DIRECT DEMOCRACY AND TAXATION: AVERTING THE DOUBLE TRUMAN SHOW

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Abstract
The purpose of the article is to analyse the phenomenon of direct democracy related to fiscal matters. This analysis will be based on the experience of a number of European countries compared to one U.S. state, California, which was chosen due to Proposition 13, one of the classic examples of antagonization between a state and its citizens. The survey begins by approaching an aspect, at the basis of the frictions between the public apparatus and the people, which has often been overshadowed. It is an element used by the common rhetoric to show off the value of direct democracy against and at the expense of representative democracy: the failure of a trustworthy relation that legitimates taxation, beyond the employ of the rough power. More than in any other domain, in the fiscal area, which is poignant and incisive like any other within the private scope and which founds one of the pillars of the state organization, it is necessary to forge a bijective bond; if it would not be exactly comparable to the interpersonal trust at least it should foreshadow some of its constituents and its role. Failing that relation – and yet on the assumption of its natural absence – the politicians of several European countries have established, being soft, some paternalistic legal systems in which direct democracy tools, even though provided, either had not the fiscal matter amongst their objects or precluded it explicitly, as in the case of Italy. The reasons for the exclusion were as much simple as trivial and easily challenged by the representative democracy’s contenders: fear that the people could repeal the tax laws enacted by the legislative bodies, disavowing their representatives and depriving the state of the supposed necessary funds for its running. The California model seems somehow to back up those concerns, by revealing a dark side: that even direct democracy tools often work with inherent pitfalls and shortcomings, held against representative democracy. It is a question of partisanship, shallow knowledge of real issues, manipulability. A Manichean attitude which imputes any sort of disgrace to the representative form of government and exalts the purity and the originality of propositions and referenda – a stark and genuine voice of the people – could be incorrect on both counts. The civics development, through the several and various ways that also information technology permits, might succeed on implementing the idea of an ‘active society’, theorized about 40 years ago, in which the spaces between the public and the private lessen thanks to more awareness on the use of both systems by educated citizens.

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1. Introduction

Emphasizing direct democracy within a world where also the smallest territorially states have a number of members which is not comparable with the old Greek πόλεις - poleis (or the small Swiss Cantons) and where the voice of each individual is confused in the hubbub of mass’ claims might sound anachronistic, implausible and senseless. The representative bodies can address the needs of the people by employing acts and regulations with more efficiency and speed than a referendum or an initiative could.
Moreover, those proceedings supposedly provide rational balance, organicity and general completeness.¹

Where regulations have a collective impact and deals with complex choices or circumstances, which either require a quick and effective decision or don’t admit solutions that can be Manichean and partisan, the mediation of a body or of a subject interposed between the act and the needs of the people seems to be the most suitable way to settle and compose expectations, which might be – and often are – conflicting and divergent, within a compromise solution. On the contrary, this result would be barred to a tool like the repealing referendum, per se radical, bipolar and tranchant..

In fact, the crisis of the representative democratic bodies – due to several factors amongst the others: an ambiguous and insufficient communication between the citizenry and the highest public offices;² the inability of tuning the general regulations on the same wave length of people’s expectations; the indifference of the constituents as regard to electoral appointments, in which basically the competition pits against different political personalities rather than between clear and distinct agendas; the very configuration of the districts that penalizes the voters of one party which is minority within it – commits to the direct democracy phenomenon more exacting tasks, new prospects of developing a civic ethic³ but, at the same time, raises some potential risks.

¹ J.G. MATSUSAKA, Direct democracy and fiscal gridlock: have voter initiatives paralyzed the California budget? in State Politics and Policy Quarterly, forthcoming, challenges that initiatives bring about irrationally short-sighted budget policies.

² It seems proper to highlight that one of the richest region in Italy (Veneto) has arranged a so called ‘Social Budget’ directed to the families, to the companies, to the workers, to the young explaining the financial budget of the region in a way that is defined “citizens’ friendly’.

The exercise of direct democracy has an unlimited scope in the same sense in which liberal scholars deem that ordinary legislation is allowed to regulate any field where the constitutional norm doesn’t establish limits by sources and topics. 

*Per se*, the direct democracy tools – whose notion I leave now intentionally generic since, as I will say, its definition and the way to have it implemented are rather blurred and controversial – could even have a broader scope whether it were accepted, as founding principle at the basis of the legal system, the theory of the popular sovereignty. If the citizens, as holders of the sovereignty – the power of giving to the state and the legal system a peculiar shape and connotation – decided to use the most immediate means to express their will, even the supreme legal sources (i.e. the Constitution) should be subjected to a modification or revision without the obstacles provided to the parliamentary procedures.

Amongst the several sectors in which direct democracy is allowed to be exercised, the fiscal area is certainly the most relevant and the one which public bodies overwhelmingly fear to leave in the ‘hands’ of common citizens. Evidence of this is the fact that the prediction of a direct intervention of the citizens is not provided for in most of the European constitutions and in numerous state constitutions of the US (or it’s expressly forbidden).

The power repudiates its own origin, mistrusts and bridles it, makes itself the only interpreter and the legal guardian. “We the People’ becomes commonly “We the Politicians”.

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*American states*, Ann Arbor, University of Michigan Press, 2004, 86: “The data suggest that citizens have more positive views of American democracy when governed by both ballot initiatives and legislatures. Matthew Mendelsohn and Andrew Parkin argue that there is a single system rather than two systems: they call this unified system ‘referendum democracy’ and it emphasizes a connection between direct and representative institutions”

4 It is the concept of ‘form of state’.


6 Cf., B. ACKERMAN, *We the People, Foundations*, Harvard University Press, 1991, 42. It is remarkable what the President of the Commission of the 75 within the Italian Constituent Assembly, Meuccio Ruini, answered on October 16th, 1947, to the amendment to the final Art. 75 of the Italian Constitution submitted by the congresswoman Rossi and by other communist congressmen aimed to exclude from the scope of the abrogative (or repealing) referendum the electoral acts: “se c'è qualche cosa in cui il popolo può manifestare la sua volontà, è proprio il sistema elettorale. La sovranità popolare si esprime qui con tutta la sua ragion d'essere ad impedire - in ipotesi - che i membri del Parlamento abusino, nel regolare a comodo loro le elezioni. Non bisogna dimenticare, onorevoli colleghi, che il vero sovrano è il popolo, non il Parlamento”.

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To maintain the illusion of sovereignty, the system of power employs a plurality of tools and methods: some are constitutional provisions; others are procedural provisions, connected to the existence of a procedural and/or substantive interest to permit the challenge of fiscal provision in front of a court; a further one, more insidious, consists in academic denigration against adversary ideas, on the premise of a presumption to possess an elitist ability of identifying the noblest societal interests and expectations; others dramatically effective in shaping the mass thought, planned and organized by the governments and based on a cultural and educational policy, which range from a partial and manoeuvred schooling, to the arrangement of models of a paternalistic society where even intermediate organizations and associations take the place of, on pursuing the protection of personal interests, individuals, through a sort of endless guardianship.

2. Trust as the basis and key factor of social life

Actually, the premise that seems to have been marginally addressed at the basis of the experience of social common life is a matter of extralegal nature which affects, through its own filminess and cloudiness, the actual foundations of the present analysis. It’s the hugest topic in the human thought, namely the meaning of ‘knowledge’, that obviously can’t be here developed. However, it’s my intention sketching some minimum features, likely to be shared by any standpoint facing the matter and helpful to start the analysis.

