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GUIDEBOOK TO DIRECT DEMOCRACY

IN SWITZERLAND AND BEYOND

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No fair and decent globalisation without direct democracy

Foreword by Swiss President Doris Leuthard

Democracy is hard work – sweat and often uncomfortable confrontation. As former journalist Ulrich Kägi[1] noted, democracy lives in "the conflict of interests and opinions – but also in the wisdom to recognise the limitations of this conflict".

Democracy is never easy – especially in an increasingly globalised world, in which state borders become more and more porous, where commerce and trade are possible everywhere and the exchange of goods can be carried out at any time. Nowadays – with few exceptions – and thanks to the latest electronic communications technology, doubt, distrust and criticism of government decisions can be viewed and downloaded by anyone anywhere in the world round the clock.

The result is that Modern Direct Democracy as a necessary part of representative democracy is forced to engage more strongly than ever before in arguing its case – in convincing people of its merits – and in the perpetual search for compromise. In the 150 years of its history as a modern democracy, Switzerland has developed a form of direct democracy and federal participation in decision-making which is about much more than just the victory of a majority over a minority. It also has to be possible for majority decisions to be secured by minorities. Federalism is one of the ways in which minority rights can be institutionally secured. Democracy also serves in a complementary fashion to protect the majority from the dictates of a minority. The procedures are designed in such a way that the losers can also live with the outcome. In our country democracy is not the "rule of the politician" as defined by Joseph A. Schumpeter[2]. In Switzerland there is a direct trade-off and active participation in shaping policy between the political establishment and the voters via the right of initiative. Here the initiative and referendum process has become a direct political feedback loop.

[1] Ulrich Kägi 1924–1995: Wird Freiheit Luxus?, 1977, Walter-Verlag
[2] Joseph Schumpeter 1950: Kapitalismus, Sozialismus und Demokratie, Francke-Verlag

A reminder of this form of citizen participation and of the possibility of the concluding check through the popular vote on substantive issues is urgently needed as the world shrinks and barriers are dismantled. For globalisation to really benefit everyone, then multinationals and multilateral organisations also need a new input of democratisation. That doesn't mean that companies have to be run democratically from top to bottom, nor that new bodies are needed to regulate international trade, for example. But the economic and financial crisis has shown that the rights of shareholders and employees need to be strengthened. And the work of tackling the crisis and dealing with its after-effects today shows just how urgent is the need for democratically derived rules within a larger international framework so that the multilateral organisations can be strengthened. In order to deal with the great challenges of the 21st century – the demand for resource efficiency, the removal of the great economic disparities, the demographic adjustments – there is a need for a democratic multilateralism. It will not suffice for a group of heads of state to determine the pulse and pace of the world. In a globalised world, Modern Direct Democracy can create that connection with the citizens which can make the law serve humanity – even in the 21st century.

The new edition of the IRI Guidebook to Direct Democracy in Switzerland and Beyond offers you the basics (and much more) to become better informed about the options and limits of this challenging way ahead.

Doris Leuthard
President of the Swiss Confederation

Initiatives & Referendums

Making democracy more truly representative

Dear reader,

Never before have so many people been able to vote on so many substantive issues as during the first decade of the new millennium. Many issues were related to fundamental organisational principles of society, such as the popular vote on a new constitution in Turkey, the creation of two separate states in Sudan, or the preparations amending the voting system for electing representatives to the national parliament in the UK (replacing the old unfair FPTP system with an alternative vote (AV) system). In other cases, the citizens were acting within the framework of a well-established participative culture – as in the US state of Oregon, where voters agreed to raise taxes; or in Switzerland, where the proposal to introduce special animal protection lawyers was unable to secure the necessary majorities.

But it was not only that citizens around the globe were able to participate actively in politics. The preconditions for this participation also became the focus of many debates and work on implementation. In late 2010, the European Union introduced the first ever transnational direct-democratic instrument, the European Citizens' Initiative. This new tool went some way towards fulfilling the promise of the "Lisbon Treaty" – the Union's de facto constitution – to place direct and indirect agenda-setting and decision-making on an equal footing within representative democracy.

Across the globe, the call for the democratisation of democracy reached new horizons: as in the Philippines, where a new president, Benigno Aquino, promised to revive the stalled developments towards genuine people power, or in Hong Kong, where a by-election in May 2010 was seen as an informal referendum on "full democracy". In Iceland the voters had a say on an international debt plan and in Japan a referendum law for constitutional changes was introduced. From the local to the global level, the very idea of being a responsible world citizen produced proposals to hold a global popular vote on climate change.

Recent developments in direct democracy do not represent a new trend, but they do strongly reinforce an existing one. Since the millennium, more and more countries around the world have begun to use popular votes on substantive issues in addition to elections, and more and more people now have the possibility of exerting an influence on the political agenda by means of a right of initiative. Throughout the world, representative democracy is being reformed and modernised. Existing indirect decision-making structures are being revitalised and given greater legitimacy by the addition of direct-democratic procedures and practice. Things looked very different not so many years ago.

As recently as 1980, it was still a minority of the world's population (46% in 54 countries) which was living in societies which enjoyed the minimum democratic standard of the rule of law, basic human rights, a choice of political parties and free elections. A quarter of a century later, more than 130 states now satisfy these requirements. This means that more than 70% of the people in the world now live under conditions which are to a greater or lesser extent "democratic". This significant progress has created the foundation for the next major step: the democratisation of democracy.

A MUCH FINER DISTRIBUTION OF POWER

Direct democracy – the right of citizens to be directly involved in political decision-making – is a core element of this next step. Modern Direct Democracy implies a much finer distribution of power, making it not surprisingly just as controversial as the introduction of universal suffrage (voting rights for all men and women) once was. Those who oppose the extension of democracy often use arguments – such as that the citizens are not competent to make important political decisions, for example – which are in fundamental opposition to the democratic principle of popular sovereignty. After all, Modern Direct Democracy is a way in which representative democracy can become truly representative.

It is the goal of the Initiative and Referendum Institute, Europe's global think-tank on Modern Direct Democracy founded in 2001, to make a significant contribution to improving the knowledge of the history and practice of direct democracy – in the world in general, and especially in Europe.

That is why the IRI Guidebook to Direct Democracy focuses on the place where the tools which allow citizens to take part in political decision-making are the most extensive and have been used for the longest period of time – Switzerland. Over the past 150 years, citizens' rights have been continually extended and now cover all the levels of

political life (national, cantonal and local) and all areas of politics (including foreign policy).

The IRI Guidebook to Direct Democracy does not restrict itself to Switzerland, however, but places that country's rich experience within the European and global contexts, where the rights of political co-decision making are being extended to more and more people in more and more countries, going far beyond simply electing political parties and their representatives to include the possibility of influencing the political agenda by means of initiatives, and deciding important substantive issues through popular votes.

The IRI Guidebook to Direct Democracy offers a variety of entry-points into the subject: the twelve introductory essays present the major contexts and challenges; the many factsheets serve to deepen the factual and analytical basis on a selection of specific themes; and the concluding surveys contain further materials, facts and links on the institutions and the practice of direct democracy around the world. Finally, this Guidebook introduces the new General Typology of Modern Direct Democracy and the new online information and collaboration platform, the IRI Navigator to Modern Direct Democracy (www.iri-navigator.com).

A COMPLEMENT TO INDIRECT DEMOCRACY

Direct democracy, as a complement to indirect democracy, became established in Switzerland as early as in the 19th century and has been developed further since then. In hundreds of referendums over more than one hundred years, Swiss citizens have learned to make decisions on substantive political issues, whether at the national (federal) level, in the cantons or in the local municipalities. What does this mean in practice? What political tools are there for the citizens to use? How do they function? What are their direct and indirect effects? These and many other questions are answered in this book.

In Switzerland, direct democracy means that a popular vote process takes place either because a group of voters demands it, or because it is stipulated in the constitution. The government cannot call a popular vote on a substantive issue: direct democracy implies the existence and use of tools for the sharing of political power which are in the hands of the citizens and serve their interests; direct democracy cannot be controlled for party-political or other vested interests by the government or parliament. There is no plebiscite in Switzerland i.e. there is no popular vote procedure which is

initiated and executed at the exclusive discretion of the authorities, whether government, president or parliament.

There are three main procedures in Swiss direct democracy. Firstly, there is the obligatory referendum: if parliament wishes to add something to the constitution, or amend it, the constitution itself lays down that the draft amendment or supplement has to be approved (or rejected) in a national referendum vote. Secondly, there is the facultative, or optional, referendum: new laws or changes to laws, which have been passed by parliament, are subject to the facultative referendum, which means that they also have to receive final approval or rejection in a referendum vote – if 50,000 voters support a demand for this. Thirdly, there is the citizens' initiative: citizens have the right to make legislative proposals which must be decided in a referendum vote if the proposal gains the support of 100,000 voters.

This allows a part of the electorate to place before the whole electorate issues which parliament does not wish to deal with, or which have not even occurred to parliament. Officially validated citizens' initiatives (i.e. ones which satisfy all the statutory requirements) will proceed to the referendum vote if that is what the initiative sponsors want, regardless of the wishes of either government or parliament.

Thus direct democracy and popular votes are not the same thing: not all popular vote procedures are direct-democratic. A plebiscite has a quite different effect than a real referendum. Direct democracy empowers the citizens; plebiscites are tools for the exercise of power by those in power. Much misunderstanding and confusion could be avoided if direct-democratic and plebiscitary procedures were clearly distinguished from one another, and even had different names.

MODERN, EFFICIENT AND PEACEFUL

In our first essay we accompany a Swiss woman through a normal year of elections and referendums. This typical citizen has six elections and thirty referendums on her calendar. We gain an insight into the political life of a Swiss citizen and how she deals with direct democracy. The second essay portrays the course of a popular initiative (the "Disabled Initiative"), and a referendum (the "Army Reform Referendum"), the political processes connected with these, and their effects. Even though most citizens' initiative proposals are rejected in the referendum vote, they nonetheless have important effects. They can result in changes in society in line with the sponsors' aims, or they can block certain proposals, either temporarily or even permanently. It is a fundamental aspect of the principle of direct

democracy in Switzerland that the most important political decisions are made – or can be subsequently controlled – by the voters themselves.

The third essay deals with how direct democracy came into being in Switzerland, its sources, and the differences between modern and pre-modern democracy. There are continuities in the development of Swiss democracy, but Modern Direct Democracy did not emerge seamlessly and painlessly from the form of indirect democracy which came into being with the creation of the Swiss federal state after the French Revolution. The same difficulties presented themselves in the liberal Switzerland of 1848 as can be observed today in many states which claim the title of "democracy": the elected representatives fought – as they continue to fight today – against the introduction of a direct democracy which serves the interests of the citizens.

The Switzerland of 1848, formed from 25 small and tiny independent states, faced a very similar challenge as is faced today by the European Union, which now consists of 27 states. The 25 (now 26) cantons of Switzerland did not become a unitary state, but a federation in which the federal authorities have only as much power as is ceded to them by the citizens and the cantons. Switzerland had to find a way of taking proper account of both the democratic rights of the citizens and the interests and independent status of the cantons, especially of the smaller ones against the larger ones. The fourth essay describes the interplay of direct democracy and federalism and the attempt to find a solution to that challenge: where possible, decisions ought to be taken locally and by those who will be affected by them; only if absolutely necessary should they be taken at a "trans-local" level (canton or federation). In other words, decision-making should be as decentralised as possible, and as centralised only as is genuinely necessary.

Popular initiatives and referendums have a multitude of direct and indirect effects and serve a variety of purposes. They function as supplementary means of contact between civil society and the political system, through which both fears and hopes, resistance to change and the bringing forward of new ideas, interests and needs can be transmitted from civil society to the political system. One of the most important functions of citizens' initiatives is to place those needs, interests and problems on the political agenda which the authorities and political parties have either neglected or deliberately ignored. Direct democracy measures the pulse of society, acts as an early warning system and a mirror for society and ties politicians more closely to civil society. How that happens, what issues are dealt with, who are the players, with what success and what consequences – these are the themes of the fifth essay.

The sixth essay considers the effects of direct democracy on politics and the form of the state. The referendum has made a decisive contribution to the transformation of Swiss majority democracy into a consensus democracy. The right to force a referendum (by collecting signatures) on a law passed by parliament puts constant pressure on those in power to take into account the interests of as wide a spectrum of political forces as possible when they are making their decisions. At the same time, groups which are insufficiently integrated into society can use the tools of initiative and referendum to counter the lack of representation – provided that those groups have the necessary communication, organisational and campaigning skills.

The fact that the tools can be used at any time has an integrative effect, countering the danger that relationship conflicts between more and less powerful groups in society can degenerate into violence. The resolution of the conflict over the Jura region is an object lesson in how such conflicts can be resolved in modern societies through the tools of direct democracy.

In the seventh essay we move to the effects of direct democracy on the development of personality. The dominance of power by politicians in purely parliamentary democracies shapes the relationship between rulers and ruled, even to the very way they conceive of democracy. Direct democracy shatters that imbalance of power, with the result that the quality of the relationship between rulers and ruled is fundamentally altered. There is a corresponding alteration in the way both elected representatives and citizens see themselves – the image they have of their respective roles in political life. All in all, citizens' rights reinforce both the self-esteem and the political competence of the voters and counter feelings of alienation and powerlessness. That this kind of added-value can also accrue to the media is shown in our eighth essay. In a direct democracy, both media and authorities have to make a special effort to provide accurate and full information to the citizens and to enter into a continuing dialogue with them.

Recent research findings on the economic benefits of direct democracy have aroused considerable interest – and not a little astonishment. Conventional wisdom maintained that extensive rights of co-determination acted as a brake on innovation and economic growth. Empirical, comparative studies proved the exact opposite. Our ninth essay shows how the widespread use of direct-democratic procedures actually strengthens the economy, reduces tax avoidance and lowers the level of public debt.

In the three final essays, we show that the positive effects of direct demo-cracy which have been described earlier do not appear automatically, but are conditioned by numerous factors. One crucial factor – the design of direct democracy – is dealt with in essay ten. In order to function properly and fulfil its potential, including living up to public expectations, direct demo-cracy has to be well-designed and carefully implemented. Any attempt to make direct democracy toothless and ineffective, or a failure to make it as us-er-friendly as possible, is merely a continuation of the age-old battle against civil rights. The Swiss procedures – at all political levels – do especially well in international comparisons precisely because of their user- and citizen-friendliness. However, when a comparison is made of all those Swiss cantons with well-developed procedures of citizen involvement in decision-making, it is apparent that the frequency of use of those procedures depends on a host of other factors. While good design is a sine qua non of a properly functioning direct democracy, by itself it is not enough. Our eleventh essay shows that if the fundamental conditions for democracy – the rule of law; respect for the constitution, basic human rights and international law; the renunciation of the use of force; a democratic press and media; transparency of decision-making; openness to self-criticism; the commitment of all those involved to observe the principles of democracy – are not met, if the public and the political parties are not prepared to hold to the principle of demo-cracy, then direct-democratic procedures will not be able to function, no matter how well-designed they are.

The final essay looks beyond the borders of Switzerland to Europe and the World, where the next few years present the prospect of the most extensive use of direct-democratic tools to date – in the context of European integration and the global trend towards more participatory decision-making processes. In Europe, the new European Citizens' Initiative will politically mainstream a series of issues developed in this Guidebook. It will offer at least one million European citizens the right to propose a new law – thus giving to 0.2% of the EU electorate the same right which the directly-elected European Parliament has enjoyed since 1979. At the global level, the UN has launched a programme for the democratisation of democracy, looking especially into the options and limits of Modern Direct Democracy as outlined in this Guidebook.

Both in Europe and across the world, the newly established General Typology of Modern Direct Democracy, as well as the new online information and collaboration platform, the IRI Navigator, are about to become key tools for a truly transnational exchange of views and collaboration on democracy

development. However, it will need many more and much better-funded efforts to bring modern representative democracy forward.

One such effort is the Global Forum on Modern Direct Democracy process, launched back in 2008 by the Initiative and Referendum Institute in partnership with many international governmental and non-governmental organisations. This process has become the natural meeting and cooperation venue for experts and activists from across the globe. Three world conferences have been held so far: in Aarau/Switzerland (2008), Seoul/ Korea (2009) and San Francisco/USA (2010). The 4th Global Forum is proposed to be held in Montevideo/Uruguay in 2012.

The IRI Guidebook to Direct Democracy is available in nine languages. The contents represent the results of years of painstaking work on the part of the authors and editorial team. Many individuals and institutions have been involved, both directly and indirectly, in this work.

Dear reader, we hope that what we have brought together here will both inspire, assist and encourage you in your work and activities, and to think critically about the issues raised. We welcome your feedback and suggestions for forthcoming editions of our IRI Guidebook to Direct Democracy.

Bruno Kaufmann, Rolf Büchi and Nadja Braun
Marburg/Brussels, July 2010

1

The year of decisions

Astrid R. lives in Zurich. As a resident and voter of this city, Astrid took part in six elections and 30 referendums in a single year. For her, this is not too demanding. She is happy to shoulder the responsibility that direct democracy needs. Follow the annual political life of one woman in Switzerland's biggest city.

It is a real challenge and one which requires some preparation. On referendum day a citizen may decide on a variety of issues such as fair rents, affordable health insurance, four car-free days per year, equal rights for the disabled and non-nuclear electric power.

"We get two daily papers, I watch the news and political programmes on TV and I like listening to the car radio on my way to work. But what I find especially important are the discussions I have with my female friends and with Spyros, my husband. At home we talk about politics a lot and our political discussions have become much more intense since our daughter reached voting age."

On a Sunday in May, Astrid was able to vote on nine federal, one cantonal and two local issues. There were also elections for office holders in the church authorities. This was a particularly intense day of decisions, even for the election- and referendum-hardened Swiss.

In the press and from a number of commentators there was talk of too much being asked of the voters. It wasn't realistic, they said, to expect that the voters would be able to judge for themselves and decide on nine complex issues. Putting so many issues to a popular vote on the same day was only over-burdening an already demanding direct democracy.

Astrid doesn't share at all this scepticism about the voters' capabilities. "It's not a burden", she states emphatically, "it's living politics." There was just as little panic in evidence in the voting offices of the Swiss towns and municipalities on that Sunday in May; rather the mood was relaxed, with a confidence born of long experience that the vote counting would not cause any particular problems.

The results of the popular votes confirmed an established trend: all seven citizens' initiatives were rejected by a clear majority, both of the total voters and of the cantons. "A defeat for the political Left," agreed the papers the next day.

A NATION OF IDIOTS?

"Seven intelligent initiatives, seven resounding "Noes": why do the Swiss vote against their own interests?," asked Constantin Seibt from the left-wing "Wochenzeitung", clearly puzzled at the way citizens had voted. "The question is why a majority of people obstinately vote against proposals which would benefit them socially, and even against their down-to-earth selfish interests. Are Swiss voters simply idiots?"

If we were to follow Seibt's way of thinking, we would have to conclude that the Swiss are 1) politically incompetent, 2) bribable or easily manipulated by propaganda from financially powerful interests, 3) easily led, like sheep and, 4) they have always been like that:

Out of the total of 172 popular initiatives only 17 (up to 01.06.2010), and mainly symbolic and toothless ones, have been approved.

That brings us to one of the big challenges of Swiss direct democracy: isn't it annoying that the majority of voters repeatedly vote differently from the way they ought to vote – at least in the opinion of those who believe that they know better? Isn't it annoying that people want to and are able to decide for themselves what they are concerned about and what not? Fair rents, affordable health insurance, four car-free days per year, equal rights for the disabled, non-nuclear electric power, a renewal of the moratorium on building new nuclear power stations, a better choice of professional training for young people: the "Wochenzeitung" had recommended a "Yes" vote on all seven issues – and both the people and the cantons gave a resounding "No" to all seven.

Most Swiss voters support the "bourgeois" parties. They are cautious about change, especially if it costs money – and nearly everything costs money, as everyone knows. Not all the losers quarrelled with the verdicts on May 18th: "To put it simply, we on the Left ought to accept the defeats of last Sunday like a football team: we just weren't good enough in the second half", is how one Zurich city politician from the "alternative list" expressed it.

Astrid R. is very familiar with the sense of frustration which comes when the majority has once again voted against what she considered to be right. All Swiss citizens have experienced political defeat, everyone has been part of a minority many times: there is no majority position which can be predicted in advance. "People voted "No" to the popular initiative "equal rights for the disabled" because they didn't feel concerned, or because they thought it was going to cost too much money. That doesn't mean that the initiative was a waste of time. There has been a lot of debate, which made people more aware of the issue; something has been achieved."

HIGHLY VALUED CITIZENS

The 18th May was not the first test which politicians had had to face that year. The first elections and popular votes were on 9th February. As always, three to four weeks before the vote every citizen had received the appropriate official documents in the post. At the federal (national) level, the votes were about an extension of direct democracy and one other issue.

Astrid R.: "I think it's good in principle that we can vote. The government always makes its own recommendations, it talks to the people and tells them how they should vote – but what happens is, of course, what is decided in

the popular vote. The government has to bow to the people's decisions. So no-one can say that we citizens do not have a say in political decision-making. I don't feel overloaded by the fact that there are more and more popular votes; I don't think that there are too many. I can very well decide for myself whether I want to vote on a particular issue or not; no-one is standing with a gun to my head and telling me what to do. We can vote if we want to, if we feel that we ought to. That's why I think that here in Switzerland we are more down-to-earth about politics. Your opinion is really valued, you get the ballot paper and referendum booklet in an envelope with your name on it and you can decide what you think."

Her husband Spyros finds big differences between the political systems in Greece and Switzerland, even at the structural level: "Greece has only had a more or less functioning parliamentary system since 1974. So despite their ancient inheritance, the Greeks cannot look back on a long tradition of democracy. The political parties still play far too great a role in the political process. The state is still far too centralised and there are hardly any direct-democratic rights."

The referendum debate on the proposed reform of civil rights had not made waves. The very low turnout (29%) showed that citizens put a relatively low value on the importance of this reform. On the other hand, the clear "Yes" to the increase in citizens' rights – the introduction of a "general initiative" (which, however, later turned out to be too complicated to be implemented, cf. Factsheet 19) and an extension to the optional referendum on international treaties – showed how well-rooted direct democracy is in Switzerland.

On this occasion, only the most conscientious voters took part – such as Astrid R. and particularly Spyros, who always votes on principle ("If I believe in the democratic system, then I must exercise my democratic rights"). But the strong support for the increase in citizens' rights came from all social strata, and was especially marked in women voters and in voters from the rural areas.

In addition to the two federal proposals which went to referendum vote on 9th February, voters also had to decide on a number of other substantive issues at the local (City of Zurich) and cantonal (Canton of Zurich) levels. As so often, it was about the spending of public money. As a voter of the City of Zurich, Astrid was able to vote on a proposal to borrow money to upgrade the city's power station; as a voter of the canton of Zurich, she was being asked to vote on a cantonal subsidy to the Glattal railway. There were also Justices of the Peace to be elected.

"I only vote when I'm happy that I know enough about the issue and have made up my own mind on it. I listen to others, but I form my own opinion. I don't follow any particular party line, but I am, of course, influenced by what the parties say. If I haven't come to any clear view, then I don't go to vote – as with the Justices of the Peace, for example. I don't know the people, don't know if they're good or not, so I didn't vote," explains Astrid.

ELECTIONS IN THE CANTON...

April 6th was the day for the elections to the cantonal parliament ("Kantonsrat") and the cantonal government ("Regierungsrat"). They took place in a society and a party-political landscape which had changed a great deal since the end of the Cold War. On the centre-right of the political spectrum, the FDP (Radical Democratic Party) – which had traditionally been the dominant party – had been losing ground steadily since 1990, while the SVP (Swiss People's Party) – further to the right than the FDP – had previously been a rather small party, but had increased in strength to become what is today the largest party. On the left, the SP (Social Democratic Party), with particularly strong roots in Winterthur and Zurich, had succeeded in consolidating its position. While the SVP had been able to increase its number of seats in Zurich's city parliament (municipality council) and the cantonal parliament in successive elections, it had not been able to make a corresponding increase in its share of power in the city and cantonal governments. In the cantonal government, two of the seven members are from the SVP. In the city government ("Stadtrat"), the SVP is not represented at all. It had managed to gain extra seats on the city parliament the previous year, but in the elections for city government it had once again come away empty-handed. In the City of Zurich, the social-democratic SP, which regularly gets 35% of the votes, had effectively become the party of government. Since 1990, the direction of politics has been determined by a Left/Green majority in government and the FDP.

The May "mega-vote" was followed by what was, for Switzerland, an exceptionally hot summer. There was a break from politics and people enjoyed their holidays: a refreshing swim in a lake or a cold beer in the shade. But soon the political caravan resumed its progress: the election campaigns for the federal parliamentary elections in October started up. As the canton with the largest population, Zurich sends 34 members to the 200-member National Council. In the Council of States, by contrast, all 20 full cantons – big and small alike – are represented by two deputies each. The former six "half cantons" (Basle City, Basle Country, Obwalden, Nidwalden, Appenzell Outer-Rhodes and Appenzell Inner-Rhodes), have one representative each.

The National Council (the "Big Chamber") and the Council of States (the "Small Chamber") have the same status and rights and together form the federal parliament – the Federal Assembly.

...AND IN THE CONFEDERATION

At the parliamentary elections the developments which became visible already in the 1990s continued. Voter turnout at these elections had risen steadily over the preceding ten years. The results show that changes in society are transforming the party system in Switzerland too – national developments corresponded to developments in the canton of Zurich. The most significant changes in the distribution of power between the parties were not between Right and Left, but between the parties of the "bourgeois" majority, which, under the influence of the European question and the reawakened struggle for national identity, split into the centre-right FDP and CVP (Christian Democratic Party) and the nationalistically oriented right-wing SVP. The SVP became the most powerful party in the national parliament, which had a knock-on effect on the composition of the federal government's college of seven, elected in December 2003. For the first time in 131 years, one of the federal councillors was not confirmed, and the "magic formula" for deciding the distribution of seats in the federal government (2 FDP, 2 CVP, 2 SP, 1 SVP) which had stood since 1959 had to be changed.

Astrid R. followed these developments – the consequences of the October elections – with interest. She also had the opportunity to vote on nine more cantonal issues on 30th November: some of them non-controversial (such as the division of responsibilities between the canton and the local authorities) and others contested (such as a change in the relationship between church and state). Astrid R. is happy with her right to be involved in political decision-making – even if many issues are hard nuts to crack. But it's the same for almost everyone in this country at the heart of Europe, in which every year is a year of decisions.

RELATED INFORMATION [F=FACTSHEET, S=SURVEY, G=GLOSSARY]
F1 Election and referendum diary Canton of Zurich: 2003
F2 Cantonal popular (referendum) votes: 1970–2003
F11 Voting behaviour in initiatives & referendums
S   World Survey: The Global Participation Challenge
G   Glossary of direct-democracy terms

2

Citizens centre stage in politics

When the people put their collective foot on the accelerator — or on the brake — important decisions are made. Read about how initiatives and referendums are used in Switzerland, and understand what happens when citizens no longer play the bit parts, but take the lead role in the political drama.

Popular initiatives cannot be put to the vote from one day to the next. They are part of a longer-term process which it may take up to a decade to complete. At the beginning is usually an idea for radical change.

The two main pillars of direct democracy are the popular initiative and the referendum. The initiative is the more dynamic instrument. It allows a minority of the voters to place an issue of their own choosing on the political agenda and to have it decided by referendum. Eligible voters thus have the right to participate directly in legislation, regardless of whether the government or parliament likes it or not. At the federal level in Switzerland there is the constitutional initiative, and at the cantonal level the legislative initiative. 100,000 eligible voters can demand an amendment to or revision of the federal constitution. If the Federal Parliament rejects the initiative, the proposal is submitted to popular vote, unless the proposers withdraw their initiative.

POPULAR INITIATIVE "EQUAL RIGHTS FOR THE DISABLED"

Let us take one typical example: a few years ago (in May 2003), the Swiss electorate of just below five million was able to vote in the federal referendum on the popular initiative "Equal Rights for the Disabled," which was proposing the addition of a new article to the federal constitution:

"The law guarantees equal rights for disabled people. It provides for measures for removing and compensating for existing disadvantages. Access to buildings and other facilities and the use of institutions and services intended for the general public will be guaranteed, as long as the costs are within reasonable limits." (Art. 8 § 4)

Between August 1998 and June 1999, more than 120,000 signatures had been collected by no fewer than 35 organisations for the disabled. In the four years between the official submission of the initiative and the deciding referendum, the proposal had been debated by the Swiss government (the Federal Council) and by both chambers of the federal parliament (the Federal Assembly) – but had been rejected by both of these, primarily on economic grounds.

In its recommendation that the voters also reject the initiative proposal – included in the referendum booklet sent to all registered voters before the vote – the government argued that: "A right of direct access to buildings would have significant financial consequences for both the public and private spheres." The government also pointed out that the new law on the disabled, which was adopted almost unanimously by the parliament in December 2003, and which came into force on 1st January 2004, would remove the existing disadvantages.

The popular initiative "Equal Rights for the Disabled" didn't have the slightest chance of success in the referendum vote on 18th May 2003. On a turnout of exactly 50%, 62.3% of the voters (1,439,893) voted against the proposal, 37.7% (870,249) in favour. The free access for the disabled to all areas of public life, for which the initiative had campaigned, was approved by only 3 of the 26 cantons – Geneva (59%), Jura (54.9%) and Ticino (54%). For the initiative to have been accepted, a majority of the cantons would also have had to vote in favour and not merely a simple majority of the total electorate, as is prescribed in Switzerland for all constitutional amendments: the result was thus even further away from the goal the initiative had to reach.

As the example of the "Disabled Initiative" shows, popular initiatives cannot be put to the vote from one day to the next. They are part of a long-term process which may take up to a decade to complete. At the beginning is usually an idea for radical change – for example, redressing the inequality of opportunity of people with disabilities. At the provisional end of a long initiative process such as this, the usual result is a referendum defeat for the proposal (fewer than one out of ten initiatives is accepted). Yet in many cases, the parliament goes some way to meeting the initiative's aims with either a direct (where both proposals are voted on at the same time) or indirect (as in the case of the initiative on the disabled) counter-proposal.

"It's true – we lost today," admitted Mark Zumbühl, spokesman for the Pro Infirmis charity for the disabled, on Sunday evening, "but at the same time, we have also made progress through the political battle which we fought over months and years: the unsatisfactory state of affairs which currently faces disabled people in Switzerland has been brought to the attention of the wider public."

POPULAR REFERENDUM "ARMY XXI"
At the same time as the vote on the "Disabled Initiative" on 18th May, Swiss voters were also able to vote on a reform package relating to national defence. In October the year before, a large majority in parliament had approved an amendment to the law on the military, creating the foundations for the so-called "Army XXI" (21st-century army). Opposing the proposed reduction of the armed forces by a third, former professional soldiers used the facultative referendum option to demand a referendum on the amendment.

On 23rd January 2003, they submitted 64,196 valid signatures to the Federal Chancellery – the central administrative office for political rights in Berne. However, when the issue was voted on in the May 18th referendum, only 541,577 voters (24% of the total vote) shared the scepticism of those who opposed the reform. 76% of those who voted (1,718,452 voters) approved the law passed by parliament, and it came into force on January 1st 2004.

The popular initiative gives citizens the chance to step on the gas pedal to accelerate political development and to introduce reforms. It's just the other way round with the popular referendum. It serves as an instrument to control government and parliament, and gives citizens the chance to apply the brakes. It gives a minority of eligible voters the right to force a referendum on a decision passed by parliament.

In Switzerland, a minimum of 50,000 eligible voters have the right to demand a popular vote on a new federal law (facultative referendum). The referendum must be held, if the required number of signatures are collected within 100 days after the official announcement of the new law. The new law becomes effective if the majority of the votes were given in favour of it.

With regard to the facultative referendum it is worth mentioning that of the more than 2,200 laws passed by parliament since 1874, only 7% have been subjected to referendum. In other words, in 93% of cases the citizens thought that the legislative proposals of their parliament were good enough not to be opposed.

MORE DIRECT DEMOCRACY IN THE CANTONS

Ballots are usually divided between four Sundays a year. But in years with parliamentary elections, just three or even two Sundays are reserved for nationwide referendum votes. Back in 2003, the government (Federal Council) decided that all the proposals which were ready to be voted on should come forward on 18th May. That's why, in addition to the "Disabled Initiative" and the "Army Reform Referendum," there were no fewer than seven other proposals to be decided on (six popular initiatives and one referendum). And that wasn't all! The instruments of initiative and referendum are available to Swiss voters not only at the national (federal) level, but at the cantonal (regional) and municipal (local) levels too. And because each canton can choose its own way of allowing citizens to participate, there are even extra possibilities here: in addition to the constitutional initiative and the legislative referendum, all the cantons except Vaud also have the so-called finance referendum.

In the canton with the largest surface area, Graubünden, any non-recurring expenditure in excess of 10 million Swiss francs has to be approved by the voters in a ballot. Any expenditure from 1–10 million Swiss francs can be challenged by the voters in a optional referendum if they can gather at least 1,500 signatures (about 1.2% of the total cantonal electorate). Similarly, for recurrent new expenditure – an annual subsidy to an opera house or arts festival, for example – there is an obligatory finance referendum where the sum exceeds one million francs. Once again, 1,500 voters can choose to call a vote if the sum exceeds 300,000 Swiss francs for regularly recurrent new expenditure.

Another important instrument of direct democracy in the cantons is the obligatory legislative referendum, and in the municipalities the administrative referendum. Some cantons and municipalities have the referendum with a counter-proposal and in the canton of Zurich there is also the individual initiative. In addition, citizens in several cantons have the right of recall of the administration. In other words: the lower the political level, the more opportunities citizens have to be directly involved in decision-making.

VARIED UTILISATION OF DIRECT DEMOCRACY

This multiplicity of direct-democratic possibilities can occasionally lead to voting days with a large bundle of separate issues to be decided. On 18th May 2003, voters in the municipality of Freienbach by Lake Zurich (part of the canton of Schwyz) could write "Yes" or "No" (or leave it blank) on 23 different voting slips. As well as the nine federal issues, there were also three cantonal and three municipal issues – and eight applications for citizenship – to be decided on. The numbers of popular votes has increased significantly in recent decades: not only in Switzerland, but also across Europe and the world. There was an increase of around 35% in Switzerland and more than 100% in Europe between 1992 and 2007.

In the cantons and the municipalities of Switzerland, the number of popular votes has been stable at a high level in the last three decades. However, there are big differences between individual cantons and municipalities. For example, voters in the canton of Zurich were able to vote on no fewer than 475 separate issues between 1970 and 2003. Over the same period, only 64 cantonal issues came to the vote in the canton of Ticino. Municipal voting patterns reveal even more extreme differences. Between 1990 and 2000, 848 issues were voted on in the municipalities of the canton of Berne: right next door in the canton of Fribourg (Freiburg), only 4 issues came to the vote in the same ten years.

Despite the extraordinary degree of commonality in its forms – such as the universally practised popular initiative, popular referendum and obligatory referendum – the overall system of direct democracy in Switzerland reflects the considerable cultural, linguistic and institutional variety of the country. With a few exceptions, citizens' rights are more fully developed in the German-speaking cantons than in the French-speaking ones or the single Italian-speaking canton of Ticino. This has to do not least with the historical circumstance that the German-speaking cantons confer much greater autonomy on their municipalities than is the case in the other language areas.

Accessibility and openness of the instruments are decisive for their usability and important for the extent of their use. For example: if in canton A 1,000 signatures are required to validate an optional referendum, while in the similarly-sized canton B the requirement is for 10,000 signatures, then it is fair to assume that there will be more referendum votes in canton A than in canton B. Besides the signature quorums, the amount of time allowed for the collection of signatures also plays a significant role in the ease of use and frequency of initiatives and referendums. Overall, the trend in recent years in Switzerland is for an opening up of the rules of direct democracy i.e. for hurdles to be lowered.

THE CITIZENS AS THE MAIN ACTORS
In the past, a favourite spot for collecting signatures was outside the polling stations on voting days, because one could be sure of catching most of the politically active voters there within a few hours. Since the introduction of unrestricted postal voting in 1996, the number of those who still go to the polling station in person has steadily decreased: in some municipalities it is as low as 10%.

The example of postal voting shows how the conditions for the exercise of direct democracy in Switzerland are subject to change, a process which will undoubtedly continue – through the introduction of electronic voting and voting by SMS. On the one hand, such reforms can make public participation in referendum votes easier – as can be seen in the slightly higher average turnout figures since postal voting was introduced. On the other hand, however, voting from home creates new problems for a system in which direct personal contact and political dialogue between citizens continue to play a key role.

For regardless of whether citizens are pressing the reform accelerator by means of the popular initiative – or alternatively using the referendum to activate the emergency brake – by virtue of the tools of direct democracy, they take their place on the political stage alongside the organs of the state, such as the government and parliament. In contrast to almost every other country in the world, alterations to the constitution are decided upon by the people as the sovereign power: in these questions, the function of both government and parliament is to advise the citizens.

So when the Swiss voters said "No" to the "Disabled Initiative" and "Yes" to the reform of the army, they were not playing the bit parts, but the lead roles in the national political drama.

RELATED INFORMATION [F=FACTSHEET, G=GLOSSARY]
F6   Postal voting
F7   Electronic voting – the first real practice
F12 Popular initiatives, accepted by people and cantons
F16 The Army XXI referendum on 18 May, 2003
F17 The popular initiative "Equal rights for the disabled"
F18 Citizens' rights at the federal level in Switzerland
G   Glossary of direct-democracy terms
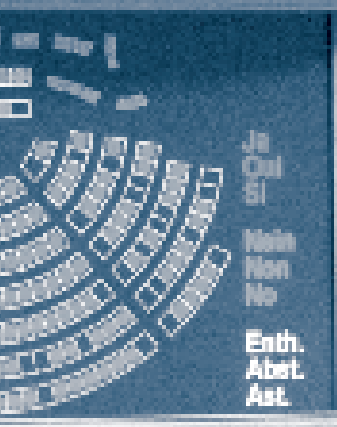
3

Back to the future

Modern Direct Democracy has had a profound impact on the character and history of the Swiss and of Switzerland. Nothing unites people more than knowing the fundamental value of their direct-democratic rights. Together, they can preserve the freedom of every citizen and foster peaceful coexistence in a multicultural state. Here is the story of a democratic revolution in Europe's heart.

The constitutional referendum found its way from France to Switzerland and later spread across Europe, and at present there is a struggle to implement it at the European level in the context of the approval of the new Reform Treaty for the European Union.

"The people are no longer willing to be governed from above; they demand their share in the making of laws and the exercise of power (…) they demand that self-government finally means what it says," wrote Florian Gengel, editor of the Berne newspaper "Der Bund," in August 1862.

In Switzerland, the liberal movement succeeded in achieving what it failed to achieve elsewhere: the creation of a nation-state and modern democracy. The half-century between 1798 and 1848 – full of conflict and occasionally descending into chaos – can be seen as a period of foundation. It began with the "Helvetic Republic," the shortlived attempt to transform the loose federation of states of the old confederation into a unitary state on the French model. Subsequently, the old order was partially restored in two stages (1803 Acts of Mediation; 1815 new federal treaty) and Switzerland was converted back into a conservative league of states.

However, economic and social development proceeded in a contrary direction to that of the Restoration. In 1830/31, there were democratic revolutions in twelve cantons; the old ruling order was replaced by modern, democratic institutions – though for the time being citizens still had no direct participation in law-making. All cantons, with the sole exception of the canton of Fribourg, approved their new constitutions in popular votes. These changes laid the foundations for the Swiss political and constitutional system which still exists today. The Swiss federal state of 1848 was born out of bitter struggles and civil war.

The 1848 federal constitution institutionalised a new state order on the model of the liberal-democratic cantons. It was designed from the start to be open to revision and already included the right of popular initiative for total revision of the constitution, in addition to the obligatory constitutional referendum. It created a framework for the bourgeois-liberal government and its modernising policies. At the same time, it can be seen as a declaration of intent: national democracy, the nation and the Swiss people, the nation-state and the federal state were at that time imagined goals rather than present reality.

There was dissatisfaction with the new democracy almost from the beginning, but opposition demands for greater participatory rights were at first resisted. It required a second democratic revolution before direct democracy could be added to representative democracy, against the resistance of the ruling liberal elite, and a new quality of democracy brought to the relationship between the rulers and the ruled. This second revolution was carried out by the Democratic Movement of the 1860s.

It defeated the ruling liberal elite and in the canton of Zurich made the decisive breakthrough to Modern Direct Democracy. The new constitution of 1869 in the canton of Zurich brought together a series of participatory rights (the constitutional and legislative initiatives, the obligatory legislative and constitutional referendums, the finance referendum), institutionalizing a degree of modern direct (though exclusively male) democracy which had never existed anywhere else before that time. It served as a model for the change in the political system from indirect to direct democracy in other cantons and in the federation.

The introduction of direct democracy – as with other changes, both before and after – took place first in the cantons and only later (and in a weaker form) in the federation. At the federal level, the facultative referendum was instituted in 1874. In 1891, the popular initiative was introduced. The referendum meant that constitutional development was placed on a different footing – with considerable consequences for the entire political system. From representative government and majoritarian democracy arose Swiss "referendum democracy" – a consociational democracy whose basic features continue to this day and which is accepted as legitimate by the citizens.

After 1891 direct democracy was further extended. The introduction (in 1918) of a proportional system for the election of the National Council made it possible for smaller groups to gain representation in parliament. The referendum on international treaties (introduced in 1921, extended in 1977 and 2003) allowed citizens to be involved in decisions on foreign policy. The creation of the so-called "resolutive" referendum in 1949 restricted the ability of the Federal Assembly to protect decisions from exposure to referendum by declaring them to be "emergency measures" (in the 1930s the government had used the emergency clause to systematically avoid referendums). In every case, these innovations were introduced through a national citizens' initiative – proof that direct democracy can use the initiative right to extend (or also restrict) itself.

POPULAR SOVEREIGNTY DISPUTED

The Liberals agreed in principle that sovereignty resides in the people, but after 1830 disagreements over how the principle was to be embodied in the institutions of state produced a split between liberal and radical democrats. For the liberal establishment, popular sovereignty was in practice limited to an elective democracy in which the representatives exercised political power on behalf of the people. It rejected a direct participation of the citizens in legislation. This view was reflected in the first democratic cantonal

constitutions and in the 1848 federal constitution. Article 1 of the Zurich constitution of 1831 illustrates this: "Sovereignty resides in the people as a whole. It is exercised in accordance with the constitution by the Great Council as the representative of the people."

The ruling liberals justified their model of democracy on the grounds of the political immaturity and incompetence of the common citizen. In their view a person without property and education was not capable of making political decisions based on sound reason and an understanding of the common good. They were afraid that incompetent citizens would make the wrong decisions and endanger progress.

For the radical democrats who opposed them, by contrast, popular sovereignty did not mean that citizens should hand over their sovereignty to their elected representatives, but, quite the contrary, that they should have the last word in the legislative process. It was on this fundamental principle that the radical democrats based their opposition and demanded the appropriate extension of popular rights.

For the radical democrats, the model of indirect democracy simply did not live up to its claim to represent reason and the common good in the best possible way, but rather served to create and extend a new order of privilege for the rich and well-educated, which disadvantaged and even excluded large sections of the population. In the radicals' view, a purely representative system of government primarily served the vested interests of the liberal establishment, and to change this situation required that the citizens be given more political power.

THE DEMOCRATIC MOVEMENT FORCES A CHANGE IN THE SYSTEM

It took quite a long time before early criticism of the existing ruling order finally coalesced, with the Democratic Movement, into a critique of the "system." The opposition in the constitutional debates of 1830–31 and the popular movements of 1839–41 had demanded the right of veto. The veto can be seen as an institutional precursor of the referendum. It had been institutionalized for the very first time as early as 1831 in the canton of St. Gallen, as a concession to protesting farmers and as a means of blocking more wide-ranging demands for participation by the democrats. As an instrument of democracy, however, the veto was hardly user-friendly and presented no threat to the liberal parliamentary democracy; the democratic opposition was still too weak for that. The situation did not change until the 1860s, when the general public had finally become convinced that a just society was impossible without a move to "pure democracy" i.e. through the addition of direct

democracy to the existing indirect, representative form of democracy. It now became possible for the Democratic Movement to secure direct democracy.

The Democratic Movement drew its power from the dissatisfaction of large sections of the population with the existing political, social and economic conditions. It accused the government of furthering the interests of the rich instead of the general good. It complained that powerful financial and commercial interests were having a deleterious effect on politics. It demanded direct democracy as a remedy, not solely in order to have greater control over the government, but in order to create greater social and economic equality: "The upwardly striving plutocracy can now be held in check only by shifting the centre of gravity of the legislative process further out, to encompass the entire people; for a few hundred cantonal councillors, i.e. representative democracy, are not powerful enough to resist corruption." With these words, Karl Bürkli expressed the feelings of the whole Democratic Movement.

As with other political changes both before and after, the change of the political system to "pure democracy" was described and legitimated, not as a break with the past, but as the continuation of an ancient tradition of freedom. It was easier to accept something new that came in the guise of venerable tradition. There was, nonetheless, an awareness of the historic importance of the event, as the following quotation from Friedrich Albert Lange reveals: "The 18th April 1869 has given the canton of Zurich a constitution which must be considered as one of the most significant phenomena in the field of recent institutions of state. It is, in short, the first consistent attempt to implement the idea of pure popular rule in a form which is appropriate to the modern cultural conditions, and to replace the venerable, but cumbersome, "Landsgemeinde" (the annual, sovereign assembly of all male citizens who had the right to vote), which is suited only to small-scale situations, by an institution whose cornerstone is the ballot vote in the local municipalities."

The second democratic revolution – like the first one of 1830-1831 – was largely free of violence. Government and opposition continued to speak to one another. Thousands of citizens came together in "Landsgemeinden" (traditional popular assemblies), putting pressure on those in power by presenting similar lists of demands, and forced through a fundamental change in the system of democracy – clearly expressed in the first article of the new cantonal constitution: "The power of the state resides in the people as a whole. It is exercised directly by those citizens who are entitled to vote, and indirectly by the authorities and the officials." Using modern terminology, it could be described as a victory of those who are victims of modernisation against those who stand to gain from modernisation.

Today, more than 130 years later, direct democracy has become more topical and relevant than ever, not only at the local and national levels, but also – and that is something fundamentally new – at the level of the European Union.

The experience and the ideas of the American and (to an even greater extent) French Revolutions represented vital sources of inspiration for the development of Swiss direct democracy. French revolutionary law contained many of the direct-democratic instruments which would subsequently be adopted in Switzerland and was carefully studied there.

French ideas on direct democracy had a strong influence on the democratisation of Switzerland, even if this was not openly admitted at the time. However, those ideas were never implemented in France itself, where a plebiscitarian tradition developed which serves the interests of those in power. There was one exception: the constitutional referendum, an import from North America, was there to stay. It found its way from France to Switzerland and later spread across Europe, and at present there is a struggle to implement it at the European level in the context of the approval of the Reform Treaty for the European Union. There is a growing conviction that a constitution which has not been explicitly approved by the citizens is simply undemocratic.

The process of introducing Modern Direct Democracy was also inspired by the experience of pre-modern forms of democracy. The Swiss cantons were bound together by a strongly rooted republican tradition, which set them apart from their monarchical neighbours. There was a living culture of the popular assembly democracy ("Landsgemeindedemokratie") and the federal referendum which went back to the Middle Ages. When the old confederation collapsed, many saw their "home-made" assembly democracy as a more attractive form of democracy and a more secure guarantee of freedom than French-style indirect democracy. This is clearly evidenced by the short-lived "Landsgemeindefrühling" (the "Assembly Democracy Spring") of 1798, as also by the fact that it was only the inhabitants of cantons where the popular assembly was practised (Glarus, Schwyz and Nidwalden) who offered fierce resistance when the troops of the French revolutionary army entered the country.

People were familiar with and trusted their own form of popular assembly democracy. Even more importantly, a shift from the traditional popular assembly ("Landsgemeinde") to a modern representative system meant a loss both of rights of political participation and of material advantages. Both considerations contributed to making popular assembly democracy more attractive.

Social movements repeatedly and consciously hark back to the tradition of assembly democracy and organise their public protests in the form of a "Landsgemeinde". For example, on 22nd November 1830, the liberals organised a popular assembly in Uster to campaign for "the restoration of lost rights of the People" and on 13th December 1867 the Democratic Movement held popular assemblies in Uster, Bülach, Winterthur and Zurich. The Uster assembly of 1830 is still commemorated every year.

CONTINUITY AND RUPTURE

Modern Direct Democracy can be understood as a mixture of completely new ideas and institutions with an old tradition of participation. What is entirely new is the way in which modern democracy has been thought of since the American and French Revolutions. Democracy and freedom are no longer presented as the historic privilege of a particular group which had its origin in the resistance to an unjust tyranny (William Tell) – but as a natural right of every individual. The ideal of modern democracy – that all people should be free and equal – is irreconcilable with any situation in which some are subject to the will of others. The pre-modern form of democracy, which was seen as a group privilege, did not exclude the possibility of oppressing others, something which was quite common in the old confederation.

What is quite old is the conviction that a citizen's freedom depends on his or her ability and desire to participate in political decision-making. It is one of the central ideas of republicanism and corresponds to the practice of popular assembly democracy. Unlike the purely parliamentarian democracy, Modern Direct Democracy continues this centuries-old tradition of the pre-modern democracy. It does so this with the new instruments of the initiative and the referendum.

RELATED INFORMATION [F=FACTSHEET, G=GLOSSARY]
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F9 Constitutional extracts from 1798, 1848, 1874 and 1999
F10 On the development of direct democracy at the level of the Swiss federal state
F25 The expectations of the Swiss direct democracy movement in the 19th century
F30 Defining Modern Direct Democracy
G   Glossary of direct-democracy terms

4

As centralised as necessary, as decentralised as possible

In a democracy, every vote has the same value. In the Swiss federal system, each canton's vote has the same value. Taken together, these two facts mean that in the smaller cantons the citizens' votes have greater weight. Look at the long battle over the protection of water resources. This shows the interplay between federalism and direct democracy, and that differences of opinion do not have to divide people: on the contrary.

