

ARTICLE

When do consultative referendums improve democracy? Evidence from local referendums in Norway / Bjarte Folkestad, Jan Erling Klausen, Jo Saglie, Signe Bock Segard

VERSION: POST PRINT/GREEN OPEN ACCESS

This document is the author's post print (final accepted version). The document is archived in the institutional archive of Institute for Social Research.

The final publication is available in:

International Political Science Review
2019 / DOI: 10.1177/0192512119881810

When do consultative referendums improve democracy?

Evidence from local referendums in Norway

Bjarte Folkestad, NORCE Norwegian Research Centre, Bergen & Volda University College

Jan Erling Klausen, Department of Political Science, University of Oslo

Jo Saglie, Institute for Social Research, Oslo

Signe Bock Seggaard, Institute for Social Research, Oslo

Abstract

Consultative referendums may provide crucial information about public opinion but have received little attention in the literature compared with their binding counterparts. In this article, we analyze 221 Norwegian local consultative referendums on municipal amalgamation using the Venice Commission's code on referendums. Much of the referendum literature suggests that consultative referendums are in fact binding. The municipal councils followed the outcomes of the referendums in most cases, but 14 percent chose to go against it. While the overall impression is that the outcomes of consultative referendums are binding, the data indicate that ballot design may affect voters' choice as well as council decisions. Although many democratic standards were met, the wording of questions and alternatives on the ballot paper was problematic in a number of cases—reducing the democratic value of the citizens' advice.

Keywords

Referendum, Consultative referendum, Local government, Municipal amalgamation, Direct democracy

Introduction

The purpose of consultative referendums is not self-evident. If the aim were to gauge public opinion, an opinion poll to a representative sample might be more efficient, and if the aim were to let the people decide, binding referendums would be more appropriate. The fact that consultative referendums are used nonetheless suggests that the act of ‘consulting’ citizens is intended to provide added value beyond that of simply measuring public opinion—but the nature of this added value is not immediately clear. From the perspective of the voter, consultative referendums may seem puzzling. Why would political bodies consult citizens on a specific issue when they routinely decide on a host of other issues without doing so? Why invite people to the polls without letting them decide the matter? How can voters be assured that the outcome of the vote is not misrepresented or taken as support of a position other than that intended? Is voting behavior affected by how the question is posed? Lastly, do politicians feel bound by the outcome of consultative votes or do they feel free to disregard the voters’ advice? Such ambiguities relate primarily to consultative referendums, but the extant literature is largely silent on how they are actually resolved.

Overall, direct democracy is in ascendance worldwide (see for example Butler and Ranney, 1994; Kaufmann et al., 2004; Qvortrup, 2017). Whether in the form of a *referendum* initiated by a political body or as an *initiative* by a citizen’s petition, popular votes on issues are commonly regarded as the most authoritative expression of the popular will (Leininger, 2015). Extensive literature has explored direct democracy from a comparative perspective (Leduc, 2003; Altman, 2011, 2017; Butler and Ranney, 1994) and as a decision-making mechanism in single jurisdictions (Allswang, 2000, Kriesi, 2008; Trechsel and Sciarini, 1998). The popular vote is not always used for deciding, however. In many cases, referendums are non-binding and serve instead a consultative function. While all but identical to binding referendums in terms of practical execution, the democratic status of consultative referendums is arguably quite different and more ambiguous (Kaufmann et al., 2008). They are not instruments of direct democracy in the sense of direct popular rule, since elected representatives may disregard the outcome. Consequently, consultative referendums cannot necessarily serve as a mechanism to keep elected politicians in check (Qvortrup, 2017: 149). Indeed, because political bodies always decide on subject, formulation, and timing, consultative referendums are a long shot away from the unmediated voting that ‘lets the people speak freely’ (Budge, 2008: 4).

The purpose of the present article is to elucidate the democratic role of consultative referendums in light of empirical evidence taken from a unique event—a virtual deluge of popular votes in the history of an otherwise markedly representative political system. In conjunction with the ongoing Norwegian local government reform, as many as 221 consultative referendums on local government amalgamations were conducted in a period of less than three years, as compared to a normal average of 13 local referendums per year (Adamiak, 2011: 122). The very high comparability of these referendums—in terms of thematic congruence and the identical legal status of the jurisdictions—means that they represent a rare opportunity for increasing current understanding about the workings of consultative referendums. The local government reform was both salient and highly contentious in national politics as well as at the local level. Furthermore, the absence of national regulation and supervision of local referendums in Norway allowed for great variation in local practice, providing fertile conditions for research.

Based on qualitative interviews, registry data, and surveys in all municipalities that had arranged an amalgamation referendum, we tracked these referendums through four phases: the decision to conduct a referendum, the formulation of questions and design of the ballots, the actual vote, and finally the decision on amalgamation. For each phase, we asked questions to identify the underlying ambiguities that adhere to the institution of consultative referendums. Keeping in mind that binding referendums are not legally mandated in many countries, the democratic value of allowing citizens to at least voice their opinion by casting a ballot should not be disregarded. Can consultative referendums contribute to an improved democracy—even if the outcome of the vote is not formally decisive?

