

# **The legitimacy of local referendums on municipal amalgamation**

*An instrument for decision-making or consulting citizens?*

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## *Leseveiledning:*

Dette er et paper som er basert på en rapport som vi nettopp har levert til Kommunal- og moderniseringsdepartementet. Som det nok fremgår bærer paperet preg av at det satt sammen av ulike deler og enda ikke er blitt gjennomarbeidet i sin helhet.

Vi ønsker særlig kommentarer på hvordan paperet kan bearbeides videre med sikte på publisering i et internasjonalt tidsskrift: Hvordan løfte dette opp fra en "evaluering" til noe som har allmenn interesse? Hvorfor er dette interessant for andre enn norske kommuner? Hvordan kan dette bidra til den internasjonale faglitteraturen og kommuneforskningen?

Vi er også interessert i å vite hva som kan kuttes ut eller forkortes.

## Introduction

Referendum may be considered as an instrument for direct democracy – as a mechanism for decision making – or as an instrument for consulting citizens as a basis for decisions made by representative institutions. In the first case, a referendum will be binding, while in the second case it will, at least formally, be consultative. In both cases, the legitimacy of referendums can be assessed. In this paper, we ask: *What influences the legitimacy of local referendums as a democratic instrument?* We use three of Robert Dahl's criteria for a perfect democratic process to discuss the legitimacy of referendums: *Inclusiveness*, *Effective participation*, and *Enlightened understanding*.

Theoretically, the aim of the paper is to contribute to a general understanding of referendums as democratic instruments, compared with other participatory instruments, and how different aspects of the use and implementation of referendum influence its legitimacy. Empirically, the paper contributes to an understanding of the dilemmas and practical choices that local referendums may involve when used in political processes. Furthermore, the paper sheds light on the dilemma many political actors face: on the one hand, they share the normative ideal of civic engagement and participation; on the other hand, they want to implement policies that can be thwarted by effective democratic participation.

The empirical basis for the paper is the Norwegian municipal reform, where more than 200 consultative local referendums on municipal amalgamation were held. We approach the research question from two angles. First, we examine how the political actors themselves assess the legitimacy of referendums, compared with other available tools for citizen involvement. Here, we look into the arguments that municipal councillors and other political actors used for arranging a referendum – or for not doing so – and to what extent referendums were considered as politically binding for the further political process. The latter question involves, for example, turnout and how clear the result of the referendum was. Second, we look into whether these Norwegian referendums actually met more overall and normative criteria for democratic decision-making processes. The paper concludes with some reflections on the local referendum as an instrument for decision making and consulting citizens, respectively, and contrasts it with citizen surveys.

## Theorizing local consultative referendums

What are the relevant criteria for assessing the democratic goodness of consultative referendums? Because the constitutional setup of representative systems allocates final decision-making powers to elected officials, it seems inappropriate to regard the degree of congruence between the outcome of the vote and the eventual decision in the matter as the key evaluative criterion. In the liberal conception of democracy, legitimacy is derived primarily from acquiescence with rules deriving from a just and acceptable constitution (Rawls 1993: 217). Many voters would probably question the legitimacy of decisions that are seen as blatant contradictions to the results of a popular vote. The fact that consultative referendums are not designed legally as mechanisms for decision-making, however, suggests that we should look for evaluative criteria elsewhere.

Rather, in our view, the normative basis for the assessment should derive from a conceptualization of consultative referendums as acts of free speech. Being able to express one's political opinions in public, freely and without constraints, is undoubtedly a hallmark of democratic citizenship. At this point however, one further qualification needs to be made. Several constitutions allow referendums based on popular *initiative*, granting the citizens the right to demand a referendum on a matter of

their own choosing (Sirico 1980). Hence, referendum by initiative can be said to epitomize 'unmediated' democracy (Scarrow 2001) and as such this form allows for free expression to a very high extent. Consultative referendums initiated by the government are, on the other hand, commonly referred to as *plebiscites* (Sullivan 2009). In the latter type, the subject matter of the referendum as well as all aspects of the design of the ballot and the precise wording of the options are decided by the government. Hence, the consultative referendum is a format that allows the government to shape and define the expression of public opinion quite rigorously. The implication is that the design of consultative referendums is a matter of considerable gravity.

The importance of safeguarding free and unconstrained expression of political opinion was emphasized by Robert A. Dahl. His frequently quoted criteria for a democratic process (Dahl, 1989; 2000) seem, on a general level, to provide quite some justification for the use of referendums regardless of their formal status: consultative or binding. Because referendums comply with the principle of 'one man, one vote', Dahl's criterion of *democratic equality* is accommodated. Moreover, local referendums may also function as tools for agenda control in that case the citizens have the right to initiative a referendum. However, the fact that local referendums in Norway are, as noted, initiated and defined by the municipal councils, implies that these referendums contribute little to upholding Dahl's criterion *agenda control*.

In the following discussion on the legitimacy of local referendum, our focus will be on three other of Dahl's criteria – *inclusiveness*, *effective participation* and *enlightened understanding*.

Referendums are an *inclusive* form of political participation in that all enfranchised citizens may cast a vote. However, inclusiveness is also about defining *demos*. Dahl stresses that *demos* should include all adults 'subject to a government and its laws' (1989: 127).

Dahl's criterion *effective participation* will be satisfied if all citizens are allowed to exchange their opinions openly and on an equal basis. This criterion is mainly related to practical issues of how the referendum is implemented and the issue of accessibility.

*Enlightened understanding* states that the citizens, at least to a reasonable extent, should be granted equal and adequate opportunities to understand and assess the policy alternatives in question, as well as the probable consequences of each. In the context of a local consultative referendum, the responsibility for safeguarding the criterion of 'enlightened understanding' clearly rests with the local council.

