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# **The transformation of local democracy through the use of semi-direct democracy procedures in France and Germany**

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Since the last decade, there has been a wave of institutionalisation of local referenda in Europe, showing both the visibility of political local systems and the growing importance of local democracy. How can we value the use of local referenda? Do they affect the structure of local representative systems? We will answer these questions by comparing two countries which had a representative conception of democracy, Germany and France. Since the 1990s, both countries have established new rules of local democracy, including the use of local referenda. Whereas France tabled new bills in local democracy as a consequence of the first Act of decentralization in 1981, Germany promoted this topic as a result of the Reunification. The local referenda are seen as an instrument to renew the participation at local level. Binding referenda create an uncertainty in local democracy; this is why local elites want to control them in order to avoid a new form of competition. Furthermore, local referenda are often associated with the devolution of powers, meaning that the political involvement could be encouraged through a conception of neighbourhood democracy. We would like to analyse the way local referenda affect the **time-scale** of local democracy systems in Europe. The time of local democracy implies to study the **genealogy** of these practices in both countries, their influence on political **agenda-setting** and then the **frequency** of local referenda.

The first part of our work will focus on the way the issue of local referenda was introduced in local politics. In Germany, the referenda and the popular initiative were included in communal charts under the pressure of associations while in France the procedure is controlled by the local representatives. The second part of our work will locate the practices and explain the relation between the legislation and the frequency of local referenda. What is the entrance price and how many local referenda are successful? Are the local referenda becoming a new **norm** of local governance in Europe?

## **I) Local referenda as a new political issue**

### **1) The necessity of consulting people**

Political parties, companies (Martin, 1994), local governments or national governments are using more and more the referendum as a legitimacy input. For the political parties, the aim is to create a major stream among their members whereas companies use it in order to make some difficult decisions be accepted. For instance, in France, the ecologists and the socialists made their members vote on the European Constitution Treaty, in order to have a clear signal from them. The result was all the more interesting as 58% of the socialists and 52% of the ecologists voted in favour of the Treaty whereas 55% of the electors refused it in 29 May 2005. The referendum is a difficult tool to manage for the political parties (Budge, 1996, Seidel, 1998) and the consequences for the two parties were quite interesting. Although the ecologists are divided into numerous streams, the referendum helped to create a major stream in favour of the Constitution, without being used as an internal reorganisation. On the contrary, the referendum modified substantially the balance of the Socialist Party by giving some members a real opportunity to contest. It is not the first time that the referendum is used inside a political party: the ecologists (Vialatte, 1996)<sup>1</sup>, promoting direct democratic tools experienced it in Germany and in France at local level. In other words, can we explain the frequent use of the referendum as a strong indicator of the crisis of political representation? Do the referendums illustrate an individualistic expression of the opinion (Gauchet, 2002)? This new democratic way could threaten all the collective units like the trade-unions and the political parties. Hence, there is a need to frame this new tool, so that it can not be reduced to a plebiscitarian instrument nor to an immediate way of expressing opinion.

We know from the studies of Ronald Inglehart (Inglehart, 1977) that the demand of direct democracy and participation became a new value in the generations of the sixties and the seventies. The environmental issues were prevailing and more important than questions of well-being : the cultural shift explains why the people were asking representative systems to be more opened and inclusive. In France, the administration opened itself to the citizens since

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<sup>1</sup> The Ecologists used to describe themselves as an “anti-parties” party, because they worked according to the principle of “*Basisdemokratie*” (**grass-roots democracy**). The members have to be consulted regularly, to avoid a certain bureaucratisation of the movement. The Party organised many local consultations of the members as in 1984 in North Rhine Westphalia and in 1992 in the region Ile-de-France. An interesting research program would be to value those **referendum practices** inside the political parties.

the end of the seventies: the post-modern State introduced the idea of consultation in different fields (Chevallier, 2003).

In a normative approach, the question of referendum is linked to the encouragement of the political participation. We can then distinguish two different intellectual traditions, a representationist one (Sartori, 1993) which insists on the original invention of the representative system and the participationist one (Barber, 1984) which promotes a strong civic humanism (Pocock, 2003). For the representationists, the democratic tools have to be clarified by the representative frame whereas for the participationists, the system of delegation has to be deeply modified in order to be compatible with the participation of the citizens. The referendum, as a modern tool, is either seen as a complement of the representative system or as a substitute. Its history often describes cycles of political mobilization and political reaction vis-à-vis the representative system. For instance, in the United States, in the early 1890s (Auer, 1989, Stelzenmüller, 1994), a “populist” movement appeared, based on an attempt to change the rules of the electoral game. The Populist Party did not succeed in creating a third organisation promoting direct democratic tools, but its influence on Republicans and Democrats helped those parties to change their way of working. The adoption of the “caucus” system (Ostrogorski 1903), the introduction of popular initiative and referendum in some States are the direct results of this influence.

Historically, Switzerland is one of the first countries which adopted the referendum in order to legitimize a new territorial order. The referendum was used as a diplomatic tool between the different cantons before becoming prevailing during the nineteenth century. According to Gallagher (Gallagher, 1996), 2/3 of the referendums of the world are held in Switzerland. If referendum is often used as an anti-elitist instrument in this country (Kobi, 2000), the political system integrated this **constraint** of government : the representatives have to negotiate public policies in a better way if they want to avoid the organisation of a referendum. This is why the referendum modifies the work of the representative system and its agenda-setting. The time-scale of those practices is not always controlled by the representatives.

## **2) The late recognition of local referendum**

In France, since the 1970s, some politicians have called for the use of referenda at national and local levels. The referendum has become a communicative instrument which appears in a lot of declarations of candidates. Many political parties promote this topic as a

new way of fighting against the abstention and the negative attitude of the citizens towards political elites. By giving them more opportunities to take part in decisions, the representatives think that they will reduce the abstention. The local level, as a level of proximity between local elect and electors, is often seen as appropriate to encourage a local participation: this is the **myth** of local democracy. In 2002, Lionel Jospin, the Prime Minister, declared that “it would be hoped that local and regional referenda could be organised in a consultative way in order to clarify the decisions” (Jospin, 2002, 206), echoing to the positions of the former president Mitterrand<sup>2</sup>.

The participatory democracy is the medicine against the decline of the representative system. If it is included in the myth of local democracy (Mabileau, 1994), the local elites’ attitude differs when it comes to the application of local referenda, many of them fearing some populist consequences<sup>3</sup>. This long debate resulted in the Decentralisation Act of 2003, which included for the first time local referenda in the Constitution. The step is clear but the conditions are very restrictive: a local referendum can be decisive if 50% of the population takes part in it. This way of recognizing the use of local referenda while braking it, reveals the ambiguity of the French political culture: the referendum is accepted at national level but ignored at local level.

