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Democratic Innovations for Representative Governments

Democracy does not exist in a static state, but rather in a constant state of flux. When representative government ceases to function as expected and there is a demand for change, two (non–mutually exclusive) paths for improvement are open that would allow democracies to retain their polyarchical foundations of freedom and equity among citizens. The first involves adjusting existing institutions (such as the electoral system), which tends to preserve political power in the hands of ambitious politicians. The second involves introducing innovative mechanisms of governance, whereby new actors are included, to some degree, in the decision-making process. *Citizenship and Contemporary Direct Democracy* focuses on the latter, arguing that by maintaining democracies' normative foundations, citizen-initiated mechanisms of direct democracy constitute an important, viable way forward among the menu of democratic innovations that have been proposed to reinvigorate current democratic regimes, particularly in the context of highly unequal societies. While acknowledging that citizen-initiated mechanisms of direct democracy can be hijacked by populist leaders or appropriated by extremist members of society, this book further explains how, when properly designed, such risks can be minimized and possibilities multiplied, as these mechanisms empower citizens, re-enchant them with politics, des-encapsulate political parties, defuse social violence, and break down some of the institutionalized barriers to accountability that arise in representative systems.

There are innumerable perspectives on how to reform or improve current democracies. In fact, the reform of existing representative institutions is (arguably) at least as important as adopting direct democracy. Thus, the argument that follows is not meant to suggest that demands for change must be limited to new forms of civic involvement through direct democracy. There is still an amazingly long "to-do list" where representative regimes are concerned. For

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example, how should we control the influence of money in politics? Or improve representation? Or enhance participation? Or maximize competition? Fully addressing each of these (and many other) concerns could have an enormous impact on the way citizens experience democracy, but that is beyond the scope of this work. Still, *Citizenship and Contemporary Direct Democracy* claims that direct democracy, particularly when it is in the hands of citizens, offers much more than a simple, pragmatic, safety valve in critical moments when representative democracy seems to be not working as expected.

This introductory chapter proceeds as follows. The next section outlines and assesses some of the multitudinous proposals for democratic innovation that have been offered in response to contemporary democratic fatigue. It argues that there are two clear paths toward reform: either adjusting current representative institutions, or adopting new forms of citizen engagement. Proposals of the latter variety can be subdivided into two groups: those that advocate moving toward deliberative/participative forums, or, as this book suggests, incorporating institutions of direct democracy. The following section defines what direct democracy is and what it is not. The third section then unpacks some of the most commonly cited concerns about the relationship between representative government and direct democracy. This chapter finishes with an overview of the structure of the book and the contents of each chapter.

1.1 DEMOCRATIC FATIGUE AND OPTIONS FOR DEMOCRATIC INNOVATION

Many electoral democracies are currently facing problems of social unrest and a perceived loss of legitimacy. Although these democratic governments were – by definition – elected in free and fair elections, leaders from Brasilia to Madrid and Athens to Santiago de Chile struggle with increasing requests for more participative features within the existing representative democratic framework. Whether we are talking about corruption in Moldova, the price of public transportation in Brazil, or higher education in Chile, the key challenge is the same: We must ask not only how every vote can be counted, but also how every voice can be heard and have influence. In Moldova, Brazil, and Chile, different sides of the various conflicts have called for better democratic performance, but the fact remains that regardless of the contents of these particular proposals, a varied menu of potential (and often contradictory) alternatives is available.

A brief overview of popular mobilizations in recent years provides evidence that something is not working as expected. In Spain, the 15-M movement against the political establishment (*movimiento de los indignados*) has been motivated by economic crisis. Student demonstrations in Chile, the likes of which have not been seen in decades, have targeted the perverse higher education model. Greeks have flooded the streets protesting against the adjustment

policies imposed by the "troika."[1] Israelis have inundated avenues in Tel Aviv, outraged by the high cost of renting or buying real estate. The list goes on. For some pundits, this effervescence is symptomatic of a global dissatisfaction with politics as usual; for others, these isolated cases of unrest are too context-specific to be indicative of a larger pattern.[2] Yet, these movements have at least one common leitmotiv: all demand more democracy, though precisely what is meant by "democracy" is quite different in each context.

