



DIRECT DEMOCRACY IN MEXICO: A VETO PLAYER ANALYSIS

By

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A Thesis

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ABSTRACT

This study presents a critical perspective about Mexican direct democracy. We first provide a historical account of democratic theory by recollecting the ideas that have shaped our current understanding of democracy. We then shift our focus to understand the current debates on <direct democracy> as a mechanism that allows citizens to participate in public decision-making and the impact it has on public policy. The second part of this thesis provides an analysis of the actors that play a role in the Federal Law on Popular Consult and we emphasize on the role of the Judiciary as the ultimate decider of the initiative process in Mexico. We conclude that the aforementioned law is faulty in its design and we propose that such a design serves strategic interests for political actors who benefit from maintaining the status quo.

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Introduction

Scholars are currently debating over the relationship between democracy and development. The main question is easily posed: What comes first, democracy or development? The debate emerged in the context of the East Asian miracle, where countries increased their economic performance in a relatively short amount of time and with weak democratic institutions. This occurrence in Asia left scholars pondering about the possible existence of a “sequence” in the development of societies. The formula seemed to be “first develop strong economic institutions, then work to develop democracy”.

But what does developing democracy mean? Design public awareness projects to increase voter turnout? Or maybe one can increase democratic performance by reforming legal frameworks in order to allow public participation in the municipal budget? Maybe the development of democracy means to decrease power of authoritarian governments and allow other actors to intervene in public affairs. Developing democracy means all of the above and much more. It implies a betterment of society as a whole. Thus, developing democracy is a broad phrase that encompasses every area of public affairs.

Out of all the possible areas of study, we chose to research an emerging institution in Mexico: direct democracy. The need of scholarly research in this new legal and political institution arises from the fact that the Federal Law on Popular Consult entered into effect on March 2014. A new law with no precedents is always a novel focus of study because it contributes to the institutionalization process of the law. Also, legal studies provide legislators with tools to reform weaknesses in the law and, in this sense, this study also aims at furthering the discussion on the Popular Consult and its potential use in Mexico.

Our study is divided in two parts. In the first part we have tried to outline the general recurrent themes in the theories of democracy. We navigate through the theories offered in

different times by different authors with the intention of grasping a general understanding of democratic theory. This first part is then divided into three chapters: 1. History of democracy. 2. What is democracy? And, 3. Direct Democracy. Each chapter aims at providing the reader our findings on the most current themes in democratic literature. In the end, the goal is to comprehend the theoretical aspect of democracy in order to then see if it resonates in Mexico's Federal Law of Popular Consult and the way that this type initiative process is used.

The second part is the actual analysis of the Federal Law on Popular Consult. The analysis is undertaken using different lenses. For example, inspired by Tsebelis¹ we identify the players that are affected by the law and the role they will play when a popular consult is triggered. In the context of understanding the law, we employ legal hermeneutics in order to understand concepts such as *national importance* and *constitutionality*. We also create hypothetical situations in order to visualize how the law could apply in such cases, and thus be in a better position to offer a critique of the law. Our goal in the second part is to provide a better comprehension of the Federal Law on Popular Consult in order to accelerate its institutionalization in Mexican society.

Both parts of this study rely mainly on non-empirical methods of research. Our main sources of information were academic publications and legal analysis. Since our objective is to understand direct democracy and to explore its implications on Mexican democracy we focus on what authors have studied on other political contexts. The fact that there has not been a popular consult in Mexico prevents us from providing quantitative data on the subject. In the future, when Mexico experiences its first national referendum researchers must be attentive to the event in order to record democratic performance from a quantitative perspective.

¹ (Tsebelis, 2002)

The relationship between political science and law is a central theme to our research. Politics and law must be in constant equilibrium in order to develop healthy democracies, the former laying out the foundations to understand the complex phenomena of *coming together* as a society, the latter providing the rules that govern that *coming together*. Therefore, this study is of interest to development lawyers in the field of good governance, since it will further research on direct democracy models. Also NGO's and other politically active groups might find the article useful, since it will support the idea that direct democracy contributes to the overall development of societies, although several authors think otherwise. Governmental advisors also make up an ideal audience, since the intention of the research is to provide incentives for the overall enhancement of political development.

On terminology

Along the study we use different concepts that mean similar things. "Initiative process", "referendums" and "direct democracy mechanisms" (DDM's) are used as synonyms unless otherwise mentioned in the context of the sentence. The Popular Consult or simply "the consult" is the Mexican equivalent for referendum, initiative process or DDM.

Part 1. Democracy and Direct Democracy

In the following pages we analyze the two concepts that give name to this part; democracy and direct democracy. First we must understand the theory on democracy and the current debates that have shaped the idea of democracy in order to comprehend the narrower concept of direct democracy. In other words, once we get a panoramic view of democratic theory, we will be able to focus on the issue of direct democracy.

By democratic theory we mean a generalized and comprehensive account of the authors and the works they have produced, which give the theoretical foundation to modern

political organization. Within this general theoretical framework we can find a myriad of subtopics, direct democracy being one of them. In this vein, we first try to get a panoramic view of the whole image and then focus on one its elements.

It is important to recollect the different works that have influenced democratic theory because a historical recollection of any concept aids the reader in the comprehension process of any topic. For example, it is important to be aware of the negative and positive connotations that the term democracy in different historic epochs (we will return to this issue below). Among others, Arblaster comments on this conceptual transformation, to argue that the evolutionary nature of the concept democracy allows scholars to keep returning to study it. He states that democracy “is an inherently debatable and changeable idea.”² Therefore he provides a justification to the perennial study of democracy. “Neither lexicographers nor political theorists can or should hope to halt this process of constant revision, although they may legitimately aspire to guide or nudge it in one direction rather than another.”³ We share this view and thus enter into the body of literature dedicated to the study of the term democracy.

In the *process of constant revision* of the theories of democracy scholars have produced a massive amount of pages. It is not our goal to provide a full review of the theories of democracy, however we will mention a few of the most clear minded conceptions of democracy that have influenced our thinking and thus underpin the ideas submitted in this thesis.

After skimming over the literature on the topic one might be inclined to think that the concept of democracy raises huge debate and controversy over its definition or meaning, but a careful observation of the theoretical works from different authors helps to understand that there is really no essential contradiction or disagreement on what democracy is. Although

² (Arblaster, 2002) Pg. 6

³ Ibid.

almost every author contributes a new perspective, the majority of works on democracy approach the subject along three general themes:

1. History of Democracy
2. What is Democracy?
3. Contemporary Debates on Democracy

In this context, our purpose in this part is to provide the reader with a summarized version of what has been said about democracy. We proceed by dividing the following section in three chapters, which mirror the three themes identified above.

1. History of democracy

A. Is democracy good or bad?

Concepts undergo an evolutionary process. For this reason, attempting to define a particular concept is never a superfluous task. As time passes concepts acquire new meanings. When Deleuze and Guattari wrote, “every concept always has a history”⁴, they meant that concepts transform through time. Therefore when studying a concept it is always helpful to outline its historical contours in order to understand its limits and its insides.

A recurring theme on the history of democracy is the negative and positive connotation attributed to the concept in different historical periods. Bobbio in his course on the history of forms of government identifies a differentiated usage of the concept.⁵ Plato, Bobbio tells us, characterizes the democratic man by his immoderate desire of liberty, so excessive that liberty becomes unlicensed permission to do anything. Aristotle, in his categorization of forms of government, understands democracy as the corrupt form of a popular government. For Aristotle, *<politeia>* is the good form of a government controlled by the majority. Therefore both authors regard democracy negatively, the latter as an unwanted form of government and the former as an immoral attitude towards society.

⁴ (Deleuze, Guattari, 1994) Pg. 18

⁵ (Bobbio, 1976) Pg. 17

We can still observe a negative connotation of democracy in more recent times. In 1804 Alexander Hamilton wrote: “I will here express but one sentiment, which is that the dismemberment of our empire will be a clear sacrifice of great positive advantages without any counterbalancing good, administering no relief to our real disease which is democracy.”⁶ In a similar tone Thomas Jefferson wrote in 1816 “Democracy is pretty impractical. You can imagine it in a town, but outside of one town it just won’t work.”⁷ As we can see, democracy has not always been used in political discourse as the concept for the ideal political project, but precisely the opposite; a form of government associated with chaos and the rule of the mob.

During the late nineteenth century democracy started to gain a new meaning. Stemming from the ideals of the French revolution, democracy developed as a concept that embodied the fundamental political rights of man. Afterwards, entering into the twentieth century, the concept had already gained the meaning and significance that we attribute to it today.⁸ From this point on political discourse regarded democracy as the ideal form of government that societies should strive for. Furthermore, the modern idea of democracy acquired a kind of metaphysical meaning, like in the case of the Mexican Constitution:

“...considering democracy not only a legal structure and a political regime, but a system of life founded on the constant economic, social and cultural development of the people.”⁹

⁶ Citation taken from Open Yale Course Hist. 116 The American Revolution, lecture by Professor Joanne Freeman. <https://www.youtube.com/watch?v=shTBSGoYtK0&list=PLDA2BC5E785D495AB&index=2> Minute 18:22.

⁷ Ibid.

⁸ Anthony Arblaster points to the lack of studies that document the evolution of democracy. However he suggests that the change in attitude towards democracy was reinforced by WWI and the political rhetoric of President Woodrow Wilson, for example in the phrase “sacrifices could be demanded in the name of democracy”. (Arblaster, 2002) Pg. 48

⁹ Article 3. II. A) *Constitución Política de los Estados Unidos Mexicanos*. Mexican Constitution.

