people with various skills who want to help. K. contacts the participation broker, who is helpful and enthusiastic: the land is indeed not in use, and K.'s plan fits within the municipal goals for community and landscape improvement. K. is now one happy 'do-democrat'.*

*However, the participation broker points out two potential roadblocks. Firstly, K. needs to show there is no resistance against the plans, by polling the neighbourhood, to show he speaks for his community, that is, to show that his plan is representative of a need in the populace. K. sends out a poll via a local WhatsApp-group and gets a few positive responses, and no criticism. Secondly, he needs to organize the permits himself. So, K. asks the permission from the Office for Public Zoning, that requests a business plan, as it will be held accountable by the city council.*

*K. does not have a business plan yet. He was counting on literal seed money: a small subsidy to buy equipment and seeds for the garden. Now he must come up with a sketch of the garden, the expected runtime of the project, the expected number of volunteers, the permit for use of heavy equipment to clear the barren lot, and so on. Luckily, K.'s neighbour used to be an engineer, so she can lend a hand with the technical parts. If not for her, K. wouldn't have been able to get through this procedure.*

*Finally, K. needs to show proof that he has the right to exploit the land. This is impossible, as the land is not theirs yet ... The permit-system is made for people cultivating their own land and land owned by corporations. K. is the first person who tries to cultivate government land with government funds. The broker spends the next weeks going between the different offices of the municipality, as the civil servants want to respect the rules. In the end, the alderman breaks this bureaucratic deadlock, by making himself responsible if the city council asks will hold someone accountable. With that, the civil servants can give out the permits. While K. feels supported by the alderman, he is also increasingly disappointed with the municipal civil service.*

*Having received the subsidy and the permits, the initiative starts. The enthusiastic alderman comes by to cut a ribbon, and the initiative is featured in promotional material for the participation agenda of the municipality. After the predetermined amount of time, the initiative must reapply for its permit. In the meantime, however, the enthusiastic alderman has been replaced, and some of the civil servants as well. This results in new demands of local government.*

*The new alderman has a focus on innovative initiatives. K. is not too sure his initiative is innovative. After all he has already been doing this for some years. The Office of Public Zoning explains that public money is meant for the entire municipality, or at least for all inhabitants of a neighbourhood. So, the initiative needs to be able to show it is not just for a limited group of people in the neighbourhood where it sits, and the volunteers should be representative of the neighbourhood, and the initiative is asked to show that visitors come from all over the city. This is a new request, that is different from what K. was told at the start. K.'s ambitions now begin to wane.*

## 6 Do-Democracy and Representative Democracy

In this section, we want to provide an analytical lens to look at CBIs from two distinct conceptions of democracy. The first is representative democracy, which Røiseland (2022, 1501-1502) calls liberal democracy. The second conception of democracy we will use is what Van de Wijdeven and Hendriks called do-democracy, which has a specific focus on acting by 'doing' rather than 'talking' (Van de Wijdeven & Hendriks, 2010). Citizens act by creating an activity or a service and, in that sense, take control over public issues. This is similar to the idea of output-based co-creation, but with an emphasis on the larger policy implication, rather than the individual welfare examples that Røiseland discusses (Røiseland, 2022: 1500).

We ask four questions to map the different evaluations of the democratic legitimacy of CBIs. First: *whose interests are to be considered?* This question is central to pluralism (Dahl, 1998). Second, we ask *who is actively and substantially involved in the decision-making process.* Who is involved in political will formation is key to understanding any democratic perspective (Warren, 2017). Third, we ask *how decisions are translated into action.* Any political system is a method of deciding what to do and doing that, or as the saying goes, politics is who gets what, when and how

(Laswell, 1936). Most writing on democracy is about the decision-making process, and not about how these decisions are translated into action. Our fourth question is: *how do people account for those actions?* A crucial aspect in any democratic process is accountability (Landa & Pevnick, 2021).

These choices will be explored further in the next paragraph. Over this next paragraph, we will fill out Table 1 to have a good overview of the differences between the representative and do-democratic perspectives on CBIs.

**Table 1** *The framework we will use to differentiate between representative democracy and do-democracy.*

Frame	The people ‘for whom?’	Inclusivity ‘by whom?’	Action ‘how?’	Accountability ‘who checks whom?’
Representative				
Do-democracy				

### 6.1 Representative Democracy

Representative democracy has been the standard for modern nation states since the early nineteenth century. It underpins the municipal institutions and is based on elections, where citizens vote for politicians who will make policy (Manin, 1997: 116-117 and 236-238). Representative democracy is used in this article as a shorthand for the entire complex web of institutions that together form our modern democracy: ‘representation’ (Bobbio, 1987; Hayward, 1996; Taggart, 2004), ‘constitutionalism’ (Canovan, 1999; 2002; Habermas, 1998; Mény & Surel, 2002), ‘bureaucracy’ (Magalhães, 2021) and ‘liberalism’ (Abts & Rummens, 2007; Mounk, 2018). Since the eighteenth century, representative democracy has been criticised for not being democratic enough, by radical democrats such as Jean-Jacques Rousseau (1923 [1762]; Manin, 1997). Radical democrats criticise exactly that feature that makes representative democracy durable: the lack of participation by most people in the political process.

Representative democracy is the framework that comes natural to civil servants and municipal politicians when determining the legitimacy of CBIs (Røiseland, 2022: 1501). In our narrative example, the civil servants working in the Office of Public Zoning and the Office of Finance are the most prominent actors using this conception of democracy, as well as the municipal council. How are the four crucial questions concerning legitimacy – *for whom, by whom, how is it done and who checks whom* – answered from this perspective?

*For whom?* From the perspective of representative democracy, ‘the people’ is manyfold and pluralistic, meaning that it is built up from several overlapping groups (Chambers & Carver, 2007; Dahl, 1998; Lefort, 1988: 18-19). These groups are in constant flux, and they compete non-violently for power (Mouffe, 2005). This means that from a representative perspective, CBIs are in competition with other initiatives, corporations or the government itself, for resources from the municipality. This is often explicitly the case, for instance when a municipality works with neighbourhood budgets (e.g. Ouden, 2018; Wijdeven & Hendriks,

2010). To claim resources from the municipality, the organisers must be representative for the population, and their activities must represent what the population wants and needs. The population is not just the neighbourhood but also the municipality, because citizens as taxpayers fill governments' pockets. We saw the representative understanding of the populace in the final interaction between K. and the Office of Public Zoning, where K. is told that subsidies are dependent on people from other neighbourhoods coming to the initiative, too. From this representative perspective, if an initiative fails to make a convincing claim to representation, the government cannot legitimise spending money on it.

*By whom?* Representative democracy is nominally inclusive, but its inclusivity is non-committal: people are free to participate, but not forced to do so (Walzer, 1989). Everyone can vote once every few years, but only the representatives and government wield a relevant measure of power. Hence the power is distributed among a large population, but only in a limited capacity. The populace at large transfers the actual political power to a small group of representatives and civil servants that are charged with the day-to-day decision-making. In a representative democratic framework, citizens have a right to vote, but are not usually obligated to partake in public office.<sup>1</sup> So, to be included in the democratic process in representative democracy means to participate in political decision-making. The voluntary nature of participation is in fact one of the main criticisms levelled at representative democracy by other democratic perspectives, as it encourages political passivity amongst its citizens (Kymlicka & Norman, 2016). The rise of this complaint in the Netherlands and other countries inspired much of the push for more active citizenship, specifically CBIs (Actieprogramma Lokaal Bestuur, 2014: 15; Ministerie van Binnenlandse Zaken en Koninkrijksrelaties, 2013, 15; Coalitieakkoord, 2021).

The initiative in our narrative example is strictly voluntary: it is run by volunteers. However, K. is asked to show support from the neighbourhood, because from the representative notion of inclusivity, the people who wield actual power do so at the behest of a larger body of people. They must be representative of these people in some way and must be able to account for this representativeness. K. could not easily do so, as there are no procedures in place for a CBI to show representativeness.

*Action: how?* Representative democracy is mainly focused on the process of coming to a decision, based on gathering different perspectives and weighing the different interests fairly. Implementation of decisions is left to civil servants. While in practice, this means that there is room for professional discretion for civil servants (for example: Lipsky, 1980), in the ideal type of representative democracy, civil servants are considered neutral and apolitical (for example: Weber, 1919, translated Waters, 2015).

Active community members are not neutral, but have clear interests in the goods or services their initiative provides, either because they benefit from providing them, or because they also receive their own services. Thus, representative democracy inherently tends to be sceptical of CBIs.

*Who checks whom?* Accountability is especially important for representative democracy, as it fundamentally is a system made for holding those in power

accountable for their actions (Landa & Pevnick, 2021: 4). Accountability must be clearly established. Politicians enact certain policies, and they are held accountable by the populace (e.g. the electorate) in the next election: if they are judged to have acted well, they will be rechosen and if not, they will be ousted for a different set of politicians. This is the basis of an electoral, representative system.

This mechanism cannot work directly for CBIs, as they are not elected, so this electoral accountability is moved from the CBIs to the municipal government: K. is held accountable by the alderperson, who is held accountable by the municipal council. This means that K. must act within certain bounds, that the alderperson has good reason to make these explicit, so she can refer to them if the council holds them accountable. One way this often happens in practice is by asking a CBI to show it has neighbourhood support, to pre-emptively establish that what it does is relevant. In the case of our example narrative, this is done through polling the neighbourhood. However, there is always the chance that the council shifts its focus to something else and tries to hold the alderperson accountable for that. This puts CBIs in a precarious position of never knowing whether they fulfil their obligations in this accountability structure.

## 6.2 *Do-Democracy*

Do-democracy “refers to the people governing by ‘doing’, through concrete action” (Verhoeven et al., 2014: 3). It was coined by van de Wijdeven and Hendriks (2010), and “adds a fourth mode to the three dominant modes of decision-making as distinguished by Elster (1998) – voting, deliberating and negotiating. That fourth mode is ‘doing’” (Verhoeven et al., 2014: 2).

The concept of do-ocracy [sic] refers to active citizens who wish to contribute to the public domain by simply doing things instead of voting, deliberating or negotiating (Van de Wijdeven, 2012: 295-296).

Do-democracy is the conception of democracy that Dzur argues is most common amongst active citizens and what he calls democratic professionals (Dzur, 2019). According to Verhoeven et al., (2014) do-democracy is focused on the act of ‘doing’ as democratic, where representative democracy is focused on voting and decision-making. Do-democrats are averse to long processes of verifying if everyone is on board as well as to accounting for actions afterwards.

Democratic theory is mostly focused on the decision-making process as the space for democracy. And most literature that does discuss the democratic potential of the executive branch considers democratising from the perspective of checks and balances (Heath, 2020). As Zacka states (2022: 27): “These are values [minority rights and checks and balances] that are central to the liberal democratic order but that remain largely beyond the scope of democratic contestation.” That leaves something to wish for, from the perspective of active community members that want to be seen as democratic. Do-democracy can be understood as democratising the executive branch of the *trias politica*. Not just the decision-making process can be democratic, according to this perspective, but acting on the decisions (made by elected politicians) can also be more, or less, democratic.

CBIs do not per definition have the innovative, experimental and disruptive qualities that Hendriks and Dzur (2022) attach to them. Their approach can be innovative, but the goals of their initiatives must be in line with local policy. That does not need to be a problem: most CBIs are indeed not revolutionary or disruptive, but instead give shape to policy ideals of local policy such as improving social cohesion, combating loneliness or greening the neighbourhood (McAdam et al., 2005; Verhoeven & Tonkens 2018). Most CBIs have a concrete, non-disruptive goal, as in our example narrative: to improve the barren lot in the neighbourhood. In our narrative example, both K., the active community member and the participation broker from the municipality use this do-democratic conception of democracy.

*For whom?* From a do-democracy perspective, the populace consists of the people affected by a CBI in a broad, abstract sense: a CBI must be 'good for the neighbourhood' (van de Wijdeven, 2012: 286). The populace from a do-democratic perspective can be limited to a neighbourhood, a block or even a single street, or a particular group like young people or the elderly. This is a much stricter definition of the affected than is used in representative democracy. However, simultaneously, the populace from a do-democratic perspective has little other qualifications and therefore can be broader than in representative democracy where only eligible citizens constitute the populace. In do-democracy, groups who are formally excluded from the populace in representative democracy, like children, undocumented people, and migrants without voting rights, are – often actively so – included in the populace. So are people that do have voting rights but lack the competences to exercise these rights, like people with dementia.

Of course, do-democrats have to make efforts to reach these groups and find out what their needs are and how their initiatives can respond to these needs. If K. does indeed include his whole neighbourhood in this way, regardless of the status of his neighbours, we could say his initiative lives up to the do-democratic norms of a properly democratic interpretation of the populace. Should K. restrict his efforts to recruit members and poll his neighbours on only one side of the street, thereby excluding the social housing project or housing for asylum seekers from the populace, he would not live up to the democratic norms do-democracy imposes.

*By whom?* Do-democracy focuses on the average people who act in the public sphere, as do-democracy aims to stay close to the lived experience of the people (Levelt & Metze, 2013; Sørensen & Torfing, 2005: 197-198). While do-democracy could drastically increase the number of people actually and substantively involved in the political process, in practice, this is not the case. CBIs are often led by a small core group of volunteers, who hold strong sway over the proceedings and run the initiative day by day. This core group of doers is formally open to all inhabitants, but in practice, it is accessed mostly through informal connections (Verhoeven et al., 2014). Just like in representative democracy, in do-democracy, a small group can act on behalf of the populace. The crucial difference is that in representative democracy, 'acting on behalf of' is formalised through elections, whereas in do-democracy, doers are legitimised by their active community-membership. In do-democracy – just like in representative democracy – participation is voluntary:



if people want to be included in the activities, they must make themselves heard. This is expected to happen through informal rather than formalised channels.

A CBI that does indeed manage to get the whole populace involved is closer to the ideal of do-democratic democratising potential. K. creates the possibility for democratic action where there was none, by taking the execution of landscape maintenance out of the hands of the government. The more neighbours get involved in the actual maintenance, the better, even if K. is the overseer of the plans. However, K. should be receptive to community feedback, otherwise he does not live up to the do-democratic ideal.

*Action: how?* Doing is the core tenet of do-democracy (van de Wijdeven & Hendriks, 2010). From the do-democratic perspective, doing is inherently political: doing becomes a fourth mode of political decision-making, as doing inevitably means deciding how the public space is given shape: through action instead of through speech (van de Wijdeven & Hendriks, 2010). Action is key: do-democrats want people to participate as much as possible in shaping their own living spaces by actively improving them, as opposed to talking about improvement (Elster, 1998). Therefore, CBIs that are in fact dormant or merely talk about activities rather than perform them, lack democratic legitimacy.

As explained above, the existence of a core group that steers the initiative is not undemocratic from a do-democratic perspective. However, participation in the activities that a CBI organises must be open to any member of the populace, of course depending on the activities. For example: children may help in K's garden but are not allowed to wield the chainsaws to cut down trees. Participants of course differ in competences, but all should be able to participate at what level they can.

This is a major democratising force when compared to representative democracy, where only specific people are allowed to participate in the actual implementation of policy. So, to enhance the democratic legitimacy of his initiative, K. should actively think of tasks that can be done by neighbourhood children or contemplate ways to involve neighbours who do not (yet) speak the native language of K's country. If K. starts gatekeeping who can and cannot work in the garden, without trying to think of ways to get them involved, K. is no longer operating in accordance with do-democratic norms.

*Who checks whom?* Establishing what do-democratic accountability looks like is no easy feat. Wijdeven (2012) suggest that do-democracy might work with a pre-emptive form of accountability. The people who want to start an initiative must show to the populace and the government what the problem is and how they will fix it. When CBIs want to obtain support from the government, they additionally need to show that their plans are supported by their community.

Do-democracy is mainly based on performance and results, less on process (Verhoeven et al., 2014: 8). Concerning process, community members are supposed to give feedback through social interaction, so accountability is not formalised but instead takes place through informal conversations (Verhoeven et al., 2014). This means that the size of the populace must remain limited, so that social interaction rather than institutional channels suffices as method of accountability for do-democracy. In our example narrative, K. considered the interests of the neighbourhood and was asked to show that people from outside the neighbourhood

also participated by a civil servant using the representative conception. K. is not against participation from inhabitants of other neighbourhoods, but he had never considered them relevant for his project. From a do-democratic perspective, participation from inhabitants of other neighbourhoods is not relevant for democratic legitimacy, as these people are not part of the populace. It must be noted that do-democracy does not leave much room for dissensus and conflicting views: from a do-democratic perspective, CBIs are legitimate when they find support from ‘the people’. In that sense, their legitimation overlaps with a populist view of democracy (Dekker, 2019: 83).

In representative democracy, accountability is formalised through rules and elections. This method does not sit well with the informal accountability of do-democracy. In our example narrative, K. is legitimised much more by his neighbours deciding to help, than by the formal poll the municipality asks him to take. The fact that his neighbours want to spend actual time and effort maintaining the garden with K. is proof that his initiative fulfils an important role. Accountability thus becomes an ongoing concern, where substantive input from the populace is used to measure contentment and legitimacy. This means that K. can no longer claim access to municipal funds if he has no more volunteers.

Our juxtaposition between the representative and do-democratic perspectives on these four key questions can be summarised in Table 2.

**Table 2** *Representative democracy and do-democracy defined along four core questions.*

<b>Frame</b>	<b>The people ‘for whom?’</b>	<b>Inclusivity ‘by whom?’</b>	<b>Action ‘how?’</b>	<b>Accountability ‘who checks whom?’</b>
Representative democracy	The entire municipality: spending of tax money affects the whole municipality	Open-ended: participation is voluntary, citizens are rational actors able to decide whether they want to participate or not	The executive branch of government and civil servants: doing is made neutral and moved away from the political	Retroactively: holding the representatives accountable
Do-democracy	A spatially defined and limited community, with no other barriers (e.g. citizenship status)	A core group that is open to community feedback; more participants are preferred	As many people as possible should be able to participate in the doing; doing is the core democratising action of CBIs	Pre-emptively and continuous: citizens show what they aim to do and how to; the initiative is legitimised through constant substantive involvement from the neighbourhood

### 6.3 *What Does This Solve?*

In the example narrative, K. starts with a sense of agency but over time, cracks start to form in K.'s enthusiasm. More and more seemingly unnecessary hurdles show up. These experiences make K. increasingly likely to stop his activities. What we demonstrated is that this is the result of a clash in the do-democratic perspective on the legitimacy of K.'s activities that K. himself holds, and the representative perspective held by many of the civil servants he interacts with. In providing a conceptual analysis of both perspectives on democracy, we have shown where the perspectives differ (fundamentally) on the question of democratic legitimacy. This knowledge can be used as a map of sorts that shows (and names) the potentially dangerous reefs that lie just below the surface of the water. Neither K. nor the municipality has a wrong perspective on the democratic legitimacy of his initiative, but by being aware of the difference of opinion, both can more easily navigate together. They have, in the end, the same goal: improving a stretch of barren land for the benefit of the neighbourhood. As governments actively encourage communities to take initiatives, the onus is on the government to help smooth the process for community members that take up the challenge.

## 7 Discussion

There are limits to this study, of course. We work with a narrative, and the proof of the pudding is in the eating. To what degree the issues of legitimacy play out in practice among both active and average citizens needs to be investigated in more detail (Jacobs & Kaufmann, 2021). But by distinguishing different types of democratic legitimation, we hope to contribute in three ways. First, to improve the quality of the debate about the value of CBIs. Second, to prevent misunderstandings and feelings of misrecognition that could shorten the lives of CBIs. Third, to elaborate more systematically than has been done so far, how to assess what is democratic about do-democracy.

We show that expanding the reach of direct civic influence can be democratic. It is correct that CBIs provide a boon to the working of representative democratic policy decisions as Røiseland (2022) explains, by providing policy makers with the knowledge and skills of civil society. But CBIs can, in the words of Mark Warren (2014: 40) “engage constituencies of those affected by issues or policies, thus expanding democracy beyond electoral constituencies”. If one considers the lack of involvement of citizens in the political process a short-coming of representative democracy, CBIs could provide a relevant tool to mend this. K. wanted to improve his neighbourhood, and he got together with his neighbours and did just that. Doing can often be more effective than voting, to paraphrase Warren (2014: 40).

Insisting on the representative democratic framework and stressing the penchant for inequality in CBIs imply overlooking the democratising potential of these initiatives. This by no means absolves CBIs from reinforcing inequalities, but it does imply that we should also be willing to look at their democratising potential beyond the issue of who is represented. If policy makers need to determine if CBIs are democratically legitimate, they need to distinguish these democratic

legitimations, and clearly communicate which of these they want to apply, where and when. No one – not the policy makers, nor the active citizens, nor the community at large – benefits from confusion on this point. Shifting goalposts is demoralising and frustrating for all alike.

## 8 Conclusion

We create and apply an analytical framework to an example narrative, to compare the representative democratic and do-democratic perspectives on the democratic legitimacy of CBIs. This comparison indicates how CBIs are assessed differently from the two perspectives and how clashes arise when these perspectives are not made explicit. Both perspectives have their own criteria for democratic legitimacy, but they are largely incompatible.

As for *whom*, for representative democracy, CBIs must at least find out what the different wishes of their entire (legal) community are. If they claim any resources from that community, they must prove they do not actively exclude people, do not waste money from a public perspective and that they represent the relevant groups in society. For do-democracy, CBIs are sufficiently democratic when they are open to those who are directly affected by an initiative. Do-democracy does not distinguish between citizens and non-citizens. Instead, what matters is that someone is part of the community. From a do-democratic perspective, CBIs should show support for their suggested activity as a form of pre-emptive accountability.