As some citizens take to the streets to protest their dissatisfaction with the status quo, others express a similar sentiment by staying home. Alongside the aforementioned unrest and mobilization, another segment of the citizenry has experienced the opposite reaction, becoming disaffected and demobilized to such a degree that they no longer show up at the polls on election day (Streeck and Schäfer 2013). Though not universal, "western citizens are becoming more skeptical about their democracies, more detached from parties, less trustful of political leaders, and less supportive of their system of government and political institutions" (Newton 2012: 4). Yet mobilization and disaffection are two sides of the same coin; two symptoms of the same underlying malaise.[3]

Many explanations have been offered for this trend. Some suggest that it reflects the fact that globalized capitalism has transformed "the tax state into a debt state" (Streeck 2014), resulting in a situation that leaves political elites with less room to maneuver and react to civic demands (Mair 2013), and which detaches the "self-referential political class" from political programs (Crouch 2004).[4] The quest for an answer lies beyond the objective of this research, but virtually no one would disagree that much of the motive behind the unrest and disaffection "lies with governments and politics themselves" (Pharr and Putnam 2000). What we see emerging, in the words of Mair, "is a notion of democracy that is being steadily stripped of its popular component – democracy without a demos" (2006: 25).

The literature is divided on how to achieve more and better democracy. Regardless, in the current discussion about what democracy is, two broad lines of thought are identifiable, though both are animated by a very tangible disaffection, disenchantment, and frustration with current democracies.[5] On the one hand, a significant group of scholars has engaged in a fertile discussion about

[1] The troika refers to a group of institutions – the European Union, International Monetary Fund, European Central Bank – with whom Greece had to negotiate for a cash bailout during the crisis of 2011.
[2] These trends transcend the OECD countries, which are the subjects of more robust literature on the subject of democratic dissatisfaction (Dalton et al. 2001).
[3] See also, Alonso et al. (2011) and Keane (2009).
[4] See also, Streeck and Schäfer (2013).
[5] With the election of Trump to the presidency of the United States in 2016, American pundits and academicians entered into a terse argument about whether democracy is changing into something called "illiberal democracy." While most scholars fear that democracy is in real danger (Isaac 2016; Mounk and Foa 2016), others maintain that support for democracy is not "a major

reforming existing institutions. Most of this literature pivots around the question of which combination of institutions produces higher levels of democracy, subjective well-being, human development, and the like. Topics dealt with in that literature include governing regime type (e.g., parliamentarism versus presidentialism), electoral families (roughly divided between majoritarian or PR systems), federalism, and compulsory voting, among others.[6] On the other hand, a second body of literature tends to offer new institutional arrangements from scratch (e.g., mini-publics, popular assemblies, crowdsourcing, direct legislation). The former literature would retain a modified version of the status quo, since it does not alter the monopoly on power held by the ambitious politicians – regardless how diverse, independent, or new these politicians are. By contrast, the latter tends to be more change-oriented, seeking to break from the status quo by explicitly incorporating new actors and democratic mediums.[7] Though they differ in many respects, perhaps the most crucial difference between these views centers around how the players are selected to start with, if indeed they are selected at all. Figure 1.1 presents a simplified scheme of the larger approaches to democratic innovation.

The incongruous items on the menu of potential innovations available to current democracies do, however, share some common characteristics. Most of this catalog is filled with what might once have been called, "democracy with a human face." The idea behind this motto is that the democratic system needs to be sensitive to all of the demands of the common citizens and not just a façade behind which elected plutocrats can hide, using the "corridors of power" for their own benefit. Contemporary democracies must provide tools for controlling these behaviors both horizontally (by other institutions) and vertically (by citizens). Democracy needs to be returned to the citizens. Moreover, within the menu of options, many voices argue that returning governance to the people can only be done if democracy takes to the streets, the neighborhoods, the municipalities, and even to civic and private interest groups. Few question this assumption, and it seems that these voices agree that "small is beautiful," particularly in regard to democracy. Elsewhere I have called this an "Athenian bias" (Altman 2011: 78).

Of course, "democrats want citizens to reason together" (Goodin 2008). Nonetheless, as it is virtually impossible for all citizens to participate, deliberate, and reason together, most (if not all) democratic innovations have mini-publics as their focal point, whether this is crowdsourced policymaking (Aitamurto 2016), deliberative polls (Fishkin 1997), participatory budgeting

problem in well-established Western democracies. Or at the very least, it's not a bigger problem than it was 20 years ago" (Voeten 2016).