In Germany, many political parties call for the extension of participatory democracy as a way of expressing the reunification of the country. The motto “*Wir sind ein Volk*” reflected not only the wish to be one country again, but also the affirmation of popular sovereignty. Just before reunification, the association “*Mehr Demokratie*” was founded by people who took part in some social movements of the sixties (Markovits, Gorski, 1993, Kohser-Spohn, 1996). In 1987, a bus, on which “Direct Democracy” was written, travelled across East and West Germany to promote that idea. Between 1987 and 1992, the bus stopped in 400 cities. *Mehr Demokratie* is the association which supported the inclusion of local referenda in the legislation of *Länder* and in the communal charts. They are currently lobbying for the possibility of organising referenda on European issues at the federal level.

Political parties were divided concerning the use of those instruments (Klages, Paulus, 1996; Weixner, 2002). The FDP liberal party included the possibility of referenda in its

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<sup>2</sup> Mitterrand, François, “Réponse à Brice Lalonde” in *Le Monde*, 23/04/1983.

<sup>3</sup> Giraud, Michel, “Le référendum? Je suis sceptique.” in *L’action municipale*, January 1979 and “On dénature la démocratie locale” in *Le Progrès*, 30 May 1990. Michel Giraud is conservative (member of the ex-RPR). The President of Constitutional Council is reluctant towards the use of local referenda. Mazeaud, Pierre, “Le Parlement et ses “adversaires”” in *Pouvoirs*, 1993, 109-102. As for the Socialists, see Glavany, Jean, *Vers la nouvelle République ou Comment moderniser la Constitution* (Paris, éditions Grasset, 1991).

programme in 1969, then in its election programme in 1980 and in the Liberal Manifesto of 1985. In 1958, the Social-Democrats (SPD) proposed a law on the organisation of a referendum about the development of nuclear weapons. During its political congress of 1986, the SPD decided to propose referenda at all levels. The Communists (PDS) and Ecologists (Bündnis 90/ Die Grünen) are also in favour of the introduction of such procedures. However, the Conservative Parties (CDU, CSU) are mainly against them, because they fear the emergence of new actors on the political scene. We can see the different attitudes in a research made on the voting reactions of the political parties in the Bundestag *vis-à-vis* the bill proposal of the coalition SPD / Grünen about the introduction of referenda at different levels. In the following table, the value 0 is given to the parties which are against more direct commitment and the value 1 to the parties which are in favour of it.

**Table 1: Voting attitude of the Bundestagsparties vis-à-vis the bill proposal of the coalition about the introduction of referenda at all levels**

	Votes for / against the proposal	Value
SPD	Yes	1
Bündnis 90 / Grüne	Yes	1
PDS	Yes	1
FDP	Divided <sup>4</sup>	0,5
CDU / CSU	No	0

Sources: Bundestag data, 07/07/2002  
Report from *Mehr Demokratie*

The last campaign for the legislative election in 2005 reminded the positions of the different political parties: whereas Die Linke<sup>5</sup>, the Greens<sup>6</sup>, the FDP<sup>7</sup> and the SPD<sup>8</sup> claimed for the extension of referenda at the federal level, the CDU / CSU<sup>9</sup> were mainly opposed to it.

<sup>4</sup> Among FDP MPs, there was no final decision on the vote, which explains the individual votes.

<sup>5</sup> "Wahlprogramm zu den Bundestagswahlen 2005", 27 August 2005, 22.

<sup>6</sup> "Die Grüne / Bündnis 90, Wahlprogramm", 9/10 July 2005, 40 (more possibilities for referenda at all levels)

<sup>7</sup> "Arbeit hat Vorfahrt. Deutschlandprogramm", FDP program, 39-45.

<sup>8</sup> "Vertrauen in Deutschland, das Wahlmanifest der SPD", 4 July 2005, 11 : « We need more direct democracy and the federal referendum ».

<sup>9</sup> "Deutschlands Chancen nutzen. Wachstum, Arbeit, Sicherheit. Regierungsprogramm 2005-2009", 11 July 2005. There are no mentions of direct democracy in that program.

In different *Länder*, the configuration is more or less the same, with the exception that the CDU/CSU does not want to enlarge too much the possibility of local referenda. If we compare the reactions of the political parties in both countries, the Communists and the Ecologists (Vialatte, 1996) are the first political movements fighting for the introduction of referenda<sup>10</sup> and the promotion of participatory instruments (Budge, 1996). The French Socialists seem to be somewhat more reserved about the use of local referenda than their German colleagues. The French Conservatives are less hesitant than their German colleagues, but in concrete terms the situation is totally different as local referenda are strictly controlled in France. If the possibilities were enlarged as in Germany, the French Conservatives would certainly adopt the same attitude.

In France, the first local referenda were organised at the end of the nineteenth century without, however, their status being defined by the public authorities. Various bills were tabled by MPs to institutionalise such procedures, such as the bills of Mr Lanessan in 1883 (Viguier, 1996) and Mr Mackau in 1890; all were rejected. The representative principle was the main criterion of local government: the law of 5 April 1884, allowed the election of local councils. The republican institutions had their foundations at the local level. Some local referenda were held between 1880 and 1907, on topics such as the location of the market place, the construction of buildings for the army, the division of the communes, the organisation of religious ceremonies and local taxes. Local authorities wanted to ascertain the opinion of electors about financial questions. However, the government began to prevent such procedures, by cancelling them. Then, in 1905 and 1907, the Council of State cancelled local authority deliberations which planned a local referendum. Between 1907 and 1959, only one local referendum was held<sup>11</sup>, because referenda were illegal. Finally, local referenda were authorised in 1971, but only for the reunion of communes. According to Marion Paoletti (Paoletti, 1996), around 202 local referenda were organised between 1971 and 1992. At the same time, the local referendum concept became a norm in political speeches. The table 2 shows the comparative history of the local referenda in both countries.

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<sup>10</sup> In France, many communist mayors organised local referenda which were illegal on the voting rights of the non-European foreigners. This kind of local consultation wants to point out a national problem which is not solved.

<sup>11</sup> During that period, three national and one territorial referenda were organised.

