Abstract: The article faces two issue, the direct democracy and the budget, in order of discussing how political regimes build their finances, since the premise that finances and taxation determine the health of a democratic regime.

Keywords: Democracy; Direct democracy; Public finances; Participative budget.

Resumo: O artigo lida com dois temas, o da democracia direta e o orçamentário, para discutir como os regimes políticos constroem suas finanças, partindo da premissa de que estes e a imposição tributária determinam a saúde de uma democracia.

Palavras-chave: Democracia; Democracia direta; Finanças públicas; Orçamento participativo.

1. Introduction: How political regimes build their finances

Direct democracy and budget are never associated. Citizens had yet never been asked to intervene, at least in basic economic, budgetary and financial national matters. The experience of the participative budget of Porto Alegre has most certainly gradually spread worldwide, but it has remained confined to the local level. Parliamentarism, together with the representative modern system, has come forward by its power to decide tax issues and discuss their use. Representation has quickly found shape in the level of acceptance from the tax-payers. However, if we recall one of the first texts thereof, two sides of budgetary authorization were established: “All citizens have a right to assess, either personally or by their representatives, the necessity of public contribution, to grant it freely, to follow its use, and to fix the proportion, the mode of assessment and of collection, as well as the period, of the taxes.”

Practice has mainly shown its preference for “representatives”. More than a preference, it is

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3 Article XIV of the Declaration of the Rights of the Man and of the Citizen, 1789.

rather something exclusive: the time of direct expression of the budgetary authorization has so to speak never existed. “The government of the people, by the people and for the people” seemed to exclude budgetary and financial decision. Generally, the referendum and the tools of direct and participative democracy are not diffuse. Not only are democracies mostly representative, but budgetary and financial matters are often considered as sensitive, dedicated to representation. However, various forms of popular participation, at the local level as well as at the national one (Switzerland, Italy, Sweden, Norway) and at the infra-national level of federal States: United-States, Switzerland...) actually took place. By allowing citizens (voters) to express themselves on laws or policies direct democracy has displayed various faces. It is deliberative when voters take part in the public decision-making process. Exchange and expression of opinions are then focussed upon. Democracy is participative when it “generates extended public deliberation”. Many tools can be used: local assemblies, random draw, right to petition... The most common one, the referendum, consists in a “direct vote of the electorate on issues exhaustively enumerated at the constitutional or the legislative level”. It can be mandatory or optional, decisional, abrogative, advisory … and its forms may vary: governmental, parliamentary or popular initiative, or both. In case of a referendum or a popular initiative, tax matters are sometimes excluded by the Constitution: expressively as in Italy (art. 75, par. 2) and Portugal (art. 115, par. 4, b), or implicitly as in Denmark (art. 46) or in France. In the latter country, in view of article 11, par. 1, of the Constitution (and since the 1995 constitutional reform), « reforms relating to the economic, social or environmental policy of the Nation and to the public services contributing thereof […] » may be submitted to a referendum. During the preparatory debates regarding constitutional law, the Minister of Justice refused to include financial laws on the grounds that they dealt with “matters which […] seem to belong only to the parliamentary sphere”. A broader interpretation of the text would today be in favour of an inclusion of tax or financial issues. Lots of topics have budgetary implications, such as the removal of a public service or the public funding of

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4 And even supranational, with a right to petition of a new kind since the Treaty of Lisbon and the Citizens’ initiative (art. 11, par. 4, TEU).
6 Ibid. p. 27.
8 J. TOUBON, Déb. parl. AN, 1ère séance du 10 juillet 1995, p. 5.

political parties. Besides, “taxation is both a tool of other public policies [...] and the subject of public policy”, which makes it difficult to separate the institutional, economic and therefore fiscal concerns.