The concept went from being a categorization of forms of government to <a system of life>. Today <democratic> is everything that is good in politics. Just add democratic before any political project and it immediately gains an aura of legitimization and moral soundness: *Democratic Political Party, Democratic Government, Democratic Elections, Democratic Process*. The concept has internalized public discourse which such power that some even have ventured into saying that democracy is revered with religious zeal.¹⁰

B. When did democracy start?

Another recurring theme in the history of democracy is its origin. Almost no author contests the idea that the Greeks were the first western culture to adopt democracy as a political system. In this context, democracy is defined as a particular form¹¹ of government that a society chooses so it can organize itself to pursue its ends. Ancient Greeks regarded democracy as a form of government in which the majority of citizens were responsible for government affairs. But be aware, although democracy was in fact the Greek form of government, for Plato and Aristotle democracy was a negative form of government assimilating it with the rule of the mob. For them, the idea of democracy was one in which <every citizen> participated in the decision making process.

Although it may seem chaotic, in ancient Greece public affairs were, in fact, decided by citizens who gathered to held open discussions. Some authors state that democracy in Ancient Greece eliminated the division between state and society. Therefore, democracy in Greece was the unification of state and society or as Prud'Homme wrote, Greece in the V century BC was a “stateless democracy”¹². In the same line of thought Arblaster wrote: “The

¹⁰ (Meaney & Mounk, 2014)

¹¹ Other forms are: e.g. Monarchy, Aristocracy, Oligarchy. See (Bobbio, 1976)

¹² (Prud'Homme, 1997)

citizen body governing itself directly, through active participation in politics, a duty which fell upon every citizen at one time or another.”¹³

Although it worked in Greece for a couple of centuries, democracy, understood as a mass decision-making process, was not an attractive idea. The basis for arguments against it was the impracticability or impossibility of a democratic government especially in large societies, at least until the invention of representative democracy. George Sabine identified the difference between the Greek democratic way of life and the more modern version of representative democracy. “Modern states are so big, so remote, so impersonal, that they cannot occupy in modern life the place that the <polis> occupied in the life of a Greek citizen.”¹⁴

C. The modern idea of democracy

The conceptual transformation of democracy started after the years of the French Revolution. Influenced by the ideals of *liberté, égalité, fraternité*, democracy became an idea associated with equality in political rights. During this period of history, instead of being a particular form of government, democracy became a political project that reflected the ideals of the revolution. Although democratic theory started to expand into areas of equal rights on property and liberty, different world-views developed different perspectives on democracy.

In the final years of the eighteenth century the literature already points to differentiated definitions of democracy¹⁵. The diversity of definitions grew out of the different perceptions of society that each author adopted and can be summarized into two main perceptions: idealism and realism. The ideal view, which was how Rousseau saw society, understands society as a community of people that gathers together to develop society’s interests as a whole. This idea can be seen in Rousseau, for example, in the fact that he

¹³ (Arblaster, 2002) Pg. 25

¹⁴ (Sabine, 1937)

¹⁵ See below 2. What is Democracy?

accepted a representative democracy as a form of government only if it had the conditions and mechanisms under which the majority's well being would truly represent the community as a whole and not simply a collection of group or individual interests.¹⁶ Under this understanding of society, democracy was defined as a form of government that translates the people's demands into reality.

The realist view of society emerged principally in the individualist thinking of Anglo-Saxon authors. For Hobbes and Bentham "society was in essence a collection of discrete individuals, held together by laws and authority".¹⁷ Inspired by that mode of thought, American revolutionaries regarded democracy as a mechanism that recognized diverse group interests and gave them a voice in society. This led the Founding Fathers to regard democracy as the people's right to choose their representatives in government and to hold them accountable.

Such arguments were the basis for a theory that would later be called elitist theory. The main argument for this theory can be found in Arblaster's paraphrasing of the Federalist: "The intention was that the electors should choose to be governed by persons they recognized as better and wiser than themselves, who might well understand better than the people themselves what their real interests were, and whose decisions the people would therefore accept."¹⁸ The French understand democracy as a political ideal, but the Americans and Greeks, understand it as a bad form of government. However, because of the rhetorical force democracy was gaining in France, the Americans worked on a new conception of democracy, and thus elaborated new concept which understood democracy as a project of political representation, eliminating the original conception of democracy as a form of government in which every citizen had a right to decide. The argument for political representation indicates that those "better and wiser" should govern because of them will naturally grow the better and

¹⁶ (Arblaster, 2002) Pg. 40

¹⁷ Ibid.

¹⁸ Idem. Pg. 39

wiser decisions. Arguments in favor of a representative democracy included all sorts of political rhetoric (Government of the people, by the people, for the people) however in essence the founding fathers had in mind what the ancient Greeks would call an Aristocracy.

Conclusion

We have outlined a very brief summary of the main recurring themes in the history of democracy. First, it is important to keep in mind that democracy was not always regarded as an ideal political project in which governments respect individual rights and are accountable to their constituents (positive connotation). Rather, democracy was frequently regarded as an impractical form of government in which the masses submitted the state under a chaotic rule of mob (negative connotation). Second, no author contests the fact that Greece was the first western culture that gave birth to democracy as a decision making process. Many works give an account of the way in which the Greeks organized their political life¹⁹. Third, after the French revolution, authors started to regard democracy as an idealistic project associated with equality in political rights. This shift has developed different theories of democratic representation and gave the term “democracy” its current rhetorical.

2. What is Democracy?

During the latter half of the twentieth century authors have struggled to get one thing straight; a complete definition of democracy. In this section we briefly analyze four authors that have shaped democratic theory because of their conceptual innovations and profound intellectual reflections. Schumpeter, Sartori, Bobbio and Ferrajoli constitute an exemplary group of authors that clearly convey what can be said about modern democracy. Of course, many are left out and no account of democracy can ever be complete without the input of

¹⁹ See for example (Laurian, 2012) (Dahl, 1998)

authors like Dahl, Diamond, Huntington and Popper. However, with the four authors chosen for this brief review, we cover the general themes and basic theoretical framework of democratic theory.

Joseph Schumpeter

German economist Joseph Schumpeter first published “Capitalism, Socialism and Democracy” in 1942. Product of an era where Marxism was on the rise, the book is mainly about two rival economic theories, however, Part IV of the book is dedicated to the study of the relationship between socialism and democracy. In here the author provides a two-part analysis of democracy. In the first part, which he labels the “classical doctrine”, the author provides an idealist procedural definition; idealist because it affirms that democracy “realizes the common good by making the people decide issues through the election of individuals who are to assemble in order to carry out its will”²⁰. It is also a procedural definition because it contemplates democracy as a <method> or an institutional arrangement that translates the people’s will into political action.

Schumpeter’s second definition is his own contribution to democratic theory by introducing democracy as a <competition for political leadership>. This definition, unlike the classical doctrine, offers a realist account of democracy but maintains its procedural nature. It is a realist definition of democracy because it recognizes the democratic process as a struggle by the individuals who want to get elected by the people. The realist view puts forward the image of the people being only intermediaries of a process in which certain individuals acquire the power to decide, whereas the idealist view holds that it is the people who decide via their representatives.²¹ Schumpeter’s theory is also known as the “elitist conception of democracy”.

²⁰ (Schumpeter, 1950) Pg. 250.

²¹ Ibid.

The key issue that differentiates the idealist and realist account of democracy is the common good. For the idealist the common good is “simple to define and which every normal person can be made to see by means of rational argument”.²² However the realist affirms that it is impossible to define a common good and therefore it is false that the individuals in power carry out the people’s will. The difference of opinion as to whether the common good can be defined therefore, as we have seen, produced two very opposite definitions of democracy.

Giovanni Sartori

Almost twenty years later (1962), an Italian political philosopher, Giovanni Sartori, published an English translation of his book on democracy “*Democrazia e definizioni*”²³. The title for the English version was “Democratic Theory” and it consisted on a two part treaty that analyzed, first the logic and semantics behind the concept of democracy, and second the history of democracy.

Like the majority of authors, Sartori too starts his theorization by dividing the analysis of the concept of democracy into two parts. Prescriptive and descriptive definitions of democracy can be said to be the most recurrent theme in the works of modern authors that endeavor to define democracy.²⁴ Prescriptive or normative definitions are those that give an image of what democracy should be. On the other hand descriptive, denotative or empirical definitions offer an account of what democracy is.²⁵

An example of a prescriptive definition could be:

“Democracy is a process by which an association of politically equal citizens participates in public decision-making via their representatives.”²⁶

²² Ibid.

²³ The original Italian version was published in 1957.

²⁴ Although many authors approach democratic theory in this duality, Sartori was one of the first ones to do so.

²⁵ Even though Schumpeter does not mention the words prescriptive and descriptive, we can identify a similar thinking in the duality from Schumpeter (Ideal and Realist) and Sartori (Prescriptive and Descriptive).

²⁶ Definition created by the author of this thesis, however the key idea of “politically equal citizens” taken from (Dahl, 1998).

On the other hand an example of a descriptive definition could be:

“Democracy is a set of rules which establish *who* is authorized to take collective decisions and under which *procedures* such decisions should be taken.”²⁷

The former definition portrays an idealism of politics, the latter political realism. The difference between the two types of definitions stems from the intellectual formation of the author that created it. If an author has a *iusnaturalist* background, most probably his approach to democracy will be prescriptive. On the other hand, a *iuspositivist* like Norberto Bobbio will most definitely give an account of democracy that more closely resembles the process by which democracy materializes in reality. The different definitions of democracy are always marked by the authors’ intellectual style.

However different the style of definition, as Sartori wrote, “one cannot exist without the other and, at the same time, one cannot be replaced by the other”.²⁸ The dual nature of the concept <democracy> encompasses the totality of the significance attributed to the concept itself both in theory and in practice. On the one hand it is necessary that people acknowledge that democracy in action means electoral processes and complex decision making processes. However, this descriptive conception of democracy cannot exist without a solid normative foundation that sets the ideals to which democratic societies should strive for.