The structure of the article is as follows. As our primary interest is the ambiguous status of consultative referendums, the theory section provides the groundwork for evaluation based on the Venice Commission's (2007) code on referendums and on enlightened understanding and inclusiveness as normative criteria for democratic quality (Dahl, 1989). We then present the empirical and legal context of Norwegian local referendums, followed by a description of our methods and data. The results section is divided into four parts, corresponding to the four phases mentioned above. In the concluding discussion, we consider conditions for how consultative referendums can function as democratic instruments.

Theorizing consultative referendums

There is considerable literature on the potential tension between representative democracy and referendums (e.g., the contributions to Cheneval and el-Wakil (2018)). The aim of this article is more limited: Our objective is not to discuss the merits of direct democracy as such, but—following el-Wakil and Cheneval (2018)—to focus on the *institutional design* of popular vote processes.

The consultative referendum is a distinct category seen from a formal-institutional perspective. As opposed to binding referendums, there is no legal obligation to guarantee that the decision is congruent with the advice given. In spite of this, consultative referendums have received little attention in the literature; indeed, several studies from the national level downplayed the distinction between advisory and binding referendums (eg. Setälä, 2006: 713; Gallagher, 1996: 246). However, studies of local consultative referendums indicate that local councils sometimes choose not to follow the advice of the majority (Jäske, 2017; Sjøberg and Tangerås, 2007). Survey experiments suggest that although a majority of citizens maintains that government decisions should conform to the result of a consultative referendum, this would depend heavily on voter turnout, the size of the majority, and whether one agrees with the winning side (Arnesen et al., 2019). Consequently, it seems inappropriate to use the degree of congruence between advice and decision as the primary basis for assessing the democratic goodness of consultative referendums.

What, then, are the relevant criteria for assessing the democratic quality of consultative referendums? The 'Code of good practice on referendums' produced by the European Commission for Democracy through Law (Venice Commission, 2007) put forward *universal, equal, free, and secret suffrage* as key democratic principles for referendums. These principles clearly apply to issues such as voting rights and the practical execution of the referendum. Moreover, the principle of free suffrage has implications for the information accessible to voters, because free suffrage implies 'freedom of voters to form an

opinion' (ibid.: 7-8). Administrative authorities must remain neutral to avoid infringing on free formation of opinion. While elected representatives may intervene to promote the proposal, the Commission warns against 'excessive, one-sided campaigning' funded by public coffers. Furthermore, the Commission prescribes that

[t]he 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 both supporters and opponents of the proposal (item 3.1.d).

The Commission presents a number of stipulations to ensure 'freedom of voters to express their wishes and action to combat fraud' (ibid.: 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).

The Commission further stipulates that 'the same question must not combine a specifically-worded draft amendment with a generally-worded proposal or a question of principle' (ibid.: 11). In a memorandum appended to the Code, 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 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.: 20). Finally, the Commission demands that the effects of referendums, whether legally binding or consultative, are clearly specified in the Constitution or by law (ibid.: 14).

All in all, the Venice Commission provides a quite detailed and nuanced operationalization of how referendums must be designed to safeguard universal, equal, free, and secret suffrage as key principles for democratic quality. In this context, we take departure in two main democratic criteria: enlightened understanding and inclusiveness (Dahl, 1989). *Enlightened understanding* requires that citizens should be granted reasonably equal and adequate opportunities to understand and assess policy alternatives and their probable consequences. In the context of a consultative referendum, the responsibility for safeguarding 'enlightened understanding' clearly rests with the authorities. The *inclusiveness* criterion refers to the definition of demos and to the allocation of rights to participate and express opinions in a given political system. Dahl contended that the demos should include all adults 'subject to a government and its laws' (Dahl, 1989: 127) except from certain groups (e.g. mentally ill persons).

In our view, both the political motivations for holding referendums and their practical implementation (including ballot design) deserve particular attention, as these conditions can affect the democratic legitimacy of the referendum in the eyes of both voters and local politicians. We analyzed to what extent potential breaches of democratic standards affected voting behavior, and whether elected decision-makers regarded the outcome of referendums as binding. We analyzed these issues by tracking the 221 referendums through four phases: the decision to conduct a referendum, the formulation of

questions and design of the ballots, the actual vote, and finally the decision on amalgamation (see Table 1).

Table 1: Phases and research questions

Phase	Research question
Deciding on the referendum	Why hold a consultative referendum?
Question formulation and ballot design	How are questions formulated and ballots designed absent regulations?
The vote	Is voting behavior affected by the ballot design?
Final decision	Do representatives feel bound by the outcome of the vote?

The empirical and legal context of the Norwegian local referendums

The Norwegian local government reform was presented to the Parliament in May 2014 (Klausen et al., 2016). At that time, Norway had 428 municipalities with an average size of around 12,000 inhabitants. Local governments were invited to enter into negotiations with the aim of submitting joint applications for merger, by two set deadlines. While applications submitted by February 2016 would be effectuated by January 2018, local governments applying by July 2016 would need to wait until January 2020 before the actual merger. This second deadline marked the end of the local, voluntary phase of the reform. Most of the referendums were therefore held in the spring of 2016. By October 2016, the county governors—state territorial representatives with mainly supervisory and coordinative functions—were to report to the Ministry on the future local government structure in their counties, based on both voluntary applications and their own recommendations. In principle, all 428 municipalities were affected by this reform. They were all expected to explore the possibilities and decide whether they wanted to merge—and with whom. The final decisions on mergers, however, were taken by the Parliament in June 2017. Although the Parliament usually followed the municipal decisions, eight of these mergers took place even though one or more of the affected municipalities had decided against it. By 2020, the number of municipalities will be 356.

