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Politicians as Judges? Conflicts of Interest in the Swiss Parliament During Decisions on the Validity of Popular Initiatives

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In the semi-direct democracy Switzerland, the parliament has to decide on the validity of popular initiatives. In these situations, politicians are confronted with different interests: 100.000 citizens demand a popular vote, the constitution sets limits to the initiative process and the politicians and their parties have their own substantive positions on each initiative. Thus, Swiss MPs have to be representatives, judges and party politicians at the same time. How do they deal with these conflicts of interest? Since the number of Initiatives which are criticized for not complying with human rights increased in the last decades and the parliament has to decide more and more often on their validity, this question is becoming more relevant.

Two theoretical concepts of democracy are in conflict with each other in these decision-making processes: the republican idea of democracy emphasizes the right of the people to vote on all important issues. The liberal view of democracy stresses the protection of individual and human rights and leads consequently to a more restrictive practice in keeping popular initiatives back from election. Since the republican principle is very important in Switzerland, the outlined paper suggests that it is hardly possible for MPs to declare initiatives invalid. Politicians and their parties are threatened of losing votes in following elections and the direct democratic tradition in Switzerland is so strong, that some MPs may respect the republican principle by conviction and may not even be aware of the conflict of Interest they are facing.

To examine these hypotheses, parliamentary debates from the Swiss parliament – the *Nationalrat* – are examined and Swiss MPs are interviewed. By the means of a quantitative text analysis, it is possible to compare the argumentation of different MPs in the parliamentary debates. This very reliable method – compared to more qualitative approaches – allows looking at a huge amount of texts. Comparisons between different parties and over time can show how the described conflict developed and which parties emphasize the republic or the liberal principle. Since parliamentary debates are a public space and offer just limited opportunities for a politician to define a position, the quantitative approach is supplemented by more qualitative interviews. By this means, more detailed positions and argumentations of the MPs can be detected and a more detailed picture of their conflicts

of interest can be drawn. The current regulation that the parliament instead of a court decides on the validity of popular initiatives – which is more and more criticized by some Swiss politicians and legal scholars – can only be upheld if MPs really have the opportunity to declare initiatives invalid.