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Basic Analogies within Direct Democracy

ABSTRACT. The aim of the paper is to present an analogical case-study within contemporary direct democracy. In the first part, we present some standard definition of referendum, as well as its basic classification. In the second part contains analysis of the role of the main institution of direct democracy i.e. the role of referendum plays in the characteristics of basic democratic models.

KEY WORDS: analogy, direct democracy, referendum, theory of democracy

Introduction

As some previous papers in this issue of “Studia Metodologiczne” have stated, for example [Gan-Krzywoszyńska, Leśniewski, 2016 and Campos Benítez, 2016], we assume that analogy, and especially analogical analysis, enables us to provide detailed and nuanced characteristics of given concepts. Following Dussel [1985] and Beuchot [2009], we agree that analogy, as an optimal solution to the problem of polysemy – pervasive within the Humanities – makes possible also a rational dialogue and better understanding of the similarities and distinctions between cultures, nations, social groups and individuals. Dussel himself claims that the analogical analysis of such complex concepts and phenomena as we have in the Human and Social Sciences is very time consuming and that only after decades does he finally clearly understand the issues concerning the major category of “people” (Spanish *pueblo*). So this paper pretends only to sketch some preliminary analogical analysis of the concept and institution

of the referendum. Namely, we will try to answer such questions as: what is the main similarity (if any) between different types of referendum, what the basic distinctions consist of and, finally, what is the role of the referendum in the democratic systems.

Towards an analogical definition of referendum

The term “referendum” is derived from the Latin verb *re-fero* which means: to bring or carry back, return, assign/count, propose/open debate, record/enter, report (on). Primarily, the sixteenth-century concept meant both putting up into debate and putting under settlement. The term, taken from the language of diplomacy, *ad referendum* was used in the context of submission for ratifying a negotiated proposal. Permanently the notion entered the dictionary in reference to the manner of proceeding in the Swiss Confederation.¹ The classic definition of a referendum comes from Theodore Curti [1905]. Still, many researchers, including most French constitutionalists, recognize it as the starting point for their considerations.² All of the presented definitions are compatible in one thing only, namely, that the referendum is the procedure or form of voting, which aims to implement the direct power of the people. Other basic issues such as the scope and subject of the referendum, are a source of fundamental differences and long debates.

It should be noted here that usually the institution of the referendum is associated only with democracy, in particular with direct democracy; however, it can and is also used in non-democratic systems.

The above-mentioned definition of referendum by Curti characterizes referendum as the sum of individual votes cast in certain places/centers and at a certain time, associated with a particular issue. He calls the sum of these votes a referendum, distinguishing it at the same time from the for-

¹ See for example [Cornu, 2003, p. 752; Guillaume-Hoftung, 1994, p. 15]

² For instance, René Capitant, Gerard Conac, Jean-Marie Denquin, Jean-François Dobelle, Francois Hamon, André Malvardi, Henry Roussillon, Frederic Rouvillois and Serge Zogg.

mer direct voting in one place. Curti points out that in this way, we can avoid the problem of the historical understanding of the concept of immediacy, because the decision is not replaced by the consent of the individual municipalities, but precisely the sum of all individual votes.³ On the other hand, Gérard Cornu describes the referendum as a constitutional and legal institution, or in other words, as a form of voting in which voters express their opinion and decide about the Constitution, laws and important problems of national and public matters. In this definition, he draws attention to the fundamental nature of the issues undertaken in referendums [Cornu, 2003, p. 752]. Moreover, it is often added that a referendum is a vote which is founded on the basic principles of the electoral law and the formulation of alternatives or options.

According to David Butler and Austin Ranney the essence of the referendum consists on the broad participation of the electorate in voting on public affairs. In this sense, it is also a synonym for the plebiscite. These authors emphasize the importance of such a vote in the key moments as one of the basic requirements of a democratic system. They distinguish two forms of the referendum: optional and mandatory; whereas, from the point of view of the matters submitted to a vote they divide referendums into: on constitutional issues, on territorial and other problems [Butler, Ranney, 1994, pp. 1-3]. On the other hand, Lawrence T. Farley defines referendum as a kind of elections in which the specific proposal is either approved or rejected [Farley, 1986, pp. 25-26]. Wolf Linder emphasizes that the referendum is a constitutional guarantee for the power of the people, because it forces the federal government to undergo major laws and treaties under universal suffrage [Linder, 1996, pp. 33; 2007, pp. 2-3; Steiner, 1993, p. 237].