Sartori offers a third approach to democratic theory by reflecting on what he calls “Etymological Democracy”. This approach limits itself to the study of the Greek origin of the word democracy, which as we know means <power of the people>. However, the conjunction of the Greek words *demos* and *cratos* was made precisely in Greece at a time when citizens were the real decision makers. Greek democracy is in fact what we today know as direct democracy. As Sartori notes, “The man of our time cannot be like its ancestor, yet the etymologist constructs his edifice on foundations he renounces to reexamine. His *demos* was

²⁷ Definition created by the author of this thesis, however the idea was taken from (Bobbio, 1987), from his ‘minimal’ definition of democracy.

²⁸ (Sartori, 1962) Pg. 4

buried centuries ago and thus has still the task of replacing it with a new one.”²⁹ For this reason, the twentieth century account of democracy needs a renewed definition that takes into consideration the modern definitions of the words *demos* or <people> and *cratos* or <power>.

Sartori’s approach to the study of democracy solely on the basis of its etymological origins and its modern interpretation takes him to areas of the social sciences, such as law and sociology. For example, Sartori digs deep into the various possible definitions of the word <people>. He proposes six interpretations and proceeds to reflect on how each interpretation impacts the concept of democracy. Two of the most lucid interpretations of the concept of *people* that Sartori offers are:

1. “People understood as the bigger part of society, expressed through the absolute majority principle”.³⁰
2. “People understood as the bigger part of society, expressed through the limited majority principle”.³¹

The difference between the absolute and limited majority principles can be summarized in the importance a society pays to the rights of minorities. The <absolute majority principle> holds that the majority of the population represents society as a whole and this representation carries absolute and unlimited power over everyone. Inversely, the <limited majority principle> understands that no majority right can ever be absolute; this latter principle translates into a system of government where the majority rules but is limited by the rights of minorities.³² In Sartori’s reexamination of democracy “The theory of Democracy Revisited (1987)” we find the incipient theoretical framework for the emerging discourse that later will be the main focus in law and politics; we refer to human rights

²⁹ (Sartori, 1988) Pg. 51

³⁰ Idem. Pg. 43

³¹ Ibid.

³² Idem. Pg. 47

discourse. Indeed, Sartori paved the way towards the most modern interpretation of democracy, which reaches its ultimate expression in the work of Luigi Ferrajoli.³³

Norberto Bobbio

The relationship between human rights or fundamental rights is also present in the work of Bobbio.³⁴ The Italian jurist proposes a minimal definition of democracy that includes two basic elements. Democracy is a group of rules that establish *who* is authorized to make collective decisions and under what *procedures*.³⁵ Under this definition, one would distinguish the democratic quality of governments by assessing the number of people that may be involved in the electoral processes (the more people that can vote, the more democratic the government is) and by the clarity of the procedural rules that regulate the process.

However, Bobbio introduces a third element, essential for any government that portrays itself as democratic: political liberty. This third element translates into formal mechanisms established by the State with the object of guaranteeing fundamental freedoms such as speech, opinion, reunion and association. These basic rights constitute the core intellectual framework of the new paradigm of democratic theory or as Ferrajoli labels it “Constitutional Democracy”.

Luigi Ferrajoli

“Principia iuris: Legal and Democratic Theory” constitutes Luigi Ferrajoli’s systematized account of the linkages and dependence between, on the one hand democracy and law, and on the other, reason and law. It is a monumental work divided in three volumes,

³³ Below we comment on “Principia Iuris”, Ferrajoli’s masterpiece on Jurisprudence and Politics.

³⁴ (Bobbio, 1984)

³⁵ This definition is coherent with Bobbio’s previous work on the history of forms of government, where he argues that political thought over the course of history has classified the forms of government essentially by answering two questions 1) Who Governs? 2) How does it govern (good or bad)? See (Bobbio, 1976)

with more than 1500 pages just on the first two. Part IV of “Principia iuris” is called Constitutional Democracy, and it is an analysis of the current theory of democracy.

Ferrajoli’s contribution to democratic theory is the rationalization of fundamental rights theory into the democratic theoretical framework. As we mentioned, Sartori and Bobbio considered that a complete definition of democracy must limit the power of State when it comes to the rights of minorities, but Ferrajoli evolved and expanded this idea. Indeed, for Ferrajoli a complete definition of democracy is built within the constitutional paradigm of the rule of law and fundamental rights. Therefore, Ferrajoli argues in favor of a definition of democracy that includes not only its formal or procedural aspect, but also its substantial element.³⁶

Ferrajolis’ argument in favor for a dual definition of democracy (procedural and substantial) is summarized in a four-part argument on the irrationality of a definition of democracy that only contemplates a procedural significance; he labels his argument the “four irrationalities of a procedural democracy”.

1. Lack of explanatory capacity. A purely procedural definition ignores the Rule of Law and therefore ignores the empirical fact that every democracy must have a strong Rule of Law that limits the action of governments not only with procedural rules but also with constitutional principles and fundamental rights.
2. Lack of theoretical coherence. A coherent definition of democracy must include a substantial limit. In other words, a definition of democracy must say what elements are not for democratic choice, they are outside the grasp of democratic decision-making. A purely formal definition of democracy allows a state to suppress fundamental rights by “democratic means”. The truth in this

³⁶ A <procedural> definition identifies the *who* and the *how* of democracy, regardless of the *what*. A <substantial> definition contemplates precisely this latter question. It values the content of the decision that is being made.

reason can be seen in the historic experience of countries where totalitarian governments gained power by way of democratic elections.

3. Disregard of the indestructible link between democracy and political liberties. Popular will can only be legitimate where people can express themselves freely. There can be no democracy where people lack basic political liberties such as speech, opinion, reunion and association.
4. Unfounded political-philosophical grounds. A procedural definition is based on a conception of <people> based on the absolute majority principle. As Sartori identified, to consider <the people> as a complete organism or <political-body>, capable of deciding over everyone else, leads to the violation of the rights of minorities. In this regard, a substantial definition of democracy contemplates a balance to the power of the state, precisely in those counterbalancing powers that are Fundamental Rights or Human Rights.³⁷

Interesting how every author presents an analytical framework of democracy structured into two:

Table 1 Twofold structure of democratic theory.

Author	1	2
Schumpeter	Ideal Democracy	Realistic Democracy
Sartori	Prescriptive	Descriptive
Bobbio	Subjective democracy (Who)	Procedural democracy (How)
Ferrajoli	Procedural Democracy	Substantial Democracy

Conclusion

The important thing to notice is the evolution of the concept. In the beginning, democracy was only regarded as a procedural concept (Schumpeter). Scholars began to understand that a purely procedural definition would lead to totalitarian governments, which clearly are considered to be undemocratic. Therefore, minority rights and political liberties

³⁷ (Ferrajoli, 2007)

started to introduce themselves as *sine qua non* conditions for democracy. This new democratic paradigm reaches its highest and most complete account in the theoretical framework of constitutional democracy. As we have seen, Ferrajoli argues that a modern democracy cannot survive without taking into consideration the content of its decisions, that is to say the alignment of every governmental decision with the Rule of Law and respect for basic fundamental rights.

3. Direct democracy

Until now we have reviewed the theoretical background of democracy. Now we proceed to analyze the current literature on direct democracy. Terminologically speaking, as we mentioned earlier, direct democracy is equivalent to democracy as the Greeks understood it. But today, the generalized understanding of democracy has little in common with its Greek origins. Today democracy is not only a form of government, but also a “way of life”, a spirit of good governance and a representative political system. For this reasons scholars have coined the term “direct democracy” to the mechanisms in which citizens participate directly in government.

In this chapter we will first analyze the debate that revolves around the issue of citizens getting involved directly in government affairs. We briefly analyze three objections that are commonly raised in the literature; 1) Territory and population, 2) Knowledge, and 3) Representation. We call this subchapter “the return of direct democracy” because it is the reentering of the common man in public affairs, just like it happened in ancient Greece.

Secondly, we present an account of the different empirical studies in the field of direct democracy. In this subchapter we analyze different approaches to the study of

direct democracy mechanisms. Direct democracy and A) economics, B) morals, C) its effects, and D) veto players are the four different types of approaches that we review in order to better understand the current debate on direct democracy. We call this subchapter “modern direct democracy” because of the extended reliance on evidence gathered by quantitative methods of research, which is typical of the modern social sciences.

The return of direct democracy

What scholars and commentators refer today as direct democracy is in fact the original conception of democracy since ancient Greece up until relatively recent times like those of the American Revolution. Direct democracy, as Sartori notes, is that which lacks representatives and mechanisms to transmit representation, in other words it is a self-governing democracy.³⁸ To put it differently, a genuine direct democracy is that system in which every citizen participates in the deliberation and decision-making processes of public affairs. Three issues are recurrently brought up by the literature on direct democracy.

The pragmatic objection of space and number

In the modern nation-state, direct democracy in its idealistic form³⁹ is nearly impossible because of the size both of territory and population. Ancient Greece had the infrastructure to hold together in a single place the totality of citizens, but in most modern countries one cannot imagine a physical place⁴⁰ that could resemble an *ekklesia* in terms of

³⁸ (Sartori, 1988) Pg. 150

³⁹ Ideally, direct democracy allows every voice to be heard and every vote to be counted.

⁴⁰ Some authors have written about implementing direct democracy through the use of technologies. For example, imagine a referendum where people could vote through their smartphones. However, the space for misuse and manipulation is still far too great.

uniting the entire body of citizens. This pragmatic objection to direct democracy is frequently raised, however, several authors have raised more interesting theoretical objections.

