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OF SCIENCES AND LITERATURE

**The System of Direct Democracy
in Poland
based on the Swiss Political Model**

by

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I do hereby attest that I am the sole author of this project/thesis and that its contents are only the result of the readings and research I have done.

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Introduction /Synopsis

The Aim and Thesis of the Work

The aim of this work is to analyze the introduction of the instruments of the Swiss political model in Poland. Is the Swiss kind of direct democracy, which has no counterpart in any other country, an advantageous factor for the development and functioning of the decision making process in Poland? In order to fully answer this question, I have analyzed the proceedings of the Swiss and Polish political system. On the end of my researches, I have concluded that there is a possibility to introduce the most important democratic instruments – typically for the Swiss system – into the Polish decision-making process.

The study has several other, although indirect, aims. One of them is to present the structure and the way of operating of the Swiss instruments of direct democracy, as well as its significance for the country's development. Another one is to present the Polish semi-democracy, it means half-democracy, its legal foundations and forms of decision-making process, structures and (dys)functioning. A further task that this study accomplishes is to discuss the possibility of introduction the Swiss instruments of direct democracy in Poland, which, unlike Switzerland, is additionally obliged to obey the laws of the European Union.

The thesis of this work states that the introduction of direct democratic instruments in Poland: referendum, popular initiative and people's veto, is possible and it would be a progress for the polish political system and for society in Poland.

The Swiss example is the best case of functioning democracy in the world. Throughout the centuries, the Swiss political system has evolved into a

mature and efficient democracy. The process of its improvement is still going on. Today, the political system of Switzerland can be described as parliamentary-cantonal. In 1848, the country adopted the Federal Constitution and a system based on referenda, while local issues, such as taxes, judiciary, schooling, police, and welfare were left to the cantons. In 1874, the document was amended and the optional referendum was introduced. In 1891, another amendment cemented the unique system by rooting in strongly in direct democracy. The current constitution of Switzerland was adopted by the majority of voter through a referendum that took place in 1999.

The most important innovation of the 1848 constitution – which was later amended in 1874, 1891, and 1999 – was that it introduced a system equipped with some elements of direct democracy. It granted citizens a number of rights and liberties, such as the freedom of speech, religion, and the free choice of place of residence. This new political order was institutionalized even further according to the aspiration of the liberal-democratic cantons. The possibility to amend the constitution through a special referendum or popular initiative was introduced at the outset. The document should be considered as a declaration of the will of its creators. As time has shown, this democratic system, based on instruments of direct state governance and strong federal tendencies, was not just an imaginary goal – it has become a reality.

The Polish democratic system is young and has a lot of system dysfunctions. There is an intermediate parliamentary democracy in Poland that does not fulfill the basic functions of a democratic state. Electoral law is undemocratic, justice does not function at all, and the mass political parties

are dominated. The citizen is only a passive observer of political life. This is a typical example of semi-democracy.

The political change is necessary and more and more citizens see this need. In this work, I attempted to build a democratic model of the functioning of the Polish political system based on the Swiss model.

Research Methodology

A significant portion of this work is comprised of the analysis of various legal solutions that regulate the most important aspects of the political system in Switzerland and in Poland. In order to carry out the research, several methodological tools were applied:

1. System analysis in which all phenomena concerning the decision-making process are considered as a part of a system, i.e., “an internally structured combination of elements.” The aim of this method was to provide a general presentation of the rules that guide the functioning of the decision-making process in analyzed countries.
2. Comparative method which allowed to find similarities and differences between the processes, institutions and system in Poland and Switzerland. It provided the framework for comparing institutions characterized by the same (or similar) duties but functioning in different political systems.
3. Institutional and legal analysis which focused on the legal acts of the analyzed countries. It is an indispensable tool for researching particular institutions and agencies, as well as the whole political system.

4. Historical analysis which proved necessary to discuss the evolution of the solutions adopted in the analyzed countries. It allowed to show the origins of the phenomena that take place in the decision-making processes and, to some extent, their causal connections.

While working on this study, I have relied on specialist literature that was selected according to the problems discussed in each chapter. Apart from generally available sources, I have used unpublished materials, which were often unavailable up to this point, and statistical data.

Additionally to reliable research methods, such as the analysis of literature and statistical data, I have conducted and verified numerous interviews. As a result, I was able to resolve certain inaccuracies and to answer unique questions connected to the specific aspects of various historical, political and economic situations. My interlocutors were mainly representatives of the Polish and Swiss political systems. The contents of the conversations were later analyzed and compared with the provisions of regulatory acts. This allowed me to verify a number of previously hypothetically stated factors that determine the political system in both countries.

The analysis of the results of various federal referenda confirms the thesis that the Swiss direct democracy (with its instruments of popular initiative, people's veto and referendum) has a decisive influence on the decision making process. The same, however, cannot be said about the Polish political system.

Structure of the Study

The work consists of the introduction and three parts and conclusions.

The first part describes and analyzes the Swiss political system. It presents the specific circumstances and traits of the functioning of the political institutions and proceedings. A special focus is put on the federalism and instruments of direct democracy. It also contains a discussion on the functionality and dysfunctionality of this system.

The second part is devoted to the Polish half-democracy (semi-democracy). It presents the forms and proceedings in Polish decision making process. Additionally, it analyzes the dysfunctionality of this system.

Part three examines the possibility of introduction of the instruments of direct democracy into the political system in Poland. The central problem of this section of the study was to establish whether these instruments of direct democracy could be introduced in Polish decision process.

The last chapter contains a synoptic summary of the study's conclusions which confirm that the instruments of direct democracy can supplement the polish system. It also discusses the possibilities and perspectives of effective functionality in the specific environment of direct democracy in Poland.

Part I
The Swiss Model of Direct Democracy

1 The Institutional and Historical Determinants of the Swiss Political System

1.1 The Beginnings of the Swiss Statehood

The history of Switzerland is undoubtedly the key to understanding its political system and the mechanisms of its institutions. Despite the fact that its past, when compared to other countries, seems rather short and “meager”, the evolution of Switzerland’s political and social system can be described as brimming with original solutions.¹

In ancient times, the area of the modern Switzerland was populated by Rhaetian and Celtic tribes. The name *Helvetia* comes from the Helvetii, the representatives of a Celtic tribe that settled in the Aare valley. However, the beginnings of modern Swiss state date back to the August 1, 1291, when three cantons – Uri, Schwyz, and Unterwalden – formed a confederation² and made an alliance in order to jointly defend their lands against the Habsburgs. In this way, a so-called eternal union was made that would later become the foundation of the Swiss state.³

This pact, known as *Eidgenossenschaft* – i.e., “a union made under an oath”⁴ – was confirmed by a special declaration, the so-called *Federal Letter*, which

¹ Z. Czeszejko-Sochacki, *Wstęp*, in: *Konstytucja Federalna Konfederacji Szwajcarskiej z dnia 18 kwietnia 1999 r.*, translation and introduction: Z. Czeszejko-Sochacki, Warszawa 2000, p. 5.

² A confederation is a loose union of states based on an agreement made usually in order to pursue a common foreign policy. The states remain sovereign and, as a rule, there is no centralized power, author’s note.

³ Cf. M. Matyja, *Swiss Made. Jak funkcjonuje międzykulturowa Szwajcaria?*, Poligraf, Brzezia Łąka 2010.

⁴ A. Baur, *Fenomen szwajcarski*, Warszawa 1979, p. 13.

was also the first political act of the Swiss Confederacy. The citizens of the cantons, i.e., the signatories of the pact, expressed their belief regarding the alliance's permanence and declared mutual aid in defending their liberty and sovereignty. They also pledged not to recognize any settlements imposed on them by an external power and to settle any disputes by peaceful arbitration.⁵ At first, the document was classified. Its content was not revealed before the battle of Morgarten in 1315.⁶ Later, it was lost and eventually found in an archive in Stans in 1760. The document was translated and published in German.⁷ The Swiss statehood continued to evolve throughout the subsequent centuries, and its political system underwent many changes. Despite the diversity in culture, language and religion, the additional cantons and communes that joined the confederation retained their sovereignty.⁸ A turning point in the history of Switzerland occurred in the late eighteenth century when the French army, led by Napoleon Bonaparte, occupied its territory and overthrew the existing political and social order. The direct cause for the French army's invasion were the inter-cantonal riots. In July 1798, undoubtedly influenced by the French Revolution, the citizens of the canton of Waadt – threatened by the authorities of the canton of Berne – sought the help of the Napoleonic army. After a number of clashes, the French conquered Berne and the whole Switzerland. On April 12, 1789, in the city of Aarau, the constitution of the so-called Helvetic Republic was

⁵ J. Wojtowicz, *Historia Szwajcarii*, Wrocław – Warszawa – Kraków – Gdańsk 1976, p. 36-41.

⁶ During the Battle of Morgarten (November 13, 1315) the citizens of the cantons of Uri, Schwyz, and Unterwalden defended their rights to independence from the Habsburgs. It took place near Morgarten in the canton of Zug, author's note.

⁷ M. Matyja, *op. cit.*, p. 8.

⁸ Cf. R.L. Frey (Hrsg.), *Föderalismus – Zukunftstauglich?!*, NZZ Libro, Zürich 2005.

officially proclaimed. Modeled after France, it was established as a centralized, unitary state.⁹ Drawn up in Paris, the constitution was an attempt at combining the progressive and enlightened ideas born by the French Revolution¹⁰ with the concept of a state governed top-down, which – up to that point – was a notion foreign to federal Switzerland. The changes introduced by the constitution of the Helvetic Republic were essential to the cantons' status and limited their competencies. The union of sovereign countries was replaced with a unitary state without any borders between the cantons, which, following the French example, were renamed as “departments.”

1.1.1 The Political Situation Before 1848

In the summer of 1802, the French army withdrew from the Helvetic Republic by the order of Napoleon Bonaparte. The reasons were the Swiss' growing protests and the cold calculation of Napoleon himself, who expected the French to soon come back to the Republic as the saviors of a divided country. After the French left, the Swiss could independently attempt at reforming their state. However, even adopting the so-called Second Constitution of the Helvetic Republic did not put an end to the internal unrest and riots.¹¹ The whole of Switzerland was ridden with rebellions and

⁹ A unitary state is characterized by internal political and administrative unity. All of its administrative units are organized identically and subordinated to its central authorities (author's note).

¹⁰ *Najstarsze konstytucje z końca XVIII i I połowy XIX wieku*, translation and introduction: P. Sarnecki, Warszawa 1997, p. 90-92.

¹¹ Cf. *Helvetische Staatsverfassung*, http://www.servat.unibe.ch/verfg/ch/1798_Helvetische_Staatsverfassung.pdf, accessed August 9, 2019.

conflicts. The advocates of the canton's sovereignty and the federal structure of the state rose to prominence. Due to this, on February 19, 1803, Napoleon imposed upon Switzerland a new constitution – the so-called Act of Mediation –, which revived the principle of federalism. The Act came fully into effect on March 10, 1803, ending the Helvetic Republic and, as a result, recreating the former administrative structure of the state.¹²

The political system imposed by France did not survive long. Centralizing a confederation of free states proved to be impossible. On the other hand, the Act of Mediation turned out more durable with its effects still visible even in 1848, when the new constitution was being prepared.¹³

The Act limited the competencies of the federal authorities to the following domains: foreign policy, military, ratifying tariffs, and mediation in inter-cantonal conflicts. At the beginning of the nineteenth century, these competencies belonged to the assembly of the cantons' representatives, and in the period between its sessions they belonged to the *Landmann* (the president), who also represented Switzerland abroad. At that time, however, the confederations' foreign policy was still strictly dependent on France.¹⁴

It should be emphasized that the time during which the Act of Mediation had been in effect, the confederation experienced a political stabilization.¹⁵ Due to being strongly dependent on France, however, Switzerland was highly

¹² M Aleksandrowicz, *System prawny Szwajcarii: historia i współczesność*, Białystok 2009, p. 38.

¹³ The new document included provisions that regulated issues such as the separation of church and state, standardization of weights and measures, currency, legislation, and military, author's note.

¹⁴ Cf. *Grenzen des Zumutbaren. Erfahrungen mit der französischen Okkupation und der Helvetischen Republik (1798-1803)*, Hrsg. A. Würzler, Schwabe Verl., Basel 2011.

¹⁵ Cf. Historisches Lexikon der Schweiz, <http://www.hls-dhs-dss.ch/textes/d/D9808.php>, accessed August 9, 2019.

sensitive to political events in other countries. The fall of Napoleon in 1814 also marked the end of the political system based on the Act of Mediation. The first half of the nineteenth century, until 1848, was a very difficult era for Switzerland. Great changes that occurred in the areas of politics, society, economy, and technology transformed the country's and its people's life. The decision regarding the further status of the confederation was made at the Congress of Vienna, during which, on March 20, 1815, the then Swiss state was granted neutrality and inviolability of its territory. The European powers agreed that a neutral Switzerland would be a perfect buffer zone between France and Austria, thus, contributing to the political stability in Europe. In the meantime, Switzerland regained its confederation's territories and, on August 7, 1815, the 22 federated states signed an agreement – an inter-cantonal pact – that made Switzerland a federation, as opposed to its previous status as confederation.¹⁶ Despite this, the union has retained its traditional name, the Swiss Confederation (German *Scweizerische Eidgenossenschaft*), which refers to the alliance made between the three cantons on the Rütli mountain in 1291.¹⁷

Around 1830, political thinking changed to be more favorable to the idea of returning to a centralized state. There were also attempts at discrediting the inter-cantonal pact and the assembly of the cantons' representatives.

In the years 1830-31, democratic revolutions occurred in twelve cantons, leading to a replacement of the former authorities with modern democratic

¹⁶ Federation, as opposed to confederation, is a state that comprises autonomous parts under a common (federal) government. The parts that constitute a federation have an internal autonomy and can make their own laws in certain domains. The common factors are, however, the currency, foreign policy, and defense, author's note.

¹⁷ J. Wojtowicz, *op. cit.*, p. 179.

institutions. However, citizens still lacked a direct influence on legislation and decision-making. Between 1831 and 1835, there began attempts at modernizing the federal pact of 1815. In the early 1830s, many projects that aimed at revising the pact were made but did not yield any positive results. Both the opposition during the 1830-31 constitutional debates and the social movements of 1839-41 demanded the right to veto political decisions. Today, this right can be considered as the precursor of modern referenda.¹⁸ The first veto was introduced in the canton of St. Gallen in 1831. As a democratic instrument, veto was not practical since it did not pose a threat to the liberal parliamentary democracy. The democratic opposition was still too weak to be able to efficiently utilize the right to veto. Finally, in 1848, the assembly of the cantons' representatives declared its own dissolution, which began the modernization of the federal state and changed the 1815 pact into a constitution. The changes, later named as the Bern Project, were accepted by fourteen cantons and one half-canton. A city in which a given session of the parliament was taking place was temporarily considered the capital of the country.¹⁹

1.1.2 The Constitution of the Swiss Confederation of 1848

In 1847, a civil war broke out between the Roman Catholic and the Protestant cantons. Catholics tried to prevent the strengthening of the central power, which was the goal of the then ruling representatives of the Radical Party. The hostilities lasted for a month and resulted in about 100 deaths. It was the

¹⁸ R. Büchi, N. Braun, B. Kaufmann, *Przewodnik po demokracji bezpośredniej*, Initiative & Referendum Institute Europe, Łódź 2013, p. 46.

¹⁹ M. Matyja, *Dysfunkcjonalność szwajcarskiej demokracji bezpośredniej*, Adam Marszałek, Toruń 2016, p. 50ff.

last significant armed conflict in Swiss territory. Since then, the country has never experienced the horror of war. As a result, in 1848, the federal constitution was drawn up, and its announcement marked a turning point in the shaping of the Swiss political system. The constitution introduced a system of state governance based on the instrument of direct democracy, while leaving the cantons and the communes the right to self-govern on local issues.²⁰ In the new constitution, the state declared itself as religiously neutral and adopted the principle of territoriality according to which multilingual Switzerland legally acknowledged every language used within its borders. All linguistic communities acquired the right to be – proportionally to their size – represented in the state’s political institutions.²¹

The new constitution comprised of a preamble and three chapters that contained 114 articles, as well as interim provisions.²² The confederation of cantons was officially replaced with a federation whose members – the cantons – had to voluntarily give up a certain part of their sovereign rights in order to submit to the new power. The new federation retained the traditional name of Confederation and obliged itself to maintain the unity of the Swiss nation while ensuring internal order and peace. In this way – after gaining competence in foreign policy making, declaring war and peace, organizing the military, introducing tariffs, establishing postal and monetary systems –

²⁰ V. A. Manatschal, *Kantonale Integrationspolitik im Vergleich. Eine Untersuchung der Determinanten und Auswirkungen subnationaler Politikvielfalt*, Nomos, Baden-Baden 2013.

²¹ M. Marczerwska-Rytko, *Szwajcarski model demokracji bezpośredniej*, in: *Stan i perspektywy demokracji bezpośredniej we współczesnym świecie*, M. Marczerwska-Rytko (ed.), Lublin 2011, p. 325.

²² A. Pogorzelska-Kliks, *Ewolucja tożsamości narodowej mieszkańców szwajcarskiego kantonu Valais*, doctoral dissertation, Uniwersytet Śląski Wydział Nauk Społecznych, Katowice 2007, p. 49.

the federation claimed the right to intervene in the case of internal conflicts between cantons or a potential civil war.²³

Apart from guaranteeing itself international independence and internal peace, the federation set itself two main goals: the protection of the cantons' rights and liberties, and the pursuit of citizens' general prosperity. Among the cantons' competencies, the schooling system, judiciary, legislation and police remained. The union guaranteed all of its citizens freedom of religion, speech, and association, as well as the right to assembly. The essential fact is that, from the very beginning, the federation ambitiously intended to create a Swiss nation. In order to do that, the freedom to settle was introduced, which meant that every citizen of the new Swiss state had the right to choose a place to live on the federation's territory without the risk of losing any of their basic rights.

However, the most significant innovation introduced by the Constitution of 1848 was undoubtedly the establishment of the legislative and the executive arms of the central authority: the parliament, the government, and the federal tribunal. The parliament – the Federal Assembly – elected in general elections, was made up of two houses: the National Council, which represented the nation, and the Council of States (two deputies from each canton). An important novelty was the executive power, the Federal Council, that consisted of seven members representing different cantons, political parties, as well as linguistic and religious groups. The first Federal Council was elected on December 16, 1848, and it adopted a system of collective decision-making (the act of May 16, 1849).²⁴ On November 6, 1848, the first

²³ *Ibidem*, p. 50ff.