For representative democracy, *inclusivity – by whom* – depends on how representatives manage to properly represent the populace, in terms of having a mandate by way of voting and representing the identities and views of (some section of) the populace. But from a do-democratic perspective, what his neighbours want and the fact that there are people willing to help, is all the legitimacy that K. needs: if the barren lot was not an issue, people would not spend their free Saturdays helping to fix it.

The representative understanding of inclusion collides with the do-democratic understanding when K. is chastised for not having a representative body of volunteers from their neighbourhood. As CBIs do not use elections, representative democrats try to look for representation in a different way, for instance, by asking: are all groups in the neighbourhood involved in this project? From the do-democratic perspective, this question makes little sense. The do-democratic perspective is that since K. lives in the neighbourhood, he will know (and if not, find out) what people want and need.

The question of *how action is taken* is core to the difference between representative democracy and do-democracy. Representative democracy is much more concerned with coming to the decision and holding people in power accountable, while for do-democracy, the *how* is crucial: the idea that the people can take over the executive is core to its democratic legitimacy. So, where K. feels that he acts democratically by taking actions that benefit his community, the civil servants from the Office of Public Zoning assess that (representative) democratic

legitimacy is lacking and refuse the permits. This only changes when the aldermen (implicitly operating from a do-democratic perspective) intervenes. K. might feel that his ability to act is frustrated, but from the representative perspective, civil servants are not supposed to act on their own volition.

Finally, for representative democrats, *accountability* is something retroactive: after the allotted amount of time, the alderperson must account for the resources spent on this CBI to the municipal council, by showing results on the one hand, and proper conduct on the other. For K., this indicates unpredictability because of shifting goal posts. From a do-democratic perspective, active citizens do not *need* to be accountable to the government, because they consider themselves to be closer to citizens. But to the degree that they accept accountability towards the government, they conceive of it as something pre-emptive: they have made their case and received the resources they needed by showing what they were planning to do. The much more relevant form of accountability is whether K.'s neighbours keep volunteering.

For this article, we voiced two aims. We wanted to show that 1) *CBIs can be understood and legitimised from the representative and do-democratic conceptions of democracy* and 2) *public tensions can be mitigated by communicating clearly about one's conception of democracy*. The first aim can be seen to be completed in Table 2, where we show how representative democracy and do-democracy can legitimise CBIs in different ways. Do-democracy can be viewed as a concrete, coherent, alternative conception of democracy, at least to understand CBIs. As for the second aim, we have shown how tensions between active members and civil servants might rise due to unspoken assumptions about democracy. We have provided a vocabulary to prevent these tensions from rising.

For politicians and policy makers, the conclusion is that clarity of mutual expectations is more useful for the sustainability of CBIs than a non-specific commitment to democracy and citizen action from the government. Moreover, there are ways to assess the quality of CBIs on their own merit, by developing criteria for how a do-democracy can be (more or less) democratic. We hope that this article contributes to developing these.

## Note

- 1 With some exceptions: mandatory voting in for example Belgium and jury duty in the USA. The latter is not really an exception to the representative democratic inclusivity, as it is a remnant of a republican conception of citizenship that is actually closer aligned to do-democracy. It also provides an interesting analogy to community-based initiatives, as both are an example of democratising powers other than the legislative in the classic *trias politica* model: jury duty democratises the judiciary, while CBIs can (and will) be argued to democratise the executive branch of government.

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# The Ideological Drivers Behind the Support for the Use of Direct Democracy among Voters and Parties of Benelux Countries

Emilien Paulis & Sacha Rangoni\*

## Abstract

*The use of referendums has gained popularity among both voters and parties. Yet, despite the diffusion of such direct forms of democracy during the last decades in Europe, referendums remain not a very common policy instrument in Benelux countries (Belgium, the Netherlands and Luxembourg). We establish that this trend could be explained by a large consensus among mainstream (especially right) parties and voters against the use of direct democracy. Moreover, we confirmed the well-established demarcation with radical ideologies, which convey overall more support and congruence on the use of referendums than the mainstream. Additionally, and probably reflecting this new line of cleavage, we show that support for referendums among the voters relate to left-wing economic position, but also with culturally right-wing view. Overall, this article questions the relevance of the traditional left-right divide to explain support for direct democracy, as well as the capacity for (some) parties to align with their voters in terms of democratic demands.*

**Keywords:** direct democracy, referendums, public opinion, political parties.

## 1 Introduction

In representative democracy, citizen participation is theoretically confined to election and public debate. However, in practice, a certain number of established democracies provide also alternative policy instruments allowing lay citizens to influence the decision-making process. Mechanisms of ‘direct democracy’ like referendums have thus become increasingly popular in Europe among the public opinion but also among policymakers, as the growing use since the end of the twentieth and over the beginning of the twenty-first century suggests (Qvortrup 2018). This shift constitutes a significant institutional evolution in the conduct of public action in many established democracies, which aims at giving more space to citizens through direct participation, as a complement to their representation.

According to ‘cognitive mobilisation theories’, the progress in resources’ access via higher education and better communication technology would have made citizens better equipped to participate in politics and more demanding of

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opportunities of involvement beyond election. The latter view is nonetheless challenged by the 'political dissatisfaction hypothesis' that claims that the increasing demand and offer in referendums reflects a willingness of the representative institutions to respond to the disaffection towards traditional political bodies rampant among the citizens. Moreover, recent cases of referendums (like on Brexit in the United Kingdom) have raised concerns about the eventual backlashing impact of the use of direct democracy. One fear relates to the instrumentalisation of these policy tools by radical forces to avoid legislatures and impose their populist agenda. From recent studies, we learned that an important line of demarcation when we approached referendums from either the supply or the demand side is driven by the role of ideology. Parties and voters' support for referendums align not only with the classical left-right distinction but also with a split between radical (anti-establishment) and mainstream party families.

Although much has been written on direct democracy in recent years, the positioning of the parties and the voters on the question remains less empirically explored (at the same time), and especially in the framework of Benelux countries that are known for a very low occurrence of referendums (Hollander 2019). We still know little about (1) whether existing individual-level, ideology-driven explanations for referendum support could hold when zooming on these three countries, (2) whether and how (both radical and mainstream) voters and parties align on their view regarding the use of direct democracy. Therefore, this article aims at disentangling more carefully the relationship of ideology with support for referendums among both the voters and their parties. To do so, we rely on the analysis of individual-level survey data gathered among three representative samples of voters in Luxembourg, Belgium and the Netherlands, for the demand side, while party-level data provided by electoral manifesto and official sources are used to match with the supply side.

## 2 Literature Review

### 2.1 *Support for Referendums among Voters*

The literature on direct democracy has been growing increasingly bigger since the early 2000s. If studies on direct democracy existed before, an important focus on the demand side both from voters and elites has been made. Following a valuable amount of works that pointed out the increasing popularity of referendum among citizens (e.g., Dalton et al. 2001; Morel 2019; Hollander 2019), Bowler et al. (2007) studied this support in 12 Western countries. They showed that a vast majority of respondents are favourable to the implementation of referendums. Between 55 and 84 per cent of respondents agreed or strongly agreed that referendums are a good way to decide important political questions. Schuck and de Vreese (2015) emphasise this increasing popularity of referendums among voters but introduced more nuanced views. On one side, they showed that referendums are also increasingly contested; on the other hand, they identified different, and somehow conflicted, factors that determine this contestation. In a more recent work based on a sample of more than 37,000 citizens from 29 countries, Werner and her

colleagues (Werner et al. 2020) acknowledged also a significant level of support for referendums among European citizens, with a mean score of 8.27 on a 0-10 points scale. Yet, some evidence at the individual-level stresses that this support may be greatly instrumental and conditioned by perceiving positive outcomes (Brummel 2020; Werner 2020).

In their work, Bowler et al. (2007) found that two subgroups in the population envision more favourably direct democracy: the 'politically engaged' and the 'politically dissatisfied'. On the one hand, 'engaged citizens' are characterised by their greater cognitive resources. They are more educated, have more knowledge and are more interested in politics and hence motivated to participate directly in politics (Schuck and de Vreese 2015). Moreover, they feel competent and consider that they have the skills to participate. They are no longer content with only voting for elections and want more opportunities to participate. This cognitive mobilisation explanation is related to the post-materialism turn described by authors such as Inglehart (1971). Yet, if most studies point towards a positive effect of political engagement on support for direct democracy and citizen participation, there are also some works contradicting these findings. Rojon and Rijken (2020) demonstrated in a study on Switzerland, the Netherlands, the United Kingdom and Hungary that although citizens' support for referendums is still important, 'winners of modernisation' with higher education and revenues tend to become less favourable to referendums (Rojon and Rijken 2020). One trend of explanation is the outcome of recent referendums in European countries (e.g., Brexit). In particular, the defeat of the democratic 'status quo' may have refrained the support from this group of citizens (Hobolt 2016). Another one is, as shown in more recent works, that more educated and socio-economically advantaged citizens favour more deliberative ways of engaging in politics (Pilet et al. 2020). A last potential reason is advanced by Anderson and Goodyear-Grant (2010) in their work on Canada: highly informed citizens were more sceptical of referendums because they cared about minority rights. In contrast, less knowledgeable citizens may not perceive that referendums, as majoritarian instruments, can reinforce the dominance of the majority and jeopardise minorities' rights.

On the other hand, the 'dissatisfied' group gathers citizens who are not content with the way democracy works. Their disaffection is thus rooted in a low level of trust in government and representative democracy (Bowler et al. 2007; Cain et al. 2003), which lead them to be more supportive of alternatives to voice citizens in the political process and hence more favourable to direct democracy (Webb 2013). Similarly, reflecting this disenchantment, citizens who feel disconnected from traditional party politics and are at the margins of the political process generally express preferences for referendums (Schuck and de Vreese 2015). Yet, more than a call for more participation, support for direct democracy in this group is also a matter of a perceived lack of responsiveness of the government with the public opinion (Werner et al. 2020). In a study on the Yellow Vests' democratic aspiration, Abrial and her colleagues (2022) found out that the ones who have a monolithic view of political class, primarily first-time activists, see favourably direct forms of participation not so much to participate, but more to control and sanction political parties and elites. This suggests that Webb's findings about two types of attitudes

prevalent among disaffected citizens are relevant. According to him, there is a split between 'dissatisfied democratic' and 'stealth democratic' orientations in the British adult population. Dissatisfied democrats are enthusiasts for all forms of participation while stealth democrats are more into referendums as a means to bypass politicians (Mudde 2004; Rooduijn 2014; Rooduijn et al. 2016; Van Hauwaert and Van Kesse 2018; Webb 2013; Zaslove et al. 2021).

Besides the level of socio-political resources and the attitudes towards representative democracy and its main actors and institutions, a last important aspect to comprehend citizens' attitudes towards referendum relates to ideological and partisan preferences. Although it seems to be particularly confined, empirically speaking, to Western Europe (Kostelka and Rovny 2019), it has been long and repeatedly theorised that individuals leaning on the left have greater chances to engage in participatory behaviours (Barnes and Kaase 1979; Bernhagen and Marsh 2007; Torcal et al. 2016; van der Meer et al. 2009). This would be because these people are attached to core values promoted by left movements and parties since the 1960s (Kitschelt 1988), e.g., collective engagement and bargaining, equality or still inclusion. More largely, although scholars do not all agree on the relevant justification, they put forward three potential explanations for this association (Kostelka and Rovny 2019). The first explanation is economic. The support for redistributive policies and state intervention in the economy that characterises left-wing voters (and parties) could push them to be more prone to adopt participatory behaviours in order to fight against socio-economic inequalities. The second explanation is cultural. Indeed, cultural liberalism, egalitarian views, and the rejection of traditional social hierarchy (which are generally associated with the left) generally make people more likely to undertake participatory actions. Klingemann (1979) stressed that those left-wing, postmaterialist people who advocate greater equality were more willing to adopt new means of participation, whereas the right-wing, materialist people (who care less about social equality) were more supportive of the status quo. Third and final, since the very beginning of mass politics, the left is historically associated with the use of protest forms of participation in their fight for political and social rights of the working class. Hence, claiming more citizen participation has been above all perceived as a territory of the left.

Although the literature questioning the link between ideological preferences and political participation of all kinds is well developed, while the one connecting ideology and vote choice is abundant, the impact on democratic preferences remains much less substantial (Ceka and Magalhães 2016; Jurado and Navarrete 2021). That is the reason why, inspired by the above-mentioned argument of an affinity between citizens' participation and left-wing values, some scholars have brought in the idea that the support for the enlargement of participatory opportunities and the use of policy instruments that would give a greater role to citizens in decision-making might be driven by where people stand on the left/right cleavage. They stressed that citizens who place themselves on the left of the left-right scale are generally more likely to support increased participation in decision-making (Walsh and Elkink 2021), while, more precisely, opinions about referendums are usually more positive among left-wing than right-wing individuals

(Fernández Martínez and Font Fábregas 2018; Rojon et al. 2019; Webb 2013). Christensen and Von Schoultz (2019) found indeed that citizens sharing leftist/cosmopolitan values tend to favour participatory political processes, while Bengtsson and Mattila (2009) demonstrated that identification with the left increased the likelihood of supporting the use of referendums.

However, similar to the literature on citizens' preferences for democracy (König et al. 2022), the empirical results remain fragmented and are not always consistent when it comes to the ideological roots of referendum support. Somehow connected to the dissatisfied thesis, what recent studies have observed is instead a strong cleavage based on radical and moderate party preferences, between people voting for radical parties and those moderate voters opting for mainstream parties embedded in traditional left or right ideologies (Paulis and Ognibene 2022). People casting vote in favour of parties located at the extreme, both on the right and left sides of the political spectrum, are more favourable to referendums (Rojon and Rijken 2020; Schuck and de Vreese 2015). As an illustration of this trend in France, in 2017, 75 per cent of supporters of the left-wing party *La France Insoumise* and 79 per cent of supporters of the radical-right party *Rassemblement National* were in favour of referendums while this support was between 60 and 49 per cent among supporters of more mainstream parties (Morel 2019). To explain it, besides the high level of dissatisfaction (Van Hauwaert and Van Kessel 2018), one central factor lies in the common populist attitudes adopted by both radical left and right-party voters. Those individuals are generally more critical of institutions such as political parties (Zaslave et al. 2021), consistent with the 'anti-elitism' identified as a subdimension of populism (Mudde 2004), and hence are more supportive of democratic reforms (Koch et al. 2021; van Dijk et al. 2020). Moreover, another, widely shared characteristic among populists is their 'people-centrism' and their demand for more people power in politics (Neuner and Wratil 2022). This predisposition is argued to make them highly predisposed to support the direct form of democracy (Jacobs et al. 2018).

## 2.2 Support for Referendums among the Parties (and the Representatives)

First and foremost, it is important to point out that the literature on the side of the parties (and their representatives) suffers from two main limitations. First, very few individual-level studies were held on MPs' attitudes towards referendums, while we lack meso-level contributions that would be informative on the role played by parties and their ideological preferences regarding democratic processes' issues like the use of referendums (Font and Rico Motos 2023). Instead, existing pieces in party research have rather looked at the way parties mobilise (in) referendums or eventually seek to influence citizens' choices and hence the results (Hobolt 2006; Gherghina and Silagadze 2021; Nemčok et al. 2019). Second, studies on the subject often focus indistinctively on both participatory and direct reforms of representative democracy. However, some key findings emerge from the literature.

A first important determinant to understand parties and elites' positive stance towards referendums is the instrumental, or strategic aspect. It means that MPs and parties in the opposition, who lost an election or fear to lose one or have little

or no power in the parliament view more favourably democratic reforms such as referendums (Bowler et al. 2002/2006; Junius et al. 2020). In contrast, parties that (are used to) win elections and are (highly) institutionalised have less incentives to implement disruptive tools that would change the status quo and eventually challenge their majority position. Yet, party organisational research has indicated that, when moderate, institutionalised parties suffer from several defeats or internal crises, they generally turn more favourable to changing the internal status quo and reforming their intra-party democracy by including more tools of direct participation in their organisation (Bloquet et al. 2022; Scarrow 2017). Moreover, in some context, parties can hijack direct democracy and promote the use of referendums as an electoral strategy that serves legitimacy purposes or intends to increase their popularity (Gherghina 2019; Stoychev and Tomova 2019). More largely, studies have acknowledged that ‘politicians and political parties may use referendums in an attempt to solve internal disputes, advance the legislative agenda, gain legitimacy for fundamental changes, or extend their public electoral support’ (Gherghina 2019: 5).

A second determinant relates to the extreme or moderate nature of the ideology supported by the party and the MPs. Indeed, reflecting the division observed among the voters, radical anti-establishment parties and representatives are more positive about referendums than mainstream and traditional parties (Junius et al. 2020; Núñez et al. 2016). Like the voters, one individual-level line of explanation relates to the radical MPs’ dissatisfaction with how democracy works. The most dissatisfied MPs are generally those more favourable to referendums (Bowler et al. 2006; Niessen 2019). Furthermore, anti-establishment parties are found to be more enthusiastic about constraining referendums than other parties (Pascolo 2020) and rely more on direct democracy for their intra-party organisation (Gerbaudo 2021). This would be a consequence of their populist strategy and discourses, which binarise a critique of democracy opposing the people to all the devil elites and call to retrocede power in politics back to ordinary citizens. Our knowledge on this aspect has improved in recent years, thanks to the development of the study of parties’ electoral manifesto in one or several European countries (Brummel 2020; Pascolo 2020; Gherghina and Pilet 2021). Gherghina and Pilet (2021) show for instance that, although references to referendums were more common in the programs of populist parties, both populist and non-populist parties were supportive of a greater use of the tool, nuancing the idea that radical parties would have the main grip on the promotion of direct democratic tools. More recently, in a study on the implementation of participatory institutions in Spanish municipalities, Font and Rico Motos (2023) found that radical left-wing parties are more likely to use more direct forms of participation (such as participatory budgeting) than Christian democrats and conservatives. For these authors, one important aspect is thus the link between party ideology and the model of democracy it promotes. Radical left parties would be in favour of more non-mediated forms of direct democracy to ‘re-launch democracy on a participatory, anti-elitist and antiliberal basis’ (March and Mudde 2005) while centre-right liberal and Christian democrats are more into participatory institutions that do not challenge a more traditional electoral mechanisms. Social democratic parties are

depicted as being in-between those positions, perceiving direct democracy as a good complementary strategy (Font and Rico Motos 2023).

### 3 Hypotheses

#### 3.1 Hypothesis 1. Left versus Right Preferences

Based on the supposed affinity between the left and citizen participation, referendums, as main policy instrument of direct democracy, are expected to be more positively evaluated by left-wing than right-wing citizens. The previous section has indeed acknowledged that there seems to exist a correlation between ideological positions and support for direct democracy, whatever these ideological preferences are operationalised through subjective (e.g., left-right self-placement) or more objective (e.g., positioning on socio-economic or cultural cleavages) measurements. Against this backdrop, our first expectation is that citizens leaning to the left of the political spectrum will be more supportive of the use of referendums. Moreover, as we know for long that there is also a strong association between ideological preferences and vote choice (Campbell et al. 1960; Quinn et al. 1999), we can also expect that the same relationship will be found when looking at left-wing party preferences. Citizens voting for parties that are generally ranged under the label of the 'left' (e.g., social democratic, green, or left libertarian) are expected to be more positive about the use of referendums.

*H1: Compared to right-wing, citizens leaning on the left or voting for left-wing parties will support more the use of referendums.*

#### 3.2 Hypothesis 2. Radical versus Moderate Preferences

Yet, more recent findings have challenged this assumption about a left-right divide driving the support for direct democracy among the voters. Instead, it would be more a cleavage between extreme and moderate types of voters. The literature has argued that people who tend to place themselves on the extreme poles of the political spectrum or who vote for radical parties are generally more supportive of referendums than moderate voters.

*H2: Compared to moderate voters, voters who locate themselves on the extreme poles of the left-right political space or vote for radical parties will support more the use of referendums.*

#### 3.3 Hypothesis 3. Left-Right Preferences among the Radical Voters

Existing studies did not find any statistical difference in the level of support depending on whether the radical voters cast their vote for far left or far right parties (Grotz and Lewandowsky 2020; Rojon et al. 2020; Svensson 2018; Van Dijk et al. 2020). Their support would indeed be more driven by their common populist attitudes, anti-elitist stance, and a need for control over corrupted politicians. This means that we cannot expect left or right orientation to drive the support for referendums among the radical voters, as both radical left- and right-party voters



should have a relatively similar level of agreement on the use of referendums. Moreover, some scholars have argued and shown that citizens with more ideological extremeness are more supportive of referendums (Schuck and de Vreese 2015). This propensity towards direct democracy was observed both among citizens at the extreme left and the extreme right of the ideological self-placement (Donovan and Karp 2006) and among citizens with strong populist attitudes (Mohrenberg et al. 2021; Zaslove et al. 2021). We thus expect to observe a similar pattern than extreme left-right self-placement than with party preferences.

*H3: Citizens positioned on the extreme left or voting for radical left parties will support the use of referendums as much as those positioned on extreme right or voting for radical right parties.*

#### 3.4 Hypothesis 4. Left-Right Party Preferences among Moderate Voters

Yet, we argue that the left-right divide may start to matter when zooming on the group of moderate voters because it gathers a large group of people with very heterogeneous party preferences and where parties embedded in traditional cleavages are supported. Here, being/voting on the left or on the right of the spectrum might potentially make a difference regarding direct democracy support. Interestingly, the democratic demands of these moderate voters and how ideology may shape the latter has been much less studied than their radical counterparts.