Taxation is an indicator of the health of a democracy. The solutions provided by governments and parliaments to the economic and financial crises attest to it. They raise the question of democratic legitimacy in new terms in the fiscal area: crises, though being « treated as constraints, [...] also offer opportunities for change». Two sets of elements must be taken into consideration. On the one hand, the sources of budget law are diffuse and therefore difficult to identify by the taxpayer. “This clearly is a relocation of norm production and a confusion regarding the levels of powers that raises a major problem of legitimacy”. This makes a “risk of fragmentation of the decision-making process inevitable”. The immediate source may be national (the vote of the State budget), but another one, more of an influence actually, a more distant one, may lie partly in markets, partly in various international, general or regional organizations. On the other hand, the social and constitutional implications of the crisis have often been concealed. If some parliaments have voted grim measures, the resistance, if not the reluctance, of others has been as remarkable as exceptional. A referendum on EU proposals regarding the recovery of the nation’s finances was finally held in Greece on July 5th 2015 after being mentioned in 2011 by the then Prime minister and reiterated by the Minister of Finance on March 8th 2015. Though politically and economically hazardous, the solution was legally founded. Though exceptional, it was nothing new as Iceland had resorted to referendums on several occasions.

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9 Such was the point of the referendum held in Italy in 1993.
11 Ibid. p. 188.
14 Like the provisory opposition of the Cypriot Parliament in 2013 against the European Union’s guidance, consisting in the taxation of private savings.
15 Pushing Greece out of the Eurozone was one of the possible consequences of the rejection of European proposals by 61.31%.
16 Most obviously, the country meets the necessary conditions for the development of direct democracy, chiefly thanks to its geography, not to say its climate: cf. MONTESQUIEU, L’Esprit des lois, part III, Livre XIV, chap. X.

Current representative democracies do not offer the necessary conditions to a viable economic and financial environment for the citizens any more. “We cannot separate the ‘political’ point of view and the ‘economic’ one, most of the economic matters having a political importance and most of the political matters having an economic importance”\(^\text{17}\). The reconciliation of representative democracy with the participative one is therefore to become effective. Political regimes make their own finance\(^\text{18}\). Whether they are representative or direct, political systems aim at providing useful tools to political decision-making. If one or the other may be picked, we have to admit that, for financial reasons, democratic institutions, owing to the defects of the representative system, need renovation. The illusion of frugal assemblies\(^\text{19}\) made way to fiscal illusions consisting in tax procedures (incentives, policies…) with debatable scope and efficiency\(^\text{20}\). Without militating for the definitive end of representative democracy, it will be simply argued here that participative democracy\(^\text{21}\) constitutes one of the useful tools to restore confidence in the political system, the financial system and the establishment of certain tax morals. To this end, we will ponder over the current exclusion of financial and tax issues from the referendum field and the other tools of direct democracy. Two arguments are mainly suggested that will be analysed. On the one hand, the bigger the country, the costlier the democracy. Practice has however demonstrated that direct democracy can be more efficient (and therefore effective) if other factors are taken into consideration (2). On the other hand democratic decision-making requires a certain skill, knowledge and capacity to explain that it has been reserved for some and/or according to a procedure of particular selection. Once again, in view of the evolution of modern access to information technologies, and the involvement of citizens in the political life, this outdated, simplistic or even condescending view of direct democracy requires caution (3).

\(^{21}\) Although the contrast between direct, participative and deliberative democracy was repeated, these democratic forms will be here discussed without preference, and essentially underline the voters’ participation in the decision-making process, in the public debate or the vote, in order to make a clearer distinction from representative democracy.

2. Democracy at all costs

If costs and benefits are measured, assessing the financial impact of direct democracy can take place in two ways. The first one consists in analysing the immediate effects of direct democracy tools on public budgets, offsetting the economic excesses of representative democracy (A). The second one will highlight the potential economic benefits as well as the social ones of the participation of taxpayers to the budget decision-making process (B). In both cases, direct democracy tools are presented at best as an alternative and at least as a complement of the representative system.