³ [Curti, 1905, p. 70]: *Aujourd'hui nous ne trouvons pas difficile la transition de ce mode de votation populaire qui ne réunit pas le souverain sur un seul point, mais sur plusieurs, et fournit un résultat par l'addition des majorités constatées dans les différentes assemblées, à l'institution du « référendum », tel qu'il existe actuellement, dans laquelle le vote a lieu dans de petits districts, et même le plus souvent dans les communes, mais sans que ces petits districts soient comptés pour une ou plusieurs voix, et la majorité décisive étant obtenue en comptant les citoyens qui votent dans toute l'étendue du pays pour ou contre le projet de loi.*

Giovanni Sartori considers the referendum as a specific procedure, which does not have the character of "pure" direct democracy. He indicates that a referendum may be regarded as an institution of direct voting only in terms of decision-making. Immediacy in this case consists of the lack of intermediary bodies. In so far as the debate before the vote, and all the same vote, go, the referendum fully resembles the elections, that is the representative democracy. Consequently, according to Sartori, we are dealing with the third model of democracy – the so-called *referendum democracy* [Sartori, 1994, pp. 145-146].

In the system of representative democracy, one of the most important questions is the relation of this institution to the parliament. Concerning this issue we can distinguish two main positions. Following the first one, the referendum aims to balance or counteract/prevent the parliament monopoly of power. In contrast, according to the representatives of the second position there is no threat from the representation, nor the conflict of both parties. The first view is supported, among others, by Raymond Carré de Mahlberg, who defines the institution of a referendum as the opportunity of the participation of the people, that balances the dominant (absolute) position of the Parliament. At the same time it is worth noting that the role of direct voting should consist of complementing and not on a systematic opposition to the decision of the legislative authorities. Similarly, André Malvardi, who formulated a broader definition of the referendum, that included also specific interventions of the people (French *intevention du peuple*) regarding the law-making process, emphasized that people may counterbalance legislative authorities by, among others, a referendum of ratification, or consultative and citizen-initiated referendums [Malvardi, 1935, pp. 41-45]. Against the domination of Parliament, René Capitant – following Rousseau's esprit – claimed that frequent use of the institution of the referendum also helps to reduce political particularism. Frédéric Rouvillois, similarly to Mahlberg and Capitant, sees the complementary role of the referendum in the parliamentary representative that moves towards the semi-democratic model. Therefore, the referendum is a kind of moderator

between state authorities and in consequence his definition includes also the consultative referendum.⁴

A quite radical stand is represented by Charles Frederic Strong who calls the referendum an *ultra-democratic device*, since it extends the law-making process over elected legislature and in consequence reduces the power of Parliament. In extreme cases, it can even lead to the reduction of the legislators' term [Strong, 1964, pp. 222, 225-226]. Likewise, Serge Zogg introduced "mixed" systems – semi-direct and half-representative democracy – according to the criterion of the use of the referendum [Zogg, 1996, p. 19].

Hamon, the author of the most descriptive and detailed definition distinguishes three types of referendum: (1) the consultative referendum, which does not force the governing body to undertake specific actions; (2) the informative referendum (French *référendum orientatif*), which determines the aim, leaving to the rules the choice of means; (3) the decisive (binding) referendum which formulates a binding legal result [Hamon, 1995, pp. 15-16]. Regarding the third type, for many researchers this is the only valid kind of referendum, since it leads to sure legal consequences that must be respected and implemented by the authorities. However, for the rest of them, the referendum is every popular form of voting on the basic issues.⁵

There are many classifications and divisions of types of referendum, according to many criteria of a legal, political and sociological nature.⁶ As the most commonly used criteria of the classification of referenda we should mention: (1) the extent (if the vote concerns the citizens of part or all of the territory); (2) a matter of necessity (mandatory or optional);

⁴ [Rouvillois, 2005, p. 201ff; see also Denquin, 1976, p. 79ff]. Cornu radically distinguished/separates the institution of consultations from referendum [Cornu, 2003, pp. 218-219].

⁵ The first stance is represented by Leon Duguit, Francis Hamon, David Butler, Austin Ranney; the second one – by René Capitant, Frédéric Rouvillois and Gérard Cornu.

⁶ See for instance [Hamon, 1995, pp. 17-29; Guillaume-Hofnung, 1994; Denquin, 1976; Zogg, 1996; Butler, Ranney, 1994, pp. 2-4].

(3) initiative; (4) the effects of binding; (5) the time (the time of voting in relation to the subject that is to be adopted or approved); (6) the object, and (7) other consequences (including for example taking into account the political consequences, for instance the aim or circumstances of the vote).