[6] Nearly every scholar has staked out a position on their preferred constellation of democratic institutions; see, for example, Lijphart (2012), Przeworski (2010), Cheibub (2007), Colomer (2001), Przeworski et al. (2000), Held (1996), Hadenius (1992), Sartori (1987), Dahl (1971).

[7] This differentiation is strongly related to what Unger calls "conservative" versus "transformative" strategies (1998: 10–12).
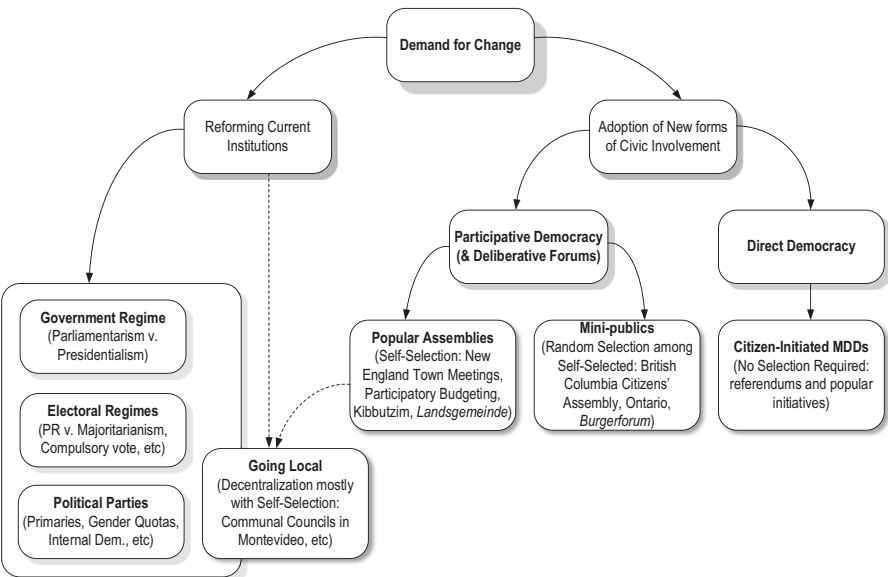
FIGURE 1.1 Simplified alternatives for democratic improvement

(Cabannes 2004), e-democracy (Lee et al. 2011),[8] "Navajo" democracy (Etzioni 1996), or even a more pure and abstract deliberative ideal. Yet these innovations, aimed at strengthening the relationship between democratic decision-making processes and the demos, are also quite demanding in terms of the resources they require of citizens. Factors such as citizens' time, cognitive abilities, rhetorical skill, etc. all play a role. I return to these innovations in Chapter 6.

Although democratic innovations do not occur in a vacuum, the literature routinely ignores the context in which these innovations are most urgently needed. At most, these studies assume the best-case scenario for their implementation. Despite the enormous differences within the democratic world in terms of social inequalities, the fact remains that most democracies are not succeeding at reducing the gaps among their citizens (Corak 2013; Fredriksen 2012). Not every innovation that works in a context of relative social equity (e.g., Norway) will also work in a context of high social segregation (e.g., Peru); to the contrary, such an innovation might even deepen existing inequalities. Yet, if an innovation can be shown to work well in a context of social inequality, it will also most likely work in a context of relative equity. From this point of view, democratic innovations are not easily transplanted.

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[8] See also, Kneuer (2016) and Netchaeva (2002). For a study on the relationship between e-Government and democracy, see Maerz (2016).

1.2 DEFINING DIRECT DEMOCRACY

Unlike other common concepts in political science, such as "political parties" or "elections," definitions of direct democracy lack a common connotation. Indeed, direct democracy is a rather polysemic concept. What we understand as direct democracy has different meanings in different places, and the different institutional components of this concept (popular initiatives, referendums, or plebiscites) have diverse normative undertones. For instance, what is referred to as a referendum in one country may be called a plebiscite or even a popular initiative in another. Essentially, "there exists no universal referendum terminology" (Suksi 1993: 10). To complicate things further, in certain countries concepts such as "initiatives," "plebiscites," and "referendums" are often used as synonyms, even within the very same piece of legislation!

