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Unter Gleichen

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**Are Direct-Democratic Political
Rights Used to Combat Inequality?**

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Are Direct-Democratic Political Rights Used to Combat Inequality?

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Irina Lehner

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I. Introduction

Equality, along with liberty and dignity,¹ is one of the guiding principles and main objectives of human rights law.² But if that is the case, how exactly can human rights serve to achieve a more equal world? Often, answers to this question examine economic and social human rights.³ This paper instead examines the potential of civil and political rights to combat inequality through the exercise of direct-democratic rights: (How) does political freedom contribute to reducing inequality through democratic practice?

In 2013, the Swiss population voted on the citizens' initiative "1:12 Initiative—For Fair Wages", which aimed at limiting the highest wages paid in each company to an amount that is twelve times higher than the lowest wages.⁴ In its essence, the initiative wanted to combat inequalities of economic and social nature.⁵ This is only one example of many popular votes in Switzerland which had impacts on (in)equality. This paper subjects all of these votes to an empirical analysis in order to answer the question posed above. The results show an ambivalent effect of direct-democratic political freedom, which has, at most, a mere indirect positive influence on equality. The paper explores different reasons for this effect and concludes that besides political freedom, other normative elements are necessary to guarantee equality.

1 SUSANNE BAER, *Dignity, Liberty, Equality: A Fundamental Rights Triangle of Constitutionalism*, U. of Toronto L. J. 2009, 417–468.

2 E.g. WOUTER VANDENHOLE, *Non-Discrimination and Equality in the View of the UN Human Rights Treaty Bodies*, Antwerp 2005, p. 1; cf. e.g. art 3 International Covenant on Civil and Political Rights (adopted 16 December 1966) 999 UNTS 171 (ICCPR), Art. 14 European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950) ETS 5 (ECHR).

3 E.g. DANIEL M. BRINKS / VARUN GAURI, *The Law's Majestic Equality? The Distributive Impact of Judicializing Social and Economic Rights*, Perspectives on Politics 2014, 375–393; KEVIN E. DAVIS / MICHAEL J. TREBILCOCK, *The Relationship Between Law and Development: Optimists versus Skeptics*, Am. J. Comp. L. 2008, 895–946. For a helpful overview see MALCOLM LANGFORD, *Critiques of Human Rights*, Annu. Rev. Law. Soc. Sci. 2018, 69–89, pp. 81–82.

4 Cf. *Text of the initiative*; see also *Botschaft über die Volksinitiative «1:12 – Für gerechte Löhne»*, BBl 2011 638.

5 See JUSO, *Lohnverteilung und 1:12-Initiative – Gerechtigkeit und Demokratie auf dem Prüfstand*, Zurich 2013, pp. 7 and 12.

II. Theoretical Context

1. Freedom and Inequality

Inequality is a situation where some people have more of a specific good than other people.⁶ This paper will focus on a sub-category: *socioeconomic*, material inequality as defined in the most important international human rights documents.⁷ One aspect of this could be the inequality of income, as it was addressed by the “1:12 initiative”.⁸

Freedom is understood in several ways throughout the paper, referring on the one hand to *political freedom* as interchangeable with the guaranteed existence of *rights of political participation*. On the other hand, *freedom of choice* allows individuals to take their lives into their own hands. The basis of this idea of freedom (of choice) is the “capabilities approach” as coined by AMARTYA SEN. This is based on the idea that the ability of people to lead their lives in a way that they have reason to value (called capabilities) is fundamental.⁹

Socioeconomic inequality, as understood here, has a strong link to freedom overall. Inequality in accessing socioeconomic goods signifies that some people have less *freedom of choice* with respect to accessing these goods than others. More equality, meaning better and more equal access to goods, would imply more freedom of choice for everybody. Therefore, if inequality continues to exist, it means that unfreedom persists. So, the question arises: Does the exercise of direct-democratic rights lead to more equality? Or is there a conflict between political freedom and an outcome that is unequal, therefore resulting in unfreedom?

2. Functions of Political Freedom

In SEN’s capabilities framework, the existence of political rights and the concrete exercise of political freedom can play three important roles: It can constitute an *intrinsic* value for human beings,¹⁰ it can be of *constitutive*

6 See e.g. Cambridge Dictionary, Definition of Inequality.

7 Cf. Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) esp. art 22-27; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966) 993 UNTS 3 (ICESCR). See also UN Department of Economic and Social Affairs, *Concepts of Inequality*, Development Issues 2015.

8 See the text of the initiative (n. 4).

9 AMARTYA SEN, *Development as Freedom*, Oxford 1999, p. 18.

10 AMARTYA SEN, Symposium on Development as Freedom: Response to Commentaries, SCID 2002, 78-86, p. 79; even if they live materially deprived lives (SEN (n. 9), p. 13).

importance for the definition of capabilities and it can have an *instrumental* function.¹¹

The capabilities approach requires that people indeed have the freedom to choose what they have reason to value,¹² i.e. the ability to decide on the objectives of themselves or of their society.¹³ Therein lies the constitutive role of political freedom: Through democratic participation in public debate and decision-making processes, citizens define what they value individually and collectively and transform it into concrete public policies.¹⁴

Third, political rights are of instrumental importance because they hold members of government and parliament accountable for respecting and pursuing the choices made by their constituencies.¹⁵ Constituents can either deny or provide re-election (representative democracy), or block or approve existing policy proposals through referendums or propose new ones directly through initiatives (direct democracy).