Rational knowledge, whatever its nature is, is basically and mainly an act of trust: in one’s own intellectual capacities and in other people’s ones. Everybody knows through his own mental capacities, through his own senses, often collecting information from the experiences lived along the path. Beyond the scopes falling into his own direct and immediate perception, each individual uses the cognitions achieved and developed by the other fellows. Those cognitions are in their turn the results both of the personal experience and of the knowledge which are conveyed by other human beings. So that all the knowledge stored can be used there is often at the very basis an (implicit) act of trust – about the modalities and ways of reaching the outcomes, about the techniques employed, about the soundness of the methods and finally about the tendential objectivity of the results gained – and that act is often blind, when it’s had, as object,

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7 G. SIMMEL, *The sociology of Georg Simmel*, New York-London, 1964, 326: “Trust is one of the most important synthetic forces within society”.
knowledge developed by other people.\textsuperscript{8} The foregoing situation could be described and summarized using this pattern.

Each of us, every human being is like a traveller who, after having walked for a long time and having climbed a mountain, gets close to a lake feeling thirsty. There the traveller meets an old man who is sitting close to the lake and, as soon as he moves to get close to the lake, this person tells him: ‘don’t drink, as, even though you are thirsty, it’s poison and you would immediately die. So far, I have seen a lot of men who didn’t listen to my warning and now they are dead and wind has cancelled any trace of them’.

What could be the reaction of the traveller? There are two possibilities: that he either believes the words of the sitting man or not. And on which basis will the traveller make his decision?

Naturally, first of all, he will refer to his own experience and would think about the beverages he usually has had in his life: namely and mostly a transparent, odourless and liquid element called water, similar, in its look, to the liquid that fills the lake. Secondly, he will try to verify through his senses if there is any form of life in the lake, something that might confirm or deny the words of the man.\textsuperscript{9} If he can’t find any revealing element, he might rely simply on his experience and, using his own knowledge, might be oriented to drink that liquid to quench his thirst.

However, he might be concerned to do that just recalling the words of that stranger who has warned him. He might think: is he sincere? Should I trust this man and avoid drinking? And, if so, why should I do that? Why should I listen to his advice? Why, first of all, should he care for my safety?\textsuperscript{10}

The answers that the traveller could give to himself might be several – the man could have said that as he looks old or has a broken leg and does not have the strength to go down by himself; either the man might be afraid that if the traveller drinks that liquid that seems water he might infect it with some disease, so that the old man won’t be able

\textsuperscript{8} As Luhmann argues the function of trust is the reduction of complexity. N. LUHMANN, Trust and power, Chichester, Wiley, 1979, 23.

\textsuperscript{9} J.D. LEWIS, A. WEIGERT, Trust as a social reality, in Social forces, vol. 63, n.4, June, 1985, 968 sharply stress that trust “always involves an unavoidable element of risk and potential doubt. We would not have to accept this risk if there were some functional alternative to trust”.

to drink it any longer; or as the traveller reminds to the old guy the son whom he hasn’t
seen for long time he might want his company; and so forth —, but all of them will have
a lowest common denominator: be founded either on trust or on fear and concern. In
order to make his decision to drink or not, the traveller might talk to the old man to
understand more about him and about his personality, his way of being, his attitude.
Eventually, thus, his decision, anyone it might be, will express or the reliance only on
his personal knowledge based on his experience, or the confidence in the old man’s
words, or the mistrust towards him.
Life in society can be described in the same way. Most of the issues that an ordinary
citizen faces are very similar to the very rough and simple example just mentioned.¹¹
Actually, are the procedures and methods used to get that external knowledge verifiable?
Certainly some are, namely the ones which are from direct and immediate detection for
an ordinary citizen, however, others (the most) must be left, for their technicality, or for
the very few information which are at disposal, to the specific expertise of a specialist
who is able (and supposed to) put into understandable words for the generality of the
citizens the outcomes attained. There’s the need in this last case of a double mediation
which passes through the intellectual abilities and the intuitions and insight of a
specialist and, afterwards, through the ways that this one employs to make his
discoveries comprehensible to the general public. Yet in both procedures elements exist
which continue to be mysterious or unintelligible for most receivers who put on as
likely and probable — if not as true — the notions which are offered to them. However,
trust presupposes a relation between parties which as minimum requires the existence of
a value sharing attitude or, at the very least, the hope that the information proposed if
not true is anyhow not noxious or detrimental. Does this kind of basic relation between
the government and the governed exist in democratic countries? It probably does.
Citizens live and build up a legal system whose they accept the basic rule according to
which their own representatives in the public bodies pursue the common good, which is
bigger for some and smaller for others, but potentially good for everyone. This act of
trust reveals itself in several ways but basically through the participation to the elections
and, in the case of people originally extraneous to the country, through the request to get
citizenship.

¹¹ Cf., V.A. CHANLEY, T.J. RUDOLPH, W.M. RAHN, The origins and consequences of public trust in
government, in Public opinion quarterly, 2000, vol. 64, 239-256.
Nevertheless, transformations which take place in some societies, above all with the expansion of schooling and with a different, deeper bent of the citizens to demand clear answers to specific questions, started to let that minimum level of reliability of the public bodies, as naturally arranged to pursue the common good, be considered insufficient. The average citizen has grown up in his grounding so that he accepts (little) less submissively and passively, prescriptions and rules which are issued by the authority. It seems to have begun again the time in which also the government and the other public bodies have to be responsive for their acts and rules not only in front of a court but also in front of more aware citizens. However, actually, what is the control that citizens have on receipts and expenditures of the state?

What is the knowledge that citizens have about the fiscal needs of the government – which represent the most intrusive and most considerable public intervention in the private area and the real basis of any contemporary public organization –, what is the knowledge of the subjects, of the procedures which lead to the passage of the tax discipline? Three more examples (amongst the several which could be expounded) with direct impact on the issue here discussed (knowledge of the mechanisms of controlling the government fiscal policy through the exercise of direct democracy tools on tax law) might express the doubts which surround an uncritical acceptance of the status quo and challenge a common opinion.

1) In some countries, the government’s budgets often include the purchase of billions of dollars in vitamins, through the health care system. Some of the members of that organization (family doctors) who are paid by it – that is by citizens’ taxes – urge and push the citizens to take vitamins on the claimed assumption that they can contribute to maintain and enhance health and wellbeing. Vitamins are not directly provided by the health care system so people, basing their acts on that advertising, during elections, might favour the candidate representatives to the Parliament who declare to include in

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14 It’s a recent dispute the one which has raised up during the passage of the Italian finance act that involves the allocation of 100 million euro for the private universities. This provision questioned by some representatives of the majoritarian coalition after they have discovered it was introduced by a subterfuge is comprised in the paragraph 603 and 604 of the article 1: not that long article, as everyone can notice. http://www.repubblica.it/2006/12/sezioni/scuola_e_universita/servizi/scuola-2007-bis/fondi-universita-private/fondi-universita-private.html
their agenda the point that vitamins will be bought by the health service (through taxes) and provided to the citizens at a minor cost. The question that is skipped in the whole cycle is the following: is the statement that vitamins contribute to the health of people really true? It might be or might not. The ordinary citizens have no particular evidence about that. Moreover, that strengthening effect could be, on one side, temporary and, on the other, noxious and harmful in the long run. Or, furthermore, the strengthening effect might be an illusion, consisting the so called ‘active ingredient’ in a placebo. Who assesses the effectiveness of the vitamins and minerals? Some expert commissions? Who are they? Who were they instructed by? Who appointed them?15

2) Similarly to the foregoing example, it might be reminded that most states in Europe and Far East and America spend every year enormous sums gathered through taxes for the treatment of cancer, by buying expensive machinery and equipment. The question is: are those treatments the most suitable in the array of potential treatments for cancer? And who is entitled to decide if one treatment is preferable than other one? A board of experts? A committee of specialists? The same people who decide about the vitamins’ issue? What kind of legitimacy do they have from both the voters and taxpayers? And if some of the patients (or their relatives) demanded to be treated by different methods, could they refuse to pay their taxes to the government and use the money saved for funding the research and the implementation of alternative therapies?