2.1. Budgetary and Fiscal effects of direct democracy

Stemming from the budgetary authorization, the parliamentary government came along the continuous increase of public spending, willy-nilly. If some spending was “imposed” – the financing of war, starvation and climatic disasters for instance – other forms of spending were not saved for electoral and political reasons – like the social demand for services. The democratic theory of public finances was laid down by A. De Tocqueville\textsuperscript{22}, who explained that democracy got stronger (with the extension of voting rights, for example) when spending increased, “even if the relationship of taxes to public services is correlated to democracy, unlike the opposition to taxation”\textsuperscript{23}. The acceptance of tax by taxpayers is explained by their claim for tax-funded services\textsuperscript{24}, which guarantees public-spirited taxation. However, In France, the inflation of spending – which could be put together with that of laws – “partly comes from… parliamentary hyperboles which the governments only opposed with inadequate energy”\textsuperscript{25}. Solutions were various, but mainly consisted in the suppression of the parliamentary power to propose spending, or at least in the strict surveillance of that power\textsuperscript{26}. The budgetary power was de facto progressively transferred to the executive. But this was not enough to contain the increase of spending, and neither was a set of binding measures upon

\textsuperscript{25} J. BARTHELEMY, Valeur de la liberté et adaptation de la République, op. cit., p. 171.
\textsuperscript{26} Cf. art. 40 of the French Constitution.
the public finance of the States. We can therefore wonder how a political regime, in particular the representative system, impacts national public finances.

Several studies have dealt with financial and budgetary implications of direct democracy, and more globally with the prevision of fiscal referendum. For the United States, Matsusaka finds that states that have that institution have lower expenditures and lower revenues than states that do not. The defence of representative democracy in this field implies that it has to remain free from every kind of constraints, mainly popular, otherwise it could not work because of initiatives that would dedicate public funds to other expenditures while preventing tax raise. However Matsusaka estimates that for California at least 32% of the state budget is tied up by popular initiatives that do not prevent tax raise to any significant degree, except on property. The fiscal referendum globally has decreasing effects on expenditures, because “the fiscal referendum forces governments to ask the citizens for approval of their budget proposals”. On the other hand, Blume, Müller, Voigt and Wolf notice that “broad initiative rights could lead to more government spending whereas the institution of (fiscal) referendums could cause the exact opposite”. Indeed, mandatory referendums, particularly on debt issues, reduce borrowing. Similarly, some argue that democracy has a cost, in particular direct democracy. Significantly, if the Greek referendum that took place on July 5th 2015, was estimated at € 110 million, the “excessive” cost of the 2005 French referendum on the ratification of the Treaty establishing a Constitution for Europe was estimated at € 130 million, approximately 3 € per each registered voter. This sum covered the printing and the routing of documents, the official campaign and the electoral operations, as well as secondary expenses: the credits of the Ministry of Foreign Affairs for civil training, the financial efforts of the government as early as spring to contain the rise of

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the “no”. This is the Gordian knot: the parliamentary majority feared a popular negative vote to the ratification of the Treaty which it had earlier approved. The result was irrevocable and significant: the treaty had been ratified by 92% of the Congress and rejected by 55% of the voters. What would however have been the cost of the absence of democracy, in other words of an unpopular legislation? It is a political cost, but an administrative one too (the reluctant implementation of unpopular measures) and an economic one (reluctance turning into opposition). The political and economic cost of the non-acceptance of tax goes with a psychological cost, which gives taxpayers the impression that they are “never in order”. These symptoms have many causes that can be related to the complexity of tax law and the multiplication of its sources, which questions the legality of taxation. Tax consent by representatives “is based on an assumption that is precisely the basis of representative democracy, that the will of the elected representatives should match that of the voters, that is to say, the taxpayers. There is obviously here something close to fiction. But it is essential, especially in financial matters, that the fiction be not too sensitive: the psychological element thereof is too important to be ignored. The tools of direct democracy could help reduce this gap, and contribute to the consolidation of tax legitimacy.