Until this point, this conception of political freedom heavily relies on procedural forms, which need to be respected. For SEN, the exercise of political freedom must ultimately result in more freedoms, whereby some capabilities support the creation of even more capabilities.¹⁶ This introduces an additional normative, outcome-oriented focus. Therefore, it can happen that the procedure is respected and the people choose freely, but they do not choose more freedom (for themselves or others). This creates an important conflict between the intrinsic value of political freedom and its role as a route to more, especially socioeconomic, freedom.¹⁷ This paper will show a concrete example of such a conflict and address the need to resolve it.

11 AMARTYA SEN, Democracy as Universal Value, *J. Democr.* 1999, 3-17, p. 10; SÉVERINE DENEULIN, Promoting Human Freedoms under Conditions of Inequalities: A Procedural Framework, *J. Hum. Dev. Capab.* 2005, 75-95, p. 76.

12 SEN (n. 9), p. 18.

13 DENEULIN (n. 11), p. 76.

14 SEN (n. 11), pp. 10-11.

15 SEN (n. 11), p. 11. For this generally see e.g. BERNHARD MANIN / ADAM PRZEWORSKI / SUSAN C. STOKES, Elections and Representation, in: Adam Przeworski / Susan C. Stokes / Bernhard Manin (eds.), *Democracy, Accountability and Representation*, Cambridge 1999, 29-54, p. 40.

16 Cf. DENEULIN (n. 11), p. 78.

17 DENEULIN (n. 11), p. 78.

3. Research Question and Hypothesis

The empirical part of this paper examines the research question: How have Swiss citizens exercised their political freedom in popular votes in equality-related issues? Are voter attitudes, as indicated by their choices in the votes, in favour of, opposed to or indifferent towards equality? Thus, what influence does democracy have on inequality?

The working hypothesis is that the objective to reduce inequality does not play an important role in popular votes in Switzerland. This is preliminarily confirmed by the example examined at the start: The “1:12 initiative” was ultimately rejected in the popular vote.¹⁸ However, the examined data goes back almost half a century and will hopefully render a larger and more sophisticated picture.

III. Empirical Analysis of Swiss Voter Preferences

1. Methodology

a) Methodological Justification

This study examines data on direct-democratic popular votes and thereby focuses on voter behaviour. Studying Yes- and No-votes instead of more indirect factors such as public budgets or taxation rates¹⁹ gives indications on the *attitude* of voters towards inequality, on whether equality is something they value and pursue through democratic participation.²⁰

Elections are choices between full programmes, package deals of parties and persons²¹ and therefore many factors guide electoral choices, such as social identity.²² In contrast, direct-democratic votes usually only concern one specific policy at a time; specifically citizens’ initiatives can serve to illustrate in more detail which subjects voters want to set on the political agenda. Therefore, the examination of direct-democratic votes allows the deduction

18 Result of the vote on 24 November 2013, BBl 2014 1773: 1’796’930 people voted against, 954’787 for the proposed amendment of the Constitution.

19 Examined in e.g. BURTON A. ABRAMS / RUSSELL F. SETTLE, Women’s Suffrage and the Growth of the Welfare State, *Public Choice* 1999, 289–300; MARKUS FREITAG / ADRIAN VATTER / CHRISTOPH MÜLLER, Bremse oder Gaspedal? Eine empirische Untersuchung zur Wirkung der direkten Demokratie auf den Steuerstaat, *PVS* 2003, 348–369.

20 Cf. KATHARINA E. JARONICKI, Does Female Suffrage Increase Public Support for Government Spending? Evidence from Swiss Ballots, *CESifo Working Paper* 2013, p. 1.

21 UWE WAGSCHAL, *Direct Democracy and Public Policymaking*, *JPP* 1997, 223–245, p. 225.

22 DARON ACEMOGLU et al., *Democracy, Redistribution and Inequality*, in: *The Handbook of Income Distribution*, Amsterdam 2015, 1885–1966, p. 1894.

of voter preferences and the establishment of causation more directly than the study of electoral choices, although there can still be many factors which influence voters' decisions besides their inherent preferences.

b) Study Design

The study examines all 399 popular votes on the national level, which have taken place in Switzerland between 16 March 1971²³ and 20 April 2020.²⁴ These votes are classified by three criteria:

- Type of vote (mandatory referendum, optional referendum, citizens' initiative)
- Policy effect of proposal (affected subject-area of equality, called "theme"; positive or negative impact on equality)
- Result (acceptance or rejection).

It is important to distinguish between different types of votes because each type has some inherent characteristics which influence its chances of acceptance in the popular vote.²⁵ Proposals can either promote or endanger equality, therefore the proposals are classified as positive for equality (equality-friendly) or negative. Four different subject areas are used as themes, which all have impacts on socioeconomic inequality: taxation, welfare, gender equality and other economic and social rights (ESR).

Progressive direct *taxation* rates redistribute income from high to low income groups in the form of public services, thus combatting inequality.²⁶ Higher (progressive) taxation rates are taken as positive proposals for equality and lower rates as negative proposals, tax deductions classified as positive for equality if they are focused on low income groups and negative if they do not differentiate between high and low income groups.

The term *welfare* is an umbrella term for pension security, health and accident, disability and unemployment insurance and related public services or systems here. This "safety net" helps to compensate especially for the worst effects of (economic and other) inequality.²⁷

23 Beginning of women's right to vote in Switzerland.

24 Data sources: Centre for Direct Democracy Aarau database on direct-democratic votes, which the author worked on for three years; Swiss Federal Chancellery, *Abstimmungen*.