The question is, following this, one of how this responsibility should be operationalized. A convenient tool for assessment is the 'Code of good practice on referendums' produced by the European Commission for Democracy through Law (the Venice Commission, 2007), a legal expert group established by the Council of Europe. This document elucidates on how referendums should be carried out, in order to satisfy democratic criteria. Citing 'Europe's electoral heritage' as its basis, and very much in line with Dahl's criteria, the Commission put forward *universal, equal, free* and *secret suffrage* as key principles. The principle of 'free' suffrage is of particular interest in the present context, because it corresponds closely to Dahl's third criterion; 'enlightened understanding'. The commission notes, firstly, that free suffrage implies 'freedom of voters to form an opinion' (*ibid.*, 7-8). This entails a duty of neutrality for administrative authorities, in order not to infringe on free formation of opinion. While the authorities may intervene in support of the proposal submitted to the vote, the Commission warns against 'excessive, one-sided campaigning' funded by public coffers. Furthermore, the commission prescribes that

*The question put to the vote must be clear; it must not be misleading; it must not suggest an answer; electors must be informed of the effects of the referendum; voters must be able to answer the questions asked solely by yes, no or a blank vote. (item 3.1.c)*

In the view of the Commission, the authorities are responsible for providing 'objective' information. This entails that electors are provided balanced information from the proposal's supporters as well as from its opponents (item 3.1.d).

Secondly, the Commission presents a number of stipulations to ensure 'freedom of voters to express their wishes and action to combat fraud' (*ibid.*, p.8). In addition to rules pertaining to matters such as polling stations, postal or electronic voting and counting procedures, the Commission asserts that 'voting procedures must be readily understandable by citizens' (item 3.2.a.i).

Under the heading 'specific rules' (*ibid.*, pp.11) the Commission stipulates that 'the same question must not combine a specifically-worded draft amendment with a generally-worded proposal or a question of principle'. This provision is explicated in an explanatory memorandum appended to the Code. Here, the Commission notes that while the vote on a specifically-worded question may be enacted by a corresponding decision following the referendum, the vote on a generally-worded proposal necessitates a number of further steps before a final decision is made. The Commission fears that combining the two forms of questions may 'create confusion, preventing electors from being informed of the import of their votes and thereby prejudicing their free suffrage' (*ibid.*, p.20). Finally, the Commission demands that the effects of referendums, in the legally binding as well as in the consultative form, are clearly specified in the Constitution or by law (*ibid.*, p.14).

All in all, the Venice Commission provides a quite detailed and nuanced operationalization of how referendums needs to be designed in order to safeguard enlightened understanding, freedom of formation and expression of opinion. We now turn to the empirical context at hand, in order to assess to what extent the consultative referendums on local government amalgamations met these requirements in practice.

## **The case of Norway - the context for the referendums**

The Norwegian legislation is mainly silent on referendums. In national politics, this means that there is no room for binding referendums, but consultative referendums can be held. At the local level, there is a general mandate for consultative referendums in the Local Government Act of 1992 (§39b): 'The municipal council or county council may itself decide to hold consultative local referendums'. However, there is no central regulation of the procedures for local referendums. This is covered neither by legislation nor guidelines, but left to the municipalities. In a comparative perspective, this is parallel to the situation in Denmark, whereas such legislation exists in Finland and Sweden. However, the regulation in Finland and Sweden mainly concern practical issues. More politically sensitive issues, such as the wording of the questions and alternatives, are not regulated in these countries (Bjørklund 2017: 25–29).

There is a long-standing tradition of local referendums in Norway, especially on the issues of language in municipal schools (the choice between the two official varieties of Norwegian) and the sale of alcohol. Special legislation covered referendums on these two issues. More recently, however, territorial issues have become the most frequent topic for referendums (Bjørklund 2013; 2017).

One of the main ambitions of the Solberg Government, which took office in 2013, was to implement a comprehensive local government reform. Since then the reform work has been going on and is still

in progress (see Klausen, Askim & Vabo (2016) for further information). The ongoing Norwegian municipal reform aims at comprehensive municipal amalgamations. A new municipal structure, with larger and fewer municipalities, is assumed to reduce the need for inter-municipal cooperation, to reduce the need for state interference in local affairs, and to increase municipal freedom to adapt welfare services to local needs. In total, this should contribute to an increase in municipal autonomy. The Norwegian municipal reform is therefore seen as a reform for increased local democracy (KMD 2014). The government emphasized that the reform must be anchored locally and based on citizen consultation; even if the final political resolutions on boundary change is up to the Parliament (*Stortinget*) to decide (chapter II in the Norwegian Local Government Boundaries Act).

Regarding citizen consultation, the Local Government Boundaries Act (§ 10) states:

*The municipal council should seek the views of the inhabitants on proposals for any boundary change. Such consultation may take the form of a referendum, opinion poll, questionnaire, meeting or be conducted in another manner.*

Some kind of citizen participation is thus required – and referendums and surveys are regarded as equals – both are tools for consultations. This is not unique for Norway: the same juxtaposition of referendums and opinion surveys is found in the Swedish Local Government Act (chapter 5, §36).<sup>1</sup>

The Ministry of Local Government and Modernisation, and its Minister Jan Tore Sanner (Conservative Party), very clearly recommended the municipalities to carry out citizen surveys to fulfil this requirement (KMD 2015; Regjeringen 2016). Moreover, the Ministry paid a commercial polling organization, TNS Gallup, to draw up a template for a questionnaire to use in local opinion polls. The template is accessible from the website of the Ministry (KMD 2015). The argument for the recommendation was that a survey yields a more detailed picture of public opinion and thereby provides a more nuanced basis for decision-making, compared to local referendums. However, there may also be an unspoken motive for the recommendation that is related to strategic considerations (Bjørklund 2017). Based on experience, there was reason to believe that the result of a referendum often would be in favour of status quo, which in the case of municipal amalgamations means ‘no’. That turned out to be the case: the outcome of citizen surveys were generally more positive towards amalgamation, compared with referendums (Gjertsen et al. 2017: 29-30). Given this knowledge it is not a surprise that the Norwegian government spoke for surveys and that many municipalities, which in many cases were indeed sceptic to the reform, *defied* the central government and chose to use local referendums as an instrument for consultation. More than half of the Norwegian municipalities carried out a local referendum where – strictly speaking – the citizens were asked to say ‘yes’ or ‘no’ to amalgamations. However, and as this paper will show, not all referendums were that clear with regard to the wording. This points to an important aspect: The manipulative features of participatory instruments, which is also an issue in the further discussion on the use and legitimacy of both local referendums and citizen surveys.

