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Implementing popular preferences

Is more direct democracy the answer?

Directe democratie is een *hot topic*, maar heeft al een lange geschiedenis. In dit artikel beschouwt Ian Budge de verschillende vormen van directe democratie en geeft hij argumenten voor en tegen het invoeren ervan.

Introduction

Direct voting on individual public decisions by all citizens was the form in which democracy first emerged in the fifth century BC among the classical Greeks. So far as they and the rest of the Ancient World were concerned this was democracy. Other regimes which limited popular policy interventions were aristocracies, oligarchies and tyrannies.

After the defeat of popular attempts to take over power in the medieval communes, direct democracy languished as a concrete political arrangement. When democracy re-emerged as a practical aspiration in the nation-states of the 19th century it took the form of representative democracy, where an elected Parliament, rather than the people, directly debated and decided policy.

The emergence of political parties, which from the late 19th century dominated both general elections and legislative and executive bodies, brought representative democracy closer to direct popular policy voting, though in a new form. Parties competed by offering alternative policy *programs* (packages of policies) to the electorate. Voters could choose the programme they preferred overall and express their choice by voting for the party which supported it. Party discipline then ensured that its representatives in parliament would support the package.

This transformation of representative democracy into party democracy gave the initiative to parties in formulating the policy alternatives electors voted for. Often these were regarded as too narrow or even indistinguishable, either because parties had been corrupted and bought by sectional interests (Ame-

rican Progressives in the early 20th century) or because they were embedded in the capitalist system to an extent that precluded them from offering truly radical alternatives (according to neo-Marxist critics of the late 20th century). The rise of new and local issues often made the broad packages offered by parties seem inadequate, or insensitive to concerns felt by particular groups of citizens. Ecological issues in particular remained off the main agenda.

Under these circumstances an obvious solution seemed again to be direct popular voting on policy, with increasing emphasis on the power to propose policies for referendum if a sufficient body of opinion wanted them.

Is this desirable? The rest of this article examines:

a) the various kinds of direct democracy on offer, contrasting in particular unmediated with mediated forms (i.e. forms with parties, parliaments and courts which 'mediate' popular voting). Contrary to many preconceptions, direct popular policy voting does not necessarily involve sweeping away parties and Parliaments, though the desire to do so is often a powerful motivating force for advocates of 'people power'.

b) arguments for and against direct democracy. Arguments for are powered by the fact that the best way to ensure democracy - i.e. 'a *necessary* correspondence between acts of governance and the equally weighted perceived interests of citizens with respect to these acts', is direct popular voting on each policy.¹ Arguments against stem from distrust of what popular majorities might do - especially to unpopular minorities such as Jews, gypsies, Muslims or immigrants.

The general conclusion drawn in this paper is that many of the critical arguments are valid against unmediated forms of direct democracy but not against mediated forms. These do give more direct and unhampered expression to the popular will than representative democracy while still providing procedural safeguards for minorities. We shall consider the implications of this position in our conclusions. One of them is that the contrast between modern forms of direct and representative democracy are overdrawn, as the latter usually involves voting on policy packages as well as on candidates and government competence. This conclusion paves the way for a new democratic synthesis which combines direct policy elections with general elections in the areas which are appropriate for them.

Pros and cons of direct democracy

Direct democracy, in the sense of the people directly voting on the questions Parliaments now vote on, has a driving appeal in the sense of forming

1 Michael Saward, *The terms of democracy* (Cambridge 1998) 51.

Implementing popular preferences

the most obvious institutionalization of democracy itself. If the object is to reinforce the 'necessary link' between popular preferences and public policy, how better than to have the latter directly decided by the citizens? Opponents generally accept this argument but argue against direct voting on three broad grounds: difficulty/impossibility of achievement, especially since we already have policy voting on overall government programs; incapacity of citizens to make detailed policy decisions; and instability of decisions (as one popular majority succeeds another). Various forms which these objections take, together with counter-responses, are summarized in table 1.