Since Norway’s independence in 1905, only six referendums have been held at the national level. These were consultative, as the Constitution does not mention referendums at all. In contrast, there is a long-standing tradition for local referendums in Norway, especially on issues of language in municipal schools (the choice between the two official varieties of Norwegian), alcohol retail, and territorial issues (Adamiak, 2011; Bjørklund, 2017). Norwegian law is mainly silent on referendums, except for special legislation on referendums on language in schools. Local consultative referendums are mandated by the Local Government Act of 2018 (§12-2): ‘The municipal council or county council may itself decide to hold consultative local referendums.’ There are, however, no legal procedures or guidelines. In a comparative perspective, Schiller (2011: 19) identified Norway among the ‘weak’ states in regard to procedures of direct democracy.

Data and methods

We used three data sources: First, we conducted interviews with mayors, local politicians, administrative representatives, and others in 13 municipalities that underwent a process of considering amalgamation. The municipalities were selected according to two criteria: We included (1) both municipalities that did and did not apply for amalgamation, and (2) both groups of two municipalities and groups of more than two municipalities considering amalgamation. Two of these 13 municipalities did not have a referendum.

Second, we conducted a web survey in early 2017. The questionnaire was sent to the 211 municipalities that had carried out referendum on municipal amalgamation in the period 09.14.2015–01.24.2017, and addressed to the person who was responsible for referendums. The response rate was 86 percent. A large majority of the municipalities that answered the survey (84.5 %) have less than 10,000 inhabitants, reflecting how municipal amalgamation in the Norwegian context is more relevant for small entities (Borge et al., 2017).

One objection against both the qualitative interviews and the web survey is potential social desirability bias (Podsakoff et al., 2003). When asked about reasons for holding a referendum, the respondents may not have reported their motives truthfully. However, although we cannot draw firm conclusions about the true reasons for political decisions, we can nevertheless conclude that some reasons are seen as more legitimate than others. Thus, these data give us valuable information about the legitimacy of referendums.

Third, we developed a dataset covering all the 221 local referendums on municipal amalgamation held between 02.24.2014 and 01.24.2017 (Saglie and Seggaard, 2017). Eight local governments held consultative referendums twice during the period of study. The initial registration was done by The Centre of Competence on Rural Development (CCRD, 2019). All ballots as well as results were recorded in this database. The CCRD data were then coded into 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.

Results

Deciding on the referendum

As noted, most of the referendums occurred in the spring of 2016, as the reform phase based on local voluntarism was drawing to a close. This schedule meant that considerable *uncertainty* existed at the time the referendums were held. The municipalities were under pressure to decide, although many practical and financial implications of the reform were still not fully known. Moreover, neighboring municipalities that considered merging usually held their referendums on the same day. When they formulated the question on the ballot paper, the municipalities did not know whether the potential partner(s) actually wanted to merge—nor did the voters when they cast their vote.

The Local Government Boundaries Act includes a requirement for citizen consultations prior to amalgamations (§ 10):

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.

The Act thus regards referendums as one tool among many, on equal terms with opinion polls. The Ministry of Local Government and Modernization very clearly recommended that municipalities choose citizen surveys to fulfill this requirement (KMD, 2015). Moreover, while the Ministry paid a commercial polling organization to develop a template questionnaire for local opinion polls, no template or guidance materials on referendums were offered. The Ministry contended that opinion polls yield a more detailed picture of public opinion and thereby a more nuanced basis for decision-making, as compared to local referendums. Even so, many municipalities chose referendums as an instrument for consultation— instead of, or in addition to, a citizen survey: 61 percent of the municipalities that held a referendum had carried out a citizen survey first.¹ It is important to underline that the municipalities were free to choose the means for citizen consultation. In fact, when examining 156 positive decisions to merge, 81 decisions (52 %) were carried out without holding a referendum.

In the survey data, one particular argument for holding a referendum in addition to a citizen survey stands out as important: 87 percent indicated that ‘It was assumed that a referendum gives a more correct expression of public opinion than a citizen survey does’ was a somewhat or very important argument (see Table 2). The argument, ‘Citizen surveys do not yield any political mandate, because everybody is not asked,’ was seen as important by 64 percent. The essence of both these arguments is that a fundamental and qualitative difference exists between the two mechanisms.

Table 2. The importance of different arguments for holding a local referendum, among municipalities that had already carried out a citizen survey. Percent.

	Does not apply	Not important	Somewhat important	Very important	N
It was assumed that a referendum gives a more correct expression of public opinion than a citizen survey does	5	9	36	51	(89)
Citizen surveys do not yield any political mandate, because everybody is not asked	10	26	31	33	(77)
Public opinion could have changed since the citizen survey was conducted	26	26	34	15	(82)
The citizen survey did not yield a clear majority for any alternative	37	30	22	11	(79)
The referendum was about a proposed amalgamation that was not included in the citizen survey	55	18	16	11	(83)

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’ was excluded from the calculations.

Source: Web survey.

Arguments related to the outcome of the citizen survey were clearly seen as less important than the more fundamental arguments in favor of referendums. Whereas almost one-half the municipalities indicated that a possible change in public opinion since the survey was a somewhat or very important

argument, about one-third attached importance to the argument, 'The citizen survey did not yield a clear majority for any alternative.'