25 See below, IV.1.b.

26 SVEN STEINMO, *Taxation and Democracy*, New Haven (CT) 1993, pp. 3 and 196–198; cf. FREITAG/VATTER/MÜLLER (n. 19), p. 349.

27 NICOLA BOCCELLA / ANDREA BILLI, *Growth and Inequality: Theoretical Issues and Empirical Evidence*, in: Nicola Boccella / Andrea Billi (eds.), *Développement, Inégalités, Pauvretés*, Paris 2005, 11–76, p. 39.

The theme of *gender inequality* comprises proposals from diverse areas such as family and inheritance law, maternity leave and insurance as well as provisions of criminal law relating to abortion rights.

Finally, other economic and social rights (*ESR*) are the fallback category for proposals with other inequality-related implications, alluding to the rights to adequate working conditions²⁸, adequate standards of living, including housing²⁹, education³⁰ and health³¹.

2. The Data: Observations

The data provide the following descriptive observations regarding the different direct-democratic instruments and inequality themes.³² “Positive” is used to describe proposals which would have a strengthening effect on equality, if accepted; “negative” for proposals with a diminishing effect on equality. A voting result counts as “equality-friendly” if either a positive proposal is accepted or a negative proposal is rejected.

1. Of 399 votes in the time frame, 15% of the proposals had an impact on equality (58 votes). Of these, only eight proposals in this half century were negative for equality (four optional referendums, four initiatives). Overall, the success rate of all popular votes is 44%. All inequality-related proposals had a significantly lower rate (success rate of positive proposals 32%, of negative proposals 12%).
2. 32 out of 58 equality-related votes were citizens’ initiatives (55%). Initiatives had very low chances of success: only one was accepted (*ESR*, 2013, with a very high acceptance rate of 68% approval). The success rate of 4% of all positive initiative proposals relating to inequality is substantially lower than the overall acceptance rate of initiatives at 9%.
3. 75% of positive optional referendums were accepted (six accepted, two rejected)—clearly more than the other two instruments. Three out of four negative optional referendums were rejected, while the overall rejection rate of optional referendums is only 31%.
4. The acceptance rate of mandatory referendums is very similar to the overall rate (68% overall, 64% in inequality). All proposals were positive.

28 Art 6-8 ICESCR, art 23 UDHR.

29 Art 11 ICESCR, art 25 UDHR.

30 Art 13 ICESCR, art 26 UDHR.

31 Art 12 ICESCR.

32 See Annex I and II for the full data. Only selected data are presented here.

Nine were accepted, three of which were governmental counter-proposals to initiatives, five proposals were rejected.

5. In *taxation*-related mandatory referendums, two complex tax reform projects were rejected, and three equality-related issues accepted: Higher income taxes (1975) and two deductions-related proposals (1973 and 1981). All six initiatives were rejected which demanded either less tax breaks, more income tax or new taxes on sources which only people with higher economic status can access (capital gains, inheritance over 2 million CHF) (1976, 1977, 2001, 2010, 2014, 2015).
6. In *welfare*, two out of four mandatory referendums passed, two were rejected. The two accepted proposals were the foundational introductions of disability and old-age (1972) and mandatory unemployment insurance (1976), while the rejected proposals were quite weak counter-proposals to initiatives. The only negative proposal (optional referendum) that passed in 50 years was a limitation of disability pensions (in the second try 2007, 1999 it was rejected).
7. Regarding *gender equality*, some fundamental changes for women's rights such as equality in nationality and civil law, insurance and abortion rights passed in the 20th century. Yet, since 2002 (legalizing abortion) no more proposals on further gender equality (such as gender quotas) were accepted in a popular vote, although over half of Swiss citizens are female.
8. Relating to other *ESR*, citizens' initiatives were often launched in the area of working conditions (eight initiatives on wages, working hours or holidays) or tenancy issues (two initiatives). However, these were rejected with a considerably low average of 31% Yes votes. The proposal to curb the excessive salaries of top managers in large firms in 2013 was the only inequality-related initiative to be accepted.

These descriptive observations lead to these additional observations, which serve as the framework for interpreting the above results in relation to the capabilities approach:

1. The citizens' initiative, though it manages to put issues on the political agenda, does not succeed in transforming them into concrete public policies that survive the popular vote.³³ Three counter-proposals to initiatives were, however, accepted.³⁴

33 See observation 2.

34 See observation 4.

- 2. Referendums block an important percentage of positive as well as negative proposals made by parliament (seven positive, three negative).³⁵ Although positive proposals have a higher chance of acceptance than negative ones,³⁶ referendums must be seen as having a slightly negative impact on equality: Without them, four more positive proposals would have been implemented.

