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II. STATEMENT OF THE PROBLEM

The demand for "more direct democracy" in the form of initiatives and referendums has, since the early 1980s, again emerged as an important institutional and political theme in public debate in West Germany. With the entrance of this theme into many arena of discussion, the advocates of such tactics have widely varying aims. The subject still arouses controversy, even if one may generally concur that the "Plebisphobia of the Post-War Era" (Rudolf Steinberg) seems to have come to an end. One may formulate the problem as follows:

On the one hand, it is argued that these developments reflected the well-known "Dream of Direct Government" (Peter Krause) or a "vulgar Rousseauism" (Ernst Fraenkel), and that in this manner a problematic, indeed dangerous, German political tradition is being reborn. Emotionalism, Destabilisation, and Erosion of West German institutional and political systems, according to this scenario, would be a necessary consequence should initiatives and referendums become more firmly entrenched and part for the political process on all institutional levels in West Germany (federal, state, and local).

On the other hand, some contend that these demands arise theoretically from the democratic principle in the German Grundgesetz (Basic Law). Normatively, certain instruments can be derived directly from the Basic Law; in any event, the advocates of such demands are themselves by no means united in their interpretation. Beside this theoretical interpretation of the nature of democracy and the Basic Law, there is an element based on participatory and political aspects. Proponents of this latter view attempt to liberate the people from its position which is "mediated" by political parties, or to formulate the position more pointedly: to break down the "representative absolutism" (Wolf-Dieter Narr) of political institutions and the party system.

The aim of this line of argumentation is to give the public a more prominent role in the government-organized process of political opinion-forming and decision-making. Additional reference is made to the changing societal structure and the changes in opinion and behavior among the West German people--trends summarized under the rubric the "silent revolution" (Ronald Inglehart). In short, the
scarcely helpful, both analytically and factually, to contrast them with the established political actors—the political institutions and parties, the social organizations and administrations. Some see groups, in the context of citizens' initiatives, raising the cry for initiatives and referendums; the same groups have in fact taken refuge in regulations covering these areas existing in the constitutions of various Federal States. Several examples to illustrate the point:

1) In the early 1980s the West German peace movement made a very clearly formulated demand for a consultative, non-binding referendum in the face of the placement of US mid-range missiles on West German territory, and the anticipated acceptance of this NATO decision by the West German government. Among the proponents of such a referendum was Helmut Simon, a constitutional judge. In the foreground of the Bundestag debate of November 1983, the referendum was to show that the predominant part of the West German public was against the missile placement. It was to be documented that there existed a clear discrepancy between the democratically legitimate institutions, their political-party representatives, and their organizations, on the one hand; and the will of the majority of the population on the other. The demand for a consultative non-binding referendum was aimed, as far as its form was concerned, at a qualitative and quantitative instruction of the West German government; at the same time it did not intend to pass a legally binding decision on the matter. A non-binding referendum, according to this approach, represents a special form of opinion poll; practically speaking, however, it is substantially more binding. A non-binding referendum with a clear answer in one direction can, in spite of its lack of any legally binding outcome, exercise the same effect as a referendum; it may, in fact, be politically very difficult to overlook such a result which has such wide acceptance throughout the country. The issue of whether one may go so far as to say that a consultative non-binding referendum can be seen as a "democratic minimum" (Christian Pestalozza) is to be discussed at another time; this opinion is hotly contested, just as the proposal for the introduction of a "people's enquete" (Hans-Peter Schneider).

2) On 8 September 1986 in North Rhine-Westphalia proponents of the "NRW initiative against atomic facilities" submitted to the interior ministry of the state a proposal for an initiative, complete with the requisite number of signatures. The subject of this popular initiative was a complex of questions about atomic energy
incidentally, which remained after the reforms of the 1970s. At that time an all-party coalition had through constitutional changes stricken the extensive institutional forms of popular participation which then existed in the Berlin constitution, leaving nothing in their place. Those participating in this new popular initiative included the "Arbeitsgemeinschaft unabhängiger Bürger eV" ["Workers' Cooperative of Independent Citizens"], the Alternative List and the Berlin CDU. Before the requisite number of signatures was collected, the Berlin Senate gave ground and called for new elections for the parliament; as a result of those elections the current Federal President Richard von Weizäcker emerged as Governing Mayor.