The knowledge objection

Sartori analyzes the relationship between direct democracy and knowledge. He claims that a self-governing society must have increased knowledge on the diverse topics that are to be decided. As a decision maker, the citizen must have not only sufficient and true information but also the capacity to use that information rationally and make a knowledge-based decision.⁴¹ The distinction between merely having information and truly having knowledge is at the heart of the theoretical objection to direct democracy. As Matsusaka pointed out *“many journalists, pundits and scholars remain concerned about direct democracy. They worry whether ordinary citizens have the attention span or competence required to decide complicated policy issues.”*⁴² Tsebelis summarizes this issue with precise clarity, *“For critics, from Plato to Stuart Mill, to Schumpeter, to Sartori, the major question is whether the average citizen has information and expertise to judge what best advances collective interests.”*⁴³

This objection often leads to arguments in favor of a representative system in the style of Schumpeterian democracy. Proponents of an elitist conception of democracy however dismiss the fact that elected representatives are also subject to the same rules of the information-knowledge issue. In other words, a representative democracy does not solve the issue due the fact that elected officials may or may not have knowledge about any given topic. Although it may be true that a representative system minimizes the problem, logically speaking the information-knowledge issue applies both for a representative and direct democracy.

⁴¹ Supra note 38. Pg. 162.

⁴² (Matsusaka, 2005) Pg. 186

⁴³ (Tsebelis, 2002) pg. 158

The concept of representation

Direct democracy literature often reflects upon the concept of representation. Because of the above-mentioned problems (space, number and knowledge), societies invented a system by which some people would represent society and be legitimized to take decisions on behalf of the whole group; this is called a representative democracy. Representative democracies are the norm in almost every country in the world. Just a few countries have direct democracy *mechanisms* (DDM's), however, in every case, these mechanisms function within the broader political framework of a representative democracy.

For some authors, having DDMs raises a fundamental contradiction. If citizens elect representatives to deal with public policy, then why would a society want to decide on specific issues? Is it not the function of representatives precisely to make decisions on behalf of the represented? These and other questions pose significant objections to the use of DDMs, but those in favor of direct democracy are far from satisfied with these objections and thus have refined their arguments.

Altman for example says that “the time elapsed between elections may be agonizingly long for citizens whose preferences are systematically unheard, and these interelection spaces constitute the weakest link in current (representative) democracies”.⁴⁴ This argument is built within a broader framework that understands politics as Schumpeter understood it. An elitist conception of democracy, ironically enough, does not contradict arguments in favor of DDM's. If we accept that only a selected powerful minority rises to public office, then it would be morally acceptable to argue that in some cases there is the need to provide the majority with mechanisms that could counterbalance the fact that the masses will never have a position of power. DDM's, then, constitute a power-balancing mechanism that could apparently maintain a balance of power between the have's and have-nots.

⁴⁴ (Altman, 2011) pg. 1

Moreover, political representation is in itself a very problematic concept. The ambiguity embedded in the concept of <representation> prevents scholars to determine what are the specific functions and limits of political representatives. Hanna Pitkin termed this issue “the mandate-independence controversy”. She framed this issue by posing two questions: “should (must) a representative do what his constituents want and be bound by mandates or instructions from them; or should (must) he be free to act as seems best to him in pursuit of their welfare?”⁴⁵. There is no consensus on what representation should look like.

David Altman, interpreting Pitkin, labels these two postures with the concepts of delegate and trustee. A representative is a <delegate> when he has “a significant quantity of independent judgment”;⁴⁶ on the other hand a <trustee> behaves “simply as (a) transmission belt for (his) voter”.⁴⁷ Understanding these ideas of representation is important to build a sound theoretical framework of direct democracy because they clearly express two different ideas about politics.

Someone who views representation as a <delegation> is probably a political realist. On the other hand, representation as a <trustee> is the normative and theoretical ideal, regarded as the perfect form of representation and thus the form that needs to be pursued. Viewing representation as a method whereby elected officials have the sufficient freedom and independence to make the choices he/she believes will result in the most favorable outcomes for the voters is more aligned with a theory that supports direct democracy. On the contrary believing that representatives carry out the mandate of their voters prevents further arguments in favor of direct democracy. If a representative already votes in the way his voters want him/she to, then why have direct democracy?

Believing in a faulty representation is at the core of direct democracy theory. The voters must have a mechanism by which to limit their representatives when they misuse or

⁴⁵ (Pitkin, 1967) Pg.145

⁴⁶ Supra Note. 44 pg. 33

⁴⁷ Ibid.

exceed the liberty and independence given to him/her by the voters. This is the reason why favoring a delegate representation does not contradict direct democracy, to the contrary, one must believe in the free exercise and independent decision making of our representatives in order to come to realize that sometimes a counterbalance is needed.

Until here we have raised three issues that frequently are raised within the direct democracy debate. The first two issues (space-number and knowledge) have been debated since democracy was invented, that is to say, democracy understood in its original version, *à la* Greek. The representation issue comes later into the literature but has growingly inserted itself as a main topic in the democratic debate. Now, however we must clarify the modern concept <direct democracy>, because, as we have mentioned before, concepts transform through time.

Modern direct democracy

When it comes to a definition of the modern usage of direct democracy, Matsusaka offers the clearest one: “Direct democracy is an umbrella term that covers a variety of political processes, all of which allow ordinary citizens to vote directly on laws rather than candidates for office.”⁴⁸ Diverse follow-up questions immediately come to mind such as: Which are the political processes that make up that *variety*? Can citizens vote on any law? What procedures should be followed in order to organize the voting process? These questions and other issues will be addressed in the following paragraphs.

First we must address the terminological aspect to direct democracy. Ultimately direct democracy has to formalize through the legal system of each country. In consequence the mechanisms of direct democracy will vary from country to country, and with different names. Some legal systems identify clearly between initiative and referendums, Mexico has the “popular consult”, and other countries have plebiscites. Moreover, a referendum in

⁴⁸ Supra note 42. Pg. 187

Switzerland may have different rules than a referendum in California. The popular consult in Mexico has some elements of the Californian referendum, and the Californian referendum has some elements of the Canadian plebiscite. For the scholar, this differentiation complicates efforts to produce a theory and praxis of direct democracy that could comprehend the totality of direct democracy around the world. For example, Altman, before proposing a general typology that can travel across in all places, notes that a typology could be disaggregated “to the extreme of generating a typology with as many categories as the number of MDDs (DDM’s) that exist”⁴⁹ because no two DDM’s are “exactly equal”⁵⁰.

But however different the names and legal concepts, ultimately every mechanism is a form of “election in which citizens vote yes or no on specific”⁵¹ issues listed on the ballot. Contrary to representative democracy, where elected officials decide on public issues, direct democracy allows citizens to vote on laws and other policy measures. Our aim here is to understand what scholars have said about the impact direct democracy has had on policy and democratic theory.

The economics of direct democracy

Authors typically describe the impact that direct democracy has on society from a political science perspective. Few authors have approached direct democracy from the standpoint of economics. Research is not enough to answer questions like those proposed by Wagschal in his article “Direct Democracy and Public Policy Making”, where important issues are raised, such as the relationship between direct democracy and economic growth, or whether direct democracy affects public expenditures or taxation. Authors who favor direct democracy typically offer political (moral) arguments, e.g. direct democracy increases awareness and raises public participation. It is interesting to note that no one defends direct democracy because of its effects on the economy.

⁴⁹ Supra Note 44 pg. 9

⁵⁰ Ibid.

⁵¹ Supra Note. 42. Pg. 187

Uwe Wagschal concludes that direct democracy is more a brake than an engine of economic growth as well as a “counter-governmental” barrier⁵². His arguments are underpinned by the assumption that the upper-classes favor tax cuts, reduced government spending and public debt. Based on this assumption the author argues that “a greater proportion of wealthier, older and more highly educated people vote than minorities or poor people. These circumstances might increase opportunities to maintain existing conditions”⁵³. He even expands his argument by stating that groups with limited financial resources are at a disadvantage when compared to the elite in a race to promote a specific initiative or referendum.

In short, Wagschal’s argument goes like this:

1. Direct democracy favors elites;
2. Elites favor conservative economic policies;
3. Therefore direct democracy is a mechanism that favors conservative policies

Conservative policies involve: reduction of public expenditure, taxation and public debt. Wagschal’s article proves empirically solid in establishing that direct democracy mechanisms most probably favors right-winged conservatives, but nevertheless he does not establish the linkage between a conservative economic policy and the reduction of economic growth.

The issue whether direct democracy favors elites is also pondered by Matsusaka. His conclusion is that direct democracy generally favors the majority and thus has a positive impact on public policy. “Despite the concerns of special interest subversion, the evidence generally shows that direct democracy serves the many and not the few.”⁵⁴ And after describing some examples he concludes “thus as far as fiscal policy is concerned, the initiative appears to have delivered policies desired by the majority”.⁵⁵ However this

⁵²(Wagschal, 1997) Pg. 242

⁵³ Ibid.

⁵⁴ Supra Note 41. Pg. 200

⁵⁵ Ibid.

conclusion does not satisfy the main argument that critics pose against direct democracy for its elitist elements. Namely, his argument does not answer their essential question: Does direct democracy *benefit*, the majority? Matsusaka's conclusion simply states that fiscal policy is a reflection of the *desire* of the majority. Critics therefore could easily ask the question: Does the desire of the majority benefit the majority? The counter argument of critics still holds: the majority may be deceived into believing that voting in favor of a particular law is beneficial while in reality it is not.

This inquiry leads us away from the economic perspective of direct democracy and into the political science involved in direct democracy.

Moral issues and direct democracy

The main body of empirical research on direct democracy has gone into exploring issues like political participation, political disaffection or the unintended effects of direct democracy⁵⁶, just to mention a few. Others have studied the increasing number of times that moral public issues are taken to the ballot.⁵⁷ More ambitious authors have researched direct democracy using the tools that economics offers to social scientists⁵⁸.

For example, Grummel offers a study that analyzes the relationship between morality issues taken to the ballot and voter turnout. Morality politics, as he calls it, is when moral policy issues are submitted to vote by way of a DDM. Abortion, gay and anti-gay rights, marriage definition, physician-assisted suicide and stem cell research are all controversial moral issues that no legislature can easily agree on. The high political cost for any political actor creates incentives for governments to transfer the task of deciding policy to the people.