*H4: Among moderate voters, citizens leaning on the left or voting for left-wing parties will support the use of referendums more than citizens leaning or voting for the right.*

#### 3.5 Hypothesis 5. Radical versus Moderate Party-Voter Congruence

Finally, we still know little about the proximity between voters and parties on the use of referendums, existing research focusing either on one or the other aspect. Therefore, the fifth general hypothesis focuses more specifically on the relationship between ideology and party-voter alignment. As we know that radical parties and voters are both the most supportive of direct democracy and that the literature on issue congruence informs us that voter-party proximity tends to be higher on issues that the party emphasises (Costello et al. 2021), we expect to observe that radical ideologies will be more capable than mainstream ones to generate consensus both on the supply (party) and the demand side (voters) regarding the use of referendum. This could mean that radical parties are potentially more responsive to the (direct) democratic demands of their voters, while pointing towards some resistance on the side of the moderate.

*H5: Radical parties and voters will have more congruent, positive opinions on the use of referendums than their moderate counterparts.*

#### 3.6 Hypothesis 6. Party-Voter Congruence among the Moderate

Yet, as a corollary of the left-wing divide hypothesised among the moderate party voters (H4) and following our previous arguments, we expect to find more

congruence on the left side of the mainstream political space when looking more closely at the moderate. Following our overall argument, moderate left-wing ideologies are expected to convey more agreement on the use of referendums between voters and their parties than right-wing ones.

*H6: Among the mainstream, left parties and voters will have more congruent, positive opinions on the use of referendums than their right-wing counterparts.*

## 4 Data and Methods

### 4.1 Cases: Benelux Countries

Besides having common features inherited from the past (e.g., parliamentary monarchies), another similarity that Benelux countries share is that they have been relatively spared by the turn towards direct democracy that other European countries have faced since the 1990s (see Appendix 1<sup>1</sup> for a European comparison). Belgium had only one referendum held in 1950 to vote about the return of King Leopold III after the Second World War. Referendums have more recently been used in the Netherlands and Luxembourg, although it was only twice (way below the European average) and advisory. If Luxembourg and the Netherlands provide referendum mechanisms in their respective constitutions, it is not the case for Belgium where no formal right is enshrined (see Appendix 2). This specific feature of Benelux countries makes them particularly interesting cases to study whether and how voters and parties position themselves towards direct democracy, as their judgements are not biased by previous national experiences and their outcomes. Moreover, they might be also good cases to assess the drivers of resistance. At a more general level, it is worth noting that Luxembourg has attracted so far less scholarly attention regarding parties and voters' democratic preferences compared with Belgium or the Netherlands.

In addition, we think that they are relevant contexts to better explore the ideological roots of voters and parties' support for referendums. This common background across the three countries may probably be explained by a similar political landscape: consensual dynamic in party politics, strongly dominated by traditional parties embedded in mainstream collective ideologies. The historical grip of three party families (namely the social democrats, the Christian democrats, and the liberals) on power and societies may potentially explain why these countries did not rely more on referendums. The mechanism might indeed have challenged their hegemonic position, despite voters expressing majority preferences for their implementation. This could turn into a gap between an increasing demand among the voters, but a very limited offer on the side of the parties. Moreover, stressing the increasing distrust towards traditional parties but also the loss of salience of historical cleavages, the dominance of 'pillar' parties has started to crumble over the last decades under the increasing electoral success of radical parties, on the right in Flanders (BE) and the Netherlands and on the left in Wallonia (BE) and Luxembourg, which are in fact the main promoter of the use of referendums in these countries. This evolution could eventually lead these countries and their

ruling parties to reconsider their position regarding the place that should be given to direct democracy in the future.

#### 4.2 Data

*Individual-level data (demand side).* Data was collected through a CAWI survey fielded during winter 2022 in Belgium and the Netherlands (Qualtrics as provider) and during summer 2022 in Luxembourg (Ilres as provider).<sup>2</sup> In each country, a stratified sampling strategy ensured sufficient representation of persons from different socio-demographic groups based on four key characteristics: region of residence, age, sex and education.<sup>3</sup> We can see from the distribution table provided in Appendix 3 that this does not prevent some groups from being over-represented in our samples (mostly older and better educated for the three countries, while Flemish citizens are more present in the Belgian sample). Therefore, after we merged the raw data, each country's sample was weighted to match the distributions on these socio-demographic characteristics in the general population. The pooled sample includes 6,688 respondents, after excluding trackers, speeders and inattentive respondents who accounted for less than 2.7 per cent of the raw data. National sample size varies from 1,602 respondents for the Netherlands to 2,836 for Belgium and 2,250 for Luxembourg.<sup>4</sup>

*Party-level data (supply side).* For the survey respondents who voted in the last national elections of their country (2021 in the Netherlands, 2019 in Belgium, 2018 in Luxembourg), our dataset was complemented with different information on the supply side regarding the party they expressed their preference for. We considered all the parties that were running in the last national election cycle, even if they did not pass the threshold for representation ( $N = 42$ ). The exact list of parties and their ideological classification is displayed in Table 1. Besides basic data on the party ideology, we collected party age (based on party origins), national parliamentary size (% of seats before the election) and incumbency (whether the party was in government before the election) from official sources and available databases. The electoral manifesto provided on the official website of the parties was used to measure their stance on the use of referendums (see Appendix 5. Coding of the electoral manifesto).

Table 1 List of the parties/voters covered

Country	Left Party				Right Party		
	Radical	Green	Moderate	Moderate	Christian Democrats/Conservative	Liberal	Radical
<b>Belgium</b>	Parti du travail de Belgique (PTB)	Ecolo	Parti Socialiste (PS)	Centre Démocrate Humaniste (CDH)	Mouvement Réformateur (MR)	Parti Populaire (PP)	
	Partij van de Arbeid van België (PVDA)	Groen	Vooruit (ex Sp.A)	Open Vlaamse Liberalen en Democraten (Open vld)	Listes Destexhe		
<b>The Netherlands</b>		DierAnimal		Nieuw-Vlaamse Alliantie (N-VA)	Démocrate Fédéraliste Indépendant (DéFI)	Vlaams Belang (VB)	
	Socialistische Partij (SP)	Partij voor de Dieren (PvdD)	Partij van de Arbeid (PvdA)	ChristenUnie (CU)	Volkspartij voor Vrijheid en Democratie (VVD)	Forum voor Democratie (FvD)	
	Bijl	GroenLinks (GL)	DENK	Boerburgerbeweging (BBB)	PDemocraten 66 (D66)	Partij voor de Vrijheid (PVV)	
				50PLUS	VOLT	Ja21	
				Staatkundig Gereformeerde Partij (SGP)			

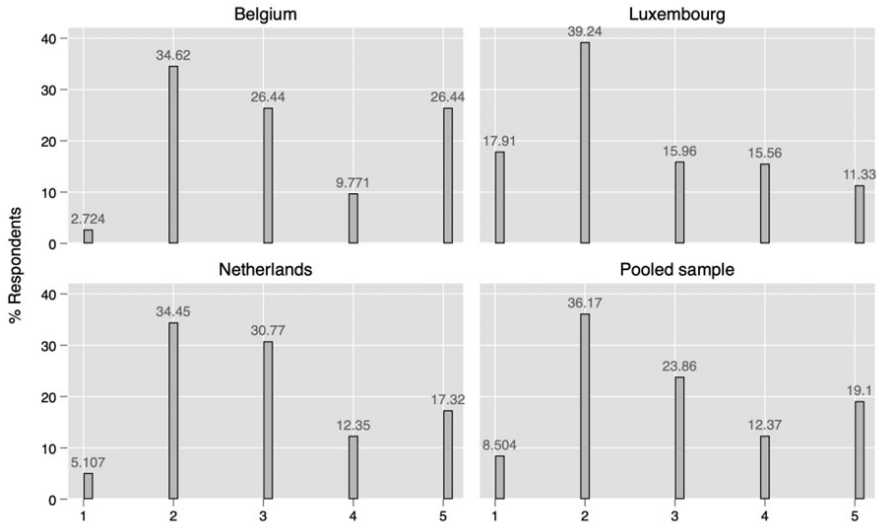
**Table 1** (Continued)

	Left Party			Right Party		
	Radical	Moderate		Moderate	Radical	
<b>Luxembourg</b>	La Gauche (Dei Lenk)	Les Verts (Dei Greng)	POSL – Parti Ouvrier Socialiste Luxembourg	PCS – Parti Populaire Chrétien-Social	PD – Parti Démocratique	RAD – Parti réformiste d’alternative démocratique
	PIRATEN – Parti Pirate du Luxembourg			Les Conservateurs (déli Konservativ)		
	PCL – Parti communiste du Luxembourg					

### 4.3 Dependent Variables

*Support for referendums (H1-4).* To measure the support for referendum among the voters, our surveys used the generic wording proposed by the European Social Survey. Respondents were asked to position themselves on a 5-point Likert scale (1 = strongly disagree, 5 = strongly agree) about the following item: “It is important for democracy that citizens have the final say on political issues by voting in referendums”. We decided to keep this variable in its initial, ordinal format (Figure 1), where the higher the value, the more support. The median value is 3 for the pooled sample, which indicates a relatively neutral position among Benelux citizens. Luxembourg respondents stand out from the two other countries (NL = 3.0, BE = 3.2) with a mean below the neutral point (LU = 2.8). Yet, the mode is 3 in all the three countries.

**Figure 1** Distribution of referendum support among voters



*Party-voter congruence (H5-6).* The second dependent variable uses both individual and party-level data. It puts in perspective the voter’s support towards referendums and the position of the party (s)he voted for in the last election. For each of the 41 parties’ manifesto, we have first identified whether there was a section dedicated to citizen participation, and then searched, through key words, whether there were specific claims to direct democracy and referendums for the 42 parties.<sup>5</sup> From this coding exercise that is summarised in Appendix 5, we found only two parties, both located in the Netherlands (the liberal party *Volkspartij voor Vrijheid en Democratie* and the small conservative party *Staatkundig Gereformeerde Partij*) with explicit negative claims about referendums (Table 2).

**Table 2** *Examples of party negative claims on referendums*

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	<p>“We are not in favor of referendums. The problem with referendums is that they reduce complex problems to a simple ‘yes’ or ‘no’. As a result, people with constructive criticism can only completely reject or completely embrace a bill. A referendum also does not go well with representative democracy”.</p> <p>VVD – Liberal party in the Netherlands</p> <p>“The disadvantage of (national) referendums is that they break into the representative democracy that we know in the Netherlands. In addition, a referendum by definition focuses on one specific subject, which makes a broader (interest) assessment difficult, if not impossible”.</p> <p>SGP – Conservative party in the Netherlands</p>
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Finally, we ended up with a contrast between 20 parties that do not at all mention issues related to referendums in their manifesto (translating a rather indifferent or neutral stance on the topic, coded as 0) or do it negatively (i.e., the two Dutch parties, coded as 0 too) to 22 parties who do positively consider direct democracy as a potential policy instrument (coded as 1). Among the latter, we found clear nuances: some parties turn out to be more in favour of a consultative use (which may often coincide also with support for other policy making instrument like deliberative mini publics) and others for a more binding (and which focus on referendums as the main complementary process to elections) (Table 3).

**Table 3** *Examples of party positive claims on referendums*

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Binding	<p>“People should therefore always be able to have their say on important decisions, for example through referendums”. Socialistische Partij (SP) – Radical left party in the Netherlands</p> <p>“Create a Citizens’ Legislative Initiative right that allows citizens to have a parliamentary assembly vote on legislative or constitutional proposals or, failing that, to submit them to a referendum with a possible counterproposal. Citizens must be fully informed about the modalities, contents and positions involved”. Ecolo – Green party in Belgium</p> <p>“Political power must move from party headquarters to the people. This can be done by organising binding referendums... Vlaams Belang wants to introduce binding plebiscites. Citizens should be able to take an initiative themselves provided they have the required minimum number of signatures”. Vlaams Belang – Radical-right party in Belgium</p> <p>“Referendum as emergency brake. It is good if voters can pull the emergency brake on laws passed by parliament in an extreme case. This boosts confidence in parliamentary democracy. There will be a binding, corrective referendum with an outcome threshold in line with advice from the Council of State: the result is only valid if the winning majority comprises at least half of the voters at the last elections to the House of Representatives”. ChristenUnie – Conservative party in the Netherlands</p> <p>“The referendum must be accompanied by comprehensive and objective information beforehand, involving citizens as much as possible”. Parti Démocratique (PD) – Liberal party in Luxembourg</p>
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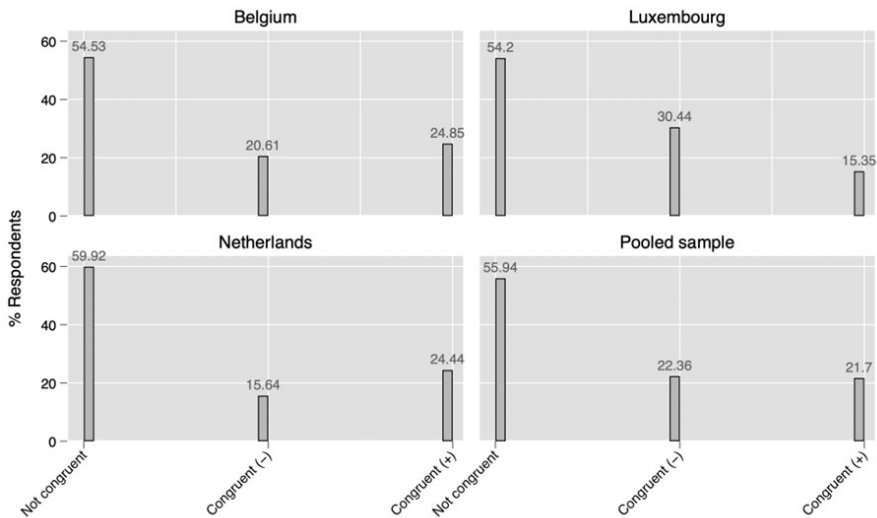
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“We also want to make greater use of popular consultations and/or referendums. We propose the establishment of direct consultations on social issues that concern citizens. This mechanism of direct democracy aims to strengthen citizen participation in the political decision-making process on an ad hoc basis”.  
 Mouvement Réformateur (MR) – Liberal party in Belgium

“D66’s analysis in its founding years still holds true today. Democracy and public administration need a thorough renovation. Therefore, when a new instrument like the consultative referendum is used for the first time, we embrace it and learn from it”.  
 Democraten66 (D66) – Liberal party in the Netherlands

Since we had not such a fine-grained information on the side of the voters (i.e., on preferences for binding or consultative referendums), party-voter congruence is finally operationalised as a categorical variable. The first, baseline group is composed of the voters who are not congruent with their party, meaning that they do not share the same position towards referendums (coded = 0, 56%). This points towards a frequent gap between voters’ demand and parties’ offer in terms of direct democracy. The second group encompasses the voters who are congruent with their party, but regarding a neutral or negative stance (coded = 1, 22.3%). The third and last group is made of the pro-referendum citizens who voted for a party that made favourable claim to referendum as alternative or complementary policy instrument in their manifesto (coded = 2, 21.7%) (Figure 2).

**Figure 2** *Distribution of party-voter congruence*



**4.4 Independent Variables**

To test our hypotheses, we rely on different measurements of ideological preferences. They are first operationalised via three different attitudinal indicators. The first two are objective and intend to place respondents both on the economic



and cultural dimension of the political space. The variable *economic attitudes* measures respondents' stance on redistribution. ("It is the responsibility of the government to reduce the differences in income between people with high incomes and those with low incomes". Strongly disagree = 1, strongly agree = 5), with respondents (strongly) disagreeing with the item expressing right-wing preferences. The variable *cultural attitudes* are opinions towards immigration. ("My country is made a worse place to live by people coming to live here from other countries". Strongly disagree = 1, strongly agree = 5), with respondents scoring 4 or 5 being perceived as culturally right-wing. These two variables were both rescaled into 3 categories: left, centre (neutral) or right opinions. We rely also on left-right self-placement as a third, yet more subjective attitudinal indicator of left-right preferences. Respondents were asked to place themselves on a scale ("In politics people sometimes talk of 'left' and 'right'. How would you place your views on the scale below?") ranging from 0 (far left) to 10 (far right). Based on this, the variable *left-right placement* organises respondents into three groups: those who score lower than 4 (left leaning), 5 (centrist), or higher (right leaning). Moreover, to test H3, the variable *extreme placement* distinguishes those respondents who locate themselves on the extreme left or extreme right side of the axis (i.e., score 0-1, or 9-10, coded 1) from the moderate who score otherwise (coded 0). Along with the three attitudinal measurements, we also relied on a behavioural indicator. Party preferences are respondents' voting choice in the last national election ("Which party did you vote for in the last national elections?"<sup>6</sup>). Voters and their party were reorganised into four big categories, what allows to assess both left-right and radical-moderate preferences: radical left, mainstream left (social democrats and Greens), mainstream right (conservative and liberal) and radical right. From that, we also computed two dummies: radical party preferences (moderate = 0, radical = 1) and left-right party preferences (left = 0, right = 1). The respondents who cast a protest vote (blank or for a micro 'other party') or did not vote have been assigned a missing value (Table 4).

**Table 4** *Distribution of independent variables*

	N	%			
		Pooled	BE	LU	NL
Ideological preferences					
<i>Economic attitudes</i>					
Left	2,791	42.4	46.6	36.3	43.7
Centre/neutral	1,198	18.2	16.2	20.3	18.8
Right	2,593	39.4	37.2	43.4	37.5
<i>Cultural attitudes</i>					
Left	2,628	40.1	40.6	41.6	37.1
Centre/neutral	1,428	21.8	22.2	19.1	24.6
Right	2,503	38.1	37.2	39.3	38.3
<i>Left-right self-placement</i>					

**Table 4** (Continued)

	N	%			
Left	2,040	33.9	28.0	42.2	32.0
Centre/neutral	1,561	26.0	24.0	31.0	21.8
Right	2,412	40.1	48.0	26.8	46.2
<i>Extreme self-placement</i>					
Moderate	5,170	86.0	83.9	85.8	89.9
Extreme	843	14.0	16.1	14.2	10.1
<b>Party preferences</b>					
<i>Left-right</i>					
Left	2,008	42.5	48.5	41.4	35.1
Right	2,720	57.5	51.5	58.6	64.9
<i>Radical-moderate</i>					
Moderate	3,526	74.6	71.2	86.7	66.7
Radical	1,202	25.4	28.8	13.3	33.3
<i>Left-right/ radical-moderate</i>					
Radical left	528	11.2	15.2	6.7	10.1
Moderate left	1,480	31.3	33.3	34.7	25.0
Moderate right	2,046	43.3	37.9	51.9	41.7
Radical right	674	14.2	13.6	6.7	23.2

#### 4.5 Modelling Strategy

The first set of models intend to test H1 to H4, using the individual-level support for referendums as main dependent variable. To see the main patterns and relationships between our predictors and the ordinal dependent variable, we report the results of ordinal logistic regressions. Since there is a significant relation between left-right self-placement and party choice<sup>7</sup>, we decided to proceed stepwise: M1a introduces attitudes (ideological preferences), M1b behaviours (party preferences), while M1c and M1d test the two at the same time. The second set of models analyses the capacity for parties and voters to be congruent on direct democracy stances (H5 and H6), using party preferences as the main predictor (and adding three-party-level controls). We ran two logistic regressions where the reference group (incongruent party voters) is either contrasted from voters who are congruent with their party on a positive view (M2a) or from those who adopt similar neutral/negative stance (M2b). To better interpret and compare effect sizes within and across logistic models (Menard 2011), we report in the main text standardised coefficient estimates for all the regressions. Although the standardisation of the main independent variables does not make much sense (as they are categorical), most controls are used in a continuous format and hence we preferred opting for scaling the whole model. We also replicated the first model by country subsample to see whether the results were holding in national samples.

This was more complicated for the second model, as some categories could turn either missing (on the predictor side) or fully predicted (on the predicted side). The full specification and outcomes are available in Appendix 4. It is finally worth noting that for the main independent variables used in our models, the right-wing categories are used as a reference group to match with the direction taken by the hypotheses. Variation inflation factors (mean = 1.21 for M1, 1.53 for M2) do not stress any alarming problem of multicollinearity, staying in a decent range of values going from 1.0 to 2.3 in both models. Besides, we have overall stressed that correlations among the independent variables were rather moderate and acceptable.

#### 4.6 Control Variables

Our models control for several other explanations of direct democracy support and hence include several control variables. For the explanation based on the level of socio-political resources, along with the socio-demographic profile (age and gender), we added (1) educational attainment (OECD classification recoded in three categories: low, middle and highly educated), (2) income security (“How you feel about your household’s income nowadays?” – find it very difficult to live = 1, living very comfortably = 5), (3) self-reported political interest (“How interested would you say you personally are in politics?” – not interested at all = 1, very interested = 4), (4) self-reported political competence/internal political efficacy (“Politics is too complicated for people like me” – strongly disagree = 1, strongly agree = 5).<sup>8</sup> For the explanation related to political distrust, we relied on (5) trust in representative institutions, measured as how much confidence respondents have in parliament, political parties and politicians on a scale ranging from 1 (not trust at all) to 5 (high trust). The mean scores on these items were averaged, creating a scale of trust (Cronbach alpha = 0.89). To deal with populist predispositions, we included two items from Akkerman et al.’s (2014) classical battery on populist attitudes that was part of the survey. They tap into two relevant sub-dimensions of populist attitudes: (6) anti-elitism (“The political differences between the elite and the people are larger than the differences among the people” – strongly disagree = 1, strongly agree = 5) and (7) people-centrism (“The people, and not the politicians, should make our most important policy decisions” – strongly disagree = 1, strongly agree = 5). It is worth noting, first, that both items correlate positively together, yet weakly.<sup>9</sup> Likewise, anti-elitism associates positively with distrust but only moderately.<sup>10</sup> Second, despite the ordinal nature of all the individual-level control variables (except trust), they are treated as a continuous factor in all our models because they are not deemed to be discussed in the results section. Finally, in the second set of models where party-voter congruence is used as the main dependent variable, three-party-level controls were associated depending on the party that the respondent voted for: (8) party age (continuous factor based on the origins of the creation of the party organisation, proxy for institutionalisation), (9) parliamentary size (proportion of seats held in the national parliament during the legislature preceding the election, proxy for institutionalisation) and (10) incumbency (dichotomous variable indicating whether in power during the national legislature preceding the election, thereby controlling for a winner/loser gap) (Table 5).