Compared with other European countries, Switzerland is seen as having particularly progressive legislation on water protection — thanks not least to the legislative process set in train by the popular initiative.

On 17th May 1992, Swiss voters were able to vote on seven federal proposals. For example, they voted in favour of Swiss accession to the "Bretton Woods" international financial institutions (World Bank and IMF) and supported the introduction of a civil alternative to compulsory military service. They also had to decide on a popular initiative launched by environmental groups to "Save our Water Resources", and on the revised law on the protection of the same, which had been passed by the government and parliament, but was being opposed by the owners of small electricity generating stations, who were using the facultative referendum option to challenge the new law.

Water is an extremely precious resource – one of the most important resources for humans, animals and plants. Formal protection of water sources had been written into the federal constitution in 1953 and had come under statutory federal regulation two years later in the form of a federal law. In 1975, Art. 24bis created the constitutional basis for the conservation of water stocks and especially for ensuring that there were adequate water reserves in Switzerland. This article (Art. 76 in the new Swiss constitution) requires that all the various – and often competing – interests in a specific water resource (river, lake) be taken into account.

The Swiss federal constitution permits the central organs of the state (such as the government and parliament) to issue general guidelines, but leaves it to the 26 individual cantons to decide on their own specific legal provisions – thus giving them considerable power to determine the way they wish to handle matters. The Federation principally takes on those tasks which require uniformity of provision. The rest is within the power of the cantons themselves. Put another way: Swiss government is (only) as centralised as is necessary – and as decentralised as is possible. The decisive distinction between the Swiss concept of federalism and the so-called "principle of subsidiarity" in the European Union is that in Switzerland the central state power can only impose as a uniform rule what has previously been approved by a majority of the citizens and of the cantons in an obligatory constitutional referendum.

It is especially true in the case of water usage that the cantons – many of which have their own hydro-electric power stations – have a considerable interest in keeping restrictions to a minimum. It is this background – of the clash of interests between those who want to protect water resources and those who want to exploit them, and between the powers of the Federation and those of the cantons – which makes the history of the "Save our Water Resources" popular initiative and the controversial revision of the law on

protection of water such an instructive lesson on federalism and direct democracy. The main actors in the drama come from the environmental and water conservation camp on the one hand, and from the water users – in this instance the owners of the small hydro-power stations – on the other. In addition, the interests of the mountain cantons in particular also played an important role.

The environmentalists launched their "Save Our Water Resources" initiative in the summer of 1983. The initiative committee included representatives of nine national environmental and commercial fishing organisations. Within 18 months, they had collected sufficient signatures to proceed: the initiative was formally presented with 176,887 supporting signatures on 9th October 1984 (the rules require a minimum of 100,000 signatures to be gathered within 18 months).

WHAT IS THE DIVISION OF POWERS BETWEEN FEDERATION AND CANTONS?

In the case of the "Save Our Water Resources" initiative, the initiative committee had produced a detailed draft law which was to add an Art. 24 to the federal constitution. The government responded in April 1987, recommending that the initiative be rejected. Although it viewed the goals of the initiative as fundamentally right in principle, it found that the exclusive focus on protection – with its considerable economic repercussions – meant that other important interests, especially those of water users, were given insufficient weight. The government presented proposals for a revision of the law on the protection of water resources as an indirect counter-proposal to the initiative. To a large extent, the revised law simply provided general guidelines and left it to the cantons to work out their own detailed legislative measures. The government's draft law was then debated in both chambers of the Swiss Parliament.

Parliament did not find it at all easy to deal with the initiative and the proposed new law. Both chambers extended the period of evaluation of the initiative by a year, in order to allow time to first debate the revision of the existing law on water protection which was to be presented as an indirect counter-proposal. It was the intention to take some of the initiative's concerns into account in drafting the amended law. The new (revised) law on the protection of water resources was passed by the Council of States, as the first of the two chambers, in October 1988.

The Council of States, with 46 members, is the smaller of the two chambers and represents the cantons. Twenty of the cantons – regardless of how big or small they are (as big as Zurich, with more than 1.2 million inhabitants;

or as small as Uri, with only 35,000) – have exactly the same number of representatives (two each), while for historical reasons six cantons (Basle City, Basle Country, Obwalden, Nidwalden, Appenzell Outer-Rhodes and Appenzell Inner-Rhodes) have one representative each. This is a "federal-istic" way of supplementing the basic principle of "one man, one vote" and the simple majority rule in favour of the smaller units.

The larger chamber – the National Council – has 200 members and represents "the People" i.e. Swiss citizens in general. Here, the most highly populated canton, Zurich, has 34 representatives and the least populated, Uri, only one. Both chambers have identical powers and responsibilities and normally handle parliamentary business (federal laws, budgetary decrees, conclusion of international treaties etc.) separately. A parliamentary decree or statute is valid only if both chambers have approved it.

In the case in question, there was disagreement over the real heart of the matter – changes to the law on water reserves. A proposal by representatives of the mountain cantons to abolish the Federation's right to prescribe minimum reserve levels and to delegate regulation of the restrictions on water usage to the cantonal authorities failed to win sufficient support and the Council of States ultimately approved the government's plans. However, the prescriptions on minimum quantities of water reserves were reduced to mere guidelines. Two proposals for compensatory payments (known as the "Landschaftrappen" – the "Countryside Penny"), in cases where a municipality was prepared voluntarily to refrain from exploiting water power in the interests of the environment, were viewed favourably by all parties. However, the Council of States decided not to make a decision on this matter at the time. In the 1989 summer session of parliament, the National Council attached significant amendments: the "Landschaftsrappen" should be used to compensate mountainous areas which refrained from exploiting hydroelectric power on environmental grounds.

SEEKING THE MIDDLE WAY

At the second reading of the law on protection of water in December 1989, the Council of States voted by a majority to stand by its earlier decisions. The "Landschaftsrappen" – even in a watered-down form – was once again rejected. In March 1990, the National Council stuck to its guns as regards the central issues of the minimum reserve quantity and the retention of the Landschaftsrappen. After further significant differences of opinion between the two Councils had been expressed in a third reading, a breakthrough was finally achieved in November 1990 at the fourth reading of the law in the Council of States, which abandoned its opposition to the inclusion

of hard-and-fast water reserve prescriptions in the water protection law. In addition, it now expressed support for compensatory payments from the Federation to those municipalities which refrained from exploiting water for power on environmental grounds. As a response to the Council of States' compromise, the National Council dropped the last major stumbling block – the proposal for the "Landschaftsrappen". After more than two years of negotiations, the two Councils were finally able to agree on the wording of the amendment of the water protection law – thereby creating the indirect counter-proposal to the original initiative.

In the view of the initiative committee, however, this counter-proposal simply did not go far enough: they therefore decided not to use the option of withdrawing their original proposal. At the other end of the spectrum of interests, the ISKB (the association of owners of small power stations) viewed the proposed amendments to the law as going too far – in particular in relation to the fixing of minimum water reserves – and availed themselves of the option of the facultative (optional) legislative referendum. The power station owners claimed that if the law were to be implemented, most of the power stations producing less than 300 KW would have to close down. This kind of referendum is directly connected to representative democracy, because the referendum vote is on decisions which have been reached by parliament, and which have to be either approved or rejected.

This political battle – lasting for over a decade – on the protection of water shows just how difficult it can be to reconcile such conflicting interests as those of the environmentalists, the cantons and the commercial users. In this instance, reconciliation proved so difficult that when the issue finally came to the decisive vote on 17th May 1992, there were two parallel ballots on the same subject. The popular initiative "Save our Water Resources" failed to win a majority of the votes in any of the cantons and was rejected by 62.9% of the voters overall. For it to have been accepted would have required a double majority of both cantons and registered voters. By contrast, the ballot on the amendment to the water protection law had it comparatively easy: a simple majority of the total vote was all that was required, and the new law was passed by a clear majority of just over 66% of the voters. It came into force on 1st January 1993. As a consequence, the cantons had to adjust their regulations to the new guidelines. Compared with other European countries, Switzerland is seen as having particularly progressive legislation on water protection – thanks not least to the legislative process set in train by the popular initiative. On the other hand, the cantons are still having difficulties implementing the provisions of the new legislation. Commercial interests often carry more weight than environmental considerations.

Although the individual cantons play a very strong role within the Swiss Confederation, no canton has a right of veto over decisions made collectively – as is quite common in the EU. The consensus rule was abandoned as long ago as 1848, when the modern state of Switzerland came into being: 15½ cantons approved the new constitution, 6½ rejected it. Despite this, the constitutional assembly of the time – the Diète – decided to implement the new federal constitution, thus replacing the principle of uniformity by that of the double majority for constitutional referendums.

The principle of dual legitimacy (people and cantons) was retained during the subsequent development of the instruments of direct democracy. The first total revision of the federal constitution in 1874 introduced both the so-called popular referendum for federal laws, and also the cantonal referendum. Whereas the popular referendum requires the collecting of at least 50,000 signatures within 100 days of the official announcement of a new law, the cantonal referendum requires the signatures of at least eight cantonal governments.

It was to be more than a century, however, before the first canton actually submitted a cantonal referendum, in 1981. The canton of Ticino was opposed to a planned change in penal law. Of all the cantons it approached to support its opposition, it received a response from only one: but the parliament of Basle City missed the deadline for a legally effective response.

Another 22 years were to pass before the instrument would finally be used. The first cantonal referendum to satisfy all the criteria and actually go ahead was against the package of tax measures approved by parliament in summer 2003, which would have produced losses in cantonal income of about 510 million Swiss francs. The finance minister of the canton of Vaud, Pascal Broulis – one of the spokespersons of the group of cantons opposed to the plans – declared: "If the Federation wants to lower its own taxes, that's its own business; but if the Federation wants to lower the cantonal taxes, that's something else altogether – a first in the history of the Confederation." But before that there was a different kind of premiere: by the end of September 2003, no fewer than 11 cantons had signed the referendum: Basle City, Berne, Glarus, Graubünden, Jura, Obwalden, Schaffhausen, Solothurn, St. Gallen, Valais and Vaud. On 16th May 2004 more than two thirds of the participating voters (67.2%) turned down the tax package proposal.

PROTECTING MINORITIES, PROMOTING COMPROMISE

Decisive for the practice of Swiss federalism is the way that the decisions taken by government and parliament at various levels are pegged back to the democratic principle. Thanks to the tools of direct democracy, in the most important cases it is the citizens who have the last word. This helps to promote greater respect for the citizens among the organs of the state and the elected politicians. At the same time, the processes of direct democracy are embedded in a national political system which protects minorities, promotes compromise and fosters collective learning processes.

The example of the conflict over the protection of water resources shows clearly that differences of opinion do not have to divide people. On the contrary: a society which is always prepared to reconsider and debate even what everyone seems to agree on will always be able to integrate opposing views and reach agreements on what needs to be done for the immediate future – at least on a provisional basis. The institutions and procedures which make this possible in Switzerland are federalism and direct democracy.

RELATED INFORMATION [F=FACTSHEET, G=GLOSSARY]
F4   How the cantons can influence the writing of a new law
F5   Five stages in the genesis of a new law
F23 The law on the protection of water resources (1983–92)
G   Glossary of direct-democracy terms

5

The land of the contented losers

Direct democracy reveals where in society the shoe pinches. Although the government wins most referendums on the national level, the authorities have a harder time of it in the cantons, and even more so in the municipalities. And yet, take note, the system produces on the whole contented losers.

Direct democracy is far less a disrupting element in politics than it is a way of enlivening it and keeping it on its toes. Much more is expected of all parts of society than in a purely parliamentary system.

It's late afternoon on the Sunday of a national referendum day. Happy faces all around. Representatives of the government are holding a press conference to explain the reasons why the vote went their way. "This is a victory for the Centre", say the Justice Minister and the Economy Minister, both from the Christian Democratic Party at this time, after the voters had accepted – by a clear two to one majority – both a reform of citizens' rights and a hospital finance bill. Three months later, the voters' support for the government's recommendations was even more striking: they rejected no fewer than seven of the popular initiatives coming from the Left-Green camp, while approving the proposed reform of security policy. Not only that: as Pascal Couchepin, Federal President for that year, noted: "The above-average high turnout shows that citizens do not feel over-burdened." What also pleased the Liberal Couchepin was the fact that the voting figures for the nine ballots were almost identical across the cantons.

There was no trace of pleasure, let alone schadenfreude, at the ballot debacle of their political opponents in the comments of the government representatives. After the clear rejection of the two nuclear power initiatives – the one aimed at extending the moratorium on the building of new nuclear power stations by a further ten years, the other demanding a change in energy policy and the progressive decommissioning of all the existing nuclear stations – Energy Minister Moritz Leuenberger pointed out that the "No" vote on the two initiatives should really be seen as a "Yes" vote on the government's indirect counter-proposals. The new law on nuclear power would offer more public involvement in decisions on new nuclear power stations and a halt to the reprocessing of fuel rods. Justice Minister Ruth Metzler argued along the same lines in respect of the "No" vote on the "Disabled Initiative": the rejection of the initiative should not be seen as a rejection of the concerns of disabled people. She praised the "losers", saying: "You achieved a lot with your initiative," and drew attention to the new law on the disabled which had the same aim of bringing about equality of treatment – only not quite so comprehensively or expensively.

After so much praise and encouragement from the government, even those on the losing side – a few at first, then in increasing numbers – expressed their satisfaction with the results. "The government now has a good basis for instituting a car-free Sunday," said Rahel Häsler, co-president of the Sunday Initiative, whose demand for four car-free Sundays per year had been supported by 37.6% of the voters. Adrian Schmid, director of traffic policies at the Swiss Verkehrsclub – a trans-

port association committed to environmentally-friendly principles – reinforced this view: "Parliament must now accept the electorate's desire for more public space free from private motor traffic."

DIRECT DEMOCRACY IS NOT A DISTURBING ELEMENT

Although nine out of ten citizens' initiatives fail at the ballot box, new initiatives are constantly being launched. This stirs up the daily round of politics, challenging the majority consensus and stimulating public debate. Initiative sponsors know from experience that they can achieve an effect, even if their proposal is ultimately defeated in the referendum. Citizens' initiatives are not zero-sum games in which one side gets everything and the other nothing. Opinion polls show that 9 out of 10 Swiss citizens are not prepared to have their statutory direct-democratic rights to participate in decision-making curtailed in any way.

If a party backs the "wrong" side in an initiative and "loses" the referendum, that doesn't affect their chances of being elected. In fact, those who win elections have frequently been on the losing side in important referendums. Losing a referendum seems to give political parties a clear profile which fixes them in the mind of the voters.

The truth is that direct democracy in Switzerland is not a disrupting element in politics: rather it is a way of enlivening it and keeping it on its toes. Much more is expected of all parts of society than in a purely parliamentary system: the authorities cannot count on a general background level of popular support between elections, but have to be able to get majorities on a number of specific substantive issues. This increases the pressure on government and parliament to provide information and explain their policies. Regular popular ballots on specific issues promote a political culture which is characterised by participation.

This in turn leads to an increased level of interest in politics – including in the media – and to greater levels of political awareness and competence among the general public. When citizens involve themselves with legislation or amendments to the constitution, they increase their knowledge of the law. Ultimately, direct democracy increases the legitimacy of political decision-making. The possibility of launching initiatives and referendums and forcing votes on real issues also serves as a kind of mirror to society, giving it a sense of itself and revealing where the shoe pinches.

One thing which becomes clear from a longer-term historical perspective is that at times of greater economic difficulty (for example between the two World Wars and at the end of the 20th century), issues of social policy and immigration quite frequently feature as the subject of popular initiatives. Votes on the form of the state and the shape of democracy have been a regular part of the calendar, as have policies on national security and issues relating to the family.

Over the last three decades, an increasing number of initiatives have concerned environmental and traffic policy issues and it was in these areas that popular initiatives have been able to record their most significant direct successes. Recent examples include the initiative for the protection of the upland moors (primarily directed against the creation of a military training area near Rothenturm in the canton of Schwyz) which in 1987 won majorities of both the voters and the cantons. Seven years later, double majorities were again recorded for the so-called "Alpine Initiative", which made it a constitutional stipulation that goods transit traffic through Switzerland would be transferred completely to the more environmentally-friendly rail by 2010 at the latest. On the other hand, other environmental and traffic initiatives, as well as proposals to reduce the number of foreigners or tighten asylum policy, were rejected. The evidence is that even those issues which are of considerable concern and which might be expected to command majorities often attract only minority support at the ballot box due to the particular (often very radical) solutions being proposed.

**FEDERAL AUTHORITIES WIN MOST
OF THE CITIZENS' INITIATIVE REFERENDUMS**

565 popular votes were held on the federal level from 1848 to 01.06.2010: 172 popular initiatives, 194 obligatory referendums, 164 popular referendums and 35 counter proposals of the parliament. If one considers the whole period from 1848 to 01.06.2010 and compares it with the period from 1990 to 01.06.2010 the following picture arises: Out of 172 popular initiatives only 17 (10%) were approved. From 1990 to 01.06.2010 only 6 out of 72 popular initiatives (8%) were approved. Among them was the initiative "For Switzerland's membership of the United Nations", which was supported by government and parliament. In addition to the citizens' initiatives, any amendment to the constitution proposed by the government or parliament must be put to referendum. Of the 194 obligatory referendums held so far, 147 were approved by the voters and by a majority of the cantons. Thus the voters agreed with the parliament in 76% of cases. Only 7 of the 44 obligatory referendums held between 1990 and 01.06.2010 were rejected, the remainder (84%) being accepted.

The situation is different with the facultative or popular referendums, which are the most difficult for the authorities to control. Of the total of 164 popular referendums, 90 (55%) have been accepted and 73 rejected. Since 1990, the authorities' "success rate" has significantly improved: of the 61 popular referendums held between 1990 and 01.06.2010, the official proposal was accepted on 45 occasions (74%).

In recent years, the referendum has been used to oppose the bilateral agreements with the European Union, the deployment of Swiss soldiers in other countries, army reform and the liberalisation of the electricity market, among other issues. Of these, only the new electricity market law failed.

If one takes all the parliamentary referendums, including counter-proposals, across the whole period from 1848 to 01.06.2010, the voters agreed with the authorities in 65% of the votes; between 1990 and 01.06.2010 the percentage even rose to 73%. The evidence clearly suggests that the gap between voters and the authorities is narrowing further.

IT'S EASIER FOR INITIATIVES IN THE CANTONS

The long-term comparison of success rates for initiatives and referendums at the federal level produces some interesting differences – and especially if one then compares these figures with the results in the 26 cantons and approximately 2725 municipalities (local authority areas). Big differences are apparent here. In the early years of direct democracy, four out of every five ballots were lost (from the point of view of the government and parliament). By the middle of the 20th century, successes and failures were about equal. These developments reflect changes in the composition of the Swiss government, which until 1891 was composed entirely of Liberal members of parliament. Gradually, representatives of other groups in society – such as Catholics, farmers and social democrats – were able to gain seats. The introduction of the "magic formula" – 2:2:2:1 – which has decided the apportioning of places in the government since 1959 laid the foundation for a more successful (from the point of view of the authorities) handling of citizens' rights. The "magic formula", an element of Swiss consensus democracy, says that the composition of the government must correspond to the relative strength of the parties in the Federal Assembly. So from 1959 to 2003, the government was made up of two representatives each from the FDP (Radical Democratic Party), the CVP (Christian Democratic Party) and the SP (Social Democratic Party), and one from the SVP (Swiss People's Party). In 2004, this composition had to be adjusted to the changed relative strengths of the parties and the CVP lost one seat to the SVP.

The authorities have a harder time of it in the cantons, and even more so in the municipalities, than at the federal level – although the picture across Switzerland is extremely varied. In Graubünden, for example, voters follow the recommendations of the authorities in 88% of all ballots, but in Fribourg the figure is only 60%. The largest general difference between the national and cantonal levels relates to the success rate for popular initiatives. At the national level, only 9% of all popular initiatives have been successful, whereas the proportion in the cantons is 23%. Citizens' initiatives are especially successful in Western Switzerland and Ticino, where 40% of initiatives have been accepted. In these parts of Switzerland, where the use of direct democracy is below average, the authorities appear to have the hardest time. The differences are even greater at the municipal level, where the results suggest that the more chances citizens have of using the tools of direct democracy, the more they will actually use them – not least in order to throw a spoke in the authorities' wheels.

The introduction of direct democracy quite unequivocally represents democratic progress. The number of issues which can be dealt with publicly is far greater. Public debate allows compromises to be worked out and agreed (for example, by means of indirect or direct counter-proposals). The number of those who can get their voices heard in the political process is far greater.

These are all advantages of direct democracy by comparison with purely parliamentary systems – regardless both of one's political point of view and of the likelihood of securing a majority with a particular political stance. This is the necessary insight – drawn from experience – which contains the secret of the land of the contented losers.

RELATED INFORMATION [F=FACTSHEET, S=SURVEY, G=GLOSSARY]

F11 Voting behaviour in initiatives & referendums
F12 Popular initiatives, accepted by people and cantons
F20 The major initiators of popular initiatives & referendums
F21 The main issues of initiatives and referendums at the federal level and in the cantons
S World Survey: The Global Participation Challenge
G Glossary of direct-democracy terms

6

Jura:
democracy, not nationalism

The centuries-old Jura conflict, and the creation of the new canton of Jura, illustrate the influence of direct democracy on politics and the state. The history of the separatist movement in the Jura demonstrates that quarrels between minorities and majorities which differ politically and culturally from one another do not need to descend into violence. There is a direct-democratic way of dealing with such problems.

The creation of the canton of Jura is a victory for a model of social integration through the sharing of power. It shows that there is a democratic alternative to nationalism, which has proven itself incapable of solving the relationship problems with minorities.

> "When it became clear that the vote for founding the canton of Jura had been won, the rejoicing knew no bounds. People were dancing in the castle courtyard; they were all embracing each other and kissing each other; car horns sounded a fanfare; musicians wandered through the town with drums and trumpets and all the church bells began to ring."

> *Schwander, Marcel: Jura. Konfliktstoff für Jahrzehnte*
> *(Jura: Object of Decades-long Strife)*, *Zürich/Köln 1977*

The Jura conflict began after the former Episcopal principality of Basle was merged with the canton of Berne at the Congress of Vienna in 1815. The French-speaking, Catholic population of the Jura formed a minority within the mainly German-speaking, Protestant canton of Berne. For most of its life the conflict remained a smouldering fire, from which flames would occasionally leap up; but it did not spread beyond the region.

It was only after the Second World War that the separatist movement in the Jura became a serious problem for the canton of Berne, and ultimately for the whole of Switzerland. The three northern (of the six) Jura districts founded the canton of Jura in 1979 and the three southern Jura districts remained with the canton of Berne. This development became possible after the failure of all attempts to integrate the minority Jura population socially into the canton of Berne, and when separatism was the only solution left. The foundation of the canton of Jura represented a significant victory for the much-maligned separatist movement, which still continues to campaign for a unified Jura.

The Jura conflict was never, nor is it today, the problem of a minority, but rather a problem of social relations between a more powerful majority and a weaker minority. It is a typical conflict of 20th century and present-day Europe, but in the case of the Jura, the descent into violence was avoided, not least thanks to direct democracy. The creation of the canton of Jura is thus also a victory for a model of social integration through the sharing of power, a model which has a long and successful pedigree in Switzerland. It shows that there is a democratic alternative to nationalism, which has proven itself incapable of solving the relationship problems with minorities.

The five Jura protest movements which arose between 1815 and the Second World War were all short-lived. They were unable to mobilise sufficient support because other conflicts took precedence. Despite this, there did emerge a minority awareness in the Jura and a number of associations were formed which fostered and transmitted this awareness. It was out of this tradition of protest that the separatist movement came into being.

According to the separatists, the people of the Jura were experiencing discrimination as a result of their dependence on the canton of Berne, and therefore separation was the solution. After the Second World War, the economic marginalisation of the Jura region added significant credibility to this interpretation.

The Jura protest movement really came to life in the post-war period after the Moeckli affair in 1947 (Georges Moeckli was a politician from the Jura, whose appointment to run one of the ministries was blocked by the Bernese parliament solely on the grounds that his mother-tongue was French). Those who wanted autonomy for the Jura while remaining within the canton of Berne joined the Comité de Moutier. The Mouvement Séparatiste Jurassien (renamed the Rassemblement Jurassien in 1951) represented those who were campaigning for complete separation from Berne.

Berne rejected a federalisation of the canton, but did make concessions to the demands for autonomy from the Jura. These included constitutional recognition of the separate identity of the people of the Jura, confirmed in a cantonal referendum in 1950. In this initial phase, the conflict between Berne and the Jura was perceived publicly as a regional problem and the separatists were excluded from official negotiations, separation being completely unacceptable to Berne.

DIRECT DEMOCRACY MAKES UP
FOR THE DEFICIENCIES OF REPRESENTATION

In September 1957, the Rassemblement Jurassien (RJ) launched a cantonal initiative to ascertain what the people of the Jura thought about the idea of creating a separate canton Jura. The initiative proposal asked: "Do you want the Jura to be given the status of a sovereign canton of the Confederation?" The initiative allowed the separatists to move their campaign on to the political stage and force the media to report it and comment on it. The separatists and their political platform could no longer be ignored. The numerous media reports dealing with the background of the movement focused a great deal of public attention on the RJ, and its existence as a sig-

nificant player in the Jura issue had to be acknowledged ("The movement is strong and widespread", the Neue Zürcher Zeitung, 15.7.1957). When the initiative finally went to referendum ballot in July 1959, it was approved by a clear majority only in the three French-speaking, Catholic districts of the North Jura, whereas the three French-speaking, but majority Protestant, districts of the South Jura and the German-speaking, Catholic Laufental remained loyal to Berne. The newspaper headlines declared the death of separatism: "The RJ dream is over!" (Basler Nachrichten, 6.7.1959); "Separatism condemned to die" (Tagwacht, 6.7.1959).

But instead of obliging their critics and falling into their own graves, the separatists changed their tactics and their arguments. In future, they would speak of the unity, not of the whole Jura region, but only of the French-speaking areas and they would abandon the idea that geography and a shared history constituted the basis of their Jura identity and instead emphasize ethnic origin and the French language.

The separatists' "nation" based on language and ethnicity is a pre-political "natural community" which is in stark contrast with the idea of the Swiss nation as a political community. The fear was expressed publicly that the separatists' nationalism would undermine the idea of Switzerland as a nation based not on a common ethnicity or language, but forged out of an active will to unite despite differences ("Willensnation Schweiz"). The separatists sought support for their vision both at home and abroad, discovering a powerful ally in General de Gaulle and his vision of a "Europe des patries".

"NO PLACE FOR VIOLENCE IN POLITICS"
The separatists fed the public with protest actions cleverly staged for maximum media effect and became the main focus of opposition to Berne, which failed in the attempt to silence the separatist cause by sidelining it. Between 1962 and 1964, a small separatist group calling itself the Jura Liberation Front (FLJ) carried out a number of bomb and arson attacks on army barracks and the houses of prominent anti-separatists. But these actions of a few militants actually created less public furore than the "Les Rangiers affair", when – at an event commemorating the Swiss army – the separatists prevented Bernese government minister Virgile Moine and federal government minister Paul Chaudet from speaking.

The scandal created by this protest had a long-lasting effect and marked the turning-point in the public perception of the Jura conflict. Where physical violence had failed (because it cuts off dialogue), symbolic violence succeeded. It challenged the national self-understanding of a now rattled

Switzerland and transformed the Jura conflict from a regional issue into a national one. Although it is true that Switzerland's prevailing national self-understanding was deeply challenged by the separatist movement, the fact is that the movement was not engaged in a struggle against the Swiss state. It was not campaigning for secession and did not want to say goodbye to Switzerland, but only to the canton of Berne. In their opinion, the separatists were arguing for a better Switzerland than their opponents. That they had renounced violence as a means of achieving their aims also showed that they did not wish to cut themselves off entirely from the common ground of politics. As Roger Schaffter, leader of the separatist movement along with the charismatic Roland Béguelin, stated: "Violence is not a legitimate tool of politics in Switzerland."

The creation of the new canton did not occur in a single step; it proceeded through several stages and was by no means a foregone conclusion. Once it was realised that separatism as such could not be defeated, there was a greater willingness to ask the people of the Jura region what they thought about a possible separation from Berne. The first stage was to create the legal basis for such a move. The cantonal parliament ("Grosser Rat") of Berne drew up a supplementary article to the Bernese cantonal constitution which provided for both a referendum procedure ("Volksbefragung") and a direct-democratic separation process. The amendment to the constitution was accepted in a cantonal popular vote on 1st March 1970, paving the way for self-determination for the Jura.

THE REFERENDUM OF 23RD JUNE 1974

The next stage saw the government in Berne deciding to ask the people of the Jura to vote on the question of separation in a referendum. The question put before them was: "Do you wish to form a new canton?" The popular vote took place on 23rd June 1974. To the surprise of many, the separatists won the vote with 36,802 votes in favour to 34,057 against, on a turnout of 88.7%.

In line with the constitutional amendment of 1970, initiatives in favour of remaining in the canton of Berne were now submitted, first in the districts of South Jura and Laufental, subsequently also in a number of municipalities along the proposed new cantonal border. The results of the popular votes which took place in March and September of 1975 were as expected: the South Jura districts of Courtelary, Moutier and La Neuveville voted for Berne. There followed referendums in 13 border municipalities: 5 majority Protestant districts voted to remain with Berne, but 8 majority Catholic districts opted for the Jura. Laufental initially decided in favour of Berne, but subsequently opted to join Basle Country.

The Jura was now officially split. Voters in the new canton approved a new constitution. After that it was the turn of voters throughout Switzerland to cast their votes. In his New Year address, Swiss federal president Willy Ritschard appealed to his fellow citizens: "On 24th September, a region will be asking the Swiss people for the right to become a separate canton. We want to show that we know how to act as democrats. Democrats respect minorities. They resolve their conflicts in a peaceful and sensible way. I ask you all to give a joyous "Yes" to the new canton." When it came to the popular vote, all the cantons and a large majority of Swiss voters approved the accession of the new canton to the Confederation.

The history of the separatist movement in the Jura demonstrates that the relationship problems of cultural minorities do not need to descend into violence and that there is a democratic way of dealing with such problems. With the help of direct democracy, the separatists were able to generate a public debate on their political platform and thus compensate for their lack of representation. This directly lessened the likelihood of violence, because it is a well-known fact that it is the lack of a voice and the lack of representation which can easily lead minorities to resort to violence. It was a combination of direct democracy and federalism which made possible the creation of the new canton.

SAYING "NO" TO NATIONALISM

The founding of the Republic and canton of Jura was on the one hand, a great success for the separatist movement, which possessed those attributes which are essential for the effective use of direct democracy: a clearly-defined cause and the ability to fight for it, to organise and to communicate. On the other hand, it was a rejection of the separatists' nationalism and a victory instead for the principles of democracy and federalism.

Berne had not only recognised the existence of a people of the Jura and a claim to self-determination, but in its constitutional amendment of 1970 had even set out the conditions under which a process of separation might take place: "The right to demand a referendum ("Volksbefragung") or to take part in it belongs to those citizens who are entitled to vote on cantonal matters and who have their place of residence in a municipality situated within the area in which the referendum is carried out (…)". This formulation defines the people of the Jura, with their right to self-determination, not as an ethnic community or "ethnos", as the separatists had claimed, but as citizens of a state society or "demos".

According to the separatists, this definition of the people violated the fundamental principles of national self-determination. Within the context of a popular vote on the separation of the Jura from Berne, the answer to the question: "Who belongs to the Jura people?" was, of course, important. The expectation was that the separatists' chances would be increased by a nationalistic definition of the people, and reduced by a democratic one.

On the other hand, we know from experience that the use of nationalistic concepts to divide the population into "natural communities" and grant to each of these peoples its own territory and its own state does not solve the relationship problems of minorities, but rather tends to perpetuate them by creating and excluding new minorities. The greater the fantasy content of these concepts, i.e. the more "ethnically" mixed a population in reality is, the greater will be the amount of force and violence needed to implement them. The break-up of the former Yugoslavia shows to what this can lead.

It makes a decisive difference what sources nourish the "we-feeling" of a state society: whether people derive their sense of belonging from active participation in the political decision-making (which allows them to say "We in Switzerland"), or from a belief in a given, pre-political nation (which makes them say "We Swiss"), whose existence must be secured by a continual separation of all that is "one's own" from all that is "foreign".

The existence of Switzerland is fundamentally based on a mixture of unity and diversity. Many factors have contributed to ensuring the success – so far – of this unity in diversity. One of those factors is certainly the policy of the sharing of power, which relies on the institutions and procedures of federalism and of direct democracy. It was these procedures, and not separatist nationalism, which made possible the peaceful separation of the Jura from Berne a quarter of a century ago.

7

The myth
of the incompetent citizen

In a direct democracy the division of political rights is different from that in a purely representative democracy. The exercise of direct-democratic rights changes the relationship between politicians and citizens. It influences the political character and habits of both groups. The track record of direct democracy shows that voters can take political decisions as competently as members of parliament can. Political incompetence is not a cause, but an effect, of the fact that in purely representative democracies citizens are not allowed to participate directly in political decision-making on substantive issues.

Direct democracy is currently experiencing a new surge in popularity in Europe.
Once again, it is being resisted on the same old grounds by those in power.
Ordinary citizens are supposedly incapable of making decisions on complex political issues.

In 1851 the Zurich radical, Johann Jakob Treichler, presented in his newspaper a critique of liberal "representative democracy" and in a 19-point programme demanded a transition to a "pure democracy" by supplementing representative democracy with direct democracy. "What the "Volksblatt" (Treichler's paper) wants," he wrote, "is the greatest possible happiness of the people through the people themselves, the full and entire rule by the people; the first principle must be: Everything for, everything through the people."

At the suggestion of Alfred Escher (politician, railway entrepreneur and co-founder of what later became Credit Suisse), Escher's colleague Jakob Dubs composed a response to Treichler's critique which was published in the "Der Landbote" (Winterthur). As representatives of the liberal establishment, Dubs and Escher were no friends of direct democracy. They shared the view of those liberals who held that people without property or formal education were incapable of making use of extended political rights. In this view these people simply lacked everything which the exercise of political governance required: a sense of responsibility (which only those with property and wealth acquire), a knowledge of justice and laws, far-sightedness, a sense for the common good, education, culture and sound judgement.

The image of the uneducated, disinterested and politically immature "common people", driven by their passions and not guided by the cool light of reason, has accompanied and held back the growth of democracy since its beginnings. Again and again, the image of the politically incompetent ordinary citizen has been used by the powerful and their allies to resist demands for greater democracy. But though the forward march of democracy was slowed, it could not be halted.

Direct democracy is experiencing a new surge in popularity in Europe and across the world. Once again, it is being resisted on the same old grounds by those in power. Ordinary citizens are supposedly incapable of making decisions on complex political issues. Not infrequently, Switzerland is held up as an example of the dangers of too much "popular vote democracy."

POLITICS FOR THE PEOPLE, NOT WITH THE PEOPLE
In the mid-19th century, Dubs was already expressing the fear that direct involvement of the people in the making of laws would lead to a flood of bad laws characterized by the selfish interests and the narrow horizons of the common citizen. "Let those who wish drink from this magic beaker of the democratic programme; we are not able to do it; it is in any case not the

kind of democracy in which we believe; not the kind of freedom we revere; and least of all is it that true, free humanity to which the future belongs."

Although the Liberals had come to power through the people, they wanted to govern only for the people, and not with it. In their view, ordinary people were immature and incapable of direct participation in political decision-making. From the very beginning, this argument served as a justification for a purely parliamentary democracy. It remained effective in Switzerland until the 1860s; elsewhere it is still being used.

Today, there is a demand for direct democracy to be introduced, not only at the level of the individual nation-state, but also at the transnational European level. There are currently, for example, lively debates in many countries about the possibility of an Europe-wide referendum on the new Reform Treaty, and in these debates popular participation is frequently contested with the same arguments which the defenders of purely representative democracy have always used.

For example, Göran Djupsund, professor of political science in Turku (Finland), wrote "that direct democracy does not always produce (…) good results. We can imagine a situation in which there is a popular vote to decide on issues which have hurt the people. The results of public opinion polls would lead one to expect the reintroduction of the death penalty, a reduction in the number of asylum seekers being admitted, and a drastic cut in fuel duties. One might also expect an explosive expansion of the public sector (…) while parts of it would be shrunk to nothing, for example, museum activities, city orchestras and opera houses".

Today's debates appear as variations and reformulations in a long and repetitive cycle of the same arguments for and against participative democracy. The faith in the ability of all people to reach sound political judgements is opposed by the contention that this faith is naïve and unrealistic.

In the 19th and 20th centuries, the incompetence argument was used also against democracy and against the extension of the male franchise, as well as against equal political rights for women. The general right to elect representatives and equality of political rights for women are now no longer open to question. But old ideas and arguments continue to be effective in the case of the general right to vote on issues i.e. direct democracy.

The argument of incompetence can be sustained only by those who ignore the evidence which contradicts it. If it were true, the stable direct democracy which has been alive in Switzerland for more than 100 years could not exist, because a referendum democracy should be self-destructive; it would – according to Giovanni Sartori's prediction – have come to a rapid and catastrophic end on the reefs of cognitive incapacity.

The technological and educational preconditions for democracy have probably never before been as well satisfied as they are today. There are no reasonable grounds for maintaining that one category of people (politicians or the political elite) is better equipped to decide public affairs than the other (the so-called "ordinary citizens"). Despite this, the idea persists: not only does it explain nothing; it is itself in need of explanation.

PARLIAMENTARY AND DIRECT DEMOCRACY

Citizens and politicians in a purely indirect democracy do not have access to the same political tools, nor do they fulfil the same roles, as in a Modern Direct Democracy. The relationship between politicians and citizens is different in the two systems. For both politicians and citizens the freedom to act politically and the opportunities to learn how to play the political game and to become good players vary in the two systems. To exercise politics contributes to the shaping of personality. However, parliamentary democracy shapes the personality of politicians and citizens in a different way than direct democracy does. For a better understanding of these differences the political organisation of democracy and the relationship between politicians and citizens can be usefully seen in terms of relations between those who are established and those who are outsiders.

The specific dynamic of such relations derives from the way in which two groups, the established and the outsiders, are in fact inter-related and mutually dependent on each other. Established-outsiders relations can be observed not only between politicians and citizens but everywhere and at all times, for example between groups categorized as men and women, blacks and whites, national citizens and foreigners, settled and newcomers.

Though there are many differences, certain regularities can be observed in all the various manifestations. The established groups always seek to monopolise the opportunities for power and status which are important to them. There is a typical tendency to stigmatise (and counter-stigmatise in return): i.e. the more powerful groups tend to perceive the outsiders who are dependent on them as of lesser worth than they themselves are – and to treat them accordingly. Cause and effect are routinely confused.

At the heart of every established-outsiders relationship is, according to Norbert Elias, an imbalance of power, with its resultant social tensions. This is the decisive factor which allows an established group to stigmatise an outsider group. The freedom to stigmatise persists as long as the established retain the monopoly of power. As soon as the balance of power shifts towards the outsiders, the established group's freedom to stigmatise begins to be lost.

MONOPOLISING SUBSTANTIVE DECISIONS

It is evident that established politicians form a group which can profit from its superior position of power. The collective images they have of themselves and of others can produce different results. They can be used to justify the status quo. They enhance the self-esteem of those who see themselves as the "elite" and lower the self-esteem of the so-called "ordinary citizens", who are classified as not belonging to the charmed circle of the "elite."

In a purely parliamentary democracy, the politicians enjoy a monopoly over a series of important sources of power – above all, the right to make decisions on substantive issues and to determine the political agenda. It is their exclusive access to these sources of power which provides the basis for the imbalance of power between the politicians and the citizens. Their relationship is one of institutionalised categorical inequality. It determines the practical division of roles: citizens elect and politicians decide. It even affects the use of language, as an example from Finland shows: in Finnish, the words for "citizen" (kansalainen) and "decision-maker" (päättäjä) describe two mutually exclusive categories of people.

The image of the politically incompetent citizen can be understood as an expression of the superior power of politicians over "ordinary citizens". In a purely parliamentary democracy, the individual citizen's access to political decisions is not really denied because of his/her individual lack of political skills and competence, but because he/she belongs to that group of people who are categorized as ordinary citizens. The question, whether in reality citizens are politically competent or not, does not matter in this context. The important question is: under what conditions do politicians feel the need and are able to represent and treat citizens as incompetent outsiders?

What the Swiss writer Iris von Roten wrote about the relationship between men and women before equal political rights were established can be seen as applying equally to the relationship between citizens and politicians in a parliamentary democracy, and therefore as an answer to that question: "Without equal political rights for both sexes, men are held to be more

important than women, are able – at the expense of women – to enjoy more of worldly life, and naturally wish to continue to be and to get more. For regardless of whether we are talking of power, influence, freedom, wealth and possessions, self-confidence, prestige and comfort – however much control is handed over to women must represent an equivalent loss to men. And men want to avoid that at all costs."

In a direct democracy, citizens and politicians are inter-connected and interdependent in a fundamentally different way than in a purely parliamentary democracy. In a direct democracy, citizens share in decision-making and often have the final word. They repeatedly have opportunities to act in effect as politicians and to become what Max Weber called "occasional politicians". Thanks to their rights to initiative and referendum, voters have access to political decision-making and to determining the political agenda. The elected politicians are unable to monopolise the power to make political decisions, but have to share it with the citizens. The concentration of political capital or political sources of power in the hands of a small minority of established politicians is thus severely restricted.

In turn, the more even balance of power affects the way politicians and citizens are viewed. The old image of the incompetent citizen fades into the past and is replaced by an image of the citizen as someone who is more mature, more responsible, more politically competent and more self-confident. At the same time the image of the politicians also changes; from nobler spheres they are brought down to share the same earthly reality with everyone else. Politicians can potentially experience this change not only as a loss of power and status, but also as a gain in empathy and humanity.

In the Swiss system of direct democracy, the institutionalised relationship between citizens and politicians is different from that in purely parliamentary democracies. The absence of the categorical inequality referred to earlier also comes to expression in the language. The concept of the "citizen" very much includes the idea of the right direct involvement in political decisions. Citizens and legislators cannot be seen as two opposing principles – for it is the citizens who are the sovereign power.

"LEARNING BY DOING"
It is common knowledge that we learn by doing. The skills required to be a legislator are best learned by being involved in the legislative process. The referendum and initiative procedures in a direct democracy make it easier to do this here than in a representative democracy, where the lack of suitable

procedures prevents people from developing the sort of political skills they need as legislators.

Matthias Benz and Alois Stutzer, two political scientists at the University of Zurich, have shown that citizens who have greater rights of participation are also better informed politically. The referendum and initiative rights enjoyed by Swiss citizens give them a decision-making power which is independent of government and which allows them not only to object and resist but to participate constructively in the shaping of state and society, and to overcome log-jams in the representative system. Direct-democratic procedures empower voters and serve (together with federalism and proportional representation) as mechanisms of power-sharing. This is especially important for those minorities whose interests are represented either inadequately or not at all through the representative organs i.e. government and parliament.

To be sure, citizens have to organise themselves and work together if they want to achieve something. They can, for example, launch an initiative. In doing so, they develop their self-organisational skills and learn how to run a referendum campaign, with everything which that involves: getting resources (financial, human and physical), information, publicity, public debates, dissent, forming alliances, reaching compromises, collective learning, dealing with political power, winning and losing and much more. Direct democracy means hard political work and people can get involved in a variety of different ways and with whatever level of commitment they wish to give to it.

Direct democracy gives citizens additional possibilities of making proposals and of political control, independently of the wishes of government and parliament. It is thus better equipped to ensure that "lies are exposed and contracts adhered to, favouritism prevented and emergencies met". This builds up mutual trust between citizens and helps to strengthen social cohesion. In short, direct democracy is also an institutionalised way of creating political trust between citizens. It belongs among those basic institutions whose vital "reinforcement and defence" remains, according to Claus Offe, a "challenge to democracy and the precondition for its continued existence".

8

Out loud

When the daily papers make lots more space available for readers' letters, when the volume of conversation rises steadily in restaurants, when complete strangers suddenly start talking to each other in trains and buses — and when, finally, the official "voters' booklet" lands in the letter box — then you know that the country is once again heading for a referendum.

Direct democracy has important implications for the behaviour of the media. Referendum campaigns differ from elections in that a much larger number of interested parties are trying to get across their point of view. Instead of presenting the various electoral manifestos, they are focused on putting forward specific proposals for resolving specific problems.

Hair-stylist Andrea G. is always happy when she finds the referendum book-let from the government in her letterbox: "That means there's going to be another referendum," says the 27-year-old from Berne. She gets as much information as she can on all the referendum issues from all the available media and regularly arranges special referendum dinners. "We always meet in a larger group before every vote to discuss the forthcoming referendum questions. I don't feel that I can come to a clear decision for myself until I have checked my views against everyone else's."

Andrea G. is not an exception. In surveys of Swiss citizens conducted by the University of Berne, 60% of those asked described themselves as "well informed" politically. That doesn't mean that everyone always goes to vote; but the confidence in being well-informed reflects the degree to which every citizen is taken seriously by the institutions of state in Swiss democracy. It is clear that this is more likely to happen in a democracy which has been strengthened by the addition of instruments of direct democracy than in one in which the citizens' involvement is limited to voting in parliamen-tary elections: in Austria, for example, only around 30% of citizens consider themselves to be "well-informed".

The ancient Greeks already knew of this difference. Writing 2,500 years ago, Pericles observed: "In a democracy, public debate does not serve as a brake on politics, but is rather the indispensable prerequisite for all wise decisions." Face-to-face debate with friends and acquaintances remains a most impor-tant source of information: in a recent survey in Switzerland, 24% named this as their primary source. The media in general were placed only second in importance – by 22% of those asked. After that came the recommenda-tions of the political parties and the official "referendum booklet", in which both the authorities (at the federal level, the parliament and government) and the initiative and referendum committees are able to present their main arguments. Last but not least, the Internet; with its growing numbers of blogs and interactive capabilities, is playing a growing role in public debate and opinion-building.

However the official referendum booklet is the only source of information which is guaranteed to reach every voter before a referendum. This is not surprising, since in the majority of cantons the modest little booklet is mailed out to all registered voters, together with the voting slips and the certificate of entitlement to vote, three to four weeks before every referen-dum ballot. In addition to the federal booklet, more than 5 million copies of which are printed in four different languages (Italian, French, German and Rhaeto-Romanic), there are often cantonal and municipal referendum book-

lets, which might contain the regional or local authorities' annual budget proposals or the design sketches for a new local hospital. The history of the referendum booklet – officially known as the "Government's Explanations" – goes back to the 19th-century official "proclamations" by the authorities before referendums on a complete revision of the constitution. But it took another 100 years for the referendum booklet to become a firm and statutorily guaranteed institution. It was in 1972 that the government first decided to summarise and explain to non-specialists the text of a 1,500-page free trade agreement.

THE RIGHT TO OPPOSE

For the first two decades in the life of this new medium of information, it was the government which summarised the arguments both for and against a proposal. In practice since 1983, and in law since 1994, initiative and referendum committees have been able to draft their own arguments and have them included in the booklet. The government can intervene only if the text is defamatory or too long. There is, however, no equivalent right to object to the government's arguments – whether or not they are defamatory, untrue or too long! Fortunately, crass errors – such as that which occurred in 1993, when, in the run-up to a national referendum vote on which canton the Laufental should belong to, the government got the borders between France, Germany and Switzerland wrong – are rare.

The practice of direct democracy presents not only a didactic challenge for government, but also tests the ability of politicians to communicate successfully and persuade voters to agree with them. In the run-up to referendum votes, the elected representatives often form themselves into cross-party committees, write newspaper articles and appear as panel members in public debates on the referendum issues. The political parties organise public debates in restaurants and sports centres. The print and electronic media go out of their way to shed light on the most varied aspects of the referendum proposals in as professional, open and balanced a way as possible – not least for quite selfish reasons, since they want to hold on to their customer base, whatever the outcome of the vote.

WELL-INFORMED CITIZENS

The public broadcasting stations are in a rather special position as regards their reporting of referendums: unlike in the private media, the chief editors of the three national radio and TV stations make no specific recommendations. Although there is no advertising at all on public radio, TV is partially financed by advertising. But in Switzerland – in contrast to the USA, for example – political adverts are banned. In their dealings with initiatives and

referendums, the public broadcast media follow an internally devised code of conduct – the "handbook of journalism" – which is designed to ensure accuracy, impartiality and fairness. Direct democracy has important implications for the behaviour of the media. Referendum campaigns differ from elections in that a much larger number of interested parties are trying to get across their point of view. Instead of presenting the various electoral manifestos, they are focused on putting forward specific proposals for resolving specific problems. Citizens' expectations also differ: whereas after elections the concern is only to ensure that electoral promises are kept, after referendum votes citizens expect approved measures to be incorporated into law and fully implemented.

In a Modern Direct Democracy there are far greater incentives, for both providers and users of information, to communicate and/or take it up. Everyone benefits, everyone's knowledge and skill are increased. The result is that the average Swiss voter is better and more comprehensively informed when he or she comes to vote on an issue than the average German member of parliament, who is after all paid to do the job – a rather sobering finding for all those who routinely assert the technical superiority of a purely parliamentary democracy over a direct democracy. In short, in a Modern Direct Democracy there is not only a greater demand for political information, but a far richer and more competently provided supply. When we compare the various forms of media, we find that the editorial sections of the print press are of primary importance as a source of information for the individual voter. After that come the referendum booklet and the electronic media. Readers' letters are surprisingly highly rated: a survey found that around 25% of voters view them as an important source of information. The role of the political parties should also not be underestimated: the parties' voting recommendations are significant for about 12% of all voters. It is also clear that citizens are increasingly using the Internet as a source of information and place for deliberation. The interactive opportunities offered by Web 2.0 and predominantly used by bloggers have introduced an important additional channel.

