THE CITIZENS' INITIATIVE AND REFERENDUM

DIRECT DEMOCRACY IN 5 COUNTRIES OF EUROPE

THE CITIZENS' INITIATIVE AND REFERENDUM: DIRECT DEMOCRACY IN FIVE COUNTRIES OF EUROPE

A reader compiled by Michael Wallace-Macpherson

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Foreword

The reports which we present here were gathered to illustrate the progress of five european countries in developing governance beyond the purely indirect, "representative" sort. Many citizens of western style societies where democracy is practised are dissatisfied with the limited participation allowed when, as is usually the case, voting and ballots are only for political parties and candidates, never about "issues", matters of real public concern. We will show how, within a few hundred miles of Britain's shores, "ordinary" people have for many decades been able to intervene in government, at local and state levels, on issues which they judge to be vital and which they have selected; when need be, directing their elected politicians with decisions of the whole electorate.

The London conference – see "Acknowledgements" – which contributed to this publication had two aims, firstly to supply knowledge about how direct democracy works in places where it is established or at least well known. The examples chosen were four countries of western Europe and one "post-communist" country of eastern Europe. The history of direct democracy, levels of governance involved and legal regulation of direct democratic procedures vary among the different countries. The second aim of our conference was to stimulate a debate about the future role of direct democracy in Great Britain and Northern Ireland.

Why did we select the countries and democracies chosen as examples?

The Netherlands because it is quite similar to Britain, e.g. it is a "constitutional" monarchy. The Dutch, like the British, have little experience of direct democracy. But, in contrast, there has been some direct democratic innovation in the large, capital city, Amsterdam, whose parliament recently voted unanimously to introduce citizens' initiative and referendum.

Poland because, even under the rapidly changing social and political conditions of the last decade, significant components of direct democracy have been available to citizens, and are being used, from the country level to the village.

The development of post-war Germany has been heavily influence by lessons of history. One indication of this is the importance given to their "basic law" of constitution, which regulates governance and democracy. For many outsiders it is surprising to learn that there is extensive practice of direct democracy in the federal states (Lands), cities and districts. There is a strong movement to protect these democratic rights and to improve them, prime examples being Bavaria and Hamburg.

Italy's direct democracy is special and in one way shows citizens' direct

democracy in its strongest form. It is special for instance because it is "only" abrogative, that is the referendum cannot be used to make a new law ("propositional" direct democracy) but can only strike out an existing one, or part(s) of it. It is strong because here we have the best example, at least in Europe, of legally binding, citizen-initiated law-making at the country level.

At all levels of governance Switzerland combines the direct with the indirect. A wealth of experience of over a hundred years shows direct democracy as public participation, with widespread deliberation of proposals and laws, a strong sense of civic stake-holding plus a reliance on the ultimate and in some cases direct authority of the people in matters of state. There is a tradition of consensus seeking among citizens' groups, non-governmental organisations, lobbyists, trade-unions, parliaments and governments. All of this can fascinate and astound some of us who take our main experience of political life from purely indirect ("representative") democratic, or from frankly undemocratic, systems. Thousands of political problems, proposals and conflicts, from the federal constitution to village traffic, have been deliberated and decided upon in procedures such as citizens' initiative and facultative referendum – the veto.

During Sunday we heard talks by experts and practitioners of direct democracy from all of these countries. For Britain a proposal to introduce elements of direct democracy such as citizens' initiative (law-proposal), obligatory debate of endorsed proposals in parliament or council, and citizen-triggered referendum for decision-making, was presented. Having learned how things are done elsewhere, we held a workshop to discuss the future of direct democracy in Britain. Those who came were interested, had good questions and made some proposals for further action.

These vital facts about democracy – rule by the people – have been concealed from the British people by politicians, controllers of mass media, academics, school teachers and other "elites". A blend of self-interested censorship combined with apathy braced by the arrogance, that "We" run our affairs better, has kept effective and exciting developments in citizen-run politics well away from news headlines, lead stories, peak-time broadcasts, school curricula and university studies.

Although our "Reader" primarily addresses residents and citizens of the British Isles we sincerely hope that people in other countries will study our account of exemplary democracies striving to approach "state of the art".

Michael Macpherson

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Our search for good, concise, historical and practical accounts of direct democracy led us to the Initiative and Referendum Institute in Amsterdam. We thank its President Bruno Kaufmann for permission to reproduce papers about Switzerland by Paul Ruppen, Italy by Roland Erne, Germany by Ralph Kampwirth and The Netherlands by Arjen Nijeboer. The abstracts about Poland (Radoslav Gawlik) and Switzerland (Roland Erne) were presented at the Direct Democracy Conference.

CHAPTER ONE

Direct Democracy in Switzerland

By Paul Ruppen

Additional remarks by Hans-Urs Wili, Rolf Büchi, Bruno Vanoni, and Bruno Kaufmann

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Direct Democracy in Europe: A Comprehensive Reference Guide to the Initiative and Referendum Process in Europe
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* Some country statistics are at the end of this paper.

The basic fact about I and R in Switzerland is: Switzerland did not create the referendum; the referendum created Switzerland. There is a full range of compulsory and citizen-initiated referendum institutions at all levels of government: the federal level, 26 cantons, and 2,973 municipalities.

The I and R institutions were established step by step: compulsory referendum in 1848; optional referendum in 1874; popular initiative at the federal level in 1891.

Average turnout is approximately 50%; this trend has recently become positive again after a long period of decreasing participation. Younger citizens are participating in I and R decisions more than they are in elections. Important developments have taken place in recent years. Women's suffrage at the national level was introduced only in 1971, and transparency laws were adopted very recently.

Types of Initiative and Referendum

The forms of direct democracy in Switzerland derive from various historical sources. As specific institutions, referendum and initiative appeared in the Montagnard Constitution of June 24, 1793 (Article 10 and Article 56-60), during the French Revolution. Before this, the Swiss had preserved both direct-democratic mechanisms of decision-making, such as the "Volksanfragen" (popular consultations) in the cantons of Zürich, Bern, Solothurn and Neuenburg, and hybrid federal-democratic mechanisms, such as the community referendums or "Zendenreferenden" in Graubünden and the district referendums in Wallis, some of which go back as far as the 15th century. It was because of its own longstanding democratic traditions, including "Landsgemeinde" or community citizens' assemblies, that the idea of I and R fell on such fertile ground during the modernisation of democracy in the Swiss cantons after the Restoration in 1830.

In the search for forms of which would preserve the traditions of co-determination while permitting a more modern form of government, initiative and referendum formed an acceptable compromise among the positions of the various political factions. Historically, the introduction of I and R shows three main trends:

1) The rights of direct democracy are introduced gradually over time. First to be

established is the right of veto; then the statutory constitutional referendum; then the legislative referendum; and finally the right of initiative.

2) Citizens' rights are introduced first at lower levels, and move upwards. They were introduced first in the member states (cantons), and introduced later at the federal level.

3) Rights are normally established by a broad coalition of differing interests.

When the federal state was established in 1848, only the statutory constitutional referendum was grounded in the constitution. The legislative referendum became law in 1874. Finally, the right of initiative was established in 1891.The 20th century saw the gradual extension and refinement of direct democracy. The referendum on international treaties was established in 1921: open-ended and irrevocable treaties were now subject to facultative referendum. Direct-democratic control of foreign policy was extended in 1977, when the scope of the optional referendum was widened to include accession to international organizations and acts involving the multilateral standardization of laws. Accession to organizations for collective security (e.g. UNO) and to supranational communities (e.g. the EU) was also made subject to mandatory referendum. In 1949, the popular referendum on urgent federal resolutions was introduced. So far, other possible extensions, such as the legislative initiative or the referendum on the national budget, have been rejected by the people.

The new federal constitution of 2000 contains the first explicit limitations on the subject matter of initiatives. Mandatory rules of international law, e.g. fundamental human rights such as the principle of "Non-Reversal," cannot be subjected to referendum, and initiatives launched on such matters are declared invalid by parliament .

Direct-democratic rights have had a lasting influence on Swiss institutions, since it was by means of initiative that the right to proportional voting was secured, which then led to the proportionalisation of the whole of political life. Proportionalisation is reinforced by the power of referendum possessed by the most important social groups.

In Switzerland, it can be said that if the citizens' initiative is the daughter of the referendum, proportional voting for the National Council (parliament) is its granddaughter, and the so-called "magic formula" (proportionally elected government) its great-granddaughter.

I. National Level

The various instruments can best be described by quoting from the relevant articles of the constitution:

a. Popular Initiative

Article 138 (Popular Initiative for Total Revision of the Federal Constitution): (1) 100,000 citizens entitled to vote may propose a total revision of the Federal Constitution. (2) This proposal has to be submitted to the people by referendum.