The status of the Norwegian municipal reform is that the resolution on municipal boundary change was decided by the parliamentary majority on 8 June 2017 (Stortinget 2017). The parliamentary debate and the final resolution were mainly based on two documents, Prop. 96 S (2016-2017) and Innst. 386 S (2016-2017), which among other things referred and summed up decisions made by

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<sup>1</sup> This refers to the new Swedish Local Government Act from 2017, see [http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/kommunallag-2017725\\_sfs-2017-725\\_15.11.2017](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/kommunallag-2017725_sfs-2017-725_15.11.2017). A similar section was also found in the previous Act.

local authorities and recommendations from all the 19 county governors in Norway. The decision implies that the municipal amalgamations decided by the Storting will be implemented no later than 01.01.2020 and that the number of municipalities will be reduced from 428 to 354. 111 municipalities will be affected by the reform.

## Data and methodological approach

We use three different data sources to shed light on our research question: 1) qualitative interviews with local political actors, 2) a web survey sent to all municipalities that had arranged a referendum, and 3) a data set with information on these referendums.

First, to analyse the arguments of the political actors we rely upon interviews with mayors, local politicians, administrative representatives and others in 13 selected municipalities (Table 1). The municipalities were selected according to two criteria: 1) municipalities that did not apply for amalgamation and municipalities that did and 2) groups of municipalities with only two applying/ considered amalgamations and groups of municipalities with more than two applying/ considered amalgamations. It is important to note that all the municipalities did go through a process of considering amalgamations:

Table 1. Overview of municipalities selected for data collection

	<b>Apply for amalgamation</b>	<b>Did not apply for amalgamation</b>
<b>Group of two municipalities</b>	Leksvik and Rissa	Gran and Lunner
<b>Group of more than two municipalities</b>	Førde, Naustdal, Gaular and Jølster	Kristiansand, Søgne, Songdalen, Lillesand and Birkenes

Of these 13 municipalities, the municipality of Førde and Kristiansand did not have a referendum. The remaining 11 municipalities went through a referendum and arranged the referendums at the same dates within the group. In the interviews, we collected data about the background(s) for the use of referendums in the municipalities. Furthermore, we asked about how the results of the referendums should or could be interpreted. The relationship between referendums and citizen surveys on the merger was also a central topic that was discussed. Finally the data collection also included more general considerations of the use of referendum as a mechanism for either consulting the public or using it as a decision-making mechanism in the local democracy.

Second, we carried out a web survey with questions about experiences with and implementation of local referendums in the beginning of 2017. The questionnaire was sent to the 211 municipalities which had had at least one referendum on municipal amalgamation in the period 14.09.2015-24.01.2017, and addressed to the person in the municipal administration with responsibility for elections and referendums. The response rate is 86 per cent.<sup>2</sup> A large majority of the municipalities that answered the survey (84,5 %) has less than 10.000 inhabitants, which reflects the fact that municipal amalgamation in the Norwegian context is a topic that is most relevant for small entities (Borge et. al 2017).

<sup>2</sup> For detailed information about the survey design, please see Saglie & Seggaard (2017).

Third, we developed a data set covering all local referendums on municipal amalgamation held between 24.2.2014 and 24.1.2017. In all, 221 referendums were included in the data set. Eight local governments held consultative referendum twice during the period of study. The initial registration was done by The Centre of Competence on Rural Development (CCRD), a government agency subsumed under the Ministry of Local Government and Modernisation, and is available at the CCRD website.<sup>3</sup> All ballots as well as results were recorded in this database. The CCRD data were then coded by our research assistant, using a coding scheme produced by the authors. The coverage of CCRD database was checked by the research assistant by a web search. Our coding included the following numeric variables: Local government identifier, date, number of questions, participation rate, and distribution of votes. The exact wording of questions, alternatives and other text printed on the ballot were included as string variables. .

## Referendum vs citizen survey: the view of the municipalities

As we have seen, Norwegian legislation treats referendums and citizen surveys as equals. The government's position was in line with this view, but it recommended the use of citizen surveys. However, the legal understanding of local referendums may not correspond with the political understanding. A representative survey of local politicians and municipal administrative officers shows that local political actors regard referendums and surveys as *unequal* tools. Gjertsen et al. (2017: 31–35) found that local politicians perceived referendums to be more binding than citizen surveys – and more important for the decision – when the municipal council should adopt a position on amalgamation. Moreover, they also thought that referendums *ought to* be more binding. In this section, we use both qualitative and quantitative data to explore this question further: how did the political actors assess the legitimacy of referendums, compared with citizen surveys?

## Qualitative interviews: Background for holding a referendum

When asked about the reasons for holding a referendum on a suggested merger, the respondents in our 13 municipalities provide rather different descriptions and arguments. Some respondents pointed to a domino effect: when one of municipalities within the group of amalgamation partners decided to hold a referendum it became 'impossible' for the other municipalities not to have one. As one respondent mentioned:

*In our municipality we did not understand the point of having a referendum because the results from the citizen survey were so clear. But then the municipal council in our neighbouring municipality decided to have a referendum, and then we felt that we also needed to have a referendum.*

Others pointed to a national trend and that 'everyone' held a referendum. Another argument that was mentioned was that in some of the municipalities, the issue of amalgamation was not a campaign issue in the local election of 2015. Some local politicians therefore felt that they needed to put forward this issue of a potential merger since this was not debated during the election campaign. As one respondent explained:

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<sup>3</sup> <https://distriktssenteret.no/kommunereformen/folkeavstemninger/> (15.11.2017)

*The reason why we needed to have a referendum here was because the issue was never mentioned in the campaign in 2015. The parties did not signal their positions and it was not discussed prior to the local election.*

Others argued that this issue was too important and special, which made it imperative to have the people's voice on the matter. As for the two municipalities that did not arrange a referendum (Førde and Kristiansand) it was argued that the politicians here were certain that they did have the public behind them when pushing forward the amalgamation process. A final observation regarding the background for the initial phases of referendums is that the issue of having a referendum or not was not really a much discussed topic. Once the issue of referendum was being mentioned or suggested there was little debate in the local assemblies on whether to have a referendum or not.