3) Another important item in the state’s budget and very close issue to people’s needs is public works, building of roads for example. Do people know how much a mile (a kilometre) of road cost? In an informal survey I have performed in Italy I asked this question to about 100 average citizens in the street and less than 10% get close to the amount that the public bodies declare to spend. And who decides what the fair expense is?

These questions could be made for almost every expense indicated in the budget. Belief that making those questions is absurd or useless simply enhances the estrangement of people towards the government, as it seems to live in a community that doesn’t belong

15 Isn’t it meaningful that a website sponsored by the pharmaceutical company Wyeth is called www.mythreality.com and it spreads the message that common people might have a misrepresentation of certain drugs’ effects and benefits, and invites also the patients to talk to their family doctors? These are some of the questions that patients should submit to their doctor: which medication is right for me? Why? What are the benefits of this medication? What should I know about side effects? http://www.mythreality.com/talk.asp Yet the formulation of the questions could be interesting to be analyzed and recalls an aspect of trust which patients should put on their physician.
and is not made by its members.\textsuperscript{16} In human relations trust is not a ‘blank check’: it requires and involves time, knowledge, respect, sharing of all the elements that I have listed above.\textsuperscript{17} Naturally it’s maybe imprecise to make a direct transfer from a one to one human relation to a one to one ‘leviathan-human’ relation of all its traits and features but the basic nature of it must be found out in both the situations.\textsuperscript{18} If so, why should it be different in the relations between the government and its citizens? Is it a less important relation? Is it a relation that lasts less than the one with our dears, with our friends, with our family? Probably not, because since our birth almost each of us happens to live in a community, in a society. So why do people accept living in a system that is as demanding (and even more under the financial side) as a one to one relation but with less guarantees?

3. The institutions of direct democracy as limit to the parliamentary power to tax

Perhaps these kind of thoughts, perhaps a more and more unsatisfactory working of the representative institutions have raised up the question if those tools, which are traditionally identified as expression of participatory democracy\textsuperscript{19} and which are so popular in some European countries (Switzerland and Italy) or American states (like California),\textsuperscript{20} have the inner capacity to tame the ‘leviathan’.\textsuperscript{21} This was also the thought of President Roosevelt who declared: “I believe in the Initiative and

\textsuperscript{18} “There are also theoretical arguments for saying that confidence in institutions is the equivalent in modern large-scale society of inter-personal trust”. K. NEWTON, Trust, social capital, civil society, and democracy, in International political science review, 2001, vol. 22, n.2., 205.
\textsuperscript{19} Within the general notion of direct legislation live together two different powers of legislative intervention of the electoral body, one identified with the exercise of the law making initiative supported by an autonomous and automatic activation, starting up of the popular vote (initiative), and the latter through the display of a normative will of the constituents coinciding with a statute potentially already thorough (referendum).
Referendum, which should be used not to destroy representative government, but to correct it whenever it becomes misrepresentative.”

Another point must be clarified before addressing the specific analysis of the binomial direct democracy - taxation and it is the very concept of the expression ‘direct democracy’ and of its forms. Several authors emphasize that direct democracy implies, in its original and genuine structure, the collective exercise of several functions related to the popular sovereignty, in a common space (such as a square), without the necessity and the presence of any mediator. Therefore, it’s stated, referendum doesn’t have those features and it can be only deemed to be an institute of the representative regime, just serving a more democratic ideal. However, that was the way that direct democracy was born and took its first steps in the ancient times and between small communities: it doesn’t exclude, anyway, that the immediateness of the public opinion’s voice can be expressed in a form which is more suitable to the size of current states and, consequently, that it can be comprised in the direct exercise of popular sovereignty. Rittinghausen, for instance, suggested to split the constituents, for a specific issue submitted to a referendum, into lots of groups made by 1000 people and more and more numerous scholars and common citizens are persuaded that Internet can prove itself to be the mechanism to bypass the representatives’ intermediation and to carry out a ‘virtual αγορά’-agora.

23 As to James Madison, Federalist, n.10, the pure democracy is “a society consisting of a small number of citizens, who assemble and administer the government in person. […] A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect, and promises the cure for which we are seeking. Let us examine the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure and the efficacy which it must derive from the Union. The two great points of difference between a democracy and a republic are: first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens, and greater sphere of country, over which the latter may be extended.
24 The main purposes of the referendum can be enumerated in the following ones: 1) remedy to the abuse of the majority; 2) limit to the proportional principle; 3) remedy to the partitocracy; 4) tool to enforce the political responsibility of the Parliament and of the Government; 5) limit to the excessive power of the elective assemblies; 6) mechanism of control of the consentanenity between representatives and constituents; 7) tool of political education of the people. Cf., M. LUCIANI, Art. 75, Commentario della Costituzione, Bologna – Roma, 2005, 85 ss.
25 M. RITTINGHAUSEN, Uber die Nothwendigkeit der direkten Gesetzgebung durch das Volk, in Social-demokratische Abhandlungen, Kölne, 1869, 10, cit. in M. LUCIANI, Art. 75 Cost., 54.
My focus is restricted to the fiscal area for one exclusive and crucial reason: since, without taxes, without financial means, there is no possibility for any organized community to survive and work. Giving the chance to the citizens to declare directly their support or their disapproval towards some tax law means giving them literally the power to control and give direction to the entire common life.

4. Brief overview on the role and powers of the National Audit Offices

Actually, there are bodies such as the ‘Courts of Accounts’ or the National Audit Office in Uk or the Government Accountability Office in the US which are entitled to carry out a check on the running of the state and of the other public bodies to audit legitimacy, efficiency and effectiveness. If these controls had been effective, they should have prevented the development and the exponential growth of the public debt (and, on the other hand, if the responsibility of its increment were political, there should have been a sufficient information and popularization of the reasons of it, which failed) whose existence brings about an increase on the tax burden. Nonetheless, at least in certain countries, a real benefit hasn’t derived from the public expense to the people through the provision of better services. Therefore, what’s the sense of increasing taxes when there is little collateral evidence in terms of tradeoffs? That’s often been the reason why ordinary citizens have launched themselves into (or clamoured for) initiatives of direct democracy to constrain the growth of fiscal impositions – which naturally haven’t penalized all the members of the community, particularly public servants, which still enjoy special privileges, as it happens in Italy nowadays.

In front of this uproar (both actual and potential) the reactions of the public bodies have been two different ones and I have considered to deepen them as they represent the extreme wings of the possible array: the Italian case, where a provision of the constitution forbids referendums in the matter of taxation, and California, where the participatory democracy tools have contributed to give the shape to the form of state. Before addressing these two major points and sketching their peculiarities, a brief overview is, however, proper about: 1) the role and the powers of those bodies which

are entitled and entrusted to audit the budget of the state and the other public agencies to identify their role and to understand if they could be a sort of watchdog for the increase of spending (and naturally taxing). I have partially considered only some of the European countries, which have a broader discipline of these agencies; 2) how referendum and other possible tools work in some European countries, though the taking place of referenda in the fiscal area is either not provided for law or has never taken place.

In any democratic system it is provided that a body which has a constitutional position, autonomous and independent from the Government and the Parliament, watches over the correct running of public resources, the respect of the financial overall balances, the regularity, effectiveness and efficiency of the administrative activity.