Political systems and referendum

Aristotle distinguished three correct and three deviant systems of government [*Politics* III.7] that can be presented in the following scheme. As we know, democracy is considered here a deviant system.

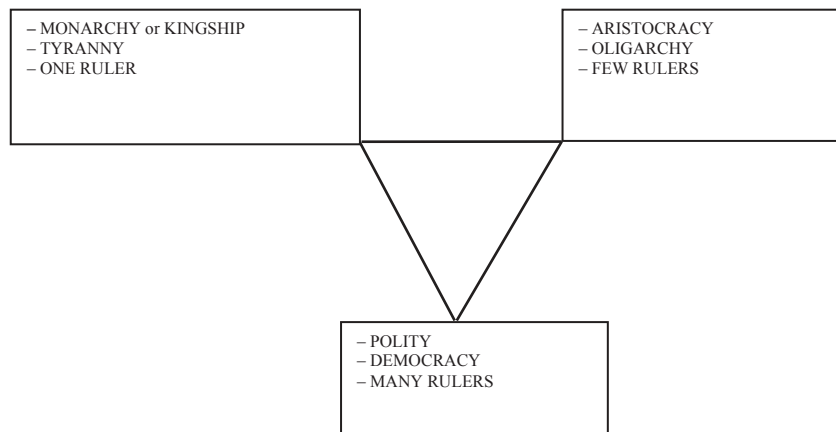


Fig. 1. Three systems according to Aristotle

Some different approach of government systems distinguished by Montesquieu should be mentioned here. Following his own description of civic virtues and the spirit of the laws, we can firstly place the three main regimes in the following diagram:

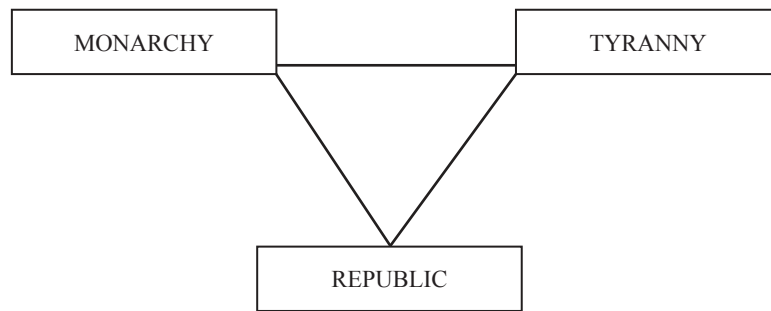


Fig. 2. Three systems according to Montesquieu

Turning to the contemporary democratic constitutional models, we have two basic forms of democracy, usually presented as opposed to each other, namely: direct democracy and representative democracy. However, it should be recalled that at the nationwide level both forms of democracy should be regarded as idealizational models. Nowadays, there is not even one country where we can observe a pure variety of direct democracy. On the other hand, when it comes to representative democracy – a system that is closest to the ideal is considered to be the federal one in The United States of America. Therefore, below, this simple diagram describes the basic opposition.

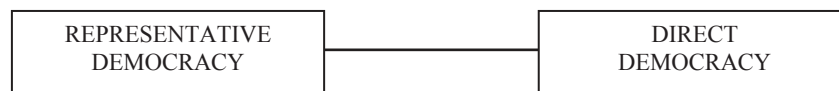


Fig. 3. Basic opposition

The next two figures (i.e. Fig. 4 and Fig. 5) present the transitions from theoretical models to the actual functioning democratic systems, which have been distinguished according to the use of the institution of the referendum. The system of mixed democracy consists of taking into account the referendum, but only the facultative one.

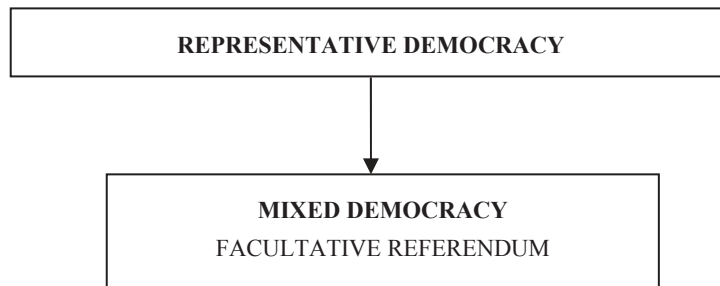


Fig. 4.

From direct democracy derives the so-called semi-direct democracy, in which the citizen-initiative referendum is obligatory, i.e. constitutionally guaranteed.