In our qualitative interviews, some respondents pointed to a domino effect when asked about the reasons for holding a referendum: When one municipality in the group of amalgamation partners decided to hold a referendum, it became 'impossible' for the other municipalities not to have one as well. According to one respondent:

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 neighboring 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. Yet, others argued that the issue of amalgamation was not a campaign issue in the local election of 2015, and some politicians therefore felt that they needed to take the issue to the people.

Others argued that the importance of the reform made it imperative to have the people's voice on the matter. Informants in the two municipalities that did not arrange a referendum argued that the politicians felt certain about a public mandate for pushing forward with the amalgamation process. A final observation is that the issue of whether to hold a referendum was not really discussed. Once the referendum issue had been suggested, there was little debate in the local assemblies on whether to hold one.

The web survey indicates that accessibility of information was an important consideration in the process of planning and implementing the referendums. A vast majority (94 %) had conducted an information campaign, and many municipalities did this in collaboration with other actors—neighboring municipalities, a private consultancy, or the local newspaper. Local newspapers play an important role in Norway as a channel for information on local issues and local politics (Karlsen, 2017) and as an arena for local debate. This was also the case regarding the municipal amalgamation reform (Waaland, 2017). The survey respondents were fairly satisfied with the way local newspapers carried out their role as information provider and debate arena (table not shown). Thus, it seems that most voters at least had a good opportunity to be informed about the processes of amalgamation. At this stage of the process, the conditions appeared to be conducive to enlightened understanding.

Overall, the local referendums were seemingly implemented without much difficulty (Saglie and Seggaard, 2017). Counting ballots, having adequate polling stations, and managing the electoral roll were seen as quite unproblematic. However, mobilizing voters was considered difficult. This is unsurprising, as turnout was low in many municipalities. Furthermore, the lack of a suitable online election administration system clearly created problems. The regular election administration system, which is operated and managed by the Norwegian Directorate of Elections, cannot be used for local referendums.

Question formulation and ballot design

Local governments were allowed to formulate questions and design ballots at their own discretion. Consequently, the questions put to vote and the available answers were worded very differently across the 221 referendums.

Guided by the above-cited, 'Code of good practice on referendums' (Venice Commission, 2007), we carried out a qualitative, exploratory analysis of question formulation and ballot design. We identified a number of practices that could be at odds with the Commission's recommendations. Following this exploratory work, we used the coded dataset to quantify the occurrence of each default.

First, the Commission recommended that the question on the ballot should be answerable with a simple 'yes' or 'no'. Many municipalities heeded this recommendation, as in Iveland:

- Should Iveland municipality amalgamate with Vennesla municipality? (Yes or no)

In 48 cases (22 %), however, the voters were presented with two, three, or even four optional amalgamation consortia to choose between. Several referendums nonetheless seemed to achieve the requisite degree of clarity by, for instance, including several 'yes'-options:

- Do you want your municipality to amalgamate with one or several municipalities?
(NO; YES, Kvalsund and Hammerfest; YES, Måsøy, Kvalsund and Hammerfest)

Second, in several cases, voters were less than fully informed (or not informed at all) about the amalgamation proposal they were voting for or against. In 33 cases (15 %), the primary question put to vote did not identify any specific amalgamation partners. In other words, the vote concerned entering into amalgamation or remaining unamalgamated. Examples include the following:

- 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)

Some of these 'unspecified' ballots included a follow-up (subsidiary) question that identified one or more potential amalgamation partners. The ballot in Os included a follow-up question with the following wording:

If amalgamation turns out to be unavoidable, I choose to amalgamate with Røros and Holtålen/Nord-Østerdal. (Either alternative could be ticked 'yes')

Apart from the 33 ballots on which the main question was entirely unspecified, in 30 cases (14 %), one or more of the alternatives were to a varying extent open-ended. An example is the referendum in Meland, where the voters could choose between these options:

Meland municipality builds a new municipality with Lindås, Radøy and possibly other municipalities in Nordhordland/Meland keeps on as one municipality. (Either alternative could be ticked)

In some cases, qualifications such as 'possibly other municipalities' were justified in the text of the ballot, with 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 those alternatives that involve amalgamation with other municipalities. (Evenes municipality)

Consequently, voters in 63 cases (29 %) were left somewhat in the dark about the consequences of voting in favor of amalgamation. These cases were identified as clearly at odds with the Venice Commission's recommendations. Even though information was available prior to the referendums, the question on the ballot hampered 'enlightened understanding.'

Third, five referendums were notable for not providing a 'no'-option. Voters could choose between varying numbers of amalgamation partners, but they were not allowed to vote *against* amalgamation altogether. These cases were identified as violating the Code's emphasis on the freedom of voters to express their opinions.

Fourth, in another four ballots, the wording was such that support for amalgamation was made contingent on circumstances not directly related to the amalgamation. Notably in Haram, one of the alternatives read as follows:

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

Construction of this road (similar to contingencies mentioned in the other three ballots) was not the issue of the referendum. Furthermore, while the referendum was conducted as guidance for the local council's decision, the decision on Nordøy road was to be made by the county council and by the Parliament. This discrepancy could confuse voters and thus be in breach of the Code's emphasis on avoiding ambiguity.

