

# REFERENDA AROUND THE WORLD

## History and Status of Direct Democracy

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### PREFACE

The first time I ever voted was the United States' 2000 presidential election. The contest was close leading up to November 4<sup>th</sup>. It was not clear who would become the next president of the United States. On the election night, a good friend and I waited up late to see what the result would be. The results came in from the eastern US to the west, but still no victor was declared. Then, Al Gore was pronounced the next president of the United States—only to have the media admit that pronouncement was too hasty shortly thereafter. And so into the night, the following days, the following weeks, and over a month later it was still unknown who would be the next president.

Although I did not realize it at the time, the closeness of the 2000 presidential contest was not the only exceptional feature of my first experience with elections. Not only had I given my opinion on who the next leaders should be, but I also made decisions on 32 state ballot measures, 20 of which were initiated by citizens, (as well as additional local ones)<sup>1</sup>. Unlike most places in the world, my home of Oregon is a hybrid of direct and representative democracy. Not only do Oregonians select individuals to make decisions on their behalves, but they directly make decisions by voting on referendums and initiatives. This paper will explore where and when this exception to representative democracy came to be.

### INTRODUCTION

We live in an increasingly democratic world. “In 1980, only 46% of the world’s population, in 54 countries, enjoyed the benefits of democracy. Today, more than two-thirds of people—72%, in 133 countries—belong to the “democratic” world.”<sup>2</sup> People around the world increasingly live in societies where human rights are protected and freedoms are ensured. They can increasingly count on having a say in how their societies are run through free and fair elections for representatives. Additionally, they can increasingly have a direct say in the policies and direction their societies will take through referenda<sup>3</sup>. “Over the past 25 years participatory democracy has experienced an enormous boom. More than half of all referendums ever held in history fall into this period.”<sup>4</sup>

But what will come from the political transformation towards direct democracy? Are we on the road to irresponsible majority tyranny?<sup>5</sup> Or are we moving to a better, more

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<sup>1</sup> Oregon Secretary of State, 2009

<sup>2</sup> Kaufmann, Büchi, & Braun, 2007, p106

<sup>3</sup> I use the term “referenda” to refer to any of the various *systems* of putting issues before voters; I use “referendums” to refer to the electoral events.

<sup>4</sup> Kaufmann, Büchi, & Braun, 2007, p199

<sup>5</sup> Haskell, 2001

just future?<sup>6</sup> Or are referenda just a minor reform unlikely to lead to big changes?<sup>7</sup> To answer these questions—in order to identify what can be expected empirically from more direct democracy—I first must discover which polities have been shaped most deeply by direct democracy. Whatever effects direct democracy has on society may take time to develop. Thus, ideal places to study will be polities with extensive history with direct democracy. Additionally, polities that have extensive forms of direct democracy should be more affected than societies with few forms of rarely used, or unusable, referenda. Thus, this paper will explore the global history and current status of referenda in order to identify the best cases for study.

#### TYPES OF REFERENDA

The first referendum was held in 1640 in the Massachusetts Bay Colony.<sup>8</sup> Since 1793, 1,430 national referendums have been held for numerous purposes and under a variety of regimes.<sup>9</sup> Referendums have been called to address constitutional, territorial, moral or other issues.<sup>10</sup> While many have occurred under democratic regimes, authoritarian regimes have also held their share of referendums. “From the time of Napoleon... the referendum had been used to provide popular legitimacy not for democratic government, but for dictatorship.”<sup>11</sup> Some of the world’s most ruthless governments, such as Nazi Germany or Communist Romania, have held referendums. This may lead one to question if referendums are democratic at all, let alone incarnations of direct democracy.

Much like representative democracy, the quality of direct democracy varies greatly. One cannot assume a country is a healthy representative democracy because of the presence of an elected leadership, nor can one assume a country is a healthy direct democracy because of the presence of a referendum. For instance, Iran holds elections to choose the country’s leadership; however, few would classify Iran as a true representative democracy on this basis alone.<sup>12</sup> When the choice of candidates, their abilities to campaign, and the results are fraudulent—although we might recognize it as more democratic than a system that allows no candidates, no campaigns and no votes at all—it would only be very marginally democratic.