**Table 2: Comparative history of local referenda**

Some key dates	France	Germany
1880-1907	First local referenda in France (between 30 and 40) until the Council of State cancelled some procedures. Strong hostility of the French Parliament	Local autonomy (Prussia, 1808)
1919-1933		The Republic of Weimar introduced some direct democracy procedures as corrective mechanisms. Some local referenda occurred (recall procedures).
1930-1945		Nazis plebiscites. Trauma which explained a post-war " <i>plebisphobie</i> ".
1945-1960	<ul style="list-style-type: none"> <li>-1946: the Constitution of the Fourth Republic was approved by referendum.</li> <li>-1958: the Constitution of the Fifth Republic introduced referenda at national level (from 1958 to 1969, 8 national referenda)</li> </ul>	
1970-1989	<ul style="list-style-type: none"> <li>-The law of 16 July 1971: local referendum is compulsory in case of the merger of communes. First acknowledgment of local referenda</li> <li>-The <b>decentralisation</b> laws of 1982 (I)</li> </ul>	

1990-2004	<ul style="list-style-type: none"> <li>-Series of laws which defined as well as restrained the use of local referenda</li> <li>-6 February 1992: the possibility of <b>local consultations</b> is introduced with some conditions: weak opening of local governments</li> <li>-4 February 1995: Popular initiative is possible under certain conditions. Local referenda are merely consultative</li> <li>-27 February 2002: “Democracy and neighbourhood”</li> <li>-1 August 2003: Decentralisation Act (II)</li> <li>-13 August 2004: Law on local liberties and responsibilities</li> </ul>	<ul style="list-style-type: none"> <li>-1990: the Reunification of Germany: many <i>Länder</i> adopted the <b>local referenda</b> in their communal charts (codification of the <i>Bürgerbegehren</i> and the <i>Bürgerentscheid</i>)</li> <li>-Fight of <i>Mehr Demokratie</i> association to extend this tool: a lot of local referenda have been held since the 1990s</li> </ul>
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Source: own research

Whereas in the seventies, various left-wing organisations promoted the idea of local democracy, the “referendum”, as an instrument of local democracy, was popular among the conservative and socialist parties. In the 1990s, a series of laws used the expression “local consultation” in order to avoid a contradiction between the referendum and local representative governments. The ambiguity of the terminology is to be noted: whereas in France, the word local referendum is practically applied to consultative and decisive votes, there are several words used in German. When a popular initiative starts, there is a *Bürgerinitiative*, if it requires a referendum, we have a *Bürgerbegehren* and the moment of popular decision is called *Bürgerentscheid* (Premat, 2005, 192). In other words, the problem is to value the success of the popular decision and not only the organisation of the local referendum. In France, a law enacted on 6 February 1992, authorised the consultation of “inhabitants” for a limited number of topics. The concept of popular initiative was introduced for the first time on 4 February 1995: one fifth of the electors can request that a local consultation is held. During the 1990s, the authorities promoted the use of other instruments that are not as complex as referenda. Town councils were created and the law of 27 February 2002 made them compulsory for cities having more than 80 000 inhabitants. The last steps towards establishing local referenda were accomplished with the Decentralisation Act of 2003 and the Law of 13 August 2004 on local responsibilities<sup>12</sup>. A referendum is decisive if 50% of

<sup>12</sup> The references for this series of laws are as follows. Law n°71-588 (16 July 1971), Law n° 92-125 (6 February 1992), Law n°95-115 (4 February 1995), Law n°2002-276 (27 February 2002), Law n°2003-705 (1 August 2003), Law n°2004-809 (13 August 2004).

the electors take part in it. Although the instrument is legally binding, it is practically impossible to organise a local referendum unless the topic is of particular importance for the local population.

In Germany, the history of local autonomy dates back to 1808 when Prussia granted the right to administer their own affairs to a small number of cities under the influence of Lord Von Stein (Poloni, 2000, 21). That right was extended to other communes at the end of the nineteenth century. Nevertheless, local autonomy does not necessarily mean local democracy. It was the Weimar Constitution<sup>13</sup> which authorised the use of semi-direct democracy procedures (*“plebiszitäre Elemente”*). After the First World War, many Constitutions of Länder included some direct democracy procedures: for instance, the constitutional initiative was possible, like in Bavaria or in Prussia (Lee, 1935, 43-46)<sup>14</sup>. In the Constitution of Baden, the required number of citizens to request a referendum is 80 000. In the Constitution of Prussia, a popular initiative can ask for the vote, the modification or the abolition of a law (Lee, 46)<sup>15</sup>. In that context, some local referenda were organised, like in Munich, when on 12 December 1920, a referendum was held after a popular initiative in order to call new local elections (Faure, 1926: 188).

### 3) The suspicious attitude towards local referenda

The political traditions of Germany and France were inversed, concerning the use of local referenda. Whereas local referenda were banished in France, national referenda and plebiscites were seen as a democratic complement to the representative system. There is in France a specific debate on the distinction between plebiscites and referenda. Theoretically, a plebiscite is the approval of the politics of a person, whereas a referendum concerns a vote on a text. In practical terms, the distinction is blurred, because some referenda are close to plebiscites (Denquin, 1976). Louis Faure made a clearer definition by writing that “the plebiscite concerns a name and the Referendum a question, a “no”. If the referendum is a step towards a direct government, the plebiscite tries to establish the representative government” (Faure, 1926: 123). In fact, according to French political tradition, the national referenda share the characteristics of plebiscites. After the six plebiscites of Napoleon I and Napoleon III, President De Gaulle reinvented those procedures at the national level, in order to avoid the

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<sup>13</sup> In the Weimar Constitution, in 1919, the right of **local self-administration** was recognised in article 127 (*Recht der Selbstverwaltung*).

<sup>14</sup> The constitutional initiative is included in articles 10 for Bavaria and 6 for Prussia.

<sup>15</sup> Constitution of Prussia, article 6 §1.

hegemony of political parties over Parliament. President De Gaulle was one of the promoters of the “participation” as opposed to the ideas of self-organisation, which were popular among left-wing organisations. He was inspired by the ideas of René Capitant (Capitant, 1982) and Raymond Carré de Malberg (Carré de Malberg, 1984, 204-206) on the necessity of referendum in order to avoid partisan fights. The integration of referendum in the Constitution of 1958 is an adaptation of some principles of Weimar.