THE WOOING OF THE SWISS ABROAD

Efforts are being made by the authorities, the media and the political parties to include registered Swiss voters abroad in the process of opinion-forming before elections and referendum votes. About a fifth of the roughly 645,000 Swiss citizens living abroad who are entitled to vote take advantage of the option of postal voting. Swiss voters abroad repeatedly play a decisive role in certain highly contested issues. In addition to the referendum booklet, they have access to special foreign editions of the major daily newspapers and can also view special Web pages devoted to the referendums. If they wish, expatriate Swiss can have a special mailing and SMS alerts sent to them

before a vote, giving them information on the current referendum debate and advising them of forthcoming voting days. In the last parliamentary elections in October 2007, a number of parties produced separate lists of Swiss voters abroad.

In debates on the options for the expansion or improvement of democracy, people regularly point to the absence of the necessary preconditions: the voters are supposedly ill-equipped, the media too superficial, the political class averse to or incapable of discussing issues with citizens on an equal footing. The Swiss example shows that the relationship between those preconditions and the growth of democracy is not a one-way street: an increase in democracy can improve the preconditions for democracy. The tools and the practice of direct democracy can help to increase the knowledge and skill levels of the voters, promote the need for high-quality, informative media and force politicians and political parties to take voters seriously all the time, and not just before elections. The connection between the development of democracy and the preconditions for democracy is especially important for highly complex, multilingual communities such as the European Union.

The Swiss experience also shows that not every citizen is equally engaged in the political decision-forming process. Political scientist Claude Longchamp from Berne distinguishes five different types of citizens: the isolated ones, who are completely cut off; the passive consumers of the mass media; the debaters, who also get involved in public discussion; the "media multiplicators", who are actively engaged in making up their own minds; and the "agenda setters", who also generate issues. Newspapers, radio and TV – all of them play an important role in Swiss direct democracy. But not even the best media productions are sufficient by themselves: what is of greatest importance is open debate and the face-to-face/blog-to-blog sharing of views between citizens. In the run-up to the referendum vote – the decisive phase in every initiative and referendum process – such crucial meetings take place at special referendum dinners, around the kitchen table, in the workplace, on the train, in cafés and restaurants. Many Swiss know that they will be able to decide what they themselves think only once they have also listened to what others think – out loud.

RELATED INFORMATION [F=FACTSHEET, S=SURVEY, G=GLOSSARY]
F6   Postal voting
F29 Voting rights of Swiss citizens living or staying abroad
F30 Defining Modern Direct Democracy
S   World Survey: The Global Participation Challenge
G   Glossary of direct-democracy terms

9

Added-value voting

For years, direct democracy was accused of putting a brake on economic progress. We now know that initiatives and referendums promote economic growth, strengthen society, and so help to make people happier. A system in which citizens have a direct influence on the making of major decisions produces much more pragmatic and cost-efficient results than a purely parliamentary democracy where powerful groups may realize their particular interests more easily, and at the cost of the general public.

In the debate on the potential and the limitations of direct democracy, it is often argued that the general public is incapable of balancing (short-term) costs against (longer-term) benefits when it comes to public finances. Swiss experience contradicts this contention.

The Swiss were amazed when, in 2002, economiesuisse, the umbrella organisation for Swiss business, produced a position paper on public finance in which this most influential body stated clearly and simply: "Direct democracy should be promoted at all levels of the state." The amazement came from the fact that leading industry spokespersons and financial experts had until then consistently claimed that the wide-ranging rights of participation enjoyed by Swiss citizens stifled innovation and damaged the economy. At the close of the 20th century, Walter Wittman, Professor of Economics at Fribourg University, had written that "Switzerland must abandon its direct democracy and turn to parliamentary democracy, just like other countries". If it failed to do so, "direct democracy in general, and the referendum in particular, will ruin the Swiss economy".

There were repeated calls during the 1990s for Switzerland to "get real" about its direct democracy: i.e. to restrict participatory rights by, for example, raising the signature quorum for initiatives and optional referendums and excluding certain issues – such as public finances – from being put to referendum. A significant number of leading figures in the economy had allied themselves to this position after what they had seen as referendum "defeats" in the 1992 decision not to join the EEC and the rejection of liberalised employment law. The then head of the major bank Credit Suisse, Lukas Mühlemann, had demanded as late as 2001 "a restriction of direct-democratic rights". Less than a year later, it appeared that business leaders – under the mantle of economiesuisse – had changed their minds and now believed that the tools of direct democracy were worthy of support because they actually benefited the economy. What had caused this volte-face?

At the end of the 1990s, the routine criticism of direct democracy coming from both academic and business circles had inspired a series of leading academics to have a closer, more empirical, look at the links between direct democracy and economic growth. These academics were able to examine evidence from the USA, where initiatives and referendums have been enthusiastically used for around 100 years in many of the individual states; but they found in Switzerland itself an ideal source of data for comparative research – ideal, because there are significant differences between the various cantons and municipalities in the way that direct democracy is instituted and practised, i.e. in its relative user-friendliness. Thus, every canton except Vaud uses the finance referendum, which requires all decisions on public spending, loans and other expenditure above certain levels to be submitted to either obligatory or optional referendum. Some of the other important variables are the signature quorums for popular initiatives and referendums – which vary between 0.9% (in Basle Country) and 5.7%

(in Neuchâtel) of the total electorate – and the length of time allowed to the initiative committees for the collection of signatures, ranging from 2 months in Ticino to an unlimited period of time in Basle Country. The range of variability in the possibilities for direct-democratic participation is even greater at the local (municipal) level – between extensive participatory rights and virtually none at all.

CHEAPER, MORE HONEST, BETTER OFF

A study by Zurich University economists Bruno Frey and Alois Stutzer showed that the cantons of Aargau, Basle Country, Glarus, Zurich and the two Appenzell cantons are among the most democratic in Switzerland. In 2003, Geneva-based lawyers Michael Bützer and Sébastien Micotti produced a comparative study of direct democracy at the local (municipal) level. It concluded that municipalities in eastern and central Switzerland enjoy considerably greater institutional autonomy than those in western Switzerland and Ticino.

Including earlier research in their investigation, St. Gallen economists Gebhard Kirchgässner and Lars Feld – now a professor at Heidelberg University in Germany – made a statistical analysis of the influence of direct democracy on economic growth. The results were striking:

1. In cantons with stronger rights of participation on financial issues, economic performance is 15% higher (in terms of GDP per head).

2. In cantons where citizens can vote on the budget, there is 30% less tax-avoidance – on average 1,500 Swiss francs per taxpayer. Cantonal debt is correspondingly lower. The possible explanation: people are more prepared to support public expenditure when they are involved in deciding how their money is spent.

3. In municipalities where the budget has to be approved by referendum, public expenditure is 10% lower per head than in places where residents have no such rights. It appears that citizens are more careful with the money taken from them in taxes than the politicians are.

4. Municipalities which have the finance referendum have 25% lower public debt (5,800 Swiss francs per taxpayer) – the direct result of lower expenditure and greater tax income.

5. Public services cost less in towns and cities with direct democracy: refuse disposal is almost 20% cheaper.

Professor Kirchgässner and his colleagues conclude: "In economic terms, everything is in favour of direct democracy – nothing against." They therefore argue that direct democracy should be extended, rather than restricted. In their view, direct democracy is "up-to-date, successful, exportable and has the potential for further development".

The results of public opinion polls support these conclusions. When the Swiss cantons were compared, it was found that the more people were involved directly in politics through initiatives and referendums, the more contented they were with their lives. According to a study by Frey and Stutzer, the degree of political participation was "even more significant than the level of personal income." This rather tends to undermine the common claim that people are primarily interested in earning money.

CITIZENS IN FAVOUR OF SPECIFIC TAX INCREASES

In the debate on the potential and the limitations of direct democracy, it is often argued – especially outside Switzerland – that the general public is incapable of balancing (short-term) costs against (longer-term) benefits when it comes to public finances. Swiss experience contradicts this contention, not only in the cantons and municipalities, where people have a closer relationship with political affairs, but even at the federal level.

In a referendum on 7th March 1993, 54.5% of voters approved an increase in the price of petrol and diesel of 21 Swiss cents (about 13 Euro cents) per litre. The main issue in the referendum campaign was not environmental protection, but the need to bolster the public purse. Five years later, more than 57% voted in favour of introducing a distance-related heavy vehicle duty which would increase the cost of transporting goods by road. Again in 1993, two-thirds of voters had agreed to introduce national VAT and to use a future rise to benefit old-age pensions. Similar proposals by both government and parliament between 1977 and 1991 had been rejected, because voters had been asked to approve whole packages of measures rather than specific individual proposals. When the politicians finally came clean and explained to people why there was a need to raise extra money, they were able to secure public approval not only for the change in the system, but also for the tax rise.

The costs of direct democracy have not so far been an issue in cost-conscious Switzerland. That has to do on the one hand with the country's political culture, where active public participation is accepted as a fundamental right, and on the other with the wide-ranging benefits for society (including the economic ones) of direct democracy. As there are referendum votes every

three or four months at local, cantonal and federal levels, it would be difficult to assess the cost to the administration of its referendum-related work.

There has been much more debate in recent years over the financing of referendum campaigns. According to political scientist Claude Longchamp, it takes "around 10 million francs" to organise a professional national citizens' initiative from the initial launch through the campaign to tying up all the loose ends after the vote. On the other hand, the example of the "Sunday Initiative" shows that it can be done with considerably less money: though the group campaigning for "four car-free Sundays per year" had no more than 50,000 francs to play with, they still managed to get 37.6% of the votes. The same day saw a vote on putting a stop to Switzerland's nuclear power programme. The environmental organisation campaigning for this had managed to raise 3.5 million francs – but only got 33.7% of the vote. In Longchamp's view, this clearly shows that in Switzerland referendum results cannot be bought. Another example which shows that success and modest financial resources are not mutually exclusive is the initiative on "Life-long custody for non-curable, extremely dangerous sex offenders and violent criminals," which was accepted in the referendum in 2004.

MONEY ALONE IS NOT ENOUGH

Even in those cases where wealthy interest groups are involved, there is no evidence that money can directly influence referendum results in Switzerland. Quite the opposite: there are plenty of cases where, despite the spending of large amounts of money, voters went against the majority of the political or financial elites. This was so in the case of the price monitoring initiative of 1982, which was accepted against the wishes of the authorities and the business world. Likewise with the introduction of the heavy goods vehicle duty and the motorway card (an annual fee for using motorways), which had been opposed by such influential and wealthy groups as the Touring Club of Switzerland, the Business Federation and tour operators. EEC accession was rejected in 1993, even though the commercial world had spent millions in promoting it.

In larger political entities with direct-democratic instruments – such as the American state of California (population 36.5 million) – extensive studies have shown that having greater financial resources is not usually sufficient to win over voters. It can, however, be an effective means of wrecking a proposal.

Political scientist Elisabeth R. Gerber from the University of San Diego found that citizens' groups appeared to do better overall in initiatives and referendums than wealthy interest groups. For example, Californians voted for a ban on smoking in all closed public areas, despite the multi-million dollar campaign waged by the tobacco companies.

From an economic point of view, therefore, there are virtually no arguments against direct democracy. Rather is it the case that a form of politics based on the principle of consensus, in which citizens have a direct influence on the making of decisions on substantive issues, produces much more pragmatic results than the kind of knee-jerk response common in purely parliamentary democracies, where the response is often excessive and has to be undone later at great cost. It remains to critically monitor the growing role of money in electoral campaigns, including direct democracy processes such as those in Switzerland.

10

Design determines the quality

The quality of direct democracy is determined by the design of the procedures: Who is able to control them? Are they citizen-friendly? What is their scope? More important than the number of popular votes is the way in which they come about. Only a reasonably well-designed direct democracy can fulfill its tasks and have the desired effects.

In a direct democracy, the constitution and the law clearly define when it is mandatory for the citizens to be consulted, and when they can decide for themselves that they have to be consulted. The quality of the direct-democratic procedures in place is crucially important for the use of direct democracy and for the quality of the decisions reached.

A popular initiative or a referendum process is launched every week somewhere in Switzerland. In the Upper Engadine (a county within the canton of Graubünden), for example, on 11ᵗʰ November 2003, at 11.11 in the morning, a 27-member initiative committee began the collection of signatures for a district initiative aimed at "limiting the number of second homes being built". At the presentation of the initiative in Samedan, not far from the well-known winter sports resort of St. Moritz, committee member Romedi Arquint explained the reason for the campaign: "We want to put pressure on politicians to finally take the issue seriously." In recent years, numerous financial institutions have invested part of their funds in property in such holiday regions as the Upper Engadine – sparking off not only a building boom, but an above-average increase in the price of land.

This has adversely affected the local people, who hope to reverse the trend through their popular initiative and restrict new building to 100 second homes a year. 800 signatures were required to validate the initiative. This took a few months. Subsequently the initiative was placed on the ballot and in June 2005 the voters of the Upper Engadine accepted the proposal by an approval rate of more than 71%.

WIDE DIVERSITY OF FORM

Switzerland is a political entity with very marked diversity. This is true especially of direct democracy, both in its practice and also in the way participatory rights are designed. For instance, the number of signatures required to validate an initiative ranges from 0.9% of the registered voters in the canton of Aargau, to 5.7% – six times as many – in the canton of Neuchâtel. For federal initiatives, around 2% are required. If we look beyond the borders of Switzerland, the range is far greater. In the Free State of Bavaria of the German Federal Republic, for example, a minimum of 10% of the electorate must give their signatures in support of a popular initiative (in Germany called "Volksbegehren", popular demand), and in Saarland the signature threshold is even 20%. It is no surprise, therefore, that with preconditions such as these very few initiatives ever get as far as the ballot box: despite the fact that the right of initiative is inscribed in the constitutions of all 16 federal states of Germany, since 1945 there have been only 13 popular votes at this level, triggered by the citizens.

When we come to consider how initiative and referendum rights are formulated, it isn't just a question of the "admission price" (the number of signatures required), but also of the amount of time the initiative group has in which to collect the signatures. In Switzerland, the time allowed for initiatives is generally longer than that for referendums. At the federal level,

initiative committees are allowed 18 months to collect the 100,000 signatures required; referendum committees, on the other hand, must speed up to obtain at least 50,000 signatures within 100 days after the publication of the parliamentary bill. At the cantonal level, the requirements vary considerably. In the canton of Ticino, initiatives are given two months to collect signatures, whereas referendum requests have to be submitted within 30 days. In the canton of Aargau, initiatives have a full 12 months and referendums 90 days. There are no time limits at all for initiatives in the canton of Schaffhausen.

Quite different signature collection periods exist in other states. In the Free State of Bavaria, nearly 1 million signatures (10% of the electorate) have to be collected within 14 days – and not just anywhere, but only in state offices. In Austria, anyone wanting to submit an initiative to parliament has only seven days to collect 100,000 signatures (according to §10 of the 1973 law on citizens' initiatives, those wishing to sign can do so only in specified places and at specified times). In Venezuela, the people who wanted to remove the incumbent President Hugo Chávez in 2004 had only four days to obtain the signatures of 20% of the entire electorate. Under such extreme conditions, it is only very rarely – as in the case of Venezuela – that the instrument of initiative and referendum is able to be used.

The design of direct democracy is somewhat more user-friendly in the states of the USA and in Italy. In the United States, signature thresholds vary from a high of 15% of qualified voters (based on the votes cast in the last general election) in Wyoming to a low of 2% of the state's resident population in North Dakota; in Italy, 500,000 signatures are enough to secure a national referendum to repeal a law. However, such referendums are valid only if at least 50% of the electorate actually turns out to vote.

An international comparison of citizens' rights also reveals significant differences in their legal consequences. Whereas in Austria a "citizens demand" never leads to a popular vote, the Swiss citizens' initiative always leads to a binding popular vote, provided the initiative committee does not withdraw the initiative.

PROTECTION OF MINORITIES AND COMMUNICATION

It is clear from Swiss experience that the benefits which can accrue from direct democracy materialise only if the procedures are regularly used in political practice. However, it is also true that under democratic conditions the mere existence of well-designed direct-democratic procedures has a positive effect. How often these procedures are used in practice depends

on a number of different factors. The benefits of regularly practised direct democracy, judged by democratic principles, can – as Andreas Gross has shown in "Direkte Demokratie" (Schiller/Mittendorf, 2002) – be summarised as follows:

- Direct democracy implies a more even distribution of political power. It reinforces the principle of equal participation in politics, brings politicians and citizens closer together and lends a new quality to their relationship. Direct-democratic rights raise the status of citizens to that of "occasional politicians".

- Direct democracy gives minorities the right to a public hearing and the opportunity to exercise that right, reducing the risk of people resorting to violence in cases of conflict. It acts as a sensor for unresolved social problems and conflicts, increases the legitimacy of political decisions and furthers social integration.

- Respect for fundamental and human rights is one of the basic premises of any democracy. The exercise of direct-democratic rights reinforces the democratic attitudes and dispositions of the citizens and thus makes it more likely that human rights will be protected and preserved. People who are used to thinking and acting in a democratic way are less likely to be susceptible to the temptations of authoritarian politics.

- Direct democracy gives citizens more effective control of governments and parliaments, allowing them independent influence – both restraining and innovating – on politics in its three fundamental dimensions (the institutions, political processes and substantive political issues). Direct democracy is a dynamic factor which counters the drift towards oligarchy and helps to prevent the political institutions from shutting themselves off from the "outside world".

- Direct democracy makes politics more communicative and political decisions more transparent, and improves the quality of the public sphere – as an entity to which all the dealings of the representative state are accountable. The citizens' initiative, as "a proposal by the people to the people", embodies the idea of a dialogue, one in which the executive and the parliament are included.

- Well-developed direct democracy puts procedures and rights in the hands of citizens which allow them to go beyond mere resistance, to offer constructive challenge and innovation.

- Efficiency must not be confused with speed: a broadly-based decision-making process is a better safeguard against major policy errors, and the greater legitimacy it offers to the decisions reached paves the way for a more efficient implementation. Direct democracy is a means for increasing the institutional legitimacy of the entire political system.

THE PLEBISCITE — OR WHAT DEFINES DIRECT DEMOCRACY

Before we can look more closely at the design of direct democracy, we have to consider by what parameters it is necessary to distinguish direct-democratic procedures from other ones, which may also include a popular vote. Two criteria help us in this. First, direct democracy makes decisions about substantive issues, not about people. Second, direct-democratic procedures serve to empower citizens and spread power more widely; they are not initiated and controlled "from above" ("top-down"), but "from below" ("bottom-up"). "From below" means two things: a) that a portion of the electorate has the right to submit an initiative or demand a referendum and that the initiative committee has control over the decision to call a popular vote; or b) that the calling of a referendum is prescribed by the constitution. In this view, plebiscites or popular vote procedures which are initiated and controlled "from above" do not count as part of direct democracy; neither does recall nor the direct election of representatives.

In a plebiscite, the "powers that be" – usually the president or the head of government – decide when and on what issue(s) the people shall be consulted. And indeed, such plebiscites are frequently merely consultative; juridically they are not binding on parliament or the government. Plebiscites are instruments of power in the hands of the rulers who seek the approval of the people in order to consolidate or salvage their power. The aim is not to implement democracy, but to provide legitimacy for the decisions of those in power.

Unfortunately, plebiscitary and direct-democratic popular vote procedures are often confused, as can be illustrated by the fact that the common term "referendum" is used to describe both of these fundamentally different procedures. By doing so, we obscure the concept of direct democracy and in addition to that, perhaps unintentionally, discredit direct democracy by association with the use of plebiscites by all kinds of dictators and authoritarian regimes.

The quoting of bad experiences with plebiscites, often done in a ritual and repetitive manner, is not a valid argument against direct democracy.

On the contrary, the fact that all kinds of dictators have used the plebiscite to justify their use of power ought to be a warning to us that plebiscites can be used to turn democracy into its opposite.

Failing to distinguish between democracy and dictatorship is a fatal error. Good democracy – and especially direct democracy – hardly allows tyrants of Hitler's ilk to flourish. On the contrary: dictatorships and totalitarianism can only flourish where democracy does not exist or has ceased to exist. Germany at the time of Hitler's accession to power is a striking example of this.

THE DESIGN OF DIRECT DEMOCRACY

In a genuine direct democracy, the constitution and the law clearly define when it is mandatory for the citizens to be consulted, and when they can decide for themselves that they have to be consulted. The quality of the direct-democratic procedures in place is crucially important for the use of direct democracy and for the quality of the decisions reached. When initiative and referendum procedures are being drawn up, a number of factors have to be taken into account:

- SIGNATURE THRESHOLDS: how many voters' signatures are required in order to trigger a citizens' initiative or a referendum?

- TIME ALLOWANCES: how much time is allowed for each stage of the process (collection of signatures, government response, parliamentary debate including a possible counter-proposal, referendum campaign)?

- HOW THE SIGNATURES ARE COLLECTED: can signatures be freely collected (on the street, for example) and thereby generate discussions, or are discussions prevented by restrictive collection rules (e.g. that signatures can be given only in designated official centres)?

- HOW WELL DIRECT DEMOCRACY IS EMBEDDED IN THE OVERALL POLITICAL SYSTEM: what rules exist for the involvement of government and parliament?

- MAJORITY REQUIREMENTS AND MINIMUM TURNOUT QUORUMS: is there a prescribed minimum "Yes" vote or turnout quorum (as a percentage of the electorate) in addition to the simple majority rule?

- INFORMATION FOR CITIZENS AND PUBLIC DEBATE: are citizens properly, objectively and adequately informed? How is public debate promoted and supported?

- RESTRICTION OF SUBJECT-MATTER: what issues are citizens NOT allowed to decide direct-democratically?

- LEGAL CONSEQUENCES: what are the legal consequences of a valid citizens' initiative (i.e. one which has satisfied the legal requirements)?

- THE PROCESS AS A WHOLE: do the direct-democratic procedures form a coherent whole which cannot be subverted by the authorities, government or parliament?

The number of popular votes has increased significantly in recent decades: during the 1990s, on the national level, there was an increase of around 35% in Switzerland and more than 100% in Europe as a whole. There are even more impressive figures at the local level: in Bavaria alone, more than 1,000 popular votes took place within a ten-year period. Worldwide, more and more people are now able to vote on an increasing number of issues.

After this quantitative breakthrough towards direct democracy since 1989, the future of direct democracy now depends on qualitative improvements, in Switzerland as elsewhere, and there is a need to bid farewell once and for all to all plebiscitary procedures.

GUIDELINES FOR (MORE) DEMOCRACY
In order to get an (even) better design of direct-democratic procedures, the following guidelines would need to be taken into account:

The procedures of direct democracy should be so designed as to encourage, rather than prevent, unimpeded communication at all levels. Setting thresholds for participation (turnout) and approval only encourages those who want to preserve the status quo to avoid communication. It is often easier to prevent supporters of a reform from reaching a quorum by blocking debate and persuading people not to vote than by securing an honest majority in the referendum ballot.

Reflection, discussion, meetings and interactions all need time. So do efforts to reach mutual understanding or compromise between those representing differing interests and organisations.

If the necessary time is not granted, the procedures tend to favour the established interests, who generally want to avoid being challenged in any case – quite apart from the fact that without sufficient time it is impossible to strengthen social integration. So the amount of time allowed for each stage of the process should be arranged with these considerations in mind. If only 14 days are allowed for the collection of what is in any case usually too large a number of signatures, then organisations which are not already established and well-organised are scarcely able to make successful use of the direct-democratic instruments designed primarily for them. It would be much more helpful to allow a collection period for signatures of between at least six months and a year.

The same applies to the time allowances and procedures granted to the administration, the organised interests and their associations, the political parties and parliament. Citizens' initiatives in California bypass parliament completely, whereas in Switzerland, once the required number of signatures has been handed in, a very diverse and extensive process of consultation and negotiation begins. If the system is to produce a high quality of discussion, with a genuine attempt to reach an understanding of each other's different positions, then it is vital not to hold the referendum vote too soon, perhaps only six months after the signatures have been handed in. The institutions should be allowed a minimum of a year, perhaps even 18 months.

This has nothing to do with stalling or dragging one's heels; it is an attempt to take those who launch initiatives seriously and to increase the reasonableness of the system and its procedures as well as the chances of finding an acceptable compromise. Direct democracy is much more than a "fast food", opinion-poll pseudo-democracy based on knee-jerk, emotional reactions to the concerns of the moment. What people are prepared to accept and be bound by has to be worked out democratically every time anew for each new issue.

Improving and guaranteeing the quality of direct democracy is not an end in itself. Only well-motivated and self-confident citizens, who have had a positive experience of politics at local, regional and national levels, will have the courage and confidence to demand elements of direct-democracy where they are most needed – in relation to the ongoing process of globalisation.

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The limits
of direct democracy

Over the last 150 years, the initiative and referendum process has been steadily improved and refined. During this time there have been profound changes, not only in the international context, but also in people's awareness and understanding of democracy itself. This has led to intense differences of opinion about the potential and the limits of popular rights — not least in Switzerland.

Direct democracy plays a central role in Swiss people's attitude to European integration. Many people consider that citizens' rights would be threatened if Switzerland were to join the EU. Others view accession as a chance to bring direct democracy to the European level, where many of today's political decisions are being made.

On 1 June 2008, Swiss voters were able to vote on a popular initiative whose aim was to secure – by having it incorporated into the national (federal) constitution – the right of voters at the local (communal) level to decide by referendum on applications for Swiss citizenship. 36.3% of the voters voted in favour of the initiative proposal, 63.7% against, and the proposal received a majority of the votes in only 1 out of 26 cantons.

Eight years before this, the commune of Emmen in the canton of Lucerne had allowed the voters to decide in a secret ballot on the naturalisation applications of 56 residents of varying nationality; the procedure had been introduced by means of a local citizens' initiative. Becoming a Swiss citizen is a complicated process in which the key decision is made at the local (communal) level. One can only acquire Swiss nationality if one is also granted citizenship by the canton and the local community. However, the Federal Court issued a ruling on 9 July 2003 that the Emmen decision to reject most of the 56 applications was discriminatory and that using local referendums to decide on citizenship applications was unconstitutional. The voters in Emmen had rejected all 38 applications of people coming from the former Yugoslavia, but had simultaneously accepted all the applications by the eight Italians seeking citizenship.

The citizenship decisions in Emmen and the two rulings by the Federal Court launched a fierce debate, both within Switzerland and within the international community. In the final analysis, the debates were about the limits of (direct) democracy – an issue which is of relevance not only to Switzerland. Are popular referendums on citizenship applications legitimate? What is meant by popular sovereignty? Where do the limits of (direct) democracy lie, and what checks and balances can there be on them? How can democracy protect itself against illegitimate popular referendum decisions; and how is this done in Switzerland? And who decides on what is illegitimate? The answers to these questions can vary greatly, depending on what ones understanding of democracy is.

Casting a glance at the development of democracy in Europe post-1945 may help to shed some light on the current battles over democracy. The experience of war and totalitarian regimes generated the desire to establish democratic states and international order founded on a commitment to peace and justice. The new democracy should be able to defend itself. The idea was to move from a system based on treaties between nation-states enjoying absolute sovereignty to one of an agreed rule of law which imposed limits on national sovereignty. The result was constitutional democracy and the promise of an international constitutional order – achievements which have been and continue to be regularly challenged and endangered.

Before the Second World War, the idea of law which constrained law did not exist. The source of law was held to rest with the majority will of the people or parliament. The legislative was omnipotent – and thus also politics. The dominant concept of democracy was a formal one and the external sovereignty of states was held to be unlimited. There was a radical change after WWII. The exercise of political power (democracy) was now tied to a constitution – for the protection of peace and of inalienable human rights. At the nation-state level this development began with the new constitutions of Japan (1946), Italy (1948) and Germany (1949); at the international level with the UN Charter (1945) and the Universal Declaration of Human Rights (1948).

These developments altered the way democracy was viewed. Nowadays, democracy is no longer seen only in terms of the supreme and unlimited power of the people, but finds its basis and material limits in being bound to a constitution and to the fundamental human rights set out therein. In addition to the formal dimension of representation and the majority principle, democracy has also acquired a material dimension.

This has, in turn, changed the understanding of the nature of legality and of jurisprudence. Valid laws are no longer merely a product of the legislative branch, but must conform in terms of content and intent with the principles of justice as laid down in the constitution. It is no longer sufficient to keep to the letter of the law, irrespective of the particular subject in question. Laws must be subjected to the test of constitutionality, and laws which do not conform must either be amended or repealed.

This has also contributed to the creation of a new relationship between politics and law. Politics no longer takes precedence over law; rather it is seen as an instrument for implementing or realising constitutionally-bound law. Fundamental human rights now constitute that domain over which neither politics nor the market has the right to make decisions.

NO DEMOCRACY WITHOUT THE RULE OF LAW

Considering the Federal Court judgements of 9 July 2003 within the framework of the two models of "formal" and "constitutional" democracy, decisions in secret ballot on applications for citizenship can be assigned to the model of formal democracy. This model places no material limits on the exercise of popular sovereignty. The outcome of a popular referendum is held to be democratic and legitimate if the referendum process has obeyed the formal procedural rules. Such an outcome cannot possibly be discriminatory.

Formal democracy is contrasted by a notion of democracy which holds that the exercise of popular rights must abide by the constitution and binding international law. Accordingly, therefore, a decision by popular vote cannot be legitimate if it violates the constitution or constitutionally protected fundamental rights. In this view, while it is legitimate to decide through the mechanism of the popular referendum on the qualifying criteria for the acquisition of Swiss citizenship (such a decision would affect all equally), it is not legitimate to use this means for deciding individual cases.

Constitutionalism is meant to protect fundamental human rights and democracy by limiting the exercise of political power by means of a constitution. Excess constitutionalism creates the danger of a state ruled by judges: legalistic interpretations of fundamental rights replace politics. Insufficient constitutionalism, on the other hand, creates the threat of the tyranny of the majority, where minorities and human rights are disregarded. Both extremes undermine democracy.

A citizens' initiative proposal – such as the failed naturalisation initiative of 1 June 2008 or the successful initiative to ban the building of minarets on 29 November 2009 – which explicitly or implicitly violates fundamental human rights which have been democratically incorporated into the constitution creates a serious problem for democracy. In the Swiss context, the problem of protecting fundamental rights is exacerbated by a loophole in constitutional jurisdiction, whereby federal laws remain valid even if they contravene the constitution (Article 191 of the Federal Constitution). There is no independent body to check whether federal laws are unconstitutional.

Distinguished constitutional experts Jörg Paul Müller and Giusep Nay therefore conclude that the Federal Court is unable adequately to protect people at the federal level in Switzerland from a breach of their constitutional rights. Their opinion is disputed. Be that as it may, there remains the essential question of how to best protect the fundamental rights; the treatment of this topic, however, is not possible within the limits of this essay.

DEMOCRACY AND NATIONAL SOVEREIGNTY

Many Swiss citizens' initiatives and referendums are concerned with Switzerland's relationship to those people who are not Swiss citizens, but who are either resident there or are immigrants or asylum seekers. The June 2008 naturalisation initiative was one of these, as were the two popular referendums on legislation relating to asylum seekers and foreigners which were voted on in September 2006. All of them point to another underlying theme: the relationship between democracy and the nation/nationalism.

The subject is not exclusive to Switzerland; many other countries are having to deal with it in the context of their own historical experiences. For a long time, Switzerland was a republic amidst what were almost all monarchies, and, unlike most other European countries, it had no direct experience of the two World Wars or of totalitarianism.

During WWI, there was a clear reversal in Switzerland from a previously liberal, open and welcoming attitude to one which was conservative and defensive. Xenophobia – in the form of an official campaign against the country being "swamped by foreigners and foreign influences" (in German: Überfremdung) – became a structural characteristic of Swiss nationalism. A national sense of "Swiss exceptionalism" developed – the idea that Switzerland, as a small, independent and neutral state with a unique national culture and identity, was a "special case". The idea of the modern liberal Swiss state of 1848 as a political nation lost out to the idea of a unique kind of Swiss identity emerging "naturally" over the course of time – of "Swissness" – which gained an increasing influence on actual policy decisions.

In the 20th century, Swiss official nationalism was able to strengthen national cohesion, especially in threatening times. It united and also obligated: all successful politics, whether of the Left or the Right, had to align itself with the coordinates of the new identity. It was internalised by the government, by parliament and by the political parties – as well as by many citizens – and became part of the country's political culture.

Since then, however, the existential parameters for states and nations have been radically transformed. Today, at the beginning of the 21st century, Switzerland is one among many democratic countries, all of which have certain problems in common – the loss of national sovereignty, for example.

But how is one to react when more and more important decisions "emigrate" away from the sphere of democracy and the constitutional state? What does one do about the fears and uncertainties aroused in the public by the loss of sovereignty? Can the loss of sovereignty be offset by joining the EU – or would such a move bring about a complete loss of independence? What is to be done with those members of the population who are not Swiss citizens? How can immigration be regulated? Do easier immigration and political rights for foreigners mean that national sovereignty is also lost internally? What does sovereignty actually mean today?

In 20th century Switzerland there were uniform answers to these questions – deriving from the framework of official nationalism supported by all the political parties. There was a common front against the perceived threat of "Überfremdung"; there was agreement on continuing to "go it alone" when the issue of joining the European Community presented itself for the first time in the 1960s.

DEMOCRACY – BUT ONLY FOR US?

The situation was radically changed by the ending of the Cold War. Swiss official nationalism became a party ideology; it divided the public and was now put to use by an increasingly powerful and influential national-conservative movement.

The shift caused the established parties to become disoriented. In the 1990s, they failed to seize the golden opportunity – presented by the international debate on "the shadows of WWII" – of generating a more realistic image of Switzerland and its history. Instead, they continued to repress their co-responsibility for xenophobic Swiss nationalism, which is incapable of fulfilling the democratic standards modern Switzerland had set itself in 1848.

The national-conservatives were the only political force able to give a clear answer to the question of the loss of sovereignty. Their message continues to be shaped by an interpretation of history which allows them to project Switzerland as a "special case" – that of a small, neutral country which has survived in a menacing environment thanks to its strong democracy and its constant readiness to take up arms if threatened. For them, sovereignty is indivisible. In this way they claim legitimacy for their continuation of a pro-

tective domestic policy and a foreign policy of "going it alone". Bolstered by their concepts of history, patriotism, democracy and international order, the national-conservatives are attempting to turn back the clock – for example, by challenging the constitutionalisation of citizens' political rights.

Policies towards foreigners and Europe thus become a litmus test of the prevailing concept of democracy in the 21st century. If the demos is replaced by the "nation", and political equality by citizenship, the result is national democracy – the standard position in the age of nationalism. To be sure, migration exposes its weaknesses, but many have accommodated themselves to the idea that the right to equal political participation should be permanently denied to a sector of the population.

National democracy was and is a political order for the privileged. To begin with, it usually applied only to men, later also to women. The history of female suffrage shows that those who are excluded do not have to accept their situation, that reforms are possible. The same applies to the political rights of foreigners: only one year after the founding of the Swiss Confederation in 1848, foreigners living in the canton of Neuchâtel were granted voting rights at the communal level.

Up to 1914, both the national government and parliament were planning to defuse the tension between the priviliged Swiss and the rest of the population by making it easier for the latter to acquire citizenship. Continuing this tradition, there have been in recent times many attempts to do the same. They derive from the Swiss understanding of democratic decisions – that the latter must not only be desired by a majority, but must also be fair and reasonable for everyone. Over the last 15 years, citizens without a Swiss passport have been granted voting rights (for both elections and referendums) in several cantons and numerous communes.

On the other hand, there is also a trend towards reducing consensus democracy in favour of simple majority democracy. Recent years have seen an erosion both of the agreed approaches to conflict resolution and of an earlier readiness for cooperation which transcended party affiliation. The trend is also confirmed by the implementation of measures to make naturalisation more difficult and by repressive policies towards asylum seekers and foreigners. Instead of gradually extending the scope of citizenship to include all adult members of the public, these policies are aiming in the opposite direction. If pursued consistently, they would ultimately lead to the extension of "alien" status to all minorities.

Whereas in many countries – such as the USA and Germany – the courts have gained enormously in importance (and thus also in political power) in recent years, in Switzerland the risk of the state being governed by the judiciary seems far less significant than the threat of the boundaries of the constitutional state and the rule of law being eroded in the name of an all-encompassing popular sovereignty. There appears to be a clear need for the fundamental human rights to be better protected. In the final analysis, of course, democracy can only survive if people decide of their own free will to honour the principles of democracy and actually know what those are. Democracy depends on people having made a fundamental democratic attitude their own, on this being reflected in their actions, and on them further developing and refining it.

A major strength of the Swiss form of democracy doubtlessly lies in the fact that it provides a particularly strong incentive for people to participate actively in political life. However, it must also be said that it has not so far been politically possible to improve the fairness of the electoral and referendum process. In many referendum campaigns, basic resources such as money, organisational strength and sophistication, time and media influence are still very unevenly distributed. Above all there is a lack of transparency. Political parties receive no public funding and there is virtually no public support for initiative and referendum campaign groups whose efforts on behalf of the wellbeing of society are extremely important.

Fairness in both the private and state/public spheres is a fundamental precondition for the democratic forming of political will. There are, however, considerable difficulties in regulating it. Where, for example, does the boundary between genuine information and propaganda lie? How is it possible to ensure the availability of balanced, accurate information? What is the role of the government and the authorities in this?

Citizens have a right to be fully informed and to have a balanced and impartial referendum debate. Without accurate information, public monitoring and control of the government is impossible, allowing the latter to remain unaccountable. In a democracy, information is a vital public good to which the public has a permanent and constantly renewable claim. This is another issue which has repeatedly been the subject of intense debate in Switzerland in recent years – for example, in the context of another failed citizens' initiative "Popular sovereignty instead of governmental propaganda" of 1 June 2008, which sought to impose a ban on the government practice of actively campaigning for a "yes" or a "no" in the run-up to a referendum. Arguments

about fairness in referendum campaigns are by no means unique to Switzerland; they also happen in other countries, such as Ireland, for example, where on 12 June 2008 the citizens were able to vote about the new "Lisbon Treaty" of the European Union. In that country, a referendum commission which oversees the campaigns is created for each new referendum.

Democracy must not only be lived; it also has to be learned. There has to be education for democracy, and for political awareness in general. Action needs to be taken in this area both in Switzerland and many other countries. A study by the "International Association for the Evaluation of Educational Achievement", published in 1999, revealed a clear lack of political knowledge and understanding among 14- to 15-year olds in Switzerland. However, the study also showed that these young people had internalised democratic values better than young people in most of the other 27 countries which took part in the study.

Since political education does not happen in a vacuum, but in relation to a vision of society and a particular concept of democracy, there is always a conflict between different ways of seeing things: between conservative and modern, nationalistic and cosmopolitan. But how is it possible to design an education for democracy when there are strongly conflicting social and democratic ideals? The potential and the limits of (direct) democracy must be considered and defined in the changed context of the 21st century.

On its own, political democracy cannot reproduce a democratic way of thinking. This has to be backed up by democratic experiences in everyday life, where each person can experience and come to see him- or herself as an active participant in a shared undertaking. Such experiences in the "sub-political" arena can lead to the realisation that democratic processes of political will-formation present a constructive means of solving common problems. In order for this to happen, two things are necessary: the practical experience of democracy, and reflection on it; active participation plus analysis and self-criticism.

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The world of direct democracy

Recent decades have seen the expansion of democratic rights of popular participation in political decision-making in most parts of the world. In many states and regions, those rights have also been put into practice. And yet for most people the reality still lags far behind their basic democratic aspirations. There is still far too little direct democracy. And the lack of quality in the provision is even greater than the lack of quantity.

The 21st century will see the part-time democracy of the past replaced by a full democracy, in which citizens will have the right to have their say on substantive issues.
This is the only way for representative democracy to become truly representative.
Citizens' rights can turn the utopia of yesterday into the reality of tomorrow.

More than two hundred years after the French Revolution, one simple principle has become firmly rooted in the minds of most people: that the foundation on which all legislation and exercise of executive power is based should be the will of the people. Or as Rousseau put it: if every man and woman takes part in drawing up the laws which govern them, then ultimately they must only obey themselves.

More than sixty years after the adoption of the Universal Declaration of Human Rights on 10 December 1948, the world has moved a little closer to the participative principles endorsed by that key document. Article 21 of the Declaration states: "Everyone has the right to take part in the government of his country directly ..." and "The will of the people shall be the basis of the authority of government". At the 2005 UN World Summit all the world governments committed to the democratic principle of "full citizen participation", which led the Secretary General of the UN to launch the decade "for the democratisation of democracy" in early 2010.

Whereas in the mid-1980s only just over 40 percent of all states in the world were judged to respect fundamental democratic values, the share had risen to more than 65 percent by 2010. The growth in the number of states which have participatory procedures is even more impressive: nine out of ten countries worldwide now have provision for some form of direct influence by citizens on the political agenda and/or their participation in the legislative and decision-making processes. People's growing awareness of their democratic claim to genuine involvement is confirmed by opinion polls: according to a poll of 19 countries carried out in the first half of 2010 by the organisation World Public Opinion[1] 85 percent of those polled believe that "the will of the people" should be the basis for the authority of government, and 74 percent believe that the principle of popular sovereignty is still inadequately realised in practice. In other words, people around the world agree that direct democracy must be a central pillar of public life – but most are also aware that this is far from being the case in reality.

LEARNING BY DOING

Anyone who has taken an active interest in the course of world events in recent years could not fail to be aware that the process of democratisation of societies around the globe is by no means linear. The euphoria over the whirlwind speed of change in the 1990s has evaporated. After the fall of the Berlin Wall, there was even talk here and there of "the end of history", and Western-style representative democracy was promoted as the univer-

[1] www.worldpublicopinion.org

sal "gold standard" which every country in the world should adopt. But that did not happen: old, submerged conflicts resurfaced and bloody confrontations broke out in many parts of the world – in South East Europe, in Central Africa, in the Middle East.

In the wake of globalisation and the soaring price of some raw materials, autocratic regimes – including China, Russia and some Arab countries – were even able to consolidate their political hold. Cracks appeared finally even in "old" democracies such as the United States and Great Britain, where – in the name of the "war on terror" – fundamental freedoms were curtailed.

Beyond this, a dynamically self-reinforcing globalisation began to undermine and eat away at the political and legal ramparts of the nation state, provoking national-conservative reactions from both ends of the political spectrum; Right and Left alike declared their opposition to integration, in respect of both domestic and foreign policy. The assumed linkage of popular sovereignty, human rights, the rule of law and the separation of powers – an understanding which arose in the wake of the French Revolution and which was increasingly formalised and ratified in charters and constitutions after the Second World War – began to be questioned, and still is. There are implications here for the future of democratisation, as Journal of Democracy editor Larry Diamond suggested with some scepticism in recent article for the journal Foreign Affairs: "Before democracy can spread further, it must take deeper root where it has already sprouted."

But where in the world, and how, has direct democracy really taken root in the last two hundred years? The institution of the constitutional referendum was born in the upheaval of the American Revolution. The very first popular vote on a substantive issue took place in 1639 in Connecticut – at that time an independent colony. But the real impetus came with the constitution-making processes in Massachusetts and New Hampshire between 1778 and 1880.

The constitutional referendum was taken up in Europe by revolutionary France. The National Assembly declared that a constitution had to be decided by the people. In August 1793, six million eligible French voters were asked to decide on the country's new democratic constitution (the Montagnard Constitution). Almost 90 percent said "yes" to the revolutionary house-rules, which included a provision for ten percent of the voters to call a referendum.

It was not France, however, but neighbouring Switzerland which provided the stage for the next step in the evolution of popular rights. From there they returned to the Americas: to the north-western states of the USA towards the end of the 19th century, and to Uruguay at the beginning of the 20th. When the Commonwealth of Australia was inaugurated in 1901, its constitution was inspired by both American federalism and the Swiss system of the double majority for constitutional amendments: as happens in Switzerland, and has now been the case for more than a hundred years in Australia, a constitutional amendment requires approval by both a majority of the total vote and a majority of the federal states.

It was not until after WWII that direct-democratic tools acquired political significance in a large number of other countries of the world – such as Italy, the Philippines, South Africa, Ecuador, Canada and many others. In the last two hundred years, more than 1,500 countrywide popular votes on substantive issues have been held worldwide – half of them in the last twenty years.

In many places in the world today, the instruments of the citizens' initiative and the referendum have become a robust component of a modern representative democracy. This is true of around half the US states, of Switzerland, and even of the hereditary monarchy of the Principality of Liechtenstein.

Nonetheless, far more places in the world suffer from an absence of or severe weaknesses in the ability of citizens to be directly involved in policy- and decision-making. For a start, there has been a problem with confusing terminology – for example, when a consultative plebiscite launched by a president is referred to as a referendum, while a citizens' initiative is often called a petition. Then there are the serious problems associated with badly designed procedures – such as excessively high turnout and approval quorums which distort the democratic decision. On top of this come major practical flaws – such as impossibly short deadlines for signature gathering, and even the refusal to respect the outcome of a popular vote on a substantive issue. Then there's the fact that in practice, as with other core components of modern representative democracy (such as, for example, transparency and legally enforceable human rights), those in power often view direct-democratic procedures as threats to their control, seducing political parties into engaging in ugly attempts to instrumentalise issues. All of these factors can wreak serious harm on the basic idea of direct democracy.

The world of direct democracy is facing enormous challenges. Whereas the globalisation of capitalism has continued its advance and clearly shown its weaknesses, democratisation has in recent years typically suffered setbacks. For many people this means that they have been able to take part in global affairs as consumers, customers, and maybe even as investors – but not as politically active citizens. Hence, in order to balance the economic globalisation, democracy must go transnational. Otherwise, all our achievements of modern representative democracy will be put into question altogether. The erosion of democracy within established democracies is happening because the democratic systems are organised and legitimised within individual states – and it is precisely the latter which are tending to lose control of their own affairs in the wake of globalisation. The democracies are like ships whose rudders are no longer reaching the water on more and more occasions. This is the case with many environmental problems, for example, where a state acting alone is likely to be ineffective, because environmental problems do not generally stop conveniently at national borders. On top of this crisis of ineffectiveness, many established democracies are also experiencing a crisis of credibility: their political parties are losing members, fewer and fewer people bother to vote, and elected officials are suspected of abusing their power primarily for self-interest.

The world's democracies need to become both more direct and more transnational. This twin-track approach has already begun – not least in Europe, where the process of European integration over the last thirty years has been gradually changing what began as an international economic project into a transnational political one. The citizens of Europe have now expressed their opinion almost fifty times in popular votes on substantive European issues, starting with decisions by the French, Danes, Swiss and Norwegians in 1973 and continuing through to the Irish adoption of the "Lisbon Treaty" in September 2009.

In at least one critical aspect, the new European "constitution" is a democratic milestone: it proposed for the very first time anywhere that the principle of participatory democracy be acknowledged at the transnational level and simultaneously established a direct-democratic tool: the "European Citizens' Initiative". From now on at least one million EU citizens from several member states have same right already enjoyed by the European Parliament and the Council of Europe: the right to propose new legislation to the European Commission.

As with the introduction of direct democracy at the local or national level, the debate at the European level was not so much about the principle of direct citizen involvement itself, but rather about the design of the new instrument: for this purpose the EU not only organised, in 2010, a wide-ranging public consultation process but agreed comprehensive implementation rules. The proposed regulation addressed all the basic questions relating to the practical process but did not fully appreciate the need of a supportive infrastructure. Such a infrastructure will be critical in preparing, enabling and advising citizens in how to make full use of the new instrument, from legal aspects to translation needs and implementation powers. Beginning in 2011, the initial practical use of the first transnational direct-democratic tool will give a hint about the options and limits of this new instrument.

MAPPING, MEETING, MAINSTREAMING

One of the important side-effects of the increased introduction and use of direct-democratic tools worldwide is the interest shown by international organisations in this modern form of democracy. In addition to such global organisations as the UN, the World Bank and the Forum of Federations, the Council of Europe (to which 47 countries belong) has drafted guidelines for "free and fair initiatives and referendums", in which it warns against excessively high signature requirements, unhelpfully short deadlines and unnecessary turnout quorums. In many parts of the world, academic institutions and NGOs have begun to take more notice of the procedures and practice of direct democracy than was the case previously.

The developments of the last 25 years have made a major contribution in this respect, as initiative and referendum rights have also been introduced – and actually put into practice, mainly at the local level – in many Asian countries and throughout virtually the whole of South America. Local democracy is benefitting from the fact that many countries have been decentralising their organisation and administration, leading to the greater empowerment of new groups of citizens. In India, for example, the introduction of a village level of political organisation (the "panchayat") was combined with a rule that women must comprise at least one third of all committees.

In Taiwan, South Korea and Japan, instruments of direct democracy have been introduced at the local level, leading millions of people to take their first ever steps in political involvement. The road to democracy is not always smooth, however: both in Asia and South America, the new democratic praxis repeatedly comes up against age-old authoritarianism – and democracy is not always the winner.

The task now is to support the expanding and increasingly complex world of direct democracy with a clear aim in mind, but also patiently – and without losing sight of either the old or new threats to democracy. This will require the promotion and exchange of knowledge, the development and nurture of common instruments, and the intensive use of initiative and referendum rights at all political levels. What is true for other institutions of social and political life is also true for direct democracy: there is no ready-made, "one size fits all", model. Each political community and each new generation must undertake the democratic fine-tuning which is necessary to adjust the various procedures to match current realities and demands and to leave a sound basis for the future. The learning process is manifold: it requires that one work at ones own praxis, but also be constantly observing what is happening elsewhere.