To avoid confusion, I begin by clarifying these concepts. I define a *mechanism of direct democracy* as a publicly recognized, institutionalized process by which citizens of a region or country register their choice or opinion on specific issues through a ballot with universal and secret suffrage.[9] This definition is intended to embrace initiatives, referendums, and plebiscites, as those terms are usually understood in the literature. It does not encompass deliberative assemblies or other settings in which the vote is not secret, nor does it apply to elections for authorities (representatives or executive officials), nor even their potential revocation of mandate through *recall*.[10]

This definition attributes special consideration to the secrecy of the vote and its universal character. The secret vote is a magnificent early democratic invention, used as early as in classical Athens and the Roman Republic, which broadened personal freedom – limiting the risk of intimidation or pernicious influences – to previously unknown horizons. Nowadays, the secret vote is virtually unchallenged. The universality of the vote, however, is more complex,

[9] As a popular vote is a sine qua non condition for defining a mechanism of direct democracy, this research does not consider petitions or legislative popular initiatives. These institutions do not require citizens to vote at any stage. A legislative popular initiative exists when the citizenry forces the legislature to consider a proposed action or a bill (though the legislature will not necessarily accept it), which represents control over the agenda rather than a tool for political decision.

[10] This book does not consider *recalls*, which are designed to remove elected officials from office. The focus of a recall is usually a local or national representative or executive officer, ranging from governors to presidents. The literature is evenly divided between those who consider these institutions to be a subgroup of the direct democratic world (e.g., Tuesta Soldevilla 2014), and those who consider them to be a completely different species (e.g., Kaufmann et al. 2010). The recall as an institution, as Bobbio mentions, has its origins in an understanding of representation as a delegation rather than as a fiduciary relationship (Bobbio 1987: see chapter II).

as even some contemporary voices argue against it (e.g., Brennan 2011), yet it remains generally accepted.[11]

Following academic consensus, in this text I use a purely procedural definition of the phenomenon in question and try to avoid the normative implications usually seen in the literature on this topic. Note that this definition of mechanism of direct democracy embraces such diverse cases as California's Proposition 13 in 1978, the Uruguayan referendum against the privatization of public companies in 1992, the Swiss popular initiative against the construction of new minarets in 2009, or the rejection of the Colombian peace deal with the FARC in 2016, among literally thousands of examples.[12]

Elaborating on this definition, I further differentiate between those mechanisms of direct democracy (MDDs) that are "citizen-initiated" (through the gathering of signatures) versus those that are "top-down" (triggered by the sitting legislative assembly, the executive's power, or by constitutional mandate). The first group – citizen-initiated mechanisms of direct democracy (CI-MDDs) – is composed of those mechanisms of direct democracy that are initiated by signature gathering among ordinary citizens: popular initiatives and referendums.[13] The distinction between popular initiatives and referendums is crucial, as popular initiatives are designed to alter the status quo, whereas referendums are created to prevent change.[14] In a popular initiative, citizens are allowed to place matters of concern directly on the ballot, without necessarily receiving the prior consent of the country's main political offices, thereby acting as *proactive* players on certain topics. In a referendum, citizens are also allowed to decide matters of concern directly on the ballot, without necessarily receiving the consent of the country's main political offices, but in these cases citizens are limited to a *reactive* or *veto player* role on certain topics. In the words of Magleby, popular initiatives are a reaction to "sins of omission," while referendums a reaction to "sins of commission" (Magleby 1994).

[11] In reality, the universality of the vote is less complete than the secrecy of the ballot, as many contemporary societies contain significant populations of disenfranchised residents. For instance, as much as 25% of the Swiss population has no voting rights (see Nguyen 2016). Shockingly, that figure even includes many third-generation immigrants! https://goo.gl/k8Qofi [Last accessed, April 16, 2017]. Some cantons and municipal governments do, however, provide some electoral rights to these nationally disenfranchised people. See https://goo.gl/t1rRrI [Last accessed, April 16, 2017].

[12] As observed, this definition is not regime-contingent; it also embraces cases such as the Nazi annexation of Austria in 1938, Pinochet's constitutional reforms of 1980, or the 1994 vote for the extension of President Niyazov's term until 2002 in Turkmenistan.