There is a controversy in Germany (Schiffers, 1999) as to whether the mechanisms of semi-direct democracy granted by the Weimar Constitution provoked the destruction of the political stability of the country in the way the Nazis and the far-left parties used them. Contrary to Stefan Meinecke, who denounces the possible political manipulation, Otmar Jung (Jung, 1989) considers that their presence did not help to destroy the regime, because of their neutrality. The extremist parties changed the nature of these instruments: the plebiscites used by the Nazis had nothing to do with direct democracy procedures, as they were imposed without any political debate (Jung, 1999). This is why, after the Second World War, a “*plebisphobie*” (Luthardt, 1994) was shared by almost all the political elites and affected the drafting of the Federal Constitution. Only article 29 allows the organisation of referenda for the modification of territorial limits (*Neue Gliedierung*)<sup>16</sup>. Article 28 of the Constitution (§1) affirms the representative principle at the local level, by describing the necessity of having elected councils (*Volkvertretungen*) in the *Länder*, the districts (*Kreise*) and the communes (*Gemeinden*). The third proposal of the same paragraph stipulates that in some communes, the town-meeting (*Gemeindeversammlung*) can play the same role as an elected council. Semi-direct democracy procedures were excluded at local level until 1956, when Baden-Württemberg introduced local referenda. Since the Reunification, almost all the *Länder* adopted communal referenda. The association *Mehr Demokratie* succeeded in two campaigns for the introduction of local referenda, the first one in Bavaria in 1995 (Mayer, Seipel, 1997) and the second one in Hamburg in 1998 (Dressel, 2003).

## **II) The frequency of local referenda**

### **1) The difficulty of comparing local consultations and referenda**

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<sup>16</sup> For instance, on 7 June 1970, a referendum was held to decide whether the country of Baden should remain in the *Land* of Württemberg. With a turnout of 61%, 81% of the people rejected the proposed territorial modification.

Popular initiatives and local referenda were added in both countries quite recently. In Germany, the local governments have been reshaped, insofar as the direct election of the mayors and the recall procedure (Wollmann, 2002: 78-81) were included in some Länder. Until the beginning of the nineties, only the southern Länder of Bavaria and Baden-Württemberg had a system of direct election of the mayors. The table 3 shows the transformation of local rules *via* the direct election of mayors.

**Table 3: the direct election of mayors in Germany**

<i>Bundesland</i>	President of the local Council	Direct election since <sup>17</sup>	Date of the introduction of direct democracy procedures	Period of mandate	Quorum in case of recall of the Local Council	Quorum in case of recall through a demand of local referendum	Quorum in case of recall through a local referendum
Baden-Württemberg	+	1956	1956	8	-	-	-
Bavaria	+	1952	1995	6	-	-	-
Brandenburg	-	1993	1993	8	2/3 of the Majority	25% <sup>18</sup>	25%
Hesse	-	1991	1993	6	2/3 of the Majority	-	25%
Mecklenburg West-Vorpomerania	-	1999	1994	7-9	2/3 of the Majority	-	33,3%
Lower Saxony	- <sup>19</sup>	1996	1996	5	3/4 of the Majority	-	25%
North Rhine Westphalia	+	1994	1994	5	2/3 of the Majority	-	25%
Rhineland-Palatinate	+	1993	1994	8	2/3 of the Majority	-	30%
Saarland	+	1994	1997	8	2/3 of the Majority	-	30%
Saxony	+	1994	1993	7	3/4 of the Majority	33,3%	50%
Saxony-Anhalt	+	1994	1993	7	3/4 of the Majority	-	30%
Schleswig-Holstein	-	1996	1990	6-8	2/3 of the Majority	25%	33,3%
Thuringia	+	1994	1993	6	Simple Majority	-	30%

Source: Norbert Kersting, *Die Zukunft der lokalen Demokratie, Modernisierungs- und Reformmodelle*, Campus Verlag, Frankfurt, 2004, p. 129

<sup>17</sup> Year of the legislation

<sup>18</sup> Until 1998 :10%

<sup>19</sup> optional

Local referenda were introduced in a moment of reorganization of local system. Except the *Länder* of Bavaria, Hesse and Rhineland-Palatinate, direct-democracy procedures were adopted before the principle of direct election of the mayors. In Bavaria, in September 1950, some proposals about the introduction of local referenda were discussed without having any consequences (Bocklet, 1974, 35). The East German *Länder* also generalised the direct election of mayors. A recall procedure has been also introduced in three East German *Länder*: for instance, in the Land of Brandenburg, some mayors have been removed from office thanks to the organisation of a referendum. According to Hellmut Wollmann, in 2000, we can conclude that “ten percent of full-time mayors lost their position as a result of successful local recall referenda” (Wollmann, 2002: 80). Between 1993 and 1998, in the Land of Brandenburg, 21 procedures were initiated and 12 of them have resulted in a referendum; 7 out of those 12 referenda resulted in the mayor being removed from office (Wollmann, 1999: 113-114). As a matter of fact, in 1998, the Parliament of the Land of Brandenburg increased the minimal quorum from 20 into 25% in order to avoid the multiplication of such procedures. These practices indicate a strong change in local democracy: the representative system can be reversed at local level in almost all *Länder* except the south ones but the conditions are so restrictive that these situations are very rare. Local elites have to be more accountable and cooperate with the citizens by opening the representative system. In France, the recall procedure and the direct election of the mayors by the citizens are not mooted as possibilities in political speeches<sup>20</sup>. French political tradition refuses the possibility of reversing electoral decisions. In fact, mayors control the mechanisms of local democracy, this is why some researchers have compared this system to a kind of “municipal presidentialism” (Sorbets, 1983). The sociology of local elites in France shows that the renewal of local representatives is very limited. The conquest of municipalities is the first step in the political career of certain mayors who try to increase their visibility at the national level (Mabileau, Sorbets, 1983). In France, when local referenda are held, it is a test for the mayoral legitimacy (Paoletti, 1996).

Referenda are typically a mayoral tool in France: between 1995<sup>21</sup> and 1998, only one referendum was organised as the result of a popular initiative. Furthermore, this referendum

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<sup>20</sup> It is to be noted that the direct election of the mayors cannot be reduced to a direct democratic procedure. The recall procedure affirms the indeterminacy of the representative system, thus it is a semi-direct democracy procedure as it leads to a local referendum.

<sup>21</sup> The Law of 4 February 1995 established the right of popular initiatives for the first time (one fifth of the electors can request a local consultation on town and country planning matters).

was held on 22 June 1997 in the district of Val d'Argent, in Alsace. The popular initiative required the construction of an infrastructure for tourism. 66,90% of the population took part in the referendum and 55,5% accepted the initiative<sup>22</sup>. Between 1995 and July 2004, 2,45% of local consultations were held as a result of a popular initiative<sup>23</sup>. Popular initiatives are not possible at the national level although some deputies proposed them. For instance, a Communist deputy tabled a bill on the introduction of "popular initiative referendum" at municipal, regional and national levels<sup>24</sup>. Article 7 of the bill was interesting because the procedure would be not only in the hands of the mayor at local level. According to the proposal, the mayor and a college of citizens, chosen by drawing lots, would have one month to examine the demand. This college of citizens would be renewed every two years. The bill was rejected but reminded people of the attempts that occurred in the past.

