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Direct Democracy at the Turn of the Century

Direct Democracy Worldwide addresses the relationship between direct and representative democracy and uncovers the specific conditions under which both can coexist in a mutually reinforcing way. It demonstrates that direct democracy is Janus-faced: Some mechanisms of direct democracy look forward in an attempt to democratize politics whereas others look backward, enhancing the power of politicians who deliberately use them. From this latter perspective, instead of *giving power to the people, other times it subjects the people to the powerful*. *Direct Democracy Worldwide* fills a lacuna in our understanding on the uses of mechanisms of direct democracy in the contemporary world, paying special attention to how direct and representative democracies interact under different institutional circumstances.

This book reevaluates how citizens acquire power to abide by public decisions and whether they have the right to take part equally and fairly in the *entire process* that generates these decisions, which naturally fall beyond national elections and the twelve or thirteen times we exercise sovereignty in our lives. It does not debase the importance of free and fair elections – to the contrary. Free and fair elections are a sine qua non constitutive element of democracy, and without them everything collapses. However, the time elapsed between elections may be agonizingly long for citizens whose preferences are systematically unheard, and these interelection spaces constitute the weakest link of current democracies. They tend to be left aside as an empty space filled with horizontal – but not vertical – accountability in a manner that eliminates the most important component of the first polyarchy transformation (Dahl 1989).

Any constitutive part of democracy, such as freedom of expression, is expected to be fulfilled at any time and indefinitely in the future. This must hold true for popular sovereignty as well – and it should not be limited to just one day every few years. Thus, this book attempts to revitalize something that is intrinsically one of the backbones and leitmotivs of the democratic tradition: popular sovereignty as a way of addressing the demands of citizens and the dependence of public policies on their preferences. The question is: How can

current democracies translate popular sovereignty into working institutions adapted for the twenty-first century?

This book answers this question in relatively simple terms. I claim that there are some institutions that deserve a closer look and, depending on certain prerequisites, should be given a chance. These institutions comprise the citizen-initiated mechanisms of direct democracy (CI-MDDs). Yet this assertion of CI-MDDs should not be understood as a romanticized version of participatory or deliberative democracy. I simply claim that these are control mechanisms to be potentially used by citizens, and this does not imply voting every week, the steamrolling of minorities through majority rule, or the substitution of party politics by citizens. More important, CI-MDDs are not intended to supplant representative democracy but rather to serve as intermittent safety valves against perverse or unresponsive behavior of representative institutions and politicians. Citizen-initiated mechanisms of direct democracy are not simply about a blind use of majority rule, and those understanding them as mere votes on a certain issue are ignoring possibly the most crucial part of the direct democratic game: the process itself, which is arguably more important than the outcome of the ballots themselves.[1]

Citizen-initiated mechanisms of direct democracy are a subtype of mechanisms of direct democracy (MDDs) in general and, by definition, not every MDD has to be initiated by citizens gathering signatures, as is usually the case. Some MDDs are initiated by chief executives (e.g., presidents) or by a well-defined group of individuals (e.g., legislators), and sometimes by both. These "top-down" MDDs often have no other intention than the erosion of the power of other state institutions or simply bypassing institutions and procedures when the political aims of the initiator do not match with the other power. Thus, some MDDs could be characterized as strongly eroding crucial aspects of representative democracy, minimizing the exchange of ideas, and evading the political battles that characterize representative liberal democracies.

Direct democracy involves many complex factors and is most certainly not a monolithic concept. Any assessment of direct democracy in general must be undertaken with extreme caution. In large part, the debate surrounding the topic has been based on stereotypes of representative and direct democracy; consequently, the literature repeatedly asks the wrong questions and, thus, provides the wrong answers. Portraying direct democracy as inherently *good* or *bad* for representative democracy does not seem to be a very good starting point for a productive and wise research agenda, yet this is where much of the literature begins.