**Table 5** *Descriptive statistics of the control variables*

	N	Min	Max	Mean			
				Pooled	BE	LU	NL
(1) Educational attainment	6,655	1	3	2.3	2.3	2.4	2.2
(2) Income security	6,518	1	5	3.4	3.3	3.6	3.4
<i>Political resources</i>							
(3) Political interest	6,609	1	4	2.9	2.8	2.9	2.9
(4) Political competence (efficacy)	6,519	1	5	3.0	3.0	3.0	3.0
<i>Political distrust</i>							
(5) Trust in	6,617	1	5	2.8	2.7	2.8	2.9
<i>Populist attitudes</i>		1	5	1.7	1.8	1.5	1.6
(6) Anti-elitism	6,580	1	5	3.3	3.5	3.1	3.3
(7)	6,537	1	5	3.1	3.2	3.1	3.1
<b>Party-level (M2 only)</b>							
(8) Party age	4,799	3	176	66.1	88.7	59.8	41.4
(9) Party parliamentary size	4,799	0	35	12.7	9.2	19.7	9.9
(10) Party incumbency	4,799	0	1	.38	.30	.56	.31

## 5 Findings

Do left-wing people support more the use of referendum than right wing? This is a question that is addressed by the first model. The outcomes for the pooled sample (with country fixed effects) are summarised in the following table (full model specifications are available in Appendix 4). To better interpret the results and capture the significant differences in probability between the groups, we have systematically calculated and plotted the predictive margins of the independent variables that display statistically significant coefficient estimates. We also briefly discuss whether the results hold across countries (Table 6).

**Table 6** *Outcomes of the first model*

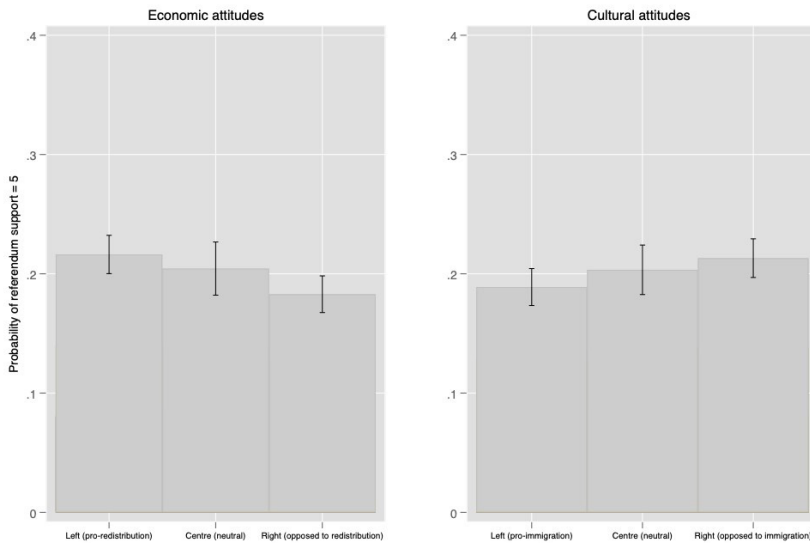
<b>DV = referendum support (1-5)</b>	<b>M1a</b>	<b>M1b</b>	<b>M1c</b>	<b>M1d</b>
<b>Economic attitudes</b> (ref = right)				
Left	0.052***		0.057***	0.057***
Centre	0.012		0.028	0.028
<b>Cultural attitudes</b> (ref = right)				
Left	-0.029*		-0.041*	-0.041*
Centre	-0.010		-0.013	-0.013
<b>Left-right self-placement</b> (ref = right)				
Left	-0.055***		-0.048**	-0.048**
Centre	0.027*		0.034*	0.034*
<b>Left-right party preferences</b>				
Left		-0.016	0.002	
<b>Extreme self-placement</b> (ref = moderate)				
Extreme	0.014		0.016	0.016
<b>Radical party preferences</b> (ref = moderate)				
Radical		0.051***	0.046**	
<b>Radical X left-right preferences</b> (ref = moderate right)				
Radical left				0.029
Moderate left				0.007
Radical right				0.045**
<b>Controls</b>	YES	YES	YES	YES
<b>Country fixed effects</b>	YES	YES	YES	YES
N	5,457	4,395	4,097	4,097
Pseudo R square (%)	3.6	3.4	3.4	3.8
Model	Ordered logistic regression			

The table displays only standardised coefficient estimates and their statistical significance (\*\* $p < 0.001$ , \*\* $p < 0.01$ , \* $p = 0.05$ ) for the main independent variables. The full model specification is available in Appendix 4.

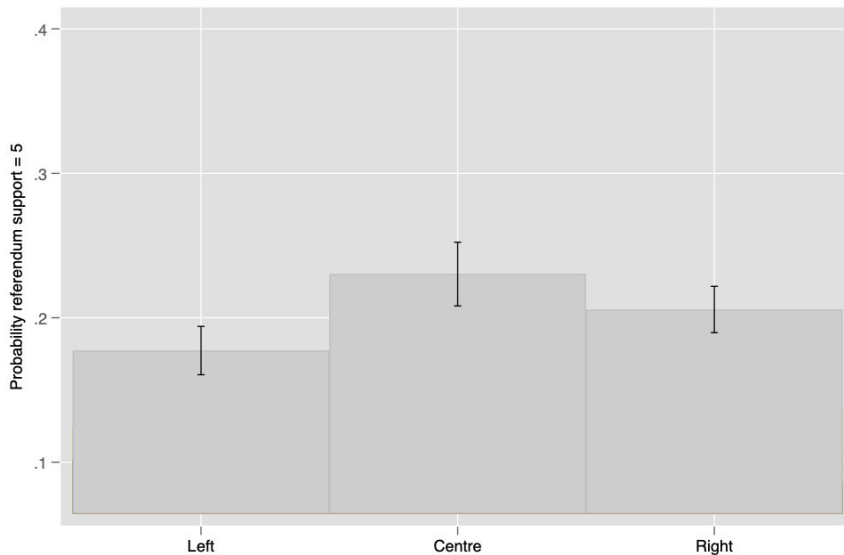
Regarding this first question, our analysis does not provide a univocal, straightforward answer. First, on the top of many other explanations, we still found that people who adopt a left-wing stance on the economy (pro-redistribution) have, as expected, higher probability to support referendums. The first graph in Figure 3 shows that the odds to strongly support referendums are significantly higher among people endorsing redistributive economic policies compared with

those who favour economic individualism. Comparing the effect size with the other significant variables in the model reveals that economic attitudes are the most important ideological driver of referendum support among our respondents.

**Figure 3** *Predictive margins of economic and cultural attitudes*



Although this finding could tend to provide evidence in favour of our first expectation (H1), generalising and saying that left-wing people are the main supporter of direct democracy would be a terribly misleading and simplifying claim. The reality appears to be more complex, as the same conclusion does not hold, in fact, when we look at the effects of the other attitudinal indicators. Counterintuitively, we found a reverse association between cultural attitudes and referendum support. As shown in the right-hand graph of Figure 3, people who adopt inclusive, pro-immigration opinions turn to have significantly lower probability to support referendums than the right-wing group. In the same direction, as the next figure illustrates, people who placed themselves on the left side of the political space have also lower chances of being positive towards the use of referendum than those on the right. All in all, this could mean two things. First, the left-right self-placement now better reflects the cultural divide, and what people understand by what is 'left' or 'right' refers much less nowadays to socio-economic views than how they position on socio-cultural issues (de Vries et al. 2013; Giebler et al. 2019). Second, some have suggested (Hooghe et al. 2002) that the economic and the cultural axes might be orthogonal. Hence, the supporters of direct democracy might be predominantly found in the quadrant where culturally right-wing and economically left-wing people meet. Hence, direct democracy support should be disentangled at the intersection of the socio-economic and cultural cleavages (Figure 4).

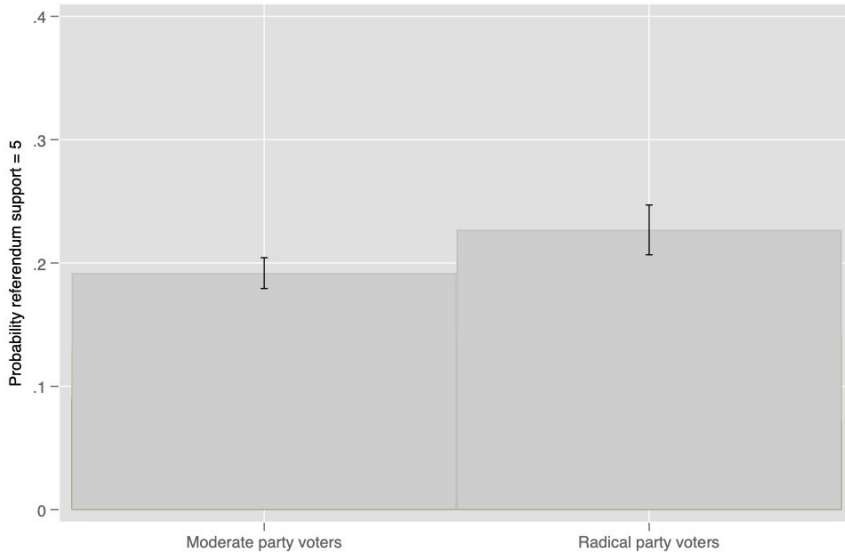
**Figure 4** Predictive margins of left-right self-placement

Our model did not confirm either that left-wing party voters could be more strongly supportive of referendums than their right-wing counterparts. No statistical difference appears between these two groups. Overall, the results regarding the first hypothesis are thus mixed and H1 is rejected. This would probably deserve deeper investigation, even more when we see that the main pattern observed in the pooled analysis seems to be driven by the Belgian sample. If the results follow the same direction in the two other countries, the coefficients are not statistically significant. Moreover, one can notice two major findings contrasting again with the main hypothesis in these countries. First, only the relationship to party preferences turns significant in Luxembourg, and the moderate right-party voters appear to be the main supporters of direct democracy. In the Netherlands, we found that people who place themselves in the middle of the left-right axis have significantly more odds for referendum support. There, direct democracy support might be a matter of people who do not identify with left or right. Acknowledging that what is perceived as 'left' or 'right' might be greatly contextual (Zechmeister 2006), the analysis of the relationship between left/right positioning and direct democracy support would benefit from larger comparisons where contextual variables could be included in the analysis.

Do radical people support more strongly the use of referendums? Regarding this second question, we did not find significant results as far as the attitudinal measurement is concerned. Citizens who position themselves at the extreme of the left-right axis do not distinguish themselves from the others as being more supportive of referendum. Yet, we did observe a clearer line of demarcation when scrutinising the behavioural predictor, which reports a significant difference

between radical and moderate party voters. As reported in the following figure, the odds of strongly supporting direct democracy are significantly higher among citizens who cast a vote for radical parties (Figure 5). This result goes totally in the direction of existing findings and our second hypothesis, although the latter is only partially corroborated. Moreover, by-country results seem to suggest that this finding is mainly driven by the Luxembourg sample, as it does not turn significant in the two other countries.

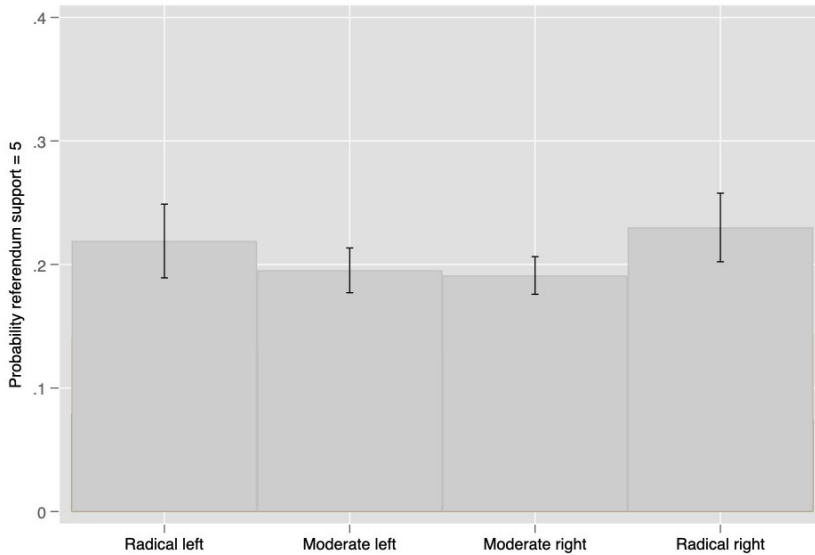
**Figure 5** *Predictive margins of radical party preferences*



Furthermore, as recent works have shown as well, we did not observe a significant difference between radical left- or right-party voters in their chances to hold a positive opinion towards direct democracy, and so in all the three countries. This means that H3 is fully supported. Moreover, we argued that the left-right divide could be more important once looking at voters of ‘ideological’ parties. Yet, we found no evidence to claim that mainstream left-party voters could be more supportive of referendum than their moderate right-wing counterparts. Both groups display relatively similar chances to be positive towards direct democracy, as presented in the following figure. This implies that H4 is rejected. Additionally, we found a statistically significant difference on the right side of the political space, with radical right-party voters having higher odds than moderate right-party voters to hold a positive stance towards direct democracy (Figure 6).



**Figure 6** *Predictive margins of party preferences*



From that, we ask ourselves how might this align with the supply side and whether parties were pushing for referendums. First, is it true that radical parties propose more than mainstream parties, making that they could meet the higher demand among their voters and bet on direct democracy as a mobilising issue? Second, among the moderate parties is it that right-wing ideologies are supporting less referendums than left-wing ones? Providing answers to these questions inevitably falls into discussing the proximity between parties and their voters on the issue of referendums (Table 7).

This leads us to the outcomes of the second model, where we focus more precisely on the relationship between ideology and party-voter congruence. The analysis performed on the pooled sample (regression table available in Appendix 5) confirms the descriptive variations. The results reveal that compared with their mainstream counterparts, radical parties and voters (both on the right and on the left) have a higher probability to be congruent and positive towards referendums, providing good empirical credit for H5 and supporting the findings provided by both supply and demand-side studies of referendum support. However, as reported in Figure 7, the difference is statistically significant mainly regarding mainstream right ideologies, which have the lowest probability of positive congruence. The non-significant difference with the mainstream left is probably due to the presence of the Greens, which have higher positive congruence than social democrats. Switching to the last hypothesis, the model found full support for H6, as mainstream left ideologies do convey more agreement on using more referendum as policy instrument. Moreover, mainstream right ideologies stand out from the left with significant higher odds of congruence on negative/neutral view, meaning

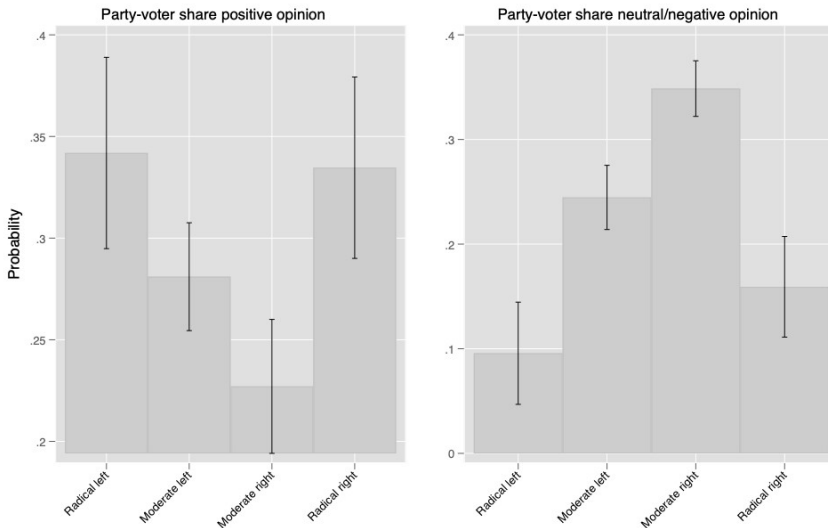
that a majority of mainstream right parties and voters tend to agree that referendums are not a solution to implement.

**Table 7** *Outcomes of the second model*

<b>DV = Party-voter congruence</b> (* Baseline = not congruent)	<b>M2a</b>	<b>M2b</b>
	<b>Positive congruence *</b>	<b>Negative congruence*</b>
<b>Radical X left-right preferences</b> (ref = moderate right)		
Radical left	0.109***	-0.233***
Moderate left	0.074**	-0.118***
Radical right	0.111***	-0.170***
<b>Controls</b>	YES	YES
<b>Country fixed effects</b>	YES	YES
N	3,403	3,434
Pseudo R square (%)	4.7	14.7
Model	Logistic regression	

The table displays only standardised coefficient estimates and their statistical significance (\*\*\*) $p < 0.001$ , (\*\*) $p < 0.01$ , (\*) $p < 0.05$ ) for the main independent variables. The full model specification is available in Appendix 4.

**Figure 7** *Predictive of party preferences (party-voter congruence)*



Overall, we believe that the results of the second model are important as they point towards another view on the link between ideology and referendum. Besides radical 'ideologies' as main promoter of direct democracy, they reveal also a strong ideological resistance among moderate right parties and voters in Benelux countries. Given that mainstream right parties have frequently been in power over the last decades in these countries, this may potentially explain why the usage has remained limited. Yet, a crucial question relates to the relatively significant proportion of moderate right voters (especially among the conservative) who are positive towards referendums, but for which their party remains less responsive. This discrepancy might become strategically but also democratically challenging because, if these voters care about direct democratic reforms as an issue, they might be tempted to move towards a more radical option, which matches more with their view on how democracy should work and back it openly in their discourses. More generally, the capacity for moderate parties to deal with the heterogeneity of voters' democratic preferences appear to be a key challenge for our current societies where radical parties are gaining ground. It also raises a promising path for further research.

## 6 Conclusion

While referendums have become an increasingly popular policy instrument in Europe over the last decades, Benelux countries have remained relatively spared by this evolution. This situation makes them particularly interesting cases to study who are the voters that would be more favourable (or not) to their use and how (some) parties are trying to respond to this demand in the electoral offer that they propose. In this article, we addressed whether ideologically based explanations for referendum support could hold when focusing on the three Benelux countries. Using survey data gathered in 2022 in the three countries, we first dismissed the idea that it could attract support from voters with a left-wing profile. More specifically, we show that, if the support for direct democracy was highly linked to left-wing economic position, it was also connected to right-wing cultural position and self-placement. This calls for further investigation that would consider economic and cultural attitudes as two orthogonal axes. As far as party preferences are concerned, we found the expected line of demarcation between radical and mainstream ideologies, with radical voters having greater odds of support of direct democracy, as well as more chances to find their party aligned on their demand. We also confirmed previous findings by showing no difference between radical right and left voters on these aspects. Among the moderate ones, our main finding is that mainstream left parties and voters tend to align more on positive opinions towards direct democracy than the mainstream right. Although the literature on direct democracy has mainly focused on populist/radical parties and voters, our findings regarding mainstream ideologies show a fundamental reluctance on the right side of the traditional political spectrum, or also a certain attachment to the status quo and the principles of representation. This majority consensus among right-wing parties and voters (but also present among moderate left) can probably

partially account for why this mechanism has never really taken off in these countries, while it was the case elsewhere in Europe.

Finally, one major limitation of this study is perhaps to have too generic a measurement of referendum support, while, in fact, opinions both on the sides of the parties and voters are far more complex and highly contingent (e.g., on their binding or consultative nature, on their perceived favourable policy outcomes or still on the context, as the by-country analyses have suggested). This limitation opens the floor for further research. Many blind spots in the study of direct democracy and referendums remain. One is the lack of comparative efforts trying to articulate systematically the demand for direct democracy among the citizens and the political parties' support for the mechanism, in their electoral manifesto or once they are in office (Close et al. 2022). This article was a first starting point to fill the gap. We would nonetheless need to pay more attention on the party awareness of the citizen demand for direct democracy and whether they integrate it in their electoral strategies. In that regard, the position of mainstream parties and their evolution would deserve some investigation. Another area of research is the link between parties and voters' support for referendum and other forms of citizen participation (e.g., deliberative), or still how they articulate citizen participation with election or other forms of non-elected politics (e.g., technocracy). We could also dig more into the consequences of the use of referendums and how both parties and voters react once the instrument produces policy results. To conclude on the Benelux case, one crucial prospective question is also whether the electoral success of radical parties in these countries could end up into revitalizing the debate around the implementation and use of direct forms of democracy.

For the Appendices referred to in this article, please see <https://www.elevenjournals.com/tijdschrift/PLC/2023/1/PLC-D-22-00019A>.

## Notes

- 1 For the Appendices referred to in this article, please see <https://www.elevenjournals.com/tijdschrift/PLC/2023/1/PLC-D-22-00019A>.
- 2 Please note that the data used in this article were collected in the framework of a larger project studying non-elected forms of democracy in Europe (ERC-funded project Cure Or Curse, grant agreement No 772695, politicize.eu), and a research convention (U-AGR-8113-00-C) on the Luxembourg Climate Citizens' Assembly established between the University of Luxembourg and the Luxembourg government.
- 3 For Luxembourg, the education quota was difficult to implement on the side of the survey company. Instead, they used also professional activity and citizenship, given the singularity of the Luxembourg population (high proportion of residing non-nationals). Luxembourg's responses are also weighed on these aspects.
- 4 The difference in size is mainly due to fieldwork circumstances and survey companies' recruiting capacity. We initially contracted for a representative sample of (at least) 1,500 respondents in each country but agreed for larger sample if data quality was ensured.