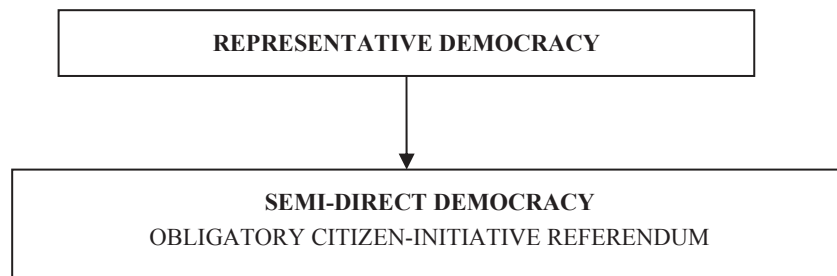


Fig. 5.

With in the contemporary constitutionalism, the most dominant opinion says that the institution of the referendum constitutes the foundation of direct democracy, for it makes possible the realization of the sovereignty of the people. There are three basic forms (modalities) of this government: directly, through representatives, and the most common “mixed” form that also has three variants. Following Zogg, according to the type of referendum, we have three options: the so-called semi-direct, half-representative (French *semi-représentative*) and the Westminster model. Once again, the

type of referendum decides on the form of the democratic system [Zogg, 1996, pp. 15-24]. In a semi-direct democracy, (also called a *referedal democracy*), the referendum is obligatory, whereas in a half-representative democracy referendum is facultative (optional both citizen-initiative and parliament-initiative), while in the Westminster model, there is only the facultative parliament-initiative referendum.⁷

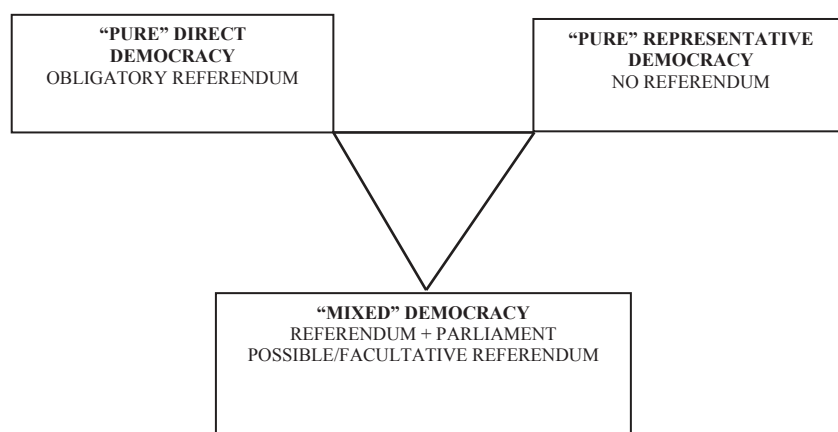


Fig. 6.

It is worth noting that the Westminster model is functioning not only in Great Britain, but also in Belgium, Netherlands and Germany, where there are many restriction concerning the use of the referendum, and in consequence only the parliament can initiate one [Zogg, 1996, pp. 15-17]. Moreover, semi-direct democracy (French *démocratie semi-directe*), which is a synthesis of representative and direct democracy, allows both parliament and citizen-initiative obligatory referendums, usually with the preference for the former. In this system, citizens can participate not only through elections, but also via the institutions of direct democracy, i.e. popular initiatives and referenda. Therefore, they vote on a subject ad-

⁷ See for example [Dahl, 2000; Sartori, 1994; Tilly, 2008, Rouvillois, 2006; Denquin, 1976, p. 149ff; Morel 1996]. For referedal democracy, see [Auer, 1996; Linder, 2011, p. 10ff; Vatter, 2011, pp. 40ff].

dressed both by rulers and by people. However, the lawmaking process is largely in the hands of parliament. This model is fully represented most of all in Switzerland, but also in Denmark, Ireland, Italy and Lichtenstein [Zogg, 1996, pp. 17-18]. The system of half-representative democracy consists of the junction of a mechanism of representative democracy with the possibility of the application of a facultative citizen-initiative referendum. Therefore, the people participate not only in the voting for Parliamentary members, but also can decide upon the choice of members of the government's cabinet and even the head of the country. In Europe, the half-representative democracy is quite popular, since it is the current system, according to Zogg, in Austria, Spain, Finland, France, Greece, Iceland, Luxemburg, Norway, Portugal and in Sweden [Zogg, 1996, pp. 18-19]. We could also include the following countries from central Europe, such as Poland, Czech Republic, Slovakia, Hungary and Romania. However, we must remember that recent referenda in Greece (2015) and in Great Britain (2016) changed drastically both the half-representative and the Westminster model.