### **Qualitative interviews: Arguments for and against regarding the result as binding?**

In our interviews with local politicians, it is a rather common theme that the results from the referendums must be respected. Few, if any, local political actors explicitly stated that one could disregard the results. One respondent argued that if you did not respect the outcome, then there was no need for arranging a referendum. In other words, the referendums were regarded as a decision-making tool, not primarily a means for consulting the public. The dominant view that the outcome of a referendum must be respected was pronounced also among those who "lost" the referendum. Here are two quotes:

*Yes-person: [Could you have voted against the results from the referendum]*

*No, no. Then you lose. Legitimacy in the public is important. If the public voted massively against and one goes against this result, then you do not have ears at all. You cannot do that, it is not possible.*

*No-person: We had decided upon this in advance. If the public voted yes, then we should be loyal to the people's voice.*

*[Was there any discussion whether to follow the result or not?]*

*Of course. A lot of people cared about the municipality. They love the municipality and still find it hard to accept the result today. It is easier for us politicians who are working with this on daily basis because we have to go through a quick process. We lost, now we have to make the best out of it.*

It should be mentioned however that some respondents mentioned issues that could make it easier to go against the results. This was issues such as turnout and how the narrow the outcome of the referendum was. It was not always clear whether this was arguments the respondents themselves made, or whether it was more a reference to arguments that had been brought up during the discussions in the public and municipal councils.

### **Survey data**

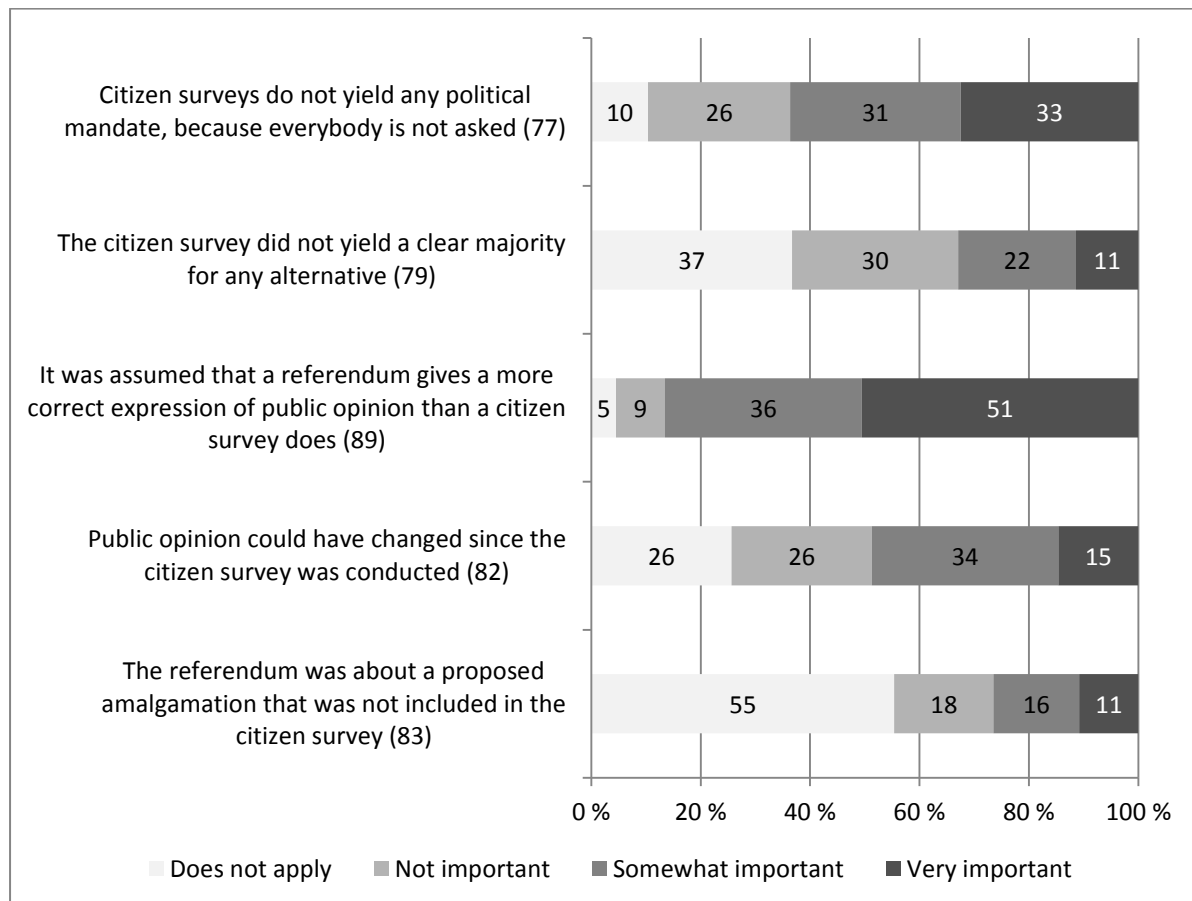
We also explored the question of *how* the citizens should be heard by means of our web survey, which was distributed to all municipalities that had held a referendum on municipal amalgamation. 61 per cent of the municipalities that arranged a referendum on municipal amalgamation had also



carried out a citizen survey *before* they decided to hold a referendum. In other words, a majority of these municipalities had decided to use *both* a survey and a referendum.<sup>4</sup>

We asked all municipalities that had carried out a citizen survey about the importance of different arguments for holding a referendum as well. One argument stands out as especially important: 87 per cent of these municipalities considered ‘It was assumed that a referendum gives a more correct expression of public opinion than a citizen survey does’ a somewhat or very important argument in favour of holding a referendum, see Figure 1. However, the argument ‘Citizen surveys do not yield any political mandate, because everybody is not asked’ was also seen as important. 64 per cent answered that it was somewhat or very important. Both of these arguments claim that there is a fundamental and qualitative difference between referendums and citizen surveys – in favour of referendums.