In Belgium for instance the Court of Audit was established by the Constitution ex art. 180, as a collateral body of Parliament: it means that the subject it reports to is the Parliament and not the citizens. It exerts an external control on the budgetary, accounting and financial operations of the Federal State, the Communities, the Regions, the public service institutions depending upon them, and the provinces. The control of townships falls outside the scope of the Court of Audit's powers. According to the Organic law 29 October 1846 the Court is responsible for examining and validating the accounts of central government and those of all accounting officers answerable to the national treasury. It ensures that no budgetary expenditure item is exceeded and that no transfers occur (art. 5). If the accounting officer's account shows a deficit, the minister or the executive of the provincial council shall decide whether he should be tried before the Court of Auditors for the repayment of the deficit. The government department mentioned above may not refrain from suing the accounting officer whose account shows a deficit unless it is of the opinion that he can invoke circumstances beyond his control (‘force majeure’) or if the deficit does not exceed an amount stipulated by the King. If that department refrains from suing an accounting officer before the Court of Auditors, it reports to it through a notice in writing in which it substantiates its reasons and provides all supporting documentation. In its annual catalogue of observations to the Houses, the Court notifies the cases for which the government departments did not use their right to sue the accounting officers for the repayment of deficits. The Court of Auditors grants a discharge if it establishes that there is no deficit or if it finds that the
accounting officer may invoke circumstances beyond his control. If this is not so, it orders him to reimburse the amount of the deficit. It may, however, on the basis of all specific circumstances and, *inter alia*, the seriousness of the failure of the accounting officer to carry out his duties, impose him to pay only part of the deficit. It’s interesting to know that the federal debt in Belgium amounts to 281 billion euros at the end of November 2006.

**Germany.** The ‘Bundesrechnungshof’ examines federal financial management. The ‘Bundesrechnungshof’, whose members shall enjoy judicial independence, shall audit the account and examine the performance, regularity and compliance of financial management. It shall report annually directly to both Houses of Parliament and to the Federal Government. Its audit functions in a wide array of areas such as defence, road works, taxation. The ‘Bundesrechnungshof’ submits an annual report to both Houses of the German Parliament, the ‘Bundestag’ and the ‘Bundesrat’, as well as to the Federal Government. The annual report is also used as a basis for Parliament granting discharge to the Federal Government and is presented to the public at a federal press conference.

In the United Kingdom, the National Audit Office scrutinises public spending on behalf of Parliament. It audits the accounts of all central government departments and agencies, as well as a wide range of other public bodies, and report to Parliament on the economy, efficiency and effectiveness with which they have used public money.

**In France,** according to the Article 15 of the Declaration of the rights of man and of the citizen, which states: “Society has the right to require of every public agent an account of his administration”, the ‘Cour de Comptes’ is entrusted to audit the public bodies which manage public money. Its checks have a certain discouraging effect on the accounts clerks, who are personally and pecuniarily liable for the regularity of their deeds and operations. On those issues the ‘Cour’ gives a judgment only provisionally.

**In Italy,** there is a comprehensive audit of the whole government including civil service and all public bodies occurs. This audit is carried out by the ‘Corte dei Conti’ and it consists in the arrangement of reports and remarks which are intended for the audited agencies. The control is aimed to determine some mechanisms of spontaneous adjustment and correction by the controlled agencies. Whereas the agencies and bodies don’t follow the directions prescribed by the Court, there might become effective the political liability of the incumbents of the organs and offices and, there being the
conditions, even legal liability upon the specific official, if from their conduct has originated a public patrimonial detriment. However, there’s not a direct connection and still less an automatism between negative outcome of the control and liability of the individual official or public servant.

At the European Union level there is one body which is entrusted to audit and control the management of the European Union takings and spending: the European Court of Auditors. The mission of the European Court of Auditors is to audit independently the collection and spending of European Union funds and, through this, to assess the way that the European institutions discharge these functions. The Court examines whether financial operations have been properly recorded, legally and regularly executed and managed so as to ensure economy, efficiency and effectiveness. The Court makes the results of its work known through the publication of relevant, objective and timely reports.

This brief overview has shown a crucial point: that most of the audit bodies are void of effective and substantial powers to let the Government and the Parliament feel under a precise control of the people. Many countries provide sanctions to the breach of the financial law by the accounts officials, but it doesn’t mean that, as it was described above, that the state gets back any possible restorations and it doesn’t mean also citizens gain an increase of awareness about the correct working of the various departments of the state. Regarding this last side, there is a decision adopted by the European Court of Auditors (12/2005 of 03.10.2005) which testifies the hierarchy of values that still distinguishes the relations between the public institutions and the citizenry. At article 4 it says:

1. The Court of Auditors shall refuse access to a document where disclosure would undermine the protection of:

(a) the public interest including:
— public security,
— defence and military matters,
— international relations,
— the financial, monetary or economic policy of the Community or a Member State.

It is evident that the interests of the state, as apparatus, prevail on the interests of the citizens to be fully informed about the results of the controls carried out by the Court,
whereas it should exactly be the opposite, otherwise a controller which controls something that can be known just by the controlled one is a theoretic and practical nonsense and leaves the question ‘Quis custodiet custodies?’ unsettled. It’s true that at paragraph 8 it’s written that “Notwithstanding the exceptions set out in this Article, the Court of Auditors may decide to allow access to a document, in whole or in part, where there is an overriding public interest in its disclosure”; however, this power shouldn’t be an exception to the rule of refusal of accessibility and transparency, but the rule itself, as it’s always in the discretion of the Court allowing or not the disclosure of its investigations.

Thus, the main defect of those bodies is that one way or another they have a connection with the representatives and the subject they refer to is the Parliament and not the people which don’t have the power to recall the political head of the department in case of misappropriation of funds, negligence or ignorance.

In consideration of the ‘status quo’, it’s more than natural (and it would be odd if it weren’t like that) that quite a large number of people feel they are under-represented and not enough feel they are protected by the tools that are provided by the system of representative democracy.

And before and beyond a direct attack to the representative institutions in a form either of a revolt or even of a complete revolution, the intermediate stage (but rather ambiguous and misleading in the way it is carried out) is the recourse to the tools of participatory democracy. When I refer to ‘tools of direct democracy or direct legislation’ I set apart the initiative (also named propositions in the US) and the referendum.

The initiative consists in the starting up of the regulatory and statutory procedure on popular impulse. It’s distinguished between direct initiative, when the proposal is directly submitted to the ballot of the electorate which completely takes the place of the legislative body and indirect initiative, in which the proposal coming from the electorate is initially submitted to the legislative body and only if the assembly rejects it or pass it with amendments considered not respectful of the original purpose it is submitted to the immediate ballot of the citizens. The referendum occurs, on the contrary, at the conclusion of the procedure through which a law is passed and it works as condition – either necessary or potential – of validity of the act.
5. The experience of direct democracy in some European countries

It’s time, now, to deal with the legal system of some of the European countries to analyze and verify the importance or the use of the tools of direct democracy in the matter of taxation, if provided. The choice has been made random, by focusing on the countries which have either higher population or a longer tradition regarding direct democracy.

France

Considered, above all during the III Republic, as a despotic tool good to manipulate the popular will in favour of an usurper power, the popular referendum is rehabilitated in 1946, just as prodromic stage to the approval of the New Constitution.  

However, though rehabilitated, it doesn’t become constitutive element of the regime of the IV Republic, which is marked by the principle of representative democracy. It’s during the V Republic that the referendum gets new life and attention by the legislator. It is bound to a strict procedure – practically committed to the president will – and also applied to a scope rather narrow. Article 11 of the French Constitution gives the power to initiate the procedure to the President of Republic, making it conditional to a proposal of the Government or of both the Parliament assemblies. The tendency is not different if the focus is put on the local referendum which has been put in by the recent constitutional revision (2003): the local referendum is restrained on the side of the initiative, referred to the decision of the institutional organs of the local body.