- 5 The main key words for the search were ‘referendums’, ‘citizen initiatives’, ‘popular consultation’ and ‘direct democracy’.
- 6 Since the electoral system is different in Luxembourg, citizens being allowed to allocate their vote to several parties/candidates, the question was the following: *To which of the following political parties did you give most of your votes during the last 2018 national elections in Luxembourg?*
- 7 A chi-square test of independence indicated that there was a significant association:  $\chi^2(6, N=4423) = 773.7, p = .000$ .
- 8 The scale has been reversed for the analyses to follow the direction of the other variables, i.e., the higher the value, the more resourceful.
- 9 Spearman’s rank correlation coefficient = .22 ( $p = .000$ ).
- 10 Spearman’s rank correlation coefficient = .26 ( $p = .000$ ).

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# Direct Democracy Integrity in Modern Authoritarian Systems

## The Constitutional Referendum in Turkey 2017 and Russian Plebiscite in 2020

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### Abstract

*Modern authoritarian regimes have implemented a relatively large number of referendums in recent decades. These have had important consequences for institutional change. Applying the new Direct Democracy Integrity Index to the Turkish constitutional referendum in 2017 and the Russian constitutional referendum in 2020, this analysis determines whether these plebiscites fulfil the standards of integrity and respect the rights of oppositional parties and minorities. We found that the level of integrity was lower during the pre-election period than during the election or the post-election period. We observe that modern authoritarian systems such as Russia (in 2020) use strategies of mobilisation, activism and even modern forms of deliberative democracy. However, their strategies are characterised by propaganda. In contrast, authoritarian regimes (such as Turkey) are still implementing strategies of repression which lead to passivity, disengagement and apathy. Both have strong implications for the integrity of referendums.*

**Keywords:** referendum, integrity, modern authoritarianism, opposition.

### 1 Introduction

Direct democracy is considered an important instrument of democratic innovation and a panacea against the crisis in parliamentary and presidential systems. It has been argued that referendums strengthen political legitimacy (Bowler and Donovan 2002), increase feelings of efficacy (Bowler and Donovan 2002; Mendelsohn and Cutler 2000; Qvortrup 2018) and mitigate conflicts (Collin 2014). Nevertheless, modern authoritarian leaders also use referendums as a tool to bolster their legitimacy.

This analysis of two case studies, Turkey and Russia, contributes to academic research on modern authoritarian regimes (Levitsky and Way 2002; Puddington and Roylance 2017) as well as on electoral integrity (Schedler 2006; ). Numerous

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terms have been used to refer to modern authoritarian regimes including “semidemocracy”, “virtual democracy”, “pseudodemocracy”, “illiberal democracy”, “soft authoritarianism” and “electoral authoritarianism” (Levitsky and Way 2002: 51). Although characterised by authoritarian leadership, primarily by one individual, these regimes often adopt democratic institutions to maintain power and gain domestic and international legitimacy (Levitsky and Way 2002: 57). Their stability is reliant on their leaders’ ability to act effectively and legitimise their power on different levels including by establishing mechanisms of representation and participation that help justify their authoritarian practices. One such tactic is to “validate autocracy through the ballot” (Levitsky 2002: 10).

In recent years, democratic innovation in numerous countries (such as Ireland and Chile) has seen constitutional referendums combining direct democracy with deliberative democracy (Welp and Soto 2020). This technique is also being deployed in some authoritarian countries. However, it has also been argued that modern authoritarian systems are using these deliberative instruments to develop deliberative authoritarianism (He and Warren 2011). This study investigates whether this deliberative constitution making is being used in authoritarian systems such as Russia and Turkey. If so, how is it being combined with direct democracy and what effect does it have on the integrity of the referendums? Therefore, our second research question focuses on the use of deliberative tools in the constitutional review processes of Turkey and Russia. We hypothesise that the integrity of referendums in these countries is often dubious. Modern authoritarian systems<sup>1</sup> typically use repressive measures to demobilise civil society leading to political apathy and disengagement. However, authoritarian systems may also attempt to mobilise citizens and activate voters using propaganda and participatory instruments.

We here analyse Turkey and Russia using a new research instrument that measures direct democratic integrity. This tool was first applied to Turkey in 2017 (Kersting and Grömping 2021 and, later, to the democratic system in Italy in 2020 (Kersting and Regalia 2023). This is the first comparative analysis article on applying this tool to two authoritarian systems. Both of these case study countries transitioned from more democratic systems to systems with very strong authoritarian presidents. Both used referendums to strengthen the incumbent’s power.

Turkey and Russia are also both considered hybrid modern authoritarian regimes in which democratic institutions are regularly misused, subverted and instrumentalised for the purpose of electoral legitimisation (see Coppedge et al. 2018). Under the Erdogan government, particularly since the attempted coup of 2016, Turkey has been considered an electoral autocracy (Baghdady 2020). In the 1990s, Russia was characterised as a “defective democracy” regime, that is, it incorporated not only democratic but also authoritarian and anarchic elements (Mommsen 2019: 29). However, Russia has transformed under the presidencies of Vladimir Putin and has been a strictly “managed democracy” since 2000. As the term suggests, constitutional principles have been bent and democratic institutions and procedures manipulated to authoritarian ends (Mommsen 2019: 29). This study contributes towards filling the gap in research on how referendum integrity

operates under undemocratic conditions. Considering the integrity and fairness of referendums for minorities and the opposition to be crucial, we have investigated the level of integrity of constitutional referendums in authoritarian systems.

By comparing the integrity of referendums in Turkey (2017) and Russia (2020) based on the results of the new Direct Democracy Integrity (DDI) Index and its expert survey, the following study develops a theoretical framework for identifying the links between modern authoritarianism, referendums and deliberation. Section 2 presents the methodical and empirical approach used to assess the integrity of the referendum as an instrument of direct democracy. We compare the integrity of referendums in Turkey (2017) and Russia (2020) using the new DDI-Index and its expert survey. Section 3 compares the political context of the referendum in Russia to that in Turkey. Section 4 presents the results of the expert surveys for Russia and Turkey and provides further detail on some of the empirical data. Section 5 presents our conclusions.

## 2 Plebiscites and Referendums under Autocracies

Modern authoritarianism has several defining characteristics: among them, an “illusion of pluralism that masks state control over key political institutions”, “state or oligarchic control over key elements of the national economy”, “legalized political repression” and “suppression of nongovernmental organizations (NGOs) that focus on human rights or political reform” (Puddington 2017: 6). In such regimes, democracy is essentially corrupted as the regime must control election outcomes for, as Puddington demonstrates,

they need to hold votes to validate their rule, but they also recognise the risk involved, as elections remain a potent instrument of democratic renewal even in deeply troubled societies. (2017: 14)

They are looking for, to use Max Weber’s term, “legitimate domination” in which the governed accept authoritarian rule because the leader comes “from an authoritative source” or because “they accept the reasons provided by the rulers” (He and Warren, 2011: 6).

Despite the awareness of these issues, the role plebiscites and referendums play in autocracies remains largely overlooked in the literature (the prominent exceptions being Altman 2010; Qvortrup 2018). Mechanisms of direct democracy have been extensively deployed in authoritarian states since the revolution in late-eighteenth-century France (Altman 2011: 88). The most notorious cases took place in Nazi Germany and there have been more recent cases in Romania under Ceausescu and the Philippines under Marcos. Most of the votes in these regimes were marred by massive fraud, coercion and blatant propaganda. Qvortrup (2018: 15) suggest that autocracies use referendums to “intimidate and control the population” and “disorganize its potential opponents”. They also find that referendums are most often used in autocracies with high ethnic fractionalisation and ‘sultanistic’ regimes, while post-communist states are less likely to use

plebiscites. According to other studies, party-based autocracies also rarely use plebiscites as they rely less on personal charismatic power and obtain political legitimacy through alternative channels (Monje and de la Cruz 2019).

The integrity of a referendum as a direct democratic instrument highlights normative standards. Direct Democracy Integrity focuses on a free and fair referendum process that ensures equal universal suffrage, in particular, and protects minority rights by facilitating campaigns that enable free expression for both ruling and opposition parties, in addition to majorities and minorities. The concept is very closely related to electoral integrity, which has been the focus of international research projects since 2012 (see Norris et al. 2014). Election integrity is based on Article 2 (3) of the Universal Declaration of Human Rights (1948). The Electoral Integrity Project (EIP) has already demonstrated that electoral malpractices often occur on polling day (stuffed ballot boxes) and during the vote count (vote rigging). The question, now, is whether the level of integrity is compromised in any phase of a referendum. Until recently, research into and the analysis of plebiscites have been quite limited. Therefore, this study sheds the much needed light on how referendum integrity is affected under non-democratic conditions using Russia and Turkey as paradigmatic case studies.

### 2.1 *Authoritarian Deliberation*

Deliberation is a “mode of communication involving persuasion-based influence” (He and Warren 2011: 3). Essentially, increased use of deliberative practices can stabilise and strengthen an authoritarian regime or can serve as a tool for democratisation. Therefore, deliberation is not intrinsic to democracy. When combined with non-inclusive power, it becomes authoritarian deliberation. This hybrid form of deliberation does provide “space for people to discuss issues, and to engage in the give and take of reasons, to which decisions are then responsive” (He and Warren 2011: 12). However, authoritarian deliberation “is not in itself a decision-making procedure” as authoritarian control also implies control of the agenda, not only in terms of which “policies or issues are deliberated, but also the forums, levels of organization, timing, and duration” of the discussions (He and Warren 2011: 12). Thus, authoritarian regimes have a particularly complex relationship with the media. Essentially, Puddington (2017: 11) has highlighted how new authoritarian regimes target key media that are perceived as having the “greatest impact on public opinion” and, thereby, the greatest influence on people’s votes. By exerting “state or oligarchic control” over such media outlets, according to Puddington, those in power are able to control “information on certain political subjects and key sectors of the media, which are otherwise pluralistic, with high production values and entertaining content”.

In He and Warren’s (2011) analysis, which focuses predominately on China, they identify ideal communication techniques based on the distribution of powers. The communication techniques include purely instrumental (i.e. the “use of communication to express preferences, without regard to the preferences of others”), strategic (i.e. the “use of communication to express preferences, with the aim of maximizing an agent’s preferences while taking into account the preferences of others”) and deliberative (i.e. the “use of communication to influence the

preferences, positions, arguments, reasons, and justifications of others”). According to their study, deliberative authoritarianism is an uncommon type of rule “in which powers of decision are concentrated, but power holders enable communicative contexts that generate influence (responsiveness to claims, reasons, and empathy) among the participants” (He and Warren 2011: 12). Therefore, this strategy involves more than the solicitation of input associated with consultative authoritarianism, in which those in power “collect the preferences of those their decisions will affect and take those preferences into account... [in] their decision-making” (He and Warren 2011: 12). In contrast, in command authoritarianism (traditional), power holders “use communication solely to indicate the content of commands”.

As seen in recent years, critical constitutional referendums have been held in (semi-) authoritarian systems including the Philippines (1977), Uganda (2000), Zimbabwe (2000), Comoros (2001, 2009), Congo-Brazzaville (2002), Madagascar (2007), Venezuela (2008), Crimea (2014) and Belarus (2022). In most of these cases, authoritarian leaders used these referendums to bolster their legitimacy. For example, in the referendum in Zimbabwe, the government implemented broad outreach programmes and deliberative democratic instruments that were characterised by strong propaganda in favour of the incumbent President Mugabe (see Kersting 2023).

### 3 Assessing the Integrity of Referendums

Direct democratic instruments of participation, such as referendums (Qvortrup 2018; Setälä and Schiller 2009), are instruments of democracy that focus on the thematic topics and policies rather than on the election of personnel and candidates. There is also a wide range of different institutional settings, and this complicates the evaluation of direct democracy in referendums (Kaufmann et al. 2010;). In the analysis that follows, direct democracy and referendums will be used synonymously as umbrella terms. The typology of referendums is based on who initiates them and what topics they are allowed to deal with. They are either mandatory or initiated from a top-down or bottom-up perspective. Plebiscites are initiated from above, usually by the executive. Referendums can be binding or consultatively determined by constitutions or electoral law and usually involve specifically defined legal requirements such as quorums and time frames. Subjects may include a new constitution or particular constitutional or other legal issues. In the following, in addition to the umbrella terms mentioned earlier, we use the terms *constitutional referendum* and *plebiscite* when referring to the 2017 Turkish and 2020 Russian constitutional votes, respectively. Both included a broad constitutional review. The Russian national vote is considered a plebiscite because it did not follow the regulations for a constitutional referendum as defined by the electoral laws (see section 20 Russian federal law). In contrast, the Turkish referendum, which had to be held because it did not get a clear majority in Parliament, was indirectly initiated by the President.

In this study, we have also used a referendum cycle model based on the electoral cycle framework (EC 2006; Norris 2014). Drawing on the work of the EIP (Norris et al. 2014), a theoretical framework was built to construct a new measurement instrument for use in expert surveys (see Kersting and Grömping 2021). The new empirical instrument, or the DDI-Index, was first tested in a pilot study on the Turkish constitutional referendum of 2017 and then on the Italian referendum of 2020 (see Kersting and Regalia 2023). Finally, the tool was applied to the Russian constitutional referendum of 2020.

### 3.1 *The Referendum Cycle and the DDI-Index*

The DDI-Index is based on the EIP. The EIP has been using its Perceptions of Electoral Integrity (PEI) Index to analyse all parliamentary and presidential elections globally since 2012 (Norris 2014; Norris and Grömping 2019). Both the PEI Index and the DDI-Index draw on experts' assessments and a survey questionnaire. The newer DDI-Index was specifically built to assess the quality of referendums.

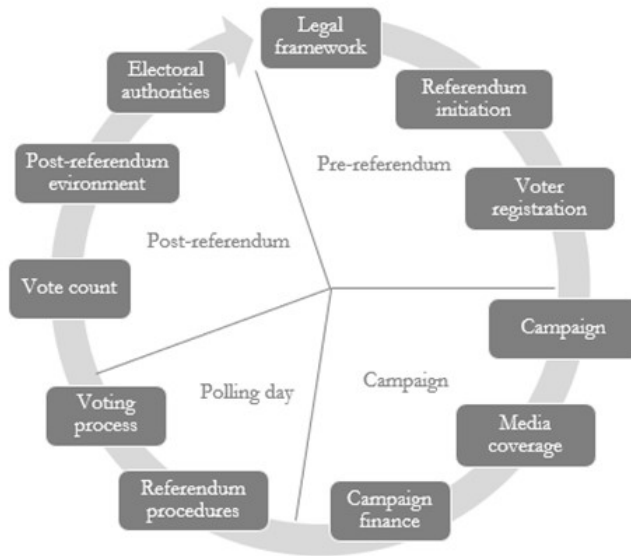
The approach taken by the DDI-Index is based on the electoral cycle framework developed by the EIP (EC 2006; Norris 2013) and divides each referendum into four phases: pre-referendum, campaign, polling day and post-referendum (see Kersting and Grömping 2021, see Figure 1). The characteristics of a referendum are similar to those of an election in the polling day and the post-referendum phases. However, referendums are extremely different in the two pre-polling day phases. Referendums are initiated differently, involve different legal requirements and instruments and other actors become relevant. The DDI-Index assesses the quality of the referendum in relation to eleven dimensions. In the pre-referendum phase, the legal framework, referendum initiation process and voter registration are the significant dimensions. In the campaign phase, the campaign itself, the media coverage and campaign finance play an important role. On polling day, it is essential to evaluate the referendum procedures and the voting process. Finally, in the post-referendum phase, the vote count, post-referendum environment and electoral authorities are the key dimensions. Each dimension has a number of indicators and questions that must be considered (for further details and the list of questions used in the survey, see the Appendix in Kersting and Grömping 2021). While much media coverage has focused on irregularities such as ballot box stuffing, 'ghost voting' and vote count falsification, problems can also emerge through the formulation of the legal framework, the media's campaign coverage or campaign financing. Thus, procedural integrity can be broken at any step of the referendum cycle.

Specifically, regarding the pre-referendum phase, some factors are crucial to the procedural integrity of the referendum: the legality of the process, the existence of bias in favour of the status quo in how the referendum is conducted and the extent to which the executive uses its privileged position to dominate the agenda-setting process. The form of the referendum topic is also important. In this regard, "accurate, balanced, accessible, and relevant information about the referendum topic" and the "unambiguous wording of the referendum question

itself” are all important safeguards that may help protect the integrity of the vote (Kersting and Grömping 2021: 7).

As has been shown, combining deliberative democracy and direct democracy is becoming more common. Therefore, any use of deliberative democracy is also accounted for by the DDI- Index as an important feature of the pre-referendum phase.

**Figure 1** *The Direct Democracy Integrity Cycle*



Source: Kersting and Grömping 2021.

### 3.2 Methodological Instrument

The discussion until now has focused on the procedural factors before, during and after polling day. In order to assess the integrity of referendums in a systematic, comparable and suitably fine-grained manner, the DDI-Index has been constructed by adopting and adapting the approach used by the EIP’s PEI Index. The DDI-Index’s survey questionnaire includes fifty-nine measures in the eleven sub-dimensions of referendum integrity covering the whole referendum cycle defined earlier. The eleven sequential sub-dimensions reflect the dimensions of the referendum cycle (see Figure 1). When completing the survey, experts were asked to indicate whether they agree with the statements about approximately sixty integrity items on a five-point Likert scale (strongly disagree – to strongly agree). Election expert is defined as a political scientist (or other social scientist in a related discipline) with demonstrated knowledge of the electoral process in a particular country (for example, through publications, membership of a relevant research group or network or university employment.) Survey invitations were sent to 230 experts on Turkey in mid-June 2017 and to 250 experts on Russia at the end of 2021, with



two follow-up reminders one week apart each. We received forty-five responses on Turkey and fifty on Russia, representing a response rate of around 20% for Turkey and 18% for Russia. The results were controlled for inconsistencies and biased answers in the different pro and contra groups.

#### 4 The 'Constitutional Plebiscites' in Russia, 2020 and in Turkey, 2017: Political Contexts

In April 2017, 46 million Turkish people voted in the popular referendum, either in Turkey or from abroad, with a turnout of 85.3%. The yes-vote won only with a small margin: 51.4% voted in favour of the new constitution and 48.6% voted against it (Zirh et al. 2020; see Table 1). In Turkey itself, there was a split between urban and rural areas. In particular, the east of the country (with a predominantly Kurdish population) along with the bigger cities and richer tourist areas on the Mediterranean voted against the constitutional amendments. The rural population in central and northern Turkey, which is a stronghold of Erdogan's ruling party AKP voted in favour of the constitutional amendments.

As a result of the binding constitutional referendum, the 2017 constitutional reform introduced a strong presidential system (see Makovski 2017). The approved amendments to the constitution abolished the office of Prime Minister and strengthened the executive role of the President within the Turkish political system (Öney 2018). This change from a parliamentary to a presidential system included considerable expansion of the presidential rights. For example, the Turkish president can now appoint the Supreme Board of Judges and Prosecutors (*Hâkimler ve Savcılar Yüksek Kurulu, HSYK*). While a small number of provisions in the referendum package strengthened the Parliament (the number of seats in Parliament was increased from 550 to 600), in general, power was centralised within the person of the President and checks and balances were weakened (Yilmaz 2020).

Turkey became an electoral democracy with many characteristics of modern authoritarian regimes (Baghdady 2020). As in the early 2010s, the 2017 referendum did not follow the constitutional review process (see Petersen and Yanasmayan 2020). However, a referendum did not eventuate in the 2010s, although a relatively broad constitutional debate did. In contrast, the 2017 referendum was characterised by a lack of freedom of information and repression. Moreover, the referendum was implemented during a state of emergency with the aim of strengthening presidential powers.

**Table 1** *Results of the 2017 Turkish Constitutional Referendum and the Russian Nationwide Vote 2020*

<b>Turkey, 2017</b>			<b>Russia, 2020</b>		
<b>Response</b>	<b>Votes</b>	<b>%</b>	<b>Response</b>	<b>Votes</b>	<b>%</b>
Yes	25.2 Mio.	51.4	Yes	57.7 Mio	78.6
No	23.8 Mio.	48.2	No	15.7 Mio	21.4
Registered voters/turnout	58.2 Mio.	85.4	Registered voters/turnout	109.2 Mio	67.9

Source: Central Election Commission Turkey; Levada Center 2020.

Since the collapse of the USSR, the former communist states have carried out numerous plebiscites, most of them taking place in modern authoritarian states such as Azerbaijan, Belarus, Tajikistan, Turkmenistan, Kazakhstan and Uzbekistan. In most cases, the main purpose of the vote was to obtain popular endorsement for constitutional changes designed to extend the political power and/or abolish the constitutional terms that limit the power of the relevant political incumbent (Hill and White 2018). After the national referendum that approved the new constitution in 1993, Russia did not hold another nationwide referendum or plebiscite until the top-down initiative of March 2020. This Russian vote represents an example within a weak party system, with consolidated electoral authoritarianism and a high level of political personalism (Golosov 2011; Hale 2005). Thus, on 1 July 2020, the Russian people voted to approve the constitutional reform proposed by President Putin in January 2020. According to figures provided by the Central Electoral Commission of Russia, 78.6% of voters voted in favour, with a turnout of 67.9% of the eligible voting population (see Table 1). This constitutional revision opened the way for Vladimir Putin to accept another term in office in 2024. The 2020 reform was presented by the President as intending to ensure stability, security and prosperity for the country. However, in actuality, the State Duma approved the changes weeks before the national vote and there was no legal requirement for a referendum (Hutcheson and McAllister 2021: 357).