For the direct democracy activist in New Zealand, the primary objective today is to secure binding status for referendums which come about as a result of a citizens' initiative; whereas true democrats in Germany are mainly focussed on trying to achieve a lowering of the signature and referendum turnout quorums, which in most cases are too high. In both instances, the available procedures are still very seldom used, because they do not – as yet – produce what they promise: the free and fair involvement of citizens in the decisions on the matters which affect them. But even the often relatively weak provisions for direct democracy which, despite all difficulties, do already exist in many countries can be used to bring the process forward.

That is why it is instructive to cast a glance at those parts of the world where direct-democratic procedures are now a solid component of the political system – at Switzerland, the USA and Uruguay, for example. It is not unusual in these countries for direct-democratic processes to be launched with the specific aim of changing the rules of the (direct-) democratic game. This is a way in which Modern Direct Democracy can be the key to itself in the 21st century.

RELATED INFORMATION [F=FACTSHEET, S=SURVEY, G=GLOSSARY]
F26 Key points for free and fair referendums in Europe
S   World Survey: The Global Participation Challenge
G   Glossary of direct-democracy terms

Resources

ELECTIONS 2003

LEVEL OF STATE		BODY ELECTED
MUNICIPALITY	9 FEB	Renewal of office, Justices of the Peace 2003–2009
CANTON	6 APR	Cantonal Council (parliament) 2003–2007
	6 APR	Governing Council (executive) 2003–2007 (4 women 3 men)
	18 MAY	Church synods 2003–2007
FEDERATION	19 OCT	National Council 2003–2007
	19 OCT	Zurich members of Council of States (2) 2003–2007

MUNICIPALITY (CITY OF ZURICH): REFERENDUM VOTES 2003

		PROPOSAL	RESULT
9 FEB	1	Loan of 75 million francs for buildings for the "Energy Services" division of the Zurich city electricity generating station	**ACCEPTED** (78.13%) TURNOUT: 31.27%
18 MAY	2	Reconstruction and renovation of the indoor stadium involving the purchase of land costing 31,448,000 francs, building permit, loan of a maximum 20 million francs and portion of increase in share capital	**ACCEPTED** (73.5%) TURNOUT: 49.55%
18 MAY	3	Public design plan for "Sechseläutenplatz-Theaterplatz"	**ACCEPTED** (69.31%) TURNOUT: 49.68%
7 SEPT	4	Subsidy for residential building and pension fund, insurance against potential losses on loan to City of Zurich pension fund, supplement to decision of municipality dated 31st August 1924	**ACCEPTED** (79.69%) TURNOUT: 32.33%
7 SEPT	5	Private development plan for the Zurich stadium with environmental impact study	**ACCEPTED** (63.26%) TURNOUT: 32.44%

MUNICIPALITY (CITY OF ZURICH): REFERENDUM VOTES 2003

		PROPOSAL	RESULT
7 SEPT	6	Approval of 47,666,500 francs for a share in the Zurich Stadium Co. responsible for creating infrastructure for the football stadium. www.stadion-zuerich.ch	**ACCEPTED** (59.19%) TURNOUT: 33.25%
7 SEPT	7	Definitive introduction of block-lessons in the lower classes of the primary school from the 2005/2006 school year, approval of annual recurrent expenditure of 3,650,000 francs	**ACCEPTED** (72.04%) TURNOUT: 32.72%

CANTON OF ZURICH: REFERENDUM VOTES 2003

		REFERENDUM QUESTION (CANTONAL AND EXECUTIVE COUNCIL RECOMMENDATION)	RESULT
9 FEB	1	Do you want to accept the following proposal? Introductory law to the Swiss civil code (amendment) (YES)	**ACCEPTED** (56.5%) TURNOUT: 32.7% MUNICIPALITIES: YES: 169 / NO: 13
9 FEB	2	Do you want to accept the following proposal? Decision of the Cantonal Council on approval of a loan for a cantonal contribution to the building of the Glattal railway and also for road building and modification in the central Glattal (YES)	**ACCEPTED** (66.6%) TURNOUT: 32.9% MUNICIPALITIES: YES: 170 / NO: 12
18 MAY	3	Do you want to accept the popular initiative "Lower taxes for lower incomes (popular initiative for greater tax fairness in the canton of Zurich)" ? (NO)	**REJECTED** (63.9%) TURNOUT: 50.1%
30 NOV	4	Do you want to accept the change in the cantonal constitution regarding the division of duties between canton/municipalities? (YES)	**ACCEPTED** (83.42%) TURNOUT: 40.0% MUNICIPALITIES: YES: 182 / NO: 0

CANTON OF ZURICH: REFERENDUM VOTES 2003

		REFERENDUM QUESTION (CANTONAL AND EXECUTIVE COUNCIL RECOMMENDATION)	RESULT
30 NOV	5	Do you want to accept the change in the cantonal constitution to reform the relationship between church and state? (YES)	**REJECTED** (55.01%) TURNOUT: 40.2% MUNICIPALITIES: YES: 14 / NO: 168
30 NOV	6	Do you want to accept the law on churches? (YES)	**REJECTED** (54.18%) TURNOUT: 40.2% MUNICIPALITIES: YES: 16 / NO: 166
30 NOV	7	Do you want to accept the law on the recognition of religious communities? (YES)	**REJECTED** (64.06%) TURNOUT: 40.4% MUNICIPALITIES: YES: 8 / NO: 174
30 NOV	8	Do you want to accept the law on a police and judicial center for Zurich? (YES)	**ACCEPTED** (55.70%) TURNOUT: 40.3% MUNICIPALITIES: YES: 110 / NO: 74
30 NOV	9	Do you want to accept the amendment to the health law relating to the handing over of medicines? (YES)	**REJECTED** (58.88%) TURNOUT: 40.8% MUNICIPALITIES: YES: 14 / NO: 168
30 NOV	10	Do you want to accept the law on the partial revision of the procedure in criminal cases? (YES)	**ACCEPTED** (76.27%) TURNOUT: 39.8% MUNICIPALITIES: YES: 182 / NO: 0
30 NOV	11	Do you want to accept the popular initiative "The right of the people to have a say on tax matters"? (maximum tax rate of 98% in the constitution) (NO)	**REJECTED** (63.77%) TURNOUT: 40.3% MUNICIPALITIES: YES: 11 / NO: 171
30 NOV	12	Do you want to accept the popular initiative "An end to the official raising of housing costs for tenants and owners"? (Abolition of the tax when properties change hands) (CANTONAL COUNCIL: YES / EXECUTIVE COUNCIL: NO)	**ACCEPTED** (52.06%) TURNOUT: 40.4% MUNICIPALITIES: YES: 155 / NO: 27

FEDERATION: REFERENDUM VOTES 2003

		PROPOSAL	RESULT
9 FEB	1	Federal decree on amendment to citizens' rights	**ACCEPTED** (70.4%) TURNOUT: 28%
9 FEB	2	Federal law on adjusting the canton's contributions to hospital costs	**ACCEPTED** (77.4%) TURNOUT: 28%
18 MAY	3	Amendment to federal law on the army and military administration	**ACCEPTED** (76.0%) TURNOUT: 50%
18 MAY	4	Federal law on civil protection	**ACCEPTED** (80.6%) TURNOUT: 50%
18 MAY	5	Popular initiative "Yes to fair rents for tenants"	**REJECTED** (67.3%) TURNOUT: 50% CANTONS: YES: 1 / NO: 25
18 MAY	6	Popular initiative "For one car-free Sunday per season – a 4-year trial (Sunday Initiative)"	**REJECTED** (62.4%) TURNOUT: 50% CANTONS: YES: 0 / NO: 26
18 MAY	7	Popular initiative "Healthcare must be affordable (Health Initiative)"	**REJECTED** (72.9%) TURNOUT: 50% CANTONS: YES: 0 / NO: 26
18 MAY	8	Popular initiative "Equal rights for the disabled"	**REJECTED** (62.3%) TURNOUT: 50% CANTONS: YES: 3 / NO: 23
18 MAY	9	Popular initiative "Non-nuclear energy – for a change in energy policy and the gradual decommissioning of nuclear power plants (Non-nuclear energy)"	**REJECTED** (66.3%) TURNOUT: 50% CANTONS: YES: 1 (BS) / NO: 25

FEDERATION: REFERENDUM VOTES 2003

	PROPOSAL	RESULT
18 MAY	10 Popular initiative "Moratorium Plus – for an extension of the moratorium on nuclear power plant construction and a limitation of the nuclear risk (Moratorium Plus)"	**REJECTED** (58.4%) TURNOUT: 50% CANTONS: YES: 2 / NO: 24
18 MAY	11 Popular initiative "For adequate vocational training (Apprenticeship Initiative)"	**REJECTED** (68.4%) TURNOUT: 50% CANTONS: YES: 0 / NO: 26

CANTONAL REFERENDUM VOTES IN 21 CANTONS

CANTON	TOTAL VOTES 1970-2003	1997–2003
Zurich	457	77
Solothurn	316	47
Basle Country	282	74
Schaffhausen	272	52
Graubünden	262	69
Basle City	242	22
Berne	222	22
Uri	183	29
Aargau	183	50
Thurgau	163	17
Geneva	150	30
Schwyz	142	26
Valais	136	8
Neuchâtel	121	6
St. Gallen	121	20
Lucerne	99	21
Zug	97	25
Vaud	86	23
Fribourg	85	11
Ticino	53	12
Jura (since 1979)	45	4
TOTAL	3,709	645

SOURCE: C2D Research Centre on Direct Democracy, Aarau (www.c2d.ch)

	PRE-MODERN	MODERN
CONCEPT	Classical direct democracy.	Modern Direct Democracy.
MODEL	"Associational democracy": Assembly democracy ("Lands-gemeinde" or just "Gemeinde" [popular assembly]).	"Individualistic democracy": Referendum and Initiative as a complement to representative democracy.
COUNTER CONCEPT	Aristocracy, monarchy.	Representative democracy.
POLITICAL CULTURE, CITIZENS' RIGHTS	Group consciousness: democracy, popular sovereignty, freedom, equality for "us" as members of a particular, privileged collective; historical justification for a collective particularism.	Individualism: democracy, popular sovereignty, freedom, equality for "all" as an inalienable human right; individual human rights based on natural law.
BASIS OR JUSTIFICATION	Democracy as the historical privilege of a certain group; origin in resistance to unjust tyranny (William Tell).	Democracy as a natural right.
DEMOCRACY	Reconcilable with domination of some by others.	Irreconcilable with domination of some by others.
FREEDOM	Associational/community or collective freedom.	Individual freedom.
EQUALITY	Equality between the members of a particular collective.	Equality of all humans.

	PRE-MODERN	MODERN
POLITICAL EQUALITY	The most important govern-mental, administrative and judicial posts occupied everywhere by members of eminent families (so-called "heads"), who were clearly distinct from the "common man" economically, socially and culturally – though not legally.	Formal equality linked to inequality in the actual practice of participation in politics.
POLITICAL PRACTICE	Purchase of official posts and votes as a form of social equalisation or political participation.	Purchase of official posts and votes held to be corrupt; social equalisation through the medium of the welfare state.

Switzerland is a federal state which emerged out of an earlier confederation of separate, independent states – the cantons. The cantons – frequently referred to in Switzerland as the "Stände", or "states" – are the original states which joined together in a confederation (the "Bund") in 1848, ceding to the confederation a portion of their own sovereignty. The Swiss political system acknowledges this fact by giving the cantons a high degree of autonomy and by involving them deeply in all the stages of political decision-making.

Swiss federalism is distinguished by five elements:
1 The cantons enjoy a substantial number of powers and competences
2 There is extensive cooperation between the "Bund" – the central power – and the cantons; but also between the cantons themselves
3 The cantons enjoy a certain autonomy in the raising and spending of public finances
4 The cantons are autonomous in respect of organisation and procedures
5 The cantons enjoy statutory rights of co-decision making in fundamental decisions of the central power.

Article 3 of the federal constitution states:
"The cantons are sovereign, insofar as their sovereignty is not limited by the federal constitution; they exercise all those rights which are not ceded to the Bund."

Switzerland consists of 26 cantons, of which 6 – for historical reasons – have rights which are in certain respects reduced. Each canton has its own constitution, its own parliament, its own government and its own courts. Every canton sends two representatives to the "Council of States", except for Basle City, Basle Country, Obwalden, Nidwalden, Appenzell Outer-Rhodes and Appenzell Inner-Rhodes, all of which send only one.

HOW THE CANTONS CAN INFLUENCE THE CREATION OF A NEW LAW[1]

INITIATIVE

1

ENTRY INTO
FORCE

5

Majority of states
needed for consti-
tutional changes

Cantonal
inititative

2 DRAFT

CANTON

Position state-
ment in public
consultation

Referendum
(for laws)

Debate in the
Council of States

4

3 VERIFICATION

FINAL DECISION
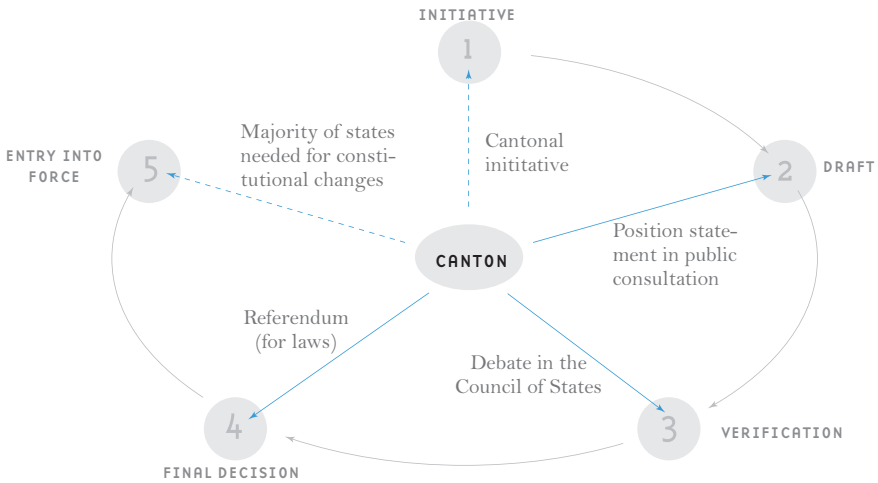
[1] For more information on the 5 phases, see Factsheet 5: Five stages in the genesis of a new law

The genesis of a law is a complex and often also a lengthy affair. The process takes a minimum of twelve months, but in extreme cases can last for more than a dozen years. Despite this, the number of new laws has increased markedly in recent years. Currently, new laws enter into force at the rate of one per week on average.

The path towards a new law can be divided into five stages:

1   The initial trigger can come, for example, from individual voters or interest groups launching a popular initiative. But it can also come from members of parliament or sections of the administration, from cantons or from the Federal Council.

2   In the second stage, a preliminary draft of the law is worked out. The Federal Council often appoints for this purpose a 10–20 member committee which includes representatives of those who have an interest in the new law. The preliminary draft is then sent out for consultation to the cantons, the political parties, the unions and to other special interest groups. All of these can express a formal opinion on the proposal and also propose changes to it. On the basis of the feedback from the consultation, the federal administration revises the draft law and passes it on to the Federal Council. The Federal Council checks the text and passes it – together with an explanatory memorandum – on to the National Council and the Council of States for parliamentary consideration.

3   The third stage is the parliamentary stage, in which the draft law is debated. The presidents of the two Councils decide in which of the two chambers the draft new law will be debated first. An advisory committee of the chosen council debates the text and then presents it together with its own opinion to the whole council (e.g. the National Council). This procedure is repeated in the second chamber (in this case, the Council of States): the text agreed by the National Council is first debated by an advisory committee of the Council of States.

If the National Council and the Council of States should come to different decisions, the so-called "resolution of differences" procedure comes into play. The advisory committee of the first chamber examines the individual differences and then makes a proposal to its chamber – to accept the Council of States' version on one point, for example, but to insist on their own version on another point. After the revised draft has been debated and agreed in the first council, the advisory committee of the second council deals with any remaining differences and makes its own proposal to its chamber.

If after three rounds of debate there are still differences in the agreed drafts, the so-called "agreement conference" is called in order to seek a compromise solution. It consists of members of the two committees of the National Council and the Council of States. The compromise formula goes to both Councils for a final vote.

4 At the next stage, the electorate has the opportunity to express its opinion on the proposed law. The draft law is subject to the facultative, or optional, referendum i.e. 50,000 eligible voters or eight cantons can demand a popular referendum vote on the law. The demand for a referendum vote must be made within 100 days of the draft law being published. (Changes to the constitution are subject to obligatory referendum).

5 The new law enters into force if 100 days pass without a referendum being called, or if a majority of the voters approves it in the popular vote resulting from the facultative referendum.

WAYS IN WHICH ELIGIBLE VOTERS CAN INFLUENCE THE GENESIS OF A NEW LAW
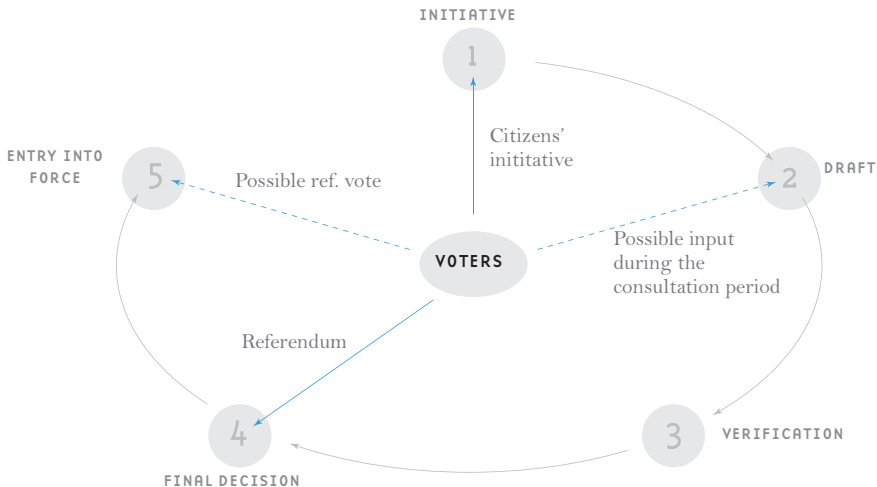
SOURCE: Swiss Federal Chancellery: The Path Towards a New Law (www.bk.admin.ch/themen/gesetz)

Since 1994 it has been a principle in Switzerland that every voter can decide freely whether to vote in person, or whether to vote by post in federal referendums[1]. Postal voting is easier both in terms of space and time. People who are away from home can mail their vote from anywhere, even from abroad. One is able to vote by post after one has received the documents required under cantonal law to enable one to vote[2]. The specific procedure for postal voting is determined by the cantons. They have to ensure that the process is straightforward and especially that it guarantees control of the entitlement to vote, voting secrecy and the recording of all votes, and that it prevents abuse[3].

There are two different systems of postal voting in Switzerland: the simplified system and the system of postal voting on request. The first of the two systems – the general, or simplified, postal vote – is more common. Voters receive an official mailing of the material for the postal vote. The second system, that of postal voting on request, is now only practised in one canton. Voters can apply to the relevant authorities for permission to vote by post. The application can be for one referendum ballot, for the whole of a legislative session, or for all forthcoming referendum ballots.

Postal voting has become very popular. On average, more than 80% of those voting now give their votes by post. But the share of postal voting still varies widely from canton to canton[4].

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[1] Federal Law on political rights (BPR) Art. 5 § 3 (www.admin.ch/ch/e/rs/c161_1.html)
[2] BPR Art. 8 § 2
[3] BPR Art. 8 § 1
[4] Further information (in German):
  · Swiss Federal Chancellery: Survey on postal voting, Berne 1998
    (www.admin.ch/ch/d/pore/va/doku/pdf/enquete_bsa.pdf)
  · Longchamp, Claude: Popular postal voting – Main results of the VOX-Analyses of postal voting at federal
    citizens' referendum ballots, 1998 (www.polittrends.ch/partizipation/postgang.php)
  · Von Arx, Nicolas: Postal Democracy, Postal voting in Switzerland (Aktuelle Juristische Praxis 1998,
    pages 933–950)
  · Swiss Federal Chancellery: Postal Voting – Analysis of the popular vote of 27th November 2005, Berne 2006
    (www.bk.admin.ch/dokumentation/publikationen/00284/02526).

INTRODUCTION OF SIMPLIFIED POSTAL VOTING ACCORDING TO CANTON[S]:

CANTON	CURRENT LEGAL BASIS (AS OF 20.08.2004)	SINCE
Zurich	Law on political rights, § 69 www.zhlex.zh.ch	1994
Berne	Law on political rights, Articles 10 and 11 www.sta.be.ch/belex/d/1/141_1.html	1991
Lucerne	Law on voting rights, § 61–63 www.lu.ch/rechtssammlung.htm	1994
Uri	Law on secret elections, referendum ballots and citizens' rights, Articles 19–23 www.ur.ch/rechtsbuch/start.htm	1995
Schwyz	Law on elections and referendum ballots, § 28 www.sz.ch/gesetze/G100/120_100.pdf	2000
Obwalden	Law on the exercise of political rights, Articles 29 and 30 http://ilz.ow.ch/gessamml/pdf/122100.pdf	1995
Nidwalden	Introductory ruling on federal law on political rights, § 32–36 www.navigator.ch/nw	1994
Glarus	Law on elections and referendum ballots, Articles 13, 15–17 http://gs.gl.ch/pdf/i/gs_i_d_22_2.pdf	1995
Zug	Law on elections and referendum ballots, § 13, 23, 30–35 www.zug.ch/bgs/data/131-1.pdf	1997
Fribourg	Law on the exercise of political rights, Article 18 www.fr.ch/ofl_bdlf/de/plan_sys/default.htm	1995
Solothurn	Law on political rights, § 78–85 www.so.ch/extappl/bgs/daten/113/111.pdf	1980

[S] Further information on ways of making voting easier in the cantons (in German/French/Italian): www.admin.ch/ch/d/pore/nrw07/ste/kt_index.html

INTRODUCTION OF SIMPLIFIED POSTAL VOTING ACCORDING TO CANTON[5]:

CANTON	CURRENT LEGAL BASIS (AS OF 20.08.2004)	SINCE
Basle City	Law on elections and referendum ballots, § 6, 8 www.gesetzessammlung.bs.ch/sgmain/default.html	1995
Basle Country	Law on political rights, § 7, 10 www.baselland.ch/docs/recht/sgs_1-1/120.0.htm	1978
Schaffhausen	Law on popular referendum ballots and elections and on the exercise of citizens' rights, Articles 14, 50, 53bis–53quater www.rechtsbuch.sh.ch/default.htm	1995
Appenzell Outer-Rhodes	Law on political rights, Articles 13–15 www.bgs.ar.ch	1988
Appenzell Inner-Rhodes	Ruling by the Great Council concerning political rights, Articles 12–14, 17 www2.ai.ch/_download/lexdb/121.pdf	1979
St. Gallen	Law on voting by ballot, Articles 16–16ter www.gallex.ch/gallex/1/fs125.3.html	1979
Graubünden	Law on political rights in the canton of Graubünden, Articles 24, 25, 34 www.navigator.ch/gr	1995
Aargau	Law on political rights, § 17 www.ag.ch/sar/output/default.htm?/sar/output/131-100.htm	1993
Thurgau	Law on the right to vote in referendums and elections, § 10 www.rechtsbuch.tg.ch/pdf/100/161_1Zneu.pdf	1985
Ticino	Law on the exercise of political rights, Articles 32–34 www.ti.ch/CAN/temi/rl *(Postal voting on request since 1987)	*

[5] Further information on ways of making voting easier in the cantons (in German/French/Italian):
www.admin.ch/ch/d/pore/nrw07/ste/kt_index.html

INTRODUCTION OF SIMPLIFIED POSTAL VOTING ACCORDING TO CANTON[5]:

CANTON	CURRENT LEGAL BASIS (AS OF 20.08.2004)	SINCE
Vaud	Law on the exercise of political rights, Articles 17b, 18, 20, 24 www.rsv.vd.ch/dire-cocoon/rsv_site/index.xsp	2002
Valais	Law on political rights, Articles 25 and 26 www.vs.ch/home2/etatVS/vs_public/public_lois/fr/ loishtml/160.1.htm	2004
Neuchâtel	Law on political rights, Articles 9a, 10, 20 http://rsn.ne.ch/ajour/default.html?141.htm	2003
Geneva	Law on the exercise of political rights, Articles 61, 62, 67 www.ge.ch/legislation/rsg/f/rsg_a5_05.html	1995
Jura	Law on political rights, Articles 18, 19, 21 http://rsju.jura.ch/extranet/groups/public/documents/rsju_ page/loi_161.1.hcsp	1999

[5] Further information on ways of making voting easier in the cantons (in German/French/Italian): www.admin.ch/ch/d/pore/nrw07/ste/kt_index.html

WHAT IS E-VOTING?

E-voting is short for "electronic voting" and refers to the option of using electronic means (i.e. the Internet, email) to vote in referendums and elections, give signatures for initiatives and referendums and acquire information on elections and referendums from the authorities. In Switzerland, it is planned to use e-voting to complement conventional procedures (voting in person by ballot and postal voting), but not to replace them.

THE STARTING POINT

A number of proposals were directed by parliament to the Federal Council, asking it to look into whether and how direct democracy in Switzerland could be reinforced by the new information and communication technologies. As a result, the Federal Council commissioned the Federal Chancellery in August 2000 with the task of examining the feasibility of e-voting. To this end, the Chancellery set up a working party composed of federal and cantonal representatives and known as the "Preliminary Project on e-voting", which has delivered a first report on the options, risks and feasibility of e-voting to the Federal Council.[1] The report was approved by the Federal Council in January 2002 and noted in subsequent sessions of parliament. The working party continues to monitor the pilot projects supported by the Chancellery in the cantons of Geneva, Neuchâtel and Zurich, which are designed to clarify the main considerations which would arise if e-voting were to be introduced in Switzerland.

PROS AND CONS OF E-VOTING

Both supporters and opponents of e-voting list a series of weighty arguments. On the one hand there are the opportunities which the electronic exercise of political rights might bring. E-voting can make voting in elections and referendums easier for many people. The considerable mobility of the Swiss population, the change in communication habits and the daily information overload could further reduce participation in political decision-making. But one might also think of those who are blind or visually impaired, who at present have only limited opportunities of exercising their right to vote in secrecy; or of the Swiss who live abroad, who are often excluded from voting by distance and slow postal services. There is disagreement among experts as to whether e-voting would actually encourage more people to vote or not.

On the other hand, there are potential risks in e-voting, primarily in terms of the possible abuse of the system. Critics fear the unauthorised intervention of third parties in the vot-

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[1] Report on e-voting: options, risks and feasibility of the electronic exercise of political rights, BBl 2002 645. The report, together with addenda and submissions from experts, is available at: www.bk.admin.ch/themen/pore/evoting (in German, French and Italian)

ing process. There is no guarantee, given the current state of information technology, that a programme could not be manipulated to allow someone to store and print out a different form or document from the one appearing on the screen. With electronic voting it is more difficult to detect and find the source of errors, technical breakdowns etc. than with conventional procedures, and public checking of recounts is less easy. If public doubts about the reliability of electronic forms of voting cannot be removed, the whole functioning of the democratic system may be brought into question.

THE PILOT PROJECTS IN GENEVA, NEUCHÂTEL AND ZURICH

A consultation exercise carried out in all the cantons showed that many cantons would like to be involved in the pilot projects which are being partly financed by the Federation[2]. To date, agreements have been reached with Geneva, Neuchâtel and Zurich.

One particular criterion was decisive in the selection of the pilot projects. The three pilot cantons form a set which covers those factors relative to the requirements for e-voting which are of central importance for all the cantons. The canton of Geneva[3], for example, already has a centralised administrative structure and a central register of voters. This has still to be created in the canton of Zurich[4]. The canton of Neuchâtel is examining the implementation of e-voting as an integral part of its "Guichet unique" ("one stop e-counter"), an electronic public office for all cantonal authority matters[5]. The differing requirements and goals, as well as the staggering of the three pilot projects over time will allow the gradual build-up of the know-how necessary for a nationwide solution.

A variety of tests has been carried out in the cantons Geneva, Neuchâtel and Zurich (cf. the table at the end of this text). The pilot projects in Geneva, Neuchâtel and Zurich were then evaluated[6]. Based on the results of this evaluation parliament decided in March 2007 to build, step by step, on the successful trials of e-voting and also to create the necessary prerequisites for Swiss citizens living abroad to be able to vote electronically.

EXTENSION TO ELIGIBLE SWISS VOTERS LIVING ABROAD

So that the eligible Swiss voters living abroad could also take part in the e-voting trials, the relevant voting registers had first to be harmonised. The first opportunity for participation in electronic voting was made available – for the federal referendum of 1 June

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[2] The survey is available (in German, French and Italian) at www.bk.admin.ch/themen/pore/evoting
[3] Further information: www.geneve.ch/evoting/english/welcome.asp
[4] Further information on the Zurich pilot project (in German): https://evoting.zh.ch/
[5] Further information on the Neuchâtel pilot project (in French): www.ne.ch/gvu
[6] Report on e-voting pilot projects, BBl 2006 5459. The report, together with addenda, is available at: www.bk.admin.ch/themen/pore/evoting/00776 (in German, French and Italian)

2008 — to expatriate Swiss who are registered in the "Guichet Unique" of the canton of Neuchâtel and who have settled in one of the EU member states, in a member state of the Wassenaar Arrangement of 1995/96, or in Andorra, Northern Cyprus, Liechtenstein, Monaco, San Marino or the Vatican City State.

E-voting is also intended to be available to eligible Swiss voters living abroad who are not registered in one of the three pilot cantons. The first such voters to be able to vote online were those registered in the canton of Basle City. They used the electronic voting system of the canton of Geneva, for which an agreement had been signed between the two cantons on 15 June 2009. On 29 November 2009 the expatriate voters from Basle City were able for the first time to cast their votes electronically on the Geneva system.

Other cantons have now signed similar cooperation agreements with the canton of Zurich: the cantons of Fribourg, Solothurn, Schaffhausen, St. Gallen, Graubünden, Aargau and Thurgau. More than a third of the roughly 120,000 eligible voters living abroad are politically domiciled in these eight participating cantons. They will have to wait until autumn 2010 to cast their first votes electronically.

LEGAL BASIS

Federal law on political rights[7] and the related, similarly-worded decree[8] had to be supplemented in order to give the Federal Council the legal means to permit legally binding studies at the federal level. The legal basis and the practical regulations came into force on 1st January 2003. From then on it was possible for the Federal Council to permit a canton, if it so requested, to carry out e-voting pilot studies limited as to time, place and subject matter.

The federal constitution inscribes the right to free decision-making and secure voting free from counterfeiting. From this result a series of requirements for e-voting which are set out in Articles 27a-27q of the Federal Decree on Political Rights. Voters must be informed about the organisation, the technology used and the temporal sequence of the process of electronic voting. It must be possible to change one's mind and/or to cancel one's vote before it is finally sent off; there must be no on-screen advertising which could influence voters in any way; and there must be a perfectly clear visual indication on the computer or machine being used to register the vote that the vote has been transmitted.

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[7] www.admin.ch/ch/e/rs/c161_1.html
[8] www.admin.ch/ch/d/sr/c161_11.html

In order to maintain voting secrecy, the electronic vote has to be encoded from the moment of sending until the moment of arrival; it must remain fully anonymous and must not be traceable to the voter. The possibility of a vote getting lost must be technically ruled out, even in the case of a fault or failure in the system. It must be possible to reconstruct every individual use of the system and every vote given even if there is a system crash.

DATE	CANTON	MUNICIPALITIES	NUMBER OF VOTERS WITH THE OPPORTUNITY OF USING E-VOTING	NUMBER OF VOTERS HAVING ACTUALLY USED E-VOTING
26.09.2004	Geneva	Anières, Carouge, Cologny, Meyrin	22,137	2,723
28.11.2004	Geneva	Anières, Carouge, Cologny, Collonge-Bellerive, Meyrin, Onex, Vandoeuvres, Versoix	41,431	3,755
25.09.2005	Neuchâtel	Users of the "Guichet Unique"	1,732	1,178
27.11.2005	Zurich	Bertschikon, Bülach, Schlieren	16,726	1,397
27.11.2005	Neuchâtel	Users of the "Guichet Unique"	2,469	1,345
26.11.2006	Zurich	Bertschikon, Bülach, Schlieren	17,344	1,309
26.11.2006	Neuchâtel	Users of the "Guichet Unique"	3,554	1,311
11.03.2007	Neuchâtel	Users of the "Guichet Unique"	3,757	1,538
17.06.2007	Neuchâtel	Users of the "Guichet Unique"	4,151	1,494
17.06.2007	Zurich	Bertschikon, Bülach, Schlieren	17,292	902
24.02.2008	Neuchâtel	Users of the "Guichet Unique"	4,385	1,523
01.06.2008	Neuchâtel	Users of the "Guichet Unique"	4,705	1,593
01.06.2008	Zurich	Bertschikon, Bülach, Schlieren	17,777	1,209

DATE	CANTON	MUNICIPALITIES	NUMBER OF VOTERS WITH THE OPPORTUNITY OF USING E-VOTING	NUMBER OF VOTERS HAVING ACTUALLY USED E-VOTING
30.11.2008	Zurich	Bertschikon, Boppelsen, Bubikon, Bülach, Fehraltorf, Kleinandelfingen, Maur, Männedorf, Mettmenstetten, Schlieren, Thalwil, Winterthur Altstadt, Zürich (districts 1 and 2)	89,061	9,981
30.11.2008	Neuchâtel	Users of the "Guichet Unique"	4,897	1,564
30.11.2008	Geneva	Anières, Carouge, Chêne-Bourg, Collonge-Bellerive, Cologny, Meyrin, Thônex, Vandoeuvres, Versoix	44,961	2,741
08.02.2009	Neuchâtel	Users of the "Guichet Unique"	4,943	1,901
08.02.2009	Zurich	Bertschikon, Bülach, Schlieren, Mettmenstetten, Klein-andelfingen, Boppelsen, Thalwil, Männedorf, Fehral-torf, Maur, Winterthur Alts-tadt, Zürich (districts 1 and 2)	84,788	9,962
17.05.2009	Geneva	Anières, Bernex, Chêne-Bourg, Collonge-Bellerive, Cologny, Grand-Saconnex, Onex, Perly-Certoux, Plan-les-Ouates, Thônex, Vandoeuvres	46,506	3,111
17.05.2009	Neuchâtel	Users of the "Guichet Unique"	5,180	1,522
17.05.2009	Zurich	Bertschikon, Bubikon, Bülach, Schlieren, Mettmenstetten, Kleinandelfingen, Boppelsen, Thalwil, Männerdorf, Fehraltorf, Maur, Winterthur Altstadt, Zürich (districts 1 and 2)	89,313	7,890

DATE	CANTON	MUNICIPALITIES	NUMBER OF VOTERS WITH THE OPPORTUNITY OF USING E-VOTING	NUMBER OF VOTERS HAVING ACTUALLY USED E-VOTING
27.09.2009	Geneva	Anières, Bernex, Chêne-Bourg, Collonge-Bellerive, Grand-Saconnex, Onex, Perly-Certoux, Plan-les-Ouates, Thônex, Vandoeuvres, eligible Swiss voters living abroad	61,107	5,837
27.09.2009	Neuchâtel	Users of the "Guichet Unique"	5,349	1,540
27.09.2009	Zurich	Bertschikon, Boppelsen, Bubikon, Bülach, Fehraltorf, Kleinandelfingen, Maur, Männedorf, Mettmenstetten, Schlieren, Thalwil, Winterthur Altstadt, Zürich (districts 1 and 2)	89,816	7,567
29.11.2009	Basle City	Eligible Swiss voters living abroad	5,321	1,084
29.11.2009	Geneva	Anières, Bernex, Chêne-Bougeries, Chêne-Bourg, Collonge-Bellerive, Cologny, Onex, Perly-Certoux, Thônex, Vandoeuvres, eligible Swiss voters living abroad	59,628	6,068
29.11.2009	Neuchâtel	Users of the "Guichet Unique"	5,407	1,976
29.11.2009	Zurich	Bertschikon, Boppelsen, Bubikon, Bülach, Fehraltorf, Kleinandelfingen, Maur, Männedorf, Mettmenstetten, Schlieren, Thalwil, Winterthur Altstadt, Zürich (districts 1 and 2)	90,153	11,296

DATE	CANTON	MUNICIPALITIES	NUMBER OF VOTERS WITH THE OPPORTUNITY OF USING E-VOTING	NUMBER OF VOTERS HAVING ACTUALLY USED E-VOTING
07.03.2010	Basle City	Eligible Swiss voters living abroad	5,345	992
07.03.2010	Geneva	Anières, Avusy, Bernex, Chêne-Bourg, Collonge-Bellerive, Cologny, Grand-Saconnex, Onex, Plan-les-Ouates, Thônex, Vandoeuvres, eligible Swiss voters living abroad	63,529	5,969
07.03.2010	Neuchâtel	Users of the "Guichet Unique"	5,550	2,003
07.03.2010	Zurich	Bertschikon, Boppelsen, Bubikon, Bülach, Fehraltorf, Kleinandelfingen, Maur, Männedorf, Mettmenstetten, Thalwil, Winterthur Altstadt, Zürich (districts 1 and 2)	83,292	9,331

NOTE:

The information in the table covers only trials on dates when there was also/only a federal popular vote. Other trials on the occasion of cantonal and/or communal referendum votes and elections are not included. The figures given in the table are in every case the latest data provided to the Federal Chancellery by the cantons.

FURTHER INFORMATION ON E-VOTING (IN GERMAN, FRENCH AND ITALIAN):
www.bk.admin.ch/themen/pore/evoting

OVERVIEW OF SELECTED TYPES OF CANTONAL INITIATIVES AND REFERENDUMS

[O]=OBLIGATORY / [F]= FACULTATIVE (CONSTITUTIONAL REFERENDUM IS OBLIGATORY FOR ALL CANTONS)

CANTON	SUBJECT OF REFERENDUM	POPULAR INITIATIVES *	COLLECTION PERIOD	FACULTATIVE REFERENDUMS *	COLLECTION PERIOD
Aargau	Laws [O+F] Finances [F]	0.9	12 months	0.9	90 days
Appenzell Inner-Rhodes	Laws [O+F] Finances [F]	Popular assembly			
Appenzell Outer-Rhodes	Laws [O+F] Finances [O+F]	2		2	60 days
Basle Country	Laws [O+F] Finances [F] Admin. [O]	0.9		0.9	56 days
Basle City	Laws [F] Finances [F]	3.2		1.6	42 days
Berne	Laws [F] Finances [F] Admin. [F]	2.2	6 months	1.5	90 days
Fribourg	Laws [F] Finances [O+F]	3.9	3 months	3.9	90 days
Geneva	Laws [F] Finances [F] Admin. [F]	4.8	4 months	3.4	40 days

* Minimum number of signatures, as a percentage of the electorate

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OVERVIEW OF SELECTED TYPES OF CANTONAL INITIATIVES AND REFERENDUMS

[O]=OBLIGATORY / [F]= FACULTATIVE (CONSTITUTIONAL REFERENDUM IS OBLIGATORY FOR ALL CANTONS)

CANTON	SUBJECT OF REFERENDUM	POPULAR INITIATIVES *	COLLECTION PERIOD	FACULTATIVE REFERENDUMS *	COLLECTION PERIOD
Glarus	Laws [O] Finances [O] Admin. [O]	Popular assembly			
Graubünden	Laws [O+F] Finances [O+F] Admin. [O]	4.0	12 months	2.4	90 days
Jura	Laws [F] Finances [O+F] Admin. [O]	3.9	12 months	3.9	60 days
Lucerne	Laws [F] Finances [O+F]	2.2	12 months	1.3	60 days
Neuchâtel	Laws [F] Finances [O] Admin. [O]	5.7	6 months	5.7	40 days
Nidwalden	Laws [F] Finances [O+F] Admin. [O]	1.9	2 months	1.0	30 days
Obwalden	Laws [O+F] Finances [O+F]	2.3		0.5	30 days
St. Gallen	Laws [F] Finances [O+F]	2.8	3—6 months	1.4	30 days

* Minimum number of signatures, as a percentage of the electorate

OVERVIEW OF SELECTED TYPES OF CANTONAL INITIATIVES AND REFERENDUMS

[O]=OBLIGATORY / [F]= FACULTATIVE (CONSTITUTIONAL REFERENDUM IS OBLIGATORY FOR ALL CANTONS)

CANTON	SUBJECT OF REFERENDUM	POPULAR INITIATIVES *	COLLECTION PERIOD	FACULTATIVE REFERENDUMS *	COLLECTION PERIOD
Schaffhausen	Laws [O+F] Finances [O+F] Admin. [O]	2.1		2.1	90 days
Schwyz	Laws [O+F] Finances [O]	2.4		2.4	30 days
Solothurn	Laws [O+F] Finances [O+F] Admin. [O]	1.8	18 months	0.9	90 days
Thurgau	Laws [F] Finances [O+F]	2.9	6 months	1.4	90 days
Ticino	Laws [F] Finances [F]	5.3	2 months	3.7	30 days
Uri	Laws [O+F] Finances [O+F]	2.4		1.8	90 days
Valais	Laws [F] Finances [F] Admin. [O]	3.3	12 months	1.7	90 days
Vaud	Laws [F] Admin. [O]	3.3	3 months	1.7	40 days

* Minimum number of signatures, as a percentage of the electorate

OVERVIEW OF SELECTED TYPES OF CANTONAL INITIATIVES AND REFERENDUMS

[O]=OBLIGATORY / [F]= FACULTATIVE (CONSTITUTIONAL REFERENDUM IS OBLIGATORY FOR ALL CANTONS)

CANTON	SUBJECT OF REFERENDUM	POPULAR INITIATIVES *	COLLECTION PERIOD	FACULTATIVE REFERENDUMS *	COLLECTION PERIOD
Zug	Laws [F] Finances [O]	3.2		2.4	60 days
Zurich	Laws [O] Finances [O+F] Admin. [O]	1.3 Individual initiative	6 months	0.6	60 days

* Minimum number of signatures, as a percentage of the electorate

SOURCE: Vatter Adrian: Kantonale Demokratien im Vergleich (Opladen 2002), p. 226f.

THE FIRST HELVETIC CONSTITUTION OF 12ᵀᴴ APRIL 1798

(Drafted by Peter Ochs and accepted without debate at Aarau on 12th April 1798, in part temporarily suspended by the decrees of 5th November 1798, 15th February 1799 and 18th May 1799, de facto annulled by the coup d'état of 7th January 1800).

SOURCE: Hilty, Carl: Öffentliche Vorlesungen über die Helvetik (Berne 1878), p.731ff.

TITLE 1. MAIN PRINCIPLES.

Art 1   The Helvetic Republic constitutes a single, indivisible state. There are no longer any borders between the cantons and the subject territories, nor between one canton and another. The unity of the fatherland and the general interest will henceforth replace the weak bond which held together strange, dissimilar, unrelated, small-minded localities and areas subject to indigenous prejudices and led them without a clear sense of direction. For as long as all the separate parts were weak, the whole could not help but be weak also. The united strength of all will henceforth generate a common strength.

Art 2   The totality of the citizens is the sovereign or overlord. No part, nor any single right of overlordship can be detached from the whole to become the property of any individual. The form of government, even if it should be altered, shall always remain that of representative democracy.
(…)

TITLE 3. THE POLITICAL STATUS OF THE CITIZENS.

Art 19   All those who are currently genuine citizens of a governing town or municipality, of a subject or free village, become Swiss citizens by virtue of the present constitution. This applies equally to those who had the right of tenancy in perpetuity ("Hintersässrecht") , and to all tenants ("Hintersässen") born in Switzerland.

Art 20   A foreigner becomes a citizen after he has lived for 20 consecutive years in Switzerland, if he has made himself useful, and if he can show favourable testimonials to his behaviour and morals. He must, however – for himself and his descendants – renounce all other citizens' rights, he must swear the civic oath and his name will be inscribed in the register of Swiss citizens which is retained in the National Archive.
(…)

TITLE 4. ON THE PRIMARY AND ELECTIVE ASSEMBLIES

Art 28   The primary assemblies consist of the citizens and the sons of citizens who have lived in the same commune for five years, reckoned from the date when they declared their intention of settling there. There are cases, however, where the legislative councils may accept only the place of birth – whether of the citizen himself, or of his father, if he was not born in Switzerland – as the place of residence. To be able to vote in a primary or elective assembly, one must have reached the age of 21.

Art 29   Every village or place which can count 100 citizens entitled to vote constitutes a primary assembly.

Art 30   The citizens of every village or place which does not contain at least 100 citizens entitled to vote will join together with the citizens of the nearest place or village.

Art 31   The towns and cities have a primary assembly in each district. The legislative councils will determine the number of citizens.

Art 32   The primary assemblies take place:
1) in order to accept or reject the state constitution
2) in order to nominate every year the members of the elective assembly of the canton

Art 33   One elector is nominated for every 100 persons who possess the required qualification to be citizens.
(…)

TITLE 11. AMENDING THE CONSTITUTION

Art 106 The Senate proposes these amendments; however, the proposed changes do not acquire the force of a formal decision until they have twice been decreed, and a period of five years must elapse between the first and second decree. The decisions of the Senate must then be either rejected or accepted by the Great Council; in the latter case, they are then sent to the primary assemblies to be accepted or rejected.

Art 107 If the primary assemblies accept them, they then become new basic laws of the state constitution.

SWISS FEDERAL CONSTITUTION OF 1848

SOURCE: Offizielle Sammlung der das schweizerische Staatsrecht betreffenden Aktenstücke, Bundesgesetze, Verträge und Verordnungen seit der Einführung der neuen Bundesverfassung vom 12. September 1848 bis 8. Mai 1850, 2. Aufl., Bern 1850, S. 3 ff.

PART I.

GENERAL PROVISIONS.

Art 1   The peoples of the 22 sovereign cantons joined together by the present alliance, to wit: Zurich, Berne, Lucerne, Ury, Schwyz, Unterwalden (ob and nid dem Wald), Glarus, Zug, Fribourg, Solothurn, Basle (City and Country), Schaffhausen, Appenzell (both Rhodens), St. Gallen, Graubünden, Aargau, Thurgau, Ticino, Vaud, Valais, Neuchâtel and Geneva, form in their totality the Swiss Confederation.

Art 2   The purpose of the alliance is: maintenance of the independence of the fatherland against external threat, the management of peace and order internally, the protection of the freedom and the rights of Swiss citizens and the promotion of their common welfare.

Art 3   The cantons are sovereign insofar as their sovereignty is not limited by the federal constitution; as such, they exercise all those rights which have not been transferred to the power of the Federation.

Art 4   All Swiss citizens are equal before the law. In Switzerland no-one is subject to any other and there are no privileges either of place, of birth, of family or of person.

Art 5   The Federation guarantees to the cantons their territory, their sovereignty within the limits of Article 3, the constitutions, freedom, rights of the people and the constitutional rights of the citizens, as well as the rights and powers which the people has transferred to the authorities.

Art 6   The cantons are obliged to formally request the Federation for guarantees for their constitutions. The Federation will issue such guarantees insofar as:
a. they contain nothing which runs counter to the rules of the federal constitution;
b. they ensure the exercise of political rights according to republican – representative or democratic – models;
c. they have been accepted by the people and can be revised if an absolute majority of the people demands it.

Art 42   Every citizen of a canton is a Swiss citizen. As such he can exercise his political rights on federal and cantonal matters in any canton in which he is established. However, he can only exercise these rights under the same conditions as the citizens of the canton and, in respect of cantonal matters, only after having lived in the canton for a longer period of time, the length of which will be determined by cantonal legislation, but which must not be longer than two years.

No-one may exercise political rights in more than one canton.

SECTION 3.
Revision of the federal constitution.

Art III   The federal constitution can be revised at any time.

Art II2   The revision shall be carried out in accordance with the forms laid down for federal legislation.

Art II3   If one part of the federal assembly decides on a revision and the other part does not agree, or if fifty thousand Swiss citizens entitled to vote demand a revision of the constitution, the question as to whether a revision shall be carried out or not must in both cases be submitted to the Swiss people for decision in a vote.

If in either of these cases the majority of the Swiss citizens casting a vote give an affirmative answer, both Councils shall be elected anew in order to undertake the revision.

Art II4   The revised federal constitution enters into force if it is approved by a majority of the Swiss citizens casting a vote and a majority of the cantons.

SWISS FEDERAL CONSTITUTION OF 1874

SOURCE: http://servat.unibe.ch/verfg/ch/1874_bundesverfassung.php

SECTION 1. GENERAL PROVISIONS

Art 43 [Citizenship, Right to Vote]

(1) Every citizen of a canton is a Swiss citizen.

(2) In this capacity, he may take part in all federal elections and votes at his domicile after having duly proved his right to vote.

(3) No one may exercise political rights in more than one canton.

(4) The established Swiss citizen shall enjoy at his domicile all the rights of the citizens of that canton and, with these, all the rights of the citizens of that Commune. However, sharing in property belonging in common to local citizens or to corporations and the right to vote in matters exclusively regarding local citizens are excepted unless cantonal legislation should provide otherwise.

(5) He acquires voting rights on communal affairs within the canton after he has been resident for three months.

(6) The cantonal laws relating to residency and the voting rights of residents in the Communes are subject to the approval of the Federal Council.

Art 89 [Federal Assembly Legislation]

(1) Federal laws and federal decrees must be approved by both Councils.

(2) Federal laws and non-urgent generally binding federal decrees must besubmitted to the people for approval or rejection if 30,000 Swiss citizens entitled to vote or eight cantons so demand.

Art 90 [Federal Assembly Legislation Formalities]

Federal legislation shall lay down the necessary rules concerning the formalities and time-limits for popular votes.

TITLE 3. REVISION OF THE CONSTITUTION

Art 118 [Constitutional Revision]

At any time, the Federal Constitution may be revised.

Art 119 [Constitutional Revision]

The revision shall be carried out in accordance with the forms laid down for federal legislation.