Article 11 of the Constitution authorizes the President of Republic on the basis of the proposal of the Government or of both the branches of the Parliament to submit to referendum every bill which regards the setting of the public powers, the ratification of international treaties and reforms regarding social and economic policy. As it clearly appears, there is not a direct power of the people to hold a referendum against a tax act which were included within an economic reform. Arbiters of the situation are the elective bodies (President and Parliament and Government) and there is no space for the common citizens either to oppose or to counter a fiscal legislation except through challenging it in front of a court. As far as the local referendum the article 72-1 has

ushered in some changes: provision of a petition right which allows constituents to get registration on the agenda of a territorial assembly of an issue which pertains to the local dimension; creation of a territorial referendum of abrogative type, which can be held on initiative of the assemblies of the local bodies; provision of a procedure of talks with the constituents when it’s debated about creating a body with special statute or a modify in the statute; possibility of asking voters’ opinion regarding the change of the boundaries of the local territory. 29 Over again common citizens are deprived of the chance of fighting against an act which has fiscal nature. 30 The direct democracy tools in the form of the referendum are meant to be instrument of the elite and not of the ordinary citizens. In an opinion poll published in the magazine Le Figaro in 2000 67% of the pollees expressed their favour towards more referendums and the most popular topics which the citizens wanted to decide directly were the issue of taxation and pension reform. 31

**United Kingdom**

Referendum and other forms of direct democracy which have found a very fertile ground in the US, Switzerland and Italy have never developed as counterpart of the principle of the sovereignty of the Parliament in UK. The popular referendum, though not unknown, has had episodic implementation in the United Kingdom, restricted to peculiar situations of the life of representative institutions. Through an act of 1871 which provided the chance of holding local talks regarding licence of sale of spirits, it was ruled the exercise of a right of the local communities which was already rather

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29 Article 72-1 The conditions in which voters in each territorial unit may use their right of petition to ask for a matter within the powers of the unit to be entered on the agenda of its decision-making assembly shall be determined by statute. In the conditions determined by institutional Act, draft decisions or acts within the powers of a territorial unit may, on its initiative, be presented for a decision to be taken by the voters in that unit by referendum. Where there is a proposal to establish a special-status territorial unit or to modify its organisation, a decision may be taken by statute to consult the voters registered in the relevant units. Voters may also be consulted on changes to the boundaries of territorial units in the conditions determined by statute.


31 *Direct democracy in Europe, A comprehensive reference guide to the initiative and referendum process in Europe*, edited by B. Kaufmann and M. Dane Waters, Durham, NC, 2004, 62. The right of interest groups to resort to “direct action” has even eclipsed an old prerogative of elected assemblies: fiscal policy. The fuel-tax protests of September 2000 offered a striking example of this. On both sides of the English Channel, independent hauliers spearheaded popular revolts against rising petrol prices and attempted to block roads and fuel depots. In England, despite widespread sympathy for the protesters, blockades were resented and seen as a challenge to parliament's power; to general approval, the government moved to restore free movement. In France, the protesters enjoyed popular support and there was widespread relief when the government caved in to their demands for tax breaks.
widespread. The practice of local referenda didn’t concern just matters which involved moral positions but also considerable social, economic and administrative interests: it developed another branch of the direct participation to the local political decision which Prest qualified ‘ratepayers democracy’. The object of the local option was the act of the Parliament, whose implementation was referred eventually to the popular decision territorially localized. The local referendum was not a consultation whose effects were the confirmation or the repeal of an act of the Parliament, but it took shape of a popular (more exactly a ratepayers’ vote) which was intended to adjust the national legislation to the specific administrative needs of the local community. This practice was rather common during the Victorian era but it was destined to come to an end as a consequence of the local government administrativization, accomplished by the reforms in 1972 and 1973. In short, the local referendum practice allowed the exercise of the right of choosing times and modalities of implementing some acts passed by the national Parliament but sometimes even the right of deciding if the act had actually to be carrying out at the local level. The referendum Act passed in 1975 didn’t add anything to the powers of citizens in the field of fiscal policy as it had as objective the holding of a referendum on the entry of UK in the EEC. However, as it was provided by the Regional Assemblies Act of 2003, the recourse to referendum is nowadays a basic element of the self determining process which is at the basis of the regionalization of the UK, but in the form of consultative and not abrogative referendum, just leaving the last word to the representative bodies.

**Germany**

The German legal system is basically hostile to the referendum, at least at federal level, but anyhow, just considering the subnational level, it plays not a marginal role. Bavaria and other northern regions commit to the referendum a peculiar role. Amongst the institutions deemed responsible of the failed barrier to the nazi dictatorship there has been the referendum strongly feared by the Constitution of 1949. The German constitution declares that state sovereignty emanates from the people who exercise it by elections and voting through specific legislative, executive and judicial bodies. The generic reference to other ‘votings’ calls to mind forms of direct democracy. However, nowhere else that idea is continued, remaining that hint a dead letter. On the

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other hand, several regional constitutions provide the possibility of resorting to the tools of direct democracy like referendum, popular initiative and popular decision. Direct democracy seems a common characteristic in the regional constitutions: not only the abrogative referendum – which is provided in almost all the regional constitutions but is very seldom used – but the more and more used popular voting on two or more alternative bills, the referendum on constitutional revision and the popular initiative. Most part of the direct democracy experiences take place at municipal level but as also in Germany like in the other countries which have been analyzed the voters don’t have any power to set themselves free from undesired tax provisions.

**Austria**

The supremacy of the representative democracy comprised in the Austrian constitution extends to the regional legal systems, as provided by the general uniformity clause of Art. 97 B-VG. All the regional constitutions provide for some form of direct democracy. Four regions – Lower Austria, Upper Austria, Burgenland, Tyrol – provide for, besides optional referendum, also the referendum repealing regional laws on popular or municipal initiative. Through a constitutional revision in 1984 it was inserted the article 117, 8 par., which has allowed the regional legislatures to provide for direct democracy forms at the municipal level. Therefore have been made possible direct popular decisions, which replace the council resolutions (in the municipalities of Vorarlberg), and repealing referendum on municipal administrative acts. In 2000 the Vorarlberg Parliament modified the regional constitution providing for the possibility that an act, stemmed by popular initiative (aimed to the passage, abrogation or amendment), if confirmed by the majority of the voters, can take effect even against the will of the majority of the Parliament. The Constitutional Court held that that provision, allowing a popular direct legislative model, broke the constitutional principles of the freedom of mandate and of the parliamentary democracy, which are necessary also for the regions according to the principle of homogeneity. The Court decision clarifies that the ‘democratic principle’ must be intended as representative democracy.

**Switzerland**

33 Specially in Bavaria, Hessen and Bremen.
Switzerland can be considered a ‘semi-direct’ democracy as direct democracy institutions in the tax domain play a remarkable role in the national policy for long time.\textsuperscript{35} Actually, the federal legislative power must abide by the rights of the people, in a meaning of the popular sovereignty which is not only formal, but substantial., The Parliament does not have the last and crucial word in Switzerland. The popular rights consist on referendum and popular initiative. The intervention of the voters at the federal level can take place both regarding constitutional revision proposals and ordinary law of popular initiative, but only generic – it means that it will be the federal assembly which will turn the proposal into a bill – whereas the Federal Houses disagree. It can also occur in the process to pass a bill, after the passage from the two branches and before the promulgation by the Federal Council. At cantonal and municipal level, there is recourse to the referendum in conformity with the cantonal Constitutions and the municipal organic acts: it is sometimes mandatory for the passage of an act, especially in the financial field;\textsuperscript{36} anyhow it is always allowed the optional referendum. The development of the referendum in Switzerland is a consequence of the inapplicability on the federal scale of the ancient forms of direct democracy held at cantonal level. Since 1830, several Cantonal constitutions admitted direct democracy tools. In the St. Gallen Canton and Basel Land it’s provided the veto which could be exercised against an act passed by the Parliament, in case part of the citizenry should ask for the search of approval by the people. Only the opposition by the majority of the cantonal voters will have brought about the annulment of the act. That institution represents a first step towards a popular control of the legislative outcomes, which had been included, first, in some Cantonal constitutions and, then, in 1874, in the Federal one.