Indeed, the 1993 Russian Constitution distinguished between two mechanisms. The mechanism provided for in Article 136 concerns constitutional revision, i.e. amendments that do not affect the constitutional foundations but require Parliament to adopt a constitutional law. The second mechanism, provided for in Article 135, allows a constituent assembly to amend the core of the constitution, with the new constitution to be adopted either by the constituent assembly or by popular vote. The constitutional law that revised the constitution on 14 March 2020 was expressly presented as falling under Article 136. Therefore, by proposing this so-called ‘nationwide vote’, national vote or ‘all-Russian vote’, the Kremlin was purely seeking greater popular legitimacy through a non-binding referendum.

The constitutional vote had an ambiguous legal status and legal experts claimed that it was unacceptable to pass constitutional amendments in a “package” not united by a common subject.<sup>2</sup> Regarding the broader political agenda, the

referendum came when Putin's popularity rating reached a historically low record of 59% in March, as the country struggled amidst the Covid-19 crisis.<sup>3</sup> However, criticism of the voting process was widespread. In a statement issued as the polls closed, the independent election watchdog, Golos, highlighted serious shortcomings in the way the campaign and referendum were conducted including accusations of ballot stuffing, voter coercion and double voting.<sup>4</sup> Immediately thereafter, the European Union also called for an investigation into the alleged irregularities (*Radio Free Europe*, 2020).

The amendments focused on creating new powers enabling the State Duma to approve the appointment of a Prime Minister, even against the will of the President, although the President retained the power to remove the Prime Minister from office. Furthermore, numerous social welfare regulations were included in the constitution including the regular indexation of pensions, a minimum wage above subsistence level. Besides this new social welfare programmes, nationalistic sentiments as well as homophobic attitudes were obvious. Amendments were restricting different homosexual rights and they were restricting marriage to being between one man and one woman. The reforms also included other more symbolic nationalistic elements. Finally, the power of the incumbent President was strengthened. With the new constitution and its amendments, any presidential terms held before the new constitution came into effect are not counted. Thus, the new constitution allows Putin to stay in power (so long as he is successfully re-elected) until 2035. Moreover, it makes it more complicated for challengers to run against him because it restricts which candidates are eligible to run for President, Prime Minister and judgeships by disallowing candidates with formerly non-Russian foreign citizenship and requiring a minimum period of residency of 25 years. This last point is specifically designed to exclude key figures in the Russian opposition who have lived abroad and prevent them from running for the presidency.

State authorities unfolded a large-scale media campaign involving celebrities which was designed to promote participation. Achieving high turnout rates (more than 50%) and high numbers of votes in favour of the amendments (at least 70%) were the priorities of the plebiscite organisers. According to the independent pollsters, voter turnout was high – 68%. About 74 million votes were cast by the 109 million registered Russian voters. Approximately 79% of the votes cast were yes-votes and 21% were no-votes. Invalid and blank votes constituted less than 1% of all votes (data from Levada Center 2020). Despite the relatively high turnout and triumphant results for the President and his supporters, how the vote was conducted prompted numerous allegations of violations and fraud.<sup>5</sup>

## 5 Referendum Integrity: Turkey and Russia

In the following section, we present some of the key results of the expert survey on integrity. The analysis focuses on the items where expert opinions showed clear agreement as well as on any particularly controversial scores provided by our

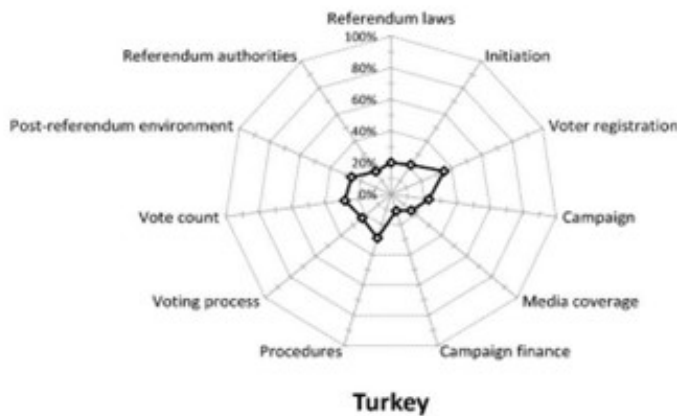
experts. The media coverage and campaign finance of the two case studies are analysed and compared in more detail in the following text.

Please note, we do not focus on the political implications of the results as the concept of referendum integrity is process focused and, therefore, excludes the outcomes of any given referendum per se. It is logically possible that both an integrous referendum and a referendum without integrity could produce any given result (see Kersting and Grömping 2021).

### 5.1 Turkey 2017

For the Turkish referendum of 2017, the expert survey suggests that the overall integrity of the referendum was relatively low. Our analysis of the eleven referendum stages compared the pre-referendum phase to the campaign phase to polling day and the post-referendum phase (see Figure 2). The scores for the eleven stages in the spiderweb graph are averages based on the percentage of scores (from 1 to 5) given to over thirty statements in the surveys. The spiderweb graph shows the overall score calculated based on the variables measured for each dimension. A high level of integrity would be indicated by a score of 100% and the lower the score, the lower the integrity.

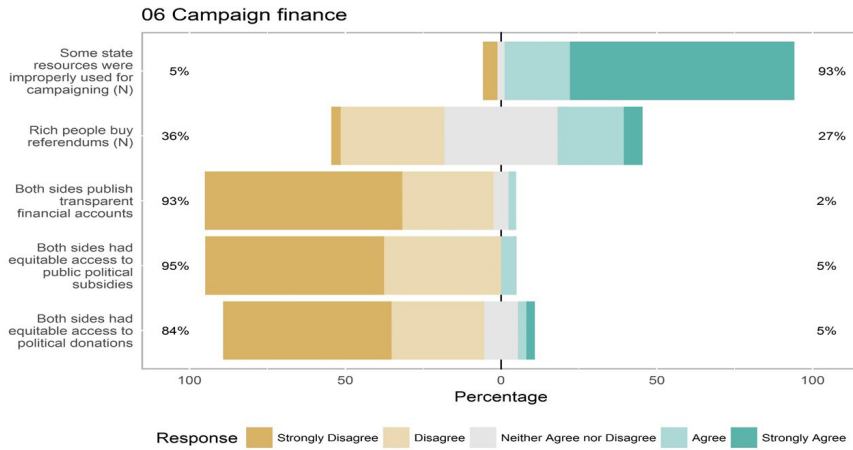
**Figure 2** Integrity Scores for the 11 Stages of the Referendum Cycle (Turkish Constitutional Referendum 2017)



Note: DDI-Index Turkey 2017, a higher percentage denotes higher referendum integrity ('strongly agree' or 'agree' for positively worded statements). N = 45 in Turkey.

All phases show a low level of integrity (below 40%). However, the scores are slightly higher in the voter registration phase and for the procedures, the voting process on polling day and the vote count. However, the adherence to referendum law, the campaign, the media coverage and campaign financing were all highly problematic in Turkey.

**Figure 3** *Referendum Integrity Turkey 2017: Campaign Finance*

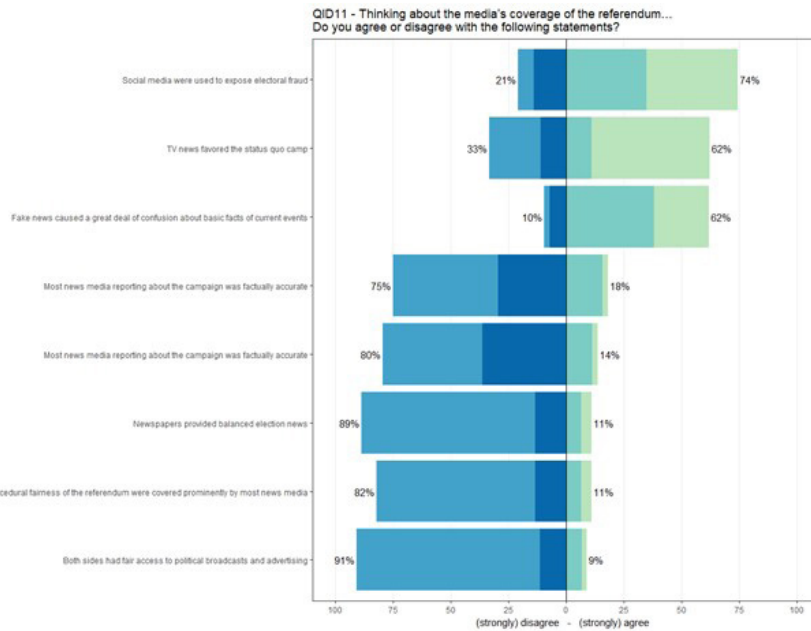


*Note: Scored on a 5-point Likert scale ((strongly) disagree – (strongly) agree). The middle category ('neither agree nor disagree') is not shown but can be deduced.*

In the campaign financing stage, the indicators show that nearly all experts agreed that state resources were inappropriately used for campaigning (see Figure 3). In this regard, the campaign financing did not provide an even playing field and give the opposition the opportunity to secure a comparable level of financial support. This became even more evident when the experts made it clear that during the referendum, both sides did not publish transparent financial records. Furthermore, both sides did not have the same access to private sponsors and public finance. Therefore, more than 90% of the experts identify a lack of integrity in all these indicators.

In Turkey, in 2017, the media coverage was affected by the tense political situation (see Figure 4). The public media were essentially muzzled by the government, which controlled important critical TV media outlets and is known to have threatened independent journalists. Approximately 90% of the experts claimed that newspapers did not provide balanced and fair information about the referendum.

**Figure 4** Media Coverage



Note: *Direct Democracy Integrity Index Turkey 2017: 5-point Likert scale ((strongly) disagree – (strongly) agree). The middle category ('neither agree nor disagree') is not shown but can be deduced.*

The reason for this lack of unbiased, informative coverage was that neither side had fair access to broadcasting and advertisement avenues. A clear majority of the experts (over 80%) stated that the media reporting about the campaign was often based on fake news and actually inaccurate. Nearly two-thirds indicated that fake news caused a great deal of confusion and this notion was only dismissed by ten per cent of the experts. The experts revealed that the TV news, in particular, strongly supported the status quo and the ruling government.

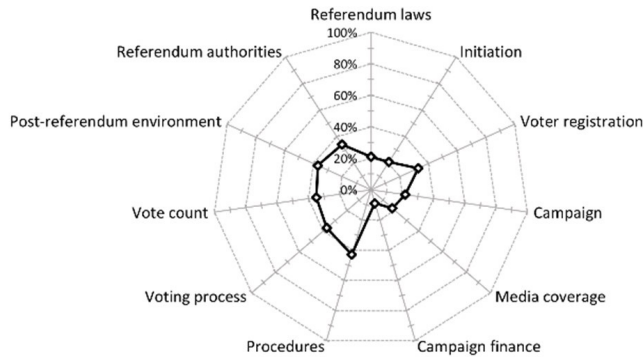
### 5.2 Russia 2020

In Russia, the overall evaluation again showed a low level of integrity (see Figure 5). While around 40% of the experts were rather satisfied with the voting procedures, the DDI expert survey presented a relatively critical picture of the 'referendum legislation' dimension. Our experts criticised the legal framework of the top-down plebiscite, which included the restriction of citizens' rights (e.g. same-sex marriage) while favouring the status quo and the strategies of the incumbent government.

In relation to the initiation of the referendum, experts were much more critical. The Kremlin used the civil society outreach groups and the parliamentary process to strengthen its powers. It was not regarded as entirely legitimate or fair because the government strongly dominated the agenda-setting. The majority of the experts also claimed that representative democracy was weakened by the reforms.

Although citizens were partly included in some regions in symbolic outreach programmes, the overall lack of citizen engagement was criticised.

**Figure 5** *Integrity Scores for the 11 Stages of the Referendum Cycle (Russian Constitutional Plebiscite 2020)*



*Note: DDI-Index Russia 2021 Higher percentage denotes higher referendum integrity ('strongly agree' or 'agree' for positively worded statements). N = 50 in Russia).*

The government was also criticised because the Kremlin strategically used social welfare programmes, nationalistic sentiments as well as homophobic attitudes in the citizenry to get support for political reforms and the constitutional review. Less than half of the experts criticised the integrity of the Russian referendum 2020.

In regard to voter registration, these figures are even lower. On this point, only around 20% of the experts claimed that the referendum was fair. The voter roll was not accurate and there were problems with voter registration in the pre-referendum phase that had more to do with the exclusion of important social subgroups and less with minimising the registration of ineligible voters (ghost voters).

In the campaign phase, the campaign itself focused on the package referendum. This means that citizens had to decide on too many complicated issues with different facets in one vote. On the ballot for the final referendum 'Do you agree on the new constitution', there was only a 'yes' and 'no' option and no option to provide a more detailed decision. The regional outreach programmes were supposed to bring higher legitimacy to the process; however, the Kremlin left itself open to criticism here. Thus, only a small number of experts evaluated this dimension positively. Most criticised the lack of information and the ambiguous wording of the question.

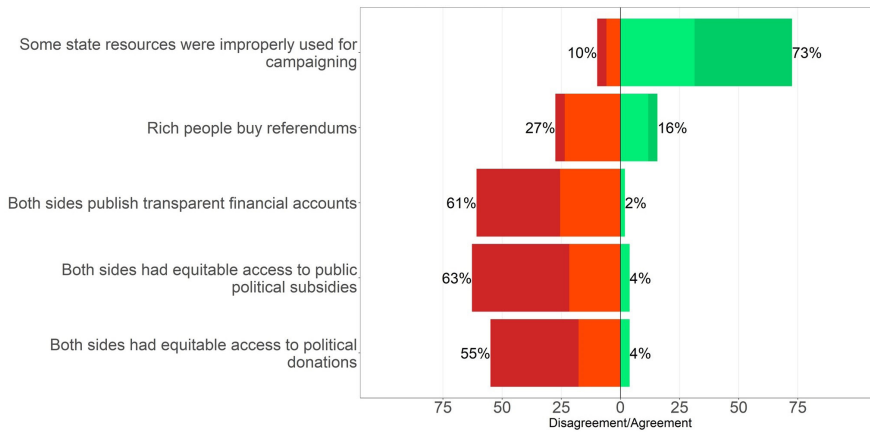
In the third phase, the referendum procedures on polling day received relatively higher scores from experts, although still more than half of them criticised the

Direct Democracy Integrity of this dimension. According to them, the number of polling stations and voter information provided were adequate and it was easy to cast a vote.

The pre-referendum phase was the most significant and a number of malpractices occurred in Russia during this phase, especially in the media coverage and campaign finance stages. The campaign finance was highly criticised by a clear two-thirds majority (see Figure 6). Only a very small number of experts did not criticise this dimension for a lack of integrity. The transfer and publishing of financial accounts, as well as the equitable access to public political subsidies and political donations were highly biased.

Campaign finance was supported by a predominantly pro-Kremlin media. State resources were improperly used for extensive campaigning. Meanwhile, the Kremlin had more and better access to free radio and television broadcast time. Access to political communication was also structurally unequal as almost all Russian media are directly or indirectly controlled by the state (through companies like Gazprom). Indeed, it has been alleged that “the first clear indicator of Putin’s authoritarian bent was his aggressive move to eliminate independent ownership of Russia’s major television stations” (Puddington 2017: 11). Thus, it is no surprise that the campaign media coverage in Russia was heavily criticised as having low integrity (see Figure 7).

**Figure 6** Russia 2020 Referendum Integrity: Campaign Finance



*Direct Democracy Integrity Index Russia 2021: 5 Likert scale ((strongly) disagree – (strongly) agree). The middle category (‘neither agree nor disagree’) is not shown but can be deduced.*

The lack of media coverage can also explain the low evaluation the experts gave for referendum integrity. Not only did the Russian media focus strongly on the Kremlin’s position, it was readily observed that the campaigns of particular groups were hindered and that politicians were offering political patronage to others. It seemed that even independent journalists were not particularly focused on the fair coverage of the pros and cons of the referendum. The pro-government media

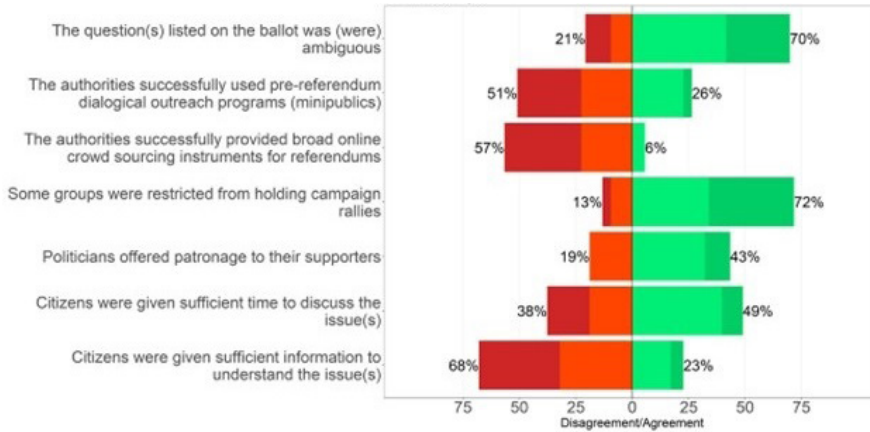


skewed the subject of the referendum by presenting amendments that were more likely to win support, for example, relating to culture and history, while the independent media tended to highlight the reforms that sought to strengthen the government's powers.

After the opinion poll in early 2020 indicated that the referendum may be defeated, the government launched a broad campaign incorporating different forms of deliberative participatory instruments for discussing the referendum issues (Hutcheson and McAllister 2022: 358). This propaganda strongly focused on the benefits of the new constitution and sought to mobilise the broader population. In contrast, the opposition did not have the opportunity to access the public media and deliberative instruments that were used to disseminate the government's propaganda as opposition leaders were side-lined and repressed. The relatively clear result reflected the fact that the opposition struggled to show their positions in this political environment and the unequal means different parties had available to reach the electorate, notably, due to the government-defined agendas and official government control of the media. Thus, the media conveyed an open letter signed by people from civil society who deplored the referendum as an "anti-constitutional coup"<sup>6</sup>

The expert survey also indicated that 70% of respondents considered the questions listed on the ballot ambiguous. As previously indicated, citizens had to vote on a very broad constitutional amendment package that included presidential competencies in addition to homophobic regulations and social welfare policies. The questions relating to whether there was sufficient time for deliberation and sufficient information about the topics were evaluated negatively. The majority of respondents would have liked better information and more time to debate the issues. Despite the various outreach programmes, this process was criticised for not successfully providing broad and open debates. Instead, this dimension was strongly criticised by 72% of the experts who indicated that they believed some groups were excluded from campaigning and restricted holding campaign rallies. About 43% claim that politicians and the ruling party offered patronage to their supporters and 19% disagree.

**Figure 7** *Russia 2020 Referendum Integrity: Campaign Media Coverage*



*Direct Democracy Integrity Index Russia 2021: 5 Likert scale ((strongly) disagree – (strongly) agree). The middle category ('neither agree nor disagree') is not shown but can be deduced.*

## 6 Conclusions

Our main research question focused on the integrity of constitutional referendums in modern authoritarian systems. Integrity is considered a normative standard that incorporates free and fair institutions, including elections, and focuses on the protection of minority rights. In recent years, deliberative instruments have been included in referendum processes and direct and deliberative instruments have been combined. Our research also focused on how this deliberation is implemented in constitutional referendums in modern authoritarian systems. To analyse these two questions, we applied the new DDI-Index through expert surveys.

Russia and Turkey, our two case studies, are modern authoritarian regimes that are thought to have used contentious Napoleonic plebiscitary referendums to strengthen their presidential systems. Their use of symbolic direct democracy is typical of ‘sultanistic’ regimes with strong autocratic presidential and weak party systems. The DDI expert surveys for Russia and Turkey showed a variation in experts’ responses regarding the different stages of the referendum cycle. These pilot case studies give us valuable insight into where the experts interviewed in the two countries differ significantly in their assessment and where their assessments converge. Thus, the study has highlighted the importance of the pre-referendum stage in two modern autocracies. Results clearly show that there is an asymmetry of means to convince the electorate, notably due to the context of government-defined agendas and official government control of the media. A number of malpractices seem to have occurred during the pre-referendum stage in our case studies, in particular, in the form of non-compliance with the legal framework of the respective country. As such, the Russian and Turkish referendums are fertile pilot cases for our research instrument, especially in relation to the campaign and media coverage stages.

The Turkish referendum in 2017 was deeply criticised by electoral observer groups for having an uneven playing field in the pre-referendum phase. In Turkey, after the attempted coup, the country was put into a state of emergency and a phase of repression and violation of civil rights and liberties ensued. During this time, the extreme media dominance of Erdogan's ruling party AKP became evident and the constitutional debate did not trigger a broad constitutional deliberation (as it did in Turkey from 2011 to 2013). Although this constitutional review process focused on an important topic, repression led to greater disengagement and apathy. In Turkey, the initiation phase and the legal requirements were not highly onerous or problematic (only a mandatory referendum after the vote). Yet, in the context of such political repression, the unfair electoral laws, biased campaign media and unequal access to financing were highly problematic. The post-referendum environment was also still characterised by an atmosphere of fear that led to further disengagement and apathy in parts of the population.

In Russia, in 2020, being required to vote on a package deal that presented measures strengthening presidential powers alongside nationalist, right-wing, anti-minority, homophobic, populist reforms and social welfare measures considerably diminished the integrity of the issue being voted on. However, other areas were also severely lacking in integrity.

The Russian initiation phase (top-down by the president) did not comply with Russian legislation for direct democracy and, because of this, the electoral laws and the registration were regarded as problematic by most experts and the plebiscite was referred to as a Russian national vote. In the Russian referendum of 2020, which was affected by the Covid-19 pandemic in the month following its announcement, it was not clear whether the plebiscite would pass. In fact, opinion polls predicted a loss. From this point on, an enormous propaganda machine sought to mobilise the population in favour of the incumbent president: this included the launch of new forms of participation and outreach. As a result of this mobilisation, the experts identified the campaign phase as the most problematic and of the lowest integrity. The campaign media and public broadcasting were viewed as highly biased and not neutral mobilisation strategy as accompanied by repression and a selective demobilisation of the opposition. This created a lack of integrity and prompted some oppositional and minority groups to boycott the vote.