Article 139 (Popular Initiative for Partial Revision of the Federal Constitution): (1) 100,000 citizens entitled to vote may propose a partial revision of the Federal Constitution. (2) The popular initiative for a partial revision of the Federal Constitution may be in the form of a general suggestion or a formulated draft. (3) If an

initiative does not respect the principle of unity of form, the principle of unity of subject matter, or mandatory rules of international law, the Federal Parliament shall declare the initiative invalid in whole or in part. (4) If the Federal Parliament approves an initiative in the form of a general suggestion, it shall prepare a draft of the meaning of the initiative and submit it to the vote of the people and the Cantons. If it rejects the initiative, it shall submit it to the vote of the People; the People shall decide whether the initiative should be followed. If the People approve the initiative, the Federal Parliament shall formulate a corresponding draft. (5) An initiative in the form of a formulated draft shall be submitted to the vote of the People and the Cantons. The Federal Parliament shall recommend its approval or its rejection. If it recommends its rejection, it may submit its own counter-draft. (6) The People and the Cantons shall vote simultaneously on the initiative and the counter draft.

The voters may approve both drafts. They may indicate which draft they prefer, should both be approved; should one of the drafts obtain a majority of the People's votes and the other the majority of the votes of the Cantons, neither of them shall come into force.

The period of time allowed for the collection of signatures begins as soon as the Swiss federal chancellery (Bundeskanzlei) publishes the proposed new constitutional text in the Official Gazette of the Confederation (Bundesblatt).

Signatures can be collected anywhere, including public places. The signatures are checked by the local government office (Gemeindekanzlei) and given a certificate of eligibility. The initiative committee then passes them on to the Swiss federal chancellery (Bundeskanzlei). Once 100,000 signatures have been collected, the initiative is declared to formally exist. It then goes to the Parliament to be checked for validity. Unity of subject matter is required, which means that an initiative must not include several different proposals. The purpose of this is to ensure that the clear will of the people can be expressed: without a single subject, the electorate might accept something with which they do not agree because the overall merit of the proposal outweighs the demerits of one or more parts of the proposed constitutional change. Unity of subject matter is required only for constitutional change, whether that change is made via Citizens' Initiative or Government proposals. It is not required for international treaties, such as EMU, which are subject to statutory referendums.

The fact that Parliament and not a constitutional court decides on the validity of initiatives is a matter of dispute in Switzerland. The initiative committee can decide to withdraw the initiative: as a rule, a clause to this effect must be included in the initiative's text.

A formally successful initiative, one which has secured the minimum 100,000 signatures, must be put to referendum within 39 months after the date on which the signatures are submitted.

The procedures to be followed when there is a counter-proposal have existed only since 1987. Before this, Parliament routinely used the counter-proposal as a tactic to divide and rule by splitting votes between the initiative and the counterproposal.

Since the introduction of the new procedures, direct counter-proposals have become rare.

b. Compulsory Referendum

Article 140 (Compulsory referendum): (1) The following shall be submitted to the vote of the People and the Cantons: a. Revisions of the Federal Constitution; b. The entry into organizations for collective security or into supranational communities; c. Federal Statutes declared urgent which have no constitutional basis and whose validity exceeds one year; such Federal Statutes must be submitted to the vote within one year after their adoption by the Federal Parliament. (2) The following shall be submitted to the vote of the People: a. Popular initiatives for total revision of the Federal Constitution; b. Popular initiatives for partial revision of the Federal Constitution in the form of a general suggestion which were rejected by the Federal Parliament; c. The question whether a total revision of the Constitution should be carried out if both Chambers disagree.

When an issue is presented to both the people (national level) and the "Stände" (cantons) for decision in a referendum, both an absolute majority of the valid votes cast and a majority of the cantons must be in favour. When a referendum is put only to the people, an absolute majority of the valid votes cast decides the issue; in this case, the cantons do not all carry the same weight. For historical reasons, six out of the total of 26 Swiss cantons (Obwalden, Nidwalden, Basel-Stadt (the city of Basle), Basel-Land (the area surrounding Basle), Appenzell Ausserrhoden and Appenzell Innerrhoden) carry only "half-weight."

c. Optional Referendum

Article 141 (Optional Referendum): (1) The following are submitted to the vote of the People at the request of 50,000 citizens entitled to vote, or of eight Cantons: a. Federal Statutes; b. Federal Statutes declared urgent with a validity exceeding one year; c. Federal decrees to the extent the Constitution or statute foresees this; d. International treaties which: 1. are of unlimited duration and may not be terminated; 2. provide for entry into an international organization; 3. involve a multilateral unification of law. (2) The Federal Parliament may submit further international treaties to optional referendum.

Article 142 (Required Majorities): (1) Proposals submitted to the vote of the People shall be accepted if the majority of those voting approve them. (2) Proposals submitted to the vote of the People and the Cantons shall be accepted if the majority of those voting and the majority of the Cantons approve them. (3) The result of a popular vote in a Canton determines the vote of that Canton. (4) The Cantons of Obwald, Nidwald, Basle-City, Basle-Land, Appenzell Outer Rhodes and Appenzell Inner Rhodes have each one half of a cantonal vote. The 50,000 signatures must be collected, verified as to voter eligibility by the communities, and delivered to the Swiss federal chancellery (Bundeskanzlei) within 100 days of the publication of the text of the law in the Official Gazette of the Confederation (Bundesblatt).

II. Regional and Local Level

Direct democracy in Switzerland originated at the local and cantonal levels. Until 1848, except for a brief period, the national level in Switzerland existed only as a loose confederation of states. There is thus a rich variety of forms of local and regional democracy, to which it is not possible to do justice in such a limited space.

Today, about 2350 communities have a community assembly, in which citizens decide

publicly on community issues. In the 500 larger communities which have no community assembly, the assembly is replaced by the referendum and by the local community parliament.

In all cantons except the two that still have citizens' assemblies, Appenzell Innerrhoden and Glarus (Landsgemeindekantone) and, there are both mandatory and optional referendums as well as the initiative. Many cantons also have an optional, some even a mandatory, referendum on budget matters.

a. Political and Social Agents

Although in Switzerland the signature quota is not very high in relation to the number of registered voters (2.1%), this does not mean that just anyone can launch an initiative. The current estimated cost per signature is two Swiss francs for printing, secretarial work, advertising, etc., even if no paid signature collectors are employed. Thus, a referendum initiative costs at least 100,000 Swiss francs for signature collection alone, in addition to the cost of the subsequent referendum campaign.

As a result, referendums are usually launched by existing organizations or parties, reflecting, as in any democracy, the existing relationships of power in society. This applies somewhat less in the case of the citizens' initiative, which can be launched even by relatively small groups. In such cases, the initiative, which can take several years from its inception to the eventual referendum, often leads to the formation of new political affiliations, which are then more capable of launching referendums in the future. In fact, the term "capable of launching referendums" (referendumsfähig) has in Switzerland become a synonym for "to be taken seriously politically."

The filtering function of the signature quota should not be judged negatively. A direct democracy without filters would burden citizens with a plethora of proposals, leading to public annoyance and the demise of the very instruments of direct democracy.

b. Outcomes and Experiences

The success or otherwise of direct democracy cannot be measured only by concrete political outcomes. Direct democracy offers the greatest possible participation by the general public in the process of decision making in modern societies which are organized into states. This participation should be seen as a human right, and the recognition of the human right to political co-determination does not depend on whether the results of referendums satisfy one's own personal interests; such a judgement would reflect a fundamentally anti-democratic attitude. The outcomes of direct democracy must be judged against this background.

In these terms, Switzerland does not differ fundamentally from other affluent countries with indirect parliamentary systems. Reforms happen more quickly in some countries than in others, but the resulting legislation is very similar. This is not surprising, since the same kinds of power relationships exist in societies with direct democracy as exist in other affluent industrialized countries which have purely parliamentary systems.

For example, if one compares Switzerland with the predominantly two-party, first-past-the-post systems in Great Britain and France, one can see that the existence of citizens' participatory rights exerted pressure for compromise at an earlier stage, but that it has been increasingly recognized even in bi-polar systems that elections are predominantly won on the centre ground. Even though the mechanisms differ, the trend is towards convergence over the longer term.

There are presumably differences in the attitude towards the state and towards taxation, as well as in the level of political awareness, though no studies have yet been carried out on these issues. It is a greater advantage for a person to be politically aware and informed about events and issues under direct democracy, since he can then play a constructive part in referendums. Tax avoidance and negative attitudes towards taxation are probably less prevalent under direct democracy, since people can share in decisions on public spending and approve any tax increases. There is empirical evidence that this connection exists at the local and regional levels. Although Switzerland is not exempt from political alienation and apathy, it may be assumed that these are less common than in purely representative systems.

III. Trends

The Swiss people hold direct democracy is held in high regard. This probably explains why politicians seldom attack the instruments of direct democracy, even though not all Swiss politicians enjoy the limitations placed on their power by direct democracy, any more than do politicians elsewhere.