3. Interim Conclusion

The empirical results reveal something about the role that law, especially (civil and) political rights, can play to reduce inequality. Overall, the exercise of these direct-democratic freedoms does not show a positive impact on socio-economic equality. Citizens’ initiatives almost never manage to succeed in creating more equality, while referendums prevent the implementation of positive governmental proposals to promote equality. Thus, this political freedom does not generate more socioeconomic freedom, but rather prevents it. The hypothesis is preliminarily confirmed: This situation presents a conflict of objectives between (at least *de jure* fulfilled) procedural requirements of political freedom (i.e. guaranteed political rights) and the outcome of this procedure, which does not lie in the protection or promotion of more freedom. This is in line with existing empirical studies, which also show an inconclusive result about the influence of (in)equality and democracy on each other.³⁷

IV. Discussion

1. Possible Explanations

In literature, explanations for this conflict of objectives come from two factors: Either problems with the process itself negatively influence the democratic decision-making, which resulted in distorted outcomes,³⁸ or the procedure

35 See observations 3 and 4.

36 See observation 3.

37 KENNETH SCHEVE / DAVID STASAVAGE, Wealth Inequality and Democracy, *Annu. Rev. Political Sci.* 2017, 451-468, p. 452, see little evidence for such a link; ACEMOGLU et al. (n. 22), p. 1889, do not see a robust pattern of an effect of democracy on equality; similar MARIA ZIEGLER, Political Institutions and Human Development: Does Democracy Fulfill its “Constructive” and “Instrumental” Role?, in: Maria Ziegler / Hermann Sautter / Stephan Klasen (eds.), *Institutions, Inequality and Development*, Pieterlen/Bern 2011, 9-32, p. 29; MARK GRADSTEIN / BRANKO MILANOVIC, Does Libert = Egalit? A Survey of the Empirical Links between Democracy and Inequality with Some Evidence on the Transition Economies, *J. Econ. Surv.* 2004, 515-537, p. 528.

38 For example SEN (n. 9), pp. 154-155.

was in order, but the choices that were freely made produced “wrong” outcomes in the way that they do not enhance capabilities.³⁹ Both kinds of explanations can be found in theories on inequality and democracy generally, as well as direct democracy specifically. In the following section, such explanations found in literature are compared to the observations drawn from the empirical data.

a) External Factors: Distorted Procedure

The first set of explanations for the present conflict rely on problems with the *working* of the democratic procedure, which is somehow distorted or misused.

Democracy relies on a condition of equality.⁴⁰ Pessimistic scholars warn that if socioeconomic inequality persists, there may be *de jure* political equality, but the *de facto* distribution of power will remain unequal. This would allow people with more resources and education to continue to dominate the political landscape.⁴¹ In this case, so-called “democratic” decisions would yield policy outcomes that do nothing to promote equality, thus perpetuating existing power imbalances.⁴² If this is systematised, democracy can be “captured” by the elite, which would distort democracy to work in their favour through different means, ranging from lobbying or controlling of the media to use of law enforcement or paramilitaries to suppress opinions.⁴³

The assessment of the “soundness” of Swiss democracy surely warrants its own paper. At an overview, the chances of the more obvious forms of capturing democracy seem negligible. Switzerland is a very old democracy – since 1874, when the optional legislative referendum was first introduced, popular votes are being held there.⁴⁴ Votes take place on a consistent basis, up to four times a year, on all state levels and are clearly regulated by law, which gives stability to the direct-democratic process. Furthermore, direct democracy generally does not seem to lend itself to the more obvious forms of capture, as there is never such a concentration of power as in representative

39 Similar to the distinction of process and opportunities (SEN (n. 9), p. 17).

40 CHARLES TILLY, *Inequality, Democratization, and De-Democratization*, Sociol. Theory 2003, 37–43, p. 37.

41 DENEULIN (n. 11), p. 79.

42 Ibid., 80. Democracies often include property rights such as inheritance protections, which have the potential to perpetuate economic inequalities (TILLY (n. 40), p. 38; SCHEVE/STASAVAGE (n. 37)).

43 DARON ACEMOGLU / JAMES A. ROBINSON, *Persistence of Power, Elites, and Institutions*, Am. Econ. Rev. 2008, 267–293; ACEMOGLU et al. (n. 22), p. 1888; SCHEVE/STASAVAGE (n. 37), p. 464. This reasoning seems similar to assertions made by populists.

44 Cf. GRADSTEIN/MILANOVIC (n. 37), p. 523, who emphasize that the length of democratic experience is important for possible effects on inequality.

democracies, especially combined with the consent-based multiparty-government. Consequently, Switzerland regularly ranks very high in democracy indexes such as Freedom House's,⁴⁵ although issues such as transparency in political financing and lobbying remain problematic.⁴⁶

The results of the present empirical analysis do not confirm these suspicions, either. All but one of the proposals with negative impacts on equality were denied, and there were not many in the first place.⁴⁷ So at least direct-democratic instruments are not directly used to subvert democracy in the interest of the privileged. However, accessibility of information and of the procedure remains an important topic. For instance, the low average voter turnout of 44% is concerning.⁴⁸ Overall, Switzerland must be considered a democracy where the exercise of political freedom and its procedures are sufficiently free and equal, as much as possible in real-life conditions. So, we turn to other factors that could explain the present results.

b) Internal Factors: Use of Political Freedom, Values and Choices

Other theories on democracy and inequality are grounded in assumptions about human characteristics which determine voters' choices of policies and values.

A median voter theorem is often invoked to explain voters' behaviour.⁴⁹ The "Robin Hood theory" of direct democracy⁵⁰ attests the median voter expansive, redistributive preferences based on the assumption that the median income of the population eligible to vote is lower than the mean income of the same population, therefore they would profit from and vote for redistributive state activity.⁵¹ These theories thus focus on the voters' choice. They assume that free and equal procedures produce equal results, *because* voters both value equality and advance it through political means out of self-interest. However, the present data has demonstrated that, paradoxically, voters often

45 Freedom House, *Democracy Scores*.

46 TRANSPARENCY INTERNATIONAL SWITZERLAND, *Lobbying in der Schweiz*, Berne 2019.

47 See observation 1.

48 Studies show a correlation between turnout and lowering inequality (GRADSTEIN/MILANOVIC (n. 37), p. 525).

49 WAGSCHAL (n. 21), p. 225; FREITAG/VATTER/MÜLLER (n. 19), p. 355.

50 Most famously ANTHONY DOWNS, *An Economic Theory of Democracy*, New York 1957, as cited in WAGSCHAL (n. 21), p. 224 and in FREITAG/VATTER/MÜLLER (n. 19), pp. 349 and 355.