Art 120 [Constitutional Revision Procedures]

(1) If one chamber of the Federal Assembly decides on a revision of the Federal Constitution and the other does not consent or if 50,000 Swiss citizens entitled to vote demand the revision of the Federal Constitution, the question whether such a revision should take place or not must be submitted in both cases to the vote of the Swiss people.

(2) If in either of these cases the majority of the Swiss citizens casting a vote give an affirmative answer, both Councils shall be elected anew in order to undertake the revision.

Art 121 [Constitutional Revision Approval]

(1) The revised Federal Constitution shall enter into force if it has been approved by the majority of the Swiss citizens casting a vote and the majority of the cantons.

(2) In order to determine the majority of the cantons, the vote of each half-canton is counted as half a vote.

(3) The result of the popular vote in each canton is considered to be the vote of that canton.

SWISS FEDERAL CONSTITUTION OF 1999 (AS OF 18TH APRIL 1999)

SOURCE: Amtliche Sammlung 1999, S. 2556-2611 (AS 1999 2556)
(www.admin.ch/ch/d/as/1999/2556.pdf)

TITLE 2 FUNDAMENTAL RIGHTS, CITIZENSHIP AND SOCIAL GOALS
CHAPTER 1 FUNDAMENTAL RIGHTS

Art 34 Political rights
(1) Political rights are guaranteed
(2) Guarantees of political rights protect the free formation of opinion by citizens and the true and certain expression of their will

TITLE 4 PEOPLE AND CANTONS
CHAPTER 1 GENERAL PROVISIONS

Art 136 Political Rights
(1) All Swiss citizens who are 18 years or older, and are not under guardianship because of mental illness or weakness, shall have political rights in federal matters. All shall have the same political rights and obligations.
(2) They may participate in elections to the House of Representatives and in federal votes and may launch and sign popular initiatives and referenda in federal matters.

Art 137 Political Parties
The political parties shall contribute to the forming of the opinion and the will of the People.

CHAPTER 2 INITIATIVE AND REFERENDUM

Art 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.

Art 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 partial revision in the sense 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 approves 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 the majority of the People's votes and the other the majority of the votes of the cantons, neither of them shall come into force.

Art 140 Mandatory 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 organisations 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.

Art 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 the statute foresee this;

    d. International treaties which:

        1. are of unlimited duration and may not be terminated;

        2. provide for the entry into an international organisation;

        3. involve a multilateral unification of law.

(2) The Federal Parliament may submit further international treaties to optional referendum.

Art 142 Required Majorities

(1) Proposals submitted to the vote of the People shall be accepted if the majority of those voting approves 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 Obwalden, Nidwalden, Basle City, Basle Country, Appenzell Outer-Rhodes and Appenzell Inner-Rhodes have each one half of a cantonal vote.

ORIGINS

1848	Federal constitution of 1848: the initiative for a total revision of the constitution and the obligatory constitutional referendum.
1872 and 1961	Introduction of the legislative initiative rejected.
1874	Completely revised federal constitution of 1874: Citizens' rights extended by addition of the facultative legislative referendum
1891	Introduction of the popular initiative for a partial revision of the constitution

DEVELOPMENT SINCE 1891

Once the popular initiative is introduced, direct democracy becomes a subject for itself – which may lead to it being developed and extended, or to being dismantled. Reforms can of course also be initiated by the authorities. Among the elements which were added after 1891 belong

a) the introduction and extension of the referendum on international treaties, which gives voters a direct say on foreign policy (1921, 1977, 2003);

b) the "double yes" option with a deciding question where there is an initiative and a counter-proposal (1987, 2003);

c) the introduction of the general popular initiative (2003).

The Swiss federal constitution provides that in the case of accession to "organisations for collective security or supranational communities", the people will have the final word. So Swiss voters first of all rejected accession to the UN (in 1986) and then voted in favour of it in a second referendum held in 2002. They also voted against joining the European Economic Area in 1992. If there had been no referendum on international treaties, the people would not have been asked and Switzerland might now be a member of the EU.

In February 2003, at the suggestion of the government and parliament, the referendum on international treaties was extended once more. The rationale was that voters must be able to be involved in deciding on important issues, and that international law and international treaties were raising such issues more and more frequently. The introduction of (in 1921), and the first extension to (in 1977), the referendum on international treaties had come about as a result of the pressure of popular movements and popular initiatives.

National democracies become less important when, as a result of globalisation and European integration, political decision-making more and more takes place outside the sphere of democracy. The appropriate response to this challenge would be to extend democracy beyond the national boundaries. For Switzerland, there is the added question as to whether accession to the EU would inevitably bring about the gradual dismantling of

direct democracy. The threat could be diminished by introducing direct democracy into the European Union.

Attempts to expand direct democracy at the federal level have repeatedly been rejected. Thus, the finance referendum was rejected in 1956, the legislative initiative in 1961, the right to have a say on motorway building in 1978 and on the granting of licences for nuclear power stations in 1979, the referendum on armaments in 1987 and the constructive referendum in 2000.

There have also been attempts to dismantle direct democracy, all of them unsuccessful so far. In 1935, the new right-wing forces, which dreamed of replacing democracy with an authoritarian order, were sent packing. The "March 2000 initiative" which wanted the "speeding up of direct democracy" (by shortening the period of time allowed for processing a citizens' initiative presented as a detailed proposal) was decisively rejected, preventing even more radical attempts to weaken direct democracy under the pretext of making it more practical.

1918	Introduction of proportional voting for elections to the National Council at the third attempt (after earlier attempts in 1900 and 1910).
1910 and 1942	Direct popular election of the Federal Council rejected.
1956	Attempt to introduce the finance referendum at the federal level fails.
1921	Introduction of the facultative referendum on international treaties (initially restricted to open-ended international treaties; simple majority of the voters), which is supplemented in 1977 by the obligatory referendum on international treaties (with a "double majority" of the people and the cantons) for accession to international organisations.
2003	Extension of the facultative referendum on international treaties.
1949	Introduction of the obligatory referendum for urgent, general federal decrees which are not based on the constitution. Such decrees have to be submitted to popular referendum vote within a year after they have entered into force. If a majority of voters oppose them, they are annulled. If they are based on the constitution, the facultative referendum applies.
1971	Introduction of voting rights (elections and referendums) for women (rejected in 1959).
1973	Repeal of Articles 51 & 52 of the constitution concerning Jesuits and monasteries (the "confessional exceptional articles").
1977	Increase of signature quorums for initiative and referendum.

1978	Rejection of the popular initiative "Enhancing parliamentary and popular participation in decision-making on matters of highway construction".
1981	Incorporation into the constitution of an article: "Equal rights for men and women".
1987	Initiative aimed at giving voters a say on military expenditure fails to win a majority in the referendum.
1987	The "double yes" for popular referendum votes where there is an initiative and a counter-proposal is accepted.
1991	Voting age reduced to 18 (rejected in 1976).
1999	On 18th April, the federal decree on a completely revised federal constitution was accepted in a popular vote. The new constitution came into force on 1st January 2000.
12.3.2000	Rejection of the popular initiative "For speeding up direct democracy (processing times for popular initiatives in the form of a specific draft)", which wanted to reduce the period of time between the handing in of the initiative and the referendum vote to 12 months.
24.9.2000	Rejection of the popular initiative "Increased citizens' rights through referendums with counter-proposals (Constructive referendum)".
12.3.2000	Rejection of the popular initiative "For a fair representation of women in the federal authorities (3rd March initiative)", which demanded a proper representation of women in all the federal authorities – in the National Council, in the Council of States, in the Federal Council and in the Federal Court.
9.2.2003	Introduction of the general popular initiative[1], the extension of the facultative referendum on international treaties and a refined version of the "double yes".
2003	"Double yes" refined.

[1] In March 2007 Parliament turned down the implementation of the general popular initiative, on the grounds that it was too complex and difficult to apply. At the same time it decided to submit to a popular vote the question as to whether the general popular initiative should be removed from the Constitution.

Swiss voters generally vote the way the authorities – the government (Federal Council) and Parliament (National Council and Council of States) – wish. Exceptions such as the three referendum ballots of 8th February 2004, which all went against what the authorities had wanted, only confirm the rule.

EVOLUTION

The evolution of voting behaviour is especially interesting. Up to the mid-1900s, popular referendum votes which went the authorities' way were still the exception: only one in five results matched the authorities' recommendations. But since then, the majority opinion of Swiss voters has more and more approached that of the Federal Council and Parliament: the percentage of ballots which support the authorities' wishes has risen from less than 20% to more than 80%. This trend parallels the growth in the number of popular referendum votes in the second half of the 20th century. In other words, it seems that the authorities were more than able to meet the increased challenge of direct democracy.

INSTITUTIONAL DIFFERENCES

If we look at the success of the authorities in relation to the three main institutions – the obligatory referendum, the facultative (optional) referendum and the initiative – we find big differences: while the authorities' success rate in the obligatory referendum has steadily grown, their experience of the facultative referendum has been something of a roller-coaster ride. In the 19th century, the facultative referendum was a big problem for the authorities: two out of three proposals were rejected by the people. But in the first twenty years of the 20th century, there was a turnaround in the authorities' fortunes: during this period they could count on getting the citizens' support on two out of three occasions. During the 1920s and 1930s, the Federal Council and Parliament lost four out of five referendum ballots. Since the 1970s, the authorities' chances of getting the result they want in a facultative referendum have once again risen to over 50%. Nonetheless, from the point of view of the authorities, the facultative referendum remains "the most dangerous" popular right.

NON-THREATENING INITIATIVES?

Popular initiatives present much less of a threat to government and parliament than facultative referendums. In nine out of ten cases, initiative results go the way the authorities wanted. Popular initiatives almost always demand something which goes further than the elected institutions are prepared to go. So the authorities recommend the rejection of the initiative, but have the option of presenting either a direct or an indirect (in the form of a law) counter-proposal. Since the reform of popular rights on 9th February 2003, parlia-

ment can also suggest a counter-proposal which takes a wider view of the issue. Historically, there was only a short period (between 1910 and 1920) when an equal number of initiatives succeeded and were rejected (2 each) at the final hurdle of the popular vote. Since 1940, nine out of every ten initiatives have been rejected by the voters, although in retrospect most initiative groups reckon they have scored an indirect success, because their intentions were introduced in part or in a watered-down form in the legislation.

WHY ARE THE AUTHORITIES SO SUCCESSFUL?

The primary reasons for the relative success of the authorities are probably the government's principle of concordance and parliament's aim of achieving maximum consensus. In other words, the more closely the major political forces have to work together in government and the greater the consensus in parliament for a particular proposal, the better are the Federal Council's and Parliament's chances of winning a popular referendum vote. But if the Federal Council fails to convince on a particular issue and parliament cannot find a large majority in favour, things can become very tricky for the authorities at the ballot box. That's what happened on 8th February 2004, when 63% of those who voted rejected the proposed extension of the road network (the "Avanti counter-proposal"), 56% of voters accepted a citizens' initiative for "lifelong detention for the perpetrators of sexual or violent crimes who are judged to be highly dangerous and untreatable" which the authorities had opposed, and 64% rejected a proposed new right for tenants.

SOURCE: Trechsel, Alexander: Feuerwerk der Volksrechte (Basle 2000)

DATE OF POPULAR VOTE	TITLE	PEOPLE YES (NO)	CANTONS ACCEPT (REJECT)	REMARKS
20.08.1893	1 "Prohibition of ritual slaughter without prior anaesthetisation" (Federal constitution (FC) Art. 25bis)	191,527 (127,101)	10 3/2 (9 3/2)	BBl 1893 IV 399–403, AS NF XIII 1020; formally in force legislatively
05.07.1908	2 "Ban on absinthe" (FC Art. 31b and Art. 32ter)	241,078 (138,669)	17 6/2 (2)	BBl 1908 IV 572, AS XXIV 879; formally repealed
13.10.1918	3 "Proportional election of the National Council" (FC Art. 73)	299,550 (149,035)	17 5/2 (2 1/2)	BBl 1918 V 100, AS 34 1219; formally in force
21.03.1920	4 "Prohibition on the setting up of casinos" (FC Art. 35)	271,947 (241,441)	11 2/2 (8 4/2)	BBl 1921 II 302f, AS 37 301; cf. No. 6: formally repealed
30.01.1921	5 "For the introduction of a referendum on treaties with unlimited duration or with a duration of more than 15 years (Referendum on international treaties)" (FC Art. 89)	398,538 (160,004)	17 6/2 (2)	BBl 1921 I 424, AS 37 303; formally repealed
02.12.1928	6 "Casinos" (FC Art. 35)	296,395 (274,528)	13 3/2 (6 3/2)	BBl 1929 I 94, AS 45 68; modified version, formally in force
11.09.1949	7 "Return to direct democracy" (abrogation of war law) (FC Art. 89bis)	280,755 (272,599)	11 3/2 (8 3/2)	BBl 1949 II 582, AS 1949 511; formally in force
28.11.1982	8 "Prevention of false pricing" (FC Art. 31septies)	730,938 (530,498)	16 2/2 (4 4/2)	BBl 1983 I 928, AS 1983 240; formally in force
06.12.1987	9 "Rothenthurm" initiative for the protection of moorland (FC Art. 24sexies Abs. 5 and transitional provisions)	1,153,448 (843,555)	17 6/2 (3)	BBl 1988 I 572, AS 1988 352; formally in force

DATE OF POPULAR VOTE	TITLE	PEOPLE YES (NO)	CANTONS ACCEPT (REJECT)	REMARKS
23.09.1990	10 "Moratorium on nuclear power station construction" (FC transitional provisions Art. 19)	946,077 (789,209)	17 5/2 (3 1/2)	BBl 1991 I 309, AS 1991 247; formally expired, no longer in force
26.09.1993	11 "For a federal work-free holiday on 1 August (1st August Initiative)" (FC Art. 116bis and transitional provisions Art. 20)	1,492,285 (289,122)	20 6/2 (0)	BBl 1993 IV 266 and 269, AS 1993 3041; formally in force
20.02.1994	12 "To protect the Alpine region from transit traffic" (FC Art. 36sexies and transitional provisions Art. 22)	954,491 (884,362)	13 6/2 (7)	BBl 1994 II 701, AS 1994 1101; formally in force
03.03.2002	13 "For Switzerland's membership of the United Nations (UN)" (FC Art. 197 Ziff. 1)	1,489,110 (1,237,629)	11 2/2 (9 4/2)	BBl 2002 3690; AS 2002 885; formally in force
08.02.2004	14 "Lifelong detention for perpetrators of sexual or violent crimes who are judged to be highly dangerous and untreatable" (FC Art. 123a)	1,198,751 (934,576)	19 5/2 (1 1/2)	BBl 2004 2199; AS 2004 2341; formally in force
27.11.2005	15 "For food grown without genetic modification" (FC Art. 197 Ziff. 7)	1,125,835 (896,482)	20 6/2 (0)	BBl 2006 1061; AS 2006 89; formally in force
30.11.2008	16 "For no statute of limitations on pornographic crimes against children" (FC Art. 123b)	1,206,323 (1,119,119)	16 4/2 (4 2/2)	BBl 2009 605; AS 2009471; formally in force
29.11.2009	17 "Against the building of minarets" (FC Art. 72 Abs 3)	1,535,010 (1,134,440)	17 5/2 (3 1/2)	BBl 2010 3437

SOURCE: Swiss Federal Chancellery, political rights section (www.bk.admin.ch/themen/pore)

	PURELY REPRESENTATIVE DEMOCRACY	WELL DEVELOPED DIRECT DEMOCRACY
IMAGE OF THE HUMAN BEING	Politically "immature" citizens, "mature" politicians	"Mature" citizens as politicians
RELATIONSHIP BETWEEN CITIZENS AND POLITICIANS	Established-outsiders relationship, institutionalised categorical inequality	More even distribution of power: no categorical inequality; citizens enjoy independent possibilities of controlling the political process and of making proposals
DISTRIBUTION OF THE RESOURCES OF POLITICAL POWER	Politicians monopolise: 1) the right to make substantive political decisions 2) the right to determine the political agenda 3) access to important information	Politicians have no monopoly on substantive political decisions or agenda setting
POLITICAL RIGHTS OF CITIZENS	Voting in elections	Voting in elections and referendums
PARTICIPATORY PROCEDURES	Elections, plebiscites, possibly obligatory constitutional referendums	Elections, popular initiatives, popular referendums, obligatory constitutional referendums and obligatory referendums on issues which are defined in the constitution (for example, accession to international organisations and supranational communities)
CITIZEN'S ROLE	Voter, passive citizen, outsider, elects people and parties, makes no substantive decisions, offers opinions to politicians, political external regulation	Voter, occasional politician, active citizen, makes the important decisions, elects the political office-holders, political self-regulation
POLITICIAN'S ROLE	Decision-maker, governs for citizens, receives citizens' opinion, active citizen, member of the established group	Decision-maker, governs together with other citizens, advises citizens, active citizen
FREEDOM	Negative freedom, renunciation of freedom as autonomy	Positive freedom, freedom as autonomy

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1950   In the referendum vote in the canton of Berne on 29th October 1950 the Jura Statute was accepted by 69,089 "Yes"-votes to 7,289 "No"-votes on a turnout of around 31%. The proposal was accepted in all districts, even more clearly in the Jura districts than in the old part of the canton.

1959   On 5th July 1959, the initiative of the Rassemblement Jurassien was rejected across the canton by 80,141 "No"-votes to 23,130 "Yes"-votes, and in the seven Jura districts by 16,352 "No"-votes to 15,159 "Yes"-votes. However, the Jura region was divided: Franches-Montagnes, Delémont and Porrentruy approved the proposal with "Yes"-votes of between 66% and 76%. Courtelary, Laufen, Moutier and La Neuveville rejected the proposal with "No"-votes of between 65% and 75%. Turnout was 85% for the Jura and 31% for the old part of the canton.

1970   The "Supplement to the constitution of the canton of Berne in respect of the Jura region", which conceded the right of self-determination to the Jura districts, was accepted in the referendum vote on 1st March 1970 by 90,358 "Yes"-votes to 14,133 "No"-votes. Turnout was around 60% in the Jura and 38% across the whole canton. The constitutional amendment was approved in all districts, especially clearly in those of the Jura.

1974   23rd June 1974: Consultative referendum of eligible voters in the Jura region: "Do you wish to form a new canton?"

DISTRICT	YES	NO	INVALID/BLANK	TURNOUT (%)
Courtelary	3,123	10,260	288	90.03
Delémont	11,070	2,948	509	92.50
Franches-Montagnes	3,573	1,058	76	93.48
Laufen	1,433	4,119	51	73.16
Moutier	7,069	9,330	383	91.48
La Neuveville	931	1,776	41	86.47
Porrentruy	9,603	4,566	404	93.62
JURA	36,802	34,057	1,752	88.67

1975 16th March 1975: Consultative referendums in three districts:
"Do you wish to continue to belong to the canton of Berne?"

DISTRICT	YES	NO	INVALID/BLANK	TURNOUT (%)
Courtelary	10,802	3,268	115	92.13
Moutier	9,947	7,740	113	96.02
La Neuveville	1,927	997	28	91.48

1978 24th September 1978: Federal popular referendum vote on recognition of the new, 26th Swiss canton. The proposal was accepted by all the cantons and by a majority of the people, with 1,309,841 "Yes"-votes to 281,873 "No"-votes. Voter turnout was 42%.

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1815   At the Congress of Vienna, the canton of Berne receives the former principality of Basle, now known as the Jura region, in compensation for the loss of Vaud and the Aargau.

1815–1945   5 protest movements in the Jura: 1826–31, 1834–36, 1838–39, 1867–69, 1913–19. They are all of short duration and fail to mobilize the people. Other lines of conflict, which divide the Jura rather than uniting it, take precedence.

1947   The Moeckli affair. Georges Moeckli, government member from the Jura, is denied the ministry of public works by the parliament in Berne on the grounds of his supposed "defective knowledge of German". Two thousand demonstrators protest in Delémont. The Comité de Moutier is formed. Its goal: autonomy within the canton of Berne. The Mouvement séparatiste jurassien (MSJ) is founded. In its newspaper "Jura libre", it demands the separation of the Jura from Berne.

1948   The Comité de Moutier addresses a 21-point memorandum to the cantonal government in Berne; it demands autonomy for the Jura und the federalisation of the canton of Berne. The government in Berne is prepared to make only some less wide-ranging concessions.

1949   The cantonal government in Berne approves the first report on the Jura drawn up by Markus Feldmann.

29.10.1950   A referendum vote endorses a change to the Berne cantonal constitution – the Jura Statute – by a clear majority. In the new constitution, the existence of a "people of the Jura" – separate from the people of the old part of the canton – is explicitly recognised.

1951   The cantonal government in Berne recognises the Jura coat of arms. The MSJ renames itself the Rassemblement Jurassien (RJ)

1952   The Comité de Moutier is wound up. The anti-separatists form the Union des Patriotes Jurassiens (UPJ).

1957   The RJ launches an initiative aimed at determining what the people of the Jura think about founding a new canton of Jura.

5.7.1959   Referendum vote – the RJ initiative is rejected.

1961   The separatists submit 4 popular initiative proposals. The referendum ballot takes place on 27.5.1962.

1962   The "Béliers" youth wing of the RJ is founded. The "Berberat" case: first lieutenant Romain Berberat is punished for declaring – at a separatist carnival at which he is wearing civilian clothes – Berne to be "an autocratic dictatorship of politicians who have never understood us".

1963   The "Front de libération jurassien" (FLJ – Jura Liberation Front) admits carrying out arson and bomb attacks. It consists of three men who acted independently of the RJ.

1964   The "Les Rangiers" affair: separatist demonstrators interrupt a service of commemoration for the Swiss Army.

1967   The Berne government appoints the "Commission of the 24" to study the Jura issue. Its report outlines three options for the people of the Jura: status quo, autonomy, separation.

1968   At the suggestion of the Federal Council, Berne appoints the "Good Services Commission"; it is meant to mediate between the different parties and produces its "First Report" on 13.5.1969.

1.3.1970   Popular referendum vote on the "Supplement to the constitution of the canton of Berne in respect of the Jura region", which grants the right of self-determination to the Jura districts. Efforts to formulate an autonomous status fail.

23.6.1974   Popular consultation among Jura electorate: "Do you wish to form a new canton?". A slim majority votes "Yes".

16.3.1975   Popular consultations in the districts of Courtelary, Moutier and La Neuveville: "Do you want to continue to belong to the canton of Berne?". A majority in all the districts votes to remain with Berne.

7 and 14.9.1975   Popular consultations in border municipalities about which canton they want to belong to. Moutier, Grandval, Perrefitte, Rebévelier and Schelten – all municipalities with a Protestant majority – vote to remain with Berne. Châtillon, Corban, Courchapoix, Courrendlin, Lajoux, Les Genevez, Mervelier and Rossemaison (all with a Catholic majority) decide to join the canton of Jura.

14.9.1975   Popular consultation: Laufental rejects accession to Berne. A law passed in November 1975 permits the Laufental to seek accession to a different, neighbouring canton. A treaty of accession to Basle Country is made, but this is rejected in 1983 by the voters of Laufental. This decision is later declared invalid, and on 12.11.1989 Laufental decides to join Basle Country.

19.10.1975   The municipality of Roggenburg (Catholic, German-speaking) decides to remain with the district of Laufen.

21.3.1976   Election of a constitutional assembly in the Jura.

20.3.1977   Approval of the constitution of the new canton of Jura in a popular referendum vote.

24.9.1978   The Swiss electorate agrees to the canton of Jura being accepted into the Federation (popular referendum on an appropriate change to the constitution).

1.1.1979   The "République et canton du Jura" (the Republic and the canton of Jura) is proclaimed. This raises the number of Swiss cantons to 26.

1980   A convention of the RJ in the municipality of Cortébert (in the Bernese Jura) is violently disrupted. Subsequently, violence gradually diminishes.

1990   The canton of Berne applies to the Federal Court for the annulment of a popular initiative "Unite" launched by the RJ to create a law on the unity of the Jura. Two years later, the court decides in favour of Berne. In 1994, the canton of Jura formally repeals the "Unite" law passed by the cantonal parliament.

8.3.1993   Dominique Haenni presents to the cantonal government his report on "The French speakers in the canton of Berne", which he drew up as a result of the Pétermann proposal of 7.9.1989. Haenni recommended a process of increasing autonomy for the French-speaking ("Jura") areas of the canton of Berne, as a means of improving the relationship between them and the canton.

19.1.1994   On the 19th January 1994 the Bernese parliament passes the "Law on the strengthening of political participation of the Bernese Jura and of the French-speaking population of the municipality of Biel", which continues to govern the position of the French-speaking minority in the canton of Berne.

6.6.1993   The new Bernese cantonal constitution is approved in a referendum ballot. It enters into force on 1.1.1995. Uniquely, the Bernese Jura is granted special regional status (cf. Art. 5) within the canton. The three districts of the Bernese Jura are French-speaking and the roughly 51,000 inhabitants (5.4% of the total cantonal population) form a relatively small minority.
Art. 5 (of the Bernese cantonal constitution) The Bernese Jura
1) Special status is accorded to the Bernese Jura, consisting of the districts of Courtelary, Moutier and La Neuveville. This should enable it to preserve its identity and its special linguistic and cultural character and to take an active part in cantonal politics.
2) The canton will adopt measures to strengthen the links between the Bernese Jura and the rest of the canton.

25.3.1994   An agreement between the federation and the cantons of Jura and Berne formalises dialogue between the Jura proper and the Bernese Jura and creates the Assemblée interjurassienne (AIJ) – the Inter-Jura Assembly. The Federal Council maintains regular contact with the governments of Berne and the Jura. The basic idea of the agreement is that the Jura region should produce its own proposals for solving its problems.

1.1.1994   Laufental joins the canton of Basle Country.

10.3.1996   Federal popular referendum vote: the municipality of Vellerat joins the canton of Jura.

27.9.2000   Report of the regional council (conseil régional Jura bernois et Bienne romande) on how increased autonomy for the Bernese Jura can be implemented.

20.12.2000   Resolution No. 44 of the Inter-Jura Assembly (AIJ) on how the Jura issue is to be addressed politically. It provides for a two-stage process: during the first two to three years, ways and means of creating cooperation between the canton of Jura and the Bernese Jura are to be put in place. In the second, four-year, phase the practical results of the cooperation should be seen. There is a plan for a regional parliament with its own executive.

2003 The "Mouvement autonomiste jurassien" (Movement for the Autonomy of the Jura) (MAJ) launches the initiative "Un seul Jura" (One Jura). Their goal is a form of re-unification of the Jura: the three districts of the Bernese Jura are to be offered shared sovereignty across the whole territory of the six French-speaking districts of the Jura.

17.11.2004 The parliament of the canton of Jura accepts the initiative "Un seul Jura" although the government had proposed to reject it mostly on legal grounds.

1.1.2006 The law on the special statute for the Bernese Jura and the French-speaking minority in the district of Biel (Special Statute Law, SstG) come into force. It is designed to enable the population of the Bernese Jura "to retain their identity within the canton, to maintain their linguistic and cultural individuality and to play an active part in the political life of the canton".

1.7.2006 The law "Un seul Jura" comes into force. It provides a legal framework for a possible political resolution of the Jura conflict. It is the task of the Inter-Jura Assembly to provide a study for the reconstitution of a new canton of Jura of the six districts. On the basis of this study, planned to be ready in August 2008, a proposition for sharing sovereignty on the territory of the six districts will be made by the government of the canton of Jura.

SOURCES:
· Historisches Lexikon der Schweiz (www.hls-dhs-dss.ch)
· Junker, Beat: Geschichte des Kantons Bern seit 1798: Band III Tradition und Aufbruch 1881–1995 (Berne 1996). Herausgegeben vom Historischen Verein des Kantons Bern (www.stub.unibe.ch/extern/hv/gkb/iii/)
· Neue Zürcher Zeitung, 26.4.2004, Sonderstatut für den Berner Jura
· Schwander, Marcel: Jura. Konfliktstoff für Jahrzehnte (Zurich/Köln 1977)
· Vortrag der Staatskanzlei an den Regierungsrat zum Entwurf des Gesetzes über das Sonderstatut des Berner Juras und die französischsprachige Minderheit des Amtsbezirks Biel (Sonderstatutgesetz, SStG). Entwürfe vom 7. Mai bzw. 19. Juni 2003 sowie Gesetzesentwurf: www.be.ch/aktuell/sonderstatut/sonderstatut.asp [German and French]
· Website of the Interjurassischen Versammlung (IJV)/Assemblée interjurassienne (AIJ): www.assemblee-interjura.ch/ [in French]
· Website of the canton of Jura: www.ju.ch [in French]
· Website of the Conseil régional Jura bernois et Bienne romande (www.conseilregional-jb.ch/)

FEDERAL LAW ON THE ARMY AND MILITARY ADMINISTRATION ("MILITÄRGESETZ: MG"), AMENDMENT.

THE PROPOSAL WAS ACCEPTED

ELECTORATE	Total eligible voters:		4,764,888
	Of which Swiss living or staying abroad:		84,216
TURNOUT	Voting slips received:		2,361,382
	Turnout:		50%
VOTING SLIPS DISREGARDED	Blank slips:		90,232
	Invalid slips:		11,121
VOTING SLIPS TAKEN INTO ACCOUNT	Valid slips:		2,260,029
	"Yes" votes:	(76.0%)	1,718,452
	"No" votes:	(24.0%)	541,577

SOURCES:
· Referendum vote of 18.05.2003: BBl 2003 51 64 (www.admin.ch/ch/d/ff/2003/5164.pdf)
· Amendment to MG of 04.10.2002: AS 2003 3957 (www.admin.ch/ch/d/as/2003/3957.pdf)
· Parliamentary decision of 04.10.2002: BBl 2002 65 43 (www.admin.ch/ch/d/ff/2002/6543.pdf)
· Statement by Federal Council of 24.10.2001: BBl 2002 858 (www.admin.ch/ch/d/ff/2002/858.pdf)

The text of the popular initiative reads:

"The federal constitution shall be amended as follows:

Art. 4bis (new)

1 No-one shall be discriminated against on grounds either of country of origin, race, gender, language, age, position in society, way of life, religious, philosophical or political conviction, or because they are subject to any physical, mental or psychological disablement.

2 The law guarantees equality of rights for disabled people. It provides for measures to remove and compensate for existing discrimination.

3 Access to public buildings and facilities, and the right to make use of utilities and services intended for public use, shall be guaranteed as long as this does not incur unreasonable expense."

STAGES IN THE POPULAR INITIATIVE:

	CHRONOLOGY	SOURCE
21.07.1998	Preliminary check	BBl 1998 3964
04.08.1998	Start of signature collection period	
14.06.1999	Signatures handed in	
04.08.1999	Officially validated	BBl 1999 7312 (www.admin.ch/ch/d/ff/1999/7312.pdf)
04.02.2000	End of signature collection period	
11.12.2000	Statement by the Federal Council	BBl 2001 1715 (www.admin.ch/ch/d/ff/2001/1715.pdf)
13.12.2002	Decision of parliament *Recommendation: rejection*	BBl 2002 8152 (www.admin.ch/ch/d/ff/2002/8152.pdf)
18.05.2003	Referendum vote *The proposal was rejected*	BBl 2003 5164 (www.admin.ch/ch/d/ff/2003/5164.pdf)

REFERENDUM BALLOT OF 18.5.2003

ON THE CITIZENS' INITIATIVE "EQUAL RIGHTS FOR THE DISABLED"

THE INITIATIVE WAS REJECTED BY THE PEOPLE AND THE CANTONS.

ELECTORATE	Total eligible voters:	4,764,888
	Of which Swiss living or staying abroad:	84,216
TURNOUT	Voting slips received:	2,367,883
	Turnout:	50%
VOTING SLIPS DISREGARDED	Blank slips:	47,178
	Invalid slips:	10,563
VOTING SLIPS TAKEN INTO ACCOUNT	Valid slips:	1,738,070
	"Yes" votes:	(37.7%) 870,249
	"No" votes:	(62.3%) 1,439,893
CANTONS	Number of cantons supporting the proposal	3
	Number of cantons rejecting the proposal	23

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Probably no other country in the world has such extensive rights of political co-determination as Switzerland. Swiss citizens enjoy the following political rights at the federal (national) level:

1) VOTING IN ELECTIONS

ACTIVE VOTING RIGHT	PASSIVE VOTING RIGHT
Elections to the National Council	Eligibility to be elected to the National Council, the Federal Council and the Federal Court
All adult Swiss citizens who have reached the age of 18 are entitled to elect representatives to the National Council	All adult Swiss citizens who have reached the age of 18 are entitled to put themselves up for election.

2) VOTING IN REFERENDUM VOTES (GENERAL VOTING RIGHTS)

All Swiss citizens, whether living in Switzerland or abroad, who have reached the age of 18 and who are not disqualified on grounds of mental illness or mental handicap are entitled to vote. The term "Stimmrecht" ("the right to vote") means the right to take part – literally to "have a say" – in citizens' referendum votes. However, the term is also understood more widely to mean the right to take up one's political rights or to exercise one's citizens' rights. The right to vote includes the right to take part in elections and referendum votes, to sign referendum demands and popular initiatives and to exercise other democratic rights.

3) THE RIGHT OF INITIATIVE

At the federal level, Swiss citizens can demand a referendum vote on a change which they wish to have made to the constitution. Before an initiative can be officially validated, the signatures of 100,000 citizens who are entitled to vote have to be gathered within 18 months. An initiative can be formulated as a general proposal or be presented as a fully worked-out text.

4) THE RIGHT TO REFERENDUM

"The people" (i.e. all those with the right to vote) has the right to decide in retrospect on decisions made by parliament. Federal laws, federal decrees, open-ended international treaties and treaties which provide for accession to international organisations are subject to the facultative i.e. optional referendum. This means that if 50,000 citizens request it (by giving their signatures), the matter must be referred to a referendum vote. The signatures must be handed in to the authorities within 100 days of the official publication of the parliamentary decision. (All amendments to the constitution and accession to certain international organisations are subject to the obligatory referendum i.e. a referendum vote must take place).

5) THE RIGHT OF PETITION

All persons of sound mind – not only those who have the right to vote – are entitled to direct written requests, proposals and complaints to the authorities. The latter must take note of such petitions. The authorities are not bound to respond, but in practice, all petitions are dealt with and responses given. Any activity of the state can be the subject of a petition.

BACKGROUND

The most recent moves to reform citizens' rights date back to the reform of the constitution. At the time, the federal government's proposals for a comprehensive reform of citizens' rights were not accepted by parliament – because of the proposed raising of the signature quorums for initiatives and referendums – and were therefore not included in the constitutional reform package. Parliament later took up those proposals which could command a majority – including the introduction of the so-called "general popular initiative".

WHAT WAS THE AIM OF THE GENERAL POPULAR INITIATIVE?

The "General Popular Initiative" was intended to replace the previous popular initiative submitted in the form of a general proposal. Its main characteristics are as follows:

- The General Popular Initiative is both a constitutional and a legislative initiative. It can be used to propose changes not only to the federal constitution, but also to federal laws (Art. 139a (1), Federal Constitution). Parliament decides on the appropriate level of jurisdiction for the implementation of the initiative. (Art. 139a, (3), Fed. Const.).

- If the initiative committee believes that the content or purpose of its initiative has been misunderstood or inappropriately coverted (into legislation) by parliament, it can appeal to the Federal Court (Art. 189, (1bis) Fed. Const.).

- Parliament can present its own counter-proposal as an alternative to the general popular initiative proposal (Art. 139a, (4) Fed. Const.). However, in contradistinction to the formulated popular initiative, such a counter-proposal is only possible when parliament has expressed its consent in principle to the general popular initiative (Art. 139a (4) and (5) Fed. Const.).

- The law includes provision for the legislative to issue directives in order to prevent the implementation of a general popular initiative which has been approved by the people from being blocked because the two houses of parliament cannot reach agreement (Art. 156 (3) Bst. b BV).

INITIAL ENTHUSIASM FOLLOWED BY DISENCHANTMENT

On 9th February 2003, there was a clear vote from both the people and the cantons in favour of introducing the general popular initiative. Implementation of the general popular initiative would have required adjustments to the federal law of 17 Dec 1976 on political rights (BPR, SR 161.1), to the federal law of 13 December 2002 on the Federal Assembly (Parlamentsgesetz, ParlG, SR 171.1), and to the federal law of 17 June 2005 on the Federal Court (Bundesgerichtsgesetz, BGG, BBl 2005 4045). On 31 May 2006, the Federal Council submitted to parliament the relevant draft legislative amendments, accompanied by an explanatory text.

However, it became clear during the attempted implementation of the new provision that the general popular initiative was a popular right which was both complex and not at all citizen-friendly. Parliament therefore decided not to act upon the proposal for implementation. In addition, the Political Institutions Committees of both houses of parliament launched a committees' initiative aimed at abrogating the general popular initiative. The proposed abrogation put the ball back in the court of the people and the cantons – who accepted on 27.09.2009 to remove the general popular initiative from the constitution.

REASONS FOR THE FAILURE TO IMPLEMENT THE GENERAL POPULAR INITIATIVE

All the problems which were highlighted in the introductory debates on the federal law to implement the general popular initiative are ultimately traceable to the the design of the initiative at the constitutional level. The following points were made in the parliamentary debates:

- that the general popular initiative was a "paper tiger" – it was too complex and required too many procedural steps – in particular for the following reasons:
  - the bicameral parliament with full equality of rights for both chambers, leading to the purely practical impossibility of preventing constitutionally disallowed inconclusive outcomes;
  - the option for counter-proposals to general popular initiatives – both legislative and constitutional – with the resulting complexity of the referendum process;
  - the possibility of an appeal to the Federal Court (described variously as "a clear change of style", "the Fall", "the first decisive step in the direction of a federal constitutional court" and "a massive paradigm shift").
- the lengthy procedure – from submission to adoption by parliament, or to a popular decision in a referendum; and finally
- that for the same "price" (100,000 signatures) there was already a more suitable instrument i.e. the properly formulated constitutional initiative.

The main arguments of those in favour of going ahead with the implementation of the general popular initiative were:

- that the general popular initiative had already been approved by the double majority of the people and the cantons and it should therefore be implemented; and
- that most of the arguments against the general popular initiative – such as the possibility of an appeal to the Federal Court – were already known at the time the constitutional changes were being debated.

The arguments about the complexity of implementing the general popular initiative are not new. Similar arguments had been put forward in the context of the discussion about the so-called "unitary initiative". The Federal Council also discussed them in its official commentary on the general popular initiative, in which it adopted a pragmatic position based on the assumption that the Federal Assembly (parliament) would only rarely adopt a general popular initiative and that consequently the putting forward of a counter-proposal would also be a rare occurrence.

The Federal Council also considered that the risk of an implementation directive failing after a general popular initiative had been approved by the people was very slight. Despite this, in order to fulfil the constitutional need to make provision also for the less likely eventualities in implementing the general popular initiative, a complex ruling was required. It was ultimately on this complexity that the implementation of the general popular initiative foundered.

SOURCES:
- Official communication from the Federal Council on the introduction of the general popular initiative and on other changes to federal law on political rights, dated 31 May 2006, Bundesblatt 2006 5261 (www.admin.ch/ch/d/ff/2006/5261.pdf – in German)
- Draft federal law on the introduction of the general popular initiative (Bundesblatt 2006 5331 (www.admin.ch/ch/d/ff/2006/5331.pdf – in German)
- Inaugural debate in the National Council, verbatim, Official Bulletin 2006, pp.1972-1979 (www.parlament.ch/su-amtliches-bulletin.htm > search engine)
- Inaugural debate in the Council of States, verbatim, Official Bulletin 2007, pp, 219-226 (www.parlament.ch/su-amtliches-bulletin.htm > search engine)
- Auer, Andreas, 2004, Les institutions de la démocratie directe en Suisse: une lente dégradation, LeGes 2004/3, S. 35-48
- Braun, Nadja, 2006, Auf dem Weg zur Umsetzung der allgemeinen Volksinitiative, LeGes 2006/2, S. 159-159
- Braun, Nadja, 2007, Gescheiterte allgemeine Volksinitiative: sind die Volksrechte reformträge?, LeGes 2007/2, S. 337-342
- Kölz, Alfred/Poledna, Thomas, Die "Einheitsinitiative" – Ei des Kolumbus oder Trojanisches Pferd?, ZSR 1988 I 1

**THE MAJOR INITIATORS OF "POPULAR DEMANDS" (POPULAR INITIATIVES AND FACULTATIVE REFERENDUMS)
IN THE CANTONS BETWEEN 1979–2000**

1. Political parties initiate 37% of all popular demands
   · Share: 60% Green/Left camp, 40% "bourgeois" camp
   · Major subjects: system of state organisation, finances/taxation, social welfare/health
2. Ad-hoc initiative committees initiate 30% of all popular demands
   · Emphasis on transport policies, democracy
3. Combined sponsorship
4. Interest groups initiate 10% of all popular demands
   · The most active groups: environmental, trade unions, tenants, employers, house owners
   · Emphasis on financial, environmental and educational issues
5. New social movements and individuals initiate 7% of all popular demands
   · Emphasis on the system of government, energy and the environment.

THE MAJOR TRENDS IN THE SPONSORSHIP OF POPULAR DEMANDS

1. At the beginning of the 21st century, the most successful initiatives do not originate in either left-wing or right-wing political circles, but in the political centre-ground, which has always done badly in parliamentary elections in recent years.
2. An increasing number of popular demands (initiatives and referendums) are launched by established groups. The citizens' movements which stood behind many popular initiatives during the 1990s have been less prominent of late.
3. The maxim that people from the Left and Green camps primarily turn to the popular initiative (the "gas pedal"), while bourgeois and right-wing circles tend to use the facultative referendum (the "brake"), is no longer true.

SOURCE: Gross, Andreas: Trendwende bei den Volksrechten? (NZZ, 12.01.2004)

THE 3 MAJOR SUBJECT AREAS COVERED BY NATIONAL POPULAR INITIATIVES SINCE 1951

	1	2	3
1951–1960	Social welfare	The economy	Peace
1961–1970	Social welfare	The economy	Peace
1971–1980	Social welfare	The economy	The environment
1981–1990	The environment	The economy	Social welfare
1991–2000	The environment	Social welfare	Peace
2001–2003	Social welfare	The environment	Social integration policies

**THE THREE MAJOR SUBJECT AREAS FOR POPULAR INITIATIVES AND FACULTATIVE REFERENDUMS
IN THE CANTONS SINCE 1979**

GOVERNANCE: THE STATE & DEMOCRACY	DISTRIBUTION: FINANCES & SOCIAL WELFARE	THE ENVIRONMENT: ENERGY & TRANSPORT
Fribourg	Basle Country	Aargau
Graubünden	Basle City	Basle Country
Jura	Geneva	Berne
Obwalden	Lucerne	Jura
Schwyz	Neuchâtel	Lucerne
Uri	St. Gallen	Solothurn
	Schaffhausen	Zug
	Thurgau	
	Ticino	
	Valais	
	Vaud	
	Zurich	

SOURCES:
· Swiss Federal Chancellery, political rights section (www.bk.admin.ch/themen/pore)
· Vatter, Adrian: Kantonale Demokratien im Vergleich (Opladen, 2002)

NATURALISATION, RESIDENCE, CITIZENS' RIGHTS, LAW ON FOREIGNERS, ASYLUM LAW

DATE	SUBJECT	OUTCOME [PEOPLE] / [CANTONS]
14.01.1866	Equal domiciliary rights for Jews and naturalized citizens	ACCEPTED [P] / [C]
14.01.1866	Permanent residents' right to vote on municipality matters	REJECTED [P] / [C]
14.01.1866	Tax and civil rights in relation to permanent residents	REJECTED [P] / [C]
14.01.1866	Permanent residents' right to vote on cantonal matters	REJECTED [P] / [C]
21.10.1877	Federal law on the political rights of permanent and temporary residents and the loss of political rights of Swiss citizens	REJECTED
11.06.1922	Popular initiative "Naturalisation"	REJECTED [P] / [C]
11.06.1922	Popular initiative "Expulsion of foreigners"	REJECTED [P] / [C]
25.10.1925	Federal decree concerning temporary and permanent residence of foreigners	ACCEPTED [P] / [C]
20.05.1928	Federal decree on revision of Art. 44 of the federal constitution (measures to limit number of foreigners)	ACCEPTED [P] / [C]
07.06.1970	Popular initiative "Foreigners, reduction of number"	REJECTED [P] / [C]
20.10.1974	Popular initiative "Foreigners, reduction of number"	REJECTED [P] / [C]
13.03.1977	Popular initiative "Foreigners, reduction of number (N° 4)"	REJECTED [P] / [C]
13.03.1977	Popular initiative "Restriction on naturalisation of foreigners"	REJECTED [P] / [C]
05.04.1981	Popular initiative "New, friendlier policy towards foreign residents"	REJECTED [P] / [C]
06.06.1982	Law on foreigners (AuG)	REJECTED
04.12.1983	Federal decree on changes to citizenship rules in the constitution	ACCEPTED [P] / [C]
04.12.1983	Federal decree on making naturalisation easier in certain cases	REJECTED [P] / [C]
05.04.1987	Asylum law, amendment of 20th June 1986	ACCEPTED

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NATURALISATION, RESIDENCE, CITIZENS' RIGHTS, LAW ON FOREIGNERS, ASYLUM LAW

DATE	SUBJECT	OUTCOME [PEOPLE] / [CANTONS]
05.04.1987	Federal law on rights of stay and domicile of foreigners, revision of 20.6.1986	ACCEPTED
04.12.1988	Popular initiative "On restriction of immigration"	REJECTED [P] / [C]
12.06.1994	Federal decree on the revision of the rules on citizens' rights in the federal constitution (easier acquisition of citizenship for young foreigners)	FAILED TO WIN A MAJORITY OF CANTONS
04.12.1994	Federal law on compulsory measures in the law on foreigners	ACCEPTED
01.12.1996	Federal decree on the popular initiative "against illegal immigration" (counter-proposal)	REJECTED [P] / [C]
13.06.1999	Asylum law (AsylG)	ACCEPTED
13.06.1999	Federal decree on urgent measures in the area of asylum and foreigners (BMA)	ACCEPTED
24.09.2000	Popular initiative "for regulation of immigration"	REJECTED [P] / [C]
24.11.2002	Popular initiative "against the abuse of asylum rights"	FAILED TO WIN A MAJORITY OF POPULAR VOTES
26.09.2004	Federal decree of 3rd October 2003 on the proper handling of naturalisations, as well as easier naturalisation for young, second-generation foreigners	REJECTED [P] / [C]
26.09.2004	Federal decree of 3rd October 2003 on the acquisition of citizenship by third-generation foreigners	REJECTED [P] / [C]
24.09.2006	Federal law of 16th December 2005 on foreigners	ACCEPTED
24.09.2006	Asylum law, revision of 16th December 2005	ACCEPTED
01.06.2008	Federal citizens' initiative "for democratic naturalisation (conferral of citizenship)"	REJECTED [P] / [C]

SOURCE: Swiss Federal Chancellery, political rights section (www.bk.admin.ch/themen/pore/)

FEDERAL LAW OF 24.1.1991
ON THE PROTECTION OF LAKES AND RIVERS (GEWÄSSERSCHUTZGESETZ, GSCHG)

	CHRONOLOGY	SOURCE
29 APR 1987	Statement by the Federal Council	BBl 1987 II 1061
24 JAN 1991	Decision of parliament	BBl 1991 I 250
14 JUN 1991	Referendum officially validated	BBl 1991 II 1575
17 MAY 1992	Referendum vote	BBl 1992 V 455
1 NOV 1992	Entry into force	AS 1992 1860

THE PROPOSAL WAS ACCEPTED AT THE REFERENDUM VOTE OF 17.5.1992
ON THE FEDERAL LAW ON THE PROTECTION OF LAKES AND RIVERS (GEWÄSSERSCHUTZGESETZ, GSCHG)

ELECTORATE	Total eligible voters:		4,516,994
	Of which Swiss living or staying abroad:		14,361
TURNOUT	Voting slips received:		1,771,843
	Turnout:		39,22%
VOTING SLIPS DISREGARDED	Blank slips:		26,233
	Invalid slips:		2,664
VOTING SLIPS TAKEN INTO ACCOUNT	Valid slips:		1,742,946
	"Yes" votes:	(66.1%)	1,151,706
	"No" votes:	(33.9%)	591,240

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FEDERAL POPULAR INITIATIVE: "SAVE OUR LAKES AND RIVERS"

The text of the citizens' initiative is as follows:

The federal constitution shall be amended as follows:

Art. 24octies (new)

1 Natural water courses and sections of such which are still largely in an original state, together with the adjacent riverbanks, are to be subject to comprehensive protection.

2 Interventions for purposes of exploitation which either directly or indirectly alter the ecological or scenic character of sections of water courses which are close to a natural state or of larger sections which are subject to considerable environmental pressure are not permitted.

3 Water courses or sections thereof which are same term as above are to be rehabilitated along with their riparian borders, taking into account also their tributaries and feeder channels, wherever restoration to a natural state is justified for ecological or scenic reasons. The free movement of fishes and the natural reproductive activity of animals are to be ensured.

4 Any work carried out on water courses and the adjacent riverbanks is to be done with care and limited to what is absolutely essential.

5 The intervention of the hydraulic engineering police is only to be permitted if it is imperative to protect human life and health or sizeable material assets.

6 In the case of new and existing damming measures and extraction of water, a sufficient flow is to be ensured continually and along the entire length of the watercourse. The flow is deemed to be sufficient when, in particular, it ensures the continued existence of the local animal and plant communities; does not seriously damage countryside worthy of protection or valuable elements of the countryside or the quantity and quality of groundwater; ensures that effluent is adequately diluted and the fertility of the ground is maintained

7 Any diminution of legitimate rights will be compensated for in line with Article 22ter. The Federation will establish a fund, paid for by the owners of hydro-electric stations, to provide compensation for restrictions to property rights which have a legitimate claim to such compensation.