Figure 1. The importance of different arguments for holding a local referendum, among municipalities that already had carried out a citizen survey. Per cent (N in parentheses).



Question: Based on your knowledge about the case, how important were the following reasons for the municipality’s decision to hold the referendum?

‘Don’t know’ are excluded from the calculations.

<sup>4</sup> We do not know whether any of these municipalities conducted a citizen survey *after* their referendum (and if so, how many).

Furthermore, we see that arguments related to the outcome of the citizen survey also were seen as (relatively) important in many cases. Almost half the municipalities (49 %) regarded 'Public opinion could have changed since the citizen survey was conducted' as somewhat or very important. 'The citizen survey did not yield a clear majority for any alternative' was considered important by a third of the municipalities.

When we compare these two empirically oriented arguments with the two fundamental arguments, we see that the percentage answering 'very important' is much higher for the fundamental arguments. Conversely, the two empirical arguments were more often seen as 'not important'. More respondents also answered that these arguments did not apply in their case. The reason may be that the citizen survey actually yielded a clear majority, or that only a short time had passed since the survey was carried out.

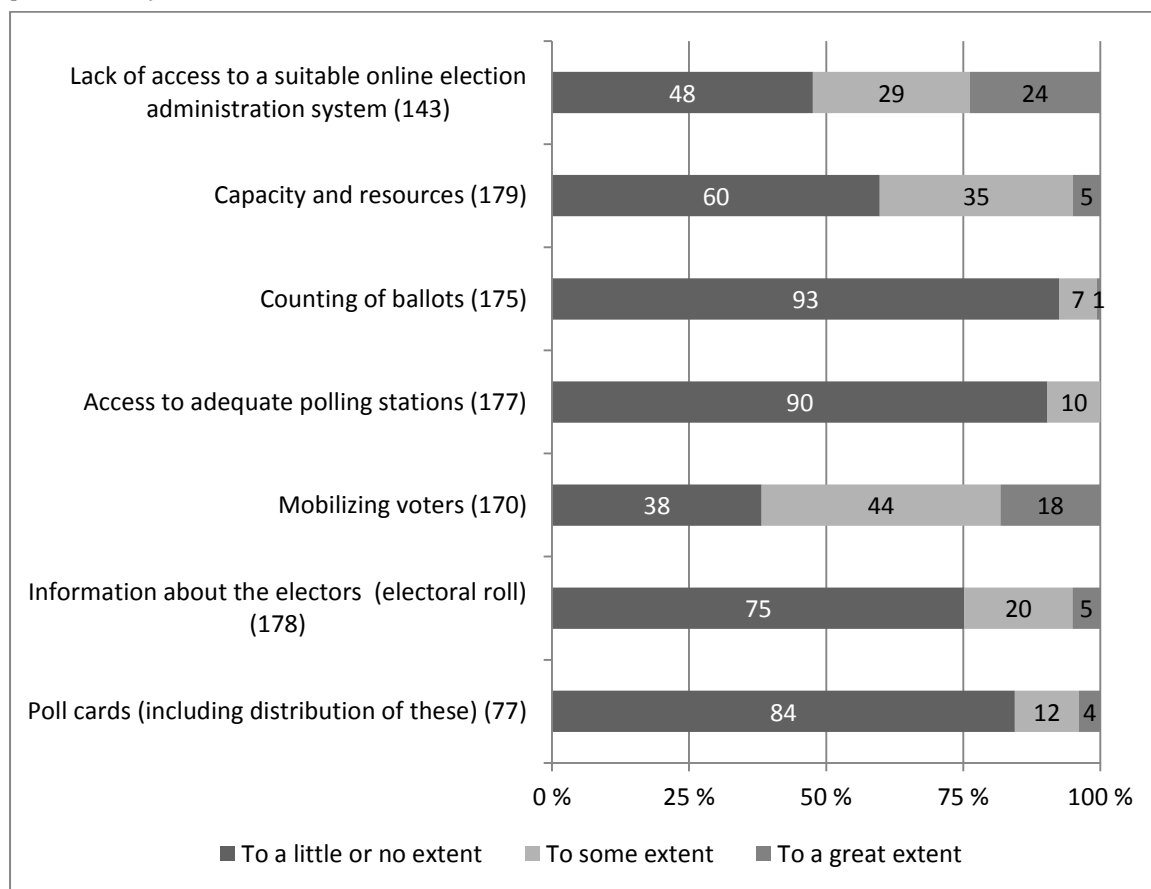
To sum up: qualitative interviews and representative surveys, as well as previous research (Gjertsen et al. 2017) yield a similar picture: the municipalities and local politicians did not regard referendums and citizen surveys as equal. A referendum was clearly seen as more weighty.

## **Normative evaluation of the referendums**

### **Survey data**

To assess whether the referendums lived up to standards for democratic processes, we first take a brief look at the municipalities' own view. In our web survey, we asked the municipalities whether there were challenges with regard to different aspects of the practical implementation. The answers, which are presented in Figure 2, show that some aspects were perceived as quite unproblematic, while others were more challenging.

Figure 2. The municipalities' view on challenges related to holding the referendum. Per cent (N in parentheses)



Question: To what extent did your municipality experience challenges related to arranging the referendum, with regard to the following aspects.  
 'Don't know' and 'Does not apply' are excluded from the calculations.

Three aspects were regarded as quite unproblematic: counting ballots, having adequate polling stations and aspects related to the electoral roll. The municipalities are used to carry out these tasks in regular elections, and referendums did not bring up any new challenges. Distribution of poll cards (information about the election, the location of the polling station, etc.) seems to follow the same pattern, but more than half the municipalities answered 'Does not apply' to this question. Apparently, these municipalities did not use poll cards.