The referendum which has a major impact on the political and social life of the country is the one which intervenes in the process of lawmaking. This kind of referendum has a suspending effect and can show the potential split between the politicians and the common people. It can be requested by 50,000 voters or 8 Cantons in the 100 days


\textsuperscript{36} L.P. FELD, J.R. TYRAN, \textit{Tax evasion and voting: an experimental analysis}, cit., 198, underline that Feld and Frey found out that on the basis of a survey among the Swiss cantonal tax authorities the ones of cantons with well developed direct participation rights are less suspicious if taxpayers report remarkably low incomes.
following the publication in the Official Paper of a federal bill passed by the two Houses. The acts with normative contents excludable by the popular control carried out by referendum are few: only the acts stated urgent and with force shorter than 1 year, ordinances, simple federal decrees, which has not normative contents (art.141). It must be taken into consideration that the budget is passed by the Parliament through a simple federal decree and therefore it is not subject to referendum, in despite of a remarkable innovation which was carried out in 2003 consisting, as above said, in the inclusion amongst the acts subjectable to facultative referendum of the federal decrees, insofar provided by the Constitution or by the law. The only exclusion regards the simple federal decrees, whereas the scope of the referendum is extended to the administrative acts taken at parliamentary stage. The fiscal matter is on the contrary one of the objects of the citizens’ decisions and they limited the federal income tax in its duration and its maximum rates. Their control is very penetrating and since 1950 no less than seven times the tax had been submitted to a popular vote and five times the proposal was repealed in the first round. 37

The referendum is even more widely used at cantonal and municipal level,38 with traits which can change according to the cantonal constitution provisions and the organic municipal acts. In 14 out of 26 Cantons and Semi-Cantons, the referendum is mandatory also for the passage of the ordinary acts and in 19 it is compulsory for the passage of outlays larger than a certain amount.

Italy

Italy is the only country in the European Union which provides explicitly the prohibition of referendum in the field of taxes. The article 75 Cost. states: “A popular referendum shall be held to abrogate, totally or partially, a law or a measure having the force of law, when requested by five hundred thousand voters or five Regional Councils.

Referenda are not admissible in the case of tax, budget, amnesty and pardon laws, or laws authorizing the ratification of international treaties.

All citizens eligible to vote for the Chamber of Deputies have the right to participate in referenda.

37 Thus, C.B. BLANKART, A public-choice view, cit., 88.
The proposal subjected to a referendum is approved if the majority of those with voting rights have participated in the vote and a majority of votes validly cast has been reached. The procedures for conducting a referendum shall be established by law”.

Reading the preliminary works about the above article and its prohibitions held in the Constituent Assembly and in its subcommittees comes out clearly both the disregard towards the common uneducated citizens and the curtness which the representatives have dealt the topic with.

On January 20, 1947 the II Subcommittee of the Constituent Assembly handled the categories of acts which would have been removed by the scope of referendum. The committee analyzed the article 5 of the ‘Mortati plan’ which excepted financial laws, laws authorizing the drawing up and the ratification of international treaties. The Hon. Einaudi and Perassi declared themselves against the inclusion of financial laws: the former demanded the possibility of keeping a referendum on tax laws but not on budget laws, the latter exactly the opposite. The Hon. Fuschini all together with Hon. Mortati and Cappi raised the doubt that, admitting the referendum against tax laws, these ones would barely have survived the popular judgment. And this is the whole discussion and the deep reason (or ‘rectius’ the ‘raison d’état’) that led the subcommittee to pass, on January 22, the final wording, which comprised the tax laws in the provision. In other words, the ‘ratio’ of the article 75, 2 par., would not be to adopt an absolute limit to the popular sovereignty in the tax field, rather to oppose potential forms of fiscal demagogy which might deprive the state of financial sources. On the contrary, the Italian Constitutional Court, also in one of its most recent decisions (51/2000, that recalls also the decisions 11/1995, 37/1997), has stated that through the expression ‘tax laws’ the Constituent Fathers referred to all the provisions which rule the fiscal relation between the public bodies and the citizens, even those ones which regards the assessment, the enforcement and the collection of taxes. Therefore, as citizens were not provided with the legal possibility to repeal tax laws which are deemed abnormal and exorbitant, they have found a shortcut: (“actually, both experimental as well as econometric, research consistently finds that higher tax rates are associated with”)\textsuperscript{39} a larger tax evasion.\textsuperscript{40}

\textsuperscript{39}L.P. Feld, B.S. Frey, Trust breeds trust: how taxpayers are treated, in Economics of governance, 2002, 3, 88.

\textsuperscript{40}L.P. Feld, J.R. Tyran, Tax evasion and voting, cit., 198: “perception of fiscal inequity increase tax evasion.”
Naturally, tax evasion doesn’t rely simply and only on the absence of a repealing referendum in the tax field but the feeling that the common citizen is considered just a ‘cash cow’ contributes to create a relation of distrust and aversion between the state and the electorate.\footnote{Cf., A. BRETON, \textit{The economic theory of representative government}, London, 1974, 8.}

This is the situation in some of the European countries. The outcomes concerning the use and the enhancement of the repealing referendum in the fiscal area, both as means of contrast against laws deemed either unfair or inadequate and as alternative to the parliamentary role, show numerous leaks. This is not due to its own faults or defects rather than to the ways it’s been provided in the constitutions. Therefore, here critics and doubts about the referendum are pinned on the organs which arranged it in the different countries; afterwards, objections will take up how tax propositions and referenda betray expectations of who placed in them the hope of a deeper and more transparent control of the public power. Each European experience of direct democracy (excepted the Swiss one) harbours a congenital defect, a sort of original sin which prevents to express its tools according to their inner potentiality. Rather than being concerned to bring up the citizens and to create the premises of a sympathetic spirit and polity;\footnote{Sic, L.P. FELD, J.R. TYRAN, \textit{cit.}, 199: “Some authors argue that a social or psychological tax contract between the government and the taxpayers going beyond a pure fiscal exchange emerges more easily if voters can directly determine crucial parameters of the tax compliance game”.} rather than planning the realization of a common identity, virtually domestic, in which the needs of the societal life are explained and co-decided, so that taxation is sensed as the way to provide citizens with services\footnote{“Recent research shows that social and political trust significantly increases the chances of citizens paying their taxes”. K. NEWTON, \textit{Trust}, \textit{cit.}, 205. T. C. HAAB; K. E. McCONNELL, \textit{Referendum Models and Economic Values: Theoretical, Intuitive, and Practical Bounds on Willingness to Pay}, in \textit{Land Economics}, Vol. 74, No. 2. (May, 1998), pp. 216-229.} and not as an unendurable theft, those short-sighted amongst the European legislators, specially within countries in which relations between politicians and citizens are troublesome,\footnote{K. NEWTON, \textit{Trust}, \textit{cit.}, 205: “Low trust suggests that something in the political system – politicians or institutions, or both – is thought to be functioning poorly”. Interesting is the chart where the author emphasizes the connection between social trust and confidence in Parliament in 42 countries sketched at p.209. Poland, Latvia, Estonia, Lithuania, Chile and South Africa have high levels of confidence in Parliament relative to low levels of social trust.} simply minded to clip people’s clutches, by believing to succeed on taming and subduing it.\footnote{“Social trust is expressed by people who feel they are generally surrounded by trustworthy people, and political trust is expressed by people who feel that their political system and its politicians generally perform satisfactorily”. K. NEWTON, \textit{Trust}, \textit{cit.}, 211.}

6. Direct democracy and taxation in the USA: the myth of Proposition 13
American taxpayers have been complaining for the high costs of the state since the foundation. Therefore, their representatives over the decades have framed and come up with strategies to becloud people’s mind, bring round its discontent and make its organized opposition costly and ineffective. Though the fiscal revolts haven’t been unusual in the American history, few, if not anyone, succeeded on bringing a real relief to the fiscal burden which bore down on their forwarders. The observation which clearly pops up from an analysis of the fragmented American system (where each state often stands for an original and unique entity) is that only deep or sudden increases in taxes can mobilize voters who were apathetic, indifferent and quiescent so far. Actually, it is usually less demanding and much easier, in terms of personal discomforts, to pay taxes, albeit unpleasant, rather than organizing a political movement or risking some penalty (and even jail) to have disobeyed to the fiscal rules. Episodes like the Shay’s rebellion or the Whisky’s rebellion were completely useless in determining a decrease of the taxes but, on the contrary, they showed to be fundamental for other purposes. First of all, as they were disbanded with the whole strength that the government could use, they made perspective and potential future revolts much less likely. Leland Baldwin deemed that President Washington and Hamilton spent more to repress the Whisky uprising than what they collected from the taxes, but that display of strength accounted for the perfect way to establish the power of the new state fiscal authority. Secondly, on the emerging of such rough rebellions towards exorbitant taxes, the representatives were warned about the risks which will have been faced in trying to increase the fiscal levy and they realized that it would have been needed to devise some imaginative mechanism to abate such a contingency: thus, the tortuous and convoluted American tax system, the taxpayers’ nescience, the fiscal illusions are to be partially viewed as a contrived legacy, result of the citizens’ original outcries against direct and visible taxes.