Not every concern about direct democracy is based on stereotypes; however, as the reader will witness, the discussion about direct democracy is plagued with normative and empirical tensions, many of which have a palpable influence in our daily life. This book captures the negative side of direct democracy, provides

[1] On the value of processes in and of themselves, see Ackerman and Fishkin (2004), Elster (1998), Sen (1997), Tyler (1997), Benhabib (1996), Fishkin (1991), and Pateman (1970).

a balanced treatment of the subject, and fairly vents the considerable skepticism that has emerged about these mechanisms. For example, it would not be risky to acknowledge that these institutions have often been manipulated by elites; this is very damaging to representative democracy.[2]

Nonetheless, and despite their potential misuses, it would be unwise not to seriously consider CI-MDDs and their potential positive synergy with representative democracy. Indeed, parliaments, elections, and even basic freedoms have also been repeatedly misused, yet their normative value had not decreased – in fact, our efforts for improving them are constantly increasing. The words of a president who faced several national CI-MDDs during his administration (and lost most of them) are eloquent:

> All institutions have their own weaknesses, including those mechanisms of direct democracy. It has been the situation with all institutions and it had always been so. But so what? Will we then have to remove the mechanism because it could be deformed? Oh no! Extrapolating that, we might even think that we are to eliminate national elections because they could warp, because people could use them demagogically. . . . No, no, no. . . . (Interview with Jorge Batlle, February 2008)[3]

In broader terms, this book deals with the distribution and exercise of power in our states – the *power* of making binding decisions that affect our lives. Who is in charge of making such binding decisions – the powerful or the numerous? What types of decisions are made, and are all included? What about overriding those decisions – who does that? All these questions remain open despite having been considered for thousands of years and having perhaps one of the longest traditions – in what we today call "the social sciences" – engaged in the constant search for the best form of government. From Herodotus' time – and not omitting Aristotle – we have compared the virtues and deficiencies of contemporary governments. Nowadays, for normative and practical reasons, we are convinced more than ever that representative democracy is the best regime of all possible, or at least the lesser evil.

Since its very millenarian origins, democracy has been always under enormous pressure for renewal – a renewal that becomes inexorable.[4] If the beginnings of the twentieth century were marked by demands for extending citizenship and ensuring fair representation, contemporary democracies face different challenges, such as transparency, access, and accountability. Phases of democratic transformation are a persistent matter throughout history, and demands for adjustments "in one direction often wane as new problems and new possibilities surface" (Cain, Dalton, and Scarrow 2003: 3). Indeed, I am positive there is at least a minimum consensus in political science: There are no

[2] As becomes clearer in Chapter 2, this does not parallel the populist paradox, as Gerber titles her book, which is based on the belief that economic interest groups manipulate direct legislation against other interests (Gerber 1999: 6).

[3] Jorge Batlle, president of Uruguay from March 2000 until March 2005.

[4] The study of democracy has been one of the most prolific areas of interest in comparative politics. If truth be told, most of us agree on many of the diagnoses of current democracies, yet consensus has not been reached in terms of the prognosis.

magic formulas that will ensure us a "high-quality" democracy. All institutional settings are the product of a delicate balance, often between conflicting choices. Although there are no neutral institutional arrangements, the status quo implies a deliberate policy choice.

Yet representative democracy remains far from perfect, presenting numerous problems and shortcomings. A great consensus exists on the contemporary challenges of current democracies (high levels of civic disaffection, distrust of political parties, and in general, animosity toward the democratic game), and one of the most tricky aspects of our democracies lies in the direct and daily relationship between citizens and the state (O'Donnell 2004a: 57). Indeed, the warning given by Dunn about representative democracy is rather illustrative: "[O]ne day's rule every four years has very much the air of a placebo" (1979: 16). Evidently, we all want a greater involvement of the citizenry in public affairs, a greater sensitivity of the state with regard to weaker sectors of society, and a greater redistributive justice of markets, among other numerous and noble aspirations. This discussion focuses on how best to achieve these goals.

A number of forces have been devoted to improving democratic institutions; electoral systems have excelled among these democracy-improving institutions despite the tradeoffs implied by this choice (e.g., representation versus efficiency). Elections usually become the focus of analysis, which leads scholars to overlook what occurs in the period between elections. Nonetheless, some scholars with a more sophisticated vision warn us that "the development of democracy is much more than the perfection of its electoral system" (O'Donnell 2004a: 49). The basic problem of democracy goes beyond simple institutional improvements: "Democracy, once again in favor, is in need of conceptual renewal. Although the traditional concerns of democratic theory with state-centered institutions remain importantly crucial and ethically central, they are increasingly subject to the limitations we should expect when nineteenth-century concepts meet twenty-first century realities" (Warren 2001: 226).