The municipalities regarded the three remaining aspects of Figure 2 as more challenging. Mobilizing voters was seen as more difficult. This is no surprise, as turnout was low in many municipalities. A substantial number of municipalities would also have preferred to have more resources. A more concrete challenge was the lack of a suitable online election administration system. For regular elections, the municipalities use a centrally developed election administration system, which is operated and managed by the Norwegian Directorate of Elections. This system is not adapted to referendums. Accordingly, municipalities cannot rely on the standard routines of this system.

## Analysis of the ballot papers

The most striking distinction between the 221 referendums included in the study relates to the wording of the proposal as well as the specification of answers for the voters to choose between. The coding scheme was designed so as to identify the number of answers that would signal support for amalgamation with a more or less specified number of neighbouring local governments.

Table 2. Local referendums and the number of alternatives on the ballot

Number of alternatives on the ballot	Number of the referendums (nominal)	Share of the referendums (per cent)
0	33	14.9
1	140	63.4
2	39	17.7
3	7	3.2
4	2	0.9
In all	221	100.0

In 33 cases, the ballot did not identify any neighbouring municipalities eligible for amalgamation at all. These ballots were worded in line with these examples:

- Should Trøgstad become part of a larger municipality? (Yes or no)
- What do you want Rindal municipality to do? (No/yes to amalgamation for Rindal)

As for the other referendums, the voters could select one of up to four alternatives to remaining unamalgamated. However, in approximately 30 cases, one or more of these alternative constellations of neighbouring municipalities were not identified precisely. An example is the referendum in Meland municipality (23.5.2016). The voters could choose between remaining unamalgamated, or the following alternative:

Meland municipality builds a new municipality with Lindås, Radøy and possibly other municipalities in Nordhordland.

In some cases, the qualification such as ‘possibly other municipalities’ were justified in the text of the ballot, with reference to the fact that the reform process was still in progress:

(...) Similar processes to ours are being conducted in most of the municipalities that are included in our alternatives. If one or more of these municipalities choose a different alternative than the one we are included in, this could cause the alternative to change or default. (...) Such contingencies are beyond our control, and this is why it is written *may include* in the alternatives which mean amalgamation with other municipalities (Evenes municipality quoted in Klausen 2017:105).

Five referendums were notable for not providing a ‘no’-option. Voters could choose between varying numbers of constellations of neighbouring municipalities, but were not allowed to vote *against* amalgamation altogether. In four of these cases, a ‘blank’ vote could be marked on the ballot. Unsurprisingly, these referendums resulted in highly untypical support for amalgamation. For instance in Lyngdal, 98.7 % of the votes signalled support for one out of two amalgamation options (1.3 % chose ‘blank’).

In four cases, one or more alternative signified support for amalgamation with more or less clearly identified constellations of neighbouring municipalities, on the condition that some specified demands were met. Notably in Haram, one of the alternatives read as follows:

Haram amalgamates with Sandøy, provided that the Nordøy road is built.

33 referendums allowed the voters to signal their secondary or even tertiary preferences, either by ranking the alternatives, or by including a secondary question on the ballot. The ballots accommodated ranking in different ways. For instance in Bardu, voters could choose between two ballots, one marked with 'yes to municipal amalgamation' or 'no to municipal amalgamation'. On the yes ballot, the text read as follows:

If you want to rank the alternatives, please indicate your preferred alternative (two optional constellations were identified)

In some of the cases of where secondary voting or preference voting was allowed, the municipality in question had not, to our knowledge, presented a document describing how secondary preferences were to be counted. In other words, voters were not able to assess what weight secondary preferences would be given. For instance, if the primary vote was against amalgamation altogether, should a secondary preference for a given alternative constellation count as much as a primary vote in favour of that alternative? Or should the secondary votes be weighted down?

We also found few indications that the municipality had decided in advance about the required majority for 'winning' the referendum. This is somewhat problematic given the substantial number of referendums with several alternatives specified on the ballot. If the question is a simple 'yes' or 'no' to a given proposal (in line with the recommendations of the Venice commission), one alternative will gain absolute majority – at least after disregarding blank votes. However, with an increasing number of options, one would expect simple majority to suffice. If the majority rule is not specified in advance, the municipal council may be suspected of strategic interpretation of the results – either by claiming that simple majority is insufficient (thereby rejecting amalgamation), or by declaring a winner with less than absolute majority.

The various practices noted above seem in different ways to be problematic in light of the Venice commission's criteria.

- Not identifying precisely the municipalities included in the alternatives on the ballot makes it difficult or impossible for the voters to assess the policy options and their possible consequences. One would expect the consequences of amalgamation to vary a lot depending on the exact identity of amalgamation partners. For instance, previous research has indicated that voters tend to regard amalgamations more favourably if the centre of the new municipality is likely to be located in their own municipality (Johnsen & Klausen 2006). If voters have reason to fear that their own municipality would become a periphery, on the other hand, they tend to resist amalgamation to a much greater extent. Not identifying the constellation in question jeopardizes 'enlightened understanding' and is as such not in line with democratic requirements.
- Lack of alternative denoting 'no' to amalgamation may provide results that are unrepresentative of popular opinion. Many voters are not allowed free expression of opinion.
- Preference/subsidiary voting, especially in cases without predetermined (or unclear) procedure for counting subsidiary votes, may create confusion and room for strategic interpretation of the results.

- The Venice Commission recommends not deciding on approval quorum (*ibid.*, p13) but in cases of several optional answers there is reason to suggest that majority rule should be set in advance.
- Conditional voting means that voting made subject to matter unrelated to the subject of the proposal, and not affected by the vote.
- The Venice commission recommends being able to answer question with yes or no (binary). This is debatable. We note however that increasing numbers of answers provides increasing leeway for local government to interpret results. In binary referendums, the alternative that wins absolute majority is seen as the victor. However, with increasing number of options, simple majority may suffice.