²⁴ *Cf.*, Bundesblatt no. 34 of July 26, 1873, http://www.admin.ch/opc/de/federal-gazette/1873/index_34.html, accessed August 10, 2019.

assembly of the two houses of the Federal Parliament took place in Bern, which was chosen to house the authorities of the newly established state.²⁵ Apart from establishing the new state order, the federal constitution of 1848 included the possibility of amending it. The amendments could not only be made through the obligatory constitutional referendum, but also through popular initiative, i.e., by the will of ordinary citizens. This set up the framework for the contemporary liberal government and its policy of modernization. The constitution of 1848 should be considered as a declaration of will: at that time, democracy and the Swiss nation, as well as the nation state and the federal system, were still being defined as the young state's goal – they were not yet a reality.

1.1.3 The Modifications of the Constitution of 1874 and 1891

The process of centralizing and limiting the cantonal power in favor of the federal authority in Switzerland was not unproblematic. The cantonal constitutions could not include any regulations that would contradict the new federal order and had to provide the possibility to be amended at the majority of citizens' will. Those constitutions, as well as the Federal Constitution, were repeatedly amended between 1848 and 1874. The most important amendment was introduced in 1874, although – despite many changes – it was still a continuation of the political system established in 1848. The changes introduced in the new constitution focused mainly on transferring some of the commercial competencies from the cantonal level to the federal one and on allowing the unification of civil law, especially its commercial

²⁵ V. M. Matyja, *Specyfika i efektywność szwajcarskiego systemu demokracji bezpośredniej*, Adam Marszałek, Toruń 2019.

branch.²⁶ The fundamental principles of the Swiss political system, i.e., the provisions determining the rights of the communes and cantons and the functioning and scope of the federation's competencies, remained unchanged.²⁷

The 1874 revision of the Constitution was not thorough and it retained basic federal institutions, such as a bicameral parliament, the Federal Council, as well as regulations concerning citizens' rights and liberties. The modified constitution increased the competencies of the central power, specifically in military issues. The Federal Government took upon itself the responsibility for the total of military affairs and commercial law. The federation gained a significant influence over religious matters. Also, the competencies of the Federal Supreme Court were expanded regarding the conflicts between the cantons and the central government.²⁸

The most important amendment to the 1874 constitution was the introduction of the optional referendum, which affected the development of Switzerland's constitutional system and the form of its political system as a whole. The amended constitution granted the central government essential competencies, but its decisions had to be implemented in stages since the authorities had to take into consideration the attitudes and the mood of the citizens taking part in a referendum. The amendments that extended the competencies of the Federal Council included the introduction of a common currency and changes resulting from the population growth and the industrial revolution

²⁶ Z. Czeszejko-Sochacki, *System konstytucyjny Szwajcarii*, Wydawnictwo Sejmowe, Warszawa 2002, p. 14ff.

²⁷ M. Rybicki, *Konstytucja Związkowa Konfederacji Szwajcarskiej*, in: *Konstytucje Wielkiej Brytanii, Stanów Zjednoczonych, Belgii i Szwajcarii*, Wrocław 1970, p. 200-201.

²⁸ *Die Bundesverfassung von 1874*, Historisches Lexikon der Schweiz, <http://www.hls-dhs-dss.ch/textes/d/D9811.php>, accessed August 10, 2019.

(among them the people's right to legislative initiative and to a partial change of the constitution).

Another modification was made in 1981. It extended the scope of the popular initiative, which, from that time, was not only to be used to adopt a new constitution, but also to introduce individual constitutional amendments.²⁹

1.1.4 The Constitution of 1999

The current Federal Constitution of the Swiss Confederation was enacted in 1999. When it comes to the position of the parliament, there were no radical changes; “in this regard Switzerland remained faithful to its political tradition and retained the foundations of the system established by the constitution of 1848.”³⁰

On December 18, 1998, the Federal Assembly proposed a draft of the new federal constitution. It was accepted by the nation and the cantons in the obligatory referendum on April 18, 1999, and it came into effect on January 1, 2000. In this way, after 125 years, the Constitution of 1874 was replaced. It should be emphasized that the basic values of the Swiss democracy, such as federalism, direct democracy, welfare state and liberal rule of law were retained and only adjusted to adhere to modern times. The fundamental principles of the 1999 constitution are: human dignity as the state's highest value, welfare state, free competition and subsidiarity.³¹ The constitution consist of a preamble and six clearly formulated titles:

²⁹ Vide M. Matyja, *Utopia or chance? Direct democracy in Switzerland, Poland, and other countries*, BoD, Norderstedt 2019.

³⁰ P. Sarnecki, *Zgromadzenie Federalne. Parlament Konfederacji Szwajcarskiej*, Warszawa 2003, p. 7.

³¹ *Eine Schweiz – viele Religionen. Risiken und Chancen des Zusammenlebens*, ed. M. Baumann, J. Stolz, Transkript, Bielefeld 2007.

- Title I: General Provisions
- Title II: Fundamental Rights, Citizenship and Social Goals
- Title III: Confederation, Cantons and Communes
- Title IV: The People and the Cantons
- Title V: Federal Authorities
- Title VI: Revision of the Federal Constitution and Transitional Provisions

The new constitution retained the “three-level” political system made up of the communes, the cantons, and the federation. Although the fundamental territorial and political units are the cantons, a lot of weight is attached to the political and administrative role of the communes.³²

The fundamental value of the Swiss constitution lies in the fact that it does not question the legal identity of the cantons. As Bohdan Górski rightly states: “The constitution does not turn against patriotism or attachment to the regional culture and identity. On the contrary, it integrates patriotism into the federal system, where it is a great force in service of a given canton and the Confederation.”³³

As I have already mentioned, Switzerland is a very diverse country in every respect. This diversity is the source of the specific role of the constitution,

³² The communal tasks include: appointment of the authorities, management of assets through agreements, public finance, imposition and collection of taxes, granting citizenship, primary and secondary public education, maintenance and establishment of educational facilities, appointment of education authorities and teachers, public healthcare and social welfare, provision of commonly accessible non-specialist healthcare, provision of essential means of subsistence to the needy, maintenance of public peace and order, local planning, formulation of area development plans and issuing location decisions, organization of public works, establishment, development, and maintenance of industrial services, as well as technical, cultural and recreational infrastructure, author’s note.

³³ B. Górski, *Jak przeżyć kapitalizm*, Retro-Art., Warszawa 2013, p. 78-79.

which – unlike in other countries – is not only a normative act, but also the actual foundation of the integrational process and identity of the Helvetic state. It cannot be forgotten that the Swiss nationality is based on the will of its citizens, which is one of the reasons why the principles expressed in the Constitution are so significant.

1.2 The Main Political Institutions in Switzerland

1.2.1 The Parliament

As it has already been mentioned, the state's legislative power lies in the hands of the bicameral parliament called the Federal Assembly, elected for a term of four years. The parliament comprises of the National Council (the small chamber) and the Council of States (the larger chamber). Similarly to other countries, it functions as the legislature by passing bills and amendments to the constitution.

The National Council is composed of 200 representatives elected in general elections based on a system of proportional representation. The cantons are the constituencies from which representatives are elected to the National Council. The number of deputies per canton is – in accordance to the principle of electoral equality – proportional to its population.

The Council of States comprises 46 members elected by cantonal legislative assemblies for a term of one to four years. Each canton elects two representatives to the larger chamber, while a half-canton elects one representative. The elections are based on the majority rule and a two-round system (an absolute majority is required in the first round and a simple majority in the second round).

Both chambers have equal rights, and both may initiate legislative procedures or supervisory actions. On the other hand, every legal act has to be approved by the two chambers. Thus, a bill does not become a law if it is not passed both by the smaller and the larger chamber. A bill is always a result of compromise between the chambers. Each chamber is chaired by the president, elected for a term of one year without the possibility to be re-elected. The president, aided by two vice-presidents, chairs the sessions of a

given chamber. When a tied vote occurs in any chamber, the president's vote is decisive.

The parliament elects the Federal Council (the government), the Federal Supreme Court (for a term of five years), the Federal President from among the members of the Federal Council (despite it being a rotary function, it has to be approved by the parliament) and a general Commander of the army in case of a direct national threat. Among the supervisory functions of the Federal Assembly is the overview of the government's and the Federal Supreme Court's activity, as well as the adoption of the government's budget. The parliament also supervises the cantons, takes measures to safeguard external and internal security, and ratifies international treaties and agreements.³⁴

Interestingly, the Swiss political system provides an advantage to the parliament, mainly through the rejection of the idea of a necessary organizational separation of powers.³⁵ This stems from the multifaceted role of the parliament, which not only carries out the legislative, supervisory, and judicial tasks, but also manages and governs the state. Unlike other parliamentary systems, Switzerland lacks such parliamentary limitations as shortening the terms, summoning and closing the sessions by the executive, constitutional courts or judicial control of elections.³⁶

³⁴ R.L. Frey, *Föderalismus – Zukunftstauglich?!*, NZZ Libro, Zürich, 2005.

³⁵ R. Roca, *Wenn die Volkssouveränität wirklich eine Wahrheit werden soll... Die schweizerische direkte Demokratie in Theorie und Praxis – Das Beispiel des Kantons Luzern*, Schulthess Juristische Medien AG, Zürich/Basel/Genf 2012, p. 7ff.

³⁶ Cf. M. Podolak, *System polityczny Szwajcarii*, in: *Współczesne systemy polityczne*, M. Żmigrodzki, B. Dziemidok-Olszewska (ed.), PWN, Warszawa 2013, p. 173.

1.2.2 The Federal Council and the Federal President

In Switzerland, the Federal Council functions as the government. The Article 174 of the Federal Constitution of 1999 describes it as “the supreme governing and executive authority of the Confederation.” In practice, the Federal Council, consisting of 7 members, is more of a coordinator than a government when compared to those in other democratic countries. The Council is elected by the Federal Assembly for a term of four years. The process of determining its composition follows the so-called magic formula. The Federal Council is a collective agency, which means that any binding decision has to be made at a session with all members present. Voting always is preceded by a discussion. Such a method stems from the principle of equality of the ministerial offices – the ministers take decisions jointly. The collective nature of the Council means that its members are not personally responsible for the decisions. Some people maliciously say that actors earn more than the Swiss ministers because the latter do not play any role.

Due to the multitude of its duties, the parliament forms federal departments (their counterparts in other countries are called “ministries”), which are headed by the members of the Federal Council.³⁷ The departments’ activity is supervised and criticized by the parliament, or, to be more precise, by its supervisory committees. It is an essential factor that the heads of the departments cannot be dismissed by parliament. Parliament has the right to set tasks for the Federal Council through resolutions and postulates. A

³⁷ There are the following departments in Switzerland: Federal Department of Foreign Affairs, Federal Department of Home Affairs, Federal Department of Justice and Police, Federal Department of Finance, Federal Department of Economic Affairs, Education and Research, Federal Department of Environment, Transport, Energy and Communications, Federal Department of Defense, Civil Protection and Sports, author’s note.

resolution may be issued by any chamber, although the other has to approve it anyway. Such a document obliges the Federal Council to submit a draft of a federal bill or to issue a binding recommendation. It is necessary for the government to examine a particular case and to submit a report containing a plan of further actions.

The functioning of the government is based on the principle of joint authority and cooperation in decision-making. The constitution does not provide the office of the prime minister. The government's tasks consist of the overview of foreign policy, including the question of neutrality, internal affairs, and security, which includes the command of the federal army. The administrative matters comprise the overview of the activity of all federal public officials. This involves such tasks as the execution of the constitutional provisions, as well as the application of acts and resolutions of the parliament. The Council also has legislative (e.g., issuing executive orders, provided that the agency is authorized to do that by the constitution or an appropriate law) and supervisory competencies in relation to the cantonal authorities.

The Federal Council does not function as a typical government since it is not politically liable to the parliament, which strengthens its position even further. When it comes to its supervisory role, the Swiss parliament is limited to merely a control and criticism of the government and its activities. The Swiss political system lacks the instrument of the vote of censure on the government. The non-existence of the political responsibility on the part of the Federal Council is justified on the basis of the principle of cooperation and consensus between the political parties represented in the government.³⁸

³⁸ Cf. J.M. Gabriel, *das politische System der Schweiz*, Haupt, Bern 1997.

The members of the Federal Council decide between themselves about their dismissal or retirement, which, naturally, has its disadvantages. Usually, they resign from their ministerial office when they sense that they have lost their political party's support.

Every year, the Federal Assembly of the Swiss Confederation elects the president from among the members of the Federal Council, and the person elected retains the membership in the Council. The institution of the federal president lacks political significance. A minister who serves as the president still heads their department. Although the federal president heads the Federal Council, he is not the head of state and does not function as the prime minister. A federal vice-president is elected from among the members of the Council and has virtually no competencies apart from substituting for the president in case of indisposition.

The competencies of the federal president include conducting the works of the Council and preliminary examination of issues presented by particular departments. The most important function is to represent the Swiss state abroad. Due to the fact that the federal president is elected every year and plays no significant role in the state's decision-making, citizens often do not know who the current president is.

Some authors and political scientists erroneously compare the position of the federal president in Switzerland to the position of presidents in other countries; this is because they ignore the term "federal," which explicitly point to the president's role as the head of the Federal Council and not the head of state.

1.2.3 The Federal Supreme Court

Located in Lausanne, the Supreme Federal Court is the chief judicial authority in Switzerland.³⁹ It was established for the first time as an autonomous agency by the constitution of 1874. As the highest echelon in the federation, it decides on matters of criminal, civil, administrative and constitutional law; it also ensures uniform applications of law in individual cantons. The autonomy of the Federal Supreme Court is expressed in its function as an administrative agency that oversees the federal courts: the Federal Criminal Court, the Federal Administrative Court, and the Federal Patent Court.⁴⁰

The characteristic trait of the Supreme Federal Court is that it examines citizens' complaints concerning the violation of their constitutional rights by laws issued by cantonal authorities. The procedure is quite commonly used by the Swiss citizens. In this way, they directly control and modify the laws of the federation.

³⁹ *Cf.* Article 188, Section 1 of the Federal Constitution.

⁴⁰ *Ibidem.*

2 The Federal System and Direct Democracy

2.1 The Constitution as a Guarantor of the Federal System

The beginning of Switzerland date back to 1291. The centuries long evolution of its statehood was facilitating by the systematic addition of new cantons joining the confederation.⁴¹ The basis for the 1291 pact were economic and security considerations. While the economic factor included mainly tariffs, the military alliance's goal was to protect the country from invasions. In the fifteenth century, the Habsburgs attempted to incorporate Switzerland do their empire, however, after the lost Battle of Dornach in 1499, the Holy Roman Emperor Maximillian I declared it impossible to subdue the cantons, which, at that time, were supported by France. As a result of the peace treaty signed in Basel, Switzerland was granted an immunity. This facilitated the development of the confederation and induced additional cantons to separate themselves from Italy and France and join Switzerland. After the Thirty Years War, following the Peace of Westphalia of 1648, Switzerland gained yet another guarantee of its independence and sovereignty. In 1788, Napoleon took control of the majority of the cantons and renamed them as the Helvetic Republic. For a number of years Switzerland was allied with France, but, after the Battle of Leipzig of 1813, it declared itself neutral, which was further confirmed during the Congress of Vienna in 1815. In 1847, a civil war broke out between the catholic and protestant cantons, which resulted in the Federal Constitution of 1848. Thus, Switzerland became a country based on direct democracy with a vast number of competencies relegated to the cantons and local authorities.

⁴¹ Cf. R.L. Frey (Hrsg.), *Föderalismus – Zukunftstauglich?!*, NZZ Libro, Zürich 2005.

Switzerland, officially known as the Swiss Confederation (*Confoederatio Helvetica* – CH), is a federal state with three administrative levels: the federation, the cantons, and the communes. The cantons have a significant autonomy; each of them has its own constitution, laws, parliament, and judiciary. Although they are sovereign and function as states, they cannot leave the confederation.

Despite the fact that the Swiss federation uses the term “confederation” as its official name, its political system is direct democracy in which the supreme power is exercised by the people.⁴² The universal suffrage, both active and passive, was introduced in 1848 for men and in 1971 for women (though only on the cantonal level). The current constitution of the Confederation was enacted on January 1, 2000.⁴³ The previous one was introduced on May 29, 1874, and was a result of a thorough revision of the constitution of September 12, 1848. The essential part of the current constitution is Article 3, which defines the state’s federal character: The Cantons are sovereign except to the extent that their sovereignty is limited by the Federal Constitution. The exercise all rights that are not vested in the Confederation.⁴⁴

⁴² Cf. M. Matyja, *System polityczny Szwajcarii. Federalizm i demokracja bezpośrednia*, „Kultura i Historia”, 2009, vol. 16, <http://www.kulturaihistoria.umcs.lublin.pl/archives/1484>, accessed February 28, 2019.

⁴³ The Swiss constitution (Ger. *Bundesverfassung der Schweizerischen Eidgenossenschaft*, Fr. *Constitution fédérale de la Confédération Suisse*, It. *Costituzione federale della Confederazione Svizzera*, Rhet. *Constituziun federala da la Confederaziun svizra*) was enacted on December 12, 1998, amended on April 18, 1999, and adopted on January 1, 2000. However, it is generally accepted to assume the year 1999 as the date of its adoption, author’s note.

⁴⁴ Article 3 of the Constitution of the Federal Confederation of Switzerland of April 18, 1999, <http://www.admin.ch/opc/de/classified-compilation/19995395/index.html#a8>, accessed April 23, 2019.

The article provides the foundation of Switzerland's political system and emphasizes the important role of the principle of subsidiarity.

The constitution, comprised of a preamble and six titles, says that all agencies of the state act within the limits of the law and in good faith, whereas their competencies are split between the federal and cantonal authorities. The federal authorities carry out only those tasks that are directly mentioned in the constitution, and any jurisdiction disputes are solved through negotiations and mediation. Although the federal and cantonal levels transcend each other, each canton has its own agencies, constitution, and laws. It is quite often that the realization of the duties defined by the federal law is relegated to the cantons.

The procedure of amending the constitution has two stages:

1. the initiative of 100,000 citizens eligible to vote,
2. the referendum.