Democracy, as we understand it today, is the long fusion, and sometimes confusion, of political traditions at least centuries long. Athenian democracy, despite its highly restrictive (by today's standards) enfranchisement rules, demonstrated the fairest imaginable distribution of power among its agents. It also exemplified the value of a political milieu that excels through the *equality* and *sovereignty* of its (few) members. With Republicanism – first Roman and then Florentine – came the concept of mutual *control* as the means for citizens to be free from state domination and arbitrary misbehaviors. A sophisticated net of institutions was established to control each other, and these operated under known rules of the game, establishing a key concept: the rule of law. Finally, liberalism, from which we borrow the idea that individuals are *free,* emerges; individuals are thus perceived as autonomous and responsible (à la Kant) and know what is best for themselves (à la Hobbes), their peer community, and their society as a whole (à la Rousseau or Locke).

Thus, democracy today can be fit under four umbrella concepts: freedom, equality, sovereignty, and control. All democracies have a flavor of each, but the

concepts are combined in different shapes and sizes, and an even combination is hardly – if ever – attained. I argue, however, that in current definitions of democracy, one concept is systematically minimized but must be refreshed and invigorated: Popular sovereignty, galvanized in the twentieth century, must be revitalized in the form of binding CI-MDDs.

Current democracies are indisputably far from the ideal representative democracy that theory promises us. It could be claimed that democracy today more closely resembles an oligarchy with the façade of democracy rather than the ideal, prototypical, representative democracy about which we teach our students every year. According to Walzer, "[G]overnment is in principle democratic, in (liberal) theory mixed, and in practice oligarchic" (2004: 25).[5] How many of us genuinely are potentially elected officials in our community? Of course, it is not that we do not have the proper conditions or vocation to do or be so; it is simply that in real terms, we do not have the effective right to be elected despite that we assume, believe, and have collectively decided we are all legally entitled to stand for election if we so choose. In practice, only a small group of people actually run for office.

Even assuming, for the time being, a positive institutional assemblage of the state, wherein the legislature, the executive, and the administration relate to each other in institutionalized patterns of behavior under the umbrella of what we call the *democratic rule of law*, the infamous "corridors of power" generate incentives for perverse interests and behaviors (Pettit 2003).[6] But this is not terribly new: Already, Michels (1999 [1911]), in his *Iron Law of the Oligarchy*, and the writings about the circulation of elites of Mosca, Pareto, and even Weber, later reevaluated by the literature on party cartelization (Cox and McCubbins 1993; Katz and Mair 1995; Koole 1996), account for these tendencies. Contemporary democracies must provide tools for controlling these behaviors both horizontally (by other institutions) and vertically (by citizens).

An almost Schumpeterian, electoralist conceptualization of democracy would tell us that citizens regularly exert control in national elections, activating their sovereignty, punishing misbehaviors and rewarding others. Nevertheless, "the chances to exercise vertical accountability, however, are only periodic and, in some cases, citizens must wait several years for the next election" (Morlino 2004: 19) – when, sometimes, the misdeeds are already done, the window for justice has passed, and our desires and preferences are ignored. The implications of these rather scattered flashes of popular sovereignty for the crafting of controlling institutions are evident. If the people's interest is

[5] In this regard, Rousseau's disrespect for elected representation is noteworthy: "The English people believes itself to be free; it is gravely mistaken; it is free only during the election of Members of Parliament; as soon as the Members are elected, the people is enslaved; it is nothing. In the brief moments of its freedom, the English people makes such a use of that freedom that it deserves to lose it" (Rousseau, *The Social Contract*, bk. III, chap. 15).

[6] By corridors of power, I loosely imply those obscure places where the elite can impose their own will in how they interpret and implement policy without public scrutiny (e.g., bureaucracy, cabinet, courts, police force).

undermined or ignored, it is incumbent on them to activate their democratic power – their sovereignty – to force a change in the status quo or ensure its maintenance in keeping with their preferences. Maintenance activities take the shape of *referendums* (trying to stop certain measures going against the general preferences), whereas status quo shifts often manifest as *popular initiatives* (trying to push forward certain measures that, otherwise, the establishment would not consider of its own volition).[7]