## The democratic legitimacy of local referendums

In this section we discuss the democratic legitimacy of local referendums. Our starting point is Robert Dahl's (1989; 2000) normative criteria for democratic decision-making processes, and, more specifically, three of them: Inclusiveness, Effective participation, and Enlightened understanding. As discussed earlier, it may still be relevant to see whether these criteria were fulfilled, even though the referendums were consultative.

*Inclusiveness* is about definition of *demos*; who has the right to participate and vote? A high degree of legitimacy assumes that all people that will be affected by the decision must be included in the *demos*. Whether people actually participate is not crucial as long as they have equal rights and possibilities to participate. That is to say, choosing not to vote in a local referendum is considered as a democratic right on equal terms with choosing to vote. One implication of such understanding is that turnout cannot be used as a measure of inclusiveness and thereby of the legitimacy of a referendum in this regard. First, we notice that more than three out of four Norwegian municipalities extended their *demos* compared to ordinary elections by including 16- and 17-year-olds. An argument for such extension may be that municipal amalgamations will affect further generations. However, *demos* was restricted to inhabitants of the municipality in question. It is fair to argue that municipal boundaries define, limit and affect the interests of other actors than the citizens of the municipality. Many people live in one municipality, work in another and use their spare time in a third municipality. Nevertheless, the question of municipal boundaries and reform in Norway was strictly speaking presented, debated and to some degree also answered as a local affair and this is reflected in the way referendums on municipal amalgamation were carried out.

Robert Dahl defines *effective participation* as adequate and equal opportunities to form and to express opinions and preferences. With regard to local referendums, this mainly points to practical considerations related to accessibility. Our survey among the municipalities indicates that good accessibility to the referendum was high on the agenda in the preparations of the local referendums. In many cases it was possible for the voters to vote in advance in the weeks before the Election Day and in eleven municipalities the voters could choose to cast their vote 'from anywhere' on the Internet. Overall, there is no evidence indicating problems regarding accessibility for the voters. That is to conclude that all people included in the *demos* seems to have had adequate and equal opportunities to cast a vote and thereby to express their opinions. We will in addition to this practical approach to effective participation also include a more normative approach: the issue of secret voting. The principle of secret voting, which is anchored in the Norwegian Election Act, is meant to hinder improper influence, to ensure that the voter votes in accordance with his/her own

conviction, and that the counting vote is identical with the vote that the voter cast. Our web survey showed that almost all the municipalities (99 %) that carried out a local referendum on municipal amalgamation considered the principle of secret voting as 'very important'. Secret voting was obviously a norm of high priority.

Whereas effective participation is about participation and expression of opinions, *enlightened understanding* deals with the opportunities of demos to get information and knowledge about the issue of the referendum and the consequences of all the alternatives on the ballot. Such knowledge requires that the demos has access to correct and balanced information before the referendum and it requires that the question and the alternatives on the ballot paper are clearly and unambiguously worded. Our survey of the Norwegian municipalities which had a referendum on municipal amalgamation shows that the vast majority (94 %) had conducted an information campaign. Many did this in collaboration with other actors – neighbouring municipalities, the local newspaper or a private consultancy firm.

We know from election studies that local newspapers play an important role in Norwegian local democracy, providing information on local issues and local politics (Karlsen 2017). This was also the case regarding municipal amalgamation and the municipal reform more overall (see e.g. Waaland 2017). Moreover, local newspapers are often an arena for local debate where supporters and opponents express their opinions. The view of how good the local newspapers function as information channels and arenas for debate will of course depend on who you ask. In our survey, Norwegian municipalities which had a local referendum were fairly satisfied. Only 10 and 7 percent were dissatisfied with how the newspapers carried out their role as information provider and as debate arena, respectively.

Good information in advance is important, but so is the information and wording on the ballot paper. A high degree of democratic legitimacy requires that there is no doubt about the meaning of the question and the alternatives on the ballot paper. Any kinds of ambiguity will influence the conditions for enlightened understanding. This will be the case regardless how well-informed the voter was before he/she entered the polling station. Despite the overall impression that the ballot papers used in the local referendums were easy to understand, it is – as we have seen – not difficult to find examples illustrating the opposite. The wording of the question and the alternatives on the ballot paper may influence the result and not least the interpretation of the result. This is what we call the manipulative features of referendum as a participatory instrument. The wording may be especially problematic when there are more than one possible amalgamation alternatives. The Venice Commission emphasized that the question put to the vote must be clear and not misleading. Our analysis of the ballots shows that although most of the Norwegian referendums on municipal amalgamation fulfilled this criterion, there were also many cases that failed to reach this standard. In these cases, the voters cannot be sure how their votes will be interpreted afterwards. Such vagueness will influence the democratic legitimacy of a referendum negatively.

Vagueness and ambiguity in local referendums partly reflects the overall uncertainty which characterized the municipal reform. Particularly in the beginning of the process, it was almost impossible for the municipalities to clarify the consequences of different alternatives for municipal amalgamation with regard to aspects such as economy and distribution of tasks, duties and responsibilities. Moreover, it was difficult for a municipality to ask its citizens about specific amalgamation alternatives, when it was unclear whether these potential partners actually wanted to

amalgamate. This may lead to the conclusion that it was impossible to achieve *enlightened understanding* in practice.

This may also lead to the conclusion that the topic of municipal amalgamation is not well suited as a topic for local referendums. However, the same objection can be raised against the other tools that the Local Government Boundaries Act prescribes for consulting the citizens. In the next section we thus compare local referendums with the main alternative tool for citizen consultation: citizen surveys.

### **The legitimacy of referendums, compared with citizen surveys**

As we have seen above, the legal starting point is clear: Referendums in Norway are only consultative, and they are regarded as a consultative tool on equal terms with citizen surveys. However, we have also seen that the local political actors themselves regard referendums as qualitatively different from opinion surveys, and more binding than such surveys. There is thus reason to discuss the legitimacy of referendums compared with citizen surveys from a *normative* perspective.