5) For years the citizens' initiative "Aktion Volksentscheid" has been very active, setting as its goal the establishment of instruments of direct democracy both in the Basic Law and on all other institutional levels. In December 1983, for example, they submitted to the German Bundestag a "Petition for a Federal referendum law." But the Bundestag reacted coolly and generally dismissively in a session used to discuss the action. In 1989 a revised version, "Petition of the 'Referendum Initiative of 23 May 1989' for the Eleventh German Bundestag" was submitted. One may find small groups of a similar nature, which have dedicated themselves to disseminating information on and to promoting popular initiatives and referendums as necessary democratic instruments and as expression of the "responsible citizen."

Which conclusions can one draw from these few examples in an attempt to make a preliminary analysis?

a) There is in general no direct linear relationship between so-called progressive citizens' initiatives and the act of resorting to popular initiatives and referendums; the instruments of the initiative and the referendum apparently are open to use by any group.

b) Popular initiatives cannot be introduced, or can be introduced only with great difficulty, without powerful support through interested political parties, to say nothing of them being passed.

c) In some cases, a popular initiative limited to a single federal state may serve as a political or institutional "emergency solution" which was to by-pass the Federal responsibility for various policies (atomic energy) and the legal exclusion of popular initiatives and referendums on the federal level (popular initiatives in North Rhine-Westphalia against atomic-energy facilities or the initiative against the
forming and decision-making, and thus give political weight to the will of the people. "Participation" and "direct involvement," "direct democracy," "basis democracy" and "decentralization" functioned as pivotal terms in the discussions. In the matter of "existential questions," "questions of life," the people itself would have to make "the final decision" and not only the indirect, democratically legitimated institutions and political parties. Peace, atomic energy, and ecology were defined as existential questions, questions about life itself; the active support of the various movements active in these areas clearly illustrates this party's political engagement. It was seen as an important priority to adopt the demands and goals of the "Aktion Volksentscheid" ["People's Initiative Group"] and to take part in the 1983 petition to the German Bundestag. They allied themselves to other popular-initiative campaigns, and acted as if they were a party and a movement at the same time. The ideological definition of popular initiatives and referendums seems for the moment to have diminished somewhat in importance; but these instruments still occupy an important place in the political program.

2. SOCIAL DEMOCRACY AND REFERENDUM: REDISCOVERY OF THE CITIZEN?

In its latest party program of December 1989, the German Social Democrats (SPD) made a decisive move to accept instruments of direct democracy to express political demands. In their words: "Parliamentary democracy does not diminish or replace the responsibility of the citizenry. We thus wish to expand the citizens' participation and to strengthen the right to petition. Within limits yet to be established by law, popular initiatives and referendums should supplement parliamentary decisions on the local, state, and federal levels. The limits to majority power as established by the constitution also hold true for direct participation of the citizenry." Is German Social Democracy thus fallen into the populist trap and put onto a path, the direction of which it has only limited power in determining? The question was raised particularly by critics within the SPD itself (unmistakably, for example, by Horst Ehmke).

The forms of direct citizen participation in the latest basic program by means of the various forms of popular initiative and referendum were supported for a number of years within the party itself. Politicians such as Walter Momper, Herta Däubler-Gmelin, Peter Glotz, Rudolf Schößberger, and Herbert Schnoor, to name but a few, were among the proponents. Political participation was the word of the
The story is varied in political practice: the great non-binding referendum campaign of 1957-1958 against the stationing of nuclear missiles on West German soil and against a potential arming of the Bundeswehr with these weapons, was essentially started by the SPD and the unions; Walter Menzel was one of its important organizers. In various states ruled by the Social Democrats such as Hamburg and Bremen, non-binding referendum laws were passed. In Hessen, campaigns were to be undertaken in various municipalities (Frankfurt, Darmstadt, Kassel, Offenbach) to include the people in municipal affairs. As a result of the influence of the CDU federal government, the efforts to produce a law in this matter was declared unconstitutional in a number of decisions by the federal court. Hamburg and Bremen were told that this represented an unlawful usurpation of federal powers (foreign-affairs, defense policy). Hessen was told that it would be demonstrating behavior hostile to the interests of the country is it would allow municipalities in its domain to attempt to make federal policy on their own. A final decision on the relation of parliamentary/representative democracy to instruments of direct democracy was never made, however.