Several taxpayer groups on the national scale got themselves organized, at the beginning of the 70s, to review tax changes, to denounce the most immoral loopholes.

46 I.S. RUBIN, Class, tax, and power. Municipal budgeting in the United States, Chatam, New Jersey, 1998, 9 ss., gathers an anthology of cases of fiscal rebellions from late XIX in Houston and San Francisco, in Ohio and in Chicago, in the 20s, and eventually in California.
and handouts and to put forward proposals to reform the tax system.\footnote{R. LUCIER, \textit{Gauging the strength and meaning of the 1978 tax revolt}, in \textit{Managing fiscal stress}, Chatham, N.J., 1980, 8 ss.; F. LEVY, \textit{On understanding Proposition 13}, in \textit{The public interest}, 56, summer, 1979, 66 ss.} In June 1978 in California a new version of the tax revolt stormed in the scene disguised as Proposition 13.\footnote{Proposition 13 comprised four sections. In short: Section 1 aimed to limit taxes on real property to 1% of the assessed value of such property. Section 2 restricted inflationary rises in the assessed value of real property, to 2% per year. This section further rolled back the value base of real property to the 1975-76 county assessor's valuation, subject to various adjustments. Section 3 of Proposition 13 provides that "any changes in State taxes enacted for the purpose of increasing revenues" require a two-thirds vote of all members of both the assembly and the senate. Section 3 also expressly forbid the legislature from imposing any new tax on real property or new taxes on the sales of real property. This provision is meaningful since even a non property tax which obtains the requisite supermajority legislative approval may be struck down if it too closely resembles an ad valorem tax. Section 4 is a key provision in Proposition 13: this section requires a two-thirds vote of the qualified local electorate for any new or increased special tax. A special tax is one which is earmarked for a specific purpose. The goal of section 4 is to prevent local taxing jurisdictions from getting back their losses from decreased property taxes by imposing or increasing other taxes.} The Californian state of affairs was, in many ways, unique: the conjunction of soaring rent of the real estate, of efficient assessors and of enormous surplus were features absent in any other area of the country. Proposition 13 constitutes an initiative\footnote{G.M. ANDERSON, \textit{Referendum, redistribution, and tax exemption: a rent-seeking theory of direct democracy}, in \textit{Politics, taxation and the rule of law: the power to tax in constitutional perspective}, edited by D.P. Racheter, R.E. Wagner, Boston, Springer, 2002, 82 ss.} which aimed to lower, through the popular approval of an amendment to the effective discipline,\footnote{Proposition 13 became Article XIII of the California Constitution.} the overwhelming growth of the property tax’s rates. Numerous factors suggested that taxpayers were more and more discontented in front of the rise of the costs of the civil services. The percentage of citizens who agreed that taxes were too high climbed from 45% in 1962 to over 70% in the 80s.

According to the surveys of the Advisory Commission on Intergovernmental Relations, resentment converged on high taxes which affected the real property, though the government had cut down by 4.6% the tax rate. In this framework a fiscal revolt in the form of Proposition 13 was backed by two factors: on one side the long Californian tradition of trust on the initiatives and on the other side was Howard Jarvis’ leadership and direction.\footnote{D..A SMITH, \textit{Tax crusaders and the politics of direct democracy}, New York, London, 1998, 17.} Proposition 13 was his fourth attempt. By November 1977, his organization – The United Organization of taxpayers – had collected over 1 million and 200 thousand signatures to modify the discipline regarding the property tax law and had received considerable financial support by developer and farmer associations. The main effects which followed the approval of Proposition 13 were the following. The first was
the setting of a maximum rate of 1%, which would have lowered the fiscal burden by 57%. Secondly, it limited rises in property tax assessment to 2% per year after rolling them back to March 1975 levels. The net effect was a loss of revenues for about 7 billions in 1978.

The campaign which hemmed Proposition 13 was noteworthy for several reasons. It was covered continuously by mass media and aroused a deep interest in the citizens: more than 6 million and 700 hundred thousands voters poured to the polling and it passed with the highest turnout of voters ever recorded in a popular ballot, despite a concurred opposition of the majority of the elective officers of the state. A second major feature was the behaviour of politicians: altogether with the other elective officers they took side against the initiative and this attitude widened the rift between the representatives and the common citizens (‘rectius’, taxpayers), as that was made out as a corporative defence of caste privileges and oppressive taxation of the mass.

Further to the approval of the initiative, since the fiscal year 1980, California lost its surplus. Property taxes levelled off (diminishing in absolute value) with the result that it turned out to be rather a curb to the wild tax growth and to the wholesale expenditures, than a clean tax cut.

It is notable that over 2/3 of the tax reduction regarded the trading business rather than the residential property, with a prank result towards the taxpayers who had crammed the polling. Moreover, the taxpayers were to pay higher income taxes since the property tax exemptions had dwindled.

However, after the sensational success of Proposition 13, a drastic change took place in the tax system, both at state and local level. Californian taxes featured more prominently progressive – particularly as to sales and income taxes – and a wide range of new taxes and fees were imposed for services such as the use of a public library, the access to the beach and to playgrounds, and, above all, tuition fees and other costs.

58 Lately: W. F. STINE, The effect of personal property tax repeal on Pennsylvania real estate tax growth and stability, cit., 45 ss. “Thus, one hypothesis is that repeal results in higher growth of the real estate tax because these counties inevitably become more dependent upon it. Another possibility is repealing counties might respond to the loss of revenue by cutting expenditures”. 46.
connected to the education. In view of these outcomes, Californian taxpayers can hardly be blamed to have felt puzzled (and someone says even betrayed). 78% of them declared in a poll of 1982 that their tax burden was even higher than before the passage of Proposition 13. Yet, Californians didn’t show willingness to increase the taxes to provide the resources necessary to preserve the level of the public services, in case the proposition had been approved: a large majority consulted in the same polling opposed rises on the income, sales and motor vehicles taxes.

Both among common citizens and in the academic circles the passage of Proposition 13 was greeted as the event which marked the beginning of a national tax revolt. A poll carried out by the CBS and The New York Times, soon after the ballot in California, pointed out that 51% of the public opinion would have supported a measure alike if it had been submitted to the vote, even though it had meant a cut on the public services. Similarly, between 1976 and 1980, fourteen states passed some kind of limitation concerning taxes and expenditures.

No matter how, reality has shown much more complex and deeper explanations to the support for Proposition 13 than the ones based on a selfish personal gain. Counties where the property tax rate was higher didn’t express the strongest support to the initiative. High income earners, more educated people who were supposed to have bigger stake in the passage of Proposition 13 gave, on the contrary, minor backing than other social groups.