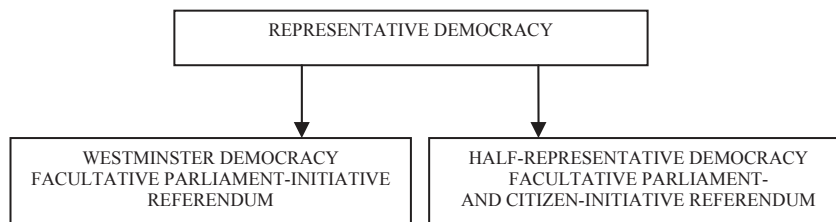


Fig. 7.

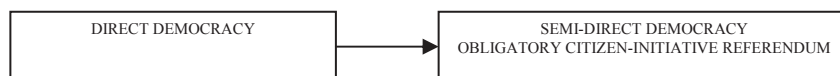


Fig. 8.

Therefore, following Zogg, we can encapsulate systems of “mixed” democracy, into the following scheme:

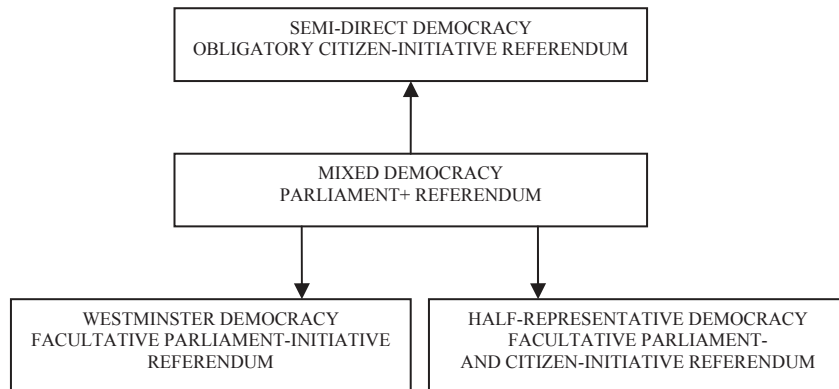


Fig. 9.

We would like to propose the following scheme illustrating the relations between democratic systems, according to criterion of general reports/proportions parliament/referendum. We have included both theoretical and practical models of democracy.

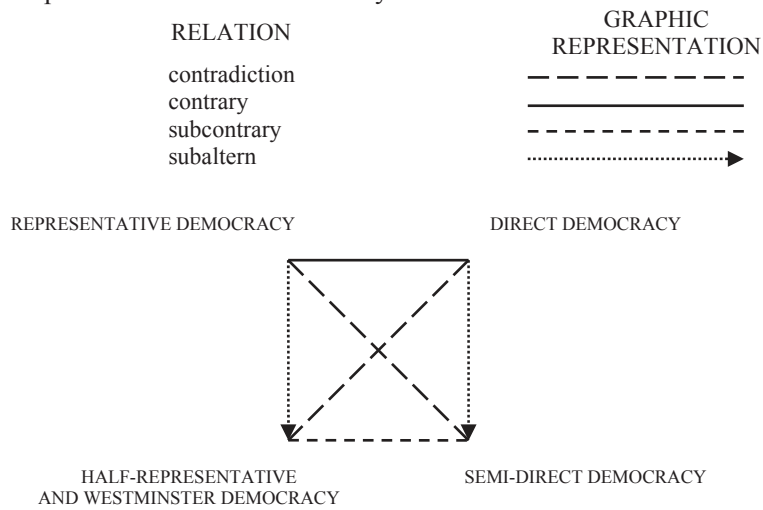


Fig. 10

The status and type of the referendum decides about the form of the contemporary democratic systems. Ranney and Butler not only agree with this opinion, but also indicate the crucial role of the referendum in the formation of the new political map of Europe after 1989. Obviously, the distinct division into liberal and young post-communist democracies is now much more vague, especially in the current time of crisis of democracy or even, as many have called it nowadays, the post-democratic epoch. Nevertheless, the referendum still is quite a remarkable gauge of the system of government.⁸

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⁸ See for example [Butler, Ranney, 1994; Morel, 1996, pp. 21-23; Krzywoszyński, 2011b, p. 181ff]. Let us also recall one classic division of democratic systems, following Sartori, who distinguishes: representative, direct and referendum democracy [Sartori, 1994, 147, 151ff].

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