In recent years, especially before the referendums on European integration (EEA), the media gave more space to academics critical of direct democracy, primarily from neo-liberal circles. However, support for direct democracy also came from the same quarter. It is unlikely that such attacks will result in any reduction of direct democracy in Switzerland.

On the other hand, greater political and economic integration tends to reduce political freedom of movement in individual countries. Decisions about new regulations and standards are increasingly being made at the transnational or international level, whether in the United Nations or in the EU.

On March 3, 2002, a majority of 54.6% voted in a national referendum in favour of entering the UN. Because a majority in the cantons was also required, ultimately one canton swung the vote in favour of accession. Switzerland's full membership of the UN has an especially high level of legitimacy because it is the first country in which the people themselves voted in favour of entry.

The question of possible accession to the EU is a much more difficult issue for Swiss citizens. They fear a severe restriction of their direct democracy, because accession would mean that areas in which the EU has competence would automatically be removed from direct-democratic control. On the other hand, many people stress the fact that Switzerland has the opportunity to contribute reform proposals to the work of the EU Convention on a possible European constitution. They believe that the growing interest in direct democracy in many EU countries enhances the chance that rights of initiative and referendum will eventually be introduced at the EU level, which could compensate for the loss of citizen influence at the lower level.

A new citizens' right, known as the "General Citizens' Initiative" or "Popular Motion," was approved by Swiss citizens in a referendum on February 9, 2003, although it was strongly criticised in the weeks before the referendum. The most disputed part of this package of constitutional amendments to increase citizens' rights was the so-called "General Initiative," which would make it possible, for the first time, for citizens' initiatives to trigger not only constitutional amendments but also legislative change. But the 100,000 signatures required for the initiative would secure only the right to present a general demand: parliament would be responsible for translating the general

proposal into a specific constitutional or legislative text. If parliament were unfaithful to the original intention, the Supreme Court could be asked to intervene.

This combination of citizens' demand, parliamentary decree and a possible referral to the Supreme Court is designed to ensure that initiatives enter the legislative process in the most constructive way and also that they do not conflict with international commitments.

During much of the referendum campaign, it went unnoticed that this process, which was being proposed as an innovation at the federal level, was already in regular use in seven cantons. Few of those who opposed checked whether their objections were actually borne out in practice at the cantonal level. While those on the right complained that the new citizens' right was too complicated, those on the left claimed that it wouldn't be used because it wasn't attractive enough: it required as many signatures as a detailed constitutional initiative.

Cantonal experience with the general/unitary citizens' initiative has been extremely good: according to Robert Heuss, director of the cantonal chancellor's office in Basle, the only plausible explanation for the frequent use of the unitary initiative lies in its "citizen-friendliness." Its introduction at the federal level was approved by a large majority of 70% of the general vote, and all the cantons also voted in its favour. On the other hand, it was approved by the lowest turnout for a national referendum in 30 years: only 28% of the electorate turned out to vote.

Parliament has already implemented most of the constitutional changes agreed by the citizens' rights reform referendum, but the new General Citizens' Initiative tool will only be available after the detailed legislation has been drafted and approved. The government is expected to present its proposals to parliament during the next year. In a recent report, the relevant parliamentary committee referred to "a number of tricky procedural problems" which might well lead to some "intense debates." The prediction is that the new citizens' initiative will not come into force until 2006.

Main author: Paul Ruppen, with additional remarks by Hans-Urs Wili, Rolf Büchi, Bruno Vanoni, and Bruno Kaufmann

Constitutional Requirements for Legislation

Title 6: Revision of the Federal Constitution and Temporal Provisions

Chapter 1: Revision

Article 192 (Principle): (1) The Federal Constitution may be subjected to a total or a partial revision at any time. (2) Where the Federal Constitution and implementing legislation do not provide otherwise, the revision shall follow the legislative process.

Article 193 (Total Revision): (1) A total revision of the Federal Constitution may be proposed by the People or by one of the Chambers, or may be decreed by the Federal Parliament. (2) If the initiative emanates from the People or if the Chambers disagree, the People shall decide whether a total revision shall be undertaken. (3) Should the People accept a total revision, both Chambers shall be newly elected. (4) The mandatory provisions of international law may not be violated.

Article 194 (Partial Revision): (1) A partial revision of the Federal Constitution may be requested by the People or decreed by the Federal Parliament. (2) A partial revision

must respect the principle of the unity of subject matter; it may not violate the mandatory provisions of international law. (3) A popular initiative for partial revision must, moreover, respect the principle of the unity of form.

Article 195 (Entry into Force): The Constitution revised in total or in part shall enter into force as soon as it is accepted by the People and the Cantons.

SWITZERLAND

Population: 7,136,000

Area: 41,284 km2

Capital: Berne (Bern)

Official languages: German (63%), French (20%), Italian (8%), Romansch

Religion: Roman Catholic (46%), Protestant (40%)

Political System: Parliamentary Federation (since 1848)

Constitution: January I, 2000 (referendum: 59% yes)

Membership: UN, EU non-active candidate.

GNP/Capita: $28,100

Human Development Rank: 10

I and R practice: more than 500 federation-wide referendums since 1848, many thousands at the cantonal level, hundreds of thousands at the local level. On March 3, 2002, Switzerland became the first country in the world in which the citizens decided to join the United Nations (55% yes).

Swiss direct democracy in brief

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Facts:

Developed I and R (Ed.: Citizens' Initiative and Referendum) institutions at the level of the Federation, the 26 cantons and the 2,973 municipalities.

- Overview over the I and R institutions

Critical Question:

"The central question should not be whether to have direct democracy, but rather how: what form should that direct democracy take?" (Gross 2004)

Facts:

A) Compulsory I and R institutions

Compulsory Referendum: Constitutional changes and the entry into organizations for collective security or into supranational communities must be submitted to a vote of the people.

Facts:

B) Citizen-initiated I and R institutions

The **Popular Initiative** gives **100,000** voters the opportunity to put their own proposals for a partial revision of the Federal Constitution to the electorate. It acts like an **accelerator**.

The **Optional Referendum** is more like a **brake**. It gives **50,000** voters the chance to object to laws passed by Parliament.

These two tools are the ones available at federal level. At cantonal and commune levels the opportunities for having an active say are more varied.

Article 139 (Popular Initiative for Partial Revision of the Federal Constitution)

100,000 citizens entitled to vote may propose a partial revision of the Federal Constitution.

The popular initiative for a partial revision of the Federal Constitution may be in the form of a general suggestion or a formulated draft.

If an initiative does not respect the principle of unity of form, the principle of unity of subject matter, or mandatory rules of international law, the Federal Parliament shall declare the initiative invalid in whole or in part.

If the Federal Parliament approves an initiative in the form of a general suggestion, it shall prepare a draft of the meaning of the initiative and submit it to the vote of the people and the Cantons. If it rejects the initiative, it shall submit it to the vote of the People; the People shall

decide whether the initiative should be followed. If the People approve the initiative, the Federal Parliament shall formulate a corresponding draft.

An initiative in the form of a formulated draft shall be submitted to the vote of the People and the Cantons. The Federal Parliament shall recommend its approval or its rejection. If it recommends its rejection, it may submit its own counter-draft.

The People and the Cantons shall vote simultaneously on the initiative and the counterdraft. The voters may approve both drafts. They may indicate which draft they prefer, should both be approved; should one of the drafts obtain a majority of the People's votes and the other the majority of the votes of the Cantons, neither of them shall come into force.

History:

The I and R institutions were established
step by step … :

Compulsory referendum in 1848

Optional referendum and initiative in the canton of Zürich et al (1868/9)

Optional referendum in 1874

Initiative at the federal level in 1891

but not without huge political conflicts:

See the important role of the revolutionary Democratic Movement (1868/1869)

"Democratic Movement" (1868/1869)

"In our view, [the movement] consists of the people's being able by constitutional means to win respect for their own faculty of judgment, which the elected representatives have arrogantly and bluntly denied them on all too many occasions" (*Der Landbote*, 3/1/1868, p. 279).

"We protest against the debasement and belittlement of the people of Zurich, which consists in their being declared incompetent to recognize true progress and to make the necessary sacrifices [to achieve it].

We see in this false evaluation of the people the main seeds of the present movement" (*Der Landbote*, 12/8/1868, p. 279).

Critical Questions:

– List of exclusions on issues
– Entry hurdles
– Time limits
– Majority requirements/quorums
– Consistency of I and R elements:
– Collection of signatures

– Reception by Parliament
– Informing the electorate

CHAPTER TWO

Direct Democracy in Italy

by Roland Erne

with comments by Bruno Kaufmann

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Italy has, after Switzerland and Liechtenstein, the most extensive I and R experience in Europe*. After the delayed legal implementation of the citizen-initiated "abrogative referendum" in 1970, the Italian people were frequently called to the ballot box. Several of these referendums have played a significant role in the democratization of Italian society and party politics. However, the particular Italian I and R procedures and the almost complete monopoly which Prime Minister and media magnate Silvio Berlusconi has over TV channels raise some doubts about the quality of Italian I and R practice.