When a moral policy issue is on the ballot, Grummel concludes, evidence shows that voter turnout is higher. Regardless of the majority's posture, an election in which morality is

⁵⁶ (Matsusaka, 2013)

⁵⁷ (Grummel, 2008)

⁵⁸ (Tsebelis, 2002)

involved will bring more people out to the voting booths. Political parties then may use DDM's as tools to increase the election turnout. A right wing candidate might propose a referendum to decide on the legalization of gay marriage in a city where the majority of voters are considered conservative. By doing this, the candidate incentivizes the majority to come out and vote against the referendum and most probably they will also vote in favor of the candidate that aligns to their conservatism, which would probably be the right wing candidate. Since the general election and DDM ballots are usually located on the same site, DDM's prove a powerful tool for politicians to provide people with incentives to vote.

To conclude, research shows that there is a higher voter turnout when moral issues – such as the definition of marriage, abortion and stem cell research– are taken to a vote.⁵⁹ This in turn impacts political strategies. Another example; in a liberal or predominantly left wing city, a liberal candidate would find it advantageous if a referendum on abortion took place the same day as his election, because evidence shows that more voters would show up to the ballot. Chances are that people would mainly show up to vote because of the referendum, however this proves useful to increase voter turnout in the candidate election. This provides a hint of the politics involved in direct democracy. The actual use of DDM's is becoming more frequent, not because of its democratic value but because of the impact it can cause on politics.

The effects of direct democracy

Researchers have explored how direct democracy impacts the traditional institution of representative democracies: legislatures. Matsusaka provides a succinct account of both the direct and indirect effect of direct democracy on public policy, concluding that the mere possibility of taking an issue to the ballot changes the behavior of legislators.⁶⁰

⁵⁹ Supra note 57. Pg. 289

⁶⁰ (Matsusaka, 2013)

Direct democracy affects public policy <directly> when voters approve new laws in the ballot box. On the other hand, direct democracy affects public policy <indirectly> “by causing the legislature to adopt different policies than it would have adopted if the initiative process was unavailable.”⁶¹ This analysis, as the author wrote, has been ignored by most of the literature on direct democracy.

In order to grasp and comprehend the effects of direct democracy, particularly the indirect effect, one must have an acute and subtle sensibility towards the analysis of statistical data and empirical analysis. We use the same words of the author in order to explain the direct effect of direct democracy:

*“Identifying a direct effect in the data is not as simple as it might seem. One cannot infer a direct effect simply by observing that an initiative was approved; it must also be the case that the initiative resulted in a policy different from what otherwise would have prevailed. The legislature might have adopted the same policy on its own even without an initiative, in which case the initiative is merely the vehicle, not the driver... In order to identify a direct effect on a particular issue, then, the question is not whether voters approved an initiative on that issue, but whether the policy prevailing in states that approved an initiative differs from the policy prevailing in states where the initiative was not approved.”*⁶²

On the other hand, grasping the indirect effects or even proving its existence is highly complicated, this is why Matsusaka notes, “*evidence... is largely anecdotal*”.⁶³ In this sense, Randolph observed that the “*indirect effects of the availability of the voter initiative process are less straightforward and require some additional discussion in order to identify how they may affect policy outcomes*”⁶⁴. Basically, the indirect effect of direct democracy occurs when legislatures move a policy closer towards a group’s preference with the objective of reducing the probability of having an initiative process. If DDM’s did not exist, legislatures would not have the incentives to decide on certain issues that favor minorities. On this issue Randolph

⁶¹ Idem. Pg. 3

⁶² Idem. Pg. 7

⁶³ Idem. Pg. 8

⁶⁴(Randolph, 2010) Pg. 6

agrees that it is because of the threat of DDM's that clear-minded legislatures prefer to align policy closer to group preferences "*in order to avoid the passage of a voter initiative*"⁶⁵.

Evidence suggests that the indirect effect of DDM's might be true for the US, which has strong democratic institutions and where ballot propositions and public participation in such electoral activities are relatively high. However, in countries that have low public participation or high apathy levels, the indirect effect in the sense of a "threat" might not seem to be so important. Mainly because legislatures might think that the people lack the structural capacity to organize a referendum. In this context grasping the indirect effect of DDM's in countries like Mexico becomes highly complicated.

Direct Democracy and veto player analysis

Political calculation and institutional analysis is at the heart of almost all scholarly literature on direct democracy. In this context, Tsebelis provides an analytical framework that helps understand the impact of direct democracy on the legislative status quo⁶⁶. His methodology for the analysis of direct democracy stems from his broader methodology for institutional analysis, which focuses mainly on the identification of veto players and the role they play on institutions.

In this context, his framework helps visualize the game by identifying the players whose agreement is necessary to change the status quo, he defines these players as "veto players". These veto players, Tsebelis argues, are the ones that have the power to set the legislative agenda and he proposes two simple questions in order to identify the relevant veto players that come into play in direct democracy mechanisms:

- Who asks the question?
- Who triggers a referendum?

⁶⁵ Idem. Pg. 1

⁶⁶ (Tsebelis, 2002)

Regarding the first bullet point, these are two examples of referendum questions held in Australia:

“Do you approve the proposed law for the alteration of the Constitution entitled 'An Act to alter the Constitution so as to omit certain words relating to the people of the Aboriginal race in any State so that Aboriginals are to be counted in reckoning the population'?”⁶⁷⁶⁸

“Write YES or NO in the space provided opposite the question set out below. A proposed LAW: To alter the Constitution to establish the Commonwealth of Australia as a republic with the Queen and Governor-General being replaced by a president appointed by two-thirds majority of the members of the Commonwealth Parliament.”⁶⁹

Who was the actor that defined the structure and form of these questions? This apparently banal issue is in fact a major factor to take into account because of the impact it will have on the outcome of the referendum. Evidently each country has its own set of rules for determining the ballot question, and for this reason all mechanisms of direct democracy impact differently a country's political atmosphere. A referendum, in a presidential system where a single man could propose it, as Charles De Gaulle wrote, “...*is in fact, an attempt to deprive the people of its sovereignty for the benefit of one man*”⁷⁰. The power to define the question implies the power to negate proposed questions by other actors and for this reason legal frameworks on direct democracy should establish a balanced formula that allows different players to be involved in the drafting of the ballot question.

⁶⁷ Referendum held on the 27th of May 1967 in Australia. Retrieved from http://www.skwirk.com/p-c_s-14_u-120_t-329_c-1133/the-1967-referendum/nsw/the-1967-referendum/changing-rights-and-freedoms-aboriginal-people/self-determination

⁶⁸ It is interesting to note that a slight search on the web is not enough to find examples of the literal questions that appear on the ballot paper. One can find immediately information about the results, issues and summaries on referendums, but not the literal question asked to voters. The google search turned out to be easier by using “Google Images”.

⁶⁹ Retrieved from:

http://www.aec.gov.au/Elections/referendums/1999_Referendum_Reports_Statistics/images/ballot2.jpg

⁷⁰ (Tsebelis, 2002) Pg. 169. quoting (Gaulle, 1971). Pg. 325

A complete veto player analysis of direct democracy should also consider the second question, that is to say, who triggers the referendum. In this sense, we can also ask, who are the possible actors that can trigger a DDM? Once again, it will depend on the specific country in which the DDM is going to be held. The president, a political party, the people or the legislature, are the most common actors. This second question gains more relevance because the veto player that triggers the referendum has the institutional powers to alter the existing status quo. In this sense, the more the veto players that can trigger a referendum the more <democratic> the mechanism is. For example, a country where the legislature can trigger a referendum is more democratic than the country where only the president can trigger it. But even more democratic will be that country where the people, by means of its organized associations, can also trigger a referendum.

As we have mentioned the initiative process has particularities that will depend on each specific country. Differentiated regulations on the actors that can trigger a referendum and the regulations that determine its consequence are the two most important factors that give the initiative process its name. Tsebelis

proposes a diagram that illustrates the different types of DDM's focusing on the veto players that trigger it, or as he wrote “(...)my analysis is focused on (...)” “(...)the degree that some players control the agenda.”⁷¹ (Figure 1.) A “Required” referendum implies that the law forces the government to submit a certain issue to a

Questions defining different categories of referendums

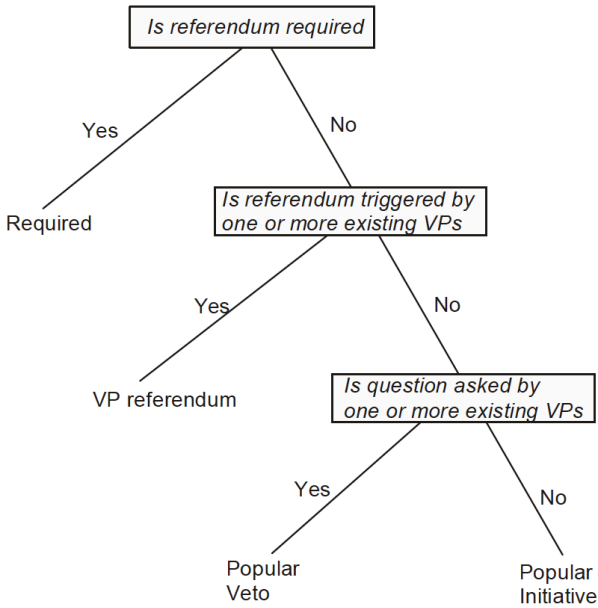


Figure 1. Types of referendums.

⁷¹ (Tsebelis, 2002). Pg. 161

referendum. Constitutional reforms in constitutionally rigid countries frequently have this type of initiative process, precisely because of its rigidity. A “VP” (veto player) referendum requires that someone with the institutional faculty to trigger a referendum decides to trigger it. The president, the legislation or another actor with legal attribution to initiate a referendum could take an issue to the ballot box. Tsebelis notes that this type of mechanism is usually called “plebiscite”⁷².