Direct democracy now has entered the game, and it is unlikely that use of its mechanisms will decrease because of its theoretical and practical tensions with representative democracy. Despite the importance and growing impact of these institutions worldwide, we still lack a comprehensive understanding of these mechanisms. There are two reasons that can explain the relatively low intensity of the cross-national study of MDDs. One stems from the belief that direct democracy has a marginal role in contemporary politics. Indeed, some colleagues argue that "referendums are relatively rare events in politics of most democratic nations" (LeDuc 2003: 13; see also Qvortrup 2002: 2). Yet I have collected information on more than seventeen hundred MDDs at the national level alone since 1900. A total of 5,342 state-level *direct popular votes* in the United States have been on the ballot between 1904 (when the first one went before voters in Oregon) and 2008;[8] this figure increases exponentially if we include MDDs at the county level, which number literally in the tens of thousands. Between 1970 and 2003, a total of 3,709 cantonal popular votes were held in Switzerland, and Bavaria alone held more than one thousand popular ballots since their constitutional introduction in 1995. It seems evident that the intermittency claim regarding the use of MDDs is, at least, questionable.

The second reason often given for the as-yet minimal cross-national study of MDDs is the disorder that still exists in terms of a common language to deal with this multifaceted factor in contemporary politics. Evidently, some clarification of the concept of direct democracy is required and urgently needed given the terminological confusion that exists in constitutional texts (e.g., what is called a *referendum* in one country is termed a *plebiscite*, or even a *popular initiative*, in another). Furthermore, it is not the case that in each country there is at least a systematic use of the definitions and wording of MDDs; rather, concepts such as "initiatives," "plebiscites," and "referendums" are actually used as synonyms within the very same piece of legislation! To aggravate this problem, scholars have demonstrated relatively low elasticity in trying to

[7] I define measures as a complete range of political actions that could perfectly oscillate between practical policy implications (on taxes, subsidies, alcohol, and even sex education) to discursive and even symbolic ones (e.g., anthems and flags).

[8] It has to be noted that despite that, the first popular initiative was held in Oregon in 1904; the first state to adopt the initiative and the referendum on a statewide level was South Dakota in 1898. Since then, of the 5,342 popular direct votes, 3,285 (61.5 percent) were initiated by the executives or legislatures and 2,057 (38.5 percent) initiated by citizens. Based on Initiative & Referendum Institute (2007), The National Conference of State Legislatures (2008), and the author's calculations.

find criteria that can travel relatively easily from one place to another. Some colleagues fall into the temptation of studying MDDs from a purely formal perspective, based on the names that constitutional texts provide for direct democracy, but research may only proceed if we eschew this and do not become entangled in semantic confusion.

It is important to note that this volume does not purport to be a book on democratic theory, despite having theoretical, conceptual, and empirical implications. I will not elaborate a justification of representative democracy because there is a large literature on the topic. I begin with the assumption that current representative democracy is given yet perfectionable in both realistic and conceptual ways. In so doing, I follow Morlino, explicitly acknowledging two liberal assumptions that cross evenly through this research. First, people are able to accurately perceive their own needs. Second, "either alone or as part of a group, people are the only possible judges of their own needs [...] this is to say, no third party can decide those needs" (Morlino 2004: 13–14).

1. What Constitutes Direct Democracy? Definition and Typology

I define an MDD as a publicly recognized institution wherein citizens decide or emit their opinion on issues – other than through legislative and executive elections – directly at the ballot box through universal and secret suffrage. Therefore, a sine qua non characteristic of all MDDs is the vote itself, where we are all equal, delivering our Rousseauean 1/n power.[9] From this perspective, MDDs are composed of those mechanisms through which, after the representatives and the government are elected, the citizenry continues to be – voluntarily or involuntarily, explicitly or implicitly – a veto actor or a proactive player in the political process.[10] Here, it is theoretically reasonable to exclude legislative popular initiatives from the realm of direct democracy and to treat nonbinding MDDs as populist placebos (I return to this point in due course).

Direct democracy constitutes a broad category that incorporates diverse resources, such as referendums, plebiscites, recalls, and popular initiatives.[11] The literature offers several typologies of MDDs, each one stressing a different aspect of these mechanisms. Because one of my major interests is conducting

[9] From a Rousseauean perspective, each citizen has a 1/n share of "sovereign authority," where n is the total number of citizens.