2.2. Efficiency and legitimacy of democracy

Although politically costly, this democratic expression could have presented benefits, in particular political ones. In other words, it is a question of estimating the direct and indirect costs, as well as the external and internal ones. It is the Public Choice model: internal (or “decision-making”) costs are the time and effort that individuals expend when they participate in the public choice process (costs of becoming informed and of negotiating with other parties); external costs arise when public decisions are harmful to a person’s interests. An

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34 Conversely, the political and fiscal consequences of the non-compliance with the outcome of the 2015 Greek referendum might as well be emphasized.
38 Cf. A. BARILARI, Le consentement à l’impôt, op. cit., p. 70, 121-122.
40 Ibid., p. 428.

optimal public choice process in this framework would minimize the sum of the two costs. More specifically, being involved in the political system, tax-payers have a higher intrinsic motivation to pay taxes. In some cases, direct democracy could be linked to the absence of tax evasion, and therefore raise tax morale. Indeed, “tax fraud is favoured by the feeling that the tax system is unfair”, whereas “public-spirited taxation is a form of support of the team in power and, in some historic circumstances, reflects a commitment towards a political organization”. The two sides of the consent which were distinguished by part of the doctrine join at this point: firstly, the consent of tax, given by representatives, and then the consent to tax, given by the taxpayers, emphasizing their psychological acceptance of it. The former is the foundation of tax legality, while the latter consolidates its legitimacy.

The difficulty lies in the position of the cursor: when is direct democracy less expensive than the representative one and conversely, when had representative democracy better intervene? The cursor is even double when telling the internal costs from the external ones on the one hand, and direct democracy from representative democracy on the other hand. One answer was given by Matsusaka: “Direct democracy is worse than representative democracy in terms of internal costs. Direct democracy involves the entire population in the policymaking process, incurring large decision-making costs [...]. Direct democracy outperforms representative democracy when it comes to external costs. For one thing, representatives may not be fully accountable to their constituents (there may be agency problems, in modern jargon) and may choose policies that are harmful to many of them. [...] The conventional conclusion is that the internal cost of direct democracy outweighs the external cost of representative democracy”. The multiplicity of the budgetary sources actually corresponds to a multitude of actors gathered in « a diverse and interactive network

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45 Ibid., p 244.

of participants”[^48]. The decisions, which “do not look the least final, or are not taken at a clearly definite time […], result from complex reiterated processes”[^49] making it “increasingly difficult to know who is really responsible [for it…]. Accordingly, charge itself has become problematic”[^50]. The evaluation of the democratic cost is not a mere mathematical and economic issue: it relates to the legitimacy of the political decision, undermined by the crisis that the main author of the decision goes through.

Y. Sintomer picked several structural causes of the crisis of political representation: its inability to face the socioeconomic crisis since the 70s; the political disconnection of the lower classes which take refuge in abstention or far-right politics; the crisis of the bureaucratic public action privatizing “public services [which] are less and less in the service of the public”[^51]; and internal causes of an elitist political system which is not spared by corruption. More in tax matters than in any other fields, the tax consent of representatives “lacks dedication”[^52]. It is “flawed”[^53], “absent”[^54], insincere[^55]. But “if social belief fades away, it is already a sign of the very limited scope of the principle”[^56]. Participative democracy would constitute an answer, “in spite of” the limits it may also meet[^57]. Indeed, when it exists, the referendum is subject to political exploitation: particularly in France at the local level[^58] and in Greece at the national one[^59]. However it would strengthen the legitimacy of the public decision by various aspects: by bringing the citizens closer to the political power, it would act as a lever of social justice[^60]; it would furthermore constitute an instrument of control of public

[^50]: P. ROSANVALLON, *La contre-démocratie, op. cit.*
[^51]: Ibid., p. 232.
[^57]: Ibid.
[^60]: The Prime Minister had asked his fellow-countrymen to reject the proposal of financial help that no longer existed (it had been withdrawn by the creditors) and conditioned his office to this result.

action and political acknowledgment. By taking several legal forms, it would act as a psychological catalyst. A popular initiative “would even more legitimize the development of associations” by giving to the people “a legal ability to express itself”, by allowing it to participate directly to the elaboration of legal rule. That is why performance shall not (only) be estimated by results to appreciate its success: participation allows all members to participate fully in the decision-making process and “in turn, participating individuals appreciate the responsibility entrusted to them”. Accordingly, legal rules are less constraints than tools allowing a more efficient action.