* Some country statistics are at the end of this paper.

Types of Initiative and Referendum

In the 1990s, the functioning of the Italian political system changed considerably. The center-right Christian Democratic Party, which had governed the county without interruption since 1946, and most of its smaller coalition partners collapsed as prosecutors discovered the involvement of several leading politicians in a dense web of political corruption.

Subsequently, several abrogative referendums led to a new electoral system based on majoritarian representation, which compelled the Italian political classes to organize themselves into two new major political alliances: the conservative "house of freedom," led by the media magnate Silvio Berlusconi, and the "olive tree" alliance, a coalition of socialists, centre-left Christian democrats, liberals, Greens, and Italian communists. The "olive tree" coalition governed the country from 1996 to 2001, but Silvio Berlusconi became Prime Minister in May 2001. Berlusconi's victorious coalition includes his own "political club," *Forza Italia*; the *National Alliance*, a party with political roots in fascism; the *Northern League*, a xenophobic regional party of Northern Italy; and two small centre-right Christian democratic parties.

I. National/Federal Level

On June 2, 1946, the Italian people voted in an ad-hoc institutional referendum, which was initiated by the anti-fascist provisional government, against monarchy and in favor of a new Italian republic. Subsequently, the constituent assembly approved a new Constitution that includes two types of national referendums and two articles on regional referendums.

Moreover, in 1989, the Italian Parliament adopted an ad-hoc "constitutional law" (a constitutional amendment that is not formally incorporated in the body of the Constitution) in order to enable an ad-hoc referendum on a European Constitution-making mandate for the European Parliament.

Finally, Italian legal dictionaries also mention the "trade union referendum" as a noteworthy feature of Italian I and R practice.

a. The "abrogative referendum" (*referendum abrogativo*) to repeal a law (or parts of it) at the national level

Article 75 of the Italian Constitution states that a popular referendum shall be held to decide on the total or partial repeal of a law or of an act having force of law whenever it is requested by 500,000 voters or by five regional councils.

This means that only 1% of the electorate is able to initiate a popular vote about the complete or partial abrogation of a particular law.

The electorate does not only play a negative role, because it can change the meaning of a law by repealing some of its articles. This use of the "abrogative referendum" compensates for the lack of a law proposing popular initiatives, but only partially, since issues that are not already covered by existing laws cannot be made the subject of a popular vote.

Some matters are constitutionally excluded from the scope of abrogative referendums, namely tax or budget laws, amnesties or pardons, or laws authorizing the ratification of international treaties.

Finally, the result of an Italian "abrogative referendum" is valid only if it fulfils the following participation quorum: to be legally binding, a particular proposition must receive not only a majority of the valid votes cast, but a majority of those eligible to vote (i.e. more than 50% of the total electorate).

Law No. 352 of May 25, 1970 practically implements Article 75 of the Constitution. It states that the 500,000 signatures can be collected freely on the streets and must be gathered within a period of 90 days before September 30 each year.Moreover, it regulates the procedure of judicial review and defines the rather marginal roles of the Italian executives (president and government) and the parliament in the referendum process.

The constitutional court reviews the legal conformity of the abrogative referendum before the actual vote takes place. Since the procedural provisions concerning Law No. 352 are open to conflicting interpretations, the constitutional court has acquired wide discretionary powers in this matter.

Finally, Law No. 352 indicates that abrogative referendums must normally take place on a Sunday between April 15 and June 15 in the year following the collection of signatures.

Despite its constitutional recognition, the first abrogative referendum took place many years after the adoption of the Constitution in 1948. Parliament did not transform the constitutional principle into practice until the adoption of Law No. 352 of May 25, 1970, since the governing political parties never displayed any great interest in enabling the "abrogative referendum." This is hardly surprising, since this instrument

might counterbalance and limit the power of the government.

In 1969/70 this situation accidentally changed, when the major governmental party, the Christian democrats, made a deal with its coalition partners whereby they would support the adoption of Law No. 352 in exchange for Christian democrat support for a law that allowed civic divorce.

Whereas enabling civic divorce was a high priority of the secular coalition partners, most Christian democrats were, in principle, against the legalization of divorce, but at the same time feared that a veto could alienate their coalition partners. Given this dilemma, many Christian democrats mistakenly hoped that the introduction of the "abrogative referendum" would eventually enable the abrogation of the civic divorce law without risking the ruling coalition.

However, its attempted abrogation failed when almost 60% of the votes backed civic divorce in the first Italian abrogative referendum on May 12, 1974. Hence, the introduction of the citizen-initiated "abrogative referendum" is not merely a result of a democratization of Italian society in the late 1960s, but the unintended consequence of an instrumental miscalculation of the major governmental party.

b. The "constitutional referendum" (*referendum costituzionale or referendum*) over a constitutional amendment which has been passed but not yet implemented

Article 138 of the Constitution states that a constitutional amendment must be approved by an absolute majority of both chambers of parliament and submitted to a popular vote when, within three months of their publication, a request is made by one fifth of the members of either chamber, by 500,000 electors, or by five regional councils. A law thus submitted to vote may not be promulgated unless approved by a majority of the valid votes cast. The result of the vote is legally binding regardless of the turnout, in contrast to the vote on "abrogative referendums." However, no vote will be held if the amendment has been approved by both chambers, with a two-thirds majority in each.

The first constitutional referendum took place on October 7, 2001, when more than one fifth of the Italian parliament had called for a constitutional referendum on the spring 2001 "federalism reform" of the "Olive tree" majority. This constitutional amendment was endorsed by referendum (64.2% "yes" votes), despite its low turnout of 35.8%.

Given the commitment of the current Berlusconi government to fundamental modification of the Italian constitution, in particular of its federal structure and functioning and Italy's judicial system, it is likely that additional "constitutional referendums" will take place in the near future.

c. The 1989 ad-hoc Referendum on a European Constitution

Article 71 of the Italian Constitution states that the legislative initiative belongs not only to the Government and to each Member of Parliament, but also to 50,000 voters. Generally such "popular law initiatives" are not successful, because parliament is not obliged to put them either on its own agenda or to a popular vote. In one case, however, such an initiative was very successful. In June 1988, the Italian section of the European federalist movement sent a proposition with 114,000 signatures to the Italian Parliament. The proposition called for a referendum on conferring a mandate on the European Parliament to create a European Constitution. In November 1989 the

two chambers of Parliament backed this proposition by means of an ad-hoc constitutional amendment. The referendum took place in parallel with the European elections on June 18, 1989, and attained a high turnout (81%) and an 88% yesvote.

d. The Labour Union's Referendum (*referendum sindacale*)

In Italy, political decision-making does not only take place in Parliament. In contrast to the Anglo-Saxon liberal-democratic tradition of "territorial democracy," economic and social policy can also be made through collective bargaining and "social pacts" between the trade unions, the employers' organizations, and the government. Therefore, it is helpful to refer also to the I and R procedures in this arena of so-called "functional democracy."

On May 20, 1970, the Italian Parliament adopted Law No. 300, the so-called "workers statute," whose Article 21 introduced the "trade union referendum."According to this provision, the unions can initiate referendums on "trade union questions" involving the workforce of a single enterprise, an economic sector, or even the whole national economy.

After an initially negligible use of the instrument, this expression of direct democracy gained importance in 1988, when the three Italian metalworkers' unions began to jointly submit their bargaining agendas and demands to a workers' referendum. In 1995, the three Italian tade union confederations even initiated a national inter-professional "trade union referendum" in which Italian workers approved an essential pension of the Dini-government.

Conversely, in autumn 2001, a trade union referendum over a national wage agreement in the metal industry was successfully barred by the two smaller, centrist unions – the Catholic CISL and the secular UIL – even though the largest, left-wing CGIL union had collected 350,000 signatures of metal industry employees (approximately 50% of the whole constituency) in favor of it. This situation reflects the failure of Italian labour law to regulate the right of Initiative for the "trade union referendum" in cases where the three representative unions disagree among themselves.

II. Regional and Local Levels

a. The Regional Referendum (*referendum regionale*)

Article 123 of the Italian Constitution states that every region shall have a statute which determines its form of government and the fundamental principles of its organization and function, in accordance with the Constitution. This statute shall also regulate the exercise of "consultative" or "abrogative referendums" on regional laws and Regional administrative decisions, and the publication of regional laws and Regulations.

Despite these constitutional provisions, the regional referendum still does not have practical significance. It is likely that this will change because of the increased competence and importance that the Italian regions gained with the adoption of the 2001 federalism reform.

b. The Territorial Referendum on Regional Boundaries (*referendum territoriale*)

Article 132 of the Italian Constitution states that existing regions may be merged or new regions created, provided that the population of any new region is at least one million, the change is requested by municipal Councils which represent at least one third of the population involved, and the proposal has been approved by the majority of the involved population in a referendum.