If the citizens manage to get their initiative approved in the referendum by the majority of the voters, it still has to be approved by one of the parliamentary chambers, namely the National Council or the Council of the States. In case the initiative is approved by the former, it means the beginning of the parliamentary procedure; otherwise, a new referendum is required. If the people vote for the amendments to the constitution, it results in the shortening of the parliament's term of office and electing new representatives to both chambers.⁴⁵

It should also be added that the referendum on amending the constitution has a two-fold nature when it comes to counting the votes. The total of the votes

⁴⁵ Cf. M. Matyja, *Granice demokracji bezpośredniej. Wpływ szwajcarskiego systemu demokracji bezpośredniej na proces integracyjny muzułmańskiej mniejszości religijnej*, Poligraf, Brzezia Łąka 2014.

is counted separately from the votes cast in the cantons. In order for a proposed amendment to be adopted, it must be approved by the majority of the general votes and by the majority of the cantons. The referendum regarding an amendment to the constitution is characterized by its “singularity,” meaning that society’s voice in this matter is final.

The essential value of the Swiss constitution is that it does not question the legal identity of the cantons. As Bohdan Górski rightly observes, “the constitution does not turn against patriotism or attachment to the regional culture and identity. On the contrary, it integrates patriotism into the federal system, where it is a great force in service of a given canton and the Confederation.”⁴⁶

2.2 The Swiss Federalism

As it has already been mentioned, Switzerland’s political system has three essential levels: the federation, cantons, and communes. It functions on the basis of a decentralized federalism that follows the principle of subsidiarity. This means that all decisions are made in a grassroots manner, with the direct participation of citizens.⁴⁷ The decisions that cannot be made on the communal level are made by the cantonal authorities. It has become a rule in many areas that the federal government makes law, but it leaves its implementation to the cantons, and they carry out this procedure according to their own regulations. Switzerland’s strong federalist tradition expresses

⁴⁶ B. Górski, *Jak przeżyć kapitalizm*, Retro-Art, Warszawa, 2013, p. 78-79.

⁴⁷ Cf. H. Blöchliger, *Kantone – Baustelle Föderalismus. Metropolitanregionen versus Kantone. Untersuchungen und Vorschläge für eine Revitalisierung der Schweiz*, NZZ Libro, Zürich 2005.

itself in the fact that each canton's authorities focus only on their own problems without criticizing other cantons.⁴⁸

The cantons cannot be compared to provinces or administrative districts in other democratic countries, such as the Polish voivodeships.⁴⁹ This is because they are, in essence, independent, territorial units that resemble – and consider themselves as – separate states (German *Staat*, French *l'Etat*). They have all rights characteristic of a state, apart from those that they voluntarily waived to the federation.⁵⁰ It should be emphasized, though, that – as many representatives of the cantons have noticed – from 1848 the number of rights of the federation has been growing, while the number of the rights of the cantons has been diminishing. According to the general political tradition of Switzerland, the higher instances of the government should relegate as much political tasks as possible to the lower instances,⁵¹ and the cantons should retain their constitutions, parliaments, governments, as well as financial and tax sovereignty intact. Moreover, the cantons, apart from making and implementing their own laws, are obliged to implement the federal laws.

The basis of the Swiss political culture is the principle of proportionality and consensus that apply to the representation through political parties and to officially used languages. This allows to create a legal environment free of

⁴⁸ W. Linder, *Schweizerische Demokratie. Institutionen – Prozesse – Perspektiven, Haupt*, Bern-Stuttgart-Wien 2005.

⁴⁹ Cf. M. Matyja, *Szwajcarski system federalny*, “Stosunki Międzynarodowe”, <http://www.stosunki.pl/?q=content/szwajcarski-system-federalny>, accessed October 28, 2019.

⁵⁰ Cf. H. Schulze, *Państwo i naród w dziejach Europy*, translation D. Lachowska, Wyd. Uniwersytetu Warszawskiego, Warszawa 2012.

⁵¹ M. Matyja, *Besonderheiten des politischen Systems der Schweiz. Föderalismus und direkte Demokratie*, “Europa Regionum” 2009, no. 12, p. 15.

conflicting regulations on all three administrative levels, as well as in regard to local minorities.⁵²

The Swiss mentality is characterized by a strong sense of local and political affiliation. Citizens identify themselves first and foremost with their commune and canton.

The system is undoubtedly organizationally complex and costly, but, in practice, it generates an authentic participation of citizens in the political life of the country, giving them satisfaction of making decisions on the matters that directly affect them.⁵³

The Swiss Federation consists of 26 cantons with a very diverse social, linguistic, religious, and cultural profiles. Among other tasks, a cantonal government supervises the communes, approves a budget, implements federal laws, appoints crucial cantonal officials, and controls important financial operations. The legislative authority is a cantonal council, i.e., a cantonal parliament comprising of 100 deputies, elected for a term of four years by the canton's citizens in general elections.

A cantonal government usually consists of 5-9 members who head a number of departments. It is obliged to enforce the decisions of the cantonal council, supervise the administration of the canton, provide advice to the communes, organize elections and referenda, and appoint lower cantonal officials.

An analysis of the Swiss political system cannot omit the particular role that the communes play as the foundation of the country. Historically, the communes were the first Swiss political units, and only as the result of

⁵² M. Matyja, *Oddolna samorządność i partycypacja obywateli – specyfika systemu federalnego Szwajcarii*, „Obywatel” 2009, no. 2, p. 46-47.

⁵³ G. Kirchgässner et al., *Die direkte Demokratie. Modern, erfolgreich, entwicklungs und exportfähig*, Helbing & Lichtenhahn, Vahlen, Basel-Genf-München 1999.

acquiring new lands or conquest, the cantons were established. All rural and urban communes have retained their rights up to this day, and their sovereignty is guaranteed by the constitution. There are many structural similarities between the communes in all cantons. A communal assembly comprises of all citizens eligible to vote. Depending on the laws of the canton it belongs to, it either has the direct legislative power or it appoints a body of representatives with such power. An assembly approves the communal budget and supervises its execution, it also enacts taxes, appoints the communal authorities and supervises their activity, and accepts reports on the communal agencies' activity.⁵⁴

A communal assembly's sessions are called by its executive agency. The sessions divide into normal and special ones. A normal session takes place on dates pre-established by communal regulations or its executive agency. A special sessions is called whenever it is necessary by the commune's executive agency or by a motion put forward by the majority of citizens eligible to vote. The sessions are headed by the president of the commune. A general assembly, as a direct legislative agency, exists only in several, minor communes. The typical model is the so-called special model of communal organization, existing in the majority of the communes. It replaces the assembly with a communal parliament, elect by the communal assembly for a term of 2-4 years. The number of its members is set by the assembly, and it is chaired by the communal president. The mode of its sessions is similar to the one of the communal assemblies'. Thus, the majority of assemblies' competencies were transferred the communal parliaments. However, the

⁵⁴ W. Linder, *op. cit.*

fundamental matters such as budget, taxes, and appointment of the communal officials, are still decided on by the assemblies.

The executive agency of the commune is the communal council, and its 3-9 members are elected by the assembly. The council is headed by the communal president, who also is the head of the assembly. From a formal point of view, the president has the same competencies as other members of the council. The term of office of the council is concurrent with the term of office of the executive agencies of the canton. The internal structure of the council is similar to the one of the cantonal government. Its members, apart from the president, also head specific departments.

2.3 The Party System and the “Magic Formula”

One of the fundamental characteristics of the Swiss political system is the cooperation of the political parties which boils down to gaining seats and appointing a common cabinet. This is based on a kind of friendly agreement, which means that, although all parties represented in the parliament rule jointly, the cabinets are not coalitional. There is no parliamentary opposition in Switzerland. The process of creating a cabinet follows a so-called magic formula (Ger. *Zauberformel*): 2/2/2/1 (three parties with the largest number of seats gained provide two members each and the fourth party provides one member).⁵⁵

⁵⁵ Cf. L. Neidgart, *Die politische Schweiz. Fundamente und Institutionen*, NZZ Libro, Zürich 2002.

The magic formula results in the fact that, despite different election results, there are essentially four main parties that have been wielding power since 1959 and that represent 70 percent of society:

- Sozialdemokratische Partei der Schweiz SP (Social Democratic Party of Switzerland),
- Freisinning-Demokratische Partei FDP (Liberal Democratic Party of Switzerland),
- Christlichdemokratische Volkspartei CVP (Christian Democratic People's Party),
- Schweizerische Volkspartei SVP (Swiss People's Party).

Every canton has a different set of parties, and, moreover, every party has members with different political views. This stems from the fact that the electoral system does not favor a strong party discipline. Since in Swiss elections people vote directly for individuals, the issue of which political party gains the most votes and the people's trust is of secondary importance. Therefore, candidates are aware that, if they are elected, it is because of their personal traits. Parties often reach agreements to propose a number of candidates that matches the number of seats. In such a situation, cantonal governments consider the candidates as elected and do not organize elections. If we take a look at other countries, minor members of parliamentary coalitions usually do not play a significant role in the political process. In Switzerland, it is the people themselves who constitute the political opposition to the government – by expressing their will through the instrument of direct democracy called referendum.

2.4 The Instruments of Direct Democracy

Due to the constitutional legislation and specific instruments of referendum and popular initiative, the Swiss have become the true sovereign whose voice matters in every important issue: from the communal level to the federal, like amending the constitution *etc.* This collective system of governance and considerable influence of interest groups and citizens has no counterpart in other countries.⁵⁶

The idea of citizens' participation in political decision-making through direct democracy is the essential part of Switzerland's past. The democratic instruments in this country are:

- people's assembly,
- popular initiative,
- referendum,
- people's veto.

It is worthy of notice that between 1848 and 2010 the instruments were used 570 times.⁵⁷

Even though other countries have systems resembling direct democracy, they cannot be compared due to the Swiss system due to its specific nature and complex grass-roots decision-making.⁵⁸

This leads us the difficult task of defining an efficient democratic system based on the instruments grounded in the principle of subsidiarity.⁵⁹ In

⁵⁶ S. Möckli, *Das politische System der Schweiz verstehen*, Tobler, Altstätten 2007.

⁵⁷ Data according to the Swiss Federal Statistical Office in Neuchâtel, http://www.bfs.admin.ch/bfs/portal/de/index/themen/17/03/blank/key/eidg__volksinitiativen.html, accessed June 10, 2019.

⁵⁸ Cf. A. Kost, *Direkte Demokratie*, Verlag für Sozialwissenschaft, Wiesbaden 2008.

⁵⁹ T. Meyer, *Was ist Demokratie*, Verlag für Sozialwissenschaft, Wiesbaden 2009.

Switzerland, almost every federal act may be submitted to a referendum, which enables citizens to verify the parliaments decision on the national level and to oblige the legislators to modify a given act. These instruments enable citizens to supervise their representatives and the political elites. The issues submitted to referenda vary from minor ones to really important. This is because the Swiss have a vast freedom to make any political issue the subject of popular initiative. As a result, the rulers are not afraid to take on difficult problems, even if it means that they will not get re-elected. In such system, they simply lack incentives to act in a conformist manner.

2.4.1 Popular's Initiative

The instrument of popular initiative plays a key role in the Swiss model. In general, it allows 100,000 citizens eligible to vote to demand amending the constitution, to propose a new bill, or to repeal an act.

An initiative may concern both particular and general issues. If there is a proposal, it is first discussed in the Federal Council and the Federal Assembly. The two bodies issue a formal statement regarding the proposed changes by making different proposals or expanding the initial one. Next, all initiatives and their counterproposals are submitted to the vote of the people and the cantons in a referendum. If the majority of them votes “yes”, then the proposal is accepted.

The Swiss political systems distinguishes two types of an initiative: one to adopt a new constitution and one that aims at amending the currently functioning constitution. The former was introduced in 1848, while the latter – in 1891. Both Articles 138 and 139 of the Constitution – concerning the initiative to adopt a new constitution and the initiative to partially amend the Federal Constitution respectively – state that such proposals may be put

forward by 100,000 citizens eligible to vote.⁶⁰ The initiative concerning a partial amendment may consist of a general proposal or specific provisions. If the initiative is at odds with the national and international laws, the parliament may declare it wholly or partially invalid. Otherwise, it draws up amendments, according to the proposed direction of changes, and submits it to the assessment of the people and the cantons. If the parliament does not agree with the initiative, it submits the proposal to the vote of the people who then decide whether it should be processed further. In case of a positive result, the parliament draws up proper amendments. A ready project of constitutional amendments is decided upon by the people and the cantons. The parliament offers advice on whether the initiative should be accepted or

⁶⁰ Article 139 reads as follows: Popular initiative requesting a partial revision of the Federal Constitution. 1. Any 100,000 persons eligible to vote may request a partial revision of the Federal Constitution. 2. A popular initiative for the partial revision of the Federal Constitution may take the form of a general proposal or of a specific draft of the provisions proposed. 3. If the initiative fails to comply with the requirements of consistency of form, and of subject matter, or if it infringes mandatory provisions of international law, the Federal Assembly shall declare it to be invalid in whole or in part. 4. If the Federal Assembly is in agreement with an initiative in the form of a general proposal, it shall draft the partial revision on the basis of the initiative and submit it to the vote of the People and the Cantons. If the Federal Assembly rejects the initiative, it shall submit it to a vote of the People; the People shall decide whether the initiative should be adopted. If they vote in favor, the Federal Assembly shall draft the corresponding bill. 5. An initiative in the form of a specific draft shall be submitted to the vote of the People and the Cantons. The Federal Assembly shall recommend whether the initiative should be adopted or rejected. It may submit a counter-proposal to the initiative. And further: the People vote on the initiative and the counter-proposal at the same time. The People may vote in favor of both proposals. In response to the third question, they may indicate the proposal that they prefer if both are accepted. If in response to the third question one proposal to amend the Constitution receives more votes from the People and the other more votes from the Cantons, none of them is approved, The Federal Constitution of the Swiss Confederation, <http://www.admin.ch/opc/de/classified-compilation/19995395/index.html#a8>, accessed April 23, 2019, author's note.

rejected. If the latter is the case, the parliament may make a counterproposal, which is then submitted to the vote of the people and the cantons at the same time as the initial proposal. The voters may accept both proposals or point the one that they would like to be approved in case both of them are accepted. If one of the proposals gets the majority of the people's votes and the other gets the majority of the cantons' votes, both are rejected.

2.4.2 Referendum

Switzerland has two types of referenda: mandatory, also known as constitutional, and optional, also called legislative.⁶¹

Mandatory referendum was introduced already in 1848, and it is used in case of a necessity to amend the constitution. Since 1977, it is also used to decide on joining international organizations. Article 140 item 2 of the Constitution defines the use of the mandatory referendum:

The following are submitted to a vote of the People:

- a. popular initiatives for a total revision of the Federal Constitution;
- b. popular initiatives for a partial revision of the Federal Constitution in the form of a general proposal that have been rejected by the Federal Assembly;
- c. the question of whether a total revision of the Federal Constitution should be carried out, in the event that there is disagreement between the two Councils.

The people and the cantons express their will on issues such as: revision of the Federal Constitution, accession to organizations for collective security or supranational communities, emergency federal acts that are not based on a

⁶¹ B. Degen, *Referendum*, entry in: *Historisches Lexikon der Schweiz*, Bd. 10: *Pro-Schafroth*, Schwabe, Basel 2011, p. 166-168.

provision of the Constitution and whose term of validity exceeds one year (such federal acts must be put to the vote within one year of being passed by the Federal Assembly).

The people are the only decision-maker when it comes to: popular initiatives for a total revision of the Federal Constitution, popular initiatives for a partial revision of the Federal Constitution in the form of a general proposal that have been rejected by the Federal Assembly, and the question of whether a total revision of the Federal Constitution should be carried out, in the event that there is disagreement between the two Councils.

2.4.3 People's Veto

Optional referendum, also called people's veto, was introduced in 1874 and is used to oppose already existing laws. According to Article 141 of the Constitution, it requires 50,000 citizens or at least eight of the cantons to be organized. The issues that are submitted to the vote are: federal acts, emergency federal acts whose term of validity exceeds one year, federal decrees (provided the Constitution or an act so requires), international treaties that are of unlimited duration and may not be terminated, provide for accession to an international organization, contain important legislative provisions or whose implementation requires the enactment of federal legislation. The Constitution also allows to submit to the vote other international agreements. According to Article 142, proposals that are submitted to the vote of the People are accepted if a majority of those who vote approve them.⁶²

⁶² Cf. S. Hug, *Occurrence and Policy Consequences of Referendums*, "Journal of Theoretical Politics" 2004, vol. 16, p. 321-36.

For instance, in 2000-2010 mandatory and optional referenda were used 45 times.⁶³ The people and the cantons approved the proposal in 11 of them and rejected in four.⁶⁴

2.5 Advantages and Disadvantages of Direct Democracy

The functionality of direct democracy closely related to the widespread and conscious participation of citizens and political actors in the state, cantonal, and communal decision-making.

Firstly, direct democracy makes citizens' participation in political decision-making easier. It allows even entities outside the governmental structures to influence the political process.⁶⁵

Secondly, every political actor is able to put forward its demands efficiently. Even those initiatives and referenda that have no chance of success are organized, because they provide a political input that shapes the public opinion.⁶⁶

Thirdly, direct democracy incentivizes rulers to make compromises and to take into account the public's opinions.⁶⁷ It means that politicians, from fear of being a "victim" of a popular initiative, are in constant contact with the

⁶³ M. Marczewska-Rytko, *Inicjatywa ludowa i referendum w Szwajcarii w latach 2000-2010*, "Polityka i Społeczeństwo" 2012, no. 9, p. 272-83.

⁶⁴ Data according to the Swiss Federal Statistical Office in Nauchâtel: http://www.bfs.admin.ch/bfs/portal/de/index/themen/17/03/blank/key/eidg__volksinitiati ven.html, accessed June 10, 2019.

⁶⁵ S. Möckli, *Funktionen und Dysfunktionen der direkten Demokratie*, "Beiträge und Berichte" 1995, no. 237, p. 9.

⁶⁶ A. Vatter, *Das politische System der Schweiz*, Nomos, Baden-Baden 2014, p. 358ff.

⁶⁷ S. Möckli, *op. cit.*, p. 10.

rest of society. This is particularly advantageous for minorities by enabling them to successfully submit their own proposals.

Fourthly, in direct democracy, final decisions are widely accepted by all actors in the political, economic, and social scene. A decision made via a referendum is much more likely to be supported by the whole society than one pushed forward by political elites.

Fifthly, direct democracy has two important functions when it comes to decision-making: political communication and political socialization.⁶⁸ The former, due to the vast number of political actors engaged in decision-making, facilitates the growth of society's political awareness to a level that cannot even be compared with representative democracies. Another factor at work here is the tendency to make compromises, which creates a net of political and social connections where information is constantly exchanged. Political socialization means that society's participation in direct democracy makes it more conscious of its democratic rights and freedoms, such as respecting the arguments of their political opponents.

The problem of dysfunctionality of certain aspects of direct democracy is complex and multileveled.