## **2) The consequences of the quorum and the turnout**

The recent wave of institutionalisation of local referenda in Germany helped those practices to develop. Table 4 shows the number of local referenda which has been held since their introduction until 2002. Bavaria is the reference concerning the number of local referenda, insofar as the legislation was in favour of those practices. In six years, we had two times more local referenda than all the local French referenda (whose total number, including the first local referenda between 1880 and 1907, is around 500).

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<sup>22</sup> Data source : French Home Office.

<sup>23</sup> The other demands were rejected by the elected local council (Data source : French Home Office).

<sup>24</sup> See Bill n°1726 (22 June 1999) on <http://www.assemblee-nat.fr/pion1726.asp>

**Table 4: Local referenda and popular decisions in Germany**

<i>Land</i>	Local referenda				Popular decisions			
	Period	Number N	Frequency (number of local referenda a year for X communes) N (1/X)	Not valid (the procedure is not correct)	Referenda which have become popular decisions	Number N	Frequency (number of popular decisions a year for X- communes) N (1/X)	Popular decision taken after referendum
Bavaria	1995- 2001	1260	210 (1/10)	160 (13%)	578 (46%)	578	96,3 (1/21)	578 (100%)
Baden- Württemberg	1956- 2002	283	6,2 (1/179)	130 (46%)	140 (50%)	292	6,4 (1/174)	140 (48%)
North Rhine Westphalia	1994- 2002	232	29 (1/14)	89 (38%)	74 (32%)	74	9,3 (1/43)	74 (100%)
Schleswig- Holstein	1990- 2002	202	16,8 (1/67)	88 (44%)	86 (43%)	100	8,3 (1/136)	86 (88%)
Hesse	1993- 2002	150	16,7 (1/67)	32 (21%)	67 (45%)	67	7,4 (1/58)	67 (100%)
Saxony	1993- 2002	130	14,4 (1/54)	41 (32%)	65 (50%)	121	13,4 (1/58)	65 (54%)
Rhineland- Palatinate	1994- 1999	61	12,2 (1/189)	19 (31%)	23 (38%)	23	4,6 (1/501)	23 (100%)
Lower Saxony	1996- 2002	51	8,5 (1/121)	22 (43%)	22 (43%)	24	4 (1/258)	22 (92%)
Brandenburg	1993- 2001	36	4,5 (1/331)	19 (53%)	6 (17%)	28	3,5 (1/425)	6 (21%)
Mecklenburg West- Vorpomerania	1993- 2002	30	3,3 (1/324)	22 (73%)	6 (20%)	25	2,8 (1/463)	6 (24%)
Thuringia	1993- 1999	29	4,8 (1/219)	10 (35%)	15 (52%)	15	2,5 (1/421)	15 (100%)
Saarland	1997- 2002	4	0,8 (1/52)	3 (75%)	-	0	0 (0/52)	0
Saxony- Anhalt	1990- 2002	4	0,3 (0/1295)	2 (50%)	2 (50%)	33	2,8 (1/463)	2 (6%)
<b>Total</b>	1956- 2002	2472	327,5	637 (26%)	1084 (44%)	1380	13,2 (1/329)	1084 (79%)

Data Source: Walter-Rogg, Mélanie, “*Direkte Demokratie in der Bundesrepublik Deutschland und im internationalen Vergleich*” in Garbiel, Oscar, *Politische Partizipation*, [www.politikon.org/inhalt](http://www.politikon.org/inhalt) and data from the University of Marburg

Half of these practices succeeded in a popular decision taken after referendum. If we refer to this period, a Bavarian commune can organise a local referendum every 10 years and can have a popular decision every 21 years. The validity of the procedures depends on the possibilities of the legislations. Table 4 and Table 5 have to be compared in order to know why some Länder, like Saarland, have a poor score of local referenda. For instance, in Schleswig-Holstein, between 1990 and 1995, we had 118 popular initiatives requiring the organisation of a local referendum. 56 led to a local vote, 39 were not accepted, 4 were taken out, 9 led to a new decision of the local Council and 10 were not yet deposited (Holtmann, 1996, 212).

The restriction of time and the number of signatures are crucial questions in the sense that popular initiatives influence local authorities.

**Table 5: Local referenda in Germany (quorums and deadlines)**

<b>Date of the introduction of direct democracy procedures</b>	<b>Popular initiative: quorum of signatures</b>	<b>Deadline for obtaining signatures</b>	<b>The minimal quorum required for the referendum be decisive</b>	<b>Number of local referenda</b>
Baden-Württemberg (1956)	5-10%	4 weeks	30% <sup>25</sup>	(1956-2002): 283
Bavaria (1995)	3-10%	No delay	10-20%	(1956-2002): 1260
Brandenburg (1993)	10%	6 weeks	25%	(1993-2001): 36
The city of Bremen (1994)	10%	3 months	50% of participation required	-
Bremerhaven (1996)	10%	6 weeks	30%	-
Hamburg (1998)	2-3%	-	No quorum	-
Hesse (1993)	10%	6 weeks	25%	(1993-2002): 150
Mecklenburg West-Vorpomerania (1994)	2,5-10%	6 weeks	25%	(1993-2002): 30
Lower Saxony (1996)	5-10%	3 months	25%	(1996-2002): 51
North Rhine Westphalia (1994)	3-10%	6 weeks	20%	(1994-2002): 232
Rhineland-Palatinate (1994)	6-15%	2 months	30%	(1994-1999): 61
Saarland (1997)	5-15%	2 months	30%	(1997-2002): 4
Saxony (1993)	5-15%	2 months	25%	(1993-2002): 130
Saxony-Anhalt (1993)	6-15%	6 weeks	30%	(1990-2002): 4
Schleswig-Holstein (1990)	10%	4 weeks	20%	(1990-2002): 202
Thuringia (1993)	13-17%	1 month	20-25%	(1993-1999): 29

Data Source : “*Mehr Demokratie*”, (Gabriel, 1999; Schiller ,2002)

<sup>25</sup> In June 2005, the quorum was reduced to 25%.