Likewise, direct democracy can also be a very marginal affair. Governments can control the choice of issues brought to referendums, can limit the ability of opposing views to campaign, can produce fraudulent results, or dismiss results completely. “Although referendums appear to be the ultimate method for checking the pulse of democracy, they are inherently limited by the machinations of elites who can decide if and when to hold them, what will be asked, what will be said through media, how success will be defined, and whether to abide by the results.”<sup>13</sup> While any referendum might be more direct democratic than no referendums, no campaigns and no voting directly on decisions, it may be only very marginally so. In fact, we shall see that such authorities’

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<sup>6</sup> Budge, 1996

<sup>7</sup> Goebel, 2002

<sup>8</sup> Zimmermann, 1986, p35

<sup>9</sup> Kaufmann, Büchi & Braun, 2007, p199

<sup>10</sup> Butler & Ranney, 1994, p2

<sup>11</sup> Butler & Ranney, 1994, p48

<sup>12</sup> Intelligence Unit, 2008

<sup>13</sup> Butler & Ranney, 1994, p215

referendums (often derisively called plebiscites) have been the norm rather than the exception in polities around the world.

“In general, where the government has discretion as to whether to call a referendum, the referendum will strengthen the government... Thus, for an evaluation of the political consequences of the referendum, it is necessary to identify which person or institution triggers the decision to call one and what discretion that person or institution has in making the decision.”<sup>14</sup> As we will see, almost all polities that have held referendums have done so on an ad hoc basis. Even if called by leaders of representative democracies, when the leisure to call one is solely in the hands of representatives, referendums are little more than marginal instances of direct democracy. Although representatives may misjudge what the results will be, they are held primarily on questions officials believe they can win, that they feel need more legitimacy, to attack their opposition or to avoid issues that they find internally divisive.

Many researchers have explored the types of referenda that exist around the world. Nearly every work has slightly different schema and definitions for initiatives, referendums and plebiscites based on who controls them, how they proceed and what the results mean. This paper will use a schema based on the Initiative and Referendum Institute Europe’s definitions (see Table 1).<sup>15</sup> In this schema, referendums refer to votes held on laws passed by representatives; initiatives to proposals for laws by citizens; and, counter proposals to alternatives to other laws also undergoing a popular vote. Referenda

<b>Table 1: Types of Referenda</b>	
<b>Referendums:</b> <i>The right of citizens to either reject or accept a decision made by an authority.</i>	
<b>Obligatory Referendum</b> <i>(initiated by constitution)</i>	Certain decisions, most commonly constitutional amendments, automatically require popular approval.
<b>Popular Referendum</b> <i>(initiated by citizens)</i>	The right of citizens to demand popular approval of a decision.
<b>Authorities’ Referendum</b> <i>(initiated by an authority)</i>	The right of an authority to submit its decisions to a popular vote. The authority may be a president, the legislature or a minority in the legislature.
<b>Popular Referendum Proposal</b> <i>(initiated by citizens)</i>	The right of citizens to petition the authorities to reconsider their decision. The authorities have the right to accept or ignore the petition.
<b>Initiatives:</b> <i>The right of citizens to propose a new decision.</i>	
<b>Popular Initiative</b> <i>(initiated by citizens)</i>	The right of citizens to formulate a issue and demand a popular decision on it.
<b>Popular Proposal</b> <i>(initiated by citizens)</i>	The right of citizens to petition the authorities to make a decision or hold a referendum on an issue they have formulated. The authorities have the right to accept or ignore the petition.
<b>Counter-proposals:</b> <i>The right of citizens to accept or reject alternatives to a decision.</i>	
<b>Popular Counter-Proposal</b> <i>(initiated by citizens)</i>	The right of citizens to formulate alternative proposals to another referendum that are put to a popular vote along with original.
<b>Authorities’ Counter-Proposal</b> <i>(initiated by an authority)</i>	The right of an authority to formulate alternatives to another referendum that are put to a popular vote along with the original. The authority may be a president, the legislature or a minority in the legislature.