Firstly, although it allows a wide participation of citizens in the political life of their country, only a small minority actually takes part in this process. It is a group of citizens who, regardless of the political system, would take the political initiative and engage in decision-making anyway. This minority consists of political elite, the so-called *classe politique*, whose opinions and views are usually respected by the majority of society. Therefore, general

⁶⁸ *Ibidem*, p. 11.

political input in direct democracy is not that much different than in representative-parliamentary democracy.⁶⁹

Secondly, direct democracy makes decision-making slower, which may obstruct the process of finding desired solutions. Due to the fact that the political process in direct democracy has so many actors (political parties, interest groups, society), it has to make compromises. Moreover, political elites are not keen on including the representatives of society in decision-making, but, to the contrary, they tend to limit the number of referenda out of fear of unprofitable decisions made at the polling stations.

Thirdly, direct democracy undermines the position of the established political actors by enabling the people to bypass certain state agencies in exercising their will. The system empowers the opposition and, as a result, makes much more rare for political opponents to negotiate, discuss, or compromise on their agendas.

This allows the interest groups to push forward proposals that will be beneficial to them, while bearing no political responsibility for the outcomes. The groups, standing between society and political parties, become a competition for the latter, undermining their power.

Fourthly, the multiplicity and diversity of decisions made in direct democracy causes society to become passive. The voters are unable to properly exchange information about all occurring changes, because as it would generate high costs. Usually, on the day before a referendum, only one-sixth of the Swiss voters are fully informed about the issues they are about to decide on.⁷⁰

⁶⁹ *Ibidem*, p. 12.

⁷⁰ *Ibidem*, p. 14.

Fifthly, direct democracy can exacerbate political conflicts in the country. This is especially possible when a referendum concerns issues of “all-or-nothing” nature. This creates a risk of inflaming political struggles, and sometimes leads to oppressing the minority by the majority.⁷¹

The question whether the federal system of Switzerland has more advantages or disadvantages requires an ideological discussion, because it cannot be directly compared with the political systems of other countries. The Swiss federalism has so many aspects that, depending on a currently adopted point of view, they may seem both positive and negative.⁷²

Due to the multicultural character of Switzerland, it would be difficult to achieve its current level of political and social consensus without its particular form of federalism. The system ensures a fair treatment of all ethnic, religious, and linguistic minorities.⁷³ Since many decisions are made at the lowest political level, citizens are protected from unjust or harmful interferences of the state.⁷⁴

Federalism thwarts cultural and ethnic conflicts, and allows the state to adjust its activities to the regional differences. The rare occurrence of any regional tensions or political conflicts are the best evidence of the efficient and fully democratic functioning of the Swiss federal state. Despite the fact that the

⁷¹ An example of it is the referendum of 2009 concerning the ban on building minarets. More on this topic in: M. Matyja, *Granice demokracji...*

⁷² Vide M. Matyja, *Dysfunkcjonalność szwajcarskiej demokracji bezpośredniej*, Adam Marszałek, Toruń 2016.

⁷³ Cf. M. Matyja, *Federalism and multiethnicity in Switzerland*, in: *Essays on Regionalisation. Collection of reports submitted at the International Conference. Regionalisation in Southeast Europe. Comparative Analysis and Perspectives*, ed. Agencija Lokalne Demokratije, Center – Agency of Local Democracy, Subotica 2001, p. 129-36.

⁷⁴ J.G. Matsusaka, *The eclipse of legislatures. Direct democracy in the 21st century*, “Public Choice” 2000, vol. 124, p. 157-77.

process of negotiations between the cantons, as well as between the federation and the cantons, is often long and slow – which is incomprehensible to foreign observers – it leads to positive results.⁷⁵

The costs of the Swiss system are certainly one of its main downsides. Each of the cantons has its own government, administration, judiciary etc. – even the universities are funded by the cantons. Although it is not an ideal system, the internal and international situation of the country shows that the Swiss would not replace it with any other – even in the face of globalization and increasing European integration. Switzerland protects its cantons' competencies and its direct democracy in a consistent manner, and in case of inter-cantonal conflicts it always looks for peaceful solutions (such as the inter-cantonal agreement called “concordat”).⁷⁶

⁷⁵ R. Eichenberger, *Starke Föderalismus. Drei Reformvorschläge für fruchtbaren Föderalismus*, Orell Füssli, Zürich 2002.

⁷⁶ Cf. M. Fenner, R. Hadorn, R.H. Strahm, *Politszene Schweiz. Politik und Wirtschaft heute*, Verlag für Sozialwissenschaft, Basel 2000.

Part II
The Polish Semi-democracy

Reason for reforms in Poland

1.1 Actually political situation in Poland

While some people consider it a utopia, others see it as a real chance for a better future for Poland and hold to the idea as fast as they can. The idea we are talking about is direct democracy, a direct form of exercising power and a political system in which it is the citizens (the sovereign) that have the deciding voice regarding Poland's crucial issues.

It is generally believed that the Polish nation is not equal to this form of governance; that Poles are foolish and incapable of making binding decisions. According to this belief, they have no clue about politics, and all they do is consume goods secured for them by the ruling class, i.e., politicians whose most important quality is that they are a part of the system, regardless whether they lean left or right. The people in power are considered different than citizens – they have proper qualifications, experience, they bear responsibility for the country, and, above all, it is them who were elected in order to govern.

The idea of the average citizen deciding on the matters of the state is at odds with Polish reality. That is why direct democracy is considered here a utopia... But is that exactly the case? And where did the idea of direct governance, which a growing number of citizens considers as a chance for a better future, come from?

Well, politics is similar to sports: impossible is nothing. We remember perfectly that even in the '70s virtually no one in Poland believed that we would free ourselves from the chains of communism. Central planning and everyday dullness were meant to last forever. In the end, it turned out that the

change of the political system – and the form of governance – was in fact possible and became a reality.

Sadly, however, the very concept of political authority is grossly misunderstood in Poland. It is generally believed that the ones in authority are unique individuals, the chosen ones, or celebrities elected to decide about our fortune or misfortune. Yet, the concept does not simply refer to individuals or cliques in power, but to a process of domination of one group over other. That is why Polish society could, and should, be its own authority since it is the sovereign and the owner of the Polish state.

Why is it then that in Poland 40 million people are ruled by a small, exclusive group?

1.2 Democracy in Poland - Utopia or Chance?

The aim of this part of the thesis is to propose a model of direct governance in Poland and to show that it is not a utopia, but (maybe) a historical chance for our country. It is important to mention here that **we are not arguing for a revolution, but rather for an evolution of the Polish political system**. It is an attempt to find a better and more efficient form of functioning of the Polish state that would make it closer to citizens.

The current Polish semi-democracy is criticised every day, and rightly so. Up to now, however, there has not been proposed any model that would include Polish society – as the sovereign – in the decision-making process and provide an alternative to the elitist, top-down mode of governance.

The goal of this work is to present a complementary model of the political system for Poland that introduces forms of direct democracy. The project is based mainly on the experience of the Swiss direct democracy, which means

that the proposed solutions have already been tested and certainly are not utopian.

While reading the book, please do remember one thing: sharing the political power with citizens is not a charity on the part of the ruling class – it is a democratic right of the sovereign, i.e., the citizens.

2 A Need for Change in Polish Political System?

2.1 Historical reasons

Most Poles, when asked, agree that there is a need for change in their country's political system. Some of them ask further: "but how and when should it occur?"

What causes this common attitude?

One of the reasons may be the fact that the transformation from communism to a semi-democratic system that happened 30 years ago in such an abrupt manner was accompanied by selling off of the country's assets, economic scandals, failed Balcerowicz Plan⁷⁷, as well as seizing the power by corrupt elites. Sadly, the consequences of those events are felt to this day.

It is a common knowledge that during the '90s Poland was used as a testing ground for the project of the systemic transformation. Citizens were told that all financial transactions conducted in the process of privatization had to be classified. In this way, the people in power – promoted to their positions as a result of the Round Table Agreement in 1989⁷⁸ – sold off national assets, without explaining to the society who were the buyers and what was the price.

⁷⁷ The Balcerowicz Plan (Polish: *plan Balcerowicza*), also termed "Shock Therapy", was a method for rapidly transitioning from an economy based on state ownership and central planning, to a capitalist market economy. Named for its author, the Polish minister and economist Leszek Balcerowicz, the plan was adopted in Poland in 1989. There was a temporary drop in output, but growth was eventually achieved by 1992. Similar reforms were made in a number of countries. The plan has resulted in a reduced inflation and budget deficit, while simultaneously increasing unemployment and worsening the financial situation of the poorest members of society, author's note.

⁷⁸ The Polish Round Table Talks took place in Warsaw, Poland from 6 February to 5 April 1989. The government initiated the discussion with the banned trade union *Solidarność* and other opposition groups in an attempt to defuse growing social unrest, author's note.

The “reformers” argued that there was no other method of improving the nation’s existence; that the only possibility was a quick and full privatization of the national economy. Politicians, and the media, argued that the crisis could be resolved in one of the two ways: the communist one and the liberal one. The idea of liberalisation of the economy became the most popular slogan, palmed off on the disoriented and exhausted society.

The most important means of quick selling of the country’s assets was the famous Balcerowicz Plan. Intended to last for about six months, it basically goes on to this day.

According to various unofficial estimates (the official ones are either non-existent or classified), Poland has lost 0.5-2 billion dollars as a result of this “perestroika.” Compared to these numbers, the public debt accumulated during the Edward Gierek⁷⁹ rule seems like “pocket money.” This unprecedented robbery committed against the Polish nation created a situation in which Poles could own only their labour since their whole capital went to foreign hands. Industrial and bank assets were sold off for about 10 percent of their worth, which made the economy of Poland dependent on other countries. Since economics and politics are almost inseparable, the scale of foreign influence on the Polish economy raised fears of a similar thing happening in the sphere of politics.

Then came about the idea of joining the European Union. Again, no one hesitated, nor did any proper estimates – it was simply “the only way to go.”

⁷⁹ Edward Gierek (6 January 1913 – 29 July 2001) was a Polish communist politician. Gierek replaced Władysław Gomułka as first secretary of the ruling Polish United Workers' Party (PZPR) in the Polish People's Republic in 1970. He is known for opening communist Poland to Western influence and for his economic policies based on foreign loans, which ultimately failed. He was removed from power after labor strikes led to the Gdańsk Agreement between the communist state and workers of the emerging Solidarity free trade union movement, author’s note.

2.2 Poland and European Union

Historically, the decision to join the EU was made unanimously by the left and the right⁸⁰. Moreover, both sides competed each other on who was to be granted the “honour” of signing the treaty of accession. However, there were no substantive negotiations with the EU. The only talks that occurred concerned merely political and ideological matters of how to subordinate Poland to the EU’s bureaucratic structures.

The Poles have never opposed the idea of building common Europe. The thing that raised their doubts, however, has been the ideological foundations of the EU, the dominant role of Germany in its structures, and the place that Poland was to assume within the ranks of this superpower.

Pushing Poland into joining the EU served as a smokescreen for all ongoing economic scandals created by the so called ruling class and the reformers of the early years of Polish independence. As a result, these elites managed to secure their wealth and positions, while their anti-state activities fell into oblivion.

It is interesting that during the time of Poland’s accession to the EU both sides of the political spectrum – Law and Justice⁸¹ and Civic Platform⁸² on the right, and Democratic Left Alliance⁸³ on the left – were unanimously in favour of it. This confirms that there are no differences between political left

⁸⁰ Poland has been a member state of the European Union since 1 May 2004, with the Treaty of Accession 2003 signed on 16 April 2003 in Athens as the legal basis for Poland’s accession to the EU. The actual process of integrating Poland into the EU began with Poland’s application for membership in Athens on 8 April 1994, and then the confirmation of the application by all member states in Essen from 9–10 December 1994, author’s note.

⁸¹ In Polish: Prawo i Sprawiedliwosc (PiS), author’s note.

⁸² In Polish: Platforma Obywatelska (PO), author’s note.

⁸³ In Polish: Sojusz Lewicy Demokratycznej (SLD), author’s note.

and right in Poland. There is no ideological struggle between them, and the only thing they strive for is power, i.e., the domination over the society. The division between both sides is fictional. It serves as a propaganda that pulls the wool over the society's (as well as the world's) eyes and claims that there is an ideological pluralism in Poland, or that the Polish democracy is in an excellent condition.

Moreover, the ruling class needs this distinction to be able to manipulate society. Usually, elections in Poland are won by the side that is considered less compromised by its ineffectual governance in the preceding years. However, due to the fact that the opposition used to govern in the exact same (bad) way, disoriented citizens either forgot how things were or, simply, have no other options to vote for. The situation resembles a cheap theatre in which the viewers hope that this time they will see an exciting show, but – since the actors are always the same, and only their costumes change – they get fooled and disappointed every time. On the other hand, there are also those who believe that this time it is the libertarians or the nationalists (or yet another minor faction) that will win and bring the necessary change. In reality, however, it does not matter who wins the elections and rules for the next four years.

2.3 Polish semidemocratic system

The form of governance that has crystallised during the last 30 years in Poland is a semi-democratic system in which the dominant position is occupied by the so-called political elites. It has nothing to do with true democratic pluralism. The system's fundamental principle can be described

by the attitude of “we vs. you,” with the ruling class (who constitute “the political authority”) on the one side, and the society on the other⁸⁴.

All of the substitutes of democracy, like free elections, free media, separation of powers, are merely a façade or propaganda used for covering up financial manipulations, selling off of the country’s assets, and seeking scraps that fall from Brussel’s table. They are necessary to tame the Poles and the international community. It is a fact that in recent years there has been an infringement of democratic principles in Poland, and there are several indications of that:

Firstly, the balance between particular powers (legislative, executive, judiciary) has been violated for a long time.

Secondly, free elections are pure fiction – all candidates are determined by the political parties based on their internal lists of accepted individuals.

Thirdly, there are no free media. There are only entities that pose as media, called “official” and “samizdat” publishers. Polish political journalists are fully aware of the problems caused by parties with non-democratic style of leadership, the representatives’ dependency on their parties, and the general ineffectiveness of the Sejm⁸⁵. Why are they silent about it? Because it is the

⁸⁴ Cf. M. Matyja, *Polska semidemokracja. Dylematy oddolnej demokracji w III RP*, WGP, Warszawa 2019.

⁸⁵ The *Sejm* of the Republic of Poland, Polish: *Sejm Rzeczypospolitej Polskiej*) is the larger, more powerful lower house of the Polish parliament. It consists of 460 deputies (*posłowie*, literally "envoys", in Polish) elected by universal ballot and is presided over by a speaker called the "Marshal of the *Sejm* of the Republic of Poland" (*Marszałek Sejmu Rzeczypospolitej Polskiej*). In the Kingdom of Poland, "*Sejm*" referred to the entire two-chamber parliament of Poland, comprising the Chamber of Envoys (Polish: *Izba Poselska*), the Senate (Polish: *Senat*) and the King. It was thus a three-estate parliament. Since the Second Polish Republic (1918–1939), "*Sejm*" has referred only to the larger house of the parliament; the upper house is called the *Senat Rzeczypospolitej Polskiej* ("Senate of the Republic of Poland") (Cf. <https://en.wikipedia.org/wiki/Sejm>), author’s note.

only way to guarantee themselves any presence in the world of media dominated by the major parties. It is the same as during the times of the Polish People's Republic⁸⁶: “We know what we know, but we talk and write only about things we are allowed to do so.”

Thousand of members of the bureaucratic force in Poland hamper entrepreneurship, while every new statute generates tremendous costs. Legislation spans for over hundreds of thousands of pages, and there are hundreds of thousands of public officials – in spite of the fact that we cannot afford it. We accumulate debt, issue bonds and pay enormous interests to foreign banks. On the other hand, many elements of the country's infrastructure, like schools *etc.*, are underfunded. Due to the excess and complexity of our laws, we become poorer and more dependent on other countries. We still have not cut off ourselves from the era of the Polish People's Republic. We lack people and politicians who understand the idea of *raison d'état*, who care about the economic development of Poland. It is truly tragic that our political system allows situations in which a person's actions – although destructive for the economy, the country, and the people – may still be perfectly legal. What is worse is that, due to the legality of those actions, many citizens will consider such an individual as completely innocent. Apart from being absurd, this shows how much the consciences of Poles have degenerated over the last three decades.

I should not be surprised that everything is going in the wrong direction, and that sooner or later it will ignite a giant conflict. I do not mean necessarily a

⁸⁶ The Polish People's Republic (Polish: *Polska Rzeczpospolita Ludowa*, PRL) was a country in Central Europe that existed from 1947 to 1989, and the predecessor of the modern democratic Republic of Poland (Cf. https://en.wikipedia.org/wiki/Polish_People%27s_Republic), author's note.

civil war, but rather a conflict of an economic, cultural, social, or even religious nature. The actions of our politicians and state's leaders resemble a bad cabaret. In order to see this, one only needs to take a look at newspapers and news channels (naturally, we should always remember not to rely on their opinions and form our own views).

Governance is not a children's game. It is a difficult and complex "job" that requires traits like intellectual input, understanding of how a given political system works, wide imagination and intuition. Moreover, it requires a perfect knowledge of psychological and sociological principles that determine the dynamics of diverse groups, organisations and individuals with differing socio-political views.

In order to develop these qualities, one must possess a great wisdom and a potential to be as humane as it is possible. It is also necessary to be a genuine patriot all the time, not only on special occasions.

Since Polish politicians lack all of the above characteristics, it is not surprising that state of affairs in Poland is as it is – the country is divided, conflicted, and completely confused.

This gives rise to the strong need of a new form of governance, one that would engage ordinary citizens in the decision-making process and end the current elitist, top-down system. Purely "cosmetic" changes (such as "the good change" slogan of the Law and Justice party) will never do anything to mend the foundations of the Polish political system.

The libertarian and nationalistic groups that have been emerging in recent times are also impotent in this regard. The reason is that they too subscribe to the top-down form of governance and strive for power, while treating society in an instrumental way. These groups seem to lack skills, or maybe

even the desire, to create a true alternative, and since they do not go beyond the mainstream slogans, they are quickly sucked into the system.

At some point, a radical change must and will occur. But what for now? Well, the cheap theatre continues its repertoire: giant planes, meetings, celebrations, elections, medals and monuments, anniversaries, scandals, appointments and dismissals, budgets and limousines, shady factions, singing of the national anthem just for show, hypocrisy and contempt for citizens.

The need for change is necessary and justified. Everyone knows it and feels it, however, only few have a real plan of taking a radical step.