The former Eastern Länder do not have a lot of local referenda, as they totally had 150 local referenda between 1990 and 2002. We are closer to the number of French local referenda: according to the French Home Office, between 1995 and 2004, 180 “local consultations” were estimated. Nevertheless, this figure is indicative, while some consultations were not taken into account by official statistics<sup>26</sup>. If we compare the global figures, until 2002, Germany had 2472 local referenda for 14 000 communes whereas France had only 500 local consultations for 36 000 communes. However, the new legislations let us think that there will be an increase of local referenda, which means that semi-direct democracy procedures are more and more taken into account in both countries.

If we now compare the number of local referenda each year from 1975 until 2005 (table 6 and figure 7), we can see the years when the number of local referenda exploded, which corresponds to the change of legislation. In both countries, from 1995 until 2004, we observe the largest number of local referenda, with a different intensity.

**Table 6: Number of local referenda a year in Germany**

Year	Not deposited	Not valid	New decision	Compromise	Success of Popular decision	Failure of popular decision	Failed (though the turnout reached)	Not known	Missing	Total
0	31	90	47	12	39	11	5	113	1	349 <sup>27</sup>
1975	0	0	0	0	1	0	0	0	0	1
1976	0	0	0	0	1	1	0	0	0	2
1977	0	3	0	0	0	1	0	1	0	5
1978	0	8	2	0	1	1	0	2	0	14
1979	0	6	0	0	2	1	1	1	0	11
1980	0	10	0	0	1	1	0	1	0	13
1981	0	5	0	0	4	0	0	0	0	9
1982	0	6	0	0	1	0	0	0	0	7

<sup>26</sup> According to our own research, we estimate that from 1995 and 2004, between 10 and 20 local referenda were not counted down (which means there are between 5 and 10% local referenda which do not appear in official statistics). The missing referenda are due to the reports’ mistakes, the ignorance of some illegal consultations by the Préfecture and the departments which did not answer to the enquiry.

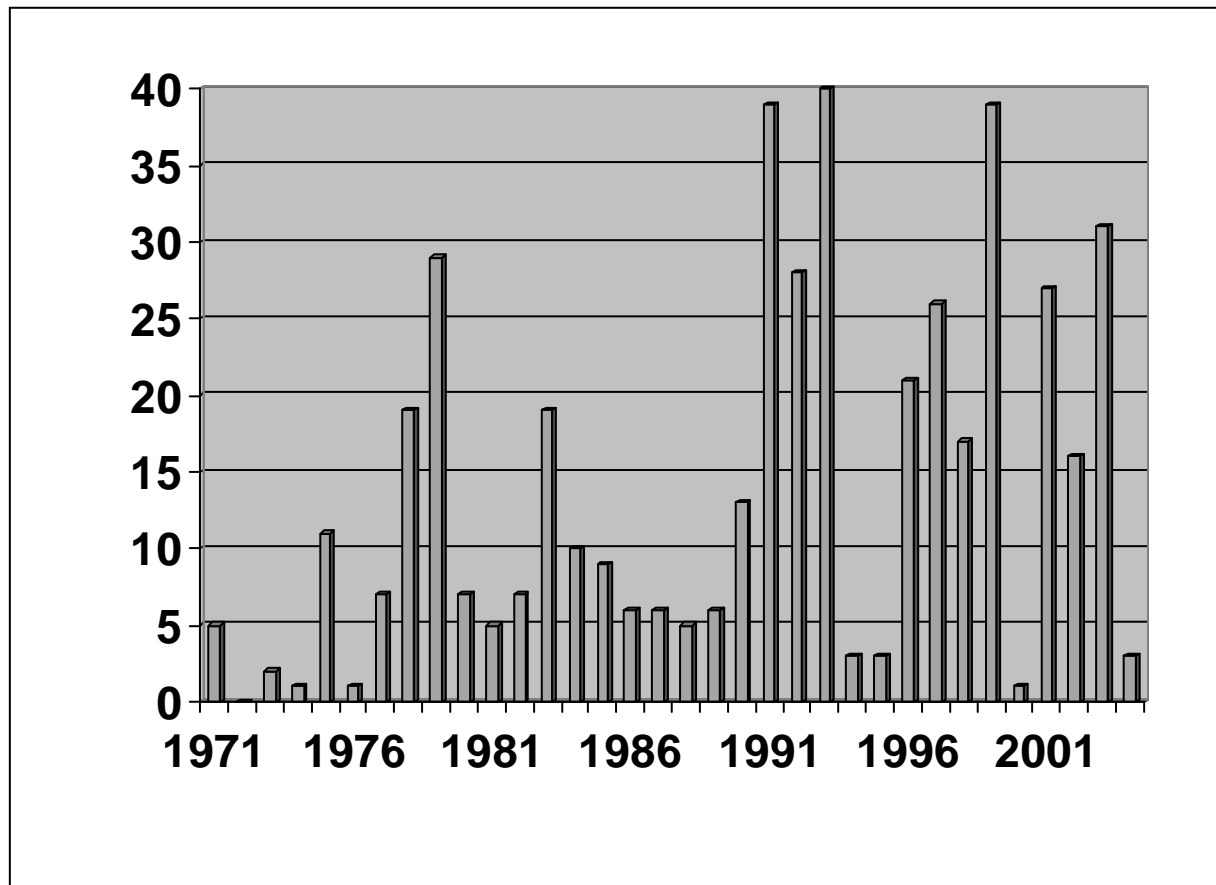
<sup>27</sup> This line corresponds to the local referenda which were counted down before 1975.

1983	0	2	0	0	3	2	1	0	0	8
1984	0	3	0	0	3	0	0	0	0	6
1985	0	8	3	0	4	2	0	1	0	18
1986	0	5	0	0	5	3	3	0	0	16
1987	0	2	0	0	4	2	1	0	0	9
1988	0	7	0	0	2	4	1	1	0	15
1989	0	1	0	0	1	2	1	0	0	5
1990	0	11	2	0	11	1	2	3	0	30
1991	0	14	1	1	11	7	5	3	0	42
1992	0	15	3	0	7	7	1	2	0	35
1993	0	10	7	1	24	8	4	14	0	68
1994	0	23	8	2	25	8	3	6	0	75
1995	8	53	20	2	53	27	6	17	0	186
1996	28	91	53	15	88	78	6	24	1	384
1997	12	65	42	7	115	82	9	64	1	397
1998	12	33	34	2	58	50	7	59	1	256
1999	6	35	10	3	54	38	6	68	1	221
2000	3	22	9	1	29	26	6	71	0	167
2001	5	28	6	1	18	16	12	24	2	112
2002	5	27	9	5	32	9	5	12	2	106
2003	16	30	22	5	18	18	21	67	11	208
2004	6	23	7	5	9	3	4	94	2	153
2005	2	8	4	4	7	2	4	94	3	128
Total	134	644	289	66	631	411	114	742	25	3056