Fifth, in 33 referendums, voters were invited to express their secondary or even tertiary preferences by either ranking the alternatives or including a secondary question on the ballot. The ballots accommodated ranking in different ways. For instance, in Bardu, voters could choose between two ballots: '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.

Some municipalities did not inform voters about the counting procedure for secondary or preference votes. Consequently, voters could not assess in advance how secondary preferences would be weighted, as compared to the results of the primary vote. For instance, if the primary vote was against amalgamation altogether, should a secondary preference for a given alternative count as much as a primary vote in favor of that alternative? Or should the secondary votes be weighted down?

Even in the referendums that did not involve preferential voting, our data indicate that few municipalities decided on a majority rule in advance. Regardless of the number of answers on the ballot, voters could not know in advance whether an absolute majority was required for deciding the outcome, or if a simple majority would suffice. Complex and/or opaque procedures such as these are problematic to the extent that electors are prevented from being informed of the import of their votes.

Ballot design and voting behavior

In the previous section, we identified a number of practices as problematic. How did the voters react to these defaults? Voter discontent could have potentially lowered turnout rates, because some voters would have refused to participate in sub-standard referendums. Alternatively, voters may have chosen to express discontent by casting a blank vote or voting against the proposed amalgamation as a form of protest.

Table 3 presents summary evidence on the impact of ballot design and question formulation on voting behavior as specified by turnout rates, blank votes, and share of referendums resulting in no-majority.

Table 3. Ballot design and voting behavior in consultative referendums 2014–2017 (N=221). Percentage distributions and significance.

		N	Turnout (average %)	Blanks (average %)‡	Votes >50% no (%)
<i>Not fully specified</i>	Yes	63	49.2	1.5	69.8
	No	158	48.7	1.8	70.9
<i>Preference/ subsidiary</i>	Yes	37	48.0	0.9	62.2
	No	184	49.0	1.9	72.3
<i>No. defined options to remaining†</i>	0	33	48.7	0.8	75.8
	1	141	48.1	2.2	77.3
	2-4	47	51.1	0.9	46.8**
<i>Without no- option</i>	Yes	5	52.9	3.4	0.0
	No	216	48.7	1.7	72.2**

† Referendums with two clearly specified answers, one of which implied ‘no’ to amalgamation.

‡ Most municipalities did not report on invalid/rejected votes.

Significance (independent samples t-test/ANOVA): *<0.05 **<0.01

Source: Coded dataset

Table 3 indicates that turnout rates and the share of blank votes were largely unaffected by the various deviations from the ‘gold standard’ that we identified based on the ‘Code of good practice on referendums.’ First, although average turnout varies a lot—from 10 to 77.7 % in the whole sample—none of the subcategories deviate significantly from the global average of 48.8 %. Second, the average share of blank votes is actually somewhat *higher* in the 141 referendums with only one clearly defined alternative to remaining un-amalgamated than in the others.² This difference is, however, not statistically significant. Third, the use of subsidiary or preference voting in 37 referendums was associated with slightly *decreasing* rates of blanks, although this difference is insignificant. Fourth, the use of more than one defined option actually corresponds with lower rates of blank votes than ballots with just one defined alternative.

However, the share of referendums that resulted in a clear majority against amalgamation (Votes >50% no) was significantly lower (46.8 %) in the referendums in which the ballot included 2–4 specified options to remaining alone than in the cases in which the ballots included only one or zero specified options (75.8-77.3%). It seems unrealistic to assume that this very substantial difference in share of referendums resulting in a no-majority can be wholly attributed to a more positive attitude toward

amalgamation among voters in the 47 municipalities that voted on several options to remaining alone. One would suspect that this result illustrates something akin to method bias in survey research (Podsakoff et al., 2003: 879): the risk that variance (in this case, the outcome of the vote) is attributable to the measurement method (here, ballot design) rather than to the constructs the measures represent. In short, voters who were presented with several options would, to a greater extent, choose one of them rather than voting against amalgamation altogether.

The councils' decisions

Did representatives feel bound by the outcome of the vote? First, a majority of the referendums (71 %) resulted in a no-majority. This is not necessarily just because referendums tend to favor the status quo. Another explanation is that small municipalities chose referendum more often than did the large ones (Borge et al., 2017; Bjørklund, 2017). Small municipalities would often become a junior partner in the merger, and the risk of marginalization within the new unit was greater.

At first glance, our data indicate that the referendums affected the decisions of the municipal councils. Overall, council decisions were usually in agreement with the outcome of the referendum. In 87 percent of the cases in which the majority voted against amalgamation, the local councils decided against amalgamation. Conversely, in 86 percent of the cases in which the share of no-votes was in the minority, the council decided in favor of amalgamation.

Our qualitative interviews strengthened the impression that local politicians indeed very often perceive the referendums as binding (see also Gjertsen et al., 2017: 31-35). Although some politicians were less than enthusiastic about even holding a referendum, it was commonly stated that referendum results must be respected. Few, if any, maintained that one could disregard the results. One respondent argued that if you did not respect the outcome, there was no need for arranging a referendum. In other words, the referendums were regarded as decision-making tools, not primarily as a means for consulting the public. The view that the outcome of a referendum should be respected was also pronounced among those who 'lost' the referendum, as these two quotes illustrate:

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.