<sup>14</sup> Butler & Ranney, 1994, p31

<sup>15</sup> Kaufmann, Büchi & Braun, 2007, p193-4

that are obligatory or popularly-initiated are of the most interest for identifying polities most effected by direct democracy, as citizens have the most control in the decision-making in such situations and this power cannot be bypassed by elites.<sup>16</sup>

However, the mere legal presence of obligatory referendums, popular referendums, popular initiatives or popular counter-proposals does not indicate a polity has been deeply shaped by the presence of direct democracy. Although popular referenda might be legally allowed, there are a number of ways to make them practically unworkable. The petitioning process, the electoral success criteria or the implementation of the result all provides areas to place obstacles. Common ways this is accomplished can be found in Table 2. Technical legality, but functional unworkability will become a common theme as we look at the status and history of referenda around the world. This paper begins with the first direct democratic polity: Switzerland.

<b>Table 2: How Referenda are made Practically Unworkable</b>	
Aspect of popular referenda:	Method: <sup>17</sup>
topics	Topics restricted from referenda (but not from representatives).
number of signatures	Extremely high percents of citizens required.
filing to begin petition	Monetary deposit may be required; or signatures need to be collected for a petition to begin the official petition.
voter turnout	High turnout thresholds are required.
binding	Results are only “advisory” rather than binding.
time limit	Signatures must be acquired in short periods.
popular proposals/ popular referendum proposals	Is merely a petition sent to the government.
unenabled	Required by constitution but never enabled by legislation.
signature collection location	Signatures can only be collected at government offices.
governmental review	Government (especially courts) has high levels of discretion in rejecting initiatives.
timing of vote	Government indefinitely delays a popular vote.
right removed	When government is challenged by referendum it does not want, it simply cancels the law allowing for referenda.

#### EUROPE – SWITZERLAND

Europe has accounted for about 2/3<sup>rds</sup> of all the national referendums held in world.<sup>18</sup> However, this is largely due to, Switzerland, which alone accounts for more than a third of all the national referendums in the world,<sup>19</sup> and 2/3<sup>rds</sup> of those held in democratic societies.<sup>20</sup>

Switzerland’s history with direct democracy goes well beyond the period of modern nation states. After the Swiss Union in 1291, popular assemblies, called Landsgemeinde spread through rural Swiss cantons (provinces). All male voters were required to attend

<sup>16</sup> Recalls are not considered within this paper. Although recall reforms are often promoted by the same people that promote referenda, they make representative government more accountable by allowing citizens to both elect, and “unelect,” a representative. They do not involve citizens directly in decision-making, but instead make the indirect system more accountable.

<sup>17</sup> Zimmermann, 1986, p46-78; Hwang, 2006, p339-375; Madroñal, 2005; Kaufmann, Büchi & Braun, 2007, 183-185

<sup>18</sup> Kaufman & Waters, 2004, p140

<sup>19</sup> Kaufman & Waters, 2004, p140

<sup>20</sup> Kobach, 1993, p1

annual meetings where decisions were made by show of hands. Switzerland is thus held as one of the three traditional examples of direct democracy by assembly (the other two being New England and Ancient Athens). The urban cantons, however, were more oligarchic and aristocratic.<sup>21</sup>

The modern Swiss nation formed after conquest by Napoleon in 1797-1798. Although the democratic rural cantons rebelled upon conquest, the urban cantons saw the end of patriarch rule and the expansion of suffrage. Switzerland quickly passed through a number of constitutions, and held its first referendum to approve one. It was an undemocratic authorities' referendum arranged by Napoleon Bonaparte in which absentions counted as yes votes.<sup>22</sup>

Following Napoleon's downfall, a conservative confederacy was formed. In the 1830s, liberal coups spread from canton to canton. These liberals established new canton constitutions via referendums that set up systems for popular referendums and initiatives. The establishment of referenda popularized and legitimized the liberals, and the system was seen as alternative to the traditional *Landsgemeinde*, which population growth had made increasingly difficult.<sup>23</sup>

The national referendum was created as the result of the Sonderbund War, triggered by radical liberal attacks on the Catholic Church. Although there were extremely few casualties in this short "war," it did result in a new conciliatory constitution with a national referendum in 1848. For some cantons, this was their first experience with referendums, and more cantons legalized referenda as well. By 1874, groups excluded from power (conservatives) had achieved a constitutional reform that allowed for popular national referendums. Popular referendums were actively used as a brake by conservatives to oppose liberal legislation. In 1891, the popular initiative was enacted, although it was not desired by the ruling liberals.<sup>24</sup>