Numerous have been the attempts to explain the meaning and the impact of Proposition 13. Was it: a revolt against a pervading state and a national trend of protest against the authority of an oppressive government; a harsh answer towards a situation limited to California or a conservative reaction against liberal and social philosophies and against high public expenditures typical of the 1960s? It’s likely that all these comments are true and correct and all contribute to give an adequate view of reality. What is considerable to our goals is the change that Proposition 13 created in the relations between the taxpayers and the elected officeholders. The chance which was claimed to


60J. D. REID, Jr., Tax revolts, cit., 67; D. LOWERY, L. SIGELMAN, Understanding the tax revolt: eight explanations, in American Political Science review, 75, 1981, 963 ss.
participate to the orientation of the fiscal policy (if it didn’t have the hoped outcomes – reduction of the fiscal burden) helps to explain the recent events in California. 25 years after Proposition 13, the recall of Governor Davis seems embedding just on it: the people sovereign not only at the moment of the creation of the legal system reserves to itself the right to influence anytime (and not just through the elections at the end of the term) the carrying out of political agenda and to adapt it to the will of the majority. Therefore, political more than economic factors explain the reasons of the fiscal revolt and justify the assumption that a redistributing side of income (and of the seat of decisions and of power) rather than the cut down of the fiscal obligation was the main outcome if not the very ground of the popular vote. 62

7. CONCLUDING REMARKS

The survey so far performed on the use of direct democracy in the fiscal area now requires an overall summary. First of all, as it has turned out clear, the fiscal direct democracy is a perfect stranger in Europe, Swiss excepted. Not provided in the European countries here analyzed, absent also in the other EU countries, it is expressly forbidden in Italy. The underlying reason seems just one: a mixture of contempt, underestimation, haughtiness and paternalism (at best) by which the political class looked at the citizenry and to the electorate. There was the belief on one side that the people would have proceeded to the repeal of any tax or wouldn’t have understood its importance for the running of the state; on the other side, the politicians, particularly in the Northern Europe seemed to rely on the deep mutual wavelength existing with their constituents about the common expectations, denying ‘ab origine’ the need of a popular vote.


62 The constitutional provision of rules that allow the implementation of initiatives and referenda shows to be the most important factor to put a cap on public spending. Referenda and initiatives are provided by 27 states: Alaska, Arizona, Arkansas, California, Colorado, Florida, Idaho, Illinois, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Utah, Washington, Wyoming. Cf., P.L. BAUDE, A comment on the evolution of direct democracy in western state constitutions, in 28 N.M.L. Rev.1998, 343.
From the overall analysis have been at least detected three clichés which stamp the
discussion on the initiatives and referenda procedures, specifically in the fiscal domain.
The first is the one which counters participatory and representative democracy and
claims them to be two inconsistent forms of exercise of sovereignty within the same
legal system. The second argument equates the widespread support to cut or diminish
taxes expressed at the ballot with the prominent participation of citizens in the
referendum campaign. The third assumption deems the tools of direct democracy are
the best way to express the people’s will authentically.
These three points have proven to be weak and not backed by unerring evidences. If the
representative democracy institutions are often unable to catch the real needs of the
people; if they frequently are connoted by features of self referentiality and wallow in
the slime of corruption, especially with regard to deliberations taken within inner
committees, nevertheless in multiple party systems and pluralistic societies the
interposition between the people and the political judgments is unavoidable, even when
that decision is imputed to the people itself and to one of its direct expression of will.
First since political agenda is only marginally set out by the constituents; secondly, as
the questions put on the referendum ballot and the proposition wording are always
settled by others; third, because the interpretation of people’s will, once expressed, is
still committed to institutional bodies which perfectly know how and whether
manipulate and implement it.
Moreover, when direct and representative democracy have been performed within the
same system, it’s been frequently noticed there is a deeper involvement of the citizens
in the care of the ‘res publica’, a more aware trust in the representative bodies, an
increase of public spirit which have come out to be not detrimental to either forms.
The fact that representative democracy is described as easily and negatively
characterized by the intrigues of partisan interests and by the factionalism of the elected,
whereas referenda and initiatives would be a taintless, sterling and absolute expression

64 On the trade offs between informed decision making and popular control, cf., J.P. FELD, G.
KIRCHGÄSSNER, *The political economy of direct legislation: direct democracy and local decision-
65 Cf., E.R. GERBER, A. LUPIA, M.D. MCCUBBINS, D.R. KIEWIET, *Stealing the initiative: how state
GERBER, S. HUG, Legislative response, cit., 92; M. LUCIANI, *Articolo 75*, cit., 83.
66 L.P. FELD, G. KIRCHGÄSSNER, *The political economy of direct legislation: cit.*, 333, address
referenda and initiatives as ‘useful supplements to representative democracy’.
of the will of the people is an actual mystification. Likewise it’s erroneous – and this emerges from the data regarding the funds needed to carry out a campaign for a referendum or an initiative – holding that groups and lobbies’ interests are negligible and not influential for a direct democracy procedure’s success or failure and furthermore is even less correct to deem that its outcomes constantly match people’s desiderata. To opine differently means accepting a double delusive reality: that representatives pursue always and in any case voters’ interests (or vice versa that once elected they are concerned just about their own personal advantage) and that propositions and referenda work for general interests by nature. It would mean to fall from an imaginary dimension into another even more fanciful and grotesque: from the Truman Show into a double Truman Show.

Actually, it could be borrowed and applied to people’s attitude, first, towards the beneficial role of the representative government (against the power of a monarch) and then to the salvific direct democracy tools what Augustine of Hippo stated in a different domain: “Nullus quippe credit aliquid, nisi prius cogitaverit esse credendum” (certainly nobody believes something whether before he has thought to have to believe it). It’s natural that where predictions end, trust starts, for a set of reasons which find their basis essentially on the complexity of the associated life that doesn’t allow employing the very standards of the interpersonal relations. However, it seems to have come time to stop believing tales, whatever they are, time to abandon any myth and to face the problem of the social community with realism and with little prejudice. Whether in a large-sized organized society it seems that there is no space

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68 D.A. SMITH, C.J. TOLBERT, Educated by initiative, cit., 80.
71 M.LUCIANI, Articolo 75, cit., 111 ss., argues that Internet can not be a mean to implement a new form of direct democracy, by recalling the old features of the concept, that he seems to consider a genetic requirement. Contra, D. MORRIS, Symposium: direct democracy and the internet, in Loyola of Los Angeles Law Review, 2001; 34, 1033.

Against positions which seem belonging to a former age, it can be reminded that on February 19, 2007, the European Parliament passed a directive that establishes the possibility of electronic voting by shareholders of companies with a registered office in a Member State and whose shares are admitted to trading on a regulated. In my opinion, this is evidence that information technology can play a determining role in the building of new forms of democracy, even in the business and economic area. The opinion released by the
for a relation leaning on the emotional side of the human trust, it’s obvious that other constituents are required to set up a different type of confidence.\footnote{Cf., D.C. NILSON, L. BURZOTTA NILSON, Trust in elites and protest orientation: an integrative approach, in Political behavior, 1980, vol. 2, n.4, 385.}

The most desirable way – from a common citizen standpoint – should be diminishing the margin of popular ignorance.\footnote{I have profited quite a lot by reading several works by Amitai Etzioni and especially, The active society. A theory of societal and political processes, New York, 1968, 135.} This result might be achieved promoting the civics; increasing the knowledge about the running of representative bodies, the cost of rights and of services provided to the citizens,\footnote{T.J. RUDOLPH, J. EVANS, Political trust, ideology, and public support for government spending, in American Journal of Political Science, July 2005, vol. 49, n. 3, 660; S. HOLMES, C. SUNSTEIN, The costs of rights, 1999, New York, 8.} about the efficacy of the checks arranged by some organ over another one. Furthermore, it should be permitted to assert the responsibility of the representatives through repealing mechanisms such as the recall. And finally, through the most widespread diffusion of Internet, citizens should be put in the conditions to decide about the local issues – such as building a pool rather than an incinerator – directly, being protected the secrecy and the personality of their vote.