However, this main impression entails substantial variation. Even though much of the referendum literature suggests that consultative referendums *are* in fact binding, 14 percent of the Norwegian councils chose to go *against* the outcome of the referendum. Similarly, some informants in our qualitative interviews contended that low turnout and a narrow referendum outcome could make it easier to go against the results. Although the councils largely decided in congruence with the outcome of the vote, interesting deviations appeared on closer inspection of the data (Table 4).

Table 4. How many municipalities decided to go against the majority in a referendum? Numbers (percentages in parentheses).

		Outcome of referendum			
		Yes*		No	
		'Gold standard'?		'Gold standard'?	
		Yes	No	Yes	No
Council decision on merger	Yes	27 (96 %)	28 (78 %)	13 (14 %)	8 (13 %)
	No	1 (4 %)	8 (22 %)	83 (86 %)	53 (87 %)
Sum (100%)		28 (100 %)	36 (100 %)	96 (100 %)	61 (100 %)

*When several 'yes'-options are present, these are summed to indicate the demos' willingness to merge. Cells marked with a grey background indicate a mismatch between council decisions and results of referendum. Source: Calculations based on coded dataset.

Table 4 indicates that to what extent the council followed the results of referendums, depended on whether the referendum yielded a yes- or no-majority and whether it met the 'gold standard' criteria. The table shows that in municipalities with a no-majority in the referendum, having a gold standard referendum did not affect the likelihood of producing a mismatch between the voters and the councilors. As for the municipalities with majorities favouring amalgamation, we see a different result. In eight of the nine cases in which the councils voted against a yes-majority in the referendums, the ballot design did not meet our 'gold standard' criteria.

Concluding discussion

The exposition of varied evidence on the four phases of the 221 consultative referendums provides insights about how local representatives relate to the referendum instrument and how they use it to maneuver through a politically challenging reform. First, it is noteworthy that the consultative referendum is considered as a device for *legitimizing* the decision on amalgamation, not just for informing politicians about public opinion on the matter. The informants' emphasis on the fact that the referendum is open to all can reasonably be interpreted as concern over democratic equality—allowing everyone to have an equal say in the matter, in line with Dahl's (1989) *inclusiveness* criterion. This highlights a basic asymmetry between referendums and other participatory tools: In a referendum, all citizens above the voting age are allowed to participate. A frequent counter-argument is the problem of low and unequal turnout in referendums, which may yield unrepresentative advice. Our point, however, is that no resident with the right to vote is *excluded* from giving advice in referendums—unlike in citizen surveys, the main alternative in this case. It can be argued that random sampling is inclusive because everyone has the same probability of being selected. In the Norwegian debates on local referendums, however, *de facto* exclusion seemed to be a more prominent consideration.

Second, in the absence of a regulatory framework for conducting consultative referenda, it is unsurprising that question formulation and ballot design were variant and in many cases unsound from

a democratic point of view. Overall, just 124 of 221 referendums were *not* found to violate any of the Venice Commission's criteria. Several aspects of the wording of the questions and answers on the ballots appear highly problematic. Asked to choose between more or less open-ended answers, voters clearly had an insufficient basis for reaching an informed opinion and assessing the consequences of their vote. Complex voting procedures such as preferential or subsidiary voting, often without a predetermined rule for counting the votes, could confuse voters and appear incongruent with the Venice Commission's call for clarity. The inclusion of several optional answers without a predetermined majority rule goes against the Commission's recommendation of a simple 'yes' or 'no.' Besides, omission of the 'no'-option meant that voters who were against amalgamation altogether were denied free expression. These findings illustrate how the achievement of 'enlightened understanding' depends on the design of consultative referendums. But vague and ambiguous ballot design partly reflects the overall uncertainty characterizing 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 amalgamation with regard to aspects such as economy and distribution of tasks, duties, and responsibilities. Although the municipalities may have done their best to inform the citizens, it could be difficult to achieve *enlightened understanding* in practice.

Third, voters seemed insensitive to these defaults. Neither turnout rates nor the number of blank votes correlates systematically with breaches of the Venice Commission's recommendations. Why were voters not angered about being denied full *enlightened understanding*? Although local referendums have a long tradition in Norway, they rarely occur in any given municipality. Lacking in experience, politicians and voters may not understand the democratic implications of formulating questions and designing ballots. Voter complacency could, however, also be attributed to *trust* (Warren, 1999)—feeling free to vote, without expecting any hidden agenda behind ballot design.

Fourth, although political informants alleged that the referendum result should be respected, a closer look at the data indicates that the formulation of questions and answers at least to some extent affects the room for political maneuvering, through two different mechanisms. First, ballot design can influence the *outcome of the referendum*. This is obviously the case when a 'no'-option is omitted, but, as Table 3 shows, the number of options on the ballot also seems to influence the outcome. Second, ballot design may influence *whether the council decides in line with the referendum outcome*. In Table 4, we found no such effect in municipalities with a no-majority in the referendum. However, breaches of the Venice Commission's criteria may explain the cases in which a municipal council decided to disregard a yes-majority in the referendum.

Which conclusions, then, can we draw for our overarching question: To what extent can consultative referendums contribute to an improved democracy? We initially pointed out that consultative referendums are pieces of advice, as they by law cannot be used as mechanisms for decision-making. This is to some extent reflected in the data. As opposed to studies of national referendums, but in line with previous research on local referendums, we found that the elected politicians usually—but *not* always—followed the citizens' advice. Using Jäske's (2017) terms, this is a 'soft' form of direct democracy. Notwithstanding, many local council members clearly felt that the consultative referendum provided an authoritative mandate for decisions in the council.