By means of a referendum, provinces and municipalities that request it may also be detached from one region and attached to another. Territorial boundaries have never been a political issue in modern Italy.

c. Local I and R (*instruments and Requirements*)

"Consultative referendums" can take place at a local level, according to the national "Bassanini" Law No. 142 on local government (June 8, 1990). However, the municipalities and provinces are not obliged to introduce the referendum into their local statutes. Moreover, the results of these popular consultations are not legally binding.

Similar provisions already existed in the Kingdom of Italy in 1903, but the increasing introduction of "consultative referendums" in many local statutes is a recent development.

The specific requirements governing local referendums differ considerably from place to place. In most municipalities, the mayor, a qualified or simple majority of the municipal council, or a qualified minority of the municipal council can initiate a "consultative referendum." However, in many municipalities, including Rome, Turin, Florence, and Genoa, popular consultations can also be initiated by a number of citizens; the number of required signatures varies.

In contrast to national I and R practice, citizens can not only abrogate but also propose bylaws. However, the instrument of local consultative referendums is not yet frequently used.

III. Trends

Despite its institutional roots in party politics, the abrogative referendum became in the late 1970's an important tool of political forces that were closer to civil society than to the political system, such as civil liberty, women's, and environmental groups. Later, the major opposition parties also made increasing use of the abrogative referendum.

At the beginning of the 1990s, two referendums about the electoral system (1991 and 1993) played an important role in the transformation of Italy's "blocked democracy" into a new bipolar party system. Today, the abrogative referendum is an established institution in Italy.

Nevertheless, some of its limitations have also become visible. In 1995, Italians had to vote on 12 initiatives on the same day, which made a proper public debate about each subject impossible.Moreover, three of the 12 abrogative referendums were aimed at breaking up Berlusconi's almost complete private monopoly of TV channels in order to guarantee fair political and economic competition. These attempts were not successful, probably due precisely to Berlusconi's use of his private TV-channel

monopoly: his TV commentators persistently "informed" the public that no good movies or TV shows could be broadcast any longer if the Italian people accepted the anti-trust propositions of the 1995 referendum.

Since the 2001 elections, the conflict of interest between Berlusconi's private role as media magnate and Richest man in Italy and his public role as politician has become even more evident. Fair political competition seems to be very much in danger, because he now also controls the public broadcasting system in addition to his own private media empire. Silvio Berlusconi has also used his immense political, media and economic power to gain control of the judicial system and to stop, in summer 2003, a "corruption" trial against himself by Italian attorneys and prosecutors. This could lead to a constitutional referendum in the near future that would put fundamental legal and democratic principles to a decisive test.

The turnout threshold of 50% is also a problem, at least from the point of view of a deliberative democracy. Since approximately 20% of the Italian electorate never votes, the opponents of an abrogative referendum can win even if they represent a minority of politically active citizens.

In 1990, the opponents of an anti-hunting proposition successfully used a boycott of the vote and of the prior public debate in place of a "no" campaign. Subsequently, boycotting the ballot has become a frequent strategy. This has led to the paradoxical result that referendums which secured more than 90% "yes" votes were rejected because they narrowly missed the 50% turnout threshold. Of 53 countrywide referendums, 18 have failed because they failed to meet the threshold requirements. The consequence has been a decline in political discussion favoring the use of the referendum process.

Finally, the manipulation of laws by abrogating particular articles has often led not only to a change in their meanings ? as desired by the initiators of the respective referendum ? but also to awkward laws that have made it necessary for parliament to subsequently revise them. The revisions, in turn, have caused heated discussion and disappointments, because parliamentarians have frequently interpreted the results of a popular consultation in a different way from its initiators.

Because of these weaknesses in the abrogative referendum, the idea of introducing the right of popular Initiative (*referendum propositivo*) has gained some exposure in constitutional debates, without becoming a major political issue so far.

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Constitutional Requirements for Legislation

Section II Amendments to the Constitution. Constitutional Laws

Article 138 [Procedure for Constitutional Amendment]

(1) Amendments to the Constitution and other constitutional acts shall be adopted by

each of the two Chambers twice with an interval of not less than three months between the votes, and shall be approved by a majority of the members of each Chamber in the second voting.

(2) Such laws shall be submitted to popular referendum when, within three months of their publication, a request is made by one fifth of the members of either Chamber or by 500,000 electors or by five regional Councils. The law submitted to referendum shall not be promulgated unless approved by a majority of valid votes.

(3) No referendum may be held if the law has been approved by each Chamber, in the second vote, with a majority of two thirds of its members.

Article 139 [Limit to Constitutional Amendments]

The Republican form of the State may not be changed by constitutional amendments.

ITALY

Population: 57,646,000

Area: 301,336 km2

Capital: Rome (Roma)

Official languages: Italian (90%), German, French, Slovenian.

Religion: Roman Catholic (90%)

Political System: Republic (referendum 2/6/1946), federal structure with 20 autonomous regions.

Constitution: January 1, 1948 (without referendum)

Membership: EU, NATO

GNP/capita: $24,670

Human Development Rank: 21

I and R Practice: 54 nationwide referendums (since 1929)

CHAPTER THREE

Direct Democracy in Germany

by Ralph Kampwirth

with additional remarks by Otmar Jung

Re-printed from
Direct Democracy in Europe: A Comprehensive Reference Guide to the Initiative and Referendum Process in Europe **Edited by Bruno Kaufmann and M. Dane Waters** Carolina Academic Press, Durham, North Carolina. Sponsored by IRI Europe, Initiative and Referendum Institute Europe and IRI Initiative and Referendum Institute

* Some country statistics are at the end of this paper.

Germany has seen a very strong trend towards more direct democracy since reunification in 1990. The most developed of the federal states is Bavaria, which has had more than a quarter (33) of the 145 popular initiatives in the 16 Länder and 5 of the 10 citizen-initiated referendums since 1990.

A major problem has been poor design of the I and R instruments, which are not very citizen-friendly; this has weakened the potential of citizen lawmaking.

An average of approximately 200 local referendums are held in Germany every year. In Bavaria alone, more than 1,360 initiatives have been launched and 640 referendums held since I and R was established there in 1995.

At the national level, the Christian Democrats have blocked the introduction of direct democracy, which is promoted by almost all the other parties.

Types of Initiative and Referendum

The Bundesrepublik is a federal country. Re-unified Germany consists of 16 states (Länder), 323 districts (Landkreis) and 13,854 local authorities (Kommune), of which 2,047 are towns and cities. The federal states have important powers that are primarily administrative, for example in the areas of transport, education, culture, policing, and the environment. The states participate in national legislation on matters which concern them via the Bundesrat (national parliament), which is composed of representatives from all the state governments. The local authorities have competence in certain areas of decision-making, such as local taxation, energy supply, refuse collection, roads and transport, infrastructure, and planning permission.

I. National Level

Germany is one of the few EU countries which so far have no experience of national referendums. The constitution provides for national referendums only on changes to administrative boundaries. In the Weimar Republic, there were three popular initiatives and two national referendums (in 1926 and 1929); during the National Socialist period, three plebiscites were held, with biased questions and blatant manipulation of results.

II. Regional Level

Six of the 11 states of the former Federal Republic (the "old" Bundesländer), Bavaria, Berlin, Bremen, Hesse, Nordrhein-Westfalen and Rheinland-Pfalz, incorporated both initiative and referendum into their new constitutions immediately after 1945. Baden-Württemberg and the Saarland followed suit in the 1970s. After 1990, the peaceful revolution in the former GDR unleashed a wave of reform which meant that by 1994, all 16 "old" and "new" federal states had introduced elements of direct legislation.

In all states, popular participation in the formulation and passing of laws is divided into three stages, but since the specific procedures have been elaborated by the individual states themselves, they vary considerably in detail. The following gives a broad outline of the most important provisions:

a. First Stage: Petition ("Popular Initiative," an application for the commencement of a process which may ultimately lead to a referendum)

• The first stage is when citizens present a formal application/request to initiate the process. This application can be called a popular initiative. In Brandenburg and Schleswig-Holstein, the state parliament is already involved at this stage, advising and deciding on the application.

• The legality of the application is checked at this stage.

• The quorum, or minimum required number of signatures to launch the initiative, varies from 3,000 (Nordrhein-Westfalen) to about 120,000 (Hesse). The quorum is usually expressed as a percentage of the electorate.

• Initiatives on both legislative and constitutional matters are allowable in principle in most parts of Germany, although in Berlin, Hesse and the Saarland, constitutional issues are excluded.

• In practice, only legislative proposals (draft laws) are allowed, although in principle "other political issues" can be raised in Brandenburg, Hamburg and Schleswig-Holstein.