| | CRITICISMS | RESPONSES |
|----|---|---|
| 1. | General Elections already let citizens choose between alternative governments and programs | Many issues are not discussed at General Elections so if the people are to decide they need to vote on them directly |
| 2. | It is impossible to have direct debate and voting in modern democracies | Even postal ballots and the print media let alone two-way communication devices allow interactive debate and voting among physically separated citizens |
| 3. | Ordinary citizens do not have the education, interest, time, expertise and other qualities required to make good political decisions | Politicians do not necessarily show expertise and interest. Participation expands citizen capacities. Citizens currently spend a lot of time informing themselves about politics through TV and radio |
| 4. | Good decisions are most likely to be produced where popular participation is balanced by expert judgment. This is representative democracy where citizens can indicate the general direction policy should take but leave it to be carried out by professionals | Expertise is important but not infallible. In any case it can inform popular decisions. Modern representative (party) democracies are heavily imbalanced against popular participation. |
| 5. | Those who vote against a particular decision do not give their consent to it, particularly if the same people are always in the minority. | The problem is general and not confined to direct democracy. Voting on issues one by one gives minorities more voice. |
| 6. | No procedure for democratic collective decision-making can be guaranteed not to produce arbitrary outcomes. | Such problems are generic to democratic voting procedures. Voting on dichotomous questions one by one (the usual procedure in popular policy consultations) does however eliminate cyclical voting and guarantees a median. |
| 7. | Without intermediary institutions (parties, legislatures, governments) no coherent, stable or informed policies will be made. Direct democracy undermines intermediary institutions including parties. | Direct democracy does not <u>have</u> to be unmediated. Parties and governments could play the same role as in representative (party) democracies today. |

Table 1. Criticisms of direct democracy with responses to them.

We have already dealt with the point that policy voting occurs in 'representative' (or party) democracies today – albeit at wide intervals and on general programs rather than on individual policies. This may produce different outcomes from individual policy-voting, a point we will pursue below.

A more general objection is the impossibility of gathering all citizens of any modern state together for discussion and voting of proposals. This only works if one considers face to face discussion the only legitimate form of debate, and discounts the referendums and initiatives traditionally carried on in Switzerland through press and postal ballots. With the development of the electronic media, capacities for interactive discussion are obviously increased. The feasibility argument now looks the most outdated.

Objections to debate at a distance shade into doubts about the general popular capacity for informed decision in points 3 and 4 in the table. The problem here is that democracy in any of its forms justifies itself as empowering citizens, and hence bases itself on trust in their capacity to make important decisions. Doubts about this rapidly take on an anti-democratic flavour rather than just arguing against direct policy-voting.² A better argument is the one from balance (4). Citizens can take very broad decisions but are not qualified to decide technical ones. Counter arguments range from ones which ask why non expert politicians are better qualified to decide, to the observation that many important policies do have technical aspects but these can be ventilated in debate and a general decision then made on their merits.

Balance and compromise are also considerations in dealing with minorities (5). A traditional fear expressed with regard to direct voting is majority tyranny. Without safeguards or intermediaries the majority may well steamroller minorities. Of course, this fear has also been expressed with regard to democracy generally and is the reason for entrenched constitutional provisions or requirements for super-majorities on certain issues. On the face of it these could co-exist with direct voting just as they do with Parliamentary voting. One point to note however is that voting issue by issue is less likely to lead to one clearly defined minority being consistently defeated than is package voting, where the defeated minority has to wait for the next general election to overturn the previous decision.

The effects of a tyrannical majority may be compounded by certain features of majority voting which could lead to arbitrary decisions being taken, not even desired by the real majority. The argument takes its start

2 Ian Budge, *The New Challenge of Direct Democracy* (Cambridge 1996) 59-83.

from the well-known voting cycle phenomenon. Succinctly put, the theorem states: 'a rational individual who prefers A to B to C must prefer A to C ... it is always possible that majority rule is intransitive. In the simplest case, if voter 1 prefers A to B and B to C, voter 2 prefers C to A and A to B, and voter 3 prefers B to C and C to A, there is a majority for A over B, a majority for B over C, and a majority for C over A. Transitive individual preferences lead to an intransitive social ordering, otherwise known as a cycle'.³

It is easy to see how this pattern of voting might generalize over large populations, and how it could occur often enough to cast doubt on the pretension of any popular vote to reflect true majority opinion. It would be equally likely, on the basis of these arguments, to reflect an arbitrary placement of topics on the agenda, or even deliberate manipulation of it.