Data Source : University of Marburg, Political Science Institute, Center “Local participation and direct democracy”

(<http://www.forschungsstelle-direkte-demokratie.de>, September 2005)

**Figure 7: Number of local consultations in France<sup>28</sup>**



**Legend: The numbers correspond to the quantity of local consultations each year, from July 1971 until July 2004**

Source : Own research

When we refer to the period 1975-1990, the number of local referenda was relatively equivalent in both countries, as 138 local referenda were held in Baden-Wurttemberg and 150 in France. The current French legislation reminds us the conditions of local referenda in Baden-Wurttemberg before 1975, when a turnout of 75% was required. In France, there was a discussion about the turnout (33% or 50%<sup>29</sup>) but politicians never mentioned the idea of a quorum of approval like in Germany. There is no delay of time specified for the reunion of signatures in order to ask for a local referendum.

<sup>28</sup> Contrary to Marion Paoletti, when a referendum was held on the reunion of communes, we count all the different referenda, this is why we have found a little bit more referenda than she had. We completed the data given by Marion Paoletti (Paoletti, 1996, 475-479) by comparing them to the data of Cécile Blatrix (Blatrix, 1997, 265-269) and the reports of the French Home Office.

<sup>29</sup> This was the divergence between the National Assembly and the Senate. Whereas the National Assembly supported a turnout of 33%, the Senate was in favour of a turnout of 50%. See French Senate, 21/07/2003, report n°407. <http://www.senat.fr/seances/s200307/s20030721/s20030721002.html#int364>

In Germany, the legislations of Bavaria and Hamburg boosted the number of local referenda. The lowest the required turnout is, the more local referenda happen. Whereas the frequency of referenda is about 90 local referenda each year from 1975 until 2005, in France from 1975 until 2004, the average frequency is around 15,5 local consultations a year<sup>30</sup>. As a matter of fact, the probability to have local referenda is six times higher in Germany than in France. In fact, the federal structure of Germany offers a spectrum of different legislations and consequently different types of practices. Nevertheless, we located the practices in France, by comparing the number of local consultations for each region. We obtained the following results, summed up in table 8.

**Table 8 : Local referenda in French regions (1971-2004)<sup>31</sup>**

<b>Region</b>	<b>Number of local referenda between 1971 and 2004</b>	<b>Number of local consultations a year in the region</b>	<b>Number of inhabitants (1999 census)</b>	<b>Probability of referenda (referenda per inhabitants in 33 years)</b>
<b>Rhône-Alpes</b>	<b>46</b>	1,4	5 645 407	122 726
<b>Provence-Alpes-Côte d'Azur</b>	<b>53</b>	1,6	4 506 151	85 022
Corse	1	0,03	260 196	260 196
<b>Languedoc-Roussillon</b>	<b>27</b>	0,82	2 295 648	85 024
<b>Midi-Pyrénées</b>	<b>42</b>	1,27	2 551 687	60 754
Aquitaine	17	0,51	3 049 000	179 353
Poitou-Charentes	14	0,42	1 640 068	117 148
Limousin	4	0,12	710 939	177 735
Auvergne	14	0,42	1 308 878	93 491
Bourgogne	14	0,42	1 610 067	115 005
Franche-Comté	11	0,33	1 117 059	101 551
Alsace	14	0,42	1 734 000	123 857
<b>Lorraine</b>	<b>23</b>	0,7	2 310 376	100 451
Champagne-Ardenne	17	0,51	1 342 363	78 962
<b>Ile-de-France</b>	<b>67</b>	2,03	10 952 011	163 463
Picardie	8	0,24	1 857 481	232 185
<b>Nord-Pas-de-</b>	<b>26</b>	0,79	4 026 000	154 846

<sup>30</sup> The frequency is 14 local referenda a year when we take the space-time 1971-2004.

<sup>31</sup> Of course, French Regions have the same rules concerning the use of local referenda and local consultations. Table 8 gives an idea about the localization of those practices.

<b>Calais</b>				
Basse-Normandie	15	0,45	1 422 193	94 813
Haute-Normandie	10	0,30	1 780 192	178 019
Bretagne	13	0,39	2 906 197	223 554
Pays de la Loire	10	0,30	3 222 061	322 206
Centre	15	0,45	2 480 000	165 333
D.O.M-T.O.M <sup>32</sup>	1	0,03	1 666 000	1 666 000
<b>Total France</b>	<b>462</b>	<b>14</b>	<b>60 389 974</b>	<b>130 714</b>

Source : Own research (updated in September 2005)

In this table, we underlined the regions whose number of referenda is higher than the average one<sup>33</sup>. The regions which have the most local referenda are the ones which are the most populated. The topics of referenda in those regions are mostly the urban planning ones. In some middle-sized cities, local consultations are a way of testing the population's willingness to accept an urban project. In Paris, we took into account district referenda, that means consultations which were organized in some particular quarters. In 1971, local referenda were only allowed in case of reunion or separation of communes but some mayors organized illegal local consultations. Then, with the series of laws from 1992 until 2004, the number of local referenda increased, this is why the figures of table 8 have to be cautiously interpreted. In table 9, we studied the frequency of popular initiatives in the different Länder : for instance, from 1995 until 2002, in Bavaria, there was one popular initiative per 63 698 inhabitants a year. After several years, we can conclude that Bavaria really developed a referendum culture which can be compared to the intensity of local referenda in some Swiss cantons. Some other Länder are strongly reluctant to these tools, like Bremen and Saarland where the instrument does not have any visibility.

**Table 9: Popular initiatives in German Länder (1990-2002)**

Land	Year of introduction of referenda	Popular initiatives and local referenda since 1990	Frequency of popular initiatives per inhabitants since 1990
BW	1956	146	792 904
Bayern	1995	1152	63 698
Berlin	-		-
Brandenburg	1993	144	144 556
Bremen	1994	2	2 130 000

<sup>32</sup> The status of these territories was modified in 2003. They are called D.O. M – R. O. M. (Overseas Regions) but the figures referred to the census of 1999. We did not take into account regional referenda which occurred in 2003, because they do not have a local aspect and because they were planned by the State.

<sup>33</sup> Having 462 local referenda for 22 regions, the average number would be 21 for each region.