51 According to the famous MELTZER/RICHARD model (see ALLAN H. MELTZER/SCOTT F. RICHARD, *A Rational Theory of the Size of Government*, J. Political Econ. 1981, 914-927). See also TILLY (n. 40), p. 39.

do not act in accordance with their own interests.⁵² Other studies have also not found a redistributive effect based on the median voter theorem.⁵³ This means that the Robin Hood theory cannot explain empirically examined voter decisions.

In direct-democratic theory, Robin Hood-redistributive tendencies are often linked to citizens' initiatives especially.⁵⁴ Indeed, the initiatives examined here often pose progressive and/or extensive demands, but without much success.⁵⁵ Therefore, the effectiveness of such Robin Hood tendencies is strongly limited.

Does this mean that the voting population does not value equality? Or could there be other explanations? Even under free and equal conditions of the exercise of political freedom, other factors may influence the voters' choices more strongly than a desire for their own equality. A main preference-based argument claims that voters are subject to a so-called *status quo bias*. The status quo bias is a modification of the self-interest-based median voter theorem, in that there are psychological reasons why some self-interests (preservation of acquired advantages) prevail over other self-interests (achieving new advantages). Because of the human tendency towards risk aversion, voters minimize the risk of losing any benefits of the current system even if there is a chance of important increases in benefit—instead choosing the status quo.⁵⁶ This may lead voters to reject proposals even if these show great potential for inequality reduction.

In direct democracy, the status quo bias is said to have a particularly strong slowing effect, because the citizens are an additional veto actor, able to delay or impede even necessary adaptations.⁵⁷ The status quo bias is closely connected to theories on the two main direct-democratic instruments, referendum and initiative. Both have a very different functionality. Referendums are used to block proposals of change by the parliament or government—thus usually limiting proposed expenditures or taxation⁵⁸—, while

52 Esp. observation 7: If potential voters acted in self-interest, women would participate in votes relating to gender equality and vote in favour of positive proposals to strengthen their rights and status.

53 WAGSCHAL (n. 21), p. 225; similar ZIEGLER (n. 37), p. 32.

54 WAGSCHAL (n. 21), p. 230; FREITAG/VATTER/MÜLLER (n. 19), p. 362.

55 See observations 2 and 9.

56 FREITAG/VATTER/MÜLLER (n. 19), p. 355; GEBHARD KIRCHGÄSSNER, Direct Democracy: Chances and Challenges, HSG Discussion Paper 2015, p. 22.

57 KIRCHGÄSSNER (n. 56), p. 21; FREITAG/VATTER/MÜLLER (n. 19), p. 354.

58 GEBHARD KIRCHGÄSSNER, Fiscal Institutions at the Cantonal Level in Switzerland, HSG Discussion Paper 2013, p. 6; WAGSCHAL (n. 21), p. 226; FREITAG/VATTER/MÜLLER (n. 19), p. 354.

citizens' initiatives bring an entirely new proposal on the table.⁵⁹ Therefore, the referendum is seen as a "brake" and in conjunction, the citizens' initiative is called the expansive "gas pedal", similar to the Robin Hood theory.⁶⁰

The slowing effect of the referendum is apparent in the present study and identified as having negative net effects on equality.⁶¹ Citizens' initiatives, in contrast, have very limited directly positive effects on the promotion of equality⁶² and can hardly be called gas pedals. These observations confirm that the status quo bias has an important influence not just on referendums, but also initiatives—even if an expansion would be in their own interest, voters have often not participated in the vote or rejected the proposal.⁶³

All in all, these conclusions paint a dreary picture of the influence of political freedom on inequality, leaving us less than hopeful for improvements towards equality. Nonetheless, it should be kept in mind that direct-democratic instruments can also have indirect effects. The simple looming threat of a referendum or of the acceptance of an existing citizens' initiative in the popular vote can serve to reign in parliamentary activity or to spur lawmakers into action, respectively.⁶⁴ This is especially true with the possibility of governmental counter-proposals to citizens' initiatives.⁶⁵

2. Further Reflection: Freedom and Equality Through Two-Pillared Democracy

We find ourselves in a situation of conflict: procedural requirements of direct democracy have been upheld but the outcome of these direct democratic procedures does not live up to the substantive expectations that they generate more freedom. Internal factors such as a status quo bias cannot be changed easily. This raises the question: If (political) freedom should always create more (socioeconomic) freedom, what should be the consequences if this does not happen? Fundamentally restricting political freedom cannot be the answer.⁶⁶ Otherwise we would only reverse the protagonists (i.e. more socioeconomic freedom at the expense of less political freedom), but receive

59 FREITAG/VATTER/MÜLLER (n. 19), p. 362.

60 Ibid., 354. Empirical studies in Switzerland yield similar results: WAGSCHAL (n. 21), pp. 230-231; KIRCHGÄSSNER (n. 56), pp. 16 and 22.