Riker generalizes this argument into a claim that we can never know whether a true majority exists.⁴ Hence liberalism – a series of checks by one institution such as the US Congress on the US Presidency, overlapping powers, balances and entrenched rights – is better than majority voting. It may be observed that this argument, if correct, again tells against democracy in any of its forms. It only holds insofar as the decision space is neither unidimensional nor separable (i.e. each dimension is discussed and voted on separately). Insofar as decisions are made on Left-Right priorities or on issues voted on individually, one by one, a true majority is guaranteed.

Parties impose additional constraints on the dimensionality of decision-space and thus enhance the probability (already high) that stable, 'real' majorities will emerge.⁵ A telling criticism of direct democracy is therefore that it necessarily dispenses with intermediary institutions like parties, legislatures and governments. The shifting majorities that emerge under such circumstances then produce ill-considered policies which are subject to sudden reversals as the majority collapses or comes under the influence of another demagogue.

This seems a valid criticism of unmediated direct democracy which is certainly the kind of set-up which many radicals yearn for – a direct and undiluted expression of the popular will uncontaminated by wheeling and dealing and party fixes. To assess the force of the criticism we have to ask if this unmediated form is the only form direct individual policy voting can

3 Iain S. McLean, *Democracy and New Technology* (Cambridge 1989) 506.

4 William Riker, *Liberalism against Populism* (San Francisco 1982).

5 Richard Niemi, 'Majority Decision-Making with Partial Unidimensionality', *American Political Science Review* 63 (1969) 488-97.

take? We have already suggested that in practice parties often intervene in referendums or sponsor initiatives for their own ideological or office seeking purposes. In the next section we ask whether this is a valid expression of direct democracy or a perversion of it, and whether therefore the criticism of shifting majority tyranny applies to direct democracy as such or simply to particular manifestations of it.

Varieties of direct democracy

Many of these criticisms of direct policy voting are based on the idea that it dispenses with mediating institutions such as parties and with the rules and procedures which for example guide legislative debate. This removes the constraints which produce compromise and stability and overstrains the capacity of citizens to make good decisions by in effect placing them in a vacuum. In turn this promotes instability by favouring the emergence of a new majority concerned to correct the mistakes or counter the imbalances produced by the previous one.

Certainly the idea of unmediated voting which 'lets the people speak' is one that has inspired many supporters of direct democracy who would be very unhappy to think that intermediaries were needed. Equally clearly their ideal opens itself to many of the criticisms made above. In most countries and popular consultations however, voting is not unmediated: parties and other groups participate and courts, governments and legislatures may all decide the wording of questions, lay down rules for the conduct of the campaign and even take sides.

All this underlines the point that direct democracy is as synonymous with party and other mediation as with a lack of it. Rules and procedural constraints may be more or less present in referendums and initiatives but are never entirely absent. Insofar therefore as criticisms are focused on unmediated direct democracy they are possibly valid – but for that form only, not for direct democracy as such.

Conceptually the same point may be made by considering the base definition of direct democracy – which has surely to be the electorate voting on questions which, in traditional representative democracy, Parliament votes on. How the vote is held clearly affects the concrete form which direct democracy takes but it is clear that both mediated and unmediated forms fall under the definition. The only requirement of direct democracy is that the people vote on individual policies. How they organize themselves to vote does not affect the fact that this is direct democracy.

Looking at the extent of party mediation under various forms of direct democracy cautions us against identifying it exclusively with an unmediated form. This is shown in figure 1. Even in ancient Athens, crude party organizations were present in the form of political clubs.⁶ They were the most effective way for statesmen like Pericles and Demosthenes to ensure their majority in the assembly and thus maintain stability and continuity in public policy – the functions of the political party in all ages.

This contrasts with the idealized Rousseauesque account where the popular will has to be unmediated to be pure.⁷ California is the modern example which approaches closest to unmediated direct policy voting but even there, parties and party-affiliated groups intervene. Lupia argues that this is necessary for ‘competent voting’ and points out that even in California voters are pretty adept at spotting which groups support which side and making inferences from this about the political import of proposals.⁸ Other American States see greater party intervention on important proposals, a tendency which becomes the norm in countries like Italy and Switzerland.