After conservatives joined the ruling government, the initiative and referendum has since been used by other excluded groups to influence government. Interest groups are use their ability to call a referendum (or threaten to do so) if they are not satisfied with legislation.<sup>25</sup> Social democrats used referendums to influence policy and eventually joined the government through a successful proportional representation popular initiative. "Like the Catholics, the Social Democrats had used direct democracy as political outsiders in their bid to win an insider role in the Swiss political system."<sup>26</sup> Fascists also tried (and failed as their initiatives were not accepted by voters).<sup>27</sup>

Today, new outsiders (such as the anti-foreigner and environmental movements) continue to influence policy via referenda.<sup>28</sup> The federal government holds 2-4 elections a year, with 6-12 measures a year.<sup>29</sup> However, the cantons have been and continue to be the innovators in the expansion of direct democracy.<sup>30</sup> "Nearly 1½ centuries of

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<sup>21</sup> Kobach, 1993, p17-18

<sup>22</sup> Kobach, 1993, p18-21

<sup>23</sup> Kobach, 1993, p22

<sup>24</sup> Kobach, 1993, p24-29

<sup>25</sup> Kobach, 1993, p31-32

<sup>26</sup> Kobach, 1993, p34

<sup>27</sup> Kobach, 1993, p35

<sup>28</sup> Kobach, 1993, p41

<sup>29</sup> Kobach, 1993, p1

<sup>30</sup> Kobach, 1993, p30;41

referendums at the national level have profoundly influenced Swiss political culture and institutions. Clearly, the consequences in Switzerland are unlikely to be duplicated precisely in nations that use referendums only infrequently.”<sup>31</sup>

#### EUROPE – WESTERN

Although Switzerland dominates Europe in the use of referenda, especially when it comes to their most direct democratic forms—the popular referendum and the popular initiative—referendums have been held in nearly every other European country as well. In fact, by 1994 only 3 countries had no referenda provision in their constitutions (Belgium, Netherlands and Norway) and only one had never held a referendum (the Netherlands)<sup>32</sup>.

One of the first experimenters was France. Dictators, such as Napoleon, Napoleon III and Marshall Petain all held, or planned to hold, referendums.<sup>33</sup> Later de Gaulle, “domesticated the referendum, so that it was no longer associated with dictatorship.”<sup>34</sup> Instead, he used it to legitimate and expand his power as a leader in representative democracy. Referendums remain in control of ruling elites in France, and so while they allow citizens to occasionally have a direct say, it is done under the control of authorities, be it authoritarian or representative democracy. Even when it has come to policy, (for instance Mitterrand used it to decide European Community membership,) the purpose has been to divide the opposition.<sup>35</sup> France, although the originator of the authorities’ referendum, has not expanded direct democracy beyond this limited form.

Sweden demonstrates one way authorities’ referendums can be very weak forms of direct democracy: through the lack of binding results. Several authorities’ referendums have been held over the years whose results have been largely ignored. For instance, in 1955 a referendum was held on changing from right-hand to left-hand driving. More than 80% of voters rejected the change, but it was nonetheless instituted. Another example would be the 1980 nuclear energy referendum. Parliament first reinterpreted the result to mean a phase out of nuclear energy by 2010 (although this was not mentioned in the options). Since then, they have not even followed their reinterpretation of the results, as nuclear power continues to provide about half the nation’s electricity needs.

The United Kingdom is an unusual democracy in that it lacks a constitution or checks on the power of parliament. Conservatives promoted popular referendums and initiatives at the turn of the 20<sup>th</sup> century as an impediment to potential radical reforms<sup>36</sup>. However, popular referenda were not created and the United Kingdom demonstrates how authorities’ referendums “can be used by the political class in its own interest.”<sup>37</sup> The Labour party have used referendums as a way to avoid internal division in the party by putting decisions to popular votes. This allowed the party to avoid internal fights over European Community membership, and the devolution of the kingdoms.<sup>38</sup>

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<sup>31</sup> Kobach, 1993, p7