61 See observation 10 and interim conclusion.

62 See observation 9 and interim conclusion.

63 Esp observation 7.

64 WAGSCHAL (n. 21), p. 227; FREITAG/VATTER/MÜLLER (n. 19), p. 355; KIRCHGÄSSNER (n. 58), p. 5.

65 Cf observations 4 and 9.

66 Similar SEN (n. 9), p. 123.

the same result. In addition, political freedom has other functions besides the constitutive one, mainly an intrinsic value for human beings, which should be enough reason to preserve political rights.⁶⁷ Still, its intrinsic value does not give precedence to political freedom over other freedoms.

The fact that other factors prevail over the reduction of the above-identified themes of inequality in voters' decisions does not mean that the people do not value equality *generally* or in other areas. This is demonstrated in surveys where the Swiss population shows increasing concerns about persisting (socioeconomic) inequality.⁶⁸ Instead of only relying on the political process to regulate everything, additional safeguards are necessary. Substantive constitutional rights and freedoms can provide safeguards of a legal nature, which are enforceable and thus to a certain extent authoritative. We must also adopt a more comprehensive view of democracy, not exclusively relying on (direct-) democratic political participation rights, but also encompassing a catalogue of rights and freedoms. Participation and universal human rights must be taken *together* to form the two-pillared basis of contemporary democracy with the common goal of securing human freedom and equality.⁶⁹ This leads back to the initial question about the contribution of law to equality. Just as much as the civil and political rights, the other set of economic and social rights need to exist and influence the political landscape as well as be judicialised in court, where necessary.

V. Conclusion

Political freedom has three important functions, an intrinsic, a constitutive and an instrumental one. A closer examination of the exercise of political rights in Swiss direct-democratic votes in view of its constitutive function yields results that disappoint overly optimistic hopes about the contribution that political freedom can make to the fight against inequality. Therefore, normative safeguards in the form of substantive economic and social rights need to exist alongside political freedom to uphold the equality of all. The exercise of political freedom is not a sufficient condition, but remains a necessary part of any efforts to enhance equality.

67 See above, II.1.

68 DOMINIQUE JOYE / JULIE FALCON, Soziale Ungleichheiten in der Schweiz: eine Bestandsaufnahme und aktuelle Herausforderungen, in: Maria Ziegler (ed.), *Ungleichheit(en) und Demokratie*, Zurich 2016, 21-41, p. 37.

69 JÖRG PAUL MÜLLER / GIOVANNI BIAGGINI, Die Verfassungsidee angesichts der Gefahr eines Demokratieabsolutismus, *ZBl* 2015, 235-250, p. 238.

Appendix I: Empirical Data

Date	Title	R/I	Re- sult	% Yes	Turn- out	Theme	Additional Information	Yes Votes	No Votes	Valid Votes	For Equality
08.12.74	CI for better health insurance (regard to health insurance, accidents and maternity)	CI	No	28	39	Welfare	mandatory health insurance for all	384'155	1'010'103	1'394'258	Positive
21.03.76	CI "Reform of taxes (fairer taxes and abolition of tax privileges)"	CI	No	42	39	Taxation		599'053	819'830	1'418'883	Positive
05.12.76	CI "Reduction of the working week to forty hours"	CI	No	22	45	ESR		370'228	1'315'822	1'686'050	Positive
25.09.77	CI "Decriminalising abortion"	CI	No	48	52	Gender		929'325	994'930	1'924'255	Positive
04.12.77	CI "Higher taxes on big incomes"	CI	No	44	38	Taxation		637'994	800'138	1'438'132	Positive
02.12.84	CI "Effective protection of motherhood"	CI	No	16	38	Gender	separate maternity insurance, parental leave of 9 months total	241'442	1'288'974	1'530'416	Positive
10.03.85	CI "Lengthening paid holidays"	CI	No	35	35	ESR		489'952	918'728	1'408'680	Positive
09.06.85	CI "Right to life"	CI	No	31	36	Gender	enshrining right to life & personal freedom in cst; goal also abortions, euthanasia; (CPI)	448'016	999'077	1'447'093	Negative
04.12.88	CI "Reduction of working hours"	CI	No	34	53	ESR		769'264	1'475'536	2'244'800	Positive
04.12.94	CI "For sound health insurance"	CI	No	23	44	Welfare	contributions acc. To income -> more solidarity	460'674	1'504'177	1'964'851	Positive
26.06.95	CI "To expand the state old age-, widows-, orphans- and disability insurance"	CI	No	28	40	Welfare	more importance for the public instead of private pension insurance	499'266	1'307'302	1'806'568	Positive
12.03.00	CI "For a fair representation of women in the Federal authorities"	CI	No	18	42	Gender	quotas for women in parliament, govt, court	346'314	1'580'859	1'927'173	Positive