The financial field is a major target: if the law is the expression of the general will, it is because it (also) aims at being applied to everyone. The legitimacy of the political decision is all the more important when the norm applies to the largest number. This is the case of budget and financial bills. “In the direct democracy system, there are as many elected representatives as voters”. But this is no more than going back to the foundations of democracy: “Good command takes its roots in good obedience, and the citizen’s ‘virtue consists exactly in knowing these two opposite faces of power’. The turnover of public offices justified itself as far as the one who was ruling-dominating one day would be ruled-dominated another. That is why the local level could be turned into a laboratory or “a do-it-yourself, where the national regulations could be adapted rather than into a space of democratic creativity” for “on a national scale, another type of legitimacy [is] necessary.”

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66 Cf. J.-J. ROUSSEAU and article VI of the Declaration of the Rights of the Man and the Citizen.
67 H. KELSEN, La démocratie, op. cit., p. 61. We put aside in this paper the problem of the subjects of the referendum or direct democracy, but we have to take into account the fact that the electoral body may vary (citizens-voters/tax payers). The electorate does not always fit in with the one concerned by a political decision; either this one is more restricted (only a part of a territory is implied), or it is larger (tax payers are also non-national). Therefore there is a difference between the one that applies the legal rule and the one that decides it (beyond the representatives).
68 ARISTOTLE, Politics, III, 4, 1277, §10.
70 Y. SINTOMER, Petite histoire de l’expérimentation démocratique, op. cit., p. 135.

Democracy has a cost that is diversely appreciated among the various States. We could then as well demonstrate that elections in the universal suffrage constitute an economically absurd method of appointing leaders. Think of the financing of political life (parties, associations) and of electoral campaigns in some States. On the whole, the criticisms against direct democracy really aim at democracy as such. In direct democracy, access to information, political knowledge and skills could not be generalized: at least, this was the main argument which consolidated for a long time representative democracy to the detriment of the direct one, generally and in particular in the budgetary field.

3. A democracy under conditions

The classical picture by the defenders of representative democracy is that of “an ignorant, uneducated, unreasonable and passionate people, the easy prey of the demagogues and the flatterers”. The arguments which founded political representation in the 18th century do not take into account several factual data allowing a first incursion of direct democracy into the financial and tax domain (A) that would allow new forms of budgetary decision-making processes (B).

3.1. Fiscal contract revisited

It is sometimes argued that direct democracy creates deficits by allowing “myopic” voters to vote for spending while cutting taxes. Incompetence is the main argument. Competence being the legal basis of the action of public authority, the people is theoretically competent: it is sovereign; its sovereignty is primary and determines other skills. The budgetary authorization has a democratic basis. Democracy being the people’s affair, the budgetary authorization should be the people’s direct affair. But the people in its unity cannot express itself. Its unity would by the way be fiction, because it would essentially consist in the aggregation of several individual wills. Public opinion at large “has no proper consistency”; “at the most” it has a “state of mind that is a trend towards forming opinions”. In order to

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F. ROUVILLOIS, L’avenir du référendum, op. cit., p. 120.
F. ROUVILLOIS, L’avenir du référendum, op. cit., p. 61.
H. KELSEN, La démocratie, op. cit.