In our opinion, the juxtaposition of referendums and citizen surveys is problematic. There is a basic asymmetry between these two tools with regard to Robert Dahl's inclusiveness criterion. Everybody who is defined as affected by the decision (i.e. all citizens above the voting age) can themselves choose whether they will participate or not. In contrast, a citizen survey only gives a random sample of citizens the possibility to express their view. Citizen surveys are thus far less inclusive than referendums, all other things being equal.

That may not be a problem, as long as surveys and referendums are regarded merely as tools for information gathering – in line with the legal understanding. In practice, however, it may be difficult to limit the role of local referendums in that way. Even though referendums in Norway – legally speaking – are consultative, there is strong public support for the idea that referendums should be binding. This applies both generally (Bjørklund 2013) and with regard to municipal amalgamation. A Norwegian survey from 2015 shows that 52 % of the respondents thought that the citizens themselves, by means of a referendum, should decide whether their municipality should be merged (Rose, Klausen & Winsvold 2017: 291–293). On the other hand, it is also quite widely accepted among the citizens that municipal councils can make decisions that go against the outcome of a referendum on amalgamation (Folkestad 2017). But even though the citizens may accept to be overruled, the politicians are clearly uncomfortable with being the 'overrulers'.

In our opinion, this makes it relevant to evaluate local referendums according to normative criteria for decision-making. If the citizens are asked to give their advice, and if this is done in a way that fulfils the criteria for democratic *decision-making*, it may in practice be difficult to treat the referendum as a tool for *information-seeking*; as one of many inputs to a decision made by others. The legal perspective – that referendums are consultative – is insufficient if referendums *de facto* become binding. In this context, it is difficult to treat referendums and citizen surveys as equal. Although citizen surveys provide valuable information for political decision-makers, they cannot be juxtaposed with referendums as tools for *making* decisions.

Judged as tools for information-seeking, citizen surveys have several advantages. It is possible to ask many questions, and accordingly get a much more nuanced picture of public opinion. Furthermore,



surveys make it possible to compare attitudes among different sub-groups of the population, and analyse the connection between attitudes and socio-demographic variables, if that is desirable.

However, it is also possible to raise some objections to citizen surveys as tools for information-seeking. First, representativeness is often seen as the main advantage of citizen surveys, in contrast to referendums where turnout may be low, and some groups may mobilize more strongly than others. However, it should not be forgotten that the response rate in such surveys often is low, making generalization to the whole population more uncertain.

Second, citizen surveys are – just like referendums – vulnerable to manipulation. We have seen several problems with the questions and alternatives on the ballot papers, but the same problems are present in citizen surveys. Poorly specified alternatives, conditional alternatives and lack of ‘no’ options were present in the citizen surveys on municipal amalgamation as well (Gjertsen et al. 2017: 28–29). Moreover, the rich material from surveys gives many opportunities for analyses. Even though this is an advantage, it also means that analysis requires a selection of ‘relevant information’. Some analyses are carried out, while other possibilities are ignored.

Our intention is not to question opinion surveys in general, but to emphasize that surveys are different from referendums. We should not consider them as alternative tools, but as supplementary tools with quite different qualities, and perhaps suitable at different stages of the decision-making process.

## Concluding remarks

Our analysis of the Norwegian cases has shown that the legitimacy of referendums is regarded as high by local political actors. This is, we believe, because referendums are *inclusive* (in Dahl’s terms). Even though a local referendum only is consultative legally speaking, it is often regarded as binding by political actors – especially if the referendum is held according to standards for democratic decision-making. However, that was not always the case. The study has also shed light on factors that limit the legitimacy of referendums, both from a normative perspective and in the eyes of political actors. Even though most of the local referendums were held according to the principles of the Election Act, the wording of questions and alternatives on the ballot paper was problematic in several cases. This certainly reduces the democratic legitimacy of these specific referendums. Also other factors, such as low turnout or a close race, may play a similar role.

The case of the Norwegian referendums on municipal amalgamation sheds light on a more general question: the role of participatory political institutions in policy-making processes. The need for more participatory democracy, where citizens are given a more active role than only voting at elections, has often been emphasized (see, e.g., Geissel & Newton 2012). The idea that the involvement of citizens should be encouraged has been met with approval by local and national politicians as well, and ‘democracy policy’ has appeared a new policy area in several countries (see, e.g., Gilljam & Jodal 2005; Montin 2007; Aars 2012).

However, the Norwegian case highlights that the lofty ideals of citizen participation easily fade, when they face actual decision-making processes. The Norwegian government wanted to merge municipalities, and it had gotten a mandate for doing so through the 2013 parliamentary election. Many local politicians also regarded amalgamation as necessary for their municipality. It cannot be surprising that these politicians wanted to avoid referendums, as they realized that citizen

participation through referendums would thwart their policy goals. To some extent, that was also the outcome – as fewer municipalities were amalgamated than what the government preferred. Likewise, local politicians who were against amalgamation would support referendums for the same reason, not necessarily because of a commitment to participatory democracy. The Norwegian case points in this way to a strategic or even a manipulative use of participatory political institutions – or at least that the choice of participatory instruments may depend on how they affect the substantial outcome of a process, rather than their inherent qualities.

Neither is it a surprise that the government instead recommended citizen surveys. Some kind of citizen involvement was needed, according to the Norwegian Local Government Boundaries Act. Since citizen surveys are a weaker democratic instrument, in terms of legitimacy (since only a sample is asked), it is also much easier to dismiss the results if one dislikes them. Moreover, since the government recommended surveys rather than referendums, it may be understandable why little was done to ensure that the local referendums fulfilled some basic criteria for good referendum practice, such as the recommendations of the Venice Commission.

Nevertheless, the fact that more than 200 referendums were held shows that it may be difficult to avoid a referendum – even if one wants to. The normative appeal of asking the people is strong, and it is simply difficult for politicians to defend *not* holding a referendum. That is especially the case when the citizens and local media see that other municipalities in a similar situation have chosen the referendum option.

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