3 The Responsibility of Polish Politicians

3.1 The Moral in the Politics

One of the main reasons behind the existence of the Polish semi-democracy is the fact that politicians evade the responsibility for the country's affairs and development. Unfortunately, the concept of political responsibility lacks an objective meaning, and thus it is interpreted in numerous ways. Nevertheless, politicians' actions have real political and economic, as well as moral, consequences. In socio-political terms, very often actions that benefit politicians are at the same time harmful to citizens. This stems from the fact that politicians' actions are not guided by Christian ethics, or they simply lack the awareness of being responsible for the fate of the nation that they represent.

This problem becomes especially visible when it comes to amending the Constitution or the introduction of new electoral regulations. People in power know very well that any amendments to the Constitution or electoral laws should benefit society and the state. Instead, they usually shun the responsibility and prepare changes that serve solely their vested interests. While leaving Christian ethics aside, they follow only their party's moral code and, thus, are biased in evaluating their own actions.

Is it then possible to assess actions that are not based on an objective moral responsibility? Moreover, is it necessary for politicians to come up with their own moral codes that often serve as a protection from real responsibility?

Politicians distinguish between objective and subjective morality. Usually, they follow a subjective moral code that suits their current political situation

and reflects positions taken on various issues by the major Polish parties (which are generally managed in an authoritarian manner).

It is precisely this cunning that prevents them from amending the Constitution, introducing new electoral laws or elements of direct-democracy that would grant the power to the true sovereign. This stems from the fact that the major parties, as well as interest groups that accompany them, follow their own tribal moral codes. If the political circumstances change, politicians instantly come up with new “moral values” in order to open new ways for their political or material profits. They do not consider this to be immoral or destabilising, they view it simply as beneficial or disadvantageous in a given situation. All beneficiaries of the system automatically adapt to the changing circumstances and thus create a new, stable foundation for their further activity. Political parties follow their own rules, which they call “moral,” as long as all of their members agree on them. In reality, however, this “morality” has nothing to do with objective or Christian ethics and responsibility. The major parties define their own systems of values in a way that rarely, or never, corresponds to the country’s social and economic reality.

This disparity in understating of ethics by politicians on the one hand and citizens on the other confirms the semi-democratic nature of the Polish political system with its fundamental division of the society into two groups: those in power and those who are governed by them.

That is why it is so important for the people to be able to express their voice, for example, in a nationwide referendum. Decisions made in this way are not subjective but are based on general ethics and social consent.

3.2 The Systemic Harmony between Society, Economics and Politics

Naturally, it is the task of the government's agencies to define and execute the rules of systemic harmony between the economic and the socio-political side of a country's life. Only in this way efficient solutions of a political life of a nation can be found. But what kind of agencies do we have in mind, and how should they be elected? Certainly, not in the system of party-determined list of candidates, which compels citizens to run for office in a collective manner. Today, as a result of parties following their subjective moral codes, the representatives are *de facto* elected by those parties' leaders.

According to the objective idea of Christian ethics and democracy, "the representatives of a nation" should be elected by the people. Although it seems plain and simple, it is so only for those who follow their innately held principles of Christian morality.

The quality of people's lives should be assessed on the basis of how a given system is beneficial for them and for the state in general. Citizens, politicians included, should be aware of their joint responsibility for the optimal and moral functioning of the triangle "society – state – economy."

The standard of value for moral behaviour can be based on Christian ethics, which can serve also as a foundation for objective political responsibility. It is time for Poland to overcome the phenomenon of parallel society in which the government follows the aforementioned "we vs. you" principle in its actions toward citizens. First, however, it is necessary to take a closer look at the shape of the political system, which our politicians seem to be incapable of doing. They are so entangled in their political quarrels that they simply

lack the time to take a proper care of the economic and social policies of the state.

If that is the situation, then why Polish citizens, i.e., the sovereign, cannot take matters in their own hands and start making decisions on issues that concern them directly?

The answer is simple: despite the fact that according to Article 4 of the Constitution of Poland, the power is exercised by the Nation directly or through their representatives,⁸⁷ the direct form of governance has been completely abandoned in the Polish decision-making process. Therefore, the people can only rely on their representatives, namely, the government and the parliament, with the Sejm in the forefront.

In Poland, the Sejm is the main decision-making agency. It is supposed to be composed of the country's elite, i.e., the best and the most independent individuals, capable of understanding the most important problems, and acting on the social teachings of the Church and the Nation's interest. Let us then take a look at the current reality of the Sejm.

Our representatives do not feel responsible for the country's fate because, above all, they represent the interests of their parties. They do not work for the good of the country, but rather adapt their actions to the will of their party's leaders. Why? Because they depend on them; it is the leaders who put them in the position of power, not genuine electoral laws.

The methods of "appointing" the representatives are the same in all parties and electoral committees. The leader appoints candidates who later become

⁸⁷ All citations from the Constitution of Poland are from an official translation available at: <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>, author's note.

“the representatives of the Nation,” given that the party crosses the electoral threshold.

That is how the governing elite is chosen in Poland. And it governs in the same way it is chosen: irresponsibly, with the party’s interest as an end, short-sightedly, based on personal sympathies and antipathies. Instead of making decisions based on national interest, the Sejm occupies itself with not important issues, shady past of parties’ members, inspection of their personal files, and shaming opponents or promoting bootlickers.

The Nation’s “chosen ones” also lack the sense of guilt for socio-economic crises, which is another example of them evading the responsibility. They focus only on party quarrels and obedience to their leaders, while seeking the opportunities to maximise their own gains (in terms of money and re-election). All of this leads the country into unnecessary conflict and gradual demise.

As a result of this way of governance, millions of Poles have emigrated abroad, families became divided, many absurd laws have been enacted, the country’s assets are sold off, making it poorer. Do the people in power feel responsible for this situation? Do they feel ashamed of their egoistic actions? Has any of the cabinets of the last 30 years apologised for its errors? Sadly, these are only rhetorical questions. The only answer we hear is: “It is not our fault, it is theirs.”

The Polish Sejm is a caricature of democracy and one of the main reasons for the dysfunction of the Polish political system. It mocks society by making citizens elect unwanted candidates determined by parties’ leaders⁸⁸. In this

⁸⁸ Cf., J. Kuban, M. Matyja, J. Sanocki, *Kulisy polskiej demokracji. Obywatel wobec systemu*, QBS, Warszawa 2019.

way, any remains of the true democratic elements in our system are undermined, and the politically dependent media not only applaud this infringement but also support the actions of the Sejm elected through a *de facto* illegitimate electoral system.

Confused by the media and politicians, the Poles vote without even realising that regardless of whom they elect, it will not change anything in the state's socio-economic policies that have been continued for years now. So far, none of the parties has presented any complex plan for socio-economic reforms or for improving the political system.

4 Democracy, But What Kind of Democracy?

4.1 Polish Constitution

Democracy, as some people believe, is not superior to other political systems, nor is it eternal or immune to any destabilising factors. The evidence for that lies in the fact that there are several fundamental forms of democratic governance. Therefore, it is difficult to define which of them is the most functional and effective. According to many political scientists, the best one is the Swiss direct democracy. However, it also has disadvantages. Moreover, the political or economic success of a given country does not always correspond to the level of functionality or dysfunctionality of its form of governance.

Nevertheless, everyone agrees that the most effective form of democracy is the one that brings the process of governance as closely to the people as it is possible and engages them in decision-making both on the local and the national level.

There is no perfect democracy – all of its forms require constant corrections and adjustments. As a system, it is characterised by uncertainty; it has to constantly face the challenges of the postmodern world. Certainly, it is not “the best of all political systems.” Suffice it to say that the presidential system of the United States, semi-presidential one in France, as well as the German system, or even the Swiss one, leave a lot to be desired.

It is crucial to implement the principles of a given form of democracy in a proper and efficient manner, which is often indirectly determined by a country’s historical experience, geopolitical situation, and the level of development.

The level of active participation of citizens in the political process on the one hand, and the operational efficiency of the state – including its local agencies – on the other, are certainly the two most important criteria for assessing the functionality (or dysfunctionality) of a given form of democracy.

Since democracy and conflicts, as phenomena, are closely connected, every democratic system should provide instruments that would contribute to their resolution. Such tools are worked out within the frameworks of a broadly defined political culture. What is a political culture? It is inextricably linked with the development of civil society, which is further determined by the functionality of a given democracy.

The concept of civil society, in its optimal meaning, refers to the activities in the social, economic, and political spheres, which constitute the elements of the political decision-making process. In this context, a political culture is the sum total of attitudes, values, and patterns of behaviour that determine all interactions between those in power and the rest of citizens.

When it comes to Poland, the values I am referring to are derived from Christian ethics and the Polish political traditions. The functioning of the triangle “society – state – economy” in the Polish democratic system should be based on the Constitution which is the fundamental and supreme law.

The current Constitution of Poland was adopted in 1997 at the end of the term of social democratic faction. Socialists found the moment very convenient since the president of Poland was at the time Aleksander Kwaśniewski, a post-communist and a leader of the Democratic Left Alliance⁸⁹, who assumed the office in December of 1995.

⁸⁹ Aleksander Kwaśniewski, born 15 November 1954) is a Polish politician and journalist. He served as the President of Poland from 1995 to 2005. He was born in Białogard, and during Communist rule, he was active in the Socialist Union of Polish

In the constitutional referendum, citizens were asked only about the bill that was accepted by the then left-wing parliamentary majority. Voter turnout was only 43 percent, of which 53 percent voted in favour. It means that only 6.4 millions of citizens eligible to vote took part in the referendum. Thus, it cannot be assumed that the current Constitution reflects the political views of the majority of Poles. Unfortunately, when it comes to the quality of the Constitution of Poland, an average cookbook is written in a more logical and intelligible fashion.

From the very beginning, the Constitution was impotent in regard to numerous difficulties that the country had been struggling with. It introduced many legal and legislative ambiguities. It does not regulate the problem of Poland's political dependency during the communist era, the apparatus of coercion of the previous system, or the collaboration of many state agencies with the USSR. It lacks any reference to the problem of Polish expatriates, expropriations, stripping of citizenship, and many others.

The Constitution invokes the system of "direct democracy," but in reality the whole governance is carried out top-down, and all "democratic" decisions are made by the undemocratic Sejm or by cabinets whose members follow their parties' leaders.

It is interesting that we do not know the actual authors of the document.

Apart from being designed in a very wily way, it is also hedged around by so many laws that people in power can interpret it as they like – and they do so since they are incapable of taking a real responsibility for the country.

Students and was the Minister for Sport in the Communist government during the 1980s. After the fall of Communism, he became a leader of the left-wing Social Democracy of the Republic of Poland, successor to the former ruling Polish United Workers' Party, and a co-founder of the Democratic Left Alliance (*Cf.* https://en.wikipedia.org/wiki/Aleksander_Kwa%C5%9Bniewski), author's note.

The history of Poland shows that while designing a constitution the Poles should consider the spirit of the times. If the Polish society wants the new Constitution to be up to the modern standards, it needs some serious amendments. It should provide legal instruments that would allow the Poles to carry out their own, sovereign policies, keep the country safe, and to directly influence the nation's fate.

It is important that the Poles define citizens' participation in the country's decision-making process in terms of specific laws. By doing this they can propose certain amendments that would introduce a proper form of referendum – a binding tool of expressing citizens' will and social supervision – and people's initiative that would allow to initiate a referendum whenever they deem it necessary. In short, in order to open the possibility for citizens to actively participate in shaping the country's future, the Polish people need a new constitution.

The way in which Polish current political elites consolidate their power – by exploiting their dominant position – is at odds with true moral principles. As it was already mentioned, politicians invent their own codes of ethics and conduct. However, crookedness, financial chicanery, constant lying, and corruption cannot provide a foundation of any ethics. Direct democracy is the only way to fill our political life with integrity and conduct anchored in Christian⁹⁰ and humane ethics. The new constitution should fully protect citizens' rights to decide on matters that concern them directly.

⁹⁰ Though varied religious communities exist in Poland, most Poles adhere to Christianity. Within this, the largest grouping is the Roman Catholic Church: 87.5% of the population identified themselves with that denomination in 2011, author's note.

4.2 Why Direct Democracy in Poland?

Introducing certain elements of direct democracy in our country seems like a rather simple task. Let us take a look at some ways of doing it. As a starting point of our analysis, we have to assume Article 4 of the Constitution of Poland:

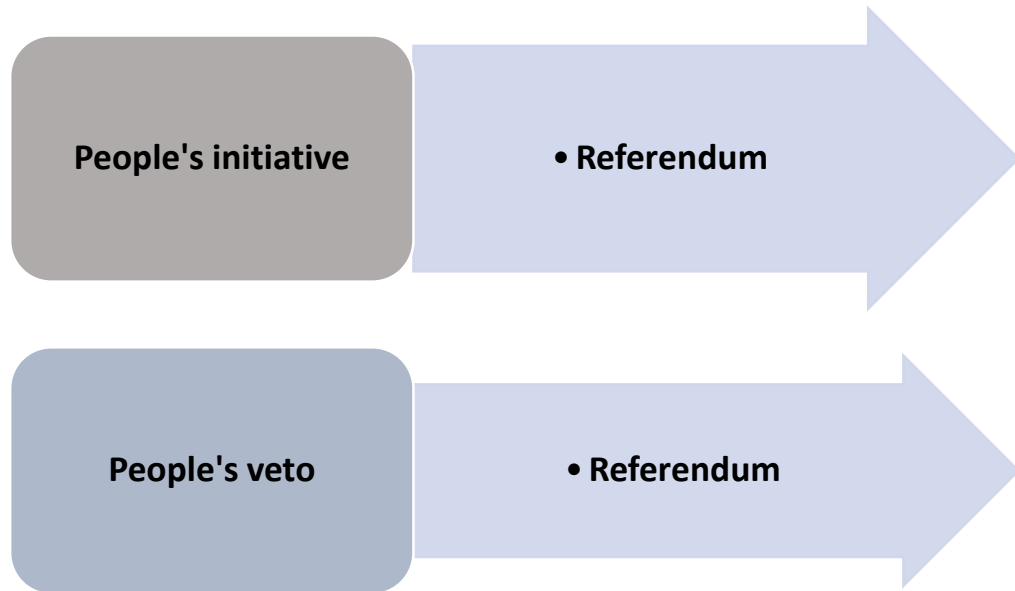
1. Supreme power in the Republic of Poland shall be vested in the Nation.
2. The Nation shall exercise such power **directly** or through their representatives.

The word “directly” is of crucial importance here, for it establishes the principle of Direct form of governance, i.e., by citizens for citizens.

The most important element of direct democracy – the system in which citizens participate in the decision-making – is a nationwide referendum that is legally binding and does not require a validity threshold. As such, it is an instrument of social control over the government; it serves as a tool for shaping the political system and expressing society’s will.

Although the Constitution of 1997 mentions a referendum, it is not society who is eligible to initiate it, but the Sejm or the president with the Senate’s approval. Such referendum has nothing to do with genuine Direct democracy or the will of Polish citizens (the actual sovereign).

Fig.1: The basic instruments of Direct democracy.



Source: own work.

Since only the people understand their problems directly, it is them who have to initiate the necessary changes. Such Direct action should be followed by a nationwide referendum that leads to an amendment of a given law or the Constitution. When it comes to the revision of particular legal acts, the proper instrument for that – as it is in the Swiss system – should be people’s veto, which constitutes a tool for protesting against an existing statute or proposing a new one (see Fig. 1).

In Switzerland, people’s veto can be initiated at the request of 50,000 citizens. In Poland, the number of required signatures could be, for instance, 250,000. Apart from that, there should be set a period of, let us say, 180 days for collecting signatures. Veto should be followed by a referendum with a “yes or no” type of question, without any validity threshold. Why should there be no validity threshold? Because it would constitute an additional

obstacle, and such obstacles are contradictory to democracy. Those who do not participate in referendum, vote passively – by accepting its results.

Similarly, people's initiative should also result in an amendment of an existing regulation or introduction of a new provision into the Constitution (see Fig. 1). This instrument would also be a tool for initiating a referendum with a "yes or no" type of question. In Switzerland, people's initiative requires 100,000 signatures in order to be initiated. In Poland, it could be, for instance, 500,000, and the optimal period for collecting signatures could be 18 months.

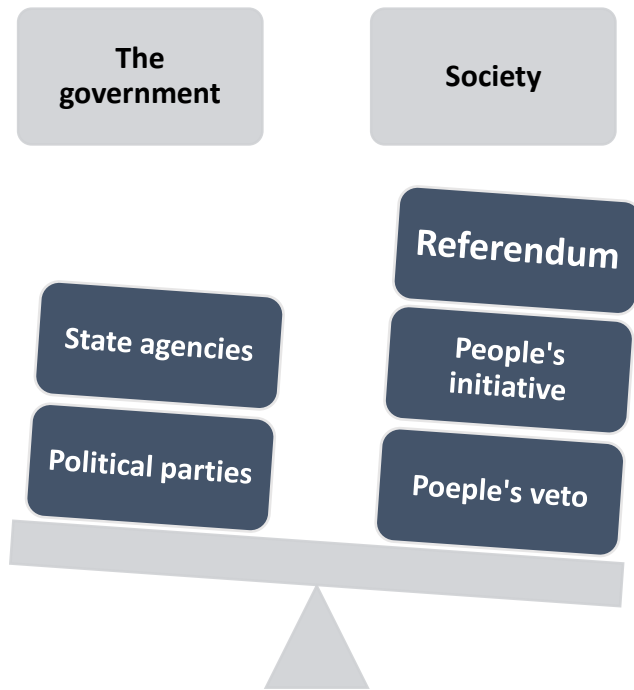
It should be pointed out that referendum is the most important instrument of direct democracy, through which it is society who decides on the state's matters. In order for it be held, it has to be initiated directly by those who demand certain changes in their legal system.

People's veto (which concerns the normal legislative level) and people's initiative (which concerns the Constitutional level) are procedural instruments of direct democracy that should always result in binding legal changes, and they should be free of any validity thresholds.

After the people's vote, the government, as the executive agency, should be obliged to introduce accepted changes within, let us say, one year.

Implementing those instruments in Poland would bring a shift of power from the political parties and the state agencies to the hands of the people, bringing us closer to the ideal of a true civil society (see Fig. 2).

Fig. 2: The power shift in the Polish political process.



Source: own work.

In the next chapters I shall discuss in detail the three basic instruments of direct democracy, which – in my opinion – should become the unquestionable foundation of a healthy and democratic political system in Poland.

Part III
The Model of Direct Democracy for Poland

1 Referendum

4.3 Current situation

In the future, referendum should become a democratic form of social supervision over the officialdom, a tool for shaping the political system, and a binding expression of the society's will.