• Initiatives dealing directly or indirectly with the economy (the so-called "finance tabu"), including taxation and the salaries of politicians and officials, are excluded.

b. Second Stage: Initiative ("Popular Demand, "Volksbegehren")

• The second stage involves the collection of signatures supporting the initiative.

• Signature quorums usually vary between 8% and 20% of the state electorate. Only Brandenburg, Hamburg and Schleswig-Holstein have low, "citizen-friendly" quorums of 4% and 5%.

• Registration procedures vary. Nine states permit the free collection of signatures within time limits of between three and 12 months. In the seven remaining states, signatures have to be recorded in designated official places, and time limits vary between two weeks and two months.

• A "Volksbegehren" which achieves the required number of signatures must be debated in the state parliament (Landtag). If the latter accepts the proposal as it stands, no referendum need be held. If the proposal is not accepted and the issue is taken to

referendum, the parliament has the right to make a competing, alternative legislative proposal.

c. Third Stage: Citizens' Decision ("Referendum, "Volksentscheid)

• A referendum result is legally binding. However, in most states, in contrast to the rule in elections, a simple majority of votes cast does not automatically win.

• In referendums on straightforward laws, most states demand a minimal approval of either 20%, 25%, or 33% of the electorate. Nordrhein-Westfalen demands a participation quorum of 15%; Rheinland-Pfalz, of 30%. Only Bavaria, Hesse, Nordrhein-Westfalen and Saxony do not require such a threshold.

• In constitutional referendums, all states have a minimum approval quorum of 50%, with the exemption of Bavaria, where the approval quorum is 25%. Moreover, this quorum is further linked to a supermajority of two-thirds in favor of the reform, which makes any changes virtually impossible. In practice, about one fourth of all citizens' initiatives are declared invalid on legal grounds. By 2003, 145 popular initiatives/petitions ("Volksinitiativen") had been started. 41 of them reached the second stage, the popular demand ("Volksbegehren"), and ten eventually went to referendum. The largest proportion of popular initiatives (31 out of 131) and referendums (5 out of 10) were in Bavaria, the only state which can claim any regular and active use of the instruments of direct democracy in Germany.

The overall view is somewhat sobering: in only four of the 16 federal states has there been a citizen-initiated referendum. As a statistical average, a referendum takes place in each federal state only once in 43 years. The direct success rate of all initiatives launched is around 20%. In addition to legislative referendums, other types of referendums exist. 14 state constitutions were accepted by popular referendum. In Bavaria and Hesse, there is also the statutory constitutional referendum, which has been invoked on five occasions in each of these states. Seven referendums have been held on boundary changes. In all, there have been 34 referendums since 1946 in all the federal states combined.

III. Local Level

The wave of reform which spread after 1989 affected the local authority level as well as the state level. Before this reform, the right of popular involvement in decision-making by local referendum (Bürgerentscheid) was known only in Baden-Württemberg, but today direct democracy has been introduced at the local level in 15 of the 16 states. Only in Berlin is there still no direct democracy at the district level within the city. Bavaria and Hamburg are special cases. Here the right to local referendum was introduced by the people themselves in statewide referendums, even though in both cases the state government was opposed to it. It is no surprise, therefore, that these two states have by far the most liberal procedures. In all the states, the popular decision-making process is in two stages:

a. Popular Initiative (Bürgerbegehren)

• In the majority of states, certain important local issues are excluded from the process (these are listed in a socalled "negative catalogue"). Only Bavaria, Hamburg, Hesse and Saxony generally forego such exclusions.

• In half of the states there is a sliding scale of signature quota depending on the size

of the community: in Hamburg it is from 2% to 3%; in Sachsen-Anhalt, from 6% to 15%. In the remaining states there is a uniform threshold, varying from 10% to 20% between states.

• Time limits for signature collection apply only when the initiative is directed against some decision taken by the local authority. The period of time allowed varies from four weeks to three months.

• Normally, the local authority decides on the admissibility of an initiative. The initiative group can appeal a negative decision.

• The local council can accept the initiative, in which case the issue does not go to referendum.

b. Citizens' Decision (Bürgerentscheid)

• In almost all the federal states there is a participation quorum of between 20% and 30%. Initially, Bavaria had no quorum, but the state government (Landtag) introduced a sliding scale of between 10% and 20% depending on the size of the community. Only in Hamburg is a simple majority of the votes accepted without further qualifications or restrictions.

• When a local referendum has been successful, the majority of states impose an exclusion period of one to three years, during which the referendum result can be repealed, or allowed to lapse, only by a new referendum.

An average of about 200 local referendums are held in Germany every year. The most by far are in Bavaria, where there were more than 1,260 initiatives and 578 referendums in the first six years after I and R was instituted. This still means that each community in Bavaria has a referendum only, on average, once every 24 years. In the other federal states, where the hurdles are higher, local referendums are used less frequently. For example, in Lower Saxony there have been only 54 initiatives and 18 referendums, giving an average of only one referendum per community every 344 years.

IV. Trends

There is a clear trend in Germany towards more direct democracy. However, the path towards a workable popular right to direct participation in decision-making is still long and arduous. The ruling SPD/Green coalition presented a bill on citizens' initiative and referendum to the Bundestag in the summer of 2002. However, the proposal did not obtain the required supermajority of two-thirds of votes in the parliament. The federal government elected in 1998, a coalition of the SPD, the citizens' rights party *Bündnis 90* and the Greens, had promised to introduce a national right to citizen participation in legislation. Three of the five parties represented in the Bundestag supported this intention, but without the support of the CDU, it could not obtain the two-thirds majority required in the Bundestag for constitutional change. There is still a chance that the initiative element of I and R, the right to force parliament to debate a topic chosen by the people, might be introduced. All parties in the Bundestag promised that there would be a new attempt after the national elections in autumn 2002. This could be the first stage of a gradual introduction of direct democracy at the national level.

During the debate about a referendum on the new EU constitution, the Liberals and the Bavarian Christian Democrats proposed a single referendum law. However, the

government coalition of Social democrats and Greens tried again to introduce the full right of initiative and referendum into the German constitution, and the Christian Democrats blocked everything.

a. Polls, Opinion polls show that between 70% and 85% of the public supports the idea of national referendum.

In September 2001, Mehr Demokratie launched a national campaign under the slogan "Menschen für Volksabstimmung" ("People for Popular Referendum"). The campaign is supported by an alliance of 80 different organizations representing the environment, citizens' rights, trade unions, employers, churches, and social groups.

At the state and local authority levels, in particular as a result of the wave of reform beginning in the early '90s, there has been a dramatic increase in the number of popular initiatives. However, for the majority of initiatives at the federal state level, the experience has been sobering. Despite wide popular support, they have typically failed to reach the high quorums required by current law. As a result, some states have already seen a decrease in the numbers of initiatives.

b. Wave of Reforms, There is an urgent need to reform institutions for direct democracy in the federal states.

After the initial successes of Mehr Demokratie in Bavaria and Hamburg, state governments and constitutional courts have blocked all subsequent popular initiatives to extend citizens' direct-democratic rights. The justification for blocking them is the usual, highly questionable assertion that extending the right of citizens to be directly involved in decision-making, including the drafting, passing and repealing of laws, would violate the norms of German democracy. Opponents of direct democracy claim that the current, unsatisfactory state of German direct democracy represents the maximum that can be legally achieved. Such judgments reflect the enormous distrust of the people which still characterizes many in positions of power in Germany, especially within the political and legal elites. Despite this, state parliaments in Bremen, Hamburg, Nordrhein-Westfalen and Rheinland-Pfalz recently decided to lower the hurdles for direct democracy at the state and local levels, although their reforms have been fairly minor. Other states are also debating whether to simplify the rules for popular initiatives.

Main author: Ralph Kampwirth, with additional remarks by Otmar Jung

*GERMANY

Population: 82,047,000

Area: 357,022 km2

Capital: Berlin

Official languages: German (91%), and in certain regions also Danish, Sorbian, Friesian

Religion: Protestant (34%), Roman Catholic (33%)

Political System: Federal Republic (since 1949), with 16 autonomous States (own constitution, parliament)

Constitution: 1949 (without referendum)

Membership: EU, NATO

GNP/Capita: $25,350

Human Development Rank: 18

I and R practice: six nationwide before WWII (three referendums, three Hitler plebiscites), growing regional (54) and local (1000s) referendum experience.

CHAPTER FOUR

Direct Democracy in The Netherlands

by Arjen Nijeboer

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The Netherlands is one of the only four countries worldwide that have never held a nationwide referendum.

At the local level, some hundred referendums have been held since 1912, most of them plebiscites. In the 1990s, many municipal constitutions were amended to allow for citizen-initiated referendums. The first was held in 1995 in the City of Leiden. However, high participation and approval quorums made it very difficult to get successful results.