From a participatory perspective, this may be good news: the voice of the citizens is actually taken into consideration. Many students of democracy would be hard-pressed to criticize a consultative

arrangement for giving *more* weight to public opinion than the legal structure of the arrangement would seem to imply. The several defaults of democratic practice observed in our study of ballot design and wording would nevertheless likely curb any growing enthusiasm regarding the potential for improving democracy by using referendums. It should at least lead to increased awareness of how the referendum is carried out in practice. In several cases, voters clearly were inadequately informed about the options they could choose to support or about how the result would be exploited politically.

In any case, the notion of ‘consultative referendum’ becomes problematic. If citizens are asked to give their advice, and if this is done in a way that fulfills the criteria for democratic *decision-making*, then 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 consultative referendum’s legal status as a non-binding tool to be used at the council’s discretion appears to be somewhat at odds with the real-world political stature of these referendums.

Finally, the Norwegian case also highlights the strategic element inherent in the choice of participatory instruments (see Welp and Ruth, 2017). Based on experience, there was reason to believe that the result of a referendum often would be ‘no.’ It is unsurprising that politicians who supported a merger generally wanted to avoid referendums, while those who were against amalgamation supported referendums. It may nevertheless be difficult to avoid a referendum—even if one wants to. The normative appeal of asking the people is strong, and a referendum in a neighboring municipality can set in motion a bandwagon effect. In such situations, we may suspect that strategic considerations also influenced the ballot design. The ambiguity of the ballots reflects to some extent that the alternatives actually were uncertain. However, the breaches of the Venice Commission’s standards suggest that strategic intentions cannot be wholly ruled out, and that politically adroit councils may maximize political leeway by means of tactical ballot design.

Acknowledgements

Previous versions were presented at the ECPR Joint Sessions of Workshops, Nicosia, 10–14 April 2018, the Norwegian Political Science Conference, Bergen, 8–10 January 2018, and the 26th Nordic Local Government Research Conference, Reykjavík, 1–2 December 2017. We would like to thank the workshop participants for their valuable comments. We also thank the reviewers for their constructive feedback and comments.

Funding

The research was funded by the Norwegian Ministry of Local Government and Modernization.

Notes

¹ It is beyond the scope of this article to examine the relationship between the citizen surveys and referendums. The survey and referendum questions were often not comparable, but the surveys generally yielded results more favourable towards amalgamation, compared with the referendums (Gjertsen et al., 2017).

² Note that due to incomplete voting records in many local governments, the number/share of blank votes was only reported with certainty in 161 cases.

References

- Adamiak, Aimée Lind (2011) Direct democracy in local politics in Norway. In Theo Schiller (ed.) *Local Direct Democracy in Europe*. Wiesbaden: VS Verlag für Sozialwissenschaften, 113-125.
- Allswang, John M. (2000) *The initiative and referendum in California, 1898-1998*. Stanford: Stanford University Press.
- Altman, David (2011) *Direct democracy worldwide*. Cambridge: Cambridge University Press.
- Altman, David (2017) The Potential of Direct Democracy: A Global Measure (1900–2014). *Social Indicators Research* 133: 1207-1227.
- Arnesen, Sveinung, Troy S. Broderstad, Mikael P. Johannesson and Jonas Linde (2019) Conditional legitimacy: How turnout, majority size and outcome affects perceptions of legitimacy in EU membership referendums. *European Union Politics* 20: 176-197.
- Bjørklund, Tor (2017) Lokale folkeavstemninger: lovreguleringer, tema og frekvens. In Jo Saglie and Signe Bock Seggaard (eds) *Lokale folkeavstemninger om kommunesammenslåing. Report 2017:08*. Oslo: Institutt for samfunnsforskning.
- Borge, Lars-Erik, Jon H. Fiva, Jørn Rattsø and Rune J. Sørensen (2017) Frivillig kommunesammenslåing – betydningen av folketall, inntekt og politisk avstand. *Michael* 14: 17-28.
- Budge, Ian (2008) Direct Democracy. In Sarah A. Binder, Roderick Arthur William Rhodes and Bert A. Rockman (eds) *The Oxford Handbook of Political Institutions*. Oxford: Oxford University Press.
- Butler, David and Austin Ranney (1994) *Referendums around the world: The growing use of democracy*. Washington, D.C: AEI Press.
- CCRD (2019) *Centre of Competence on Rural Development database*, <https://distriktssenteret.no/kommunereformen/folkeavstemninger>. (accessed 30/1-2019).
- Cheneval, Francis and Alice el-Wakil (eds) (2018) Debate: Do Referendums Enhance or Threaten Democracy? *Swiss Political Science Review* 24: 291–358.
- Dahl, Robert A. (1989) *Democracy and its critics*. New Haven, Conn: Yale University Press.
- El-Wakil, Alice and Francis Cheneval (2018) Designing Popular Vote Processes to Enhance Democratic Systems. *Swiss Political Science Review* 24: 348-358.
- Gallagher, Michael (1996) Conclusion. In Michael Gallagher and Pier Vincenzo Uleri (eds) *The Referendum Experience in Europe*. Basingstoke: Macmillan, 226-252.
- Gjertsen, Arild, Svein Frisvoll, Jostein Brobakk, Annelin Gustavsen, Bjarne Lindeløv and Rita Sivertsvik (2017) *Innbyggermedvirkning i kommunereformen*. Bodø: Nordland Research Institute.
- Jäske, Maija (2017) 'Soft' forms of direct democracy: Explaining the occurrence of referendum motions and advisory referendums in Finnish local government. *Swiss Political Science Review* 23: 50-76.
- Karlsen, Rune (2017) Mediebruk i lokalvalgkampen 2015: Informasjon om politikk og kandidater. In Jo Saglie and Dag Arne Christensen (eds) *Lokalvalget 2015 – et valg i kommunereformens tegn?* Oslo: Abstrakt, 125-145.
- Kaufmann, Bruno, Rolf Büchi and Nadia Braun (eds) (2008) *The IRI Guidebook to Direct Democracy*. Marburg: The Initiative and Referendum Institute Europe.
- Kaufmann, Bruno and M. Dane Waters (eds) (2004) *Direct democracy in Europe*. Durham: Carolina Academic Press.
- Klausen, Jan Erling, Jostein Askim and Signy Irene Vabo (2016) Kommunereformen i Norge. In Jan Erling Klausen, Jostein Askim and Signy Irene Vabo (eds) *Kommunereform i perspektiv*. Oslo: Fagbokforlaget, 26-46.
- KMD (2015) *Nytt verktøy for høring av innbyggerne i kommunereformen (Kommunal- og moderniseringsdepartementet)*, <https://www.regjeringen.no/no/aktuelt/nytt-verktoy-for-horing-av-innbyggerne-i-kommunereformen/id2397356>. (accessed 25/2-2015).