exercise such competence, representation was instituted: some exercise power for all, in the name of all. We know the practical reasons: they are mainly geographic. The largest states cannot manage direct democracy. They are therefore political too: the political decision may only be made by an organized and particularly composed assembly. Representation would have allowed “the refining and enlarging of the public views by passing them through the medium of a chosen body of citizens whose wisdom may best discern the true interest of the country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations”\textsuperscript{76}. Sieyes justified representation on the basis of a sensible division of labour: once busy with their economic affairs, the citizens cannot all dedicate themselves completely to the public affairs; that is why some of them will assume the latter. Criteria had to be given to representation and were consecrated by texts: take for instance the French Revolution with ability, virtues and talents\textsuperscript{77}. In the budgetary field, part of the doctrine is even more radical to deny any competence to the people, to the ordinary citizens, to the non-professional politicians: owing to the complexity of tax issues and their technical nature, the people’s “ability” to vote a budget is strongly questioned\textsuperscript{78}. But this same doctrine paradoxically fears the people’s inability “to consent to the most necessary sacrifices”\textsuperscript{79} and owns that a Constitution which “has pushed the respect for skills and the principle of technicality to the limits is also the least free”\textsuperscript{80}.

During the revolution, the “abilities” referred to the “persons able, by their education or position, to exercise political rights”\textsuperscript{81}. In practice, politics was reserved to some, which confirmed Sieyes’s division of labour and vindicated the necessary ability required by Madison. A poll tax voting system\textsuperscript{82} will be its lever, property its main requirement. Today, the inability argument seems old-fashioned in many practical various ways to imagine “a new

\textsuperscript{76} J. MADISON, “Federalist 10”, \textit{Federalist papers}, November 22, 1787.
\textsuperscript{77} Comp. article VI of the 1789 French Declaration: “The Law is the expression of the general will. All citizens have the right to take part, personally or through their representatives, in its making. It must be the same for all, whether it protects or punishes. All citizens, being equal in its eyes, shall be equally eligible to all high offices, public positions and employments, according to their ability, and without other distinction than that of their virtues and talents”.
\textsuperscript{78} J. BARTHÉLEMY, \textit{Le problème de la compétence dans la démocratie}, op. cit., p. 27.
\textsuperscript{79} Ibidem.
\textsuperscript{80} J. BARTHÉLEMY, \textit{Le problème de la compétence dans la démocratie}, op. cit., p. 75 about the French Constitution of the Year VIII.
\textsuperscript{81} Dictionary Littére, quoted by Y. SINTOMER, \textit{Petite histoire de l’expérimentation démocratique}, op. cit.
\textsuperscript{82} A suffrage conditioning access to the vote on the payment of a tax (the \textit{cens}).
fiscal democracy”\textsuperscript{83}. “In the name of which legitimacy could some claim themselves ‘able’\textsuperscript{84}, we may first wonder. The representative system undergoes increasing direct criticisms, through majoritarian rule and elections which representative democracy is structured by. J.-J. Rousseau already considered that the election process was only a short-lived expression of the freedom of the people\textsuperscript{85}. That is why, when defending the necessary protection of the minorities, Kelsen justified the qualified majority, “if possible unanimity”, considered by him “as guarantees for personal freedom”\textsuperscript{86}. Kelsen adds that, “our modern democracies were forced to forego unanimity”; yet “by contenting itself with decisions by the majority, democracy gets along with a mere approximation of its primary ideal”\textsuperscript{87}.

Secondly, the criticism against the professionalization of the representatives goes with the inner weakness of the representative system. They are no longer the traditional political professionals. Politics is nowadays less and less the business of a chosen few, in particular in the economic domain. The complexity of that area would have justified the concentration of budgetary powers in the hands of the executive power, with a suitable administration\textsuperscript{88} that would have been more effective in financial matters than an unruly\textsuperscript{89} or naturally disabled\textsuperscript{90} assembly. Representatives are submerged from all sides: specialists (economists) roam the corridors of Parliament. They take on various forms (individual experts, organisms, public institutions) and different statuses (independent or linked to public authorities). Besides, it was never asked to the parliaments to be experts. This “ideology of the skill” was also denounced as the “experts’ power to create rules [regarding...] something essential, that of the legitimacy of the norm-making institutions”\textsuperscript{91}.