A “Popular Veto” is a type of referendum that places in different actors the faculty to trigger it and to formulate the question. For example, a country where people decide to organize themselves to vote on gay marriage rights. The community might round up thousands of signatures in order to activate the initiative process, however, the government holds the power to formulate the actual question that will appear in the ballot paper. Tsebelis does not give us a common term for this category of referendums. Lastly, a “Popular Initiative” originates from the people and is basically a substitution of the legislative process,⁷³ whereby organized groups trigger the referendum and formulate its question.

Terminology

Literature on the subject does not frequently use Tsebelis’s categorization to classify the different types of mechanisms of direct democracy. Most usually classification of direct democracy mechanisms are based on the effects that a particular mechanism has on the legislation. Matsusaka, for example, proposes the following terms:

Table 2 Definitions of direct democracy mechanisms.

Term	Definition
Initiative	A direct democracy mechanism by which a new law is proposed by ordinary citizens that is qualified for the ballot by collecting a predetermined number of signatures. ⁷⁴

⁷² Idem. Pg. 163

⁷³ Idem. Pg. 171

⁷⁴ Supra Note. 41. Pg. 187

Referendum	A direct democracy mechanism by which a law already approved by the legislature qualifies for the ballot by collecting a predetermined number of signatures. ⁷⁵
Legislative measure	A direct democracy mechanism by which a measure is placed on the ballot directly by the legislature. ⁷⁶
Advisory Measure or Advisory Referendum	A legislative measure (see definition above) that has a <u>nonbinding resolution</u> . It takes places for the sole purpose of getting a sense of public opinion before actually reforming the law. ⁷⁷⁷⁸
Petition Referendum	A direct democracy mechanism by which a measure is placed on the ballot by citizen petition in order to <u>reverse a decision</u> of the legislature. ⁷⁹
Recall	A direct democracy mechanism that allows citizens to remove and replace a public official before the end of a term of office. ⁸⁰

The definitions vary as much as there are authors that write about the subject. Ultimately the proper name for a specific direct democracy process will be established in the specific law that regulates that process.

Conclusion

We have analyzed the theoretical and empirical themes that are raised in direct democracy literature. Territorial size, high levels of population, insufficient and false information are the most common theoretical objections against the use of direct democracy.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ (Matsusaka, 2005-2) Pg. 158

⁷⁹ Ibid.

⁸⁰ National Conference of State Legislatures. Retrieved from <http://www.ncsl.org/research/elections-and-campaigns/initiative-referendum-and-recall-overview.aspx>

Moreover representative democratic models appear to be in direct contradiction with the use of DDM's. These debates are at the heart of the modern literature on the theories of direct democracy.

With the increased usage of mobile technology, what appeared to be science fiction for Sartori⁸¹ could someday in the near future become true. However, there is a need to overcome a higher obstacle, the knowledge issue. Even if we take for granted the technology that allowed an ideal direct democracy, there is no guarantee that citizens will ever have true and sufficient information. In fact, this objection can never be sufficiently quieted, as Popper states, "*...knowledge is unstable, growing, critical, and ...it is always tentative, hypothetical. It searches for the truth, and tries to get nearer to the truth, without ever claiming, or trying to justify the claim, that it has reached it.*"⁸². Modern theories of knowledge tell us that there is no ultimate or definite solution for anything, thus it is meaningful to test the knowledge objection to direct democracy under the lens of modern epistemology.

The representation debate will never cease to exist. Societies are increasingly communicated and this factor will contribute in the development of their political awareness and thus will raise the demands for better representation. Because of this, the use of DDM's will also increase and thus academic production of democratic knowledge will have to elaborate more a sophisticated and pragmatic understanding of democracy and the ways the masses can participate in public decision making.

This leads us to our empirical analysis of direct democracy. Academic study has been approaching direct democracy from different angles and perspectives. Some authors study the relationship between direct democracy and economics. There is no definite and comprehensive work on this issue, but several works point to the fact that a predominantly representative system is better for the economy and for the majority. Another author, while

⁸¹ Sartori plays with the idea of every citizen having a device at home whereby he could push a button in order to cast a vote.

⁸² (Popper, 1963) Pg. 8

studying the relationship of moral issues and direct democracy, found out that when a moral issue was taken to the ballot, there was a high probability of having an increased voter turnout. In consequence, DDM's could be used as instruments to raise voter turnout in any particular election.

We also analyzed both the direct and indirect effects of direct democracy. The direct effect is evident, but the indirect effect is a more sophisticated political phenomenon because it causes legislatures to modify their policy, in their intent to evade the possibility of being forced to legislate in a certain manner by way of a referendum.

Lastly, the analysis of direct democracy under the analytical framework of veto players gives us the tools to identify the relevant actors that have the power to alter the existing status quo. This helps when trying to understand the regulations of a particular DDM, as we will see in the next part.

Part 2. Direct Democracy in Mexico: The Federal Law on Popular Consult.

Introduction

Liberal democracy has established itself as the predominant form of government around the globe⁸³, especially in its representative version. Mexico is no exception. Contemporary Mexico has continuously elected governments by way of democratic procedures with relatively no violent conflicts. Representative democracy in Mexico is a well-established institution that is very unlikely to present decay in the foreseeable future.

This is not the case for direct democracy. Unlike representative democracy, direct democracy is far from being an institutionalized procedure. As Huntington described in his landmark book about developing societies; in order for a procedure to become politically institutionalized it must meet certain criteria to assure its permeation in society.⁸⁴ Since direct democracy in Mexico is relatively young, its institutionalization process is beginning and its completion will take time and effort from every major political actor that is affected by it.

To understand the emergence of direct democracy in Mexico we have to go back in time to the ninth of August 2012, because on this date a constitutional reform entered into effect. Popularly known as the “Political Reform”, the reform created new institutions that modified several democratic processes, like permitting citizens to register their candidacies for public office independently from a political party or formalizing citizen’s right to submit a bill for a new law. The Reform was applauded by commentators, which considered it to strengthen Mexican democracy.

⁸³ (Ginsbourg, 2008) Pg. 23.

⁸⁴ Criteria of Political Institutionalization of organizations and procedures: 1) Adaptability-Rigidity; 2) Complexity-Simplicity; 3) Autonomy-Subordination; 4) Coherence-Disunity. (Huntington, 1968) Pg. 12-24.

The political reform included the creation of a new political institution; the <popular consult> (from here on, the consult). The consult is no different than what is commonly known as referendum or initiative, in other words, the consult creates a formal channel of political intervention for citizens. For the first time in Mexican history citizens were formally permitted to intervene in public decision-making on matters of *national importance*.

However, the Political Reform was just the first step in the process of establishing this new democratic game. Secondary legislation would be needed to establish the rules to regulate the process of the consult. These new rules needed to answer important questions such as: What kind of issues can be taken to the ballots? Who is going to organize the Consult? Who is going to define the question written in the ballot on the day of the election?

The day finally came on the fourteenth of March 2014, when Mexico's official gazette "*Diario Oficial de la Federación*" (DOF) published a Presidential Decree that informed citizens of the creation of new Federal Law on Popular Consult "*Ley Federal de Consulta Popular*" (LFCP). This new law lays out the ground rules for the organization and implementation of a popular consult and constitutes a building block in its institutionalization process.

Part two of this thesis offers an analysis of some of the key elements that we have identified in the Federal Law on Popular Consult. Hermeneutical problems raised by faulty legislative drafting, ambiguous terminology and a particular "clause" inserted in the law will be our main areas of focus. We analyze two basic concepts that the law introduces as requisites for the organization of a popular consult; "National importance" and "Constitutionality". We also try to provide a comprehensive account of the effects of a consult. The majority said "yes", what now?

The Federal Law on Popular Consult

As mentioned, the Federal Law on Popular Consult (from here on LFCP) was published on the fourteenth of March 2014. It includes five chapters and 65 articles divided as follows:

- Chapter I. General Dispositions.
- Chapter II. Regarding the petition of a popular consult
 - First Section. On the subjects.
 - Second Section. On the notice of intention.
 - Third Section. On the presentation.
 - Fourth section. On the requirements.
 - Fifth section. On the procedure of the announcement.
- Chapter III. On the attributions of the Electoral Federal Institute⁸⁵ in matters of Popular Consult.
 - First Section. On the verification of citizen support.
 - Second Section. On the organization of the Popular Consult.
 - Third Section. Public awareness of the popular consult.
 - Fourth Section. On the previous acts to the day of the popular consult.
 - Fifth Section. On the day of the popular consult.
 - Sixth Section. On the results.
- Chapter IV. On the effects and its follow-up. (Binding, Non-Binding)
- Chapter V. On the means for contest.

Using the analytical framework proposed by Tsebelis we have analyzed the LFCP in order to identify the veto players that are affected or created by it.

Table 3 Veto players in referendums.

Who triggers the referendum?	Who asks the question?
I. The President ⁸⁶	I. President. ⁸⁷
II. 33% of any of both chambers in Congress can start the debate, however the actual triggering requires the majority of each Camera. ⁸⁸⁸⁹	II. The chamber that started the process. ⁹⁰
III. Citizens when they amount to 2% of the national voters list. ⁹¹	III. Citizens. ⁹²

⁸⁵ Now the National Electoral Institute.

⁸⁶ Article 12. LFCP.

⁸⁷ Article 26. LFCP

⁸⁸ Supra note 86.

⁸⁹ Article 27. II. LFCP

⁹⁰ Article 27. LFCP

⁹¹ Supra note 86.