At the national level, one party (D66) has made I and R a priority: the issue became part of the "lilac" coalition agreement in 1994, triggered a government crisis in 1999, and led to the Temporary Referendum Law in 2002. Under the current government, a two-thirds majority in parliament is necessary to introduce a binding referendum. But the rightist populist government has announced its intention to abolish all citizen-initiated referendums.

Some country statistics are at the end of this paper*.

Types of Initiative and Referendum

The Netherlands is a centralist unitary state (93% of all taxes are raised at the national level). The provinces and especially the municipalities have considerable responsibilities and competences (provinces: environment, spatial planning, water, public utilities; municipalities: housing, health care, spatial planning, welfare, social and city renewal, traffic, police) but these are in the spirit of "co-rule" generally carried out within the framework of national rules. Some large municipalities (cities) have municipal governments with separate elected bodies.

The Kingdom of the Netherlands is composed of the Netherlands, the Dutch Antilles and Aruba (islands in the Caribbean).

I. National Level

On January 1, 2002, the *Tijdelijke Referendumwet* (Temporary Referendum Law; TRW) entered into force and introduced a citizen-initiated "consultative corrective referendum" (non-binding rejective referendum) at the national, provincial and municipal levels. It was intended to exist until the introduction of a binding version in the Constitution, but the new rightist-populist government announced that it would break with the I and R policy of the last two "lilac" governments and abolish all citizen-initiated referendums.

At the national level, laws are subject to referendum, as are treaties which are, within the Kingdom, only valid in the Netherlands, including revisions of laws and treaties.

Excluded are constitutional changes, laws on the monarchy, the royal house, the budget (but not taxes), laws which are valid in the entire Kingdom, and laws which only serve to implement international decisions.

After the monarch signs a law which has been adopted by the parliament, or a treaty has been accepted, the Home Secretary announces within a week -- in the state newspaper (*Staatscourant*) -- whether the law can be the subject of a referendum. If it can be, a three-week period starts in which citizens can make an "initial request" for a referendum by delivering 40,000 signatures. When the Central Voting Bureau publicly announces that enough valid signatures have been delivered, a 6-week period begins in which citizens can make a "definitive request" by delivering 600,000 signatures.

Signatures must be entered on official forms by citizens in person at the municipal office of their municipality. (The mayor may indicate other places within his municipality.) During the definitive phase, citizens can also send their signatures on an official form by mail to their municipal office. The government may decide by executive measure that citizens can also give signatures electronically, but there is no sign that this will happen soon.

Signatures are counted and considered valid or invalid by the voting bureaus, of which each municipality has at least one. They send the results to the provincial voting bureaus, which total the numbers in their provinces and send them to the national central voting bureau (the Election Council), which checks and totals the numbers given by the local and provincial voting bureaus.

If the prime voting bureau announces that enough valid signatures have been delivered, a date for the referendum is chosen no earlier than 50 days and no later than four months after the bureau's announcement. If an election takes place within this period, the referendum is held on the same day as the election. It is possible to hold more than one referendum on the same day.

The TRW does not say who will draft the question, although the context suggests the government, or which rules should be applied. The Prime Minister is responsible for writing a summary of the law or treaty, which will be mailed by the mayor to the address of each voter no later than two weeks before the referendum. The text of the law or treaty is freely available at each municipal office four weeks before the referendum.

There is an approval quorum: the outcome is only valid when a majority votes against the law, and when this majority comprises at least 30% of the electorate.

Citizens can challenge before the administrative court (*Raad van State*) the decision on whether a law or decision can be the subject of a referendum and decisions of the prime voting bureau of a political unit about the initial request, the definitive request, and the outcome of the vote. Citizens cannot challenge decisions of lower voting bureaus or the decision on the date of the referendum.

The freedom of lower government levels is greatly restricted: according to the rules of the TRW, provinces and municipalities can hold only rejective referendums on decisions of the provincial and municipal councils. Municipalities and provinces can hold referendums with their own specific requirements only on topics which are not dealt with by the TRW (either explicitly allowed or excluded) and on decisions of governmental institutions other than the provincial and municipal councils.

Municipalities and provinces which had their own referendum bylaws on February 15, 2001, can keep them until the introduction of a binding rejective referendum in the constitution (planned for 2005). However, municipalities and provinces are entirely free to introduce (through a municipal or provincial bylaw) popular initiatives with self-made requirements, as well as government-initiated referendums (plebiscites). There is one exception: the Constitution prohibits binding referendums.

Municipalities and provinces can adopt bylaws which prohibit referendums about municipal and provincial taxes or the salaries of elected officials.

The TRW is valid until January 1, 2005, when, according to plan, a rejective referendum with the same requirements but with legally binding outcomes will have been adopted. However, the incoming rightist-populist government (July 2002) announced that it would break with the I and R policy of the last two "lilac" governments and dismantle all forms of citizen-initiated referendums. Since the TRW and the Constitutional amendment also provide I and R rights at the provincial and municipal levels, their abolition would also mean a blow to I and R at the local level, although it would increase the freedom of local governments to install their own I and R bylaws.

II. Regional Level

The same rules exist as at the national level, with the following exceptions. Referendums can be held on decisions of the provincial parliaments if they form a "generally binding regulation"; on provincial decisions to take part in private organizations; on changes to the name of the province; and on arrangements in which several provinces, municipalities or water authorities take part. Referendums cannot be held on decisions which serve to execute international treaties or decisions of international organizations (or laws which have this purpose); on subjects outside the competence of the province; or on zoning plans.

The provincial parliament can decide by bylaw that no referendum can be held on provincial taxes or on the salaries and compensations of politicians and officials. The Provincial Council acts on the same issues on the provincial level as the Administration does at the national level.

The signature quorum is 0.33 per cent of the electorate for the "initial request" and 5 per cent of the electorate for the "definitive request." The prime voting bureau of the province is responsible for checking the number of signatures and votes, and for determining the outcome of the vote.

Only the province of North Holland has had, since 1995, its own referendum bylaw, which provides a citizen-initiated rejective referendum with many excluded topics and a participation quorum of 50% of the turnout of the last provincial election.

III. Local Level

The same requirements exist as at the national level: the Council of Mayor and Aldermen act on issues where, at the national level, the Administration acts. The topics about which referendums can and cannot be held are the same as at the provincial level; furthermore, referendums can be held on readjustments of municipal borders when all municipalities involved agree on them. The municipal council can decide by bylaw that no referendums can be held on municipal taxes and salaries or on compensations of politicians and officials.

At the municipal level, the signature quorums of the "initial request" and "definitive request" are respectively:

a) in municipalities with fewer than 20,001 voters, 1 per cent of the voters (minimum of 50 and maximum of 125) and 10 per cent of the voters (minimum of 200 and maximum of 1250);

b) in municipalities with 20,001 to 40,000 voters, 0.7 per cent of the voters (maximum of 200) and 7 per cent of the voters (maximum of 2250);

c) in municipalities with 40,001 to 100,000 voters, 0.5 per cent of the voters (maximum of 300) and 6 per cent of the voters (maximum of 5000);

d) in municipalities with more than 100,000 voters, 0.33 per cent of the voters and 5 per cent of the voters.

The prime voting bureau of the municipality is responsible for checking the number of signatures and votes, and for determining the outcome of the vote.

Of 537 municipalities, at least 61 introduced their own referendum bylaws between 1990 and the beginning of 2001.

These remain valid for now, as stated above. Most allow a government-initiated and/or citizen-initiated "consultative" referendum: a non-binding rejective referendum on a government decision which is held before the government formally makes the decision. Currently, only two municipalities (Nijmegen and Oosterhout) allow the popular initiative.

Requirements vary with each municipality, but most have a participation quorum – often lower than that specified in the Temporary Referendum Law – and most exclude topics on the budget, politicians' salaries, "vulnerable groups" (asylum seekers, prostitutes etc.), and "urgent decisions." Some cities (e.g. Amsterdam, Amersfoort) also allow referendums at the city district level.

IV. Practical Guide

Additional rules are set in various executive documents. *A General Executive Measure* (*Tijdelijke Referendumbesluit*,

STB 2001 389) provides rules on many topics. *A Ministerial Arrangement* (*Tijdelijke Referendumregeling Modellen*, CW

2001/82245) sets, among other things, the form of a ballot question (the name of the law, followed by the options "for" and "against") and the form of signature-gathering petitions.

Several executive papers (*circulaires*) instruct municipal and provincial governments regarding the effects of the referendum process on their internal organization: CW 2001/82050 and 82554. There is *de facto* free signature-gathering for activists in the "definitive phase": they can obtain official forms from the municipal offices, copy them, ask citizens to sign, and send them in bulk back to the municipal offices. They cannot obtain forms from a provincial or national government.

There is no government support, financial or otherwise, for the citizen groups which request a referendum. The "referendum booklet," which is distributed to all

households, consists solely of a formal summary of the law or decision.