In the 1960s and 1970s the theme "popular initiative and referendum" was again viewed as a general problem relating to the theory of democracy and social order, both on the federal and all state levels; there was a tendency for the Social Democrats to object at the time. As arguments for its rejection, it cited emotionalism, effects of demagoguery, and the complexity of politics and the associated difficulty for the average citizen to comprehend the issues. When the CDU opposition made an attempt under Franz Amrehn in 1967-1968 in Berlin (ruled by the Social Democrats) finally to pass popular initiative and referendum laws, Social Democratic representatives (e.g., Klaus Riebenschläger) very vocally expressed their objections. In the context of a constitutional reform, an all-party coalition (SPD, CDU, and FDP) dismissed these proposals. The only thing remaining was the popular initiative calling for early parliamentary elections, as well as the non-binding citizens' initiative in the local community law (Paragraph 41). In contrast, the parliamentary debates during the same time period in Baden-Württemberg and Schleswig-Holstein were marked by a more positive stance on the part of the Social Democrats. Even the regulation concerning citizens' initiatives and referendums in the local law of Baden-Württemberg (Paragraph 23) has the full support of the SPD there. Several of the referendums passed in
competition among the parties on the federal and state levels for its own uses, primarily for its long-term establishment in the West German political and party system. For that reason one may be justified in the assumption that the FDP is not risking the (potentially) slippery surface of direct democracy and also need not raise the corresponding demands. Realistically speaking, it must take account of the fact that a popular initiative which it supported would lead to a popular referendum which would call into question its position up until that point. One must also keep in mind that even a popular initiative only on the state level requires a consider investment of time, organizational skills, personnel, and money, to say nothing of the populist "touch," which can easily turn into a political stigma in such a situation.

Thus various conditions make it clear that in the case of the FDP as well, there exists no clear relationship to instruments of direct democracy. In the section on the Social Democrats it was noted that various local FDP groups had taken part in the non-binding referendum campaign of 1958. Also in the case of the introduction of the two school referendums in Bavaria the FDP had made a considerable political contribution. On the other hand, it belonged, in the early 1970s in Berlin, to those parties-along with the SPD and the CDU-which wished to do away with popular initiatives and referendums on certain political issues. In the Bundestag debate of 1978 concerning the concluding report of the "Enquete Commission on Constitutional Reform," the now federal Justice Minister Engelhard remarked for the FDP that it was in agreement with the report, where it related to the rejection of plebiscite elements. On the other hand it should be mentioned that popular initiatives and referendums on the federal level belonged since 1969 to the party program of the FDP; the demand was then taken up - including a support vote from Hans-Dietrich Genscher -and has been strengthened in the 1980s on a number of occasions.

One could read in the press some time ago that the Bavarian FDP, not no longer represented in the Landtag, wished to apply for a popular initiative which would support broader freedom for the broadcast industries from state influence and for a limitation of the party influence in the Communications Commission. The FDP in Hessen intended in 1989 to start a popular initiative to make it unlawful to serve both as a minister and as a representative. The acceptance of this proposal requires a change in the constitution, which would have to be confirmed in a popular initiative. In the 1970s the Hamburg FDP debated among its own ranks
should take a more prominent role than previously in important political questions through popular referendums which would have to have a basis in the constitution."