[10] According to Tsebelis, veto players are individual or collective actors whose agreement (by majority rule for collective actors) is required for a change of the status quo (Tsebelis 1995: 289).

[11] A more orthodox perspective on the matter would refer to this group of institutions as expressions of "semidirect" instead of "direct" democracy." The latter term is reserved for those citizens' assemblies where issues were brought up, discussed, and decided directly without any institutional intermediation. Examples include New England town hall meetings and the modern-day remnants of the Swiss *Landsgemeinde* in Obwalden and Nidwalden, where voting is done by show of hands. This also applies to citizens' assemblies in classical Greece. Because a consensus on terminology is difficult to attain, I will adhere to its simplest form, "direct democracy."

an empirical study on direct democracy at different levels of democracy, the typology I provide should travel relatively easily along the democratic continuum. The first dichotomy I use to classify MDDs refers to whether the mechanism considered is regulated by law (or the constitution). In other words, are MDDs *mandatory* or *facultative* (also termed *regulated* or *unregulated* in the literature)?

A second dimension involves whether the resolution of an MDD is absolute in a given discourse or if another institution has the final say on that topic. The literature refers to this dichotomy as *binding* versus *consultative* MDDs. The third criterion refers to the intention of the MDD, which could be either *proactive* or *reactive*. Simply put, does the MDD attempt to alter or sustain the status quo? The fourth and final criterion concerns the main trigger of the MDD: Did it derive from the political establishment (e.g., the executive power or the legislature – whether a majority or a minority), in which case the event is labeled *top-down*? Or, rather, was it derived from a group of citizens, in which case the event is labeled *bottom-up* or *citizen-initiated*? From this last dichotomy (establishment versus citizens), we can derive a third group of MDDs, which refers to constitutionally mandatory MDDs, sometimes called "obligatory referendums."

For this research, I built a typology that travels relatively easily from one place to another. It also fits rather well within the categories used by the most prodigious employer of MDDs worldwide: Switzerland.[12] The adoption of these categories has nothing to do with Swiss terminological imperialism; it is simply a matter of practicality. I do not see the point of forcing rather marginal categories based on ad hoc criteria instead of using the categories employed by the country that, in one way or another, serves as a focal point in the study of direct democracy. In other words, if the same "animal" is called "cow" 85 percent of the time, "spotted grass-eater" 10 percent of the time, and "methane maker" 5 percent of the time, we should simply call it "cow."

Nonetheless, the Swiss terminology is not exhaustive enough to cover, in a systematic way, most of the "animals" that fit within the basic criteria of this study. Many but not all types of MDDs exist in Switzerland and, as a result, the terminological names of these other types must be obtained elsewhere. The questions are where and how.

If we agree that a typology should help to aggregate MDDs in clusters, a question remaining is how many levels of disaggregation are required for traveling far enough while remaining adequately profound. A typology – a nominal measurement – has to fulfill certain conditions; namely, it must be exhaustive

[12] Switzerland occupies a unique and prominent position in the literature of direct democracy not only because it is the most experienced country on earth with these institutions, but also because it is an ideal case scenario for comparative research given its huge variations in how direct democracy is practiced and institutionalized at and within its different levels (federal, cantons, communities). Moreover, the late Stein Rokkan once called Switzerland a microcosm of Europe because of its cultural, religious, and regional diversity (Linder 1994: xii).

and its categories mutually exclusive. In other words, categories should include all of the possibilities for the measure, and they should be differentiated in such a way that a case will fit into one, and only one, category. Of course, in the case of institutions, the creation of a typology can be a complex task. For instance, it is still open for debate what type of regime exists in Switzerland. For those who emphasize executive formation, Switzerland is a truly pure hybrid regime (Klöti 2001; Lüthi 2007); however, for those who highlight government business and daily life, it behaves more like a presidential one (Kriesi 2001). As a matter of fact, in terms of government survival, Switzerland resembles a "pure" presidential regime in the sense that once the executive is appointed by the Federal Assembly, councilors cannot be removed and there is no possibility of dissolution of the legislature by the executive (Cheibub 2007: 36). Thus, if the question that motivates research is government survival, the inclusion of the Swiss case, along with other parliamentary regimes of Western Europe, would distort the research, unless we want to explain how different regimes affect government survival.[13]