It is a paradox that although the Constitution of Poland makes referendum possible, the relevant provisions – as well as the whole document, actually – is practically useless. They are chaotic, inconsequential, and impractical.

The Constitution distinguishes three kinds of a nationwide referendum:

- as a way of granting of consent for ratification of an international agreement, by virtue of which the Republic of Poland delegates to an international organisation or international institution the competence of organ of State authority in relation to certain matters (Article 90);
- in matters of particular importance to the State (Article 125);
- in matters of amending the Constitution (Article 235).

The first and the third kind are specific in the sense that they concern an existing statute or an international agreement which citizens are to accept or reject.

The concept of “matters of particular importance to the State” (Article 125), however, is ambiguous. A referendum of this sort concerns only general issues and cannot be considered as superior to any state agencies' decisions; it only specifies what kind of solutions the agencies can undertake in the future. As a result, such referendum does not concern matters that have already been regulated. In other words, there is no way of amending any

statute through referendum – the law is “sacred” and cannot be repealed, regardless of how absurd or outdated it may be⁹¹.

Moreover, according to the Constitution, referendum is always optional. Naturally, it is citizens who decide whether it will be held – everything depends on politicians’ goodwill.

Let us take a closer look at Article 125 of the current Constitution of Poland. It contains a specific provision concerning a nationwide referendum, which in its current form constitutes merely a substitute a of Direct democracy. The Article provides for holding a referendum in matters of utmost importance to the Polish state. Supposedly, it is based on Article 4 which states that the supreme power in the Republic of Poland shall be exercised by the Nation directly or through their representatives. “Directly” should mean in a Direct manner, with an active participation of citizens, i.e., the unquestionable sovereign.

REFERENDUM

Article 125

1. A nationwide referendum may be held in respect of matters of particular importance to the State.
2. The right to order a nationwide referendum shall be vested in the Sejm, to be taken by an absolute majority of votes in the presence of at least half of the statutory number of Deputies, or in the President of the Republic with the consent of the Senate given by and absolute majority vote taken in

⁹¹ Cf. M. Matyja, *Utopia or Chance? Direct Democracy in Switzerland, Poland and Other Countries*, BoD, Norderstedt, p. 153-155.

the presence of at least half of the statutory number of Senators.

3. A result of a nationwide referendum shall be binding, if more than half of the number of those having the right to vote have participated in it.

4. The validity of a nationwide referendum and the referendum referred to in Article 235, para. 6, shall be determined by the Supreme Court.

5. The principles of and procedures for the holding of a referendum shall be specified by statute.

The above provision has nothing to do with Direct democracy. Why?

Firstly, no one is able to specify what the concept of “matters of utmost importance to the State” means in concrete terms. There are many different suggestions of what it means: the introduction of the common European currency, the closing of the Ukrainian border, fighting corruption *etc.*

Secondly, a nationwide referendum may be initiated only by the Sejm or the President with the consent of the Senate. Additionally, it requires an absolute majority of votes taken in the presence of at least half of the statutory members of a given body. This poses a virtually impenetrable barrier that makes any referendum inaccessible for citizens. Society can only stand aside and watch its political elite at work.

Thirdly, a referendum is binding only if a half of the eligible to vote participate, which is completely at odds with any democratic norms. By setting such a validity threshold, the government limits the possibilities of making democratic decisions in the country by abandoning the rule that passive voting (i.e., not participating) should also be considered valid.

In order to effectively engage the sovereign in the political process, Articles 90, 125, and 235 of the Constitution should be amended⁹². Their current wording is incompatible with the idea of direct democracy, and they do not vest the power in citizens⁹³.

It should be emphasised that the Polish Constitution does not provide for an obligatory referendum, which is a grave error. It is specifically the case of the Articles regarding issues of international agreements (Article 90) and amendments to the Constitution (Article 235). Since they do not make a referendum mandatory in these matters, they should be changed and supplemented with a provision compelling the government to hold a referendum not only on the most urgent issues but also on those that are not specified by the Constitution (Article 125).

4.4 Future situation

Apart from that, there should be a new article concerning a referendum that would allow society to express its will through people's initiative in matters of amending the Constitution or statutes (through people's veto) – we will discuss it later.

New provisions introducing an obligatory referendum and replacing the current Articles 90, 125, and 235, could read as follows:

OBLIGATORY REFERENDUM

1. A national referendum shall concern:

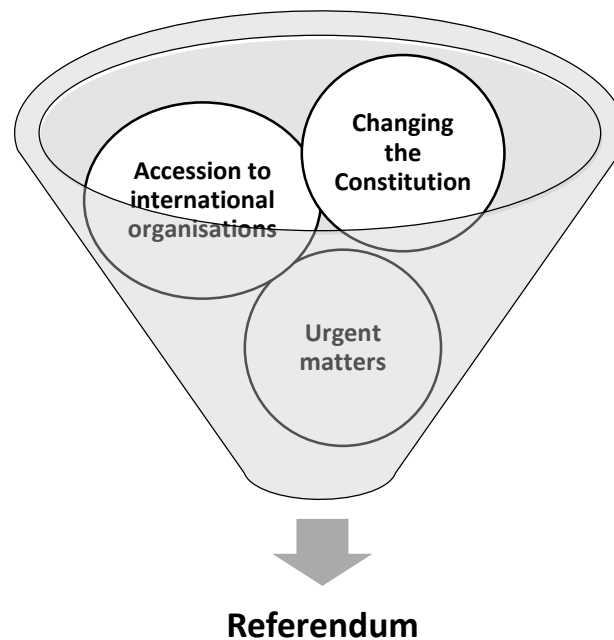
⁹² Cf. Annex IV.

⁹³ Cf. M. Matyja, *Utopia or Chance? Direct Democracy in Switzerland, Poland and Other Countries*, op.cit., p. 155-163.

- a. amending the Constitution of the Republic of Poland;
 - b. accession to collective security organisations or supranational communities;
 - c. matters considered the most urgent, which are not specified in the Constitution and whose timespan exceeds one year.
2. A national referendum shall also concern:
- a. people's initiatives concerning a complete amendment of the Constitution of the Republic of Poland;
 - b. people's initiatives concerning a partial amendment of the Constitution of the Republic of Poland presented in a form of specific provisions;
 - c. people's veto in matters of repealing or amending an existing statute.
3. The Supreme Court shall adjudicate upon the validity of an obligatory referendum.
4. The Council of Ministers shall implement the decisions made through an obligatory referendum within one year.
- (© M. Matyja, Public Domain)

These provisions contain two fundamental sections. The first one compels the government to hold a referendum every time it wants to make amendments to the Constitution or to access a collective security organisation or supranational community (see Fig. 3).

Fig. 3: A referendum ordered by the government according to the proposed provisions.



Source: Own work.

The section 1.c. requires a more detailed explanation. It replaces the ambiguous provision in Article 125 of the current Constitution concerning “the matters of utmost important for the State”⁹⁴.

4.5 Example – case study

A new provision should state: “matters considered the most urgent, which are not specified in the Constitution of the Republic of Poland, whose timespan exceeds one year.” It is best to illustrate it with an example:

⁹⁴ Cf. Annex IV.

Suppose that the Polish government intends to purchase weapons abroad, which is an enormous task requiring serious expenditures (covered naturally with tax payers money). The Constitution does not regulate weapons purchases specifically, the contract of purchase lasts longer than one year, and the weapons are supposed to be supplied over several years. The government has the authority to ratify the contract, however, after that it is obliged to – for example, within a year – put the whole plan to the people’s vote. The question should be: “Do you agree with the plan of purchasing weapons...?” And the answer should be only “yes” or “no.”

In this way – through a nationwide referendum with no validity threshold – the sovereign makes the ultimate, binding decision regarding the purchase of weapons. Other similar examples may include: construction of gas pipes, purchase of trains, deportation of foreign criminals *etc.*

It is understandable that the expression “matters considered the most urgent, which are not specified by the Constitution, whose timespan exceeds one year” – although better than the original one – is still not perfect. It leaves the Sejm a room for interpretations, since the very idea of “urgent matters” may also be debatable. In order to avoid that, the concept should be specified by statute. It cannot be done in the Constitution itself due to obvious, formal reasons.

When it comes to Article 90⁹⁵, it suggests clearly that a referendum, as an instrument of expressing the people’s consent regarding an international agreement, is only optional. The situation is identical in the case of amending the Constitution (Article 235)⁹⁶. A nationwide referendum is considered as

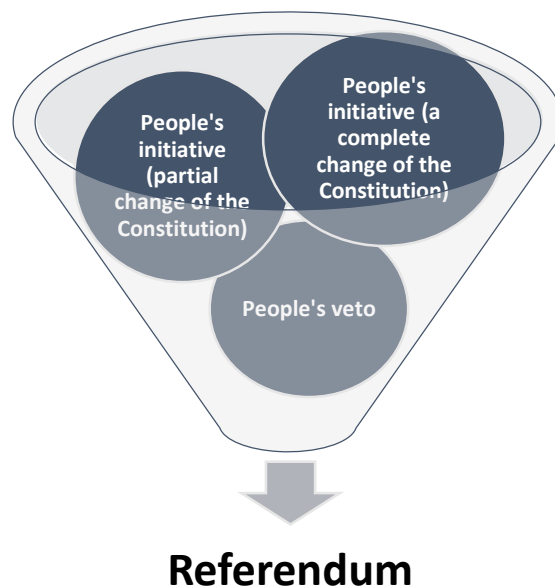
⁹⁵ Ibidem

⁹⁶ Ibidem

an exceptional procedure, initiated solely by the Sejm and the Senate. Due to this fact, both Articles have nothing to do with direct democracy and everything to do with the “goodwill” of the people in power. That is why it is necessary to introduce an obligatory referendum into the Polish political system.

The section 2 of the proposed provisions refers to the people’s participation in the legislative process (see Fig. 4). It would be a completely new element in the Polish political system. By assuming the role of the initiators, citizens would be able to influence it through initiative or veto. As it has already been mentioned, the difference is that the former aims at amending the Constitution, while the latter amends statutes. Nevertheless, both instruments function through the process of nationwide referendum.

Fig. 4: A referendum ordered by the citizens according to the proposed provisions.



Source: Own work.

The proposed amendments to the Constitution of Poland are intended to provoke thought and need further refinement. They should be seen as an incentive to make changes necessary to introduce the instruments of referendum in the Polish political system.

It should be added that it would not be necessary for a citizen to go to the polling station every time there was a referendum. In Switzerland, 90 percent of the eligible to vote do so by mail. Any information regarding a referendum, along with voting forms with “yes or no” question, are sent to citizens’ homes. Since taking part in a referendum is dictated by the sense of civic duty, validity thresholds are pointless and at odds with common sense.

5 People's Initiative

5.1 Current situation

People's initiative is a political tool that grants citizens and various social groups the right to initiate amendments to the Constitution, i.e., to create new laws. The scope of its application differs among countries. In Switzerland, it can be used to make partial or complete amendments to the constitution. It also requires 100,000 signatures collected within 18 months in order to be valid. The Swiss may demand to make amendments, to repeal existing constitutional provisions, or to introduce new regulations. Such initiative may concern both specific and general matters. Any initiative that ends with a successful collection of signatures automatically results in a nationwide referendum. In 1999, Poland has passed the citizens' legislative initiative act. However, it contains a number of provisions that substantially limit the possibility of its practical use as an efficient instrument of Direct influence on the Polish legislation by citizens⁹⁷.

The Polish version of people's initiative – unlike the Swiss one – enables changes only on the statutory level, and in no way can it affect the Constitution. Legislative initiative is the right to propose a bill, which allows citizens to present a new legal solution concerning issues not regulated by statutes or to amend an existing legal act. In this regard it is similar to the Swiss system. It is interesting, however, that according to the Constitution of Poland, there are only several specified entities that have the right of legislative initiative:

⁹⁷ Cf. <http://www.polska-ie.com/kategoria/ciekawostki/profesor/>

- The President;
- The Council of Ministers;
- The Deputies (a group of 15 or a parliamentary committee);
- The Senate (as a whole).

Polish citizens have gained the right of legislative initiative in 1999. In order to be exercised properly, it requires establishing a committee that collects 100,000 signatures within 3 months (Article 118 of the Polish Constitution)⁹⁸. Any bill proposed in this manner has to be accompanied by a report documenting its financial consequences.

The provision reads as follows:

Article 118

1. The right to introduce legislation shall belong to Deputies, to the Senate, to the President of the Republic and to the Council of Ministers.
2. The right to introduce legislation shall also belong to a group of at least 100,000 citizens having the right to vote in elections to the Sejm. The procedure in such matter shall be specified by statute.
3. Sponsors, when introducing a bill to the Sejm, shall indicate the financial consequences of its implementation.

In the next stage, the bill is passed to the Marshall of the Sejm, and after that the process is identical as in the case of any other legislative act. Due to the complicated procedure, as well as short signature collection period, the

⁹⁸ Cf. Annex IV.

number of bills proposed by citizens that are actually discussed in the Sejm is very low. Apart from that, in Switzerland, similar initiative would have to be put to the vote in a referendum, whereas in Poland Direct democracy ends already at the signature collection stage. At the beginning of the legislative process, the bill is termed as “parliamentary printed matter” and is given a specific number (see Fig. 5). From this point, deputies begin discussing the proposed legislation, while citizens lose control over its shape and become passive observers. Thus, in Poland, the initiative is essentially nothing more than a citizens’ petition to the politicians in power.

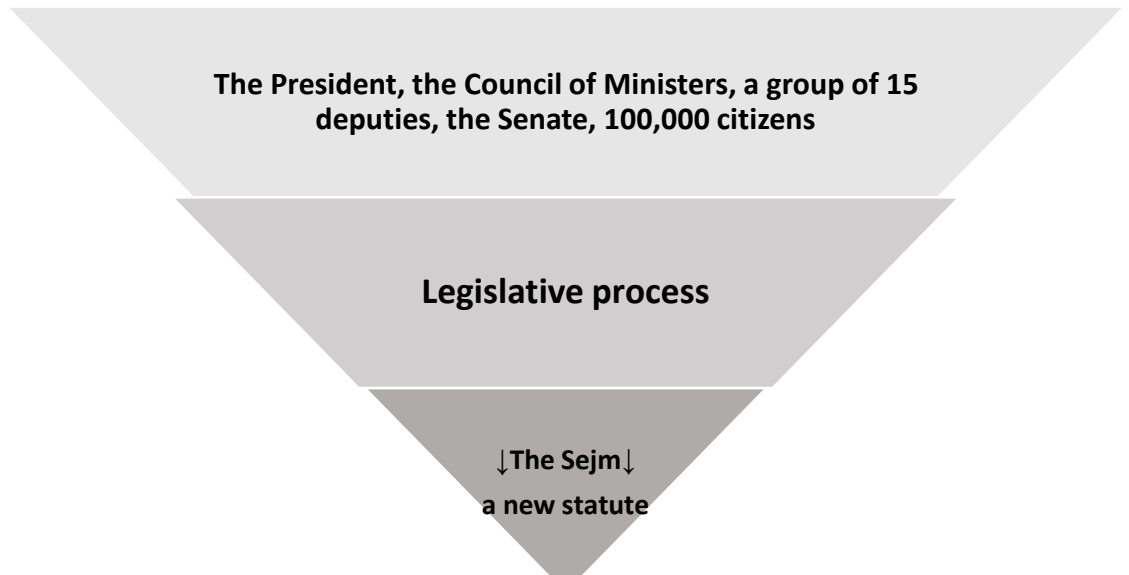
From the logical point of view, any legislative initiative should be put to the vote in a nationwide referendum, as it is in Switzerland. Only then a given political system can be considered as giving its citizens a real and creative possibility to participate in the political decision-making.

It is also noteworthy that the initiative is further limited by the fact that some projects can be proposed only by a specific entity. The best illustration is the State Budget Act which can be proposed only by the Council of Ministers (Article 221 of the Constitution of Poland)⁹⁹. Another example is a bill on the amendment to the Constitution: the initiative belongs to a group of at least 1/5 of the statutory number of Deputies, to the Senate, or to the President (Article 235, sec. 1)¹⁰⁰. This means that Polish citizens lack even a theoretical possibility of a direct way of amending the Constitution.

⁹⁹ Ibidem

¹⁰⁰ Ibidem

Fig. 5: Legislative initiative according to the current Constitution.



Source: Own work.

As an element of direct democracy, citizens' initiative should be a tool of creativity and innovation. It should be initiated by citizens themselves and lead to a binding referendum in which they would make their final decision without having to comply with any validity thresholds.

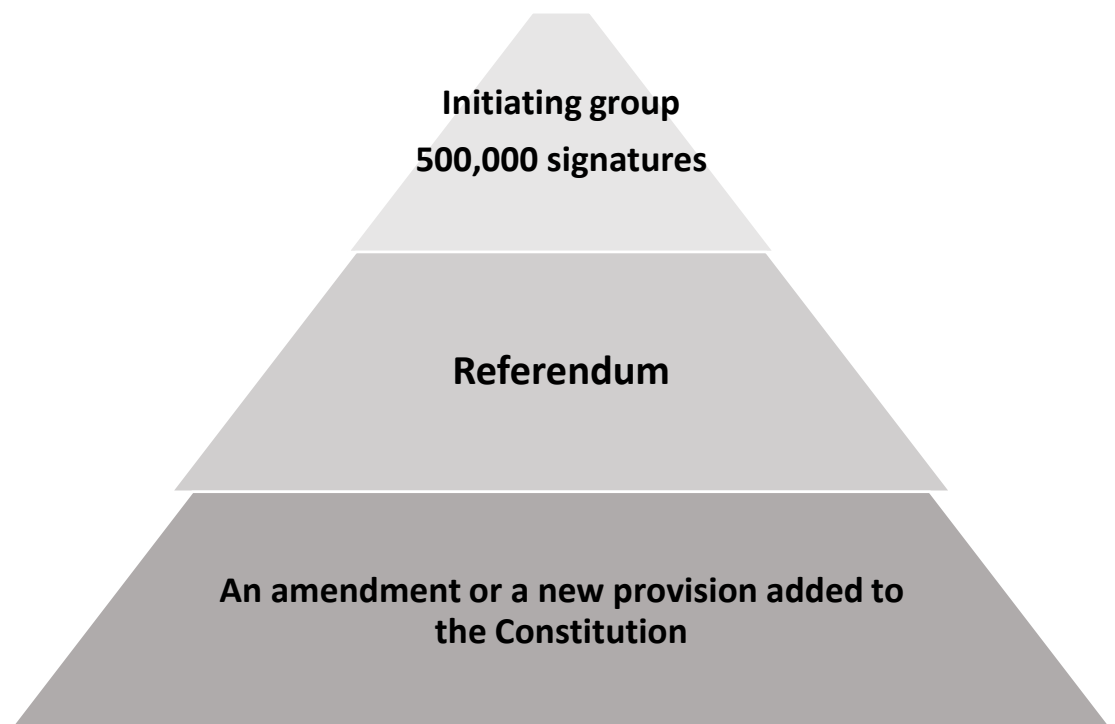
5.1 Future situation

The goal of an initiative should be to introduce new laws by amending or adding provisions to the Constitution. This means that it cannot function only

on the statutory level, and it should always result in modifying the Constitution itself¹⁰¹.