All this is to make the obvious point that procedural rules are necessary for votes, even popular votes, to be held. We would not expect a representative democracy to function without a constitution (written or unwritten), presiding officers, rules of procedure and debate. No more should we expect a direct democracy to do so. Just as representative democracies may have more or less regulation of these matters so may direct democracies. To California we can contrast Quebec with a whole branch of law devoted to the few referendums that have been held.

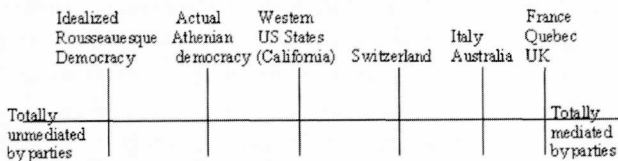


Figure 1. Different kinds of direct democracy.

- 6 R.J. Bonner, *Aspects of Athenian Democracy* (New York 1967).
- 7 J.J. Rousseau, G.D.H. Cole, J. Brumfitt, P.J.C. Hall, *The Social Contract & Discourses* (London 1973).
- 8 Arthur Lupia, 'Shortcuts vs Encyclopedias', *American Political Science Review* 88 (1994) 63-76.

Most criticisms in table 1 apply particularly or exclusively to unmediated and relatively unregulated forms of popular policy voting. As such they may have a high degree of validity. However, the solution under direct democracy as under representative democracy is not to abandon it but to strengthen procedures in order to deal with these dangers, and to encourage mediation rather than discourage it. This may put off many advocates of participatory or discursive democracy who wish to let the people speak unmediated. But if direct democracy consists in deciding individual policies through popular votes, mediation is quite consistent with it.

Combining direct and representative (programmatic) democracy: an emerging synthesis?

In the modern world, direct and representative democracy have come together, through the pervasiveness of policy voting and the party role in organising it. Of the two, indeed representative democracy has come the longer way, no longer based on individual representation but rather on programmatic voting with the successful party as guarantor of the programme. Direct democracy has continued to differentiate itself as direct voting on individual policies, most often policies not central to ongoing party politics or exceptional decisions which transcend normal party divisions.

We can see this better by examining actual practice in contemporary democracies. Popular policy votes tend to be held disproportionately in five areas: changes in the constitution; territorial questions covering secessions or extensions of the national territory, devolution and autonomy; foreign policy; moral matters such as divorce, abortion and homosexuality; and ecology and environment (including local campaigns for protection of particular features, or in opposition to the siting of a power plant). In Swiss Cantons and American States, fiscal matters are increasingly voted on, usually involving tax limitation and restrictions on the size of government.

It can be seen from this that policy-voting tends to take place either on issues of a certain level of generality – constitutions or foreign policy measures like trade liberalisation that will have a long-term effect – or in areas which fit uneasily into the Left-Right division of party politics and which might indeed provoke internal party splits, like moral and ecological matters. The closest policy votes come to influencing the current political agenda is on fiscal matters. Even tax limitation has a long term rather than

an immediate effect however. Almost never is a vote held to 'prioritise unemployment now', 'stop inflation', 'end the War', 'reduce prison population' and so on.

Several factors contribute to this pattern of policy consultation. First and perhaps most importantly governments do not want to put their central policies to referendum. So where they have control, voting will not cover issues central to Left-Right conflicts – only to off-issues which might split the party. New and opposition parties have generally also mobilised to put such issues on the agenda and not to refight continuing party battles.

A party based explanation is only one part of the answer however since the same pattern occurs also in fairly unregulated popular initiatives where parties have less control. It is probable that electors themselves and even self-interested groups see no point in taking up matters that have already been part of the general election debate, putting into office parties which are pursuing them as part of a mandate. As we have stressed, so-called representative elections are heavily focused around medium term policy plans, so it is natural that parties should be left to get on with them at least in their first years in office (and it often takes time to organise a referendum or initiative).

In this way a certain division of labour seems to be emerging spontaneously between general, programmatic elections and direct policy voting on individual issues. Where issues are linked together and form an integral part of the activity of governments, usually within the traditional Left-Right framework, the parties in power are left to get on with them. Where individual issues have long term implications and do not fit so easily into a unifying framework they tend disproportionately to be the subject of special popular votes. The overall mix does not seem a bad way of trying to translate popular preferences into public policy.