<sup>32</sup> Butler and Ranney, 1994, p25

<sup>33</sup> Butler and Ranney, 1994, p48

<sup>34</sup> Butler and Ranney, 1994, p48

<sup>35</sup> Butler and Ranney, 1994, p56

<sup>36</sup> Butler and Ranney, 1994, p34-35

<sup>37</sup> Butler and Ranney, 1994, p74

<sup>38</sup> Butler and Ranney, 1994, p41-43

Ireland was a leader in popular legislation. Its 1922 constitution allowed for popular initiatives and referendums. However, the constitution could also be amended by the legislature without a required referendum. Thus, when a petition was started for a popular referendum on a treaty, the government responded by simply amending the constitution to disallow popular referendums and initiatives.<sup>39</sup> Despite this anti-democratic blow, Ireland today has one of the stronger claims to direct democracy in Europe, as constitutional amendments now require obligatory referendums. “The people, although hardly the ‘masters’ of the Irish Constitution, as De Valera claimed, nevertheless enjoy a considerable amount of power, since their assent is required for any amendment to the Constitution.”<sup>40</sup>

Italy has had one of the biggest surges in the strength of direct democracy.<sup>41</sup> Today, “Italy is the only West European democracy (excepting Switzerland) in which the people can themselves trigger a referendum.”<sup>42</sup> The 1948 constitution allows any law to be put to a popular referendum, with no time limit. Thus, its popular referendum functions nearly as deeply as a popular initiative, as there is nearly always some related law to be overturned, and petitioners have been able to demand what its replacement will be. However, for many years this power was still-born. Until 1970, although required in the constitution, the conservative Catholic party was uninterested in implementing it in legislation. However, outsiders gained power at that time and the right was enabled.<sup>43</sup>

Since then referendums have been actively used and have transformed Italian politics by making unresponsive government respond.<sup>44</sup> Major reforms have been decided, such as divorce, abortion, anti-corruption and the end of proportional representation. However, the system retains major limits: it requires high turnout thresholds that allow opposition to reject any reforms by not participating; Italian media is monopolized;<sup>45</sup> and courts have taken an extremely liberal attitude to blocking votes (67 of 141 successfully completed petitions have been prevented from reaching the ballot.)<sup>46</sup> Nonetheless, Italy has become a leader in direct democracy in Europe and has been transformed in the process.

Germany made a major transition after unification and is becoming a new leader in popular referendums and initiatives in Europe as well. In 1989, the first municipality enacted a popular referendum and initiative law. By 2005, every municipality and Länder (German province) had enacted them. Since 1990, there have been 204 Länder initiatives, 4,200 municipal initiatives, and 2,000 municipal referendums. Nonetheless, the process varies from polity to polity. Some polities have signature and time limit requirements so high that no popular referendums or initiatives have been held. Thus, we see how direct democracy can be legislatively allowed, but prevented in practice.<sup>47</sup>

On a national level, Germany currently does not allow referenda. However, nearly 100 years ago during the Weimar Republic popular legislation was legally possible.

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<sup>39</sup> Butler and Ranney, 1994, p79

<sup>40</sup> Butler and Ranney, 1994, p86

<sup>41</sup> Kobach, 1993, p5

<sup>42</sup> Kobach, 1993, p62

<sup>43</sup> Kobach, 1993, p228-233

<sup>44</sup> Kobach, 1993, p233

<sup>45</sup> Kaufmann & Waters, 2004, p5

<sup>46</sup> Kaufmann, Büchi & Braun, 2007, p218

<sup>47</sup> Kaufmann, Büchi & Braun, 2007, 221-228

However, it was not practical due to high turnout requirements; the only two popular referendums held were both discounted. Nazi Germany held three authorities' referendum to entrench its rule, which, like all authorities' referendums, but especially those held under undemocratic conditions, have limited direct democratic depth.<sup>48</sup> Nonetheless, the local governments in Germany today are among the most direct democratic in the world.

The micro-state of Liechtenstein deserves mention as well. The tiny population of 35,000 has nearly as strong popular referenda laws as anywhere else in the world. "However, the prince of the only direct-democratic hereditary monarchy in the world retains a right of veto and won a constitutional referendum in March 2003 after threatening to leave the country" if he lost.<sup>49</sup> Thus, the depth of it is limited by the non-binding (veto) power of authorities. In this unusual case, that authority is a monarch.

Overall, the Western European liberal movement for direct democracy stalled after the turn of the 20<sup>th</sup> century. "Switzerland, which before 1914 had been seen as one of the basic models of democratic government and had been regarded by democratic theorists of the nineteenth century as the direction in which all democracies had been moving, was almost forgotten. When