The number of signatures required and the time for their collection also needs to be revised. If we compare Poland to Switzerland, it seems that 500,000 signatures with 18 month collection period would be a realistic option. It would be enough to organise rallies and campaigns in various social and political circles.

Fig. 6: People's initiative according to the proposed constitutional amendments.



Source: Own work.

¹⁰¹ Cf. <http://naszczasopismo.com.pl/?p=1275>

A new article introducing a proper instrument of people's initiative should read as follows:

People's initiative (© M. Matyja, Public Domain)

1. All citizens of the Republic of Poland, as well as socio-political groupings, shall retain the right to exercise people's initiative.
2. People's initiative is valid if a registered initiating committee collects at least 500,000 signatures of citizens eligible to vote and presents its project to the Council of Ministers within 18 months.
3. The Council of Ministers adjudicates on the constitutionality of a project proposed through people's initiative and its conformity to the international law binding upon the Republic of Poland.
4. A project proposed through people's initiative shall be put to the vote in a nationwide referendum.

Let us note that the proposed provisions do not mention the Sejm, but only the Council of Ministers. Since the government is the executive power, it is its duty to assure that the procedure is completed efficiently and leads to a nationwide referendum (see Fig. 6). Another government's task is to check whether a given initiative complies to the international law that Poland has obliged to obey by signing certain treaties and agreements.

Let us take a closer look at how it could work in practice:

Article 168 of the Constitution of Poland concerns taxes and charges set by units of local government:

Article 168

To the extent established by statute, units of local government shall have the right to set the level of local taxes and charges.

Local government strives to be independent in terms of its budget and financial policies. The current constitutional provision, however, limits this independence and cedes the regulation of this matter to a statute, making it, paradoxically, superior to the Constitution (there are other such cases).

It is therefore necessary to amend Article 168. In order to do that, an initiating committee needs to be established, whose goal would be to collect 500,000 signatures within 18 months. The initiators would be obliged to present a new wording of the article, which could read as follows:

Article 168

Units of local government shall have the right to set the level of local taxes and charges by themselves.

Collecting half a million signatures within a year and a half is not an easy task, but given the dissatisfaction of the communes with the financial policies imposed on them, it is not impossible. It would be necessary to organise an informative campaign, which is an element of any democracy, not only its direct form¹⁰².

¹⁰² <https://politykapolska.eu/2018/10/11/prof-miroslaw-matyja-demokracja-oddolna-sterowana-odgornie/>

When the signatures are collected, the project is proposed to the government whose duty is to set the date of a nationwide referendum. This process is free from any interference on the part of the Sejm or the Senate.

Citizens make a decision by answering a question whether they want to change Article 168 and, thus, to introduce a new financial policy and tax system on the local level. The decision is binding and final. The Council of Ministers, as an executive body, has one year to amend the Constitution.

In case the citizens answer “no,” nothing changes, although – only seemingly. For the referendum send a signal that there is a problem with the tax policy on the local level. Now, the Parliament and the government have to take into consideration that many citizens are opposed to the current regulations in this field. But what would happen if those bodies remained indifferent to the matter? Well, they would be compelled to do something anyway due to the very possibility of another initiative, which – this time – may result in a “yes” vote.

This is the essence of direct democracy. It simply does not stop. Naturally, there could be other initiatives, which would not necessarily aim at amending any constitutional provision, but rather at introducing a completely new one. For instance, a provision concerning punishments for individuals guilty of economic scandals, a ban on the privatisation of industrial plants, a ban on selling Polish financial institutions to foreigners, a percentage of foreigners allowed to reside in Poland, or a change of electoral laws from undemocratic to democratic ones *etc.* One could provide many similar examples.

Anyway, the people in power should rest reassured. Although citizens may propose any projects they want, collecting half a million signatures is difficult, and even then the way to “win” a referendum is long. Moreover,

collecting signatures requires time, energy, and money, which means that usually referenda will be held only in the most important matters.

6 People's Veto

6.1 Current situation

People's veto, known mostly in Switzerland, is a method of social control over the laws made by politicians. It is a form of protest that makes it impossible for the people in power to create laws which would benefit only them, instead of the society as a whole. In Switzerland, where people's veto has functioned well for the last 150 years, the disputes among the major parties are completely different from those in Poland. They exercise their power by delegating representatives to the seven-member Federal Council, which constitutes the Swiss executive branch. Due to that, the parties are compelled to seek a consensus on all important matters they deal with¹⁰³.

Moreover, all political factions that comprise the Swiss parliament are aware that if they enact a law against the wishes of their voters, sooner or later it will be repealed through people's veto. Due to this, the parliament does not pursue projects that would prompt a general opposition from citizens.

Essentially, people's veto is a method of raising an objection against solutions existing in a current political system. Instead of taking a matter to the streets, this instrument allows citizens to veto any law they disagree with. In Poland, the situation is different. Political parties are doing everything to gain as much power as they can. They rule with a disregard for their political rivals, as well as citizens in general, and act on their particular, oligarchical

¹⁰³ <https://www.nacjonalista.pl/2018/07/04/prof-miroslaw-matyja-marzenia-o-oddolnej-demokracji-w-polsce/>

interests, while pushing the people out of the decision-making process. The law they make is instrumental to their goals, and the only way for Poles to oppose this is to take it to the streets. The sad truth, however, is that no matter how loud the protests are, they are doomed to fail. The people of Poland should have the possibility to object to laws made by politicians by putting them to the vote *via* people's veto.

6.2 Future situation

Similarly to other countries with indirect or parliamentary democracy, such instrument does not exist in Poland. With the dominant position of political parties, people's veto would be an innovative and efficient tool to counter their influence.

If we look at the population of Switzerland, people's veto in Poland should be organised by the order of, approximately, 250,000 citizens eligible to vote. Such a number would be enough to put to the vote an existing statute or to propose a new one.

The results (for or against) would be binding. Theoretically, it seems very simple, and the most interesting thing about it is that the procedure itself is also quite easy in practice.

Let us, for a moment, take a look at this issue from another point of view. Although people's veto does not have to be used everyday, the people in power do have to face its "threat" daily. This alone would make voting in the parliament more cautious, for politicians and their parties would have to consider the opinions of various social groups or society as a whole.

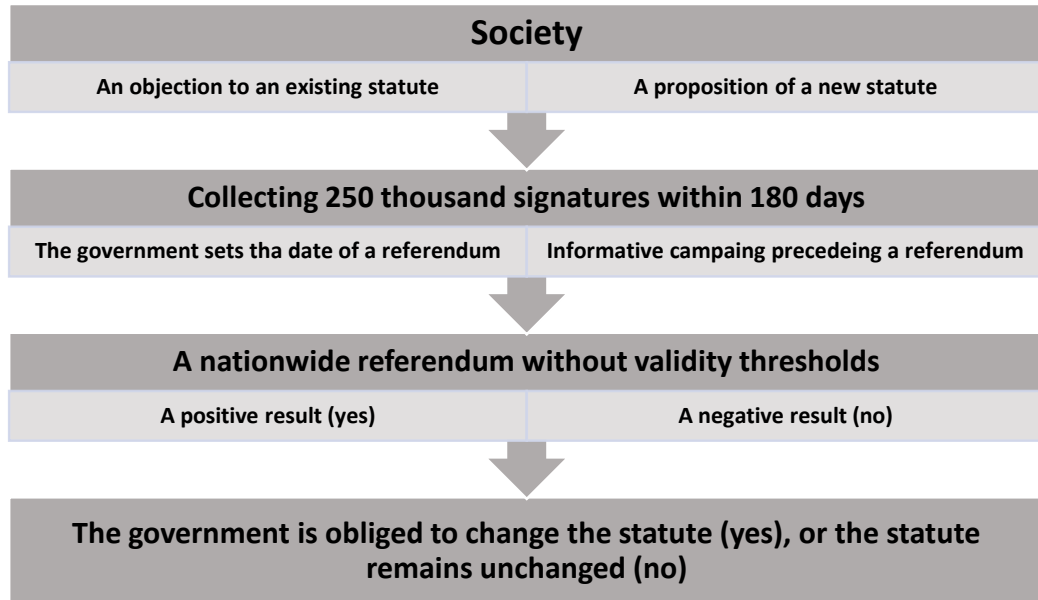
A provision introducing people's veto into the Polish Constitution would certainly be an innovative move, and it would equip citizens with real

possibility to control and make laws. Instead of complaining, they would be able to take the initiative into their own hands and, by collecting the necessary number of signatures, change any harmful regulations. It should be emphasised that the decision whether to accept or reject a statute would have to be made by the majority of the participants, and that the Polish government would be obliged to act on it.

Again, the Polish political elites should not worry in excess – collecting 250,000 signatures is not easy and requires a lot of time and organisation¹⁰⁴. The most important factor here is politicians' awareness of the fact that there exists such a tool of social control over the government, and that it can be easily used against them. This would compel any ruling party to actually consider the opinions of their voters and their trust in them. Figure 7 illustrates the proposed procedure of people's veto in Poland.

¹⁰⁴ Cf. <https://poland.us/strona,25,34682,0,weto-obywatelskie-demokracja-oddolna-w-polsce-cz-3.html>

Fig. 7: The proposed procedure of people’s veto in Poland.



Source: Own work.

A proper constitutional provision introducing people’s veto into the Polish political system should be analogical to the one regarding people’s initiative and could read as follows:

People’s veto

1. All citizens of the Republic of Poland, as well as socio-political groupings, shall retain the right to exercise people’s veto.
2. People’s veto is valid if a registered vetoing committee collects at least 250,000 signatures of citizens eligible to vote and presents its project to the Council of Ministers within 18 months.

3. The Council of Ministers adjudicates on the constitutionality of a project proposed through people's veto and its conformity to the international law binding upon the Republic of Poland.
4. A project proposed through people's veto shall be put to a vote in a nationwide referendum.

6.3 Example – case study

Let us assume that people's veto already exists in the Polish political system. This means that there is a provision, based on Article 4, stating that at the order of 250,000 citizens a referendum is held in order to amend or introduce a new statute.

Now, let us imagine the following example: we know that every newly-elected party makes changes to the laws of education system, which results in organisational chaos and angers students, parents, and teachers.

Therefore, the best solution is to object to the current statute – whose only proponent was the Minister of Education – and to propose a new one. But who can do this? Well, anybody; every citizen eligible to vote may propose a people's veto. Naturally, it is easier to collect the required signatures and to get a positive final result if the initiative is put forward by some political or social organisation. Let us assume that the Polish Teachers' Union, with a vast support of parents representing diverse circles (working class, intellectual, rich and poor, rural and urban), proposes a project of a veto.

People are fed up with educational experiments carried out on their children. Due to the existence of people's veto, they do not have to write complaints

(which are ignored, anyway) and appeal to politicians – they just have to collect the signatures within the established time limit.

The vetoing committee presents the Council of Ministers its project, for instance – a following question: “Are you in favour of changing the Education System Act and reinstating the previous model of educational system?”

Anyone who knows the reality of Polish schools – namely, teachers and parents (not to mention students) – will answer “yes.” The referendum is preceded by an informative campaign where different views are presented and promoted. Naturally, some political parties will exploit the whole matter to boost their ratings.

The government has the right to defend its newly introduced changes, and thus it will call to vote “no.” On the other hand, the majority of citizens will probably be of different opinion. Everybody has the right to their own views and to promote them. Any attempts at making the referendum a purely ideological event will fail because the problem it concerns is very narrow and specific. Parents, driven solely by the idea of ensuring the best education and development opportunities for their children, ignore fairy tales propagated by political parties.

Everyone who considers the issue important will take part in voting, as it would be the right thing to do. Naturally, there is no validity threshold, and the results are binding. If the majority answers “no,” everything stays the same. However, if the majority votes “yes,” then the government has one year to repeal the new statute and reinstate the previous one.

It all seems simple. The ultimate decision belongs to the sovereign, so – regardless of the outcome – citizens have only themselves to blame.

We should, however, ask ourselves whether any Minister would dare to propose changes to the Education System Act in the first place? In the system of direct democracy they would probably think twice before doing it – due to the possibility of reversing their decision through a referendum. Maybe they would fear losing their jobs or actually learn to respect the people and never come up with similar ideas in the future?

Let us now come back to reality. The semi-democracy in Poland is a system of top-down governance without any possibility citizens influencing in directly. As a result, government officials act as kings without a crown, who usurp the right to decide on what is good and bad for the country and its people.

On what basis a governmental official, even as high as a Minister, decides on the fortune or misfortune of Polish students? Does a soulless, incompetent bureaucratic machine have a right to determine the fate of Polish families?

Although people's veto is mainly an instrument of defence against harmful attitudes and actions of politicians, such as those exemplified by the problem of our educational system, in fact it can be used to oppose any law.

7 Power Shift in the Polish Political System

My *complementary model of democracy for Poland* anticipates a long-awaited power shift in the political process. Its implementation would yield an array of positive results that not only would be beneficial to citizens but also would allow them to assume the proper role of the country's sovereign (see Fig. 8). Other improvements include:

First, the decrease of the Sejm's powerful position. Voters would become a natural opposition to political parties who would be compelled to consider people's opinions.

Although society would gain its rightful place in the decision-making process, it would not be the most important thing. The people would be finally able to efficiently supervise the parliament's and the government's activity. Thus, the Sejm and the Senate would have to stop acting as a king without a crown. They would be aware that any law they propose could be opposed by citizens and put to the vote through people's veto. Due to this, the government would also become much more modest in its decisions. Society would become the supervisor of all state agencies.

Many critics of direct democracy consider weakening the position of the parliament as a disadvantage. Paradoxically, however, if we take a closer look at the current state of the Polish political system, it will become obvious that the country needs to break the omnipotence of its parliament. The deputies should represent the interests of their voters and consult with them, and the people should be able to defend themselves through veto or initiative. The parliament has to become more civil and democratic.

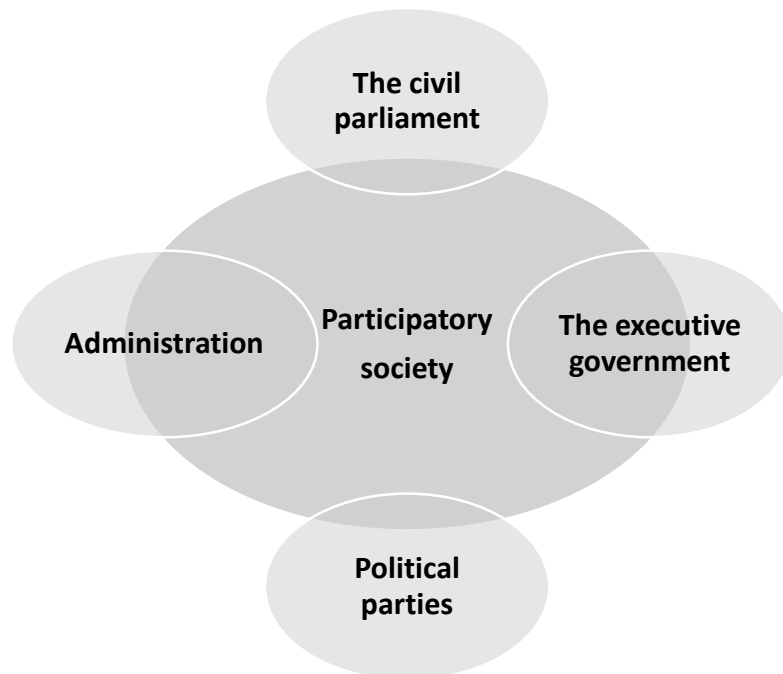
Second, demonstrations, marches, and protests would no longer be the only way for society to express its dissatisfaction with politics. People's initiative and veto are the most efficient forms of a legal and peaceful protest. By becoming more aware of those instruments, society becomes more civil and takes greater responsibility for the country.

Third, apart from the parliament, political parties' also lose significance in direct democracy. Citizens would no longer have to rely on them, for the people themselves could make vital decisions. Party membership would lose its appeal since there would be other possibilities to influence the state's policies. Due to the effectiveness of people's veto, initiative, and referendum the role of major parties with non-democratic leadership would be significantly diminished. In short, their political monopoly – as well as their dominance over the nation – would be broken, while at the same time society would regain a genuine influence on the country's politics.

Fourth, in a system of direct democracy, the government functions only as an executive body. Its tasks include efficient organisation of referenda and implementation of their results (amending statutes or the Constitution).

Fifth, state bureaucracy would no longer be uncontrollable and omnipotent (currently no one is able to comprehend its decisions, regulations *etc.*). Society should use people's veto to reduce the overgrown numbers of public officials. Since it is the people who pay taxes and take part in making political decisions, they should have the right to demand a proper treatment in public offices.

Figure 8. A new political structure in complementary democracy. (© M. Matyja, Public Domain)



Source: Own work.

Sixth, the awareness of being a part of the political process would cause a burst of positive energy among society. As a result, the people would start to feel co-responsible for the present and the future of the country. On the other hand, those who have been rather passive up to this point would gain a sense of being appreciated and needed, which would reignite their interest in politics. The ultimate effect would be an evolution of the Polish political culture and the formation of a fully civil, participatory society. The process of political socialisation would finally be put back on a proper track. Debates preceding referenda would become more substantive and less ideological. The reason is that the people – who know best what they need – would vote for their own good; they would not have to follow the party line anymore.

No matter what country we look at, when citizens go to the polling stations, they always decide based on the same set of factors:

- their wallets, i.e., their economic self-interest;
- their conscience, religion, patriotism, tradition, family, and so on;
- their political beliefs or a particular party agenda.

Seventh, although the decision-making process in direct democracy is longer than in parliamentary democracy, the number of new laws created by the government would be significantly smaller. They would be filtered through the democratic instruments of civil control. Moreover, the Constitution would finally regain its power as the supreme law of the country and the source of citizens rights, as well as duties. The art of proper governance is to respect the Constitution and to make humane laws that are consulted with society. Essentially, it is about the quality and efficiency, not quantity and haste.