Because my interest is to examine how direct and representative democracies interact while keeping my typology relatively simple, I consider it crucial to determine who initiates the MDD, what its purposes are, and whether the MDD is the final word on an issue. Each of the three criteria is then further divided. With regard to initiators, I found three major alternatives: citizens (through signature gathering), political establishment (executives, legislators, or both), and the legal or constitutional regulations existing in a country. With regard to the purposes of MDDs, we find two very large groups: those that maintain the status quo and those that alter it. Finally, the issue of whether the MDD is the last word (i.e., it becomes law) or can simply be ignored is important (this is the differentiation between binding and nonbinding MDDs). This typology thus allows for conceptualization comprising twelve categories (three types of instigators times two possible purposes times two potential legal statuses). Although these are all theoretically possible combinations, not all of these combinations exist, as we will see.

On many occasions, colleagues have told me that "this particular MDD held in that particular country" was rather special and thus could not fit properly into any of the twelve categories I have created. Rather, we should create a special box for "this type of case." My answer is simple: I do not continue disaggregating this typology because my theory does not require it. I simply note that this typology could be disaggregated further, even to the extreme of generating a typology with as many categories as the number of MDDs that exist. In other words, given that no two MDDs are exactly equal, we could expand our typologies to capture a minor difference between two extremely similar MDDs. The question, however, is whether this practice is

[13] Vatter (2008) has shown how difficult it is even to locate Switzerland within just one continuum (majoritarian-consensus) and how stressing different characteristics of this continuum would produce rather different locations for a single case.

useful either for research or theory building. For example, if technical nuances on how a vote was held are of interest for the researcher, it would be logical to include whether the vote was an e-vote (electronic in some way) or if ballots were cast at physical polling stations. Otherwise, including that distinction would not be theoretically relevant and would be, for practical reasons, inconvenient.[14]

Figure 1.1 describes the typology of MDDs using the criteria delineated in the previous paragraphs. Note that the second row deals with the initiators and the third row considers whether the MDD is binding. The bottom row indicates the political purposes of MDDs in terms of the status quo. Before moving on to the figure and describing each category, I elucidate a few points.

We must be extremely careful in dividing the waters between MDDs into categories. In this typology, I make the division between those that are "citizen-initiated" (or "bottom-up") and those initiated from above, "top-down." This differentiation is crucial because top-down MDDs usually represent plebiscitary means either for bypassing other representative institutions, disengaging from the responsibility of tough policies, or simply as mobilization/legitimization populist tools. As Kaufmann and Waters state,

> [I & R (initiatives and referendums)] have to be clearly distinguished from plebiscites. These are votes on issues implemented from above by a government, without support from or influence of the citizens. Plebiscites have nothing to do with I&R; on the contrary, they are often used by governments who want to get a special legitimacy on their policies by bypassing existing laws and constitutional rules (Kaufmann and Waters 2004: xix).

Here, the terminological differences between the continental and American literatures are evident. Whereas the previous quotation notes a clear

[14] The literature offers a wide menu of typologies that link mechanisms of direct democracy and democracy types, such as those presented by Vatter (2009) or that of Hug and Tsebelis (2002). These typologies include certain aspects not covered by my typology, including "decision rules" (particularly with parliamentary-minority initiated MDDs). Vatter's typology (and, for this matter, also the typology offered by Hug and Tsebelis) is an extremely useful cognitive map of different types of mechanisms of direct democracy in the context of developed democracies. However, I have reservations about how useful it would be to extrapolate it to non-European countries because it does not necessarily travel smoothly to the southern regions of the globe. For example, unlike most Western developed countries (Vatter's universe of cases), all Latin American countries are typical presidential regimes, where the executive party is usually the largest minority within the legislature and sometimes even a small minority within it (as the cases of Brazil and Ecuador illustrate best; many countries in Africa also present this configuration). In this context, although it is possible to identify MDDs triggered by the gathering of citizens' signatures that favor or go against the status quo, it is extremely difficult to assess if legislators pushing for a particular MDD belong or not to the executive's legislative-coalition in that particular time in a broader cross-regional comparison. By the own nature of regimes, assessing the "ruling majority" in a multiparty presidential regime is far more complicated than doing so in parliamentary regimes (Chasquetti 2001). In other words, I am more concerned about the applicability of Vatter's typology to my universe of cases (all countries of the world) and its fit with the objectives of my research than with the typology itself.