[13] While there is neither "universal referendum terminology" (Suksi 1993: 10), nor a unique typology (see Hug 2002; Svensson 2011; Vatter 2009), here I employ the terminology used by the National Conference of State Legislatures (www.ncsl.org/) [Last accessed, April 16, 2017], the Initiative and Referendum Institute of the University of Southern California (www.iandrinstitute.org/) [Last accessed, April 16, 2017], and the Centre for Research on Direct Democracy of the University of Zurich (www.c2d.ch/) [Last accessed, April 16, 2017].

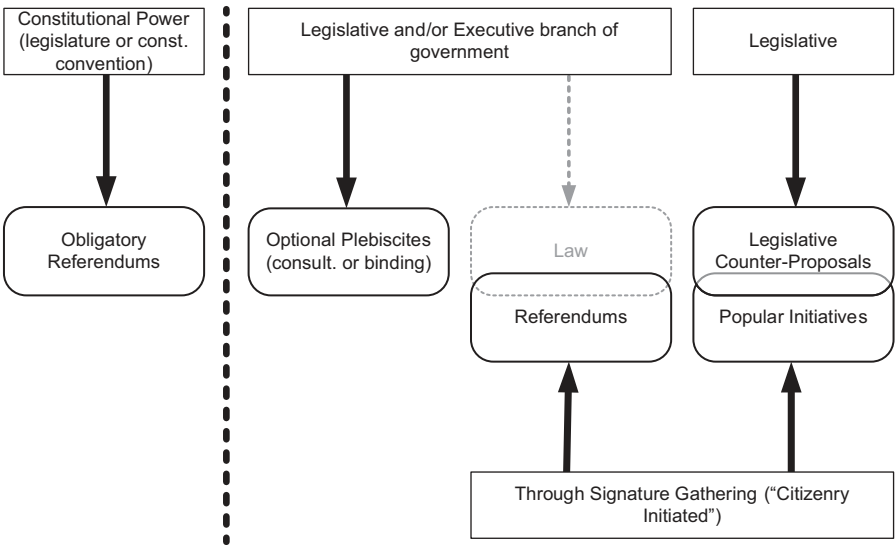[14] There are some exceptions to this norm; they will be dealt with in due course.

FIGURE 1.2 Simplified typology of mechanisms of direct democracy

The second group is composed of those top-down MDDs (TD-MDDs) that are (directly or indirectly) initiated by authorities: mandatory referendums and plebiscites.[15] Their distinction is also crucial because plebiscites typically represent either the bypassing of one representative institution by another (usually the executive bypassing the legislative branch), the renunciation of responsibility for tough policies, or they are simply used as a tool for the legitimization of extant policies.

Therefore, unless otherwise stated, in this research I use quite a simple typology that recognizes five main subtypes of MDDs: (a) those MDDs that are citizen-initiated with the intention of altering the status quo (citizen-initiatives), (b) those that are also citizen-initiated but aim to defend the status quo (referendums), (c) those that are triggered by authorities (plebiscites), (d) those that are legally mandated (obligatory or mandatory referendums), and finally, (e) legislative counter-initiatives. Figure 1.2 illustrates the different types of MDDs dealt with in this book.

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[15] The demarcation between CI-MDDs and TD-MDDs is something of an analytical artifact, as MDDs may well have a mixed origin. The fact that we observe TD-MDDs in a particular context does not necessarily mean that societal actors view the process antagonistically. Although rare, collective actors (such as unions, NGOs, and business associations) may press authorities to trigger a popular vote on a given matter. The crucial points here are the origin of the initiative and whether or not it legally needs the consent of a country's authorities to be put on the ballot.

To clarify the key concepts this research uses, let me describe them even further:

(a) Obligatory Referendums: These are, in most cases, limited to certain specific topics in the constitution, or – as in the case in Switzerland, Uruguay, and all but one of the American states (Delaware) – to an amendment of the constitution. Strictly speaking, however, an obligatory referendum is not a right the population exercises in any active way. Rather, it is a defensive right or a veto right.