\textsuperscript{83} M. LEROY, L’impôt, l’Etat et la société. op. cit., p. 260.
\textsuperscript{84} A. BARILARI, Le consentement à l’impôt, op. cit., p. 106.
\textsuperscript{85} J.-J ROUSSEAU, The social contract, book III, chap. 15: “The people of England regards itself as free; but it is grossly mistaken; it is free only during the election of members of parliament; as soon as they are elected, slavery overtakes it, and it is nothing. The use it makes of the short moments of liberty it enjoys shows indeed that it deserves to lose them”.
\textsuperscript{86} H. KELSEN, La démocratie, op. cit., p. 19.
\textsuperscript{87} H. KELSEN, La démocratie, sa nature, sa valeur, op. cit., p. 19-20.
\textsuperscript{89} Cf. our « L’évolution des rapports entre les pouvoirs budgétaires », Politeia, n°15-2009, p. 407-430.
\textsuperscript{91} M. BOUVIER, « Experts et politiques face à la gouvernance des sociétés complexes », op. cit., p. 303-304.
Finally, tax payers and citizens have similar access to the economic and political information through various means of communication. From this point of view, Iceland constitutes a particularly useful laboratory. By combining various democratic tools of participation (referendum, constitutional debates on the online social networks), Iceland has demonstrated that the people is involved in the decision-making processes (legislative as well as constitutional) which are therefore not reserved to some political professionals. Even more in the financial and economic domains, Icelanders were twice asked to have their say on the bank-saving plans (“Icesave agreements”) in an original way. Indeed, the constitution of Iceland includes resorting to a referendum procedure in order to settle a conflict between the assembly and the president of the republic. If such a disposition aims at being applied to any act, it was dramatically applied in economic and financial circumstances as voters twice rejected the proposals adopted by the parliament (in 2010 and 2011). The comparative law argument widens its frontiers beyond Iceland: the people has the right to intervene at various levels and on various matters. If the Swedes rejected their participation in the Eurozone in 2003 by a referendum, on May, 31st 2012, the Irish were the only ones to discuss the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (“fiscal compact”) whereas the people’s vote would have been possible in other European States (France for example) that favoured parliamentary ratification. In the financial domain, the people may also intervene, as in Italy in the financing of political parties (1993); or more generally at the local level (Switzerland, California…). The people may also intervene in the economic domain although this right is denied for the vote of some taxes or budget acts (for example Italy). The historical and political reasons for this general denial of direct and participative democracy in the financial and budgetary domains are well-known. But this trend could nowadays be reversed, without basically questioning the representative system.

3.2. Towards new forms of decision-making processes in financial matters

The division of “political” labour – together with the criteria of the abilities – could lay the foundations of representation at the expense of direct democracy. The debate regarding

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92 Election of 25 citizens without political affiliation among the 522 who presented their candidacies, under the condition to be of age and to have collected the support of at least 30 persons.

93 Article 26 of the Constitution of Iceland.

94 Cf. article 11 of the French Constitution which could be modified (according to a possible referendum in application of the article 89 of the Constitution) in order to extend direct democracy in this field.
constitution of popular juries provides useful arguments. Indeed, the legal qualifications obtained after a competitive examination or a training period are required to become a judge, but there are some courts composed of professionals and non-professionals. The technical skills of some citizens even justify their participation in some committees, in labour or commercial law, for example. In criminal matters, the institution of the popular jury is an old story: the main argument has been justice by someone’s peers. The model of the criminal jury in particular consolidates a certain division of labour insofar as the professional judge brings to mind the boundaries of the law. The jury would even have an additional virtue: an educational function. “The jury, which is the strongest path to people’s rule, is also the most effective way to teach it how to rule”\(^{95}\). “Ignorance” is fought by way of an education, of training, either from the first age or all along the citizen’s life (popular jury, local participative budget)\(^ {96}\). This can only be made possible by means of a true right to information. The issue of training is tricky. The acquisition of knowledge in a particular area and of adequate skills in order to exercise a job (judge) or a function (such as giving informed opinion) may be unavoidable in some cases in which “special […] skills” are required\(^ {97}\). In other cases, training depends on the quality and thus the implementation of the information\(^ {98}\). But if the latter is already at work with the rise of social networks and new technologies, it is far from being universal and available to all, all the more in financial matters\(^ {99}\). Information must be plural to be convincing\(^ {100}\) and should be both public and private. The right to information is therefore contingent to the acknowledgement of the pluralism of the media, of the freedom of the press, and more globally of the right to free association (labour unions, for instance). Pluralism is essential insofar as the contemporary press is increasingly dependent on private corporations\(^ {101}\). The role of Parliament should also be reconsidered: it should no longer only be representative, an authority of deliberation, but a cog in the democratic machinery, a