The above-mentioned referendums in Bavaria (school referendum; broadcast-media referendums) illustrate that the CSU at that time fully saw the political import of the situation and involved itself in the direct-democracy political process. In the case of the popular initiative in North Rhine-Westphalia "Citizens' Group 'Stopkoop'" in 1978, one may say that the initiative would never have been able to be successfully implemented without the powerful support of the CDU of North Rhine-Westphalia. In the midst of an extensive Landtag debate the then CDU opposition leader, Heinrich Köppler, advocated that bill submitted by the Social Democratic state government should be withdrawn, or should otherwise take account of popular initiatives as a political instrument. In Berlin the CDU opposition under Franz Amrehn supported the position in 1967/68 that it was finally time for the Senate, then led by the SPD, to allow the creation of the constitutional article by law, so that the citizens would have the opportunity to have access to these instruments. Several years later the CDU advocated striking this constitutional article. In the face of the surprising result of elections to the house of representatives in Berlin of January 1989, and the subsequent formation of the SPD/AL governing coalition, the then Governing Mayor Eberhard Diepgen (CDU) that regardless of which appointment-related decisions the newly forming Senate would make, the CDU would have to consider a popular initiative for early parliamentary elections and dissolving the house of representatives. This position of applying the popular initiative as a tactical weapon in an everyday political battle was, however, withdrawn for the next day. The above-mentioned Landtag debates in Baden-Württemberg and in Schleswig-Holstein in the 1970s further illustrate that the Landtag factions of the CDU in each state were apparently much more open to the use of such instruments, in contrast to prior periods. Finally, I would like to refer to an example from the 1950s. In the course of the highly controversial Bundestag debate which extended over several days concerning the non-binding referendum campaign of 1958 organized by the SPD, Rainer Barzel, then a CDU representative, stated in regard to the proposed introduction of the consultative non-binding referendum as a political instrument: it was essentially an affront to the voting public to call them to the polls in a large-scale process, and then potentially to ignore the political result on the basis of the legally non-binding nature of the referendum. Viewed from the democratic perspective, this presented
short, the people appear here as a reserve of general legitimation and acceptance;  

Fourth, one can say more specifically that the competition between parties produces both differences and programmatical similarities. This aspect is illustrated both in the case of the SPD and the Greens, and also in the case of the relationship between the SPD and the CDU/CSU;  

Fifth, one may in some cases posit that the oppositional role may in fact lead to an act of using these instruments as a form of "back covering" and to solidify the party's acceptance among the populace. There is no clear answer to the question of whether smaller parties may take greater and more immediate advantage of these instruments than large opposition parties. While the FDP has overall strongly demanded these instruments in its programs and only occasionally made use of them, the Greens, by contrast, have seen in them programmatically and practically relevant political instruments; in regard to the SPD as the current oppositional party there is, as discussed, no clear evidence that the instruments are used exclusively as politically expeditious tactical weapons;  

Sixth, the West German party competition, federalism, as well as the varying reception of direct-democracy political instruments within the state constitutions present a widely varied political landscape. In the case of party competition these instruments may occasionally represent politically usable instruments; in regard to the West German federal structure one may observe that a party in one federal state is for such instruments, and against them in another. This impression is strengthened by the varying acceptance in the various state constitutions;  

Seventh, it can be demonstrated that citizens' initiatives, to be sure, in many cases rely on these instruments. Successful popular initiatives and referendums in the context of the West German political and party system, however, as a rule have little chance of success without the substantive support of a large party.  

Eighth, finally: How can one answer the question: "Rediscovery of the Citizen and 'Bringing the People Back In'?" On the one hand, it is argued in the literature that in the last 20 years there have been in many cases major changes for example in voting behavior and changes in the public's attitudes. "Bringing the people back in" can thus be grouped within this broader political context. Whether this, in any case, means that there will be a substantially stronger political confrontation between "citizens and political parties" appears questionable. Here, one should not underestimate the political flexibility of West German parties. The expansion of the institutional sets in the form of increased citizen participation in the decision-making process could well lead in this manner to a solidification and further


5 The phrase "Bringing the people back in" has been adopted from: Peter Evans/Dietrich Rueschemeyer/Theda Skopol (eds.), Bringing the State back in, Cambridge University Press, Cambridge 1985. There is of course a substantive difference between the two phrases: "Bringing the State back in" is directed toward the restructuring of a market economy while "Bringing the people back in" refers to the political participatory dimension.

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