(b) Optional Plebiscites (sometimes called authorities' plebiscites, or simply "plebiscites"): TD-MDD plebiscites are direct democratic mechanisms that allow authorities to pose a question to the citizenry for them to answer. These institutions are not necessarily related to popular sovereignty in the traditional sense, which is why some scholars claim that they cannot be characterized as belonging to the direct democratic world (Kaufmann and Waters 2004). Although leaders can use plebiscites perversely, during the vote itself citizens exercise their sovereignty and are thus still fulfilling the defining function of an MDD, as provided previously.[16]

(c) Optional Referendums (sometimes called popular vetoes, or abrogative referendums): Unlike a popular initiative, an optional referendum allows citizens to reject a law passed by the legislature (the "people's veto" in American jargon). Thus, citizens vote reactively – or "defensively" – in that they respond to a previous move by the authorities. Though referendums are less powerful than popular initiatives, they are powerful institutions nonetheless, as referendums open up the possibility of rejecting an act, constitutional amendment, financial decision, etc.

(d) Popular Initiatives: A popular initiative is a bill, statute, or constitutional amendment supported by a group of citizens that offers an alternative to the status quo. Citizens are allowed to decide directly at the ballot box on matters of concern to them, without the consent of the country's main political officials. Popular initiatives therefore allow citizens to play a proactive role on certain topics. This includes an active role for the electorate, and, depending on how this instrument is designed, it can also include amendments to the constitution or ordinary laws.

(e) Legislative Counterproposals: In some countries, such as Switzerland, the legislature has the right to react to a popular initiative, offering an alternative to it. This vote is held concurrently with the original

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[16] Institutionally speaking, this is probably the most heterogeneous type of MDDs. Some studies go further, subdividing these TD-MDDs into categories based on who is behind the vote (e.g., executive, legislative majority, legislative minority). See for example, International IDEA (2008).

initiative and implies multiple (at least three) choices for citizens:
the citizens' original proposal, the legislative counterproposal, and
the status quo.[17]

In order to trigger a CI-MDD, most countries (or "polities," to use a more
generic word) require the participation of a certain minimum fraction of
registered voters (e.g., Uruguay, Nebraska); others base their calculation on
the proportion of registered voters that actually voted in a preceding election
(e.g., Bulgaria, most US states); while still others require the participation of a
fixed number of citizens (e.g., Switzerland). In addition, many polities employ a
distribution requirement, ensuring that the required signatures must be col-
lected from across the breadth of the polity and not concentrated in a single
area (e.g., Bolivia, Alaska). Beyond these overarching requirements, many
states regulate the timeline for collecting signatures, which typically varies from
a few weeks to no time limit whatsoever. Some polities have adopted restric-
tions and regulations that limit the allowable scope and content of citizen-
initiated proposals (such as limiting CI-MDDs to the subject of taxes). These
regulations usually restrict the range of acceptable topics, ranging from notably
lax criteria, as in Switzerland, to highly restrictive conditions, as in Hungary.
Such regulations may also affect the plausibility of judicial review.

Indeed, ballot measures face additional challenges beyond qualifying for the
ballot and receiving a majority of the vote. Some polities require that popular
initiatives receive more than a simple majority to "pass," while others set
quorums (such as participation, approval, or administrative criteria), and still
others demand a combination of these requirements. Moreover, if a popular
vote fails, some polities limit how much time must pass before that initiative can
be revisited.

Among the many democratic innovations that have been proposed to
reinvigorate democracies, mechanisms of direct democracy allow citizens the
greatest opportunity to maximize their freedom through secret and universal
votes. As Rousseau once claimed (hyperbolically, perhaps, but not entirely
incorrectly), "the people of England regards itself as free; but it is grossly
mistaken; it is free *only* during the election of members of parliament. As soon
as they are elected, slavery overtakes it, and it is nothing" (Rousseau 1995
[1762], italics are mine). Mechanisms of direct democracy – particularly if they

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[17] In Switzerland, legislative counterproposals have been frequently used as an instrument to derail
popular initiatives. These counterproposals often incorporate some of the elements proposed by
the popular initiative but typically present only minor changes to the status quo, with the aim of
placing the counterproposal closer to the median voter than the popular initiative itself.
Therefore, counterproposals have a greater chance of being approved than the original initia-
tives. However, in the absence of a popular initiative, it seems unlikely that the legislature would
make an attempt to change the status quo using this strategy, given that they could simply
legislate on the matter instead. From this perspective, legislative counterproposals can be
understood as a mild defense of the status quo by the legislature.