⁹² Article 28. LFCP

Although it identifies some of the veto players that control the agenda, the Tsebelis Test proves to be incomplete for the Mexican case. The answers provided by the test do not necessarily offer a clear understanding of the intricate mechanisms devised by Mexican legislators to regulate the agenda setting aspect of the consult. The reason for this is because the judiciary plays a vital role in the consultation process regardless of the player that initiates it. Indeed, the LFCP requires in every case the verification of the Supreme Court of Justice, “Suprema Corte de Justicia de la Nación” (SCJN) along three elements:

1. To verify the <constitutionality> of the consult.
2. To verify the <national importance> of the consult.⁹³

Additionally, the SCJN has to revise the question in order to

- Revise that its content derives directly from the topic of the consult;
- Revise that it is not biased or contains subjective judgments;
- Revise that it applies neutral, simple and comprehensible language;
- Revised that its designed to produce a categorical answer in positive or negative (yes or no).⁹⁴

This “verification requisite” introduces a new veto player and could pose a huge obstacle on the whole process, thus naturally impacting the agenda setting phenomena. Introducing the judiciary as a veto player in defining policy issues may have different results, mainly because Supreme Courts and judges in general behave ideologically.

In this sense, sometimes the SCJN tends to lean in favor of conservative policies, but other times they can issue decisions aligned with liberal thinking. Regardless of the debate on whether politics should influence law, no realistic thinker argues against the general claim that judges are heavily influenced by their ideological standpoint.⁹⁵

⁹³ The SCJN will determine the national importance only when citizens trigger the consult.

⁹⁴ The SCJN only analyzes the ballot question when the president or citizens trigger the consult. When the consult is triggered by congress, the question will not be submitted for approval by the SCJN.

⁹⁵ In here we refer to American Legal Realism.

The key to understand the role of the SCJN lies in the interpretation they will attribute to the word <constitutionality>. The hermeneutical possibilities of the word <constitutional> are many and in constant evolution. What today is considered constitutional tomorrow might not be. Additionally, when citizens trigger the consult, the SCJN has the task of defining its <national importance>. Although the judiciary cannot trigger a referendum, these clauses cause the SCJN to become a de facto agenda setter. What does <constitutionality> and <national importance> mean and what impact does this have on the process of the consult? These are the questions that we will now turn to.

National Importance

The LFCP indicates that Consults will be regarding topics of national importance⁹⁶. Article 6 of the LFCP understands that an issue is considered to be of national importance when it contains <elements such as>:

- The issue impacts on most part of the national territory, and;
- The issue impacts on a significant part of the population.

Under these circumstances, defining the national importance of a particular issue may seem an easy task. What any rational person would do is to look at the scope of the issue and make a quantitative judgment about its impact either on the territory or on the population. Although this may be true, we also need to take into account that the law is drafted in a way that H.L.A Hart would call “open texture”. <Elements such as> does not limit the analysis of national importance only to a quantitative analysis. It leaves a gap that creates a “penumbra of doubt”⁹⁷ because other elements might be taken into consideration. What other elements? The law does not specify, and for this reason the SCJN would have the attribution to fill in this gap.

⁹⁶ Article 5. LFCP

⁹⁷ (Hart, 1961) Pg. 123

To illustrate this point, imagine a consult triggered by citizens in favor of the legalization of marijuana. Conservative judges could try to dismiss the consult on the basis that it lacks the sufficient quantitative grounds to determine its national importance. Liberal judges might try to offer socioeconomic arguments about the state of national violence caused by drug cartels and thus vote in favor of having a consult that submits the end of marijuana prohibition. Both are plausible arguments to determine national importance. Like this example, most issues that end up being decided through direct democracy are controversial and likely to raise opposing views in any group. If this is the case, and taking into account the law's openness to interpretation, consequently the ultimate decision for or against having a consult, when triggered by citizens, falls in the hand of the 11 judges that integrate the SCJN.

The law differentiates the veto player that determines the national importance of an issue depending on the veto player that triggers the consult:

Table 4 Who determines national importance.

Veto player that triggers the consult	Veto player that determines the national importance.
The President	The majority of legislators present in each chamber.
Any of both houses of Congress.	The majority of legislators present in each chamber.
Citizens	SCJN

Constitutionality

Regardless of the player that triggers the consult, the SCJN will always have to decide on its constitutionality. As mentioned, this implies an extra veto player in the consultation process, hence on the policy agenda as well. In this context, the Supreme Courts' control over the agenda will depend on the interpretation that the judges give to the word <constitutionality>. What is necessary for a consult to be constitutional? In the answer to this question lies the core issue of Mexican direct democracy.

Table 5 Who determines constitutionality

Veto player that triggers the consult	Veto player that determines its constitutionality.
The President	SCJN
Any of both houses of Congress.	SCJN
Citizens	SCJN

The constitutional analysis of a popular consult may be approached from two perspectives.

1. Article 11 of the LFCP
2. Legal interpretation of <constitutionality>.

Article 11 of the LFCP prohibits the object of consults to be on:

- I. Restriction of human rights
- II. The Republican principles of the Mexican United States.
- III. Electoral matters
- IV. The national budget
- V. National security
- VI. The organization, functions and discipline of the Armed Forces.

Article 11 touches upon six constitutional themes indicating that they are outside the realm of issues that can be submitted to a consult. In this sense, we might reasonably say that the constitutionality requirement is about making sure that the topic for consult does not infringe article 11 of the LFCP. In other words, if the proposed issue for a consult has no relation with any of the six constitutional themes mentioned above, then the consult is considered to be *constitutional*.

The problem with these six themes is their broadness. The way the LFCP was drafted allows for judges to interpret these restrictions without limits. Three real life examples of topics that political parties have been positioning for a consult will serve to illustrate our point:

Table 6 Arguments against the celebration of a popular consult by specific topic.

Topic	Violation of article 11 LFCP.
Elimination of legislators elected by proportional representation. ⁹⁸	The issue is in direct correlation with electoral policy of the nation, thus violating Article 11. III.
Privatization of the extraction of natural resources (oil).	Oil constitutes the number one natural resource for the national income, thus the topic is in direct relation with article 11. IV.
Increase of the minimum wage.	Administrative sanctions and governmental policies are structured on a minimum wage defined by a legitimate commission. The topic violates article 11. IV. Because of its relation with the nations' income policy

If someone ever proposed to organize a consult asking about ending drug prohibition or about anticipated termination of pregnancy or even gay marriage, solid arguments could be offered against the constitutionality of any of the topics. Drug related issues impact direct on national security, and a relation between human rights and abortion or gay rights can be easily established. In this vein, we reassure our initial statement; the SCJN is the ultimate decider in the process of a Popular Consult.

What posture should the SCJN adopt when a Popular Consult reaches its courtroom? A judiciary with the power to influence policy raises further issues of constitutional nature. Does the judiciary have the right to prohibit the people to vote on particular issues? What limits should the judiciary impose unto itself regarding the popular consult? These are questions that will be answered in time, when precedents start to fortify the consultation procedure. As we mentioned earlier, it will take time and effort before Mexican direct democracy becomes an institutionalized procedure.

⁹⁸ Mexican electoral system allows political parties to have seats in congress for legislators that were not elected directly through general elections, but chosen through a mathematical formula that takes into consideration the percentages of the electoral results.

On the consequences of the consult

Recently, commentators have been discussing about the effects of a consult. The core issue at hand is whether the consult is automatically binding, or is some kind of extra procedure necessary in order to materialize the result of the consult. Only article 64 of the LFCP regulates the effects of the consult. Basically it indicates that when more than 40% of registered voters participate in the election the result will be binding.

However it does not establish in detail the procedure that authorities must follow in order to alter the existing status quo, in case that the result of the consult orders it. This ambiguity in the law could have catastrophic consequences because it leaves too much open space for inaction from part of the authorities. For example, the law does not specify if Congress has to pass a new law or reform an existing one. Also, it does not establish how much time do authorities have to carry out the necessary tasks in order to materialize the consult.

Article 64 also says that the SCJN will <notify> the corresponding authorities in order for them to take action within the realm of their legal attributions. Notice that the law does not permit the SCJN to <order>, only to <notify>. The drafters of the law chose a very inconvenient word, and again as a result there could be huge consequences in terms of inaction. If the highest judicial court cannot order a modification of legislation or policy then who can?

One might argue that new laws are prone to be drafted with inaccurate terminology and internal contradictions. Indeed, the LFCP, apart from giving excessive power to the SCJN, lacks coherence and should be thoroughly revised in order to ponder its material implications like for example in the case of paragraph two of article 64:

“When the result of the consult is binding it will have effect during the following three years, to be counted starting from the declaration of validity.”

We cannot find a reasonable argument that could sustain the existence of this paragraph. The paragraph is in fact a clause to the whole consultation process. If ever a consult becomes binding, then when the time comes, the law will de facto alter the existing legislation by legalizing again whatever was modified by the consult. To put it differently, if the production and consumption of marijuana was legalized by means of a popular consult, this clause indicates that three years after the consult was declared valid, marijuana will become again illegal. Why would legislators create this clause on the consult? Finding a response to this question exceeds our intellectual competence. However we can easily foresee the implications of this clause in terms of a legislative “rewind”.

Conclusion

Many areas of the LFCP could be improved. Not only legal drafting but the actual design of the whole procedure has serious flaws. First, the law has to provide more details on the role of the SCJN in the consultation process. Without further regulations on the hermeneutical limits of the SCJN, they are the ultimate de facto deciders of any consult that is proposed. As we have shown in table 4. Why does the SCJN determine a consult’s national importance only in the case where citizens trigger the consult? One could easily guess that if the President or Legislature triggers a consult, most probably it will be to solve an issue of national importance; however the current legal design of the LFCP gives the Executive and the Legislative unbalanced power over the judiciary.

Second, the LFCP must provide many more details regarding the binding effects of a popular consult. The LFCP must establish with clarity which actors have the power to order the necessary reforms that have to take place after the consultation process. Also, the law

must establish time frames that give certainty to the whole procedure, and include punitive measures against political actors in case that they do not act.