8 Organisations involved in the protection of nature, the countryside and the environment shall be accorded the status of a party that is entitled to launch a complaint.

9 Where objections and complaints are directed against actions aimed at the exploitation of water courses, such actions will be deferred.

Transitional arrangements

1 Plans for which valid concessions or approvals already exist are to count as new interventions, if essential building work has not yet begun at the point when Art. 24octies is approved.

2 Until such time as the legal provisions are created, the government shall issue the necessary rules and in particular manage the process of issuing permits and arranging restoration work. If these rules have not been issued within two years after acceptance of Article 24octies, no work is to be permitted other than by the hydraulic engineering police.

3 Article 24octies and the aforementioned provisions enter into force when they have been approved by the people and the cantons."

STAGES OF THE CITIZENS' INITIATIVE:

	CHRONOLOGY	SOURCE
17.05.1983	Preliminary check	BBl 1983 II 354
31.05.1983	Start of signature collection period	
09.10.1984	Signatures handed in	
08.11.1984	Officially validated	BBl 1984 III 994
01.12.1984	End of signature collection period	
29.04.1987	Statement by the Federal Council	BBl 1987 II 1061
06.10.1989	Decision of the parliament *Recommendation:* *rejection of the initiative, indirect counter-proposal*	BBl 1989 III 900
17.05.1992	Referendum vote *The proposal was rejected*	BBl 1992 V 459

REFERENDUM BALLOT OF 17.5.1992
ON THE FEDERAL POPULAR INITIATIVE "SAVE OUR LAKES AND RIVERS"
THE PROPOSAL WAS REJECTED BY THE PEOPLE AND THE CANTONS

ELECTORATE	Total eligible voters:		4,516,994
	Of which Swiss living or staying abroad:		14,361
TURNOUT	Voting slips received:		1,771,722
	Turnout:		39%
VOTING SLIPS DISREGARDED	Blank slips:		31,086
	Invalid slips:		2,566
VOTING SLIPS TAKEN INTO ACCOUNT	Valid slips:		1,738,070
	"Yes" votes:	(37.1%)	644,083
	"No" votes:	(62.9%)	1,093,987
CANTONS	Number of cantons supporting the proposal		0
	Number of cantons rejecting the proposal		26

Article 192, § 1 of the federal constitution states that the constitution may be subjected to a total or partial revision at any time. In the case of a total revision, the proposers (the initiative committee) are only allowed to demand that a referendum vote be held to decide whether the constitution should be revised or not (Art. 138 federal constitution (FC)). In the case of an initiative for a partial revision of the federal constitution, on the other hand, the initiative committee can propose a specific change in content. However, the proposers do not have an entirely free hand: they must bear in mind certain restrictions on what can be proposed arising from national and international law.

Article 139 § 3 of the federal constitution states that in the case of a popular initiative for a partial revision of that constitution: "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 an initiative is declared invalid, no referendum vote is held.

VIOLATION OF THE PRINCIPLE OF UNITY OF FORM
Initiatives for a partial revision of the federal constitution can be presented in the form either of a general proposal, or of a detailed, precisely worded draft. It is only permitted to choose one or the other form. If the proposal contains a mixture of forms, the initiative will violate the principle of unity of form.

VIOLATION OF THE PRINCIPLE OF UNITY OF SUBJECT MATTER
In order that the voters can vote freely on the issue, the proposal for a partial revision of the federal constitution must restrict itself to a specific subject matter. There must therefore be a material connection between the various parts of the initiative proposal (Art. 75 § 2 Federal Law on Political Rights). If the proposers wish to present materially distinct proposals, they must present these as separate initiatives. There is no provision for an initiative to be split up into different components, because it would not be possible to ascertain whether the various individual parts had secured the required number of signatures.

VIOLATION OF MANDATORY RULES OF INTERNATIONAL LAW
In the case of a popular initiative proposal which violates the mandatory rules of international law, the federal constitution specifies that it – or that part of it which violates ius cogens – must be declared invalid (Art. 139 § 2 for the current popular initiative; Art. 139a § 2 FC for the "general initiative" which is being introduced). However, the mandatory rules of international law are binding not only on the proposers of popular initiatives, but equally on the members of the Federal Parliament (Art. 193 § 4 and Art. 194 § 2 FC).

Switzerland bound itself to the mandatory rules of international law by ratifying the Vienna Convention on the Law of Treaties (SR 0.111 = AS 1990 1112), which standard-

ized the relevant principle (Art. 53). The Convention was signed on 23.5.1969 and ratified by Switzerland on 7.5.1990 (AS 1990 1111 and 1144). It was as a result of this ratification that the federal popular initiative "For a sensible asylum policy" – which violated the principle of non-refoulement i.e. non-expulsion of refugees (BBI 1994 III 1492–1500) – had to be declared invalid (BBI 1996 I 1355).

The Federal Council, in its statement of 20th November 1996 on the reform of the constitution (BBI 1997 I 362), defined what was covered by the mandatory rules of international law. In the same way that the essence of fundamental human rights must be inviolable (Art. 36 § 4 FC), the international community protects certain minimal rules of behaviour between states; any state which "legitimises" crimes against humanity places itself outside the community of nations. Genocide, slavery and torture, the compulsory return of refugees to the country persecuting them on grounds of race or religious or philosophical beliefs, the violation of the most basic internationally agreed humanitarian rules for the conduct of war, or of the ban on the use of violence and aggression, or of the absolute guarantees of the European Convention on Human Rights – all these violate such fundamental rules, according to the current widespread view of justice in the European community of nations.

The mandatory norms of international law include:

- the European Convention on the Protection of Human Rights and Fundamental Freedoms of 4th November 1950 (entry into force in Switzerland 28th November 1974, SR 0.101 = AS 1974 2151, Art. 2,3,4 § 1,7,and 15 § 2);
- the UN Pact of 16th December 1966 on Civil and Political Rights (entry into force in Switzerland on 18th September 1992, SR 0.103.2 = AS 1993 750; BBI 1991 I 1189–1247; Art. 4 § 2,6,7,8 § 1 and 2,11,15,16 and 18; cf. also in a preliminary form the UN General Declaration of Human Rights of 10th December 1948 (reproduced in BBI 1982 II 791–797(Arts. 4,5,6,9 and 28);
- the UN Convention of 10th December 1984 against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (entry into force in Switzerland 26th June 1987, SR 0.105 = AS 1987 1307; BBI 1985 III 301–314, Art. 2 § 2 and 3 and Art. 3);
- the Geneva Convention of 28th July 1951 on the Status of Refugees (entry into force in Switzerland on 21st April 1955, SR 0.142.30 = AS 1955 443, Art. 33).

It is not unlikely that the international community will elaborate further such basic rules and that these will become universally accepted norms.

UNWRITTEN MATERIAL RESTRICTIONS ON CONSTITUTIONAL REVISION

What happens when the content of an initiative violates law or is impermissible? The specific consequences in such an instance are regulated neither in the constitution nor in legislation – with the exception of the case in which the proposal violates non-mandatory international law: in such cases, an initiative may not be declared invalid. There has been a controversy lasting decades over whether Swiss constitutional law contains any further limits to constitutional revision. For example, some maintain that certain fundamental principles of the Swiss form of state (federalism, the separation of powers etc.) may not be altered. In practice, the only unwritten material restriction which has so far been accepted is one relating to the temporal impossibility of executing the initiative proposal, viz. the case of the popular initiative "Temporary reduction of military expenditure (moratorium on new acquisitions of arms)", which demanded the cutting of expenditure for years which would already have elapsed when the ruling came into force (BBI 1955 II 325).

FOUR CASES OF INVALIDITY

To date, the Federal Assembly has declared a popular initiative invalid on four occasions:

1 Federal popular initiative:
  Temporary reduction of military expenditure (moratorium on new acquisitions of arms)".
  Declared invalid by parliament on 15.12.1955 (BBI 1955 II 1463).
  Reason: Temporal inexecutability.
  Statement by the Federal Council: BBI 1955 I 527, II 325

2 Federal popular initiative:
  "Against rising prices and inflation".
  Declared invalid by parliament on 16.12.1977 (BBI 1977 III 919).
  Reason: violation of unity of subject matter.
  Statement by the Federal Council: BBI 1977 II 501

3 Federal popular initiative:
  "For less military expenditure and more investment in policies for peace".
  Declared invalid by parliament on 20.06.1995 (BBI 1995 III 570).
  Reason: violation of unity of subject matter.
  Statement by the Federal Council: BBI 1994 III 1201

4 Federal popular initiative:
  "For a sensible asylum policy".
  Declared invalid by parliament on 14.03.1996 (BBI 1996 I 1355).
  Reason: violation of mandatory rules of international law.
  Statement by the Federal Council: BBI 1994 III 1486

The introduction of citizens' direct law-making was accompanied by the following claims and expectations:

- "The decisive control and use of political power should be transferred from the hands of the few onto the broad shoulders of the many"
- "Republican life depends on the continuous steady balancing of opposing tendencies"
- "The people should acquire wider political knowledge and opinions"
- "The authorities, statesmen and representatives will try much harder to acquaint ordinary people with their thoughts and convictions"
- "The people will approach them with the clear and genuine expression of their needs and preferences"
- "The moral-spiritual-intellectual life of the people" should be stimulated by "being deeply involved with the great issues of the common public weal"
- "We are taking into our own hands the decisions which affect the destiny of our country; in some way or other we wish to have the final word on these matters"
- "The will of the people and the spirit of the times, the understanding of the common man and the great thoughts of the statesmen should be peacefully negotiated and reconciled";
- "The creation of popular rule in happy union with representation"

The spokesmen of what was in effect a democratic revolution and which between 1867 and 1869 put a system of direct democracy in place of the former liberal rule in the canton of Zurich identified two fundamental elements of "the heart of the democratic movement":

"In our view [the heart of the movement] consists in the people being able by constitutional means to win respect for its own faculty of judgment, which the elected representatives have arrogantly and bluntly denied it on all too many occasions"

"We protest against the debasement and belittlement of the people of Zurich, which consists in their being declared incompetent to recognise 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"

SOURCE: Der Landbote (Winterthur), Der Grütlianer (Berne) quoted and translated in
Gross, Andreas/Kaufmann, Bruno: IRI Europe Country Index on Citizenlawmaking (Amsterdam 2002)

BEFORE VOTING DAY

- Be aware of the plebiscite trap!
  The origin of a popular vote is important. An exclusively presidentially or governmentally triggered process (a plebiscite) tends to be much more "unfree" and unfair than a constitutionally or citizen-triggered referendum vote.
- The democratic debate needs time!
  The gap between the announcement of the popular vote and voting day itself is critical and should be at least six months in duration.
- Money matters!
  Without complete financial transparency during the campaign, unequal opportunities and unfair practices may prevail. Disclosure rules are extremely important; spending limits and state contributions can also be useful.
- The campaign needs guidance!
  Equal access to media sources (principally public and electronic) as well as the balanced dissemination of information (e.g. a general referendum pamphlet to all voters) are vital aspects of fair referendum campaigns. These may be supervised by an independent body.

ON VOTING DAY

- Avoid referendum votes on election day!
  Having a referendum on the same day as a general election tends to mix up party-politics and issue-politics. This should definitely be avoided, especially if a country is not used to referendums.
- Expand the voting "day" to a "period"!
  Since a referendum is a process with various phases, the voting phase should be longer than just a single day. In order to make participation as easy as possible, citizens should be able to vote by ballot box or postal mail over a period of two weeks.
- Keep it secret!
  During the voting period, everybody has the right to express his / her will freely. This means in absolute secrecy and without briefings on events as they develop.

AFTER VOTING DAY

- Avoid unnecessary and special majority requirements!
  A democratic decision is based on a simple majority of the votes cast. Turnout thresholds exceeding 25% of the electorate tend to provoke boycott strategies.
- Non-binding decisions are non-decisions!
  In many countries a popular vote result is non-binding. This is a democratic contradiction in terms and creates an uncertain and unfair process. The role of parliament and government in the implementation of the result must be limited. A referendum decision can only be changed by another referendum decision.
- Guarantee a free and fair post-referendum period!
  It is vital to have judicial safeguards in place. For example, each citizen could have the opportunity to appeal against a referendum decision in a court.

SOURCE: Kaufmann, Bruno (Ed.): Initiative & Referendum Monitor 2004/2005, the IRI Europe Toolkit for Free and Fair Referendums and Citizens Initiatives (Amsterdam 2004)

In order to study whether direct democracy makes a difference to the outcomes of the political process, a natural starting point is to look at public expenditure and revenues. Fiscal decisions are the central activities of most governments and policy priorities are to a large extent formed in the budgeting process. In a sample of 132 large Swiss towns carried out in 1990, the authors replicated their examination of the mandatory referendum on budget deficits. In cities where a budget deficit has to be approved by the citizenry, expenditure and revenue, on average, are lower by about 20%, while public debt is reduced by about 30%.

PURELY REPRESENTATIVE DEMOCRACIES ARE LESS EFFICIENT

The cost-efficient use of public money under different institutional settings can be directly studied for single publicly provided goods. In a careful study of refuse collection Pommerehne (1990) finds that this service is provided at the lowest cost in Swiss towns which have extended direct-democratic rights of participation and choose a private company to provide the service. If the service is provided by the municipality instead of by a private company, costs are about 10% higher. Efficiency losses are about 20% in municipalities with purely representative democracy (compared to direct-democratic ones). The average cost of refuse collection is highest in municipalities which rely on representative democratic decision-making only, as well as on publicly organised collection (about 30% higher than in the most efficient case).

A hint as to the efficiency of public services comes from a study that relates fiscal referendums to economic performance in Swiss cantons (Feld and Savioz 1997). For the years 1984 to 1993, a neo-classical production function is estimated which includes the number of employees in all sectors, cantonal government expenditure for education, including grants, as well as a proxy for capital based on investments in building and construction. The production function is then extended by a dummy variable that identifies cantons with extended direct-democratic participation rights in financial issues at the local level. Total productivity – as measured by the cantonal GDP per capital – is estimated to be 5% higher in cantons with extended direct democracy, compared to cantons where these instruments are not available.

Based on an aggregate growth equation, Blomberg et al. (2004) analyze to what extent public capital (utilities, roads, education, etc.) is productively provided and whether there is a difference between initiative and non-initiative states in the US. The data on gross state product, private and public capital, employment and population are for 48 US states between 1969 and 1986. They find that non-initiative states are only about 82% as effective as states with the initiative right in providing productive capital services, i.e. approxi-

mately 20% more government expenditure is wasted where citizens have no possibility to launch initiatives, compared to states where this institution is installed.

INITIATIVE RIGHT REDUCES CORRUPTION

The misuse of public office for private gains is measured based on a survey of reporters' perception of public corruption. It is found that, in addition to a number of control variables, there is a statistically significant effect of voter initiatives on perceived corruption. In initiative states, corruption is lower than in non-initiative states, and this effect is the larger, the lower the signature requirement to launch an initiative.

In a study for Switzerland in the early 1990s, the effect of direct-democratic participation rights on people's reported satisfaction with life is empirically analyzed (Frey and Stutzer 2002). Survey answers are from more than 6,000 interviews. The proxy measure for individual utility is based on the following question: "How satisfied are you with your life as a whole these days?" People answered on a scale from one (=completely dissatisfied) to ten (=completely satisfied).

The institutionalized rights of individual political participation are measured at the cantonal level, where there is considerable variation. A broad index is used that measures the different barriers preventing the citizens from entering the political process via initiatives and referendums across cantons. The main result is a sizeable positive correlation between the extent of direct-democratic rights and people's reported subjective well-being.

SOURCE: Stutzer, Alois/Frey, Bruno S.: Direct democracy: designing a living constitution (Zurich 2003)

SELECTED FURTHER READING:
· Pommerehne, Werner W.: The Empirical Relevance of Comparative Institutional
  Analysis. European Economic Review 1990, 34 (2–3): 458–469
· Feld, Lars P. / Savioz, Marcel R.: Direct democracy Matters for Economic Performance:
  An Empirical Investigation. Kyklos 1997, 50 (4): 507–538
· Blomberg, S. Brock/Hess, Gregory D./Weerapana, Akila: The Impact of Voter
  Initiatives on Economic Activity. European Journal of Political Economy 2004
· Frey, Bruno S./Stutzer, Alois: Happiness and Economics. How the Economy and
  Institutions Affect Human Well-Being (Princeton 2002)

Democratic procedures are very demanding. They can only function to the extent that the basic conditions for democracy are met. These conditions include:

- a functioning media and public space
- a state operating under the rule of law, protection of the constitution and fundamental human rights
- education for democracy in addition to people and organisations which have internalised the democratic principle
- institutionalised self-criticism of democracy
- research and development of democracy

Democratic procedures are only useful if they have been well designed and implemented and if they are sensibly matched. The same conditions and standards apply also to direct democracy, on the shaping of which this factsheet focuses.

The usefulness of direct-democratic instruments depends on their design. But the presence of well-designed direct-democratic procedures does not in itself ensure that they will be frequently used. The frequency of use of direct-democratic instruments depends also on other factors – such as the make-up of society (more or less complex, more or less conflict-ridden) – as well as on the way problems and conflicts are handled in a particular society. A comparison of direct democracy in the cantons of Switzerland shows that well-designed direct-democratic procedures are used more often in societies which are complex and conflict-ridden, than in smaller and simpler societies.
(cf. Vatter, Adrian: Kantonale Demokratien im Vergleich (Opladen 2002))

IMPORTANT ASPECTS IN THE SHAPING OF DIRECT-DEMOCRATIC PROCEDURES

1 NUMBER OF SIGNATURES

Question	How many signatures of eligible voters are required in order to hold a referendum vote?
Experience	International experience shows that large signature quorums (more than 5% of eligible voters) deter the majority of individuals and organisations from using the instruments of the popular initiative and the popular referendum, while very high hurdles (10% or more) make these instruments unusable.
Recommendation	Depending on the particular instrument (e.g. constitutional initiative, facultative referendum) and level of the polity (local, regional, national, transnational), the entry quorums should not be higher than 5% of the total eligible electorate.

2 TIME ALLOWED FOR COLLECTION OF SIGNATURES

Question	How much time is allowed for signatures to be collected?
Experience	Communication – informing, discussing, learning – is the heart of direct democracy. It cannot happen without sufficient time. So the time allowances for collecting signatures must reflect this. If the periods are too short e.g. only 3 months for nationwide signature collection, this blocks the crucially important processes of communication
Recommendation	For launching a nationwide initiative, there should be at least 12 months – and preferably 18. For a facultative referendum, 2–4 months should be sufficient, as the referendum issue is already on the political agenda

3 HOW THE SIGNATURES ARE COLLECTED

Question	Is there free (uncontrolled) collection of signatures with subsequent official verification – or does the signature-giving have to take place at designated official centres and/or be officially monitored?
Experience	Uncontrolled signature collection is controversial. In many countries the authorities want to restrict the options for signature collection or check the eligibility of the signatories before they sign. In Austria, signatures for popular initiatives can only be given in official centres. In the USA, collecting signatures in public places, such as at the post office, is actually forbidden.
Recommendation	A well-developed direct democracy does not require any special restrictions on signature collection: it is sufficient to check the legitimacy of the signatures. Signature collection ought to be organised in a way that encourages debate and makes it easy for people who wish to sign to do so.

4 HOW THE POPULAR INITIATIVE IS WORDED

Questions	Does the wording of the initiative proposal presuppose special legal know ledge, or can the proposal be submitted in clear and ordinary language?
Experience	In Switzerland, a specific initiative proposal can be formulated in normal language, requiring no knowledge of legalese. Any title can be chosen as long as it is not misleading, does not cause confusion or contain commercial or personal advertising. The appropriate authorities assist the initiative sponsors with the formal questions, but have no input into the content.
Recommendation	The authorities should advise the sponsors in the launching of an initiative with the aim of ensuring that the latter are enabled to express their political will freely and clearly and in a way which everyone can understand. Two things are required: that the authorities do not interfere with the content; and that the text is clear, comprehensible, unambiguous and consistent. Any kind of specialist jargon would be unsuitable.

5 HOW THE REFERENDUM QUESTION IS WORDED

Questions	Who decides how the referendum question is worded? Is the title of the initiative or of the law repeated in the question?
Experience	In Switzerland, the referendum question contains the title of the initiative or law which is being subjected to ballot.
Recommendation	The title of the proposal should be included in the referendum question, so that the voters know precisely what they are voting on. The question should also be formulated in such a way that it is clear whether a "yes" vote means approval or rejection of the proposal. The referendum question may not be misleading, as this makes it impossible to ascertain how the voters actually intended to vote.

6 CONTENT AND FORMAL LEGAL REQUIREMENTS

Questions	What procedure exists for checking that the initiative satisfies the formal legal requirements and the rules regarding content?
Experience	The validity of the content of the initiative text can be checked by one of the organs of state (parliament, authorities, courts). There is disagreement over which procedure is preferable – whether it should be parliament or the constitutional court which decides on the validity of an initiative. In Switzerland, it is parliament which checks that the content of the initiative satisfies the rules: it does so only after the required 100,000 signatures have been collected. In the U.S., this happens before the signature collection starts. Procedures vary: in Florida, it is the State Supreme Court which checks validity, whereas in Oregon it is the Attorney General.
Recommendation	The validity rules (e.g. that the initiative must not contravene binding international law; that it may not include several different issues; that it must be unambiguous in form) must be clear and transparent; they can, for example, be laid down in the constitution. The check on content may be carried out as soon as the initiative is launched, or only once the signature collection is completed. It can be performed by a constitutional court or by one of the political organs of state – by parliament, or by one of the authorities. How great a risk exists that the body charged with checking the initiative might fail to be impartial is more a question of the political culture and cannot be entirely "designed out".

7 INTERACTION WITH GOVERNMENT AND PARLIAMENT

Questions	Is parliament able to debate the subject-matter of a popular initiative and make its own recommendation? Does parliament have the right to present a counter-proposal? Does the interaction between the sponsors of the initiative and either parliament or the government allow space for negotiation and compromise? Is there a withdrawal clause?

Experience	In California, initiatives bypass parliament and are put directly to the voters. There is no such "direct initiative" in Switzerland, only an "indirect" one, which includes the government and parliament in the initiative process; they express a view on every referendum issue, take part in the public debate, and parliament can make a counter-proposal. The indirect initiative thus produces greater public discussion and it is possible to create a space in which government and parliament are able to negotiate with the promoters of the initiative and reach a possible compromise solution. In order to facilitate this negotiating space, a withdrawal clause was introduced in Switzerland. The sponsors can withdraw the initiative if, for example, they have been able to reach a satisfactory compromise with the government and parliament.
Recommendation	Direct and indirect democracy should be linked in a way which strengthens both. This can be achieved, for example, by making it obligatory for parliament to consider popular initiative proposals and express an opinion, and by giving parliament the right to make counter-proposals. Where there is both an original initiative proposal and a counter-proposal to be voted on, the voters should be able to vote "yes" to both proposals and, in addition, indicate which of the two they prefer if both are approved (the so-called "double yes"). A withdrawal clause gives the initiative sponsors the chance of withdrawing the initiative if, for example, they have managed to reach an acceptable compromise with the government and parliament. This creates a manoeuvring space for negotiations and compromise which both sponsors and the authorities can take advantage of.

**8   TIME PERIODS ALLOWED FOR GOVERNMENT AND PARLIAMENT TO EXPRESS AN OPINION,
AND FOR THE REFERENDUM CAMPAIGN**

Questions	How much time is allowed to the government, the parliament and the voters to debate and reach a considered opinion on an initiative or referendum proposal? How much time should be allowed for the referendum campaign?
Experience	Involving all the parties to a referendum vote in an exchange of views, in dialogue, negotiations and a collective learning process takes time. This must be taken into account in setting the statutory time periods.
Recommendation	The basic rule is: there must be adequate time allowed for all the stages of an initiative or referendum process – for the initiative committee to collect the required signatures, for the government to express a view on the proposal, for parliament to debate the issue and possibly work out a counter-proposal, for all the individuals and groups involved to carry out a proper referendum campaign. A simple rule of thumb is that a period of 6 months should be allowed for each of these stages.

9 VALIDATING THE REFERENDUM BALLOT:
   MAJORITY APPROVAL REQUIREMENTS AND MINIMUM TURNOUT QUORUMS

Questions	Does approval require a qualified majority and/or a minimum turnout quorum, or is a simple majority of the voters sufficient?
Experience	The satisfaction of special turnout or approval quorums is often demanded to validate referendum votes, whereas there is no minimum turnout requirement for parliamentary elections. In practice, turnout quorums of 40% or more often leads to the result of a referendum being annulled. This can give direct democracy a bad name. High approval quorums can make it very difficult to secure approval for any proposal.
Recommendation	Turnout quorums, at least the ones higher than 25%, should be avoided. Such quorums mean that the proposal can be rejected by a combination of "no"-votes and non-votes; they assist those groups which refuse to get involved in a public democratic debate and instead call for the ballot to be boycotted. This promotes undemocratic behaviour. The same applies to approval quorums which require a qualified majority of the eligible voters.

10 ISSUES WHICH CAN BE VOTED ON / EXCLUSION OF ISSUES

Questions	What issues may – or may not – be decided direct-democratically?
Experience	In many countries, important issues are withheld from direct-democratic decision-making. This weakens the foundations of direct democracy. The exclusion of certain subjects is often based on specific historical experiences. In Switzerland, no subject is in principle excluded from direct-democratic procedures. However, initiatives which contravene binding international law must be declared invalid. In actual practice, the following three subject areas are the main focus of direct-democratic activity: 1. The form of state and democracy; 2. Financial and tax policy; 3. Welfare and health provision.
Recommendation	Citizens should be able to decide on the same range of issues as their elected representatives. Creating special exclusion lists for initiatives and referendums contradicts the democratic principle of equal participation in politics. The limits imposed on democratic decisions by fundamental human rights and international law apply equally to parliamentary and direct-democratic decisions.

11 SUPERVISION AND ADVICE /CONSULTATION

Questions	Is there provision for supervision of initiative and referendum processes? Is there an independent authority which has this specific task?
Experience	In order to guarantee the fairness and correct handling of popular referendum procedures, some countries (e.g. Ireland and Great Britain) have instituted referendum commissions. The duties and powers of these commissions vary. In Switzerland, the federal referendum procedures are looked after by the Federal Chancellery. The "Political Rights" section of the Chancellery "advises initiative and referendum committees, checks submitted signature lists and popular initiatives, organises the federal referendums and the elections to the National Council, and deals with complaints about elections and referendums". It is also responsible for testing electronic voting.
Recommendation	A referendum authority or commission can have a variety of duties, such as advising initiative committees, making a preliminary examination of the initiative proposal, authenticating signatures, supervising the referendum campaign (including checking for fairness and equality), as well as the monitoring and evaluation of referendums. It can also be charged with the task of informing the voters; the minimum should be a referendum pamphlet or booklet for each eligible voter.

12 FINANCING AND TRANSPARENCY

Questions	Do parties and groups have to reveal how much money they spend on a referendum campaign, and where the money comes from? Do groups without access to significant financial resources receive any support funding to make the referendum process more equal?
Experience	The important role of money in referendums is generally recognised: money can be one of the decisive factors.
Recommendation	Transparency (e.g. information on the source of funding) and fairness (e.g. equality of financial resources and equality of access to the public through the media and advertising) are important to ensure the genuinely democratic formation of the political will. The sponsors of initiatives and referendums can be supported, for example by having a portion of their expenses refunded once the required number of signatures has been collected and the referendum date set.

THE PRINCIPLE

Swiss citizens living or staying abroad who are eligible to vote are able to take part at the national level in referendum votes and elections, as well as giving their signatures to initiatives and referendums (Art. 3, § 1 of BPRAS – the federal law on the political rights of Swiss citizens living or staying abroad[1]). They have the right not only to take part in the elections for the National Council (active voting right), but to be elected themselves to either the National Council, the Federal Council or the Federal Court (passive voting right). However, they may only take part in elections for the Council of States if the law of the canton to which they are attached provides for the right to vote for Swiss citizens living or staying abroad. In the Swiss federal system, those Swiss living or staying abroad do not constitute a distinct voting area or constituency[2]; they choose one municipality as their "voting municipality" (this could be the municipality in which they were born, or one in which they have been previously resident; Art. 5, § 1 BPRAS). Eligible expatriate Swiss voters who wish to exercise their political rights must notify the Swiss office of their chosen voting municipality of their intention. The notification must be renewed every four years (Art. 5a BPRAS). Eligible Swiss voters living or staying abroad can submit their vote for proposals at the federal level either personally in the voting municipality in Switzerland, or by post (Art. 1 BPRAS).

SOME FIGURES

At the end of 2005 there were some 634,200 Swiss citizens living abroad[3], of whom about 485,100 were potentially eligible to vote i.e. they were 18 or over and were not disqualified by reason of mental illness or feeble-mindedness. At the end of December 2005, around 102,000 persons were actually entered in the voting register of a Swiss municipality and were therefore eligible to vote. The figure represents 2.1% of all eligible Swiss voters (4.86 million[4]).

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[1] Federal law of 19.12.1975 (SR 161.5) on the political rights of Swiss citizens living or staying abroad, available online at: www.admin.ch/ch/d/sr/c161_5.html

[2] The cantons form the constituencies; cf. Art. 149, § 3 of the federal constitution (SR 101); available online at: www.admin.ch/ch/itl/rs/1/c101ENG.pdf

[3] Source: Federal Department of Foreign Affairs. Status as of end-December 2005

[4] Source: Federal Chancellery. Status as of end-December 2005

VOTING BEHAVIOUR OF SWISS LIVING OR STAYING ABROAD

A survey carried out in 2003 by ASO (Organisation of the Swiss Abroad) and Swissinfo / Swiss Radio International revealed that Swiss living or staying abroad have a very distinctive profile, which is formed far less by their political opinions than by such values as modernity of outlook, cosmopolitanism, openness to change, tolerance towards foreigners and belief in the free market.[5]

REPRESENTATION OF SWISS ABROAD IN THE PARLIAMENT

In the National Council elections of 19th October 2003, the Swiss People's Party (SVP) in the canton of Zurich came up with a list of candidates for Swiss abroad ("List 31: SVP-Union of Swiss Abroad"). To date, however, no overseas candidate has ever been elected to the Federal Parliament. One reason for this may lie in the fact that the electoral potential of the Swiss abroad is diffused. Since they do not form their own constituency, their votes are distributed among the 26 cantons. The election in Spring 2004 of Beat Eberle from Bad Ragaz, at that time military attaché in Stockholm, to the Great Council (parliament) in St. Gallen showed, however, that it is possible for Swiss citizens living abroad to be elected.

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[5] The final report of the study carried out by the GfS research institute can be downloaded from the Internet at: www.aso.ch/pdf/ASO-Bericht%20berdef.pdf

Modern Direct Democracy gives citizens the right to exercise popular sovereignty also between elections by voting on substantive issues. It is not the same as classical assembly democracy that was born in ancient Athens. Originally Modern Direct Democracy meant direct legislation by the people through the right of proposal (initiative) and rejection (referendum) and was first developed as a procedure during the French Revolution, later becoming the principal demand of the early workers' movements in many countries, for example in Germany, Austria, and Finland.

Direct democracy decides on substantive issues, not on people. In this view recall elections and the direct election of representatives (e.g. direct elections for mayors or the president) do not belong to direct democracy.

Direct democracy means power sharing: sometimes people choose to decide an important question directly themselves. But the bulk of legislation continues to be carried out by parliament. Direct and representative democracy are interdependent and complementary.

Direct democracy empowers people, not governments. The distinction between top-down and citizen-initiated procedures is crucial. Plebiscites are popular vote procedures which citizens cannot initiate, and whose use lies exclusively within the control of the authorities. This distinction between plebiscites and referendums is fundamental for a proper understanding of direct democracy. The distinction is frequently not made, often leading to considerable confusion in the debate about direct democracy.

CLASSIFICATION OF POPULAR VOTE PROCEDURES

PROCEDURE DESIGNED TO	MAKE DECISIONS ON ISSUES	MAKE DECISIONS ON PERSONS
empower Citizens (power sharing)	INITIATIVE	recall election
	REFERENDUM	
empower Representatives (concentration of power)	PLEBISCITE	election of representatives

Looking at the table above, we can discern at least 5 possible concepts of direct democracy, and all of them can be found in the literature. The most stringent concept includes only procedures which are designed to empower citizens and to make decisions on issues. In this understanding Modern Direct Democracy contains two types of popular vote procedures: initiative and referendum. Wider concepts include also plebiscites or recall elections or both. The widest concept, which makes little sense, includes even direct elections of representatives.

It is obvious that the nucleus of any definition of Modern Direct Democracy consists of two types of procedure: initiative and referendum. In addition it makes sense to restrict Modern Direct Democracy to decisions about issues, excluding elections and recall elections which make decisions about persons and therefore belong to indirect democracy. Whether to include plebiscites (authority-controlled popular votes) is widely discussed.

If authority-controlled popular votes (plebiscites) are included, the concept of direct democracy becomes more heterogeneous, sometimes even Janus-faced, since it includes procedures designed to enhance the power of certain representatives and procedures designed to give more power to the citizens. Such a extended concept of direct democracy embraces both instruments for people to implement democracy and instruments for power holders using people as means for an end other than the achievement of democracy.

If plebiscites are however not included, the concept of direct democracy becomes more consistent and distinctive. It means direct legislation by the people through initiative and referendum. In this view the right to decide which issues are referred to popular vote belongs to the citizens, not the politicians. This concept includes only instruments designed for empowering citizens and implementing democracy. However, this does not prevent us from analysing plebiscites, but they are now considered as a part of indirect rather than direct democracy.

Whatever solution is chosen, it remains crucial that the concept of direct democracy is clearly stated and that the distinctions between the different types of procedure – initiative, referendum, plebiscite – and the different forms they can take are kept clear as outlined below.

It is also important to keep in mind, that a popular vote procedure is a process and should not be reduced to the moment of decision-making at the ballot box; other aspects like creativity, public debate, and implementation, are equally important. For example, the process of a citizens' initiative begins with an idea, and this idea must be organised in many ways and made public. Public debate is at the very heart of an initiative process from beginning to end. And the initiative does not end at the ballot box; the decision has to be implemented as well. To sum up, the entire process is much more important than the result of the vote alone.

3 0

DEFINING MODERN DIRECT DEMOCRACY

A GENERAL TYPOLOGY OF MODERN DIRECT DEMOCRACY

The following typology covers all procedures of popular votes on substantive issues. It is based on a division of popular vote procedures into three different types: initiative, referendum and plebiscite. The initiative comprises procedures where the author of the ballot proposal is the same as the initiator of the procedure; the referendum procedures where the author of the ballot proposal is not the same as the initiator of the procedure. Thirdly, the plebiscite comprises procedures where the majority of a representative authority is the initiator of the procedure.

However, there exist procedures and practices which complicate this classification and there are grey areas between the different types. Accordingly, eleven different forms are included in this General Typology of Modern Direct Democracy (GTMDD), which distinguishes popular vote procedures according to who is

1 the AUTHOR of the ballot proposal (a group of citizens, a minority of a representative authority, a representative authority)
2 the INITIATOR of the procedure (a group of citizens, law, a minority of a representative authority, a representative authority).
3 the DECISION-MAKER (the whole electorate, a representative authority)

In the table the forms of procedure are listed in column 1. The following columns indicate who is the author of the ballot proposal (column 2), who has the right to initiate the procedure (column 3), and who has the right to decide about the outcome of the procedure (column 4). The last column tells us about the Type of procedure in question. Citizen- and law-initiated procedures are shown in blue, and procedures triggered by an authority are kept in black.

Genuine direct-democratic procedures are designed to offer the electorate instruments of agenda-setting and decision-making on substantive issues. The corresponding forms of procedure are marked in blue in our classification. However, in political reality, many procedures and especially practices of popular vote processes are partly or totally controlled by elected authorities. These procedures marked in black in our classification. While forms initiated by a minority of an elected authority (e.g. ⅓ of the parliament in Denmark or Sweden) are labelled under the initiative and the referendum type, procedures initiated by a majority of an elected authority are labelled under the plebiscite type of popular vote procedures.

The abbreviation for the form of procedure consists of 3 characters:

- The first character designates the initiator of the procedure
  (P = popular/citizens; A = authority; L = law).
- The last character indicates the TYPE of procedure
  (I = initiative, R = referendum, P = plebiscite).
- The middle character specifies the form of procedure
  (A = agenda, C = citizen, M = minority, O = obligatory, P = proposal,
  T = top-down, V = veto). The "+" -sign indicates that the initiative or
  referendum procedure is combined with a counter-proposal.

FORM		AUTHOR OF THE PROPOSAL	INITIATOR	DECISION-MAKER	TYPE
CITIZENS' OR POPULAR INITIATIVE	PCI	a group of citizens	the same group	the whole electorate	INITIATIVE
+ AUTHORITIES' COUNTER-PROPOSAL	PCI+	a group of citizens	the same group	the whole electorate	INITIATIVE
AGENDA INITIATIVE	PAI	a group of citizens	the same group	a representative authority	INITIATIVE
AUTHORITIES' MINORITY INITIATIVE	AMI	minority of a representative authority	the same minority	the whole electorate	INITIATIVE
CITIZEN-INITIATED OR POPULAR REFERENDUM	PCR	a representative authority	a group of citizens	the whole electorate	REFERENDUM
+ COUNTER-PROPOSAL	PCR+	a representative authority	a group of citizens	the whole electorate	REFERENDUM
REFERENDUM PROPOSAL	PPR	a representative authority	a group of citizens	a representative authority	REFERENDUM
OBLIGATORY REFERENDUM	LOR	a representative authority	law	the whole electorate	REFERENDUM
AUTHORITIES' MINORITY REFERENDUM	AMR	a representative authority	minority of a representative authority	the whole electorate	REFERENDUM

FORM		AUTHOR OF THE PROPOSAL	INITIATOR	DECISION-MAKER	TYPE
AUTHORITIES CONTROLLED POPULAR VOTE / PLEBISCITE	ATP	a representative authority	the same representative authority	the whole electorate	PLEBISCITE
AUTHORITIES CONTROLLED POPULAR VOTE / VETO PLEBISCITE	AVP	a representative authority	another representative authority	the whole electorate	PLEBISCITE

Agenda-initiatives and referendum proposals are addressed to and decided by a representative authority; they may lead to a popular vote, but often they do not. Despite this, these two forms of procedure are included in our typology.

THREE TYPES AND ELEVEN FORMS OF POPULAR VOTE PROCEDURES

TYPE 1. INITIATIVE

Designates a certain type of popular vote procedure (the IRI typology distinguishes three types: initiative, referendum, and plebiscite). Initiative procedures are characterised by the right of a minority, normally a specified number of citizens, to propose to the public the introduction of a new or renewed law. The decision on the proposal is made through a popular vote.

Note: the agenda initiative fits into this type of procedure only with respect to its initial phase. What happens next is decided by a representative authority.

Form 1.1. Popular or citizens' initiative [PCI]

A direct democracy procedure and a political right that allows a given number of citizens to put their own proposal on the political agenda. The proposal may be, for example, to amend the constitution, adopt a new law, or repeal or amend an already existing law. The procedure is initiated by a prescribed number of eligible voters. The sponsors of a popular initiative can force a popular vote on their proposal (assuming that their initiative is formally adopted). The initiative procedure may include a withdrawal clause, which gives the sponsors the possibility to withdraw their initiative, for example in the event that the legislature has taken action to fulfill the demands of the initiative or part of them.

This procedure may operate as a means of innovation and reform: it allows people to step on the gas pedal. In principle, initiatives enable people to get what they want. In practice, it is a means of synchronising the citizens' view with the politicians' view.

Form I.2. Popular or citizens' initiative + authorities' counter-proposal [PCI+]

Within the framework of a popular initiative process a representative authority (normally parliament) has the right to formulate a counter-proposal to the initiative proposal. Both proposals are then decided on at the same time by a popular vote. If both proposals are accepted, the decision on whether the initiative proposal or the authority's counter-proposal should be implemented can be made by means of a special deciding question.

Form I.3. Agenda (setting) initiative [PAI]

An agenda initiative is the right of a specified number of eligible voters to propose to a competent authority the adoption of a law or measure; the addressee of this proposal and request is not the whole electorate but a representative authority. In contrast to the popular initiative, it is this authority which decides what is going to happen to the proposal.

An agenda initiative can be institutionalised in a variety of ways: for example as an agenda initiative without a popular vote, as an agenda initiative followed by a consultative or binding plebiscite, or as a popular motion ("Volksmotion"). The popular motion can be the equivalent of a parliamentary motion; if adopted, it can also be treated like a popular initiative (this is the case in the canton of Obwalden).

Form I.4. Authorities' minority initiative [AMI]

A direct democracy procedure and a political right that allows a specified minority of an authority (e.g. one-third of the parliament) to put its own proposal on the political agenda and let the people decide on it by a popular vote.

TYPE 2. REFERENDUM

Designates a certain type of popular vote procedure (the IRI typology distinguishes three types: initiative, referendum, and plebiscite). The referendum is a direct democracy procedure which includes a popular vote on a substantive issue (ballot proposal) such as, for example, a constitutional amendment or a bill; the voters have the right to either accept or reject the ballot proposal.

The procedure is triggered either by law (→ obligatory referendum), by a specified number of citizens (→ popular referendum), or by a minority in an authority (→ authorities' minority referendum). Note: a popular vote procedure, which is triggered and controlled exclusively by the authorities, is not a referendum but a plebiscite.

Form 2.1. Popular or citizen-initiated referendum [PCR]
A direct democracy procedure and a political right that allows a specified number of citizens to initiate a referendum and let the whole electorate decide whether, for example, a particular law should be enacted or repealed.

This procedure acts as a corrective to parliamentary decision-making in representative democracies and as a check on parliament and the government. The "people" or demos (i.e. all those with the right to vote) has the right to decide in retrospect on decisions made by the legislature. Whereas the popular initiative works like a gas pedal, the popular referendum gives people the possibility to step on the brakes. In practice, popular referendums (like popular initiatives) are a means of harmonising the citizens' view with the politicians' view.

Form 2.2. Popular referendum + counter-proposal [PCR+]
This direct democracy procedure combines a popular referendum against a decision by an authority with a referendum on a counter-proposal. If both proposals are accepted, the decision between the two can be made by means of a deciding question.

Form 2.3. Referendum proposal [PPR]
This procedure is characterised by the right of a prescribed number of eligible voters to propose to a competent authority the calling of a popular vote on a specified issue; note that the demand is addressed to a representative authority (usually parliament – local or national) which decides about further action.

Form 2.4. Obligatory referendum [LOR]
This direct democracy procedure is triggered automatically by law (usually the constitution) which requires that certain issues must be put before the voters for approval or rejection. A conditional obligatory referendum means that a specified issue must be put to the ballot only under certain conditions (for example, in Denmark the delegation of powers to international authorities is decided by popular vote if more than half, but less than four fifths, of the parliament accept such a proposal). Unconditional referendums are without loopholes (for example, in Switzerland changes to the constitution must always be decided by a popular vote).

Form 2.5. Authorities' minority referendum [AMR]
A direct democracy procedure characterised by the right of a minority of a representative authority to put a decision made by the majority in the same authority before the voters

for approval or rejection. This procedure enables a minority of a representative authority to step on the brakes and give the final say to the voters.

TYPE 3. PLEBISCITE

Designates a certain type of popular vote procedure (the IRI typology distinguishes three types: initiative, referendum, and plebiscite). A plebiscite is a public consultation controlled "from above". It is the powers that be (the President, Prime Minister, parliament) which decide when and on what subject the people will be asked to vote or give their opinion. Rather than being an active subject in control of the procedure, the people/popular votes become a means to an end which is determined by a representative authority.

Plebiscites give ruling politicians additional power over citizens. They are used to evade responsibility for controversial issues which have become an impediment: to provide legitimacy for decisions those in power have already taken; to mobilise people behind rulers and parties; and they are used by an authority to bypass another representative authority. The aim of a plebiscite is not to implement democracy, but to reinforce or salvage those in power with the help of "the people".

The IRI typology distinguishes between two forms of plebiscite: plebiscite and veto-plebiscite.

Form 3.1. Plebiscite (Authorities' controlled popular vote) [ATP]

A popular vote procedure whose use lies exclusively within the control of an authority. In this form the author of the ballot proposal and the initiator of the procedure are the same (for example parliament or president).

Form 3.2. Veto-plebiscite (Authorities' controlled popular vote) [AVP]

A popular vote procedure whose use lies exclusively within the control of the authorities. In this form the author of the ballot proposal and the initiator of the procedure are not the same. For example, a government or a president may oppose (veto) a decision of parliament and refer it to a popular vote; hence the name veto plebiscite.

THE WORLD OF MODERN DIRECT DEMOCRACY

PRACTICES AND CHALLENGES ACROSS THE GLOBE

Civic participation has become the key to sustainable democratic governance across the globe. In the last twenty years more than a hundred countries have introduced institutional mechanisms of direct citizen participation within the framework of representative democracy. Other countries have experienced lawmaking by citizens for more than a century already. The growing use of initiative rights, popular votes on substantive issues, and the mechanism for the recall of elected officials, have profoundly changed political dynamics.

In many parts of Latin America and Africa new forms of "participative budgeting" have been successfully introduced, while across Europe, Asia and North America modern methods of consultation – such as "deliberative polls" – are becoming standard in dealing with complex political challenges. The impact and sustainability of such tools are however dependent on a legal framework, ensuring government by, of and for the people. As this survey suggests, in practice these well-accepted democratic principles are very hard to realise. Opposition to power-sharing is strong, strategies for limiting the say of others widespread.

Having said that, the worldwide evolution of Modern Direct Democracy is indeed remarkable. From Iceland to New Zealand and from Uruguay to Turkey, citizens are increasingly called to vote on new laws and constitutions. Something close to a participatory revolution has taken place at the local level, putting citizens onto the political centre stage on issues as varied as the budget, moral values and urban planning. However, where initiatives and referendums are already an established element of representative democracy (as for example in Switzerland and many US states), new challenges have become very relevant – such as the role of money in the process, compatibility with international law or the introduction of citizen-unfriendly restrictions on the direct-democratic process.

While "classical" elections to legislative bodies have already been a major issue in international cooperation and research for decades, challenges and concerns linked to the growing worldwide use of initiatives and referendums, as well as participative budgets and deliberative polls, only became a major issue during the first years of the new millennium. However, international organisations, electoral management bodies, academia and civil society have begun to monitor, research and evaluate the options and limits of Modern Direct Democracy in a more comprehensive and in-depth way than ever before. One expression of this is the launch of a global network of professionals and activists within the framework of the "Global Forum on Modern Direct Democracy" process. Launched in Aarau/Switzerland in 2008 and continued with the 2009 Forum in Seoul/Korea and the

2010 Forum in San Francisco/United States, this network is due to be strengthened at the regional levels and is now heading for a 2012 Forum in Montevideo/Uruguay.

This survey of Global Direct Democracy offers you an introduction to and overview of developments across the globe and includes special features on the Americas. In preparing this updated edition of the Guidebook and its international surveys we have extensively cooperated with experts across the Americas – such as Joe Mathews (New America), Leslie Graves (Ballotpedia), Brandon Holmes (Citizens in Charge) and David Altman (University of Santiago).

THE WORLD OF MODERN DIRECT DEMOCRACY – HOTSPOTS
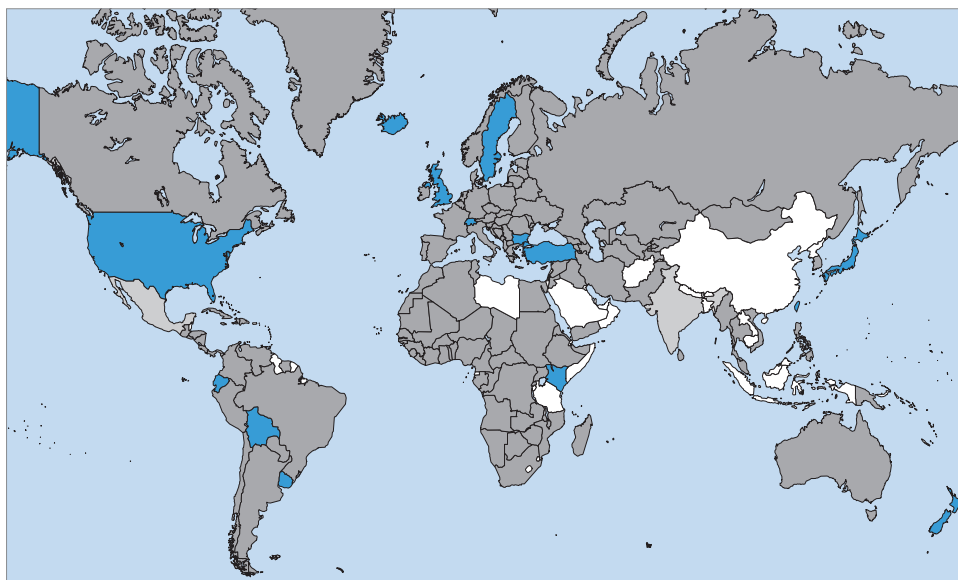
blue=nationwide procedures available, grey=only sub-national procedures available, white=no procedures

The growing practical use of and analytical reflection on direct-democratic mechanisms across the globe makes it clear that efforts to develop new tools for the categorisation, assessment and comparison of direct-democratic procedures and practices must be intensified worldwide. In other words: we need a "common language" of Modern Direct Democracy which differentiates between e.g. "top-down" mechanisms (plebiscites) and "bottom-up" ones (popular initiatives and referendums) and which may enable the establishment of a common analytical framework for identifying and comparing the various

tools. The Initiative and Referendum Institute Europe (IRI Europe), together with its worldwide partners, has launched a couple of pioneering projects to address these issues – by introducing a General Typology of Modern Direct Democracy (cf. Factsheet 30) and by starting work on a global information and collaboration platform – the IRI Navigator to Modern Direct Democracy (www.iri-navigator.org).