Both the Russian and Turkish plebiscites were supposed to demonstrate symbolic legitimacy and public endorsement of their president's power, that is, of Vladimir Putin and Recep Tayyip Erdogan, respectively. In both countries, shortcomings on the polling days and during the post-referendum phases have been identified by independent watchdogs. These include voter coercion, violence against journalists, ballot stuffing and multiple voting.

The political contexts of both countries are largely biased because of the dominance of state-controlled media and the strong coercion of voters. Both countries combine mobilisation by propaganda and demobilisation by repression. These regimes restrict human rights as well as political rights and civil liberties. In 2017, Turkey was more oriented towards a mode of repressive communication leading to demobilisation, apathy and fear. In contrast, in 2020, Russia differed

from traditional authoritarianism in that it behaved, at least symbolically, as a deliberative authoritarian state, which is defined as a type of rule in which decision-making powers are concentrated but which permits communicative contexts that generate limited influence. However, the state's strong media campaign and participatory outreach programmes were characterised by manipulation and propaganda, not by open and fair deliberation. Thus, Russia's deliberative authoritarianism was only symbolic, and the processes used were strongly founded on propaganda and mobilisation. The lack of democratic integrity was strongly associated with the repression of oppositional minority rights.

Authoritarian systems often misuse referendums to strengthen their legitimacy and discipline opposition parties and civil society groups. Historically, referendums and elections authoritarian systems have lacked integrity as they were manipulated by repression and vote rigging (stuffed ballot boxes, fraudulent vote counting). However, in Russia in 2020, the integrity of the initiation and campaigning phases had become more important than the issues on the polling day.

The new research instrument, the DDI-Index, has provided initial insight into the integrity of and how referendums and deliberative instruments are being used in modern authoritarian political systems. Further qualitative and quantitative research is necessary to evaluate the deliberative instruments used in referendums in more authoritarian systems. However, it will be difficult to secure research support and free and fair access for the necessary investigations. Nevertheless, future studies and expert surveys on direct democratic integrity should include case studies of additional authoritarian, hybrid and democratic systems.

## Notes

- 1 In the following text, we use the terms ‘modern authoritarian regimes’ and ‘modern autocracies’ interchangeably.
- 2 [www.bbc.com/russian/features-51402865](http://www.bbc.com/russian/features-51402865).
- 3 Indeed, during the Covid-19 pandemic, Putin preferred to leave unpopular decisions to others and make regional governors managers, a tactic that was also criticised. See “Putin’s Approval Rating Drops to Historic Low: Poll”, in the *Moscow Times*. [www.themoscowtimes.com/2020/05/06/putins-approval-rating-drops-to-historic-low-poll-a70199](http://www.themoscowtimes.com/2020/05/06/putins-approval-rating-drops-to-historic-low-poll-a70199) (accessed 10 March 2022).
- 4 [www.golosinfo.org/articles/144477?fbclid=IwAR3cF\\_Yeej5IuA4pkT7vT6siDnTlRunaW55lJESd9HXouoqp0r1-yzsyQJA](http://www.golosinfo.org/articles/144477?fbclid=IwAR3cF_Yeej5IuA4pkT7vT6siDnTlRunaW55lJESd9HXouoqp0r1-yzsyQJA).
- 5 See “EU Calls for Investigation into Irregularities in ‘Triumphant’ Vote for Putin”, *Radio Free Europe*, [www.rferl.org/a/eu-calls-for-investigation-into-irregularities-in-triumphant-vote-for-putin/30702503.html](http://www.rferl.org/a/eu-calls-for-investigation-into-irregularities-in-triumphant-vote-for-putin/30702503.html) (accessed 10 March 2022).
- 6 *Dozhd*, 16 March 2020.

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# Responsive or Responsible? On the policy implementation of popular initiative under challenges of international law

Laurent Bernhard<sup>1\*</sup>

## Abstract

*The scant literature on policy implementation in direct democracy has found that non-compliance with accepted initiatives is rather widespread. Political scientists have mainly explained this finding by focusing on the preferences of those actors in charge of implementation, thereby neglecting supranational restrictions. This article advances the literature by focusing on the challenge posed by international law. It is argued that the implementation of initiatives that conflict with international law poses a dilemma between responsiveness (i.e., respecting the people's will) and responsibility (i.e., complying with a country's external obligations). A case study of the Swiss deportation initiative shows that legislators relied as much as possible on responsiveness by enacting a decisive tightening of penal legislation according to the basic demands of the accepted proposition and as little as necessary on responsibility, given that MPs refrained from implementing those provisions that conflicted with mandatory international law.*

**Keywords:** direct democracy, deportations, implementation, international law, Switzerland.

## 1 Introduction

When citizens accept initiatives in the framework of a direct-democratic ballot, there is often great jubilation among their originators. This is all too understandable, since such victories usually are obtained over large parts of established political elites and aim at substantial policy change. However, the demands of accepted initiatives do not automatically take effect with the people's verdict at the polls. After their passage, such initiatives find themselves in fact at the very beginning of a long, arduous and often frustrating process for their supporters. As Gerber et al. (2001, p. 5) have forcefully emphasised, initiatives never implement nor enforce themselves. For accepted initiatives to affect public policies, political actors in charge of the implementation – typically legislators, but sometimes also members of government and civil servants – have to comply with their core provisions. Yet a major challenge arises from powerful post-passage opposition by precisely those

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actors that are responsible for implementation decisions (Lupia & Matsusaka, 2004). For instance, many initiatives contain policies that MPs prevented from passing via legislative channels at an earlier point in time (Gerber et al., 2004). Asking lawmakers to perform their duty by faithfully implementing initiatives they dislike may indeed require them to force themselves to do so.

In line with this leadership challenge, the few empirical analyses that have studied policy implementation in direct democracy thus far have found that numerous initiatives are modified, abandoned or ignored altogether (see Lupia & Matsusaka, 2004 for an overview). Suffice it to say that the actors in charge of implementation expose themselves to harsh criticism from the supporters' side in such instances. Yet the accusation directed at elites to flout the will of the people has to be taken very seriously. Indeed, a main aim of direct democracy in general and initiatives in particular is to enable marginalised groups to change policies according to their wishes. Non-compliance with accepted initiatives is concerning, as large parts of the citizenry may have the feeling that they are not able to influence the political process and to make their voices heard. This poses a serious democratic challenge. If elites do not faithfully implement policies accepted by citizens, they may not only nurture populist attitudes but also widespread distrust, thereby ultimately calling into question the legitimacy of existing democracies. Therefore, addressing and understanding the reasons for non-compliance of initiatives can be considered important from a normative perspective.

Despite the relevance of this topic, it is striking that political scientists lack deep knowledge about the determinants of (non-)compliance in direct democracy. Indeed, the state of the art is scant as to the number of publications and restricted in terms of context, given that scholars have limited themselves to the experience made in U.S. states. In addition, there has been an astonishing disregard in recent years. Hence, political scientists may have overlooked some important topical developments as far as lawmakers' responses to the passage of initiatives are concerned.

This article seeks to examine the policy implementation literature in direct democracy by focusing on the challenging role played by the supranational level, a neglected factor in the field. Indeed, political scientists have not explicitly addressed the fact that some popular demands that are expressed in winning initiatives may conflict with international law. Hence, such provisions may be difficult to be complied with at the domestic level. More specifically, I argue that legislators (and other actors in charge of implementation) face a dilemma between responsiveness (i.e., respecting the people's will) and responsibility (i.e., complying with a country's international obligations). This article examines the provisions of accepted initiatives that conflict with international law provisions legislators are more or less likely to comply with. By focusing on the Swiss context, this article draws a distinction between mandatory and non-mandatory parts of international law (see Section 3). It is hypothesised that legislators will not implement provisions of accepted popular initiatives that conflict with mandatory international law, while they will be more open to comply with provisions that conflict with non-mandatory international law.



The empirical part of this article is devoted to a case study of the Swiss deportation initiative, a proposition launched by the Swiss People's Party (SVP) in 2007 that demanded criminal foreigners to be expelled from the country for some offences. The selected initiative clashed with various principles of international law. After its passage in 2010, the implementation of the deportation initiative posed a serious challenge to Parliament, which was in charge of translating the new constitutional provisions into federal legislation. As will be shown, the two chambers of Parliament ultimately decided in 2015 to square the circle between responsiveness and responsibility by enacting a decisive tightening of penal legislation that nevertheless conformed with non-mandatory and above all mandatory provisions of international law. This result proves to be basically in line with the hypothesis. In this case, MPs therefore relied as much as possible on responsiveness and as little as necessary on responsibility.

The remainder of this article is organised as follows. Section 2 is devoted to the state of the art in the field of policy implementation in direct democracy by focusing on the key factors of (non-)compliance. Subsequently, the restrictions posed by international law are outlined in Section 3. After some general considerations, the Swiss practice in dealing with this challenge is addressed by introducing the crucial distinction between mandatory and non-mandatory norms of international law. Section 4 outlines the selection of the Swiss deportation initiative. Section 5 thereafter presents the implementation of this case. While special attention is given to the bargaining process in Parliament, the pre-parliamentary phase will be also scrutinised, given that it pre-structured the implementation decisions taken by legislators. Finally, Section 6 reviews the major findings of this article and discusses some implications.

## 2 State of the Art

Despite the normative importance of policy implementation in direct democracy, the political science literature proves to be scant on this topic. To the extent that such studies exist, they focus on U.S. states, especially California. What is more, there is an obvious lack of recent contributions. Taken together, the work by political scientists has nevertheless identified some factors that are key in explaining the likelihood of (non-)compliance with winning initiatives.

To date, scholars have understandably put much emphasis on the role played by leadership. More specifically, they have focused on the preferences of those actors in charge of implementation (Bali, 2003; Ferraiolo, 2007; Gerber et al., 2001, 2004). In the case of California, Gerber et al. (2001, p. 6) have stated that "if a legislative majority and the governor are united in their opposition to an initiative, then full compliance is extraordinarily unlikely". Yet this is often the case in any political system with direct-democratic provisions, given that initiatives typically propose policy changes lawmakers dislike. Indeed, proponents would have not taken the costly path of launching an initiative to obtain their desired policy otherwise (Gerber, 1999).

However, under some circumstances, actors whose support is necessary for compliance can be expected to be less inclined to tinker with a voter-approved initiative. The formal models developed by Gerber et al. (2001, 2004) posit that the level of compliance increases when lawmakers face high sanctions. In line with these general expectations, Bali 2003 and Ferraiolo 2007 have found that the extent of compliance positively depends on the level of popular support for an initiative.

Another crucial moderating aspect refers to characteristics of the ballot measures themselves. In this respect, the precision of initiatives emerges as the single most important factor from previous work. Accordingly, scholars agree that non-compliance is less likely to occur when winning initiatives provide clear instructions to those responsible for implementation (Ferraiolo, 2007; Gerber et al., 2001, 2004). By contrast, lawmakers' ability to resist the popular mandate is greatest when the terms are vague in nature.

Finally, political science scholars have studied the role of three types of institutions when it comes to policy compliance.<sup>1</sup> First, empirical work from the United States suggests that a legislature's leeway in the stage of implementation can vary considerably across jurisdictions (Ferraiolo, 2007). Whereas California prohibits legislators from revising, rejecting or otherwise altering laws passed by initiative, the room of manoeuvre is much larger in other states. Second, rulings by courts may have a detrimental effect, as they can lead to prohibitively high costs of compliance or prevent it altogether (Gerber et al., 2001, 2004). To be sure, legal studies suggest that numerous ballot measures have posed serious constitutional problems in the United States (Miller, 2009; Schacter, 1995). Third, institutional veto players have to be taken into account. Accordingly, a growing number of actors required to implement and enforce initiatives can generally be expected to favour non-compliance (Gerber et al., 2001, 2004).

As will be developed in the next section, this article aims at advancing the existing literature by considering an institutional factor in the supranational domain. More specifically, it will address the constraining role played by international law when it comes to policy implementation of initiatives in the domestic level.

### **3 The Dilemma Posed by International Law**

Popular sovereignty and the rule of law are two main principles of liberal democracies. While these principles can be basically considered to be mutually dependent, their relationship does not come without tensions. Given that this topic is particularly salient in direct democracy (Marxer & Pällinger, 2007; Miller 2009), it is striking that the potentially tense relationship between popular sovereignty and the rule of law has not been discussed in detail so far in academia (Christmann, 2012).

To be sure, the question of whether the sovereign people can never be subject to any limitation when it comes to decisions of passing constitutional amendments (Nugraha, 2022) cannot be answered with a resounding 'yes'. In liberal democracies,

the rule of law regulates and therefore sets some barriers to the exercise of popular sovereignty, especially in order to protect fundamental individual rights.

The tensions between popular sovereignty and the rule of law are by no means a new phenomenon in direct democracy. In the case of Switzerland, for instance, the very first popular initiative that was adopted at the federal level clashed with fundamental individual rights. The ban on slaughtering, passed in 1893 in an anti-Semitic context, violated freedom of belief and conscience. While the people are basically sovereign only within the boundaries of the Constitution, new supranational restrictions have played an increasingly important role in recent decades. A significant development relates to the expansion of international law and, more generally, to a growing number of international commitments by nation states. To a certain degree, this has led to a detachment from domestic laws.

In the European context, the embedding of human right protection within the European Convention on Human Rights (ECHR) has established such a supranational restriction for their member states. The noble assumption underlying this international protection is that human beings have an inherent dignity as well as equal and inalienable rights that no popular majority, no matter by what margin, should be allowed to overrule (Langer, 2010).

The approval of ballot measures that clash with international law thus raises the question of the limits of popular sovereignty. A strict policy implementation would have a negative impact on international relations. Indeed, for the international legal system to work smoothly, it must rely on the primacy of international law over domestic law (see for instance Naef, 2017). This implies that ratified international treaties need to be observed at the national level. Compliance with international obligations is therefore based on the principle of *pacta sunt servanda*, which is customary in international law.

When faced with a proposition that violates international law, an option for a national government would be of course to terminate or at least renegotiate the affected international treaties. Yet this is hardly feasible in many domains, especially when it comes to multilateral human right treaties such as the ECHR and the UN human rights pacts. Since states are under international obligation to respect human rights, it follows that they are not allowed to invoke referendum outcomes to justify an infringement (Nugraha, 2020).

By borrowing on an idea developed by Mair (2013, 2014) in the domain of party politics, I argue that legislators (and other actors in charge of implementation) are typically confronted with a dilemma that revolves around responsiveness and responsibility. Responsiveness refers to the decisions-makers' quality to express the policy preferences of citizens. Responsibility, for its part, is concerned with acting in line with legal and procedural rules and conventions that are anchored in the Constitution and international obligations of a given country.

The dilemma that arises in the question at hand can be described as follows: if legislators act responsively by relying on a faithful implementation that contradicts international law, serious consequences may occur in the international realm. Condemnations by international courts may not only lead to reputational damages but also to the termination of treaties which are of crucial importance for a country. If, on the other hand, MPs show responsibility by implementing an initiative in

conformity with international law, they expose themselves to the accusation of flouting the will of the people at the national level. In a nutshell, lawmakers face the obviously delicate task of squaring the circle between responsiveness and responsibility.

In the context of Switzerland, which is at the centre of the empirical part of this article, this dilemma arises in connection with adopted *popular initiatives* that conflict with international law. At the federal level of the country, popular initiatives always refer to constitutional amendments. Given that the new constitutional provisions are usually not directly applicable, they require an implementation at the level of federal legislation. This task is the responsibility of the Federal Assembly (Parliament), which consists of the National Council (lower house) and the Council of States (upper house). In most cases, policy implementation of popular initiatives can thus be considered a political matter that falls into the hands of Parliament. The strong position of MPs is also reflected in the fact that there is no judicial review at the federal level. In addition, it follows from Article 190 of the Federal Constitution that the laws enacted by Parliament are valid even if they are unconstitutional. Taken together, this means that, at least theoretically, legislators have a considerable room of manoeuvre on implementation matters.

Generally speaking, there is no remedy for resolving the conflict between obligations under international law and constitutional norms contrary to international law. To be sure, the implementation of such a popular initiative can be described as a highly political balance act that lacks specific legal guidelines in many respects (Naef, 2017). Article 5 Paragraph 4 of the Federal Constitution ensures a general primacy of international law over domestic law, without establishing clear rules in case of a conflict of norms, however. Furthermore, Article 190 of the Federal Constitution requires the Federal Supreme Court to apply both federal laws and international law, thereby opening the door for reconciling these two legislations.

By contrast, the Federal Constitution is unambiguous regarding compliance with *mandatory international law*. This prohibition forms the only barrier for popular initiatives in relation to international law.<sup>2</sup> Yet the scope of mandatory international law is not clearly defined neither. The federal authorities have interpreted it to include *ius cogens*. These peremptory norms of international law cannot be derogated in any circumstances such as the prohibition of genocide, torture, slavery or inhuman and degrading treatment. They also include the principle of non-refoulement (i.e., the guarantee that no one should be (re-)turned to a country where they would face irreparable harm). By contrast, the remaining fundamental rights are not considered to be part of *ius cogens*. Accordingly, the vast majority of restrictions on fundamental rights do not constitute a limitation when it comes to the implementation of popular initiatives at the federal level of Switzerland.

This crucial distinction between mandatory and non-mandatory international law implies that MPs will be reluctant to comply with provisions that are contrary to *ius cogens*. By contrast, there are no clear expectations as to demands of winning popular initiatives which, although contrary to international law, do not involve a violation of mandatory law. The policy outcome may vary as the case arises. In the

realm of non-mandatory international law, it thus remains an open question whether the legislators of the Federal Assembly will make use of the possibility of watering down some problematic aspects of initiatives in order to respect Switzerland's external obligations. Based on these considerations, I am now equipped to state the following hypothesis:

H: Legislators will not implement provisions of accepted initiatives that conflict with mandatory international law (*ius cogens*), while they will be more open to comply with provisions that conflict with non-mandatory international law.

#### 4 Case Selection

The empirical analysis deals with Switzerland, a country that can be considered the paradigmatic case of direct democracy in the world. By contrast to referendums that prevent policy reforms from being enacted, popular initiatives allow for proposing new policies. While the success rate of the latter used to be very low (around 10%), this has slightly changed since the beginning of the twenty-first century. Among the 25 popular initiatives that have passed since 1893, 13 were accepted by a majority of both citizens and cantons (i.e., the Swiss member states) between March 2002 and June 2023. While their range includes a large number of issues, major implementation problems have occurred above all with those popular initiatives that conflict with international law (Hertig Randall, 2017). In recent years, many decision-makers and experts have indeed racked their brains as to how to comply with the popular mandate without disregarding Switzerland's international obligations.

It is no coincidence that this challenge takes place in current populist times. Indeed, popular initiatives that clash with international law are an integral part of the political strategy adopted by actors from the radical right, especially by the SVP, Switzerland's biggest party (Bernhard et al., 2015; Biard, 2019). According to Hertig Randall (2017, 2018), the aim of this strategy consists in highlighting the encroachment of international norms on national sovereignty and to disregard both the international legal order and the rule of foreign judges, exemplified by the European Court of Human Rights (ECtHR).

In order to gain a detailed understanding of the implementation process in the context of the federal level of Switzerland, I decided to conduct a single case study. Based on a stepwise procedure, I selected the popular initiative on the deportation of criminal foreigners (thereafter 'deportation initiative'). Among the 13 popular initiatives that have passed thus far in the twenty-first century, seven cases can be considered to clash with some international law provisions. These popular initiatives are listed in Table 1 chronologically according to the date of acceptance.

**Table 1** *Accepted popular initiatives at the federal level of Switzerland in the twenty-first century that conflict with international law (chronological order)*

Date	Proposition	Approval	
		Voters (%)	Cantons
8 February 2004	Life imprisonment for dangerous offenders	56.2	21.5
30 November 2008	Ban on statute of limitation for pornographic crimes	51.9	18
29 November 2009	Minaret ban	57.5	19.5
28 November 2010	Deportation of criminal foreigners	52.9	17.5
9 February 2014	Against mass immigration	50.3	14.5
18 May 2014	Prohibition of paedophiles to work with children	63.5	23
7 March 2021	Burqa ban	51.2	18

Note: For a popular initiative to pass a majority of both voters and cantons,  $n = 23$  is required.

As far as this pre-selection is concerned, the minaret ban as well as the burqa ban could not be taken into consideration here, since the former did not require a legislative bill to be enacted, while the implementation of the latter has not been completed yet. Subsequently, I decided to keep those popular initiatives that used to be disputed in terms of both mandatory and non-mandatory norms of international law. This is necessary in order to be able to examine whether, and if so, to what extent MPs of the Federal Assembly take into account this distinction in their implementation decisions (see Section 3). I thus eliminated the mass immigration initiative, given that only this case basically did not contain problematic provisions with respect to mandatory international law. Finally, I decided to set the initiatives' authors as selection criteria by giving priority to parties over the remaining organisation. The reason for this choice relates to the fact that the preferences of parties are more likely to be accounted for than for usually less powerful and established collective actors, since MPs are among the implementation decision-makers. Among the four remaining cases, three popular initiatives originated from rather loosely organised citizen committees (i.e., the proposition on life imprisonment for dangerous offenders, the ban on statute of limitation for pornographic crimes and the prohibition of paedophiles to work with children). Hence, the remaining deportation initiative by the SVP is selected for this case study.