Setting parameters for a realistic debate about direct democracy

Individual policy voting is on the increase. In his latest survey Le Duc estimates that its use increased from around 250 from 1961-1980 to nearly 350 from 1981-2000 over the countries of the world excluding Switzerland.⁹ In

9 Laurence Le Duc, *The Politics of Direct Democracy. Referendums in Global Perspective* (Peterborough 2003) 21-22.

both the American States and Switzerland policy votes doubled in the last 20 years compared to the preceding period. In many jurisdictions such as the German Länder, the UK and New Zealand individual policy voting has now been introduced for the first time.

There is little to surprise us in this trend. In a world where the majority of citizens are better educated, better off and increasingly self confident, it is natural that they should take the promise of democracy seriously and seek to get their preferences directly enacted into public policy. The ability of democracy to make a 'necessary connection' between the two through elections is as we have seen its core characteristic. This is what gives direct democracy its driving force and wide appeal in the modern world: there is no better way of enforcing the link than by voting directly on each policy.

Of course, the groups pressing for direct voting often have other motivations too. They feel their causes – whether to reduce taxes or protect the environment – are so obviously correct that they will get majority support if they can only get them on the ballot and sweep self-serving parties away. So far analysts have failed to find any clear evidence that direct policy voting favours particular outcomes, either in terms of direct votes or indirect influence on legislatures from the threat of an initiative. There is some evidence however that its presence does bring policy closer to median (majority) voter preferences – which vary of course over time and between jurisdictions.¹⁰

As critics have pointed out, sweeping away parties and other mediating institutions brings many undesirable consequences which may lead in the end to popular majorities voting against their own preferences and interests. This may result from lack of the essential if minimal information about wider policy implications which party endorsements provide, or from shifting majorities voting against taxes in one consultation and for public services in another.

Despite the aspirations of many of its advocates however direct democracy does not generally take on an anti-party or non-partisan form. It can be argued that even in the US States established parties fought back successfully against policy proposals which threatened their central interests, as with tax cuts. The minority Republicans also built up to their present dominance by exploiting popular initiatives, among other tactics. Elsewhere established parties dominate referendums, and opposition and emergent

10 Mathew Mendelsohn and Andrew Parkin ed., *Referendum Democracy. Citizens, Elites and Deliberation in Referendum Campaigns* (London 2001).

parties exploit policy votes to embarrass the government and force their own recognition. Of course, the best way to fight parties is to form an anti-party party, which many proponents of extended participation and popular voting have done (e.g. the German Greens and Danish Progress Party).

In terms of actual practice therefore direct democracy tends towards either strongly mediated or moderately mediated rather than unmediated forms. This is hardly surprising as it tends to take place in party-run representative democracies with a plethora of institutions – Governments, Parliaments, bureaucracy and courts – overseeing their processes and codifying them along the lines of fair play embodied in general elections. The Californian experience should not be allowed to dominate discussion, especially since weak regulation of representative as well as direct elections is the norm there.

Convergence between specific policy consultations and general election practice should not be surprising since in the modern world they are both about policy. An essential starting point for informed debate should be that so-called representative democracy is actually about putting policy packages to electors and following through on them in government.

Our choice between direct democracy and representative democracy should not therefore continue to base itself on outdated contrasts between popular policy decision and representative deliberation. Rather it should characterise itself as being between individual policy voting and package policy voting. Put this way it seems much less apocalyptic than has been portrayed. The two procedures cannot be 100 per cent guaranteed against producing different outcomes but this is far from saying that they will generally do so.

In any case decisions on the issues involved are probably best arrived at using the different procedures. Where issues are linked to each other, generally through forming part of Left-Right divisions, decisions on one may well have consequences for the others and so are best voted on as a package to be effected over 4-5 years. Where issues are more discrete and have less mutual interactive effects they are probably best voted on separately, especially when they do not 'fit' in Left-Right terms and get ignored or totally excluded in general election debate.

Happily this division of labour seems to be evolving in actual democratic practice. In this sense the modern extension of individual policy

Budge

voting enhances and extends the 'necessary democratic connection' between popular preferences and public policy, much rather than threatening and undermining it.