Visit the global information and collaboration platform at www.iri-navigator.com

At the beginning of the second decade of the new millennium, the shape and performance of (direct) democratic political systems are being discussed widely and deeply. Popular votes on substantive issues play a key role in this development, as they are not always and only expressions of the "will of the people", but also mirrors of the democratic maturity of a polity. In recent years we have seen several power-challenging popular votes in Asia, Europe and Latin America. Many of those votes were introduced from above and offered examples of plebiscitarian failures, while others could not be validated because of major limitations and hurdles in the process. In some countries, however – including Venezuela, Taiwan, Hungary, Ireland and Bolivia – governing presidents and governments were defeated in their endeavour to get a majority for their political proposals. While the Venezuelan president Hugo Chávez first lost and then won a plebiscite to increase his powers, a similar attempt in Honduras produced a military coup in mid-2009. In Taiwan, two popular initiatives in favour of a closer affiliation with the UN failed to pass the participation quorum and thus the positive decisions were invalidated. In Hungary, two citizens' initiatives against the government's plan to introduce new health and university fees marked the beginning of the end for the long-serving socialist government, which was finally replaced in spring 2010 by the national-conservative cabinet of Victor Orban.

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Other countries with a richer history of direct democracy saw roller-coaster-style popular voting experiences – including Italy, where yet another reform package to the electoral law failed to reach the 50% turnout quorum; and Switzerland, where the successful popular initiative to "Ban New Minarets" provoked a profound debate on current options and limits of the process. The same is true for another powerhouse of Modern Direct Democracy, California, where the adoption of "Proposition 8", which introduced an effective ban on same-sex marriages, has led to a series of political and judicial after-effects. In terms of the historical use of national popular votes on substantive issues across the world since 1793, the most recent decade has seen a slight decrease in the number of votes, underlining the fact that the previous decade (which followed the end of the Cold War) produced an extraordinarily high number of constitutive votes about transnational integration and the establishment of new constitutions. In Slovenia, the voters agreed in a June 6, 2010 popular vote to let the European Union assist in negotiating the border treaty with its neighbour Croatia.

WORLDWIDE PRACTICE – COUNTRYWIDE POPULAR VOTES ON SUBSTANTIVE ISSUES
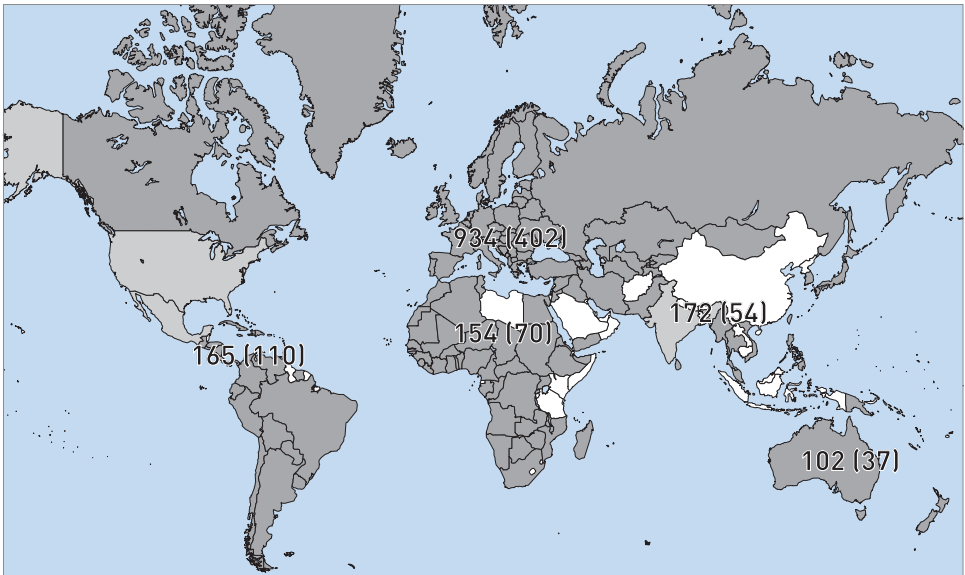
first number: all countrywide popular votes on substantive issues since 1793,
number in brackets: votes since 1991

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While the struggle for democratic ideas has shown little progress during most of the 20th century, the political reality has left us with the fact that we have a "representative government" in most countries of the world of today, but not yet a "representative democracy" – which can be defined as a framework within which the decisions made within a political community mirror the preferences of its citizens as much as possible. Today we know that purely indirect democracy or "representative government" is far too weak to enable such an efficient mirroring.

Ban-Ki Moon, the United Nations Secretary General, summarised this 21st century understanding of "representative democracy" by acknowledging (in "Guidance note on Democracy"(1), published on the International Day of Democracy 2009) that "full participation in decision-making of the citizens" is necessary to "develop democracy". The U.N. Secretary General also stated that "democracy is a reflection of self-determination and must be based on the freely expressed will of the people". In order to support and promote the democratisation of democracy the U.N. has declared the next ten years the "decade of democratisation", with a special emphasis on "civic education for democracy".

**WORLDWIDE PRACTICE; COUNTRYWIDE POPULAR VOTE
ON SUBSTANTIVE ISSUES PRACTICE ACROSS TIME AND SPACE (1793–2010)**

TIME	EUROPE	ASIA	AMERICAS	OCEANIA	AFRICA	TOTAL	AVERAGE
1793-1900	58	0	3	0	0	61	0.6
1901-1910	14	0	0	4	0	18	1.8
1911-1920	21	0	3	5	0	29	2.9
1921-1930	36	1	2	6	0	45	4.5
1931-1940	40	0	7	6	0	53	5.3
1941-1950	36	2	3	11	0	52	5.2
1951-1960	38	13	3	5	9	68	6.8
1961-1970	44	22	4	7	19	96	9.6
1971-1980	116	50	8	14	34	222	22.2
1981-1990	129	30	12	7	22	200	20.0
1991-2000	235	24	76	15	35	385	38.5
2001-2010	167	30	44	22	35	298	29.8
TOTAL	934	172	165	102	154	1,538	7.1
SHARE IN %	60.8	11.3	10.9	6.8	10.2	100	

Another very strong signal was given when the new "Basic Treaty of the European Union" (the so-called "Lisbon Treaty") entered into force on December 1, 2009. President of the European Commission José Manuel Barroso stated proudly that this treaty founds "a more democratic, open and accountable Union" and that "the citizens will be given the opportunity to influence" the E.U. lawmaking process. As the very first of ten "benefits for European citizens", Barroso quoted the "European Citizens' Initiative": the new E.U.treaty establishes the notion that within representative democracy indirect and direct forms of citizen participation are equal.

This global surveys features the state and development of Modern Direct Democracy in two selected world regions: Europe and the Americas. First we visit Europe, where the new European Citizens' Initiative leads the way into new participative territory at the transnational level; then we head to Latin America and explore the development of "people power" in Uruguay, Bolivia and Venezuela before we end this survey's tour in the United States of America, where many procedural and practical restrictions place limits on democratic performance – and where citizen-friendly reforms are urgently needed.

EUROPE — INTO A THIRD DIMENSION OF MODERN DIRECT DEMOCRACY

If we look at our global data we can see that a large majority of all direct-democratic events are still being reported from Europe, where most countries today have some form of initiative and referendum process, at least at the local and/or regional levels. At the other end of the spectrum, the 27-member European Union is deeply involved in a development which is about to bring the citizens onto the political stage also transnationally. As far more than half of all national legislation now has its origin at the European level, a transfer of participatory democratic instruments to the relevant legislative level has become a key reform requirement. In practice, however, this is not so easy, as the idea of national and popular sovereignty frequently clash with the need to make Europe more democratic. Nevertheless, the constitutional debates which were seriously launched in Europe a decade ago have produced a large number of pro-democratic transnational activities. And even better, those activities — with which the Initiative and Referendum Institute Europe has been closely involved — are about to impress even long-term critics of the European integration process. It is time for the next big step in the democratisation of democracy — into a third, the transnational dimension!

Already back in 2004, the EU heads of state and government agreed to include the principle of direct democracy in the then-proposed constitutional treaty. While the "constitution" did not pass the popular vote test in all member states — the French and Dutch voted against it in popular votes — the participatory principle survived and became part of the "Lisbon Treaty", which came into force on December 1, 2009. So, after all, all member states have agreed on the principle of a modern representative democracy — enshrined under Art. 11 of the TEU (Treaty of the European Union) "The Democratic Life of the Union" — the principle which states that a modern representative democracy is equally based on indirect (parliamentarian) and direct (participative) democracy.

And even more importantly, the TEU also establishes a concrete direct-democratic instrument at the transnational European level: the European Citizens' Initiative. The introduction of this new tool of direct citizen participation is not only important for the EU level, but also for the member states, as a similar right does not yet exist in all 27 member states today.

EUROPE – COUNTRIES WITH CITIZENS INITIATIVE RIGHTS ON THE NATIONAL LEVEL

blue: full citizens initiatives, grey: agenda initiatives only; white: no use

In comparing tools of Modern Direct Democracy our new General Typology of Modern Direct Democracy (GTMDD) offers a classification into three types (Initiative, Referendum and Plebiscite) and eleven forms. The European map above shows that full citizens' initiatives which trigger a popular vote (PCI) only exist in a minority of countries, while some others only know a form of agenda-setting citizens' initiative (PAI).

The European Citizens' Initiative (ECI) is an agenda-setting initiative only. However, it is the most powerful form of "legislative initiative" available today within the sui generis political system of the European Union. Or in other words: what the citizens have in the "Lisbon Treaty" is exactly the same "initiative" right as the European Parliament and the European Council already possess. The formal "initiative monopoly" remains at this stage of development with the EU Commission, an administrative-political body appointed by the member states and confirmed by the European Parliament.

While the "Lisbon Treaty" established the instrument as such at the transnational level, a regulation had to be developed and agreed on within the EU to implement the new right and to make it useful for Europeans. In April the EU Commission presented its draft regulation, deserving both congratulations for its ambitiousness and criticism for its limitations.

What was especially positive about the proposed regulation for the European Citizens' Initiative (ECI) was the balanced approach: designing such a totally new procedure presents an enormous challenge, but things were kept fairly simple. On the other hand, the proposed requirements underlined one very important point: as a legal right and democratic procedure the ECI is a formal process. Which means: the ECI is much more than a consultation, an opinion poll or a petition.

However there was also a lot of criticism as the new procedure will have to be optimised, supported and revised on a regular basis in order to become the tool everyone is looking forward to – namely, the very first tool of transnational direct democracy in world history! In the debates on the strengths and weaknesses of the proposed regulation something had not to be forgotten, that making representative democracy truly representative (through direct democracy) is a rather long process. After all the the ECI-making process can be summarised in five steps:

Step One was the new paradigm of a modern democracy, established during the Treaty discussions over the last twenty years. When the Cold War was over it became clear that a modern representative democracy in the 21st century must go beyond purely indirect ways of agenda-setting and decision-making and beyond purely nation-state-based democracy. By establishing the notion of a transnational political union this was implicit in the Maastricht and Amsterdam Treaties, becoming explicit in the Constitutional Treaty, now called the "Lisbon Treaty". Art. 11 states that the EU is based on representative democracy which equally respects indirect/parliamentarian and direct/participatory forms. The contradiction between representative and direct democracy has therefore gone – in principle.

Step Two began during the work of the Constitutional Convention in 2002/2003. An informal working group of the Convention, facilitated by IRI Europe and supported by activist networks from across Europe, started to discuss possible direct-democratic elements in the EU constitution – and finally came up with the ECI. The golden idea within it was to put the citizens on an equal footing with the parliament and the Council – not to change the political system of the EU as such. This new right of a transnational Citizens' initiative inspired many groups across Europe to launch their own signature-gathering campaigns and to gain some very useful experience. So, the new right was there and managed to survive both the "no"-referendums in France and the Netherlands as well as the repackaging exercise of Lisbon.

When Lisbon came into force *Step Three* began: the work on the new procedure. Solid preparatory work by former Commission Vice-President Margot Wallström, supported by us and others, laid the foundations, which could now be built on and developed into a fully-fledged regulatory proposal. Overall the proposed regulation – given the limitations of being part of the existing political system of the EU and considering the challenging novelty of direct democracy at the transnational level – was a good starting point. But there were obvious weaknesses in the proposals, such as the quite high thresholds and above all the unclear follow-up stages.

Our checklist of key features of the proposed regulation reveals a mixed picture:

1 TIME: the proposal to allow 12 months for gathering more than one million statements of support was very restrictive as having enough time is crucial to initiating and developing a pan-European discourse. So there was a clear wish by initiative-experts to extend this time-line by at least six months − to 18 months. Other chosen deadlines were reasonable − such as the two-month period for checking admissibility (see also next paragraph) and the six-month period after the submission of the signatures for the Commission to produce a response (in the form of draft legislation).

2 REGISTRATION AND ADMISSIBILITY: while formal registration of an initiative is meant to be without restrictions (except for clear misuse such as bad or discriminatory language), the issue of admissibility did produce a lot of debate. The question here was: when should the decision be made as to the admissibility of an initiative proposal i.e. whether it falls within the EU Commission's competences. The Commission itself proposed a check after 300,000 signatures had been collected, while others preferred a much lower-level entry check at 50,000 statements of support. Obviously, the former suggestion could have a serious delaying effect on an initiative which has just got some air under its wings. There is also the fact that collecting 300,000 signatures requires an enormous amount of time, energy and money; the risk that after all this effort and expense a proposal will be declared inadmissible could act as a serious deterrent to potential organisers. A wide-ranging pre-launch advisory service to ECI organisers would be one way of avoiding the risk of inadmissible initiatives being launched, while the latter could still be considered and registered.

3 VERIFICATION OF IDENTITY: this was one of the most discussed issues, as the Commission has opened the door to future online e-signature collection. The question is how to ensure and verify that a statement of support has really been made by the apparent signatory and that this person is both eligible and has not signed more than once. The obvious risk at some point was to create too many requirements for a valid signature − such as the provision of passport or ID Card numbers − which would severely hamper the open collection of signatures on the street.

4 TRANSNATIONALITY: in addition to the fundamental introduction of a direct-democratic procedure at the EU level, the transnational dimension of a bottom-up discourse was and is at the very heart of the ECI. This meant that a certain minimum number of signatures should come from a "significant number" of member states. The Commission produced an innovative list of qualifying numbers of signatures for each country, based on the distribution of seats in the European Parliament.

THE EUROPEAN CITIZENS'INITIATIVE — SIGNATURE REQUIREMENTS

The numbers indicate the minimum signature requirements per EU member state to qualify for an European Citizens Initiative (according to the EU Commission proposal as of March 31, 2010)

5 REWARDS: yet another key issue intensively discussed during 2010 was how a successful European Citizens' Initiative should be rewarded. The proposed regulation included no suggestions at all on this matter. The Commission did indicate that an ECI would certainly oblige some follow-up actions, but without being specific about them. This could become a key weakness of the whole procedure, i.e.if the enormous efforts by organisers were to produce little or no effect. Many commentators therefore proposed a much more pro-active obligation of response by the EU Commission. And backing this up, activists and experts alike also stressed the need for a proper European ECI infrastructure.

The Commission proposals contained no provisions for the support of transnational initiatives: no educational input, no coordination of advice by the EU representative offices across Europe. At the end of 2010, many observers were looking forward to seeing the first ECIs out of the starting-blocks and wondering how they would fare, as well as how the EU and other official stakeholders would deal with this new transnational direct-democratic practice – supportively, antagonistically, or merely with indifference?

Despite all the unresolved questions and doubts, it is important to take note of the flagship role the ECI is acquiring in a world where established democratic procedures are increasingly questioned and where new transnational forms of modern democracy have so far been very weak. The ECI is an embodiment and an expression of a desire for change and of a real hope for a better future.

Over the last decade Europe has made its first steps towards becoming a modern representative and transnational democracy. The European integration process offered a prime and unique case study of practical democratisation beyond the nation-state – and hence a first view of what is likely to happen around the globe in other contexts as well. This direct-democratic experience included more than 50 countrywide popular votes on European issues in 27 European countries.

With so many popular votes on substantive issues in so many different countries over such a long time, the effects of having popular votes on Europe in Europe have recently been the subject of extensive research projects. The results of these comparative and empirical studies are highly encouraging. Citizens who are in charge of important decisions become far better informed than people without such voting opportunities. Moreover, a team at the European University Institute of Florence has shown that referendum votes on Europe in Europe predominantly deal with the subject-matter in hand: "Direct democracy has fostered a high degree of politicisation of integration", according to political scientists Andrew Glencross and Alexander Trechsel.

Under reasonably well-designed and citizen-friendly circumstances, direct-democratic procedures can deliver precisely what a transnational polity such as the EU most lacks today: an intense dialogue between institutions and citizens, a feeling of ownership of EU politics by the voters, and solid legitimacy for the decisions made at the EU level.

However, all forms of transnational direct democracy must of course be embedded in wider contexts such as basic human and civil rights, the rule of law, regional and possibly overlapping transnational entities, manifold levels of autonomy, as well as the structures for and assistance to deliberative processes beyond national borders. In contrast to the local and national levels, where a broad set of direct-democratic instruments is already known and (frequently mis-)used, for the European level it would be good to begin with a starter set of initiative and referendum instruments, including the European Citizens' Initiative (PAI) and the mandatory constitutional EU referendum (LOR), as a way of involving the people from the very beginning in a new process democratisation which should be the next step on the long road forward.

AMERICAS — NEW AND OLD FORMS OF DIRECT DEMOCRACY UNDER PRESSURE

This section of the survey is based on a long list of materials — videos, blogs, newspapers, websites, reports, constitutions, laws and scientific articles. Latin American realities are complex and contradictory processes. This seems particularly true for weak democracies like Bolivia and, in particular, Venezuela, where conclusions drawn from analyses are extremely divergent. The same does not apply to Uruguay, which is a stable and mature democracy.

The following sources have been particularly helpful:

> For Latin America in general and Uruguay in particular:
>> Altman, David. 2009. Power to the People? A Global View on Direct Democracy. Santiago. Book Manuscript under Review: Instituto de Ciencia Política — Pontificia Universidad Catolica de Chile.

> For the history of direct democracy in Uruguay and comparison with Switzerland:
>> Altman, David. 2008. Collegiate Executives and Direct Democracy in Switzerland and Uruguay: Similar Institutions, Opposite Political Goals, Distinct Results. In: Swiss Political Science Review 14 (3).

> For the relation between direct democracy and globalisation and the struggle for water as a human right:
>> Madroñal, Juan Carlos. 2007. Democracia Directa y Globalización. El caso del plebiscito sobre el agua del 2004 en Uruguay. www.dd-la.ch/download/Madro-nal_Juan_Carlos.pdf

> For the popular votes on the Expiry Act:
>> Altman, David. 2009. Reasons behind the Failure of Uruguay's 2009 Popular Initiative against the Ley de Caducidad. First Draft.

>> Mallinder, Louise. 2009. Uruguay's Evolving Experience of Amnesty and Civil Society's Response, Working paper from Beyond Legalism: Amnesties, Transition and Conflict Transformation project (Institute of Criminology and Criminal Justice, Queen's University Belfast) http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1387362

LATIN AMERICA: COMPLEX AND CONTRADICTORY DEMOCRATISATION PROCESS

In Latin America the 1980s were characterised by a return to civilian government after prolonged periods of authoritarian military rule. However, the hopes of many people that representative democracy would better serve their interests were disappointed and discontent with the political parties and representative government grew. This disappointment in broad sectors of the population contributed to the emergence of more direct democracy in Latin America, as had happened in Switzerland in the second half of the 19th century and in the USA around the end of the 19th/beginning of the 20th century. However, strong popular demands for direct democracy are not widespread, except in Bolivia. In Latin America most of the new constitutions adopted since the late 1980s included direct-democratic rights, but also plebiscites and sometimes the right of recall (e.g. in Bolivia, Columbia, Peru and Venezuela).

With respect to direct democracy the Latin American countries can be divided into three categories. 1) Direct democracy is well established and regularly used. Uruguay alone can be placed in this category. 2) Direct democracy was newly established and has been used rarely or not at all; in addition to direct democracy, plebiscites were introduced (or already existed) and these top-down procedures are used more frequently. Bolivia and Venezuela are examples that fall into this category. 3) Direct democracy is not yet established and also plebiscites have not been used since 1978. The countries in this category are Cuba, the Dominican Republic, El Salvador, Honduras, Mexico, Nicaragua, and Paraguay.

Out of 108 popular votes that took place in Latin America on 54 voting days between 1978 and 2009 only 15 were citizen-initiated initiatives or referendums. Out of these 15 direct-democratic procedures 12 were held in Uruguay (7 popular referendums and 5 popular initiatives), 1 popular initiative took place in Bolivia and 2 consultative popular initiatives in Colombia. In addition to the direct-democratic procedures there were 2 recall elections (1 in Bolivia and 1 in Venezuela), 3 authorities' minority initiatives (all in Uruguay), 21 obligatory referendums (17 voting days), and 69 plebiscites (20 voting days).

USE OF POPULAR VOTE PROCEDURES IN LATIN AMERICA 1978—2009

COUNTRY	POPULAR INITIATIVE	POPULAR REFERENDUM	OBLIGATORY REFERENDUM	AUTHORITIES' MINORITY INITIATIVE	PLEBISCITES
Argentina					yes
Bolivia	yes	yes			yes
Brazil					yes
Chile		yes			yes
Colombia	yes				yes
Costa Rica					yes
Cuba					
Dominican Rep.					
Ecuador		yes			yes
El Salvador					
Guatemala		yes			
Honduras					
Mexico					
Nicaragua					
Panama		yes			yes
Paraguay					
Peru					yes
Uruguay	yes	yes	yes	yes	
Venezuela		yes			yes

Yes = popular vote procedure was used between 1978—2009

USE OF POPULAR VOTE PROCEDURES IN LATIN AMERICA 1978–2009

- Citizen-initiated **15**
- Law-initiated **21**
- Authority-initiated **72**

14%

19%

67%
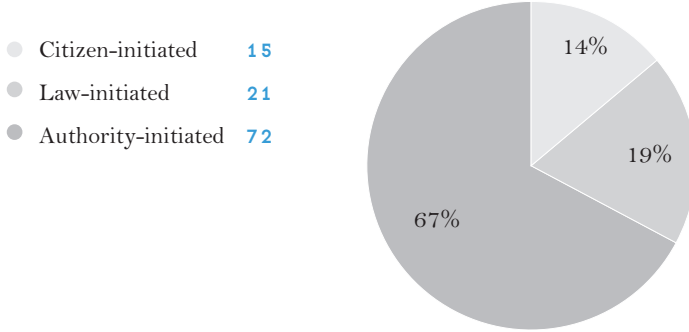
The 2 recall elections are not included

URUGUAY

Uruguay is the only Latin American country with a long tradition of efficiently run direct democracy, and as such it is a special case. It is one of the few countries that adopted the Swiss model of direct democracy and not the Italian or French one. Accordingly it implemented the following forms of procedure: obligatory referendum, popular initiative with counter-proposal, authorities' minority initiative for constitutional reform, and the popular referendum for statutory matters. And, as in Switzerland, also in Uruguay authorities do not have the right of plebiscite.

CONSTITUTIONAL DIRECT-DEMOCRATIC RIGHTS IN URUGUAY

PROCEDURE	REMARKS	CONSTITUTION
Popular initiative with authorities' counter-proposal [1] (PCI+)	Initiated by 10% of the electorate; participation quorum: 35% electorate	331A
Authorities' minority initiative [1] (AMI)	Initiated by ⅖ of the General Assembly; participation quorum: 35% electorate	331B
Obligatory referendum [1] (LOR)	Decision of Constitutional Assembly; approval quorum: 35% electorate	331C
Obligatory referendum [1] (LOR)	Constitutional law, simple majority of the votes cast	331D
Popular referendum [2] (PCR)	Initiated by 25% electorate; excluded: taxes and issues in the exclusive competency of the executive; blank vote counted as a "no" vote; simple majority of the votes cast	79

[1] for constitutional reform
[2] for statutory issues

The emergence of direct democracy can be caused by various processes, short- and long-term, normative and other; it always happens in the context of particular power struggles. In Uruguay the development of direct democracy went hand in hand with processes of a concentration of executive power. For the adoption of the Swiss model the influence of president José Batlle y Ordoñez was decisive. The constitution of 1917 was ratified by popular vote. However, it was only in the constitution of 1934 that direct democracy (obligatory referendum, popular initiative) was introduced, which was then revised in 1942 and expanded in 1967. But after 1967 there followed long years of economic crisis and social unrest that led to a military dictatorship (1973–1985), and only afterwards was the expanded direct democracy put into practice. Between 1985 and 2009 direct-democratic procedures were used 17 times: there were 7 referendums, 5 popular initiatives, 2 obligatory referendums and 3 authorities' minority initiatives.

LATIN AMERICA — MAPPING THE PRACTICAL USE OF DIRECT DEMOCRACY ON THE NATIONAL LEVEL

blue: frequent use, grey: infrequent use, white: no use

USE OF DIRECT-DEMOCRATIC PROCEDURES IN URUGUAY 1985–2009

FORM OF PROCEDURE	DATE	ISSUE	RESULT
PCR (79)	16.4.1989	Abrogation of amnesty law for members of the military and police officers	REJECTED
PCI+ (331A)	26.11.1989	Constitutional reform, adjustment of pensions to inflation	APPROVED
PCR (79)	13.12.1992	Partial withdrawal of the privatisation law that would partially privatise the state telephone company	APPROVED
LOR (331C)	18.8.1994	Constitutional reforms to separate in the ballots national and municipal elections	REJECTED
PCI+ (331A)	27.11.1994	Constitutional reform to stop "hidden cuts" in pensions	APPROVED
PCI+ (331A)	27.11.1994	Constitutional reform, assign 27% of the budget to education	REJECTED
LOR (331D)	8.12.1996	Constitutional reform to modify the electoral system	APPROVED
PCR (79)	17.6.1998	Opposing the Law of Energy Framework	REJECTED
PCR (79)	20.9.1998	Time available to workers to make claims against employers	REJECTED
AMI (331B)	31.10.1999	Constitutional reform that limits executives of public services in running for office	REJECTED
AMI (331B)	31.10.1999	Constitutional reform, financial autonomy for Courts	REJECTED
PCR (79)	18.2.2001	Repeal of 13 articles of Law 17.243	REJECTED
PCR (79)	5.8.2002	Repeal of Articles 612 & 613 of Law 17.296	APPROVED (NO VOTE)
PCR (79)	7.12.2003	Repeal of Law 17.448	APPROVED
PCI+ (331A)	31.10.2004	Constitutional reform, inclusion of water as a basic human right in the constitution	APPROVED
PCI+ (331A)	25.10.2009	Repeal of Articles 1-4 of the Expiry Act (Law 15.848)	REJECTED
AMI (331B)	25.10.2009	Constitutional reform, introduction of postal voting for Uruguayans living abroad	REJECTED

Comparing Switzerland and Uruguay we can observe both similarities and differences. In Uruguay, direct democracy was introduced from above in a strongly unitary and centralised state; in Switzerland, the same happened in a strongly decentralised and federal state and from below. Although both countries use popular initiatives and referendums in a regular way, the legal design of these instruments differs considerably. In Switzerland 2% (1%) of the electorate can initiate a popular initiative (popular referendum), whereas in Uruguay 10% (25%) of the electorate are needed. In practice this means that the tools of direct democracy in Uruguay are made only for powerful actors, whereas in Switzerland weak actors can also use them. This is one of the reasons why direct democracy is used much more in Switzerland than in Uruguay.

There are also similarities between the two countries. The political culture in both countries is characterised by a strong tendency towards political compromise rather than confrontation. In both countries the tools of direct democracy form a workable whole and do not allow for plebiscites (unlike in most other countries with direct democracy). Direct democracy dynamises politics, enhances political participation from below and brings the citizens and elites closer to each other. In both countries direct democracy is well accepted from left to right and there are no significant forces willing and able to work for its abolition.

EXAMPLES OF PRACTICAL USE

In 1980 the then military regime lost a plebiscite for a new and authoritarian constitution. This surprising result showed that plebiscites are not completely controllable. It marked the beginning of the Uruguayan return to democracy, as legitimacy and power relationships began to change immediately.

After the restart of democracy with a new government in 1985, direct democracy emerged as an important oppositional player in Uruguayan politics. It started with a referendum and heated debates against an amnesty law (Law 15.848, also called the Expiry Act) giving immunity to police and military officials for acts committed in Uruguay under the military regime. The referendum was rejected, mostly for fear of unrest and not because a majority of the people was convinced that the amnesty was right.

Between 1990 and 2004 governments would use the Expiry Act to block the prosecution of crimes committed by the military during the 12 years of dictatorship. This changed after the victory of the Frente Amplio under Tabaré Vázquez, although the amnesty law remained in force. The idea of using a popular initiative for overturning this law came from within the Frente Amplio in 2006; however, significant sectors of the Frente Amplio did not support the idea and neither did President Vázquez. In spite of that, the

popular initiative was launched in September 2007 and the necessary signatures collected and handed in to the authorities on 27 April 2009. On 14 June 2009 the Electoral Court confirmed that the popular vote on the annulment of Articles 1-4 of the Law 15.848 would be held together with the national elections on 25 October 2009 (Coordinadora Nacional por la Nulidad de la Ley de Caducidad: www.nulidadleycaducidad.org.uy).

The referendum failed. Does this mean that justice cannot be done? Only three days before the vote the former military ruler of Uruguay, Gregorio Alvarez, was sentenced to 25 years in prison for human rights violations and the murder of 37 people. In February 2010 the former dictator Juan Maria Bordaberry was given a 30-year prison sentence for violating the constitution during the 1973 coup. Even more important, just six days before the popular vote, the Supreme Court of Justice ruled that in the case involving the murder of Nibia Sabalsagaray, a communist activist, the provisions of the amnesty law were unconstitutional and could not be applied. In practice this means that Law 15.848 can no longer be used to prevent the prosecution of state officials for crimes committed in Uruguay before 1985. But what about earlier rejected claims; can they be reconsidered without the annulment of the amnesty law?

The first successful referendum in Uruguay against a far-reaching privatisation law was well noticed worldwide. It was one of the first democratic responses against a free-market economic policy that was perceived as detrimental to the interests and welfare of most of the people. Five articles of the Law No. 16.211 providing for the sale of public companies were abrogated by an overwhelming majority of 71.6% of the valid votes (55.0% of the eligible voters).

Later successful popular votes appear like follow-ups to the referendum in 1992. In 2003, the referendum against ending the monopoly of the state-owned ANCAP company (import, export, and refinement of oil) was accepted. In 2004, the popular initiative for a constitutional reform that aimed to include drinkable water as a basic human right and to maintain all the resources of water extraction, production, and commercialisation in the hands of the state won a comfortable majority. All three referendums can be seen as struggles in defense of the welfare of the ordinary people and against the privatisation of public services, state industries and resources. They also show that direct democracy provides Uruguayan people with some instruments for interfering in processes of globalisation in their country, which has effects also in other parts of Latin America and beyond.

BOLIVIA

In Bolivia, after military rule (1964–1982), a new representative democracy was established that still excluded the majority of the population from participation in politics and material wealth. As resistance and the self-esteem of the excluded grew the established politicians had to defend their power and privileges more and more by using violence.

The "Water War in Cochabamba" in 2000, which saw massive protests against the privatisation of the local water supply, marked the beginning of a sea change in political power. As happened a few years later in Uruguay (see the 2004 popular initiative) the protesters demanded that access to water should be recognised as a human right and that water should be treated as a public good, not a commodity. The turn came to a close when Evo Morales was elected president in December 2005 and the traditional political parties lost all their power.

The institutionalisation of direct democracy falls into this period. It happened under the growing pressure of the then opposition which was led by the Movement Toward Socialism (MAS). Article 4 of the constitution, according to which the people of Bolivia deliberates and governs only by means of its representatives, was modified and complemented with some direct-democratic rights in 2002 and again in 2004, when a referendum law was also adopted. This referendum law specified the terms for a plebiscite that could be launched by either the executive or two-thirds of the National Congress, and for a popular initiative that could be initiated by 6 percent of the electorate on the national level.

REFERENDUM LAW (LEY NO 2769, 6 JULY 2004)*

PROCEDURE	REMARKS	REFERENDUM LAW
Plebiscite (ATP)	Norms, policies or decisions of public interest; initiated by executive or ⅔ National Congress	5
Popular initiative (PCI)	Norms, policies or decisions of public interest; initiated by 6 percent of the electorate	6

* RefL 3 means Referendum law Article 3
Binding result (RefL 3), excluded issues: taxes, security, political division (RefL 4), publication of the voting date at least 90 days in advance; (RefL 7); turnout quorum: 50% eligible voters (RefL 8), only 1 referendum of a kind per term; no referendum 120 days either side of election day (RefL 11)

The first plebiscite on the country's hydrocarbon policy was ordered by president Carlos Mesa, the successor of Sánchez de Lozada, who had to resign following the "First Gas War" (2003). The voters decided overwhelmingly for greater state control over the gas industry. On the one hand, the plebiscite didn't resolve the government's problems, the popular movements and opposition insisting on full nationalisation of the hydrocarbon industry, and after a "Second Gas War" President Mesa also had to leave office. On the other hand, those in power in Santa Cruz, the center of the future opposition, reacted with demands for regional autonomy and started to collect signatures for a popular initiative on this issue.

On 2 July 2006 the popular initiative on regional autonomy was decided by popular vote and at the same time the members of the Constituent Assembly were elected. The ballot question was: "Do you agree, within the framework of national unity, with giving the Constituent Assembly the binding mandate to establish a regime of departmental autonomy, applicable immediately after the promulgation of the new Political Constitution of the State in the Departments where this Referendum has a majority, so that their authorities are chosen directly by the citizens and receive from the National Government executive authority, administrative power and financial resources that the Political Constitution of the State and the Laws grant them?"

In the election to the Constituent Assembly, the Movement Towards Socialism – now as a government party – gained a majority of the seats, but not the ⅔ majority necessary to control the reform process. On the other hand, the autonomists of the "half moon" (the departments Santa Cruz, Tarija, Beni, and Pando) gained the majority of the votes in their departments, but on the national level as a whole their demands for regional autonomy were rejected.

On 9 December 2007, the Constituent Assembly decided on the final text of the new constitution, but this happened without the necessary ⅔ majority, because the delegates from the opposition did not participate. In reaction to the Constituent Assembly's move the departments of the "half moon" declared their autonomy from the central government and organised plebiscites on regional autonomy in May and June, although the Bolivian National Electoral Court had declared them unconstitutional.

Later, President Morales and the opposition agreed to organise recall elections (such a procedure is not recognised by the constitution) for the president and his vice-president as well as for the prefects in the departments (except in Chuiquisaca). The results of these recall elections (August 10, 2008) strengthened the position of President Evo Morales, who got 67% of the votes, but the autonomist prefects were also confirmed with comfortable majorities; only the opposition prefects of La Paz and Cachabamba were elected out of office.

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Unlike in Peru (1993) and Venezuela (1999), where new constitutions emerged through a top-down process driven by a strong political leader, in Bolivia grassroots movements were the driving force that led to a Constituent Assembly in 2006. However, the making of a new constitution was a very strife-ridden process that often ended in a stalemate between the majority and the opposition. Finally, after the victory of president Evo Morales in the recall elections and under the pressure of the great mobilisation of the social movements, an agreement was reached and the new constitution was adopted by popular vote on 25 January 2009.

The new constitution expands the repertoire of direct-democratic tools. All changes of the constitution are subject to an obligatory referendum. All state treaties are subject to a popular referendum that can be initiated by 5 percent of the electorate. There is a popular initiative for the partial revision of the constitution, but the legal design of this instrument is still open. It can be initiated by 20 percent of the electorate; this hurdle is very high indeed and can be surmounted only by very strong and well-organised actors. Of course, both government and opposition use popular vote procedures as tools for enforcing their politics. But for the new majority, direct democracy – and communitarian democracy in particular – also have a fundamental significance. Based on experience, many people have come to believe that the indigenous population can overcome the colonial tradition of oppression, exclusion and poverty only by way of direct participation in the decision-making processes.

PROCEDURE	REMARKS	CONSTITUTION
Popular referendum (PCR)	on state treaties, initiated by 5 percent of electorate	259
Popular referendum (PCR)	cancellation of state treaties, initiated by 5 percent of electorate	260
Plebiscite (ATP)	on state treaties, initiated by 100 members of parliament	259
Popular initiative (PCI)	total revision of the constitution by means of a Constituent Assembly	411.I
Popular initiative (PCI)	partial revision of the constitution	411.II
Plebiscite (ATP)	total revision of the constitution by means of a Constituent Assembly, initiated by the parliament (absolute majority) or the president	411.I
Obligatory referendum (LOR)	constitutional amendments	411

USE OF POPULAR VOTE PROCEDURES IN BOLIVIA
(CONSTITUTION ADOPTED ON 25 JANUARY 2009)

FORM OF PROCEDURE	DATE	ISSUE	RESULT (% YES)	TURNOUT
Plebiscite initiated by president Carlos Mesa (ATP)	18.7.2004 FIRST PLEBISCITE IN DEMOCRATIC BOLIVIA	Repeal of Hydrocarbons Law No 1689	APPROVED (86.6%)	60.1%
		State ownership of all hydrocarbons	APPROVED (92.2%)	59.9%
		Re-establish state ownership of the oil company YPFB	APPROVED (87.3%)	59.9%
		President's policy of using gas as a strategic means to get access to the Pacific Ocean	APPROVED (54.8%)	59.9%
		Gas export and how to use revenues from it	APPROVED (61.7%)	59.9%
Popular initiative initiated by the opposition (PCI), based on Constitution and Referendum Law 2004	2.7.2006	Regional Autonomy (result binding for the Constituent Assembly)	REJECTED (42.4%)	84.5%
Recall based on Law No. 3850, 12.5.2008	10.8.2010	Recall election: President Evo Morales, Vice-President Álvaro García Linera, and eight out of nine departmental Prefects	*	83.3%
Constitutional plebiscite (ATP), based on Law No. 3941 + Law No. 3942, 21 Oct. 2008	25.1.2009	New Constitution	61.43%	90.24%
		2 versions of Art. 398 of the Constitution (maximum size of a landholding 5,000 or 10,000 hectares)	80.65% FOR 5,000 HECTARES, 19.35% FOR 10,000 HECTARES	90.14%

* Results:
  President Evo Morales and his Vice-President were confirmed in office with 67.4% of the valid votes.
  Two opposition prefects, José Luis Paredes of La Paz and Manfred Reyes Villa of Cochabamba were recalled.

Unlike many other countries in Latin America, Venezuela had enjoyed an unbroken period of representative democracy since 1958 when the Punto fijo agreement between three political parties was made. In the 1990s this political system was falling apart; it had become perverted, unresponsive to the needs of the people, thoroughly corrupt and unable to cope with economic crisis. In this context Hugo Chávez was elected president in 1998. A 56% majority of the voters chose a candidate who promised something new: to end corruption, to eradicate poverty, and to establish a new order based on social and participatory democracy.

Beginning with two popular votes to convene a Constituent Assembly in April 1999, the new constitution was created rather quickly and adopted by a popular vote in December 1999. Representative democracy was complemented with direct-democratic and plebiscitarian instruments as well as the right to recall those elected, including the president. Chavism now dominated the government, and the oppostion had little influence in the National Assembly. In Venezuela, the creation of a new constitution by way of a Constituent Assembly was a top-down process controlled by the president, whereas in Bolivia the same happened bottom-up as a result of long-standing struggles and demands of grassroots movements.

POPULAR VOTE PROCEDURES IN THE CONSTITUTION OF VENEZUELA
(CONSTITUTION ADOPTED ON 15 DECEMBER 1999)

PROCEDURE	REMARKS	CONSTITUTION
Popular initiative (PCI)	Questions of national importance; initiated by >10% electorate	71
Plebiscite (ATP)	Questions of national importance; initiated by a) president or b) National Assembly	71
Popular referendum (PCR)	International treaties which impair or transfer national sovereignty; initiated by 15% electorate	73.II
Plebiscite (ATP)	International treaties which impair or transfer national sovereignty; initiated by a) president or b) ⅔ National Assembly	73.II
Plebiscite (ATP)	Parliamentary bill; initiated by ⅔ National Assembly; approval quorum: 25% electorate	73.I

PROCEDURE	REMARKS	CONSTITUTION
Popular referendum (PCR)	Abrogation of a law (presidential decree) initiated by 10% (5%) electorate; participation quorum: 40% electorate	74*
Plebiscite (ATP)	Abrogation of a law; initiated by the president	74*
Popular initiative (PCI)	Constitutional amendment; Constitutional reform; Convene a National Constituent Assembly; initiated by 15% electorate	341 343 347, 348
Obligatory referendum (LOR)	Constitutional amendment or reform	341, 344, 345

* The following issues are not subject to abrogatory referendum: budget laws, laws on taxes, public expenditure, amnesty, human rights, approval of international treaties. On any specific issue only one (1) referendum per term is allowed.

The legislative process necessary to put the constitution into practice proved slow and the president used his constitutional powers (article 203, leyes habilitantes) to enact a package of 49 laws in order to accelerate change. The opposition tried to organise a general strike on the day that these laws were enacted and intensified a campaign to remove Chávez from office. In April 2002 a military coup failed and on 15 August 2004 the opposition suffered another major defeat when President Chávez won the recall election with a clear majority of 59%.

In 2006, a new system of local assembly democracy was created: communal councils. They provide an opportunity for self-organisation for a part of the population whose basic needs have traditionally been ignored. However, they face a difficult task, challenged by established interests, opportunism and state bureaucracy alike. It remains an open question to what extent, despite all the difficulties, this form of local democracy can contribute to changing society from below.

In December 2006, Chávez was re-elected with 62.9% of the votes under the banner of "socialism of the 21st century". In December 2007, two constitutional reform proposals were narrowly defeated in a referendum vote, when (compared to the recall election) only 56% of the eligible voters went to the polls. The proposal to change 69 of the 350 articles of the present constitution was made top-down by the president. In February 2009, a constitutional change – proposed again by Chávez – was approved by the voters, allowing the unlimited re-election of the president.

The introduction of direct democracy in the new constitution of 1999 can be seen as part of an attempt to empower people and to distribute political power more equally. Among the new procedures are an obligatory referendum for changes to the constitution, a popular referendum to abrogate laws or presidential decrees, and a popular initiative for partial revision of the constitution as well as for convening a National Constituent Assembly. However, direct democracy is still more a promise than a practice. So far neither the citizens' initiative nor the citizen-initiated referendum have been used. There is a lack of clear rules for the implementation of the constitutional norms on direct democracy, and where rules exist, such as those concerning information and propaganda, their application is deficient (for more see www.ojoelectoral.org).

In addition to direct democracy plebiscites were also introduced, boosting the power of the president. It is well known that the use of such plebiscites is not without dangers; in a real democracy authorities have enough instruments to exercise political power in effective and legitimate ways without recourse to plebiscites.

Venezuelan political and social reality is a complex and contradictory process; equally contradictory are the judgements and conclusions drawn from analysis of this reality. Some see a democratisation process (for example: Julia Buxton: The deepening of Venezuela's Bolivarian revolution: why most people don't get it (www.opendemocracy.net/democracy-protest/deepening_revolution_4592.jsp)): Under Chávez poverty was put on the political agenda and alleviated through a number of social programs, the most disadvantaged sectors of society were mobilised and empowered, their sense of belonging and self-esteem restored; today they also have a voice and voting power that any future government with a commitment to democracy must take into account.

Others see a process of de-democratisation (for example: Enrique Krauze: Hugo Chávez and Venezuela: a leader's destiny (www.opendemocracy.net/article/hugo-chavez-and-venezuela-a-leader-s-destiny)): In this view the quality of democracy has been diminished under Chávez, with the checks and balances of a liberal democracy put aside, and where the administration and the authorities – such as the National Electoral Council and the Attorney General – do not act in a non-partisan and non-political way. This view situates the charismatic president not in a tradition of radical democracy, but of fascism. For them the developments under Chávez point towards the installation of an authoritarian or even dictatorial regime.

The institutionalisation of direct democracy and plebiscites always happens in a concrete context. In Venezuela this context is characterised by a climate of confrontation and polarisation between government and opposition, and the power struggle between the

two is not carried out only with democratic means. Democratisation is a difficult task even if everyone wants it, and the time factor plays an important role. It takes time to learn how to exercise democracy or how to exercise it in a new way; it takes time to overcome old habits of thinking and doing. Clientelism, patronage, and heavy reliance on top-down leadership are not easily eradicated. These difficulties come to a head under conditions of struggle and geopolitical hostility such as exist in Venezuela.

USE OF POPULAR VOTE PROCEDURES IN VENEZUELA

FORM OF PROCEDURE	DATE	ISSUE	RESULT (% YES)	TURNOUT
Plebiscite (ATP)	25.04.1999	Constitutional Convention	APPROVED (87.9%)	37.9%
Plebiscite (ATP)	25.04.1999	Convocation of the Constitutional Convention	APPROVED (81.9%)	37.9%
Obligatory referendum (LOR)	15.12.1999	Constitution ratification	APPROVED (71.4%)	45.3%
Plebiscite (ATP)	3.12.2000	Heads of Trade Union Confederations	APPROVED (62.5%) AQ OF 25% MISSED	24.5%
Recall election (70, 72, 233)	15.08.2004	Remove president Chávez from office	REJECTED (41%)	69.9%
Obligatory referendum (LOR)	2.12.2007	Constitutional reform, proposals A and B	REJECTED (BLOCK A 49.3% YES, BLOCK B 48.9% YES)	55.9%
Obligatory referendum (LOR)	15.02.2009	Constitutional reform, removed term limits for the offices of President, state governors, mayors and National Assembly deputies	APPROVED (64.85%)	70.3%

AQ = approval quorum

UNITED STATES OF AMERICA — PEOPLE POWER RESTRICTED

This section of the survey has been provided by Brandon Holmes at Citizens in Charge and have been adapted and edited to the IRI Guidebook to Direct Democracy.
Link: www.citizensincharge.org

Let us finally have a look at the United States of America. While the First Amendment to the United States' Constitution guarantees the right to "petition government for redress of grievances," this is not considered a guarantee of a formal process by which citizens can launch an initiative, a referendum or a popular vote on a substantive issue. Since South Dakota became the first state to recognise some form of statewide citizens' initiative rights in 1898, twenty-five other states have joined in recognising the right of citizens to initiate laws through signature-gathering and have created processes for citizens to make their voices heard at the ballot box. These processes operate under widely varying laws, rules, regulations, and restrictions, so that the initiative rights of citizens in one state may be quite different – and far less secure – than the rights of citizens in another state.

THE HISTORY OF STATEWIDE INITIATIVE & REFERENDUM RIGHTS

As governments have grown at local, metropolitan, state, and federal levels, the power of entrenched political factions has also grown vis-à-vis the citizenry. Traditional representative government has proven unreliable in restraining itself constitutionally and electorally, often to the point of uniting all branches of America's distributed powers against the very people it was meant to serve. Institutions of Modern Direct Democracy have evolved to help restore this balance of power, in effect fulfilling a basic promise of democratic governance: the right to "petition government". Initiative and referendum thus serve as an expansion and perfection of one of the most basic principles of a limited republic.

The movement for statewide initiative and referendum rights grew out of the "Populist" and "Progressive" movements in the late nineteenth and early twentieth centuries. During this period voters became increasingly distrustful of government and the moneyed special interests that controlled it. Voters saw the power of initiative and referendum to restore a voice to the people and allow for the enactment of other reforms – such as women's suffrage, secret ballots, and primary elections – through the citizens initiative. This push for an additional check on the power of politicians led to the amending of several state constitutions to provide for a citizens' initiative process, especially among western states, between the turn of the century and American entry into the First World War.

UNITED STATES OF AMERICA –
INITIATIVE STATES ALLOWING FOR LEGISLATIVE AND/OR CONSTITUTIONAL CITIZENS' INITIATIVES
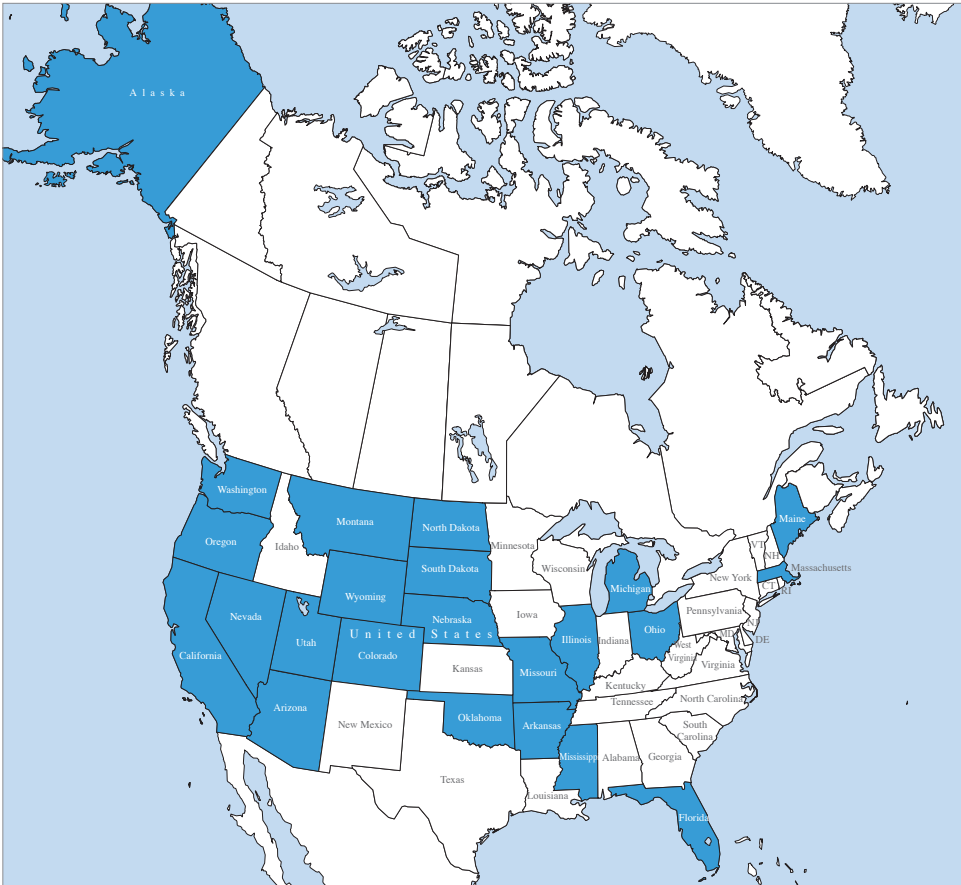
It was not until 1959, when Alaska entered the Union with the initiative and the "people's veto referendum", that another state recognised citizens' initiative rights. Since then, only three more states have added or restored a statewide initiative or referendum process. The fight for statewide initiative rights continues today as activists in many states work to convince legislators to amend their state constitutions to provide for an initiative process. Because legislators are generally adverse to initiative rights, and most states have high requirements for amending their constitutions, these activists face an uphill battle.