Date	Title	R/I	% Yes	Turn- out	Theme	Additional Information	Yes Votes	No Votes	Valid Votes	For Equality
26.11.00	CI "For lower hospital costs"	CI	No	18	42	Welfare	compulsory insurance limited: only for the coverage of hospital costs -> very bad	343'008	1'574'528	1'917'536 Negative
02.12.01	CI "For a capital gains tax"	CI	No	34	38	Taxation		594'927	1'149'182	1'744'109 Positive
03.03.02	CI "For shorter working hours"	CI	No	25	58	ESR		686'935	2'021'198	2'708'133 Positive
02.06.02	CI "For mother and child -protection of the unborn child and assistance for mothers in need"	CI	No	18	42	Gender	abortion only in case of acute, physical danger to life of woman	352'432	1'578'870	1'931'302 Negative
18.05.03	CI "Healthcare must be affordable (health initiative)"	CI	No	27	50	Welfare	premiums acc. To income/wealth, but new financing with VAT	625'073	1'682'694	2'307'767 Positive
18.05.03	CI "For adequate vocational training (apprenticeship initiative)"	CI	No	32	50	ESR	fundamental right for adequate vocational training in cst	722'931	1'564'325	2'287'256 Positive
18.05.03	CI "Yes to fair rents for tenants"	CI	No	33	50	ESR	some better rules for tenants re. rent level	749'388	1'540'401	2'289'789 Positive
11.03.07	CI "For a social united health insurance"	CI	No	29	46	Welfare		641'917	1'590'213	2'232'130 Positive
28.11.10	CI "for equitables taxes"	CI	No	42	52	Taxation		1'073'229	1'510'589	2'583'818 Positive
11.03.12	CI «6 weeks holidays for all»	CI	No	33	45	ESR		771'717	1'531'986	2'303'703 Positive
03.03.13	CI to curb senior managers' pay	CI	Yes	68	47	ESR		1'616'184	761'975	2'378'159 Positive
24.11.13	CI «1.12- for fair wages»	CI	No	35	54	ESR		954'787	1'796'930	2'751'717 Positive
09.02.14	CI «costs of termination of pregnancy not paid by compulsory basic health insurance»	CI	No	30	56	Gender		873'060	2'019'549	2'892'609 Negative
18.05.14	CI "For the protection of fair wages (minimum salary initiative)"	CI	No	24	56	ESR		687'571	2'210'192	2'897'763 Positive

28.09.14	CI «For a public health insurance»	CI	No	38	47	Welfare			933'012	1'512'036	2'445'048	Positive
30.11.14	CI «to end tax breaks for wealthy foreigners» (Abolition of lump sum taxation)	CI	No	41	50	Taxation			1'053'125	1'528'114	2'581'239	Positive
15.07.15	CI «to impose inheritance of millions for our Old-Age and survivors' insurance AHV (Reform of inheritance tax)»	CI	No	29	43	Taxation			658'218	1'613'394	2'271'612	Positive
05.06.16	CI «For an unconditional basic income»	CI	No	23	47	Welfare	debatable if good or bad for equality		568'660	1'897'528	2'466'188	Positive
25.09.16	CI «AHVplus: for a strong AHV»	CI	No	41	43	Welfare	better pension insurance of poor and middle incomes with 10% more		921'375	1'348'032	2'269'407	Positive
09.02.20	CI «more affordable housing»	CI	No	43	41	ESR			963'610	1'280'148	2'243'758	Positive
03.12.72	amendment to the Federal Constitution on introduction of a disability, old age-, widows- and orphans insurance	MR	Yes	77	51	Welfare	very important!		1'393'797	418'018	1'811'815	Positive
02.12.73	Federal decree on limitation to tax deductions on federal, cantonal and district income tax	MR	Yes	68	35	Taxation	to curb problematic economic excess		834'792	391'956	1'226'748	Positive
08.12.74	Federal decree on improvement to the federal financial budget	MR	No	44	40	Taxation	higher taxes for high incomes, but also many other things		625'780	783'894	1'409'674	Positive
08.12.74	Revision of the Constitution in regard to health insurance, accidents and maternity	MR	No	34	37	Welfare	CP to CI; newly mandatory for big risks (hospital), voluntary for everything else		457'923	883'179	1'341'102	Positive
08.06.75	Federal decree on raising income from taxes from 1976	MR	Yes	56	37	Taxation	try #2 after 1974		753'642	593'041	1'346'683	Positive
07.12.75	Amendment of the Federal Constitution (freedom of settlement and social welfare assistance)	MR	Yes	76	31	ESR			842'165	271'563	1'113'728	Positive

Date	Title	R/I	Re- sult	% Yes	Turn- out	Theme	Additional Information	Yes Votes	No Votes	Valid Votes	For Equality
13.06.76	Federal decree on a complete redesign of unemployment insurance	MR	Yes	68	35	Welfare	for employees mandatory, nationwide uniformized	866'211	402'550	1'268'761	Positive
12.06.77	Federal decree on revision of VAT and direct federal taxation	MR	No	41	50	Taxation	higher taxes for high incomes, lower for the bottom (but also many other things...)	760'830	1'117'044	1'877'874	Positive
14.06.81	Counter proposal to CJ "Equal rights for men and women"	MR	Yes	60	34	Gender	gender equality article in cst	797'702	525'885	1'323'587	Positive
29.11.81	Federal decree on continuation of budget and improvement in federal finances	MR	Yes	69	30	Taxation	more tax deductions for families etc. -> specifically intended to lessen the problems of lower income groups in progressive taxation	818'327	368'508	1'186'835	Positive
04.12.83	Changes to nationality rules in the Federal Constitution	MR	Yes	61	36	Gender	same rights for couples with 1 swiss 1 foreign national (nationality of themselves & of children)	872'981	562'557	1'435'538	Positive
07.12.86	Federal decree on the citizen's initiative "Tenants protection" (counter-proposal)	MR	Yes	64	35	ESR	more protection of tenants against abuse by landlords	922'221	510'490	1'432'711	Positive
01.06.08	Counter-proposal of the Federal Assembly in response to the citizen's initiative "To lower health insurance premiums within the basic insurance system"	MR	No	31	45	Welfare	also ESR partly, enshrining social principles in the Cst (prob deemed unnecessary)	661'312	1'505'702	2'167'014	Positive
03.03.13	Federal decree of 15 June 2012 on family policy	MR	No	54	47	Gender	compatibility family-work as a principle in Cst. Majority of Cantons said no -> rejection!	1'283'951	1'078'531	2'362'482	Positive