\(^{95}\) A. DE TOCQUEVILLE, *De la démocratie en Amérique*, I, 2, chap. VIII.


\(^{98}\) The organization of the Greek referendum on July 5th 2015 may be criticized for it may be deemed precipitated (one week), which may have left little time and space to debate and therefore to information: the voters were only given documents translated in Greek the day before the election, and were asked to vote on a complex issue.


\(^{100}\) A. BARILARI, *Le consentement à l’impôt*, op. cit., p. 133-134.

\(^{101}\) Cf. L. BLONDIAUX, « La démocratie participative, sous conditions et malgré tout… », op. cit.
transmission channel of the political (and therefore economic) information, among others like associations. The latest trends of current constitutionalism have not reinforced the Parliament’s role in the decision-making process but rather its role of control of the executive power by improving its information, in particular the financial one. The latter is traditionally provided by the Court des Comptes that “contributes to informing citizens” by means of its public reports. This trend deserves to be sustained towards participative democracy. Several issues must be taken into account, in order to reconsider representation. The dematerialization of the voting process is one. Electronic voting is a response to the costly organization of a referendum, and a useful tool of participative democracy. So is it for the appointment of representatives, which can only increase their legitimacy as well as the participation to elections. The representative principle has received an extreme solution: the prohibition of any imperative mandate. With the exception of the recall in some countries, constituents may not give instructions to their representatives. It was argued that as soon as they were elected, they would represent one nation, one people, and not the portion of a bigger group. But most democracies have given also to the representatives a long term mandate (5 years for instance). Therefore, by the election, the voters give a free hand to the representatives in order to manage public affairs. At the most, the voters are called to other ballots (local, professional...) that give them an opportunity to express their disagreement with the national representatives. Moreover, in modern representative democracies, “mid-term” elections are the only opportunities for the voters to express themselves. As a matter of fact, long before the existence of the Internet, of new technologies and of new means of public participation (such as social networks), the idea “that the people should come with some suggestions that would enable the Parliament to direct its legislative activity”, has already been advanced. Among such suggestions, some of which are implemented: shorter mandates or links between the representatives and the constituents, direct decision-making mechanisms that would not jeopardize the mandate of the former (otherwise the referendum becomes a plebiscite). Condorcet had already outlined it in his constitutional draft to the Convention on February 15th, 1793, enabling the citizens “to arouse the supervision of the people’s representatives on constitutional, legislative or general administration acts, to prompt

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102 Art. 47-2 of the Constitution.
103 Cf. P. ROSANVALLON, La contre-démocratie. La politique à l’âge de la défiance, op. cit., p. 60.
104 H. KELSEN, La démocratie, op. cit., p. 48.
the reform of an existing law or the enforcement of a new act. The shapes of participative democracy are many, which would be combined with representative democracy, by a division of skills (and therefore of democratic expression) between them. The principle of representative democracy could be maintained while laying out wider and more systematic spaces for the citizens’ intervention in public decision.

105 Art. 1er, Titre VIII of the girondine Constitution.
106 This distribution of the competences between the representatives and the people could be modelled on the territorial distribution of the competences, often organized by Constitutions or laws. Lists of subjects could be made. The popular consultation (or other forms different from the parliamentary one) could be done in application of those competences lists and/or on the initiative of some traditional institutions – like the executive chief of the parliament’s speaker – or groups of persons – petition, popular initiative, citizen and representative initiative etc.