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UNITED STATES OF AMERICA —
REFERENDUM STATES
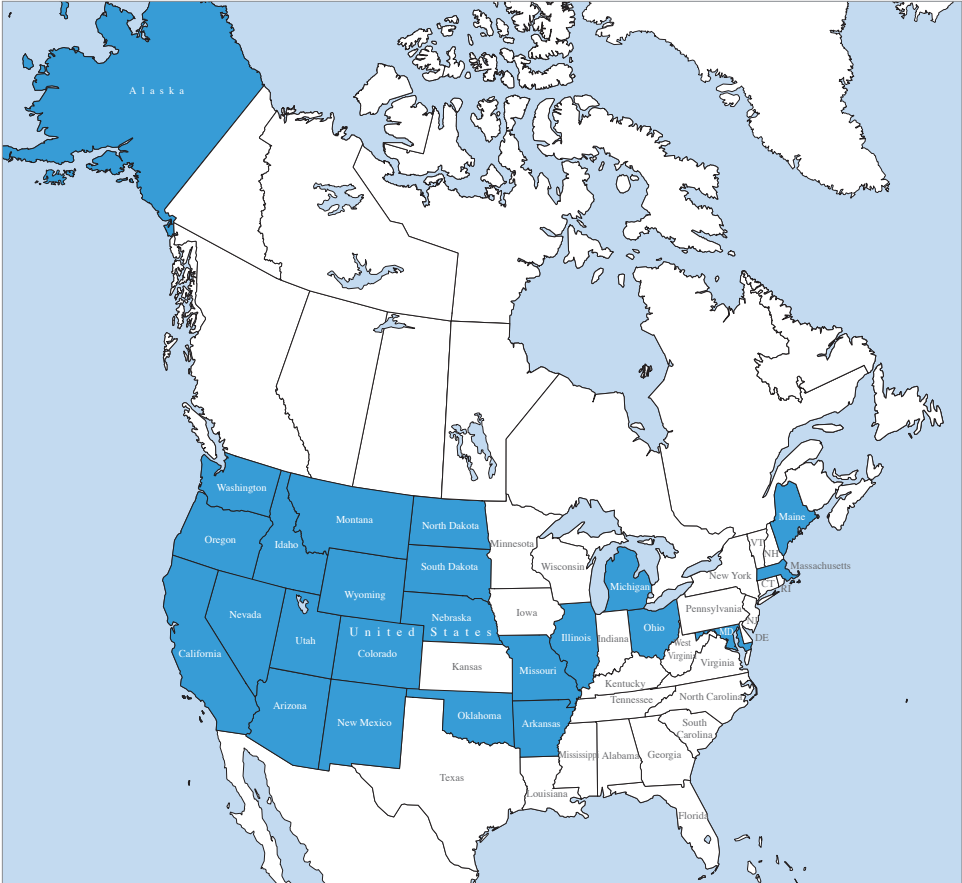
INITIATIVE AND REFERENDUM: PROCEDURES AND PRACTICES

Statewide initiative rights comes in three different forms: initiated state statutory laws ("legislative" PCI), initiated state constitutional amendments ("constitutional" PCI), and people's veto referendums on acts of state legislatures (PCR). Of the twenty-six states that have some form of citizen-initiated rights, twenty-one allow for statewide statutory initiatives, eighteen allow initiated constitutional amendments, and twenty-three allow for people's veto referendums.

Though the right to "petition government" has undergone several centuries of development, and institutionalised rights to initiative and referendum just over a century of practice in the United States, these procedures are by no means universal throughout the US. Actual practices vary widely in how citizens-friendly the design is. Attempts to restrict initiative and referendum rights by putting up barriers to how signatures can be collected, who can work for I&R campaigns, and how campaign workers can be paid are common and often successful, though federal and state courts have regularly struck down certain barriers as violations of First Amendment rights. In many ways the politics of initiative and referendum have switched from securing initiative rights for more people in more states, to maintaining existing rights in the face of opposition from politicians and special interests.

In its first annual report on statewide initiative and referendum rights, *Of the People, By the People, For the People: A 2010 Report Card on Statewide Voter Initiative Rights*, the Citizens in Charge Foundation graded each state on the accessibility of its initiative process and found that most of the 26 states with some form of statewide direct democracy received a considerably reduced ranking (C or lower). Most of these states place restrictions against those engaged in the process. Some states – such as Missouri and Ohio – have robust processes with few restrictions, earning them an A-ranking. At the other end of the spectrum, Wyoming recognises statewide statutory initiative and referendum rights, but lacks a process to amend the state constitution through initiative. Wyoming's limited process, along with the many restrictions placed on signature gathering by the state legislature, earns Wyoming a low E-ranking.

States that don't recognise any statewide form of direct democracy all receive failing rankings of D or E. While many of these states do recognise local initiative rights, the failure to provide citizens the ability to propose either statewide statutes or constitutional amendments means citizens are denied the means to effectively control the state government to which local governments are legally subservient.

In order to have an initiative process that serves the citizenry of the state, that process must be accessible to the average citizen. Restrictions on who can participate in the process and on what terms, as well as on where and how voters' signatures can be collected, how long proponents have to collect them, and how many they are required to collect, increase the cost of accessing the ballot – which can easily exceed $1million in states such as California – and drive out average citizens. Many restrictions, such as requiring that people who collect signatures be residents of the state they are working in, and prohibiting paying those workers on a per-signature basis have been found by courts to violate the First Amendment to the U.S. Constitution. Fundamentally, any attempt to restrict the ability of the people to use the initiative and referendum process undermines our basic democratic principle that government be of, by and for the people: a principle enshrined in America's democratic republic.

UNITED STATES OF AMERICA —
THE CITIZENS IN CHARGE RANKING MAP OF STATE I&R
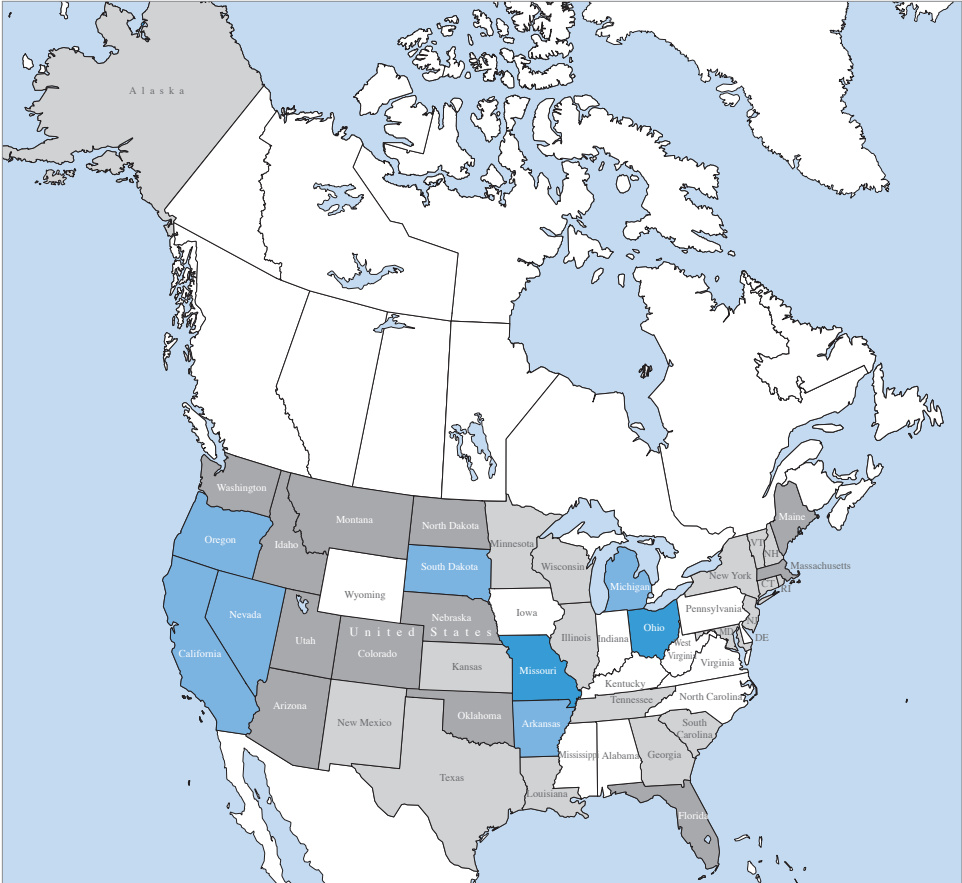
dark blue: A-states (=best direct-democratic provisions), light blue: B-states (=second best provisions),
dark grey: C-states (=limited provisions), light grey: D-states (=highly restricted provisions),
white: E-states (=almost none or no provisions)

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RANKING METHOD

In order to draw appropriate comparisons across all 50 states, *Citizens in Charge Foundation* looked at the most prominent and consistent factors affecting the people's ability to "petition government". Examining state constitutions and legal codes, the Foundation looked at the designs of the various direct democracy procedures available – like the statewide citizen-initiated constitutional amendment ("constitutional" PCI), the statewide statutory initiative ("legislative" PCI), the statewide referendum (PCR), the existence of a local initiative and referendum process, and the use of local processes – and awarded rankings accordingly.

There are many ways of restricting the process, such as short circulation periods, high signature requirements, bans on campaign workers from other states circulating initiatives and referendums, bans or limitations on paying campaign workers who gather signatures according to the number of signatures they collect, and requirements that initiatives and referendums be circulated according to a geographical/political distribution. In the assessment by the Citizens in Charge Foundation, such restrictions were counted in when ranking a state.

KEY PROCEDURES AVAILABLE ACROSS THE US

Constitutional Amendment ["constitutional" PCI]

States that allow citizens to propose amendments to the state constitution through an initiative process were awarded points. A constitution is the fundamental contract by which citizens establish their government and citizens should have the power to propose changes to be voted on by the people.

Statutory Initiative ["legislative" PCI]

States were awarded points for allowing citizens to propose statutory measures through an initiative process. This process allows citizens to propose legislative acts to be voted on by the people. States vary on whether such a voter-enacted statute can be amended or repealed by the state legislature, but in most cases legislatures are able to make changes to legislative citizens' initiatives.

Referendum [PCR]

States that allow citizens to call a statewide referendum – or People's Veto of acts of the legislature – were given points. A popular referendum allows citizens to delay the implementation of a law passed by the legislature* until a popular vote can be held whereby

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* Wyoming is the only state where a popular referendum does not delay implementation of a legislative statute until an election to decide the matter is held.

UNITED STATES OF AMERICA —
YEARS OF INTRODUCTION OF INITIATIVE AND REFERENDUM

Alaska
1959

Washington
1912

Montana
1906

North Dakota
1914

Minnesota

Oregon
1902

Idaho
1912

South Dakota
1898

Wisconsin

Maine
1908

Massachusetts
1918

Nevada
1912

Wyoming

Nebraska
1912

Iowa

United States

Michigan
1908

New York

Pennsylvania

California
1911

Utah
1900

Colorado
1910

Kansas

Illinois
1970

Indiana

Ohio
1912

West
Virginia

Virginia

DE

Arizona
1911

New Mexico

Oklahoma
1907

Missouri
1908

Arkansas
1910

Kentucky
1910

Tennessee

North Carolina

Texas

Mississippi
1992

Alabama

Louisiana
1912

Georgia

South
Carolina

Florida
1968

dark grey: until 1918, light grey: since 1959, blue: "in the making"

voters can either approve or reject the act passed by the legislature. As a reaction to an act by the state legislature, the referendum has a different function than the initiative.

Local Direct Democracy

Many states recognise initiative and referendum rights at the local level, such as in certain municipalities or other local jurisdictions, and states are recognised in the assessment for giving direct-democratic rights at the local level. Local initiatives give citizens the power to affect laws and initiate government reforms close to home.

OFTEN USED RESTRICTIONS ON I&R

Residency Requirements for Campaign Workers

States that ban non-residents from gathering petition signatures for initiatives and referendums lost a point in the Citizens in Charge assessment. This restriction prevents proponents from hiring the best-qualified people, making it more difficult to meet the signature requirements to qualify a measure for the ballot. Residency requirements have generally been struck down by federal courts as unconstitutional violations of First Amendment rights, but remain on the books in 13 states, Ohio's ban having been struck down in May of 2010 (bans have been enacted in recent years in Montana, Nebraska and South Dakota).

Restrictions on Campaign Worker Pay

States that ban or limit paying campaign workers who collect signatures based on the number of signatures they collect, or otherwise restrict how campaign workers can be paid, lost a point. Payment-per-signature allows citizens greater certainty in judging the cost of an initiative or referendum effort. Moreover, in states that have passed such bans, the cost of successfully completing a direct-democratic process has risen considerably, sometimes more than doubling. Federal courts have struck down these bans in five different states.

Geographic Distribution Requirements

States that require signatures to be collected within, or distributed over, a certain number of subdivisions in the state also lost a point. Distribution requirements increase the complexity of qualifying a measure, thus driving up the cost and difficulty. When distribution requirements are based on geographic boundaries – rather than being population-based – forcing signatures to be collected in sparsely populated areas, the costs are further increased. Federal courts have universally struck down non-population-based distribution requirements as violations of the Constitution's equal protection clause – the "one man, one vote" principle.

Short Signature Gathering Periods

Initiative committees need ample time to collect the tens of thousands, hundreds of thousands, or in some cases more than a million signatures needed to qualify an initiative for the ballot. Short circulation periods make it nearly impossible for grassroots volunteer efforts to qualify a ballot measure. States with restrictive circulation periods for constitutional amendments and statutory initiatives therefore had a point deducted. Periods of less than nine months were considered restrictive.

High Signature Requirements

High signature requirements make it very difficult to qualify initiatives for the ballot, and nearly impossible for grassroots volunteer campaigns to qualify. We deducted from states that required signatures of more than 8 percent of the number of voters (in the last election for statewide office) to qualify a constitutional amendment for the ballot. We deducted from states with signature requirements above 10 percent.

In assigning and subtracting points, only the laws in place as of December 2009 were considered. The factors selected for grading were both uniform across the states and had a significant effect on the ability of average citizens to use the initiative and referendum process. Oftentimes, factors other than those listed in this report affect the process, but vary so widely among states that including them would call for subjective judgments. In cases where these other factors have a major impact on the ability of citizens to use the initiative and referendum process, we have made note of them under the "Additional Notes" section at the end of that state's report.

Grades for the fifty states are below, and the full report can be viewed by going to www.CitizensInCharge.org/stategrades

OUTLOOK AND PROSPECTS

US direct democracy is a patchwork quilt in which it can be difficult to discern a pattern. With 13 initiative petition deadlines in 2010 still ahead as this is written, here are some emerging trends of the 2010 ballot season:

1) Tax, spending and fiscal policy rule the 2010 ballot roost.
2) A big story in 2010 is the dogs that aren't barking: In about half of the 24 states with Initiative and Referendum the process of gaining ballot access has grown complex and burdensome to the point that it is rarely used.
3) For reasons related to expense and procedural burdens, initiatives we see on the 2010 ballot mostly will not reflect the volatility we otherwise see in the country's political environment.

Tax, spending and fiscal policy
In many cases, when voters head for the polls in 2010 they will decide tax, spending and fiscal policies. With state budgets across the country in disrepair, even when voters consider the marijuana propositions that are regular features of American ballots, they may be thinking about the tax and revenue implications. Richard Lee, the marijuana entrepreneur in California who led the charge for a marijuana legalisation initiative on the November ballot, drums up support for his measure by talking about its tax and revenue implications, characterising it as "... a reverse tax revolt – no taxation without legalisation."

When people think about ballot propositions and tax/spend initiatives, their minds often turn to California's 1978 tax revolt and Proposition 13. Some notable tax and fiscal questions on the 2010 ballot, however, involve requests to approve higher taxes. Oregonians went to the polls in January and approved a $733 million tax increase. Arizona's voters by a large margin approved a statewide sales tax increase in May. However, voters in California, Colorado, Florida, Indiana, Louisiana and Maine – and possibly in a number of other states with petition deadlines later in the year – will have a shot at measures to provide tax exemptions, restrict some taxes, limit future tax increases, or tie spending or tax increases to various metrics calculated to limit the growth of taxation or spending.

Ballot measures that change the ground rules for congressional and legislative redistricting, how campaigns are funded, how voting works in primaries, who can vote and what kind of identification they need in order to do so, and how initiative petition signature requirements work made up nearly 10% of the approximately 125 measures that had been certified for ballots through early June.

Proposition 8, the constitutional amendment to prohibit same-sex marriage in California, attracted an enormous amount of attention, dollars and passion in 2008. There's not going to be another Prop 8 in 2010, although an attempt in California to suspend the provisions of AB 32, a signature global warming law passed in the state in 2006, might come close. The ballot proposition says that the provisions of the 2006 law, set to go into effect in 2012, should instead be suspended until California has four consecutive quarters when its unemployment rate is 5.5% or less. The backers of the initiative, which in the early going were Texas oil companies, are hoping they can drive a wedge between the green values of California voters and concerns about steady high unemployment rates.

Dogs that aren't barking: I&R on life support?
In 2010, what's not on the ballot might be just as significant as what is.

While citizens in 24 states nominally have access to the I&R process, restrictions in seven, (Idaho, Illinois, Mississippi, Nebraska, Oklahoma, Utah and Wyoming) are so burdensome as to be nearly insurmountable.[1]

In five additional states (Alaska, Arkansas, Montana, Nevada and South Dakota), in a year that is otherwise characterised by heightened levels of political interest and engagement, there is some use of I&R in 2010 but not enough to inspire hope for a robust future. The reasons for declining participation vary, but include one or more of these factors:

• Regulations governing how the process works have grown more burdensome since the last election.
• Lawsuit activity around initiatives in the last cycle was pronounced to the extent that activists aren't confident in the stability of the legal structure of the I&R process.

[1] http://www.ballotpedia.org/wiki/index.php/California_Marijuana_Legalization_Initiative_%282010%29#cite_note-kush-1

For example, supporters of an Alaskan initiative in 2008 which would have stemmed the discharge of toxic materials from large metallic mineral mines in Alaska found that their initiative was tied up in repeated lawsuits and legal uncertainty about whether it would even be on the ballot until seven weeks before the vote. This significantly eroded both their campaign treasury on high legal fees and their ability to raise money for promotional campaign efforts. In the longer term, unclear laws that lead to expensive last-minute litigation reduce the motivation of all political activists in an I&R state to gear up for what to them looks like a legal minefield.

The remaining 12 states have a legal, regulatory and political environment in which citizens can propose laws – if they know rich donors.

2010 initiatives are not reflecting political volatility

In the states with plenty of I&R activity, initiative sponsorship is largely the province of well-heeled individuals, corporations and unions. In California in 2008, four men who are on the list of the Forbes 400 richest Americans were the primary sponsors of five of the twelve propositions on the state's November ballot. Heading into the 2010 ballot season, at least five of what will ultimately be 10–15 statewide ballot propositions in that state were funded exclusively through the expensive signature-gathering phase by wealthy corporate, union or individual backers, including the aforementioned Richard Lee, a leading member of what the New York Times has dubbed the Ganja Riche.

The long lead times, expense, difficulty, and level of expertise required to qualify measures for the ballot leads me to predict that the political volatility that is otherwise evident in the United States in 2010 will not exert much impact on what voters see on their ballots, although it might influence how they vote on what they do see.

A

ABROGATIVE REFERENDUM [PCR] A popular referendum by means of which voters may retain or repeal a law or decree that has been agreed and promulgated by the legislature and already implemented. Such a referendum is known as the people's veto in the U.S. state of Maine.

ADMINISTRATIVE REFERENDUM [PCR] A popular referendum on an administrative or governmental decision made by parliament. The Finance referendum is one kind of administrative referendum widely used in Swiss cantons and municipalities.

ADMISSIBILITY OF THE INITIATIVE The legal right to conduct an initiative within the powers of the decision-maker to whom the initiative is addressed. In the context of international law and human rights the admissibility factor is dealt with very differently under different jurisdictions. Whereas in Germany or Hungary, for example, the check on admissibility is carried out before an initiative is registered, in Switzerland (by parliament) or the US (by courts) this is done after the submission of an initiative.

AGENDA (SETTING) INITIATIVE [PAI] An agenda initiative is the right of a specified number of eligible voters to propose to a competent authority the adoption of a law or measure; the addressee of this proposal and request is not the whole electorate but a representative authority. In contrast to the popular initiative, it is this authority which decides what is going to happen to the proposal. An agenda initiative can be institutionalized in a variety of ways: for example as an agenda initiative without a popular vote; as an agenda initiative followed by a consultative or binding plebiscite; or as a popular submission ("Volksmotion"). The popular submission can be the equivalent of a parliamentary motion; if adopted, it can also be treated like a popular initiative (this is the case in the Swiss canton of Obwalden).

ALTERNATIVE PROPOSAL See counter-proposal.

APPROVAL QUORUM A requirement for passing a popular vote which takes the form of a minimum number or percentage of the entire electorate whose support is necessary for a proposal to be passed.

ASSEMBLY DEMOCRACY Democratic system where eligible voters exercise their political rights in an assembly. Assembly democracy – the original form of democracy in ancient Greece – is widespread in Switzerland. There are citizens' assemblies in the majority of communes. In two cantons (Glarus and Appenzell Inner-Rhodes), popular assemblies are held at the cantonal level. In Appenzell Outer-Rhodes the citizens rejected in June 2010 an initiative to reinstall the popular assembly.

AUTHORITIES' MINORITY INITIATIVE [AMI] A popular vote procedure and a political right that allows a specified minority of an authority (e.g. one third of the parliament) to put its own proposal on the political agenda and let the people decide on it by a popular vote.

AUTHORITIES' MINORITY REFERENDUM [AMR] A popular vote procedure characterized by the right of a minority of a representative authority to put a decision made by the majority in the same authority before the voters for approval or rejection. This procedure enables a minority of a representative authority to step on the brakes and give the final say to the voters.

B

BALLOT INITIATIVE [PCI] Term used in the U.S. to describe a citizens' initiative. See Popular Initiative.

BALLOT MEASURE An issue brought forward to a popular vote by all three types of Modern Direct Democracy: Initiatives, Referendums and Plebiscites.

BALLOT PAPER a) The official ballot paper, on which voters mark or indicate their choice, e.g. indicate with a Yes or No whether they accept

or reject the referendum proposal. b) For elections: the official form which eligible voters must use for elections. For the elections to the Swiss National Council, voters can fill out a special, non pre-printed form themselves, and may change the form or make additions to it.

BALLOT TEXT Text which appears on the ballot paper, typically in the form of a question or a series of options. For a referendum it may be a specified question text, or a question seeking agreement or rejection of a text; for an initiative, a question asking for agreement or rejection of a proposal identified by the title of the popular initiative; for a recall, a question asking for agreement or rejection of the early termination of office of a specified office holder.

BINDING Description of a popular vote where, if a proposal passes, the government or appropriate authority is legally compelled to implement it.

BOND MEASURE The term given in the U.S. to a measure – either a popular initiative or a measure referred by the legislative body – that asks voters to authorize borrowing. Bond measures are common in the country because of state and local restrictions on public borrowing without voter approval.

C
CANTON A member state of the Swiss Confederation. The cantons – also frequently referred to in Switzerland as the "states" – are the original states which joined together in a federation in 1848 and ceded a part of their sovereignty to it. Switzerland has 26 cantons.

CANTONAL INITIATIVE [AMI] Non-binding right of submission of a proposal by a canton. Any canton may submit a draft decree for approval by the Federal Assembly or suggest that a proposal be worked up into a formal bill. In a number of cantons, the cantonal initiative can be demanded via a popular initiative.

CANTONAL MAJORITY In the case of a mandatory referendum, a majority of the cantons is required, in addition to a popular majority, in order for the proposal that has been submitted to the People to be accepted. It is accepted when the popular vote has been in favour of the proposal in a majority of the cantons. In calculating the majority, the results in the cantons of Obwalden, Nidwalden, Basle City, Basle Country, Appenzell Outer-Rhodes and Appenzell Inner-Rhodes each count as half a cantonal vote.

CHAMBERS (OF THE BI-CAMERAL PARLIAMENT) In Switzerland the Council of States and the National Council each form one chamber of the parliament.

CITIZEN-FRIENDLY In the context of initiatives and referendums, the degree to which the rules on thresholds, hurdles, quorums, voting methods etc. make the process as free, fair and accessible as possible for the eligible voter.

CITIZEN-INITIATED REFERENDUM [PCR] See popular referendum.

CITIZENS' INITIATIVE [PCI] See popular initiative.

COLLECTION OF STATEMENTS OF SUPPORT See signature gathering.

COMPULSORY VOTING Duty of the eligible voters to participate in the election or referendum vote. The voter may cast a blank vote, i.e. not choose any of the given options. In some countries where voting is considered a duty, voting has been made compulsory and sanctions on non-voters are imposed. In Switzerland, compulsory voting is known in the canton of Schaffhausen. Non-voters face a fine of 3 Swiss Francs. A fine sanction for non-voters is also known in other countries, e.g. Austria, Australia, Belgium, Chile, Cyprus and Thailand. In some countries with compulsory voting the non-voter has to provide a legitimate reason for his/her abstention to avoid further sanctions, if any exist (e.g. in Egypt, Liechtenstein, Luxembourg and Turkey).

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CONSENSUS DEMOCRACY A form of democracy which aims to involve as large a number of players (political parties, trade unions, minorities, social groups) in the political process as possible and to reach decisions by consensus. Because it is relatively easy to overturn a parliamentary decision by means of a popular referendum, both parliament and – even before the matter is debated in parliament – also the government must look for compromise solutions which will satisfy all the important political groups capable of launching a referendum. It was the popular referendum which led historically to the formation of consensus democracy.

CONSTRUCTIVE REFERENDUM [PCR+] A popular referendum combined with a popular counter-proposal. The constructive referendum gives a certain number of eligible voters the right to present a counter-proposal to a decree which is subject to the optional referendum. The counter-proposal is presented together with the decree. In Switzerland this possibility currently exists in the cantons of Berne, Nidwalden and Zurich. It is also known in the City of Lucerne.

COUNCIL OF STATES The smaller chamber of the Federal Parliament (Federal Assembly) in Switzerland, comprising 46 members. The Council of States is the chamber representing the cantons because its members act as delegates of their respective cantons. Nowadays, the members of the Council of States are elected in their cantons by the citizens there who are eligible to vote, in the same way as the members of the National Council, but according to regulations laid down under cantonal law.

COUNTER-PROPOSAL [PCI+, PCR+] A proposal to be presented to a popular vote as an alternative to the proposal contained in a popular initiative or referendum. The counter-proposal may originate in the legislature or with a given number of citizens. In Switzerland the Federal Assembly may submit a counter-proposal both to a general popular initiative and to a formulated popular initiative in the event that it wishes to

address the concern raised in the popular initiative but wants to deal with the matter in a different way from that proposed by the authors of the initiative. In such a case, a vote is held in accordance with the rules on the "double yes" vote.

D

DECIDING QUESTION Where an original proposal and a counter-proposal are to be voted on in the same vote, there is the possibility of a "double yes" result, as voters may vote in favour of both proposals. In such cases, the deciding question is used to determine which version should be implemented, should both proposals be approved.

DIRECT DEMOCRACY Direct democracy gives citizens the right to exercise popular sovereignty directly. There exist two types of direct democracy, modern and pre-modern. Pre-modern direct democracy was born in ancient Athens and has been practiced in the form of classical assembly democracy. Modern (direct) democracy differs in many ways: it is individualistic, not associational; it is seen as a universal human right, not as a privilege (see → Factsheet 3: Differences between pre-modern and modern democracy and → Direct democracy procedure).

DIRECT DEMOCRACY PROCEDURE Procedures which a) include the right of citizens to participate directly in the political decision-making process on issues and b) at the same time are designed and work as instruments of power-sharing which empower citizens. Two types of procedure can be distinguished: referendum and initiative. Each type of procedure exists in different forms, and each form can be institutionalized (legal design) in various ways. Forms of referendums are: citizen-initiated referendums (popular referendums), referendums initiated by a minority of a representative authority, obligatory (mandatory) referendums. Forms of initiatives are: citizens' initiative (popular initiative), which may also be combined with a counter-proposal (usually by parliament), agenda (set-

ting) initiative (see → Factsheet 30: Defining Modern Direct Democracy).

DIRECT LEGISLATION Traditional U.S. term for laws and constitutional amendments enacted directly by the people, either through ballot initiatives or legislative referendums.

"DOUBLE YES" [PCI+] If a counter-proposal in response to a popular initiative is submitted, the voters may approve both the counter-proposal and the initiative and at the same time indicate which of the two they would prefer if both are approved. The proposal (initiative or counter-proposal) that is ultimately accepted is that which receives the most "Yes" votes.

DOUBLE MAJORITY Requirement for a proposal to pass which includes both a majority of the overall total of votes cast and a majority of the votes in at least a specified proportion of defined electoral areas. In Switzerland a double majority of People and States (cantons) is required for obligatory referendums. In other words, in order to be accepted, a majority of cantons must have voted in favour, in addition to an overall majority of all those citizens who voted. This means that all the votes cast are counted twice: once for the overall number, and then for each separate canton. At least 50%+1 of those who voted (the "People"), plus a majority of the cantons, must approve the proposal. In calculating the cantonal majority, it must be remembered that the cantons of Obwalden, Nidwalden, Basle City, Basle Country, Appenzell Outer-Rhodes and Appenzell Inner-Rhodes each have half a cantonal vote. In the case of referendums held to approve or reject laws, a simple majority of the votes cast is sufficient.

E

ELIGIBLE VOTER Person who has the right to vote.

EUROPEAN CITIZENS' INITIATIVE [PAI] The European Citizens' Initiative is a direct-democratic procedure at the transnational level established under the EU "Lisbon Treaty" in late 2009. The Treaty specifies a minimum of one million signatures from a significant number of member states, supporting a legislative proposal within the powers of the EU Commission. A separate regulation was adopted during 2010. It defines the procedure in detail and its terms are crucial to making the new instrument more or less citizen-friendly.

E-VOTING Form of voting where the voters are able to vote with the aid of a special electronic voting system by completing an "electronic ballot paper", which is then sent via a data network to the office responsible for the vote. In Switzerland the cantons of Geneva, Zurich and Neuchâtel are currently conducting electronic voting pilot schemes under the auspices of the Federal Chancellery, whereby the primary concern is to ensure the security of the procedure (preservation of voting secrecy, prevention of voting fraud). From 2010 Swiss citizens in selected countries abroad are part of the e-voting procedure. Estonia is the first country in the world where legally binding e-elections have been made possible. For the new European Citizens' Initiative (→) procedure online e-signature collection is foreseen.

EXPLANATION FROM THE FEDERAL COUNCIL See referendum booklet.

F

FACULTATIVE REFERENDUM [PCR] See popular referendum.

FEDERAL CHANCELLERY As the general administrative office of the Swiss Federal Council, the Federal Chancellery coordinates Federal Council business and is also the office of the President of the Confederation. In addition, it has special responsibility for political rights, is in charge of official publications (Federal Gazette, compilations of federal legislation) and coordinates the release of information to the public and the translation services for the Federal Administra-

tion. The Federal Chancellery is headed by the Federal Chancellor.

FEDERAL COUNCIL (GOVERNMENT) The national government, i.e. the highest authority of the executive in the Swiss Confederation (executive power). The Federal Council has seven members, who are elected by the United Chambers of the Federal Assembly, and has the task of managing and supervising the Federal Administration. The Federal Chancellor is head of the general administrative office of the government, the Federal Chancellery. The Federal President chairs the meetings of the Federal Council. Currently the acting president serves for one year. It is proposed to extend this into a 2-year term.

FEDERAL COURT The highest authority of the judicial power in the Swiss Confederation. The Federal Supreme Court, as the supreme court of appeal, is responsible for ensuring that court decisions conform to the Constitution, and is the only court with jurisdiction in federal law cases that cannot be dealt with by cantonal courts, e.g. those relating to certain criminal offences against the state. The various chambers of the Federal Supreme Court are specialised courts in a variety of legal fields such as those of bankruptcy, civil, criminal and administrative law. The Federal Insurance Court in Lucerne has jurisdiction in cases relating to social insurance law.

FEDERAL DECREE A ruling by the Swiss Federal Assembly on constitutional provisions, important single acts and general decisions. A federal decree that is not subject to approval by referendum is called a "simple Federal decree".

FEDERAL LAW / FEDERAL ACT Decree of the Swiss Federal Assembly.

FINANCE REFERENDUM [PCR, LOR] A popular referendum on parliamentary decisions on public expenditure, also referred to as the "referendum on public expenditure". Any parliamentary decision which involves the expenditure of public money can be the subject of a finance referendum. Although the finance referendum does not exist at the Swiss national (federal) level, it is widely used at both cantonal and local levels.

I

INDIRECT COUNTER-PROPOSAL A proposal which is not presented as a formal alternative to an original initiative proposal. In Switzerland the indirect counter-proposal may come from parliament or the government and enters the decision-making process a a different level than the original initiative, i.e. the initiative aims at making a change at the constitutional level, whereas the indirect counter-proposal is a proposal to change a law.

INDIVIDUAL INITIATIVE In the canton of Zurich an initiative can be launched by a single individual. The initiative will go to (referendum) ballot if it is supported by the Cantonal Council.

INITIATIVE Designates a certain type of popular vote procedure (the IRI typology distinguishes three types: initiative, referendum, and plebiscite). Initiative procedures are characterized by the right of a minority, normally a specified number of citizens, to propose to the public the introduction of a new or renewed law. The decision on the proposal is made through a popular vote. Note: the agenda initiative fits into this type of procedure only with respect to its initial phase. What happens next is decided by a representative authority.

INITIATIVE COMMITTEE The proponents of the initiative. In Switzerland an initiative must be submitted by a minimum of 7 and (since 1997) a maximum of 27 sponsors. The bigger number ensures that one representative from each canton can be part of the committee. An absolute majority of the sponsors has the right to withdraw the initiative.

L

LEGALITY CHECK See admissibility of initiative.

M

MANDATORY REFERENDUM [LOR] See obligatory referendum.

MODERN DIRECT DEMOCRACY Modern Direct Democracy gives citizens the right to exercise popular sovereignty also between elections by voting on substantive issues. Originally it meant direct legislation by the people through the right of initiative and referendum. Direct democracy decides on substantive issues, not on people (representatives). In this perspective recall popular votes do not belong to direct democracy. Direct democracy is meant to empower people, not governments. We therefore do not include plebiscites in our definition of direct democracy. If plebiscites are included, the concept of direct democracy becomes more heterogeneous, even Janus-faced, since it includes procedures designed to enhance the power of certain representatives and procedures designed to give more power to the citizens. Such a concept of direct democracy embraces both instruments for people to implement democracy and instruments for power holders using people as means for an end other than the achievement of democracy.

O

OBLIGATORY REFERENDUM [LOR] This direct democracy procedure is triggered automatically by law (usually the constitution) which requires that certain issues must be put before the voters for approval or rejection. A conditional obligatory referendum means that a specified issue must be put to the ballot only under certain conditions (for example, in Denmark the delegation of powers to international authorities is decided by popular vote if more than half but less than four-fifths of the parliament accept such a bill, and if the government maintains it). Unconditional referendums are without loopholes (for example, in Switzerland changes to the constitution must always be decided by a popular vote).

OPTIONAL REFERENDUM [PCR] See popular referendum.

ORGANISER See initiative committee.

P

PARTICIPATION QUORUM See turnout quorum.

PARTICIPATORY DEMOCRACY See direct democracy.

PEOPLE'S INITIATIVE See popular initiative.

PETITION In Switzerland the federal authorities must acknowledge a petition, but need not respond to it. Many European countries have the petition or mass petition right as a non-binding request by citizens. In the United States, however, the term petition is also used as a synonym for a citizens' initiative. A petition may contain a proposal, a criticism or a request, and the subject-matter may be any state activity.

PETITION CIRCULATORS See signature gatherers.

PLEBISCITE Designates a certain type of popular vote procedure (the IRI typology distinguishes three types: initiative, referendum, and plebiscite). A plebiscite is a public consultation controlled "from above". It is the powers that be (the president, prime minister, parliament) which decide when and on what subject the people will be asked to vote or give their opinion. Rather than being an active subject in control of the procedure, the people/popular votes become a means to an end which is determined by a representative authority. Plebiscites give ruling politicians additional power over citizens. They are used to evade responsibility for controversial issues which have become an impediment; to provide legitimacy for decisions those in power have already taken; to mobilize people behind rulers and parties; and they are used by an authority to bypass another representative authority. The aim of a plebiscite is not to implement democracy, but to reinforce or salvage those in power with the help of "the people". The IRI typology distinguishes be-

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tween two forms of plebiscite: plebiscite and veto-plebiscite (Authorities' controlled popular vote) (ATP).

POLITICAL RIGHTS Political rights are the fundamental rights of the People under democracy. They enable citizens of voting age to participate in the shaping of law and politics in the state. Political rights include the right to vote and the right to participate in elections, as well as the right to submit a popular initiative or referendum request and the right to sign such a request.

POPULAR ASSEMBLY Assembly of eligible voters. One of the oldest (pre-modern) forms of democracy, still practised today in Appenzell Inner-Rhodes and Glarus. The eligible voters of a canton or a commune gather in the open air on a certain day in order to elect the government and reach decisions about laws and public expenditure. Everyone has the right to speak on any issue. Voting is by show of hands, which does not respect the secrecy of the vote. In Glarus and Appenzell Inner-Rhodes a secret vote can, however, be requested.

POPULAR INITIATIVE [PCI] A direct democracy procedure and a political right that allows a given number of citizens to put their own proposal on the political agenda. The proposal may be, for example, to amend the constitution, adopt a new law, or repeal or amend an already existing law. The procedure is initiated by a prescribed number of eligible voters. The sponsors of a popular inititive can force a popular vote on their proposal (assuming that their initiative is formally adopted). The initiative procedure may include a withdrawal clause, which gives the sponsors the possibility to withdraw their initiative, for example in the event that the legislature has taken action to fulfil the demands of the initiative or some of them. This procedure may operate as a means of innovation and reform: it allows people to step on the gas pedal. In principle, initiatives enable people to get what they want. In practice, popular initia-

tives (like popular referendums) are a means of synchronizing the citizens' view with the politicians' view.

POPULAR INITIATIVE + AUTHORITIES' COUNTER-PROPOSAL [PCI+] Within the framework of a popular initiative process a representative authority (normally parliament) has the right to formulate a counter-proposal to the initiative proposal. Both proposals are then decided on at the same time by a popular vote. If both proposals are accepted, the decision on whether the initiative proposal or the authority's counter-proposal should be implemented can be made by means of a special deciding question.

POPULAR REFERENDUM [PCR] A direct democracy procedure and a political right that allows a specified number of citizens to initiate a referendum and let the whole electorate decide whether, for example, a particular law should be enacted or repealed. This procedure acts as a corrective to parliamentary decision-making in representative democracies and as a check on parliament and the government. The "people" or demos (i.e. all those with the right to vote) has the right to decide in retrospect on decisions made by the legislature. Whereas the popular initiative works like a gas pedal, the popular referendum gives people the possibility to step on the brakes. In practice, popular referendums (like popular initiatives) are a means of synchronizing the citizens' view with the politicians' view.

POPULAR REFERENDUM + COUNTER-PROPOSAL [PCR+] This direct democracy procedure combines a popular referendum against a decision by an authority with a referendum on a counter proposal. If both proposals are accepted, the decision between the two can be made by means of a deciding question.

POPULAR SUBMISSION The "Volksmotion" (popular submission) is used in several Swiss cantons. The submission, bearing the signatures of a prescribed minimum number of registered

voters, requests the cantonal government to draft legislation or adopt a particular measure. In practice, the cantonal parliament treats the Volksmotion in the same way as it does a parliamentary motion (a motion signed by members of the cantonal parliament). In the cantons of Schaffhausen and Solothurn a Volksmotion needs a minimum of 100 signatures, in the canton of Fribourg at least 300. In Solothurn the popular submission is called a "Volksauftrag".

POSTAL VOTING Method of voting in which voters send their ballot papers to the office responsible for the vote by post instead of going to a polling station to vote.

PROPONENTS See initiative committee.

PUBLICATION OF THE INITIATIVE The act of making a proposal for an initiative public by the appropriate authority after it has been registered and checked for compliance with the substantive and formal requirements of registration.

Q

QUALIFIED MAJORITY A majority requirement demanding that for a proposal to be passed, it must receive a proportion of the vote in excess of 50% plus 1 – for example $^2/_3$ or $^3/_4$.

R

RECALL A procedure that allows a specified number of citizens to demand a vote on whether an elected holder of public office should be removed from that office before the end of his/her term of office.

REFERENDUM Designates a certain type of popular vote procedure (the IRI typology distinguishes three types: initiative, referendum, and plebiscite). The referendum is a direct democracy which includes a popular vote on a substantive issue (ballot proposal) such as, for example, a constitutional amendment or a bill; the voters have the right to either accept or reject the ballot proposal. The procedure is triggered either by law (→ obligatory referendum),

by a specified number of citizens (→ popular referendum), or by a minority in an authority (→ authorities' minority referendum). Note: a popular vote procedure, which is triggered and controlled exclusively by the authorities, is not a referendum but a plebiscite.

REFERENDUM BOOKLET Also known as the "Explanation from the Federal Council". In Switzerland, a pamphlet or booklet in which the proposal(s) being submitted to the voters are explained and which includes the arguments of the committee responsible for the initiative or referendum together with the opinion of the Federal Council is published by the Federal Chancellery in the four official national languages and sent to all eligible voters via the communes (local authorities) along with the other voting documents three to four weeks before the voting day.

REFERENDUM ON INTERNATIONAL TREATIES [PCR, LOR] At the Swiss national level, all international treaties which are of unlimited duration and which may not be terminated, provide for accession to international organisations or introduce a multilateral harmonisation of law are subject to the optional referendum. Accession to organisations for collective security or to supranational communities is subject to mandatory referendum. Most cantons also have a special referendum dealing with sovereign treaties with other cantons or foreign states. In both the federal and cantonal cases, it is not the treaty as such which is subject to referendum, but parliament's agreement to the treaty.

REFERENDUM ON PUBLIC EXPENDITURE [PCR] see Finance referendum.

REFERENDUM PROPOSAL [PPR] This procedure is characterized by the right of a prescribed number of eligible voters to propose to a competent authority the calling of a popular vote on a specified issue; note that the demand is addressed to a representative authority (usually parliament – local or national) which decides about further action.

REFERENDUM REQUESTED BY THE CANTONS [AMI] In Switzerland, an optional referendum that is held when a minimum of eight cantons decide to request the same.

REGISTRATION OF A POPULAR INITIATIVE The act of depositing an initiative for publication and collection of signatures, whereby the legal process of the initiative is officially started. In Switzerland registration is made at the Federal Chancellery.

REJECTIVE REFERENDUM [PCR] A popular referendum which may either retain or repeal a law or decree that has been agreed by the legislature but has not yet come into force.

REPRESENTATIVE DEMOCRACY Traditionally and conceptually representative democracy has been understood mainly as a purely indirect democracy, in which elected representatives make decisions on behalf of the citizens, monopolising the right to decide the political agenda and substantive political issues. In practice and increasingly also conceptually, democracy is based on both indirect (parliamentarian) and direct or participative forms of agenda-setting and decision-making. Hence a new understanding is emerging according to which a truly representative democracy is a democracy combining indirect and direct forms of citizen participation.

RIGHT TO VOTE Right to participate in a (referendum) vote. At the Swiss national level, the right of citizens of voting age to participate in popular votes at the federal level. Exceptionally, foreigners holding residence permits are also permitted to vote at the cantonal or communal level. Anyone who has the right to vote also has the right to participate in elections.

S

SIGNATORY An eligible person, who signs or supports an initiative.

SIGNATURE GATHERING (OR COLLECTION) The process of gathering signatures. Often this process starts with the registration or filing of an initiative and ends after a certain amount of time or with the submission of signatures.

SIGNATURE GATHERERS / COLLECTORS People who gather signatures in public. In the US most signature gatherers are paid, while this concept is still relatively unknown in the rest of the world.

STATEMENTS OF SUPPORT The terminology used in the framework of the European Citizens' Initiative as a synonym for signatures.

T

THE SWISS CONFEDERATION The Swiss Confederation is the official name for Switzerland. In day-to-day Swiss usage, the full name is often abbreviated to "Confederation" (Eidgenossenschaft): it stands for the country as a whole – People, government and authorities. When the reference is specifically to the government, parliament and authorities alone, the term "Federation" (Bund) is employed.

TITLE The formal name given to the proposal in a popular initiative or citizen-initiated referendum. In U.S. states, it is often given along with a summary of the measure that appears on petitions and the ballot. In Switzerland, the proponents of an initiative can choose the title of the initiative as long as it respects certain legal requirements.

TURNOUT The number of those who actually vote, usually expressed as a percentage.

TURNOUT QUORUM The minimum number of voters that have to take part for a ballot to be valid.

U

UNITY OF SUBJECT MATTER When voting in referendums, Swiss voters have only two options (other than deciding not to vote at all): they can vote either "Yes" or "No". In order to ensure that voters' voting intentions are completely freely expressed and unequivocal, there is a re-

quirement for the referendum issue/proposal to be reduced to a single political question. The principle of unity of subject matter applies to all referendums, regardless of whether they result from a popular initiative or are mandatory referendums.

V

VETO-PLEBISCITE (AUTHORITIES' CONTROLLED POPULAR VOTE) [AVP] A popular vote procedure whose use lies exclusively within the control of the authorities. In this form the author of the ballot proposal and the initiator of the procedure are NOT the same. For example, a government or a president may oppose (veto) a decision of parliament and refer it to a popular vote; hence the name veto plebiscite.

VOTING SLIP See ballot paper.

W

WITHDRAWAL OF AN INITIATIVE A procedure that allows the proponents of an initiative to withdraw their proposal. In Switzerland a popular initiative can be withdrawn by the initiative committee. At the federal level, withdrawal is permitted only up to the time when the government announces the date for the referendum. An initiative presented as a general proposal can no longer be withdrawn once the Federal Assembly has approved it.

IRI Europe was founded ten years ago in Amsterdam/the Netherlands. The Institute's main mission is to develop insights into the theory and practice of direct democracy among politicians, the media, NGOs, academics and the public throughout Europe.

IRI Europe is an independent, non-partisan and non profit-making think-tank established in 2001. The global headquarters were moved to Marburg/Germany in 2005. Since the early days of this millennium IRI has assisted and advised the EU constitution drafters – first in the Convention, subsequently in the EU institutions and member states, and finally within the electorates across Europe – in seizing the opportunity of developing democratic tools which are both issue-based and pan-European. As a key result of this work, the first transnational direct-democratic tool – the European Citizens' Initiative (ECI) – was established in 2011.

IRI Europe is today the premier research and educational institute focusing on the initiative and referendum process across Europe. With a comprehensive network of experts and correspondents throughout the region, the Institute is uniquely equipped to provide the know-how and the tools Europe (and the wider world) needs. IRI Europe's informational and educational materials include handbooks and guidebooks, toolkits for free and fair popular votes (referendums), as well as dedicated materials for schools. In all its projects IRI Europe cooperates closely with partners from civil society, governmental institutions and international players.

Beyond its European focus the Institute has developed a fully-fledged network of cooperations across the globe. IRI experts have been involved in developing a worldwide database on direct-democratic mechanisms and a Handbook on Direct Democracy for practioners in governments, parliaments, political parties, media, academia and civil society, prepared and published by the International Institute for Democracy and Electoral Assistance.

The Institute is led by journalists, politicians, academics and civil society experts from different political parties, backgrounds and countries. A small team of staff coordinates IRI Europe and oversees its growing range of international projects. The Institute has an open approach to cooperation and has developed a far-reaching reputation as Europe's Direct Democracy Think Tank.

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- developing its world-renowed IRI GUIDEBOOK into a reference work and entry point into the issue available in many languages, featuring by the beginning of 2011 versions in Chinese, Korean, English, Spanish, French, German, Italian, Finnish and Hungarian.
- offering tailor-made and award-winning BRIEFING TOURS to Modern Direct Democracy procedures and practices in Switzerland and Europe, offering intensive crash-courses in the use of initiative and referendums.
- creating new programmes at the IRI RESEARCH CENTER in Marburg looking into the local use of DD mechanisms across the world and preparing the launch of an INTERNATIONAL JOURNAL on MODERN DIRECT DEMOCRACY.
- continuing its efforts to assist Europe in becoming more democratic by advising Europeans on the newly established EUROPEAN CITIZENS' INITIATIVE RIGHT introduced in the European Union's Lisbon Treaty.
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For more information on our publications, events and programmes check out our Web services at www.iri-europe.org and/or contact us by writing to info@iri-europe.org

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GUIDEBOOK TO DIRECT DEMOCRACY

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