However, at the local level there is a tradition that governments subsidize the initiating citizen committees.

On the website www.referendumwet.nl, the Home Office keeps lists of laws on which a referendum can be held and information on all referendum rules and requirements.

The full text of all I and R legislation, including all executive papers, can be downloaded (in Dutch only) from the Referendum Platform's website www.referendumplatform.nl.

V. Trends

The Netherlands is one of only four countries worldwide that have never held a national referendum (cf. Butler and Ranney). Only at the municipal level have at least 101 rejective referendums been held from 1912 until December 2003.

Most of them were plebiscites.

Only in the 1990s were municipal bylaws adopted which gave rights to citizens to enforce (mostly rejective) referendums through a prescribed number of signatures; the first citizen-initiated referendum was held in 1995 in the city of Leiden. Of these 101 referendums, 51 were held on restructuring municipal borders, i.e. abolishing small municipalities.

Also popular were building plans (15 referendums), the reorganization of municipal government (11), and traffic and parking policy (6). Three referendums were held in the overseas territories on a change to their status within the Kingdom.

Because high participation quorums were often adopted many municipal referendums failed and many important subjects were excluded. The outcomes were not legally binding, This caused some cynicism among the political elite, which had falsely hoped that the widespread political malaise among the population would disappear once some referendums
had been held.

The debate about direct democracy dates from the end of the 19th century, when the Social Democratic League (since 1882) and the Social Democratic Workers Party (since 1895) demanded the introduction of "direct citizen lawmaking."

Since 1903, the Parliament has held seven debates on introducing the referendum or initiative, and five commissions have been set up to investigate I and R.

These efforts were generally blocked by the Christian democratic parties, which were at the centre of every government coalition from 1917 to 1994. In 1994, however, a coalition without the Christian democrats was formed with the pro-referendum party D66, which was able to make the inclusion of a binding rejective referendum part of their coalition agreement. Because of the binding outcome, a constitutional change (which needs a two-thirds majority) was deemed necessary.

Mainly because of resistance by the right-wing liberal coalition party VVD, the proposal was not far-reaching; nevertheless, during the final vote in the Senate in May 1999, a majority including one VVD senator voted against it. D66 caused a government crisis by angrily leaving the coalition. They returned after a promise by

the VVD leaders that they would present the constitutional change to Parliament again and would support a non-binding version of this proposal by ordinary law in the meantime. This became the Temporary Referendum Law.

Under the original plan, the constitutional change would be adopted by 2005. But the new rightist-populist government that was formed after the turbulent elections of May 2002, in which maverick politician Pim Fortuyn was murdered, announced their intention to break with the I and R policy of the last two "lilac" governments and abolish all citizen-initiated referendums: a move which caused some cynicism among commentators and the public because the new government pays lip service to "political renewal" and "giving the country back to the citizens." Instead of referendums, then, the government may only hold an occasional plebiscite.

The Dutch public supports I and R: 80% are in favor of "deciding directly on important issues, the so-called referendum"; 15% are against it, and 5% are undecided (SCP poll, 1998). A poll taken by NIPO in October 1995 found, however, that only 49% were in favor of the government proposal for a rejective referendum (10% were against and 40% undecided).

We know of only one poll on the difference between the referendum and the initiative, conducted among the Amsterdam population in 1992: if they had to choose between the rejective referendum and the initiative, 60% preferred the initiative, 20% the referendum, and 20% were undecided.

Most Dutch politicians are against I and R. The most "moderate" poll, a 1994 poll of the University of Leiden among local politicians, showed 36% in favor and 52% against the rejective referendum.

The debate centers very much on the rejective referendum; lately, however, interest in the initiative has grown. Currently, the parties which are in favor of the referendum?PvdA, D66, GroenLinks, and SP (the VVD, CDA, Christen-Unie and SGP are all opposed)?also moderately favor the initiative. Since the TRW leaves this area unregulated, a beginning could be made with the introduction of popular initiatives at the municipal and provincial levels. This would require the support of political parties.

At the same time, experience with the referendum can be gained through the TRW. Because of criticism of the high quorums, parliament will evaluate the practical effects of the TRW in 2004. Advocates of I and R hope this evaluation will lead to more democratic provisions in the constitutional amendment.

Main author: Arjen Nijeboer

Constitutional Requirements for Legislation

Chapter 8 (Revision of the Constitution):

Article 137:
(1) An Act of Parliament shall be passed stating that an amendment to the Constitution shall be considered in the form proposed.

(2) The Second Chamber may divide a Bill presented for this purpose into a number of separate Bills, either upon a proposal presented by or on behalf of the King or otherwise.

(3) The two Chambers of the Parliament shall be dissolved after the Act referred to in the first paragraph has been published.

(4) The newly elected Chambers shall consider the Bill, and it shall be passed only if at least two thirds of the votes cast are in favor.

(5) The Second Chamber may divide a Bill for the amendment of the Constitution into a number of separate Bills, either upon a proposal presented by or on behalf of the King or otherwise, if at least two thirds of the votes cast are in favor.

Article 138:
(1) Before Bills to amend the Constitution which have been given a second reading have been ratified by the King, provisions may be introduced by Act of Parliament whereby: (a) the proposals adopted and the unchanged provisions of the Constitution are adjusted to each other as required; (b) the division into chapters, sections, and articles and the headings and numbering thereof are modified.

(2) A Bill containing provisions as referred to under Paragraph (1)(a) shall be passed by the two Chambers only if at least two thirds of the votes cast are in favor.

Article 139: Amendments to the Constitution passed by the Parliament and ratified by the King shall enter into force immediately after they have been published.

Article 140: Existing Acts of Parliament and other regulations and decrees which are in conflict with an amendment to the Constitution shall remain in force until provisions are made in accordance with the Constitution.

Article 141: The text of the revised Constitution shall be published by Royal Decree in which the chapters, sections and articles may be renumbered and references to them altered accordingly.

Article 142: The Constitution may be brought into line with the Charter for the Kingdom of the Netherlands by Act of Parliament. Articles 139, 140 and 141 shall apply by analogy.

***THE NETHERLANDS**

Population: 16,000,000

Area: 41,526 km2

Capital: Amsterdam

Official languages: Dutch, Friesian (regional)

Religion: Roman Catholic (36%), Protestant (26%)

Political System: Parliamentary monarchy (since 1848), with the overseas territories of Dutch Antilles and Aruba.

Constitution: February 17, 1983 (without referendum)

Membership: EU, NATO

GNP/Capita: $227,190

Human Development Rank: 5

I and R practice: No practice at national level, six regional referendums in the Antilles (1994-2000), 100 local referendums since 1912.

Appendix

Abstract of a lecture given at the Direct Democracy Conference, London 2004, organised by Citizens' Initiative and Referendum I&R
http://www.iniref.org/conf.html

Report about direct democracy in action, Poland

Radoslaw Gawlik, Wroclaw, member of board Zieloni 2004, president of Ecological Association "Eko-Union".

I. History:

1. Country referenda during the times of the People's Republic of Poland:
   a. System referendum in 1946 (3 questions):
      - abolition of the Senate – for, 68%
      - consolidation of the agricultural reform and the nationalization of the economy – for, 77 %
      - moving the border to the rivers Odra and Nysa – for, 91 %

      Attendance 85 %

   b. referendum dealing with the reforms in 1987, Walesa calls for a boycott, two questions:
      - for the support of a radical economy reform – for 44%
      - for the support for Polish model of deep democratization of the political life – for 46 %

      Voter participation claimed to be 67% ?

2. In Poland after the peaceful revolution in 1989:
   a. enfranchisement referendum in 1996 – attendance 33 %
   b. constitutional referendum in 1997 – attendance 43 %, 53 % of whom supported the new constitution
   c. EU access referendum in 2003 – attendance 59 %, among which 77 % supported the EU access!

II Legislative regulations in today's Poland (the most important):

1. The constitution
(English version: http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm)
a. article 118, bill 2: legislative initiative of the citizens.
b. article 125 - country referendum

2. Bill on the execution of legislative power by the citizens
(http://www.sejm.gov.pl/prawo/inicjat.htm)
a. people's initiative
   - legislative – 100 thousand citizens' signatures, 3 months for the collection of signatures – the duty of the house of representatives to consider the initiative during a period of 3 months

3. (Ed.: the following sentence may be wrongly translated) Bill on the country referendum in 2003 – about 20 initiatives in the house of representatives from 1990 to 2003, there were 3 referenda.

III. Local referenda experiences:
rules: 10 % of the citizens must sign order for the results to be valid, there must be at least 30% attendance

Local referenda concerned the following issues:
1. self-taxation; locally-important issues, very often concerning the vetos of the mayor. (Ed.: presumably this means recall of an elected politician.)
2. administrative borders of counties, constituencies, states.