## 5 The Implementation of the Swiss Deportation Initiative

The SVP launched the deportation initiative in the run-up to the 2007 federal elections. The proposition above all demanded criminal foreigners to be expelled from the country for a list of offences. The party managed to qualify this proposition to the ballot by collecting the required 100,000 signatures within 18 months with

ease. Despite the fact that the deportation initiative clashed with various principles of international law (see below), Parliament decided not to invalidate it, considering that it may be possible to interpret its wording consistently with mandatory norms of international law in the case of success at the polls. On 28 November 2010, a majority of Swiss citizens (52.9%) and cantons (17.5 out of 23) came out in favour of the deportation initiative. On the same date, they defeated a so-called direct counter-proposal, by which both chambers of Parliament had tried to combat the deportation initiative. This alternative constitutional amendment was in conformity with international law, since it specifically complied with human rights and the proportionality principle by preventing automatic removal and enabling reviews in particular cases.

As a result of the deportation initiative's passage, Article 121 of the Federal Constitution was supplemented by four paragraphs. According to Paragraph 3, foreigners lose their right of residence and all other legal rights to remain in Switzerland if they are convicted of a range of offences (i.e., intentional homicide, rape or any other serious sexual offence, any other violent offence such as robbery, human trafficking or drug trafficking and burglary) or have improperly claimed social insurance or social assistance benefits. The convicted persons are to be subject to an entry ban of 5 to 15 years (Paragraph 5). According to transitional provisions, the Federal Assembly had to specify and complement the list of offences under Paragraph 3 and to enact penal provisions against persons who violate the entry ban within five years after the adoption of the new constitutional provisions.

The deportation initiative clashes with international law in several ways, given that the aforementioned Paragraph 3 does not provide for any exception to automatic removal (Hertig Randall, 2018; Langer, 2010; Naef, 2017). Most importantly, there are some concerns with mandatory provisions of international law. According to Naef (2017, p. 257), there is a conflict with Article 3 of the ECHR, which prohibits torture, inhuman or degrading treatment and punishment. In recent practice, the ECtHR (and the United Nations Human Rights Committee) also established a violation of the right to life in Article 2 of the ECHR when a person facing a death sentence is expelled to that country. In the same way, the non-refoulement principle that is enshrined in the Geneva Convention relating to the Status of Refugees is affected.

Regarding non-mandatory provisions of international law, conflicts arise with the right to respect for private and family life in Article 8 of the ECHR, which requires a case-by-case proportionality analysis (Hertig Randall, 2018, p. 771) as well as with the Convention on the Rights of the Child. In addition, there is an inconsistency with the Agreement on the Free Movement of Persons (AFMP) between Switzerland and the European Union. The automatic deportation mechanism violates a directive of the EU according to which the AFMP can only be restricted for reasons of public order, safety and health. A faithful implementation could not only jeopardise this specific treaty as a result of a conceivable unilateral termination by the EU but, due to the so-called guillotine clause, six sectoral bilateral agreements in the domains of agriculture, research, public procurement, technical barriers to trade, land transportation and civil aviation as well.

In the following, I shall track the implementation process of the deportation initiative. To that end, this case study relies on a systematic reading of the *Neue Zürcher Zeitung*, a Swiss high-quality newspaper. Based on the search term ‘deportation\*’ (*Ausschaffung\** in German) those 36 articles that primarily addressed the implementation of the popular initiative under scrutiny from November 2010 to December 2015 were selected as a source for this case study.

The implementation process of the deportation initiative was in line with common Swiss practice for those cases there is a need for legislation at the federal level. The remainder of this section is thus divided into two parts. The first part is devoted to the pre-parliamentary phase (working group, consultation procedure and governmental draft submitted to both chambers of Parliament), which is of importance as it pre-structures the bargaining in the Federal Assembly. The second part deals with the implementation decisions made by both chambers of Parliament. Given that they have equal rights, the National Council and the Council of States had to reach an agreement in order to enact legislative bills. Each chamber can thus be regarded as a veto player. It is important to note that the MPs of the SVP were far from reaching majority in both houses.<sup>3</sup> Hence, the supporters of the deportation initiative were dependent on other parties in order to achieve a strict implementation.

### 5.1 Pre-Parliamentary Phase

While the Federal Assembly was in charge of implementing the new constitutional provisions, the government (i.e., the Federal Council) had first to decide on a legislative proposal it would submit to the two chambers of Parliament. To that end, Justice Minister Simonetta Sommaruga set up a *working group* in December 2010 with the mandate to elaborate some implementation proposals. The seven-member panel was headed by Heinrich Koller, a law professor and a former director of the Federal Office of Justice. In addition to respectively two representatives of the federal administration and the cantons, it included two members of the Swiss People’s Party (SVP).

Unsurprisingly, the working group did not manage to agree on a joint proposal. A majority of experts recommended implementing the initiative in a modified way, considering the automatism demanded by the initiative to leave no room for judging individual cases and would therefore lead to Switzerland being condemned by the European Court of Justice. In addition, the majority feared a revocation of AFMP by the European Union and thus of six additional sectoral bilateral treaties. By contrast, the representatives of the SVP insisted on sticking to the initiative’s wording.

In its final report of June 2011, the working group presented four implementation variants. In all variants, the working group committed itself to compliance with the principle of non-refoulement, which is part of *ius cogens*. The first variant, favoured by the SVP and rejected by the majority of the working group, included an automatic deportation of foreigners after a conviction for an offence mentioned in the constitutional provision. In addition to social abuse and burglary, the catalogue of offences that would result in deportation focused on everyday crimes of violence and sexual offences. In the absence of a minimum



penalty as a prerequisite for deportation, a significantly higher number of offenders would have been affected than under the three remaining variants. These provided for various exceptions depending on the severity of penalty and the nature of offence.

The majority of experts pleaded for the second variant, under which the list of offences included the crimes that are explicitly mentioned in the new constitutional paragraph as well as other serious crimes. For these offences, penalties of at least six months would lead to deportation. The second variant basically corresponded to the counter-proposal citizens had rejected on 28 November 2010. The only notable exception was a tightening of the minimum penalty length, which was reduced by six months.

A majority of the working group proposed the third and fourth variants as alternatives to the second one. Under the third variant, the catalogue of offences contained crimes against specific legal interest such as 'life and limb', 'freedom', 'sexual integrity' as well as crimes against public peace. The fourth variant, for its part, proposed an implementation in the framework of the law on foreigners (as opposed to the penal legislation) by a mandatory revocation of permits and a mandatory entry ban based on the requirements of the second variant.

The SVP was quick to react. By proposing a minimum penalty length for deporting criminal foreigners, party president Toni Brunner declared that the majority of the working group had blatantly disregarded the will of the people. But more drama was to come. Given that the party anticipated that the deportation initiative would be watered down by Parliament, it decided to launch another popular initiative that aimed at enshrining the party's desired legislative amendment in the Constitution. The so-called enforcement initiative was launched in July 2012, without waiting for the Federal Council to submit its proposal to the two chambers of Parliament. With this strategic move, the SVP managed to put some pressure on the other parties so that they would finally accept a strict implementation of the deportation initiative. This enforcement initiative listed numerous offences that would lead to deportation, including inflicting bodily injury, kidnapping, public incitement to crime or violence, counterfeiting currency or committing sexual offences against children. In addition, it contained a definition of preemptory norms of international law by limiting them down to the prohibition of torture, genocide, aggression, slavery as well as to the principle of non-refoulement.<sup>4</sup>

Based on the proposals made by the working group, the Federal Council put forward two drafts for consideration by relevant stakeholders (such as parties, interest groups and state actors) in May 2012. In the framework of a *consultation procedure* about legislative amendments of the penal code and the military penal code, the Federal Council made it clear that it favoured the first draft. Based on the new constitutional provision, this variant set out a list of specific offences and expanded the catalogue to include serious crimes against property. In principle, a convicted foreign criminal would be expelled from Switzerland if he or she is sentenced to at least six months of imprisonment. Government proposed an exception for those deportations that would lead to a serious violation of international human rights guarantees. Whereas the minimum penalty would

make sure that automatic deportation does not apply to minor offences, criminal tourists and repeated offenders would nevertheless be expelled for a minimum of five years for minor offences.

The second draft stemmed from the SVP's representatives of the working group. It not only contained a broader list of offences (especially in the area of violent offences to include lighter crimes and misdemeanours such as simple bodily harm) but also provided for deportations even for petty offences, given that judges would always have to pronounce a mandatory expulsion, regardless of the sentence pronounced.

By pleading for not applying the principle of automatic deportation for prison sentences of less than six months, the Federal Council sought to take into account the constitutional principle of proportionality and to minimise incompatibilities with international law. According to its assessment, the first draft would largely comply with the ECHR and the UN Pact II, even though it was aware that the first draft would not fully meet these requirements. Deportations based on the provisions proposed by the Federal Council could also violate the AFMP with the European Union. Indeed, the relevant EU law under the Agreement requires a case-by-case examination, which would not always be compatible with the new constitutional provision. However, there was no doubt that the first draft would better account for these provisions than the second draft, since the former restricted the list of offences to serious crimes, provided for a minimum penalty and included the human rights guarantees under international law on deportation matters.

The vast majority of participants in the consultation procedure pronounced themselves in favour of the first draft. It was therefore no surprise that the *draft of the Federal Council submitted to Parliament* in June 2013, was strongly oriented towards this variant. However, compared with the initial draft, the catalogue of offences was expanded to include, among other things, offences in the area of social welfare fraud. In its report, the Federal Council explicitly mentioned that international human rights guarantees had to be respected. It thus proposed to include a provision in the penal code (Article 66d) that explicitly requires mandatory international law to be taken into account when it comes to enforcing deportations. As for non-mandatory provisions, the government drew attention to some dangers of not conforming to international law. It stated that recent constitutional law may take precedence over conflicting international law. As a result, the proposed implementation would lead to conflicts with the ECHR, the UN Pact II and the AFMP.

These rather concerning considerations about a possible non-compliance with international law provisions had to be appreciated in the context of a controversial decision taken by the *Federal Supreme Court* in October 2012 and published in February 2013. As expected, the court denied direct applicability of the new constitutional article, thereby arguing that it was the duty of the Federal Assembly to define the relationship of the deportation initiative with international law. Yet in an *obiter dictum*, the Federal Supreme Court additionally held that in case of an irreducible conflict, precedence was to be given to the ECHR over the constitutional provision. This rather unequivocal statement caused quite a stir, since it put some

pressure on Parliament to comply with international law as far as the implementation of the initiative at hand was concerned.<sup>5</sup>

### 5.2 Parliamentary Phase

Among the two chambers of Parliament, the *National Council* was the first to consider the implementation of the deportation initiative in March 2014. The political institutions committee of the lower chamber had previously asked the federal administration to elaborate a variant that was based on the SVP's enforcement initiative. It turned out that the representatives of the major parties from the right (i.e., the Swiss People's Party, the Liberals, (FDP) and the Christian Democrats, (CVP)) favoured this approach over the governmental draft. Philipp Müller, the president of the FDP was the driving force behind the adoption of this harder line. Müller's goal was to take the wind out of the sails of the SVP. He was determined to prevent another ballot on criminal foreigners in the context of the 2015 federal elections. In line with many MPs from the moderate right, Müller was convinced that people and cantons would also come out in favour of the enforcement initiative in the framework of a nation-wide vote and that it was therefore preferable to have some controversial provisions stipulated in the penal law than in the Federal Constitution.

In the plenary, a majority of 106 votes against 65 accepted a bill that made substantive concessions to the SVP. Most importantly, the National Council decided that a minimum penalty would not be a prerequisite for deportation regarding an extended list of offences. Such an automatic mechanism would apply to intentional homicide, murder, manslaughter, grievous bodily harm, qualified theft, robbery, commercial fraud, sexual assault, rape, drug offences and social welfare fraud. For other offences, such as simple assault, deportation would only occur in the case of repeated offences.

Opposition came only from the Social Democrats and the Greens as well as from a majority of the Green Liberals. These MPs pointed out in vain that back in 1999, people had approved the Federal Constitution that explicitly contains the principle of proportionality. In this context, Ms. Sommaruga observed that the fundamental guarantees of the rule of law had not been abolished with the adoption of the deportation initiative. Several National Councillors from the right rejected the governmental approach to implementation on the grounds that it contained central provisions of the counter-proposal citizens had rejected in November 2010.

In light of this strict implementation, Mr. Brunner announced that the SVP would possibly withdraw the enforcement initiative in the case the *Council of States* would follow the lower chamber in the most important points. However, due to major constitutional and international law concerns, there was a big question mark behind the fulfilment of this condition indeed. While complying with mandatory international law in the enforcement of deportations by adopting Article 66d of the penal code, the National Council's implementation of the deportation initiative severely undermined the constitutionally guaranteed right to proportionality and some non-mandatory provisions of international law. In individual cases, it would have been therefore left to the courts to weigh the matter accordingly. It was

foreseeable that there would also be conflicts with the ECHR, with the ECtHR in Strasbourg taking corrective action.

In June 2014, the political institutions committee of the Council of States announced that it wanted to take its own path of implementation by searching for a middle ground between the Federal Council's and the National Council's proposals. Yet the committee struggled with elaborating an appropriate solution that was supported by a larger majority of its members. It was only in November that it presented a new draft. Contrary to the lower chamber, it did not base its proposal on the enforcement initiative but on the deportation initiative. Accordingly, all offences listed there provided for mandatory deportation. This would also apply to welfare abuses as well as to some serious crimes such as forced marriage and genital mutilation that had not been taken into account thus far. For other offences, however, a more differentiated approach was envisaged. More specifically, mandatory deportation should not apply to misdemeanours and offences of application.

Yet the core of the proposal referred to a *hardship clause*. Under this provision, courts would have the possibility to waive deportations in case of 'serious personal hardship' and if the public interest does not outweigh the private interests of the person concerned. Special consideration would have to be given to the situation of foreigners who were born and raised in Switzerland (i.e., so-called *Secondos*).

In December 2014, this bill passed with ease in the upper house. The Senators followed the recommendation of their committee by 28 votes to 3. Although some of their moderate members had accepted the draft in the Council of States, the SVP was not satisfied with the outcome. The party was particularly bothered by the hardship clause, considering that the people had spoken out in favour of automatic deportations. The supporters argued that such a clause was necessary in order to maintain the principle of proportionality. They also emphasised that this clause would only come into play under very limited conditions.

After the decision taken by the Council of States, observers of Swiss politics agreed that this compromise solution would be likely to be adopted by a majority of the National Council. This was primarily due to members of the CVP and the FDP who were expected to change sides. In March 2015, two proposals by the SVP to stick to the National Council's initial implementation draft and to at least not include the hardship clause failed by clear margins. With only some minor changes, the MPs of the lower chamber agreed on the Council of States' version. The Senators subsequently approved the legislative they obtained from the National Council, thereby paving the way for the final votes.

The Council of States adopted the legislative bill by 36 votes to 3 with 5 abstentions. The nays came all from the SVP's parliamentary group. The National Council, for its part, voted in favour by 109 votes to 68 with 18 abstentions. In addition to the united radical right (i.e., SVP, Ticino League and Geneva Citizens' Movement), three MPs of the FDP as well as the majority of the Greens rejected the bill. The rather surprising opposition from the left was attributable to the fact that the Greens were fundamentally opposed to the deportation of foreigners from the second and the third generation. The implementation of the deportation initiative eventually came into force in October 2016 seven months after which people and

cantons had rejected the enforcement initiative at the ballot box, not least due to a strong mobilisation by civil society.

To sum up, the implementation of the deportation initiative turned out to be a stony and controversial journey onto Swiss penal legislation. After a long process that included a lot of stakeholders, the Federal Assembly enacted a decisive tightening in deportation matters that essentially proved to be in line with the initiative's aim. Most importantly, it specified and extended the list of offences that leads to deportations. At the same time, Parliament basically managed to comply with Switzerland's international obligations, above all with respect to *ius cogens*. This was achieved by anchoring the consideration of mandatory international law as far as enforcement decisions are concerned in a new article of the penal code. Regarding concerns about both mandatory and non-mandatory provisions of international law, the introduction of the hardship clause proved to be of crucial importance. Under the decisive influence of the Council of States, commonly referred to as *la chambre de réflexion* (i.e., the chamber of reflection) in Swiss politics, this clause enables judges to justify exceptions to automatic deportations. However, it needs to be mentioned that this approach falls short of a full proportionality review (Hertig Randall 2017, p. 135), thus not conforming to a EU directive on the AFMP for instance.<sup>6</sup> Hence, compliance with some specific non-mandatory provisions of international law was not completely accomplished. Overall, the results are in line with the hypothesis, given that it turned out that MPs refrained from implementing provisions that clashed with *ius cogens*, while being less strict regarding when it came to non-mandatory international law.

## 6 Conclusion

Initiatives play an important role in direct democracy, given that they enable weak actors to submit new policies to citizens. Once such propositions pass at the ballot box, implementation is still pending, however. When it comes to transforming winning initiatives into policy change, the conclusion reached by scholars thus far proves to be rather sobering. Indeed, many accepted initiatives have been found not to take full effect or even no effect at all. To explain this intriguing finding, political scientists have focused on leadership. From this perspective, widespread non-compliance arises from the fact that actors in charge of implementation are typically reluctant to meet the demands of initiatives approved by the people because they basically dislike them.

Yet the political science literature on policy implementation in direct democracy has somewhat neglected the fact that in liberal democracies, non-compliance by decision-makers can be the result of supranational constraints. In an attempt to advance the existing literature, this article has focused on the role played by international law in legislators' responses to the passage of initiatives. I have argued that the actors in charge of implementation face a fundamental dilemma between responsiveness and responsibility in such situations. The former refers to following a people's will by complying with the demands of an initiative, while the latter consists in not adopting a faithful implementation in order to respect a

country's external legal obligations. Against the background of the Swiss context, this article has focused on the distinction between mandatory and non-mandatory international law. I have hypothesised that legislators do not implement provisions that conflict with the former, while they are more open to comply with provisions that conflict with the latter.

The empirical part of this article has dealt with a case study of the Swiss deportation initiative, a proposition that conflicted with both mandatory and non-mandatory international law. The summary of this long and rather complex implementation process that included a multitude of stakeholders has shown that the Federal Assembly was eventually close to squaring the circle. Indeed, the amendments of the penal code basically met the demands of the popular initiative and at the same time respected most concerns regarding international law. More specifically, the latter was above all achieved through the introduction of a hardship clause that provides judges with the possibility to justify exceptions to automatic deportations. In line with the hypothesis tested here, the mandatory norms of international law (*ius cogens*) were fully complied with, while this proved not to be completely the case as far as some specific issues relating to non-mandatory international law are concerned.

It can be stated that Parliament eventually did a fairly good job in balancing out the initiative's demands with international law obligations, given that the translation of the new constitutional provisions into federal law was watered down only to the extent that was necessary. Despite the fact that the initiators from the Swiss People's Party expressed dissatisfaction with the implementation outcome, it appears not very convincing to argue that legislators had disregarded the people's will. In this context, it needs to be highlighted that the SVP achieved a lot with the deportation initiative in all stages of policy-making, ultimately leading the Federal Assembly to enact a decisive tightening in deportation matters (Bernhard et al., 2021; Biard, 2017). Altogether, MPs thus displayed a great deal of responsiveness, while showing responsibility with respect to international law. This case study illustrates that though power emanates from the people in a democracy, popular sovereignty cannot be absolute, especially when compliance with fundamental principles of superior law is at stake.

However, it remains an open question whether Parliament would have adopted such a faithful implementation in other political circumstances. The fact that the SVP put a lot of pressure on MPs, especially by launching an enforcement initiative during the implementation process certainly contributed to a high degree of compliance in the case of the deportation initiative. The Federal Supreme Court also played a significant role, as it urged legislators to act responsibly by complying with international law. It needs to be mentioned that this rather surprising intervention is of importance well beyond the case at hand. Hence, scholars may thus want to focus on the implementation of other initiatives that clash with international law. To that end, the context of Switzerland provides researchers with numerous opportunities. In this context, a thus far neglected aspect in the processes of implementation is international and supranational actors. Indeed, EU or UN organisations can be expected to attempt to influence the Swiss

decision-makers to favour responsible policy outcomes that are in conformity with international law, be it in the intergovernmental sphere or via lobbying.

Yet scholars may also put into perspective the Swiss evidence to the experiences made in the numerous countries where ballot measures have played an increasingly important role in recent years. While the literature on policy implementation in direct democracy is generally underdeveloped, the lack of internationally comparative work can be considered a major blind spot indeed.

## Notes

- 1 A reviewer of this article convincingly pointed to an additional crucial institutional characteristic from a theoretical perspective by drawing the distinction between legally binding and advisory direct-democratic votes (Setälä, 1999, p. 338). The former can be reasonably expected to be more strictly implemented than the latter. However, advisory votes may in fact also provide strong guidance to decision-makers (Jäske & Setälä, 2019, p. 91).
- 2 Since there is no judicial review at the federal level of Switzerland, Parliament has the possibility to at least partially invalidate popular initiatives that violate mandatory provisions of international law before a nationwide vote is organised. This happens rarely though (Serdült, 2014, p. 73). In international comparison, the admissibility hurdles for popular initiatives are thus very low in the Swiss case (Marxer & Pällinger, 2009, p. 51).
- 3 During the 49th legislative term of the Federal Assembly (2011-2015), in which the deportation initiative was adopted, the SVP had 59 out of the 200 seats of the National Council and only 7 out of the 46 seats of the Council of States.
- 4 The Federal Assembly decided to invalidate this particular provision in March 2015.
- 5 Beyond that, the *obiter dictum* produced a considerable political backlash, leading to the launching of yet a popular initiative by the SVP. The so-called “self-determination initiative” sought to establish a precedent of the Federal Constitution over any other law except for peremptory norms of international law (*ius cogens*).
- 6 These incompatibilities between federal legislation and supranational law may be the subject of court rulings relating to individual cases of deportation decisions.

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