Hamburg	1998	26	197 885
Hessen	1993	164	338 992
Mecklenburg-Vorpommern	1993	42	338 286
Niedersachsen	1996	57	695 263
NRW	1994	206	614 976
RPf	1994	78	362 115
Saarland	1997	3	1 425 333
Sachsen	1993	165	214 594
Sachsen-Anhalt	1990	57	504 649
SWH	1990	202	151 931
Thüringen	1993	29	670 621

Source: Roland Sturl/ Petra Zimmermann-Steinhart, 2005, *Föderalismus, eine Einführung*, Baden-Baden, Nomos, p. 91

### 3) Is there an optimal size for local referenda?

Curiously, the communes which organise the most local referenda are not the small ones. Between 1995 and 2004, the French Home office reported 99 small communes which held local consultations. It is too early to deal with an increase of rural referenda, when we know that 33 915 communes have less than 3 500 inhabitants. Nevertheless, the local referenda reflect the communal structure of France. Many communes want to conserve their identities and do not accept to reunify with other communes. These particular referenda show that the reform of local governments is delayed in France (Mendras, 1988) whereas in Germany and other European countries, the reduction of the number of communes dates back to the seventies. In France, between 1995 and 2004, around 5% of the communes between 20 000 and 50 000 inhabitants organised local consultations, 7% of the communes between 10 000 and 20 000 inhabitants had local referenda whereas only 0,3% of small communes knew this situation. In Germany, after thirty years of practices, we counted down 2650 local referenda in communes of less than 50 000 inhabitants : as a matter of fact, 84% of local referenda are located in those communes (71% in communes smaller than 20 000 inhabitants).

**Table 10: the size of the communes and the number of local referenda in Germany**

Period 1975-2005	Less than 20 000	Up to 50 000 inhabitants	Up to 100 000 inhabitants	Up to 200000	Up to 500000	Total referenda
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	<b>inhabitants</b>			<b>inhabitants</b>	<b>inhabitants</b>	
<b>Germany</b>	2 240	394	210	129	65	3 144

Source: Data from the University of Marburg (updated in September 2005)

The topics of local referenda in both countries concern urban planning questions, public equipments, communal life, economical projects and so forth. Between 1975 and 2005, in Germany, 29,4%<sup>34</sup> of the referenda questions were about urban planning questions (transportation, construction of roads) and economical projects<sup>35</sup>. In France, from 1995 until 2004, 37,8% of the questions were about urban planning problems<sup>36</sup>. There is a pressure from below on urban planning questions, as if the criteria of local environment became important for people. The post-materialist paradigm described by Ronald Inglehart (Inglehart, 1977) is also confirmed by those remarks. The resurgence of semi-direct procedures is also due to a cultural shift. People would like to participate in questions concerning their way of life: they require their representatives to be more responsive and explain the decisions. The complex structure of decisions cannot be reserved to political elects. Local referenda transform the representative system as well as the structure of the decisions. Therefore, the decisions have to be more negotiated in order to be accepted. The paradox is that, in our developed societies, the decisions have to be taken quickly. The risk is to create social conflicts because of this non-transparency. Referenda can be a good indicator of some emerging conflicts. In figure 6, we observe that many French referenda were held in 1979, precisely under the protest against nuclear equipment (Touraine, 1980)<sup>37</sup>.

If environmental questions have been playing a major role in our societies, there is a probability that many referenda will be held in the future, as the conflicts increase. As far as Bernard Stiegler is concerned (Stiegler, 2004), our societies are subject to a deep transformation: they are becoming “hyper industrial”, that means that there might be a correlation between semi-direct procedures and the so-called urbanisation. If the expansion of some cities is not controlled, the phenomenon of local referenda will occur more and more. The legislations have included the necessity of consulting citizens about important projects: in this context, local referenda have to be linked to other participatory tools and the opening of

<sup>34</sup> Figures updated by the University of Marburg (September 2005).

<sup>35</sup> An economical project could be for instance the construction of a supermarket.

<sup>36</sup> Source : French Home Office

<sup>37</sup> In Germany, the protest against nuclear power plants was very strong in the seventies in some communes like Wyhl (a local referendum was also organised there) and Brokdorf.

local representative systems, without forgetting their specificity. Local referenda contribute to the transformation of a “post-modern State” (Chevallier, 2003) as they multiply public debates.

Local referenda have all the more consequences as they really affect the politicians’ decisions. This is why, in the review of participatory tools, some political elites do not consider referenda as effective instruments in public policies. They fear that they would not control the instruments, thus they are quite reluctant to use them too frequently.

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The growing use of local referenda shows the transformation of local democracy in Europe and the citizens’ will to take part in elites’ decisions. We have in that way entered in what Bernard Manin called the age of “democracy of public” (Manin, 1995). Citizens want to take part in important political decisions affecting their environment; as a matter of fact, they play an important role in the agenda-setting of the representatives. The increase of local referenda does not have the same intensity in both countries but proves that European countries evolve slowly toward a form of inclusive democracy (Fotopoulos, 1997): local referenda are the strongest indicators of the implementation of local democracy. The way some articles on participatory democracy were included in the European Constitution Treaty is striking: some members of the European Convent succeeded in adding articles on a citizen popular initiative at the last minute (Duhamel, 2003, 221; Lamassoure, 2004)<sup>38</sup>. The conflict between direct democracy and representation is not finished, but their interaction produces a form of “continuous democracy” (Rousseau, 1995; Premat, 2003): the rhythm of the agenda is not only defined by the elections but also by these participatory occasions. The question is to know whether these tools are really known by all the citizens or whether they do contribute to a form of “illusion of participation” next to the “illusion of representation” (Ellul, 1977). According to Ellul, on the one hand, the “illusion of participation” means that the political system seems to offer different tools to citizens although it is based on a kind of passivity. On the other hand, the “illusion of representation” shows that these instruments are included in communicative strategies for representatives who represent only their own interests. The combination of these illusions<sup>39</sup> produces what we can call the representative game between citizens and political elites. Further investigations need to be made on referenda topics in

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<sup>38</sup> We made an interview with Alain Lamassoure’s assistant who confirmed the roles played by lobby groups like *Mehr Demokratie*, *International Democracy* and the *Institute for Referendums and Initiatives* in the drafting of article I, 47.

<sup>39</sup> The word « illusion » comes from Latin « illusio » which means « playing with something ».

order to answer the remaining questions: in which way do local referenda affect the political decisions? How many popular initiatives referenda are really held? Do referenda help the constitution of public spaces or are they the product of particular interests?

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