28.05.78	Federal law on protection of pregnancy and abortion as a punishable offence	OR	No	31	49	Gender	legalisation of abortion for medical, social reasons or after rape	559'103	1'233'149	1'792'252	Positive
22.09.85	Amendment of Swiss civil law (marriage and inheritance law)	OR	Yes	55	41	Gender	more equal status of women in marriage, esp. inheritance & matrimonial property	921'743	762'619	1'684'362	Positive
04.12.94	Federal law on health insurance	OR	Yes	52	44	Welfare	fundamental: solidarity + (insurance newly mandatory, prem deductions acc. to economic situation of individual)	1'021'175	950'360	1'971'535	Positive
25.06.95	Federal law on old-age, widows- and orphans insurance, amendment of 7 October 1994	OR	Yes	61	40	Gender	reaction to BV 8 III 1981 -> same pension rights for M/W; more money for handicapped old people	1'110'053	718'349	1'828'402	Positive
13.06.99	Amendment of the Federal law on disability insurance	OR	No	30	46	Welfare	cost-saving measures, less disability pensions -> probably try no. 1, next 2007	620'797	1'428'986	2'049'783	Negative
13.06.99	Federal law on maternity insurance	OR	No	39	46	Gender	also soc sec; separate maternity insurance for working & non-w mothers; less for higher income families	822'458	1'286'824	2'109'282	Positive
02.06.02	Amendment to Swiss criminal code (abortion)	OR	Yes	72	42	Gender	provisions permitting abortion within the first three months of pregnancy	1'399'545	540'105	1'939'650	Positive
05.06.05	Federal law of 18 June 2004 on the registration of partnerships of same-sex couples (Partnership law)	OR	Yes	58	57	ESR		1'559'848	1'127'520	2'687'368	Positive
17.06.07	Amendment of the Federal disability insurance (LAI) law	OR	Yes	59	36	Welfare	cost-saving measures, less disability pensions	1'039'282	719'628	1'758'910	Negative

Date	Title	R/I	Re- sult	% Yes	Turn- out	Theme	Additional Information	Yes Votes	No Votes	Valid Votes	For Equality
07.03.10	Amendment of 12 December 2008 to the federal law on the old age-, widows- and orphans occupational pension. (minimal conversion rate)	OR	No	27	46	Welfare	lower rate of conversion	617'209	1'646'369	2'263'578	Negative
24.09.17	Federal Act of 17 March 2017 on the reform of the pension provision 2020	OR	No	47	47	Welfare	gender: women would work as long as men; but also Welfare (less money for pension insurance)	1'186'203	1'320'952	2'507'155	Negative
19.05.19	Federal Act on Tax Reform and AHV Financing (STAF)	OR	OR	OR	44	Welfare		1'541'147	780'457	2'321'604	Positive

R/I = type of instrument, CI = Citizens' initiative, MR = Mandatory referendum, OR = Optional referendum, ESR = Economic and social rights (fallback theme)

Appendix II: Preliminary Analysis of Data

	Yes	No	Total	% Yes	Good for equality	Bad for equality	% Good for equality	Positive accepted	Positive rejected	% Accepted of positive	Negative accepted	Negative rejected	% Rejected of negative
All votes since 16.03.71													
OR	82	36	118	69									
MR	79	38	117	68									
CI	15	149	164	9									
Total	176	223	399	44									
Inequality													
OR	7	5	12	58	9	3	75	6	2	75	1	3	75
MR	9	5	14	64	9	5	64	9	5	64	0	0	-
CI	1	31	32	3	5	27	16	1	27	4	0	4	100
Total	17	41	58	29	23	35	40	16	34	32	1	7	88
Taxation													
OR	0	0	0	-	0	0	-	0	0	-	0	0	-
MR	3	2	5	60	3	2	60	3	2	60	0	0	-
CI	0	6	6	0	0	6	0	0	6	0	0	0	-
Total	3	8	11	27	3	8	27	3	8	27	0	0	-
Welfare													
OR	3	3	6	50	5	1	83	2	0	100	1	3	75
MR	2	2	4	50	2	2	50	2	2	50	0	0	-
CI	0	9	9	0	1	8	11	0	8	0	0	1	100

	Yes	No	Total	% Yes	Good for equality	Bad for equality	% Good for equality	Positive accepted	Positive rejected	% Accepted of positive	Negative accepted	Negative rejected	% Rejected of negative
Total	5	14	19	26	8	11	42	4	10	29	1	4	80
Gender													
OR	3	2	5	60	3	2	60	3	2	60	0	0	-
MR	2	1	3	67	2	1	67	2	1	67	0	0	-
CI	0	6	6	0	3	3	50	0	3	0	0	3	100
Total	5	9	14	36	8	6	57	5	6	45	0	3	100
ESR													
OR	1	0	1	100	1	0	100	1	0	100	0	0	-
MR	2	0	2	100	2	0	100	2	0	100	0	0	-
CI	1	10	11	9	1	10	9	1	10	9	0	0	-
Total	4	10	14	29	4	10	29	4	10	29	0	0	-

positive proposals for equality marked light grey, negative proposals for equality marked dark grey
Yes = acceptance in popular vote, No = rejection in popular vote
good for equality = = positive accepted + negative accepted + negative rejected + negative accepted

APARIUZ XXII UNTER GLEICHEN

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