Eighth, the instruments of direct democracy make corruption limited or impossible. They prevent economic scandals, politicians' unlawful financial gains and wastefulness, stealing away of national assets, and dividing society into superior or inferior groups.

Afterword

Is the implementation of the instruments of direct democracy a utopian idea, or is it a chance for a better future of millions of Poles?

Frankly speaking, we do not have much to lose, rather we could build a truly democratic political system, in which citizens are no longer pawns on a chess-board used by incompetent and ill-willed players. The instruments of direct democracy (referendum, people's initiative and veto) would ensure a more efficient decision-making process and allow society to properly control politicians' actions.

If we managed to do this, everyone would find it easier to say things like: "It is my country," "It is my decision," "It is my motherland." Such words would have a true meaning and would not carry any false grandiloquence.

With time, these foundations would give rise to a genuine civil society, one that is pragmatic, engaged and actually participates in the political process. Without it a true democracy has no chance of survival, and *vice versa* – there will be no civil society without real Direct democracy.

The model of democratic change in Poland presented in this book requires an amendment of the Constitution. However, this change – as a political project – has to be initiated outside the sphere of politics. It has to come from the people, and in order for that to happen, there has to occur a change in the mentality of Polish society. We cannot delude ourselves that the political elites will ever agree to such reforms of their own will. They see the people as "a mob," who cannot be let near the reins of power. Therefore, citizens are the ones who should realise that they are the sovereign, and that they should fight for their right to participate in the governance of the country.

The current Constitution is very convenient for the ruling elites. It is ambiguous, imprecise, inconsistent, and hedged around with so many laws that it can be interpreted in any way. This is especially visible in politicians' tendency to introduce many electoral thresholds. If there is a proposition of a reform that they consider as potentially harmful to their interests, they simply make it more difficult to reach the validity threshold – by hindering the debate and discouraging people from supporting the project – instead of honestly winning anyone over by persuasion.

Another interesting element of the Constitution is Article 7 that determines the principles governing the functioning of the state agencies. According to it, “The organs of public authority shall function on the basis of, and within the limits of, the law.” Our political elites use it to push the idea that the law is always right, which, in effect, undermines our legal system as a whole... This means that politicians can make any laws they want and justify them by simply pointing to Article 7.

It is a vicious circle. The only way to break it is to remind Poles that they are the true sovereign and that participation in the political process is their natural, democratic right.

We must free the Polish culture from the false notion that political power is something that can be *given to, divided between or taken back* by an exclusive group of people. No one in a democratic country – apart from the sovereign, i.e., the civil society – has the privilege to take the absolute power. *It is essential to convince citizens that things can be different and better.*

We do not need a revolution. What we need is an evolution that would spread the awareness of the fact that Poland belongs to us. We will not transform our semi-democracy by simply electing different people and political parties.

The system has been flawed from the moment it was established 30 years ago. The question is: how long can it last?

It is not about looking for “good” politicians and condemning the “bad” ones. What we essentially need to do is to propose a simplified theoretical model of systemic choices and challenges necessary to improve the political system in Poland. Theory and practice show that we do not have to choose between “liberal parliamentarism” and “direct democracy. For it is impossible to state *a priori* that the latter or the former will turn out to be completely functional or dysfunctional. Political systems comprise of numerous elements, and one of the most important is a factor that I call “both this and that” which is essentially the fact that in order to come up with a healthy political process a country needs social dialogue and compromise above all. And this should be the foundation of the political process of the Polish state. My model of a system based on direct democracy in no way suggests that we should copy the Swiss system in its entirety and implement it in Poland. It only points out that it is possible to combine elements of parliamentary and direct democracy. The result would be a complementary system, in which citizens would have a greater control over their country.

Does this book make the idea of direct democracy in Poland more realistic? Is it a utopia or a chance? Is it only a charity for the people on the part of those in power, or is it a natural, democratic right of citizens? Should we strive for a form of capitalism based on the principles of modern cavemen, who dwell in ignorance, economic scandals, and corruption, or a one in which citizens fulfil their historical duty to provide a better future for the next generations?

Annexes

Annex I Frequently Asked Questions

1. Will the ruling class agree to “give power back to society”?

It does not have to “agree” since power already belongs to the People. The ruling class that controls the fate of nearly 40 million Poles must simply accept the introduction of certain elements of direct democracy into current form of governing. Such a change would definitely not overturn the political system but it would complement and upgrade it so that the state would become more humane and democratic. It is impossible to give, take away, or appropriate power in a truly democratic system.

2. Is Polish society “mature” enough for this kind of democracy?

After centuries of experiencing different political systems, Polish society does not have to prove anything to be worthy of democracy. If a nation is prevented from participating in power, it will never develop into civil society, and – *vice versa* – a true democracy will not function properly without citizens’ active participation. Apart from that, Poles certainly do not need lessons in patriotism or Christian ethics.

3. Does not direct democracy, as a political process, take too much time to accomplish anything?

The decision-making process in a direct democracy is longer than in a parliamentary one. Judging by the example of Switzerland, however, it results in a smaller number of hasty decisions. Such a system has certain advantages: decisions are made in a thoughtful manner and filtered by society as a whole, instead of being pushed by a limited circle of politicians. Decisions made by citizens at the polling stations have a wider social support and acceptance, which makes them more democratic and effective.

4. Would not a direct democracy be too expensive for Poland?

When asking about costs, we usually mean administrative expenditures in a given system. Therefore, the proper question is: what would be the cost of organising an initiative, a veto, or a referendum? If we consider the socio-economic costs of bad decisions made under the current system, a direct democracy presents itself as incomparably cheaper. Let us remind

ourselves how much of our national assets were sold off in the early '90s. If there had been a referendum on this during that time, Poland would not be in the hands of foreign corporations today.

5. Will “giving back power to the People” lead to irresponsible management of national assets?

It is a simplistic way of thinking. It would seem that direct democracy gives citizens the possibility to initiate the most unrealistic projects and to veto any opposing voices. However, the very act of collecting signatures makes the process rather difficult. Moreover, decisions are made by society as a whole in a referendum preceded by an informative campaign in which all interested parties present their viewpoint. It should be also remembered that it is also society itself that will bare any consequences. Finally, maybe it would be more proper to ask ironically: is the Nation capable of wasting national assets more than it has been done by Polish politicians for the last 30 years?

6. How to harmonise the supremacy of EU laws over national laws in a direct democracy?

Being a member state means that EU's laws are superior to the national law of Poland. Therefore, any projects of amending the Constitution (or a statute) have to be in accordance with the Union's law. The government should verify the legal compatibility of an initiative or a veto before any signatures are collected. This applies not only to the laws of the EU but also to any international laws that Poland has obliged to follow.

7. Is not it too soon to introduce any elements of direct democracy in Poland?

Certainly not. Let us take a look at the Polish semi-democracy of the last 30 years. Where are we now? The elements of direct democracy are a chance to heal Poland's socio-political and economic system. The sooner, the better for everyone.

8. Would introduction of direct democracy undermine the role of state's institutions and political parties?

It would hardly be the case. They would become more democratic and be compelled to consider the will of society. It is certain, however, that the authoritarian mode of governing by the current elites would be eliminated – it is their position, not the state's institutions as such that would be undermined. Political parties would have to re-evaluate their role since they

would not be the sole intermediary between the state's institutions and society anymore. Moreover, they would no longer be considered as the only agencies capable of improving the socio-economic situation of the country.

9. Does a referendum without a validity threshold truly reflect the views of the majority (or all) citizens?

The idea of a referendum with a validity threshold is an unjustified and undemocratic invention of the Polish ruling class. If a person does not participate in a referendum, it should be considered as an equally valid, although passive, voice. Apart from that, different referenda will attract different social groups – while some people will find a particular problem urgent, others will see it as unimportant. Thus, when it comes to a referendum the voter turnout should be irrelevant. Let us remember that even if only a minority of citizens participates in voting, they still constitute a larger group – in terms of single individuals – than the number of representatives in the Sejm. A true democracy will always stand on its own merits and be able to seize the future.

10. Can a single citizen initiate the legislative process?

Yes, by all means. An individual can, for example, establish an initiating committee and promote a particular project. Of course, in order to make it effective, it is necessary to collect the required number of signatures. The final decision will nevertheless be made by all citizens eligible to vote.

11. Why is it that the discussion about the possibility of direct democracy in Poland has started only now?

There are several reasons. **First**, the contemporary Poland lacks the tradition of direct form of governance. Polish society has been ruled in an authoritarian and egoistic manner for decades. Any changes were simply cosmetic. Thus, it is difficult for Polish citizens to imagine a situation in which others do not govern them. **Second**, direct democracy limits the possibilities of gaining power by shady elites and celebrities. In such system politicians' pompous slogans of patriotism, tradition, and ideology, which serve as a cover-up for corruption, lose their power. Instead, organic work carried out by various groups becomes the foundation of the people's awareness of their true interests. Moreover, direct democracy significantly alters the nature of political power, i.e., the process in which certain individuals dominate over masses. That is why politicians do not want to share whatever power they have with average citizens. **Third**, the young Polish democracy has assumed its current parliamentary-elitist form already

after the country's systemic transformation. It is understandable since thirty years ago everybody was eager to accept any form of democracy that would replace the socialist "people's democracy." The experience of the last three decades, however, has shown that the current semi-democracy does not meet the expectations of Polish society. **Fourth**, the simplicity of a complementary democracy that enables citizens to participate in the process of governance is, paradoxically, beyond the comprehension of the currently ruling class.

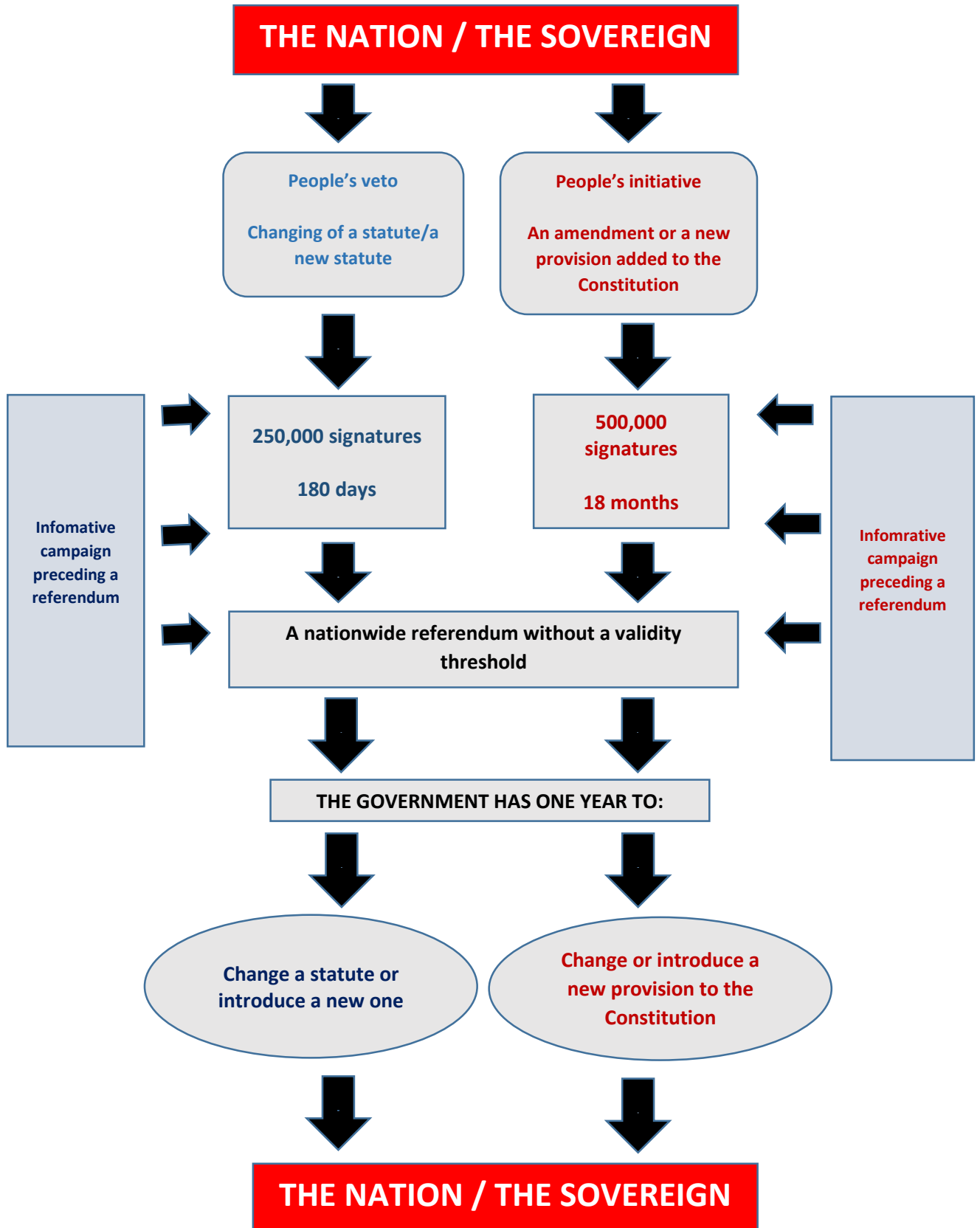
Annex II Basic Terms

Referendum – a form of general voting that is the closest embodiment of direct democracy in which all citizens eligible to vote (active suffrage) can participate. During a referendum, citizens of a country (or its part) articulate their opinion on a certain issue. As an instrument, it allows to control the government's actions, shape the political system and express the will of society.

People's veto – a political instrument that allows citizens to express their objections regarding the solutions existing in a country's legal system. In practice it means that a certain number of citizens eligible to vote may, within a given period, make an official stance concerning a particular statute. Following this, society votes on the matter ("yes" or "no") in a referendum. People's veto has a direct impact on the political process by enabling a Direct, civil control over the decisions made by the state's authorities.

People's initiative – a political instrument that grants citizens and socio-political groups the right to propose laws. Its practical implementations differ among various countries. In Switzerland, it may concern a partial or complete amendment of the constitution, if a required number of citizens eligible to vote whom, within a specific period, collect necessary signatures supports the project. They can demand to introduce simple amendments or repeal existing provisions, or propose a completely new solution. People's initiative may concern both particular and general matters. It should be mentioned that any initiative with the required number of signatures has to be followed by a referendum.

Annex III
A simplified model of direct democracy in Poland



Annex IV

The Constitution of the Republic of Poland of 2nd April, 1997 (Articles: 4, 7, 90, 118, 125, 170, 235)

Article 4 (forms of governance)

1. Supreme power in the Republic of Poland shall be vested in the Nation.

2. The Nation shall exercise such power directly or through their representatives.

Article 7 (the principle determining the mode of operation of state's agencies)

The organs of public authority shall function on the basis of, and within the limits of, the law.

Article 90 (delegation of competences to an international organisation)

1. The Republic of Poland may, by virtue of international agreements, delegate to an international organisation or international institution the competence of organs of State authority in relation to certain matters.

2. A statute, granting consent for ratification of an international agreement referred to in para. 1, shall be passed by the Sejm by a two-thirds majority vote in the presence of at least half of the statutory number of Deputies, and by the Senate by a two-thirds majority vote in the presence of at least half of the statutory number of Senators.

3. Granting of consent for ratification of such agreement may also be passed by a nationwide referendum in accordance with the provisions of Article 125.

4. Any resolution in respect of the choice of procedure for granting consent to ratification shall be taken by the Sejm by an absolute majority vote taken in the presence of at least half of the statutory number of Deputies.

Article 118 (legislative initiative)

1. The right to introduce legislation shall belong to Deputies, to the Senate, to the President of the Republic and to the Council of Ministers.

2. The right to introduce legislation shall also belong to a group of at least 100,000 citizens having the right to vote in elections to the Sejm. The procedure in such matter shall be specified by statute.

3. Sponsors, when introducing a bill to the Sejm, shall indicate the financial consequences of its implementation.

Article 125 (nationwide referendum)

1. A nationwide referendum may be held in respect of matters of particular importance to the State.

2. The right to order a nationwide referendum shall be vested in the Sejm, to be taken by an absolute majority of votes in the presence of at least half of the statutory number of Deputies, or in the President of the Republic with the consent of the Senate given by an absolute majority vote taken in the presence of at least half of the statutory number of Senators.

3. A result of a nationwide referendum shall be binding, if more than half of the number of those having the right to vote have participated in it.

4. The validity of a nationwide referendum and the referendum referred to in Article 235, para. 6., shall be determined by the Supreme Court.

5. The principles of and procedures for the holding of a referendum shall be specified by statute.

Article 170 (local referendum)

Members of a self-governing community may decide, by means of a referendum, matters concerning their community, including the dismissal of an organ of local government established by direct election. The principles of and procedures for conducting a local referendum shall be specified by statute.

Article 221 (legislative initiative regarding a Budget)

The right to introduce legislation concerning a Budget, a interim budget, amendments to the Budget, a statute on the contracting of public debt, as well as a statute granting financial guarantees by the State, shall belong exclusively to the Council of Ministers.

Article 235 (amending the Constitution)

1. A bill to amend the Constitution may be submitted by the following: at least one-fifth of the statutory number of Deputies; the Senate; or the President of the Republic.

2. Amendments to the Constitution shall be made by means of a statute adopted by the Sejm and, thereafter, adopted in the same wording by the Senate within a period of 60 days.

3. The first reading of a bill to amend the Constitution may take place no sooner than 30 days after the submission of the bill to the Sejm.

4. A bill to amend the Constitution shall be adopted by the Sejm by a majority of at least two-thirds of votes in the presence of at least half of the statutory number of Deputies, and by the Senate by an absolute majority of votes in the presence of at least half of the statutory number of Senators.

5. The adoption by the Sejm of a bill amending the provisions of Chapters I, II or XII of the Constitution shall take place no sooner than 60 days after the first reading of the bill.

6. If a bill to amend the Constitution relates to the provisions of Chapters I, II or XII, the subjects specified in para. 1 above may require, within 45 days of the adoption of the bill by the Senate, the holding of a confirmatory referendum. Such subjects shall make application in the matter to the Marshal of the Sejm, who shall order the holding of a referendum within 60 days of the day or receipt of the application. The amendment to the Constitution shall be deemed accepted if the majority of those voting express support for such amendment.

7. After conclusion of the procedures specified in paras 4 and 6 above, the Marshal of the Sejm shall submit the adopted to the President of the Republic for signature. The President of the Republic shall sign the statute within 21 days of its submission and order its promulgation in the Journal of Laws of the Republic of Poland (*Dziennik Ustaw*).



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