- Kriesi, Hanspeter (2008) *Direct Democratic Choice: The Swiss Experience*. Lanham, Md: Lexington Books.
- Leduc, Lawrence (2003) *The Politics of Direct Democracy*. Toronto: University of Toronto Press.
- Leininger, Arndt (2015) Direct Democracy in Europe: Potentials and Pitfalls. *Global Policy* 6: 17-27.
- Podsakoff, Philip M., Scott B. Mackenzie, Jeong-Yeon Lee, Nathan P. Podsakoff and Sheldon Zedeck (2003) Common Method Biases in Behavioral Research: A Critical Review of the Literature and Recommended Remedies. *Journal of Applied Psychology* 88: 879-903.
- Qvortrup, Matt (2017) Demystifying Direct Democracy. *Journal of Democracy* 28: 141-152.
- Saglie, Jo and Signe Bock Segard (eds) (2017) *Lokale folkeavstemninger om kommunesammenslåing. Rapport 2017:08*. Oslo: Institutt for samfunnsforskning.
- Schiller, Theo (ed.) (2011) *Local Direct Democracy in Europe*. VS Verlag für Sozialwissenschaften.
- Setälä, Maija (2006) On the problems of responsibility and accountability in referendums. *European Journal of Political Research* 45: 699-721.
- Søberg, Morten and Thomas P. Tangerås (2007) Voter turnout in small referendums. *Electoral Studies* 26: 445-459.
- Trechsel, Alexander H. and Pascal Sciarini (1998) Direct democracy in Switzerland: do elites matter? *European Journal of Political Research* 33: 99-124.
- Venice Commission (European Commission for Democracy through Law) (2007) *Code of good practice on referendums*. CDL-AD(2007)008. Strasbourg: Council of Europe.
- Waland, Jarand (2017) *Ære være Jæren – En studie av mediedekningen av kommunesammenslåingen på Jæren*. Master's thesis. Oslo: Department of Media and Communication, University of Oslo.
- Warren, Mark (ed.) (1999) *Democracy and Trust*. New York: Cambridge University Press.
- Welp, Yanina and Saskia P. Ruth (2017) The Motivations Behind the Use of Mechanisms of Direct Democracy. In Saskia P. Ruth, Yanina Yelp and Laurence Whitehead (eds) *Let the People Rule?* Colchester: ECPR Press, 99-119.

Author biographies

Bjarte Folkestad is senior researcher at NORCE Norwegian Research Centre, Bergen, Norway and assistant professor at Volda University College, Norway. His research interest includes local democracy, local government and representation. He is currently participating in the research projects 'Norwegian Local Election Study' and 'Reshaping the Map of Local and Regional Self-Government. A study of the Norwegian Local Government Reform processes 2014–2019'

Contact details for corresponding author:

Bjarte Folkestad
Høgskulen i Volda
Joplassvegen 11
6103 VOLDA
Norway

Jan Erling Klausen is an associate professor at the Department of Political Science, University of Oslo. The focus of his research is on political participation, local politics, municipal management, and comparative local government reform.

Jo Saglie is Research Professor at the Institute for Social Research, Oslo, Norway. His research interests include party organizations, local elections and local democracy, and the politics and representation of indigenous peoples. He is currently directing the Norwegian Local Election Study (with Signe Bock Seggaard) and the Norwegian Sámi Parliament Election Study.

Signe Bock Seggaard is Senior Research Fellow at the Institute for Social Research, Oslo, Norway. Her research interests include local democracy, election, representation, and voter behavior. She is currently—together with Jo Saglie—project leader for the Norwegian Local Election Studies of 2019 and 2023.