Finally, legislators have to remove the “three years clause”. Unless the law properly defines the limits of this clause, there is no legitimate reason for its existence. The whole purpose of the Consult is to give citizens the ability to intervene in the legislative process. This clause negates the legitimacy of the people’s demand and thus is clearly against the spirit of the LFCP.

Conclusion

Although the Political Constitution of the Mexican United States is nearly one hundred years old, Mexican democracy is still in infancy. There is a widespread consensus about democratization in Mexico. It is said that a democratization process began in the year 2000 when for the first time in history the opposition won a presidential election. With the end of the rule by a hegemonic political party, as Nobel laureate Mario Vargas Llosa⁹⁹ said, Mexico went from being a “perfect dictatorship” to an “imperfect democracy”.

Fourteen years later Mexico is still struggling to improve the quality of democracy and the rule of law. In this context we consider the Federal Law on Popular Consult as a democratization effort that can lead towards a healthier democracy. However, recalling Schumpeter, –democracy is just a competition between the powerful in the struggle to control policy– in the LFCP we see that every consultation process must go through the approval of the SCJN. The involvement of the judiciary is a *de facto* lock on the popular consult that can rarely be broken.

⁹⁹ Nobel Prize for Literature 2010.

<http://www.jornada.unam.mx/2011/03/04/index.php?section=politica&article=023n1pol>

Additionally, internal contradictions and ambiguous drafting in the LFCP will prevent any consult to actually materialize in society. As we mentioned, there is no clarity on the steps that must be taken in order for any authority to put into effect the results of the consult. Plus the irrationality of the “three years clause” might enter into Mexican legislative history as the strangest piece of legislation that ever existed.

We must broaden our attention in order to see the complete political landscape that Mexico is currently going through. Stephen Holmes’ excellent article about the reasons why “political actors might furiously resist or warmly embrace the rule of law”¹⁰⁰ serves us to understand the context in which Mexican direct democracy was born.

The LFCP entered into effect in a time when the historical hegemonic political party (Partido Revolucionario Institucional, PRI) returned to occupy the presidency. For twelve years (2000-2012) the PRI was at the margins of power and now they return stronger and with a renewed strategy on how to maintain political power. Holmes depicts a rational politician that can calculate the costs and benefits of restraining its power by constitutional means. The case of Mexican direct democracy fits perfectly into Holmes’ hypothesis if we consider that the PRI strategically allowed the LFCP because it considered that in the long term, the introduction of direct democracy would bring more benefits. But even in Holmes’ hypothetical the power holder cedes <actual power> to the others, something which clearly does not occur in the Mexican case. Indeed, the LFCP is just a façade that gives the appearance of a more democratic Mexico; a Mexico that enters into the club of countries that has spaces for decision-making in hands of citizens. In reality, the LFCP creates an illusion of such a country.

Furthermore, this thesis, in the context of the LFCP, leaves an important issue to deal with in further studies. The question is simple: Why would politicians cede power to the

¹⁰⁰ (Holmes, 2003) Pg. 19

SCJN? A skeptic might be induced to question the autonomy and independence of the judicial authorities. Ceding policy issues into the hands of independent and autonomous judges reduces the power of both the legislative and the executive, unless that the judicial power presents a weak institutional design in its autonomy. This question should be addressed in further studies.

For our part, we can safely conclude that judicial involvement in the consult, as currently legislated, is not very accurate. The SCJN, more than being a body that provides legitimacy to the people's demand, serves as an obstacle that will most frequently maintain the status quo. The inclusion of the SCJN as a veto player in the Popular Consult—with its current power—will have negative consequences on the process as a whole and thus hinder the development of democratic institutions in Mexico.

Bibliography

Altman, D. (2011). *Direct Democracy Worldwide*. United States of America. Cambridge University Press.

Arthur, J. (Ed.) (1992). *Democracy. Theory and Practice*. Belmont California. Wadsworth Publishing Company.

Arblaster, A. (2002) *Democracy*. 3rd. Ed. Buckingham. Open University Press.

Birch, A.H. (1993). *The Concepts and Theories of Modern Democracy*. London & New York. Routledge.

Bobbio, N. (1976). *La teoría de las formas de gobierno en la historia del pensamiento político*. México. Fondo de Cultura Económica. (Reprinted 2012.). Original title. *La Teoria delle forme di Governo nella Storia del Pensiero Politico*. Anno Academico 1975-1976.

- (1987). *The Future of Democracy. A Defence of the Rules of the Game*. Trans. By Roger Griffin. Minneapolis. University of Minnesota Press. Original Title in Italian *Il Futuro della democrazia* (1984)

Dahl, R. A. (1967) *The City in the Future of Democracy*. *The American Political Science Review*, 61, 953. Retrieved June 12, 2014, from <http://www.jstor.org/stable/1953398>

-(1998) *On Democracy*. New Haven & London: Yale University Press.

- Deleuze, G., & Guattari, F. (1994). What is a Concept?. *What is philosophy?*. London: Verso. (Reprinted 2011)
- Ferrajoli, L. (2007). Principia iuris. Teoría del derecho y de la democracia. 2. Teoría de la democracia. Madrid. Editorial Trotta. Original Title: *Principia iuris. Teoria del diritto e della democrazia. 2. Teoria della democrazia.*
- Gaulle, C. D. (1971), *Memories of Hope: Renewal and Endeavor*, New York, Simon and Schuster.
- Ginsbourg, P. (2008) *Democracy. Crisis and Renewal*. 1 ed. Profile Books.
- Grummel, J.A. (2008) Morality Politics, Direct Democracy, and Turnout. *State Politics & Policy Quarterly*, Vol. 8 No. 3 Fall 2008 pp. 282-292. <http://www.jstor.org/stable/40421614>
- Hart, H.L.A. (1961) *The Concept of Law*. Third Ed. United Kingdom. Oxford University Press.
- Holmes, S. (2003) *Lineages of the Rule of Law*. In “Democracy and the Rule of Law” eds. José María Maravall and Adam Przeworski. New York. Cambridge University Press.
- Huntington, S.P. (1968) *Political order in changing societies*. 2006 ed. New Haven: Yale University Press.
- (1991) *The Third Wave: Democratization in the Late Twentieth Century*. Norman and London: Oklahoma University Press.
- Laurian, L. (2012) This is what direct democracy looks like: how Athens in the 5th century BC resolve the question of power. *The Town Planning Review*, 83(4), Retrieved from <http://www.questia.com/library/journal/1P3-2710448331/this-is-what-direct-democracy-looks-like-how-athens>
- Lijphart, A. (1999) *Patterns of Democracy: Government Forms and performance in Thirty-Six Countries*. New Haven: Yale University Press.
- Matsusaka, J.G. (2005) Direct Democracy Works. *Journal of Economic Perspectives*, Vol. 19, No. 2 Spring 2005. Pp.185-206. Retrieved from <http://www.jstor.org/stable/4134943>
- (2005-2) The eclipse of Legislatures: Direct Democracy in the 21st Century. *Public Choice*, Vol. 124, No. ½, Policy Challenges and Political Responses: Public Choice Perspectives on the Post-9/11 World. (Jul., 2005) pp. 157-177. Retrieved from: <http://www.jstor.org/stable/30026708>
- (2013) Disentangling the direct and indirect effects of the initiative process. *Public Choice*. http://www-bcf.usc.edu/~matsusak/Papers/Matsusaka_Direct_vs_Indirect_2013.pdf
- Meaney, T., & Mounk Y. *What was Democracy?* The Nation. May 13, 2014. Retrieved from <http://www.thenation.com/article/179851/what-was-democracy#>

Pitkin, H. (1967) *The Concept of Representation*. Berkeley and Los Angeles, California. University of California Press.

Popper, K. (1963) *Optimist, Pessimist and Pragmatist Views of Scientific Knowledge*. In *After the Open Society. Selected Social and Political Writings*. Eds. Jeremy Shearmur and Piers Norris Turner. New York. Routledge. 2008.

Prud'Homme, J. (1997) *Consulta Popular y Democracia Directa*. Cuadernos de Divulgación de la Cultura Democrática. Instituto Federal Electoral. México D.F.

Randolph, G.M. 2010. *Measuring the Indirect Effect: Voter Initiatives and Legislative Production in the American States*. *Public Finance Review* 38 (6): 762-786. Retrieved From: http://academicarchive.snhu.edu/bitstream/handle/10474/2414/snhu_00171.pdf?sequence=1

Sabine, G.H. (1937) *Historia de la Teoría Política*. 3rd Ed. México D.F. Fondo de Cultura Económica. Original Title. *A History of Political Theory*

Sartori, G. (1962). *Democratic Theory*. Detroit. Wayne State University Press.

- (1988). *Teoría de la Democracia*. 1. *El debate contemporáneo*. Alianza Editorial Madrid. 4th Reprint. First published by Chatham House Publishers, Inc. As "The Theory of Democracy Revisited. Part One: The Contemporary Debate." (1987)

Schumpeter, J.A. (1950) *Capitalism, Socialism and Democracy*. 3rd Ed. New York. Harper Perennial Modern Thought.

Tsebelis, G. (2002) *Jugadores con veto: Cómo funcionan las instituciones públicas*. México D.F. Fondo de Cultura Económica. 1st Ed. Numbered pages make reference to the spanish translation. *Original Title. Veto Players: How Political Institutions Work*. New Jersey. Princeton University Press. Quoted citations in english retrieved from: http://www.socpol.unimi.it/corsi/scienzapoliticasi_e_al/documenti/File/lastvp2.pdf

Wagschal, U. (1997) "Direct Democracy and Public Policy Making" *Journal of Public Policy* Vol. 17, No. 2 (May – Aug. 1997) Pg. 223-245. Cambridge University Press. <http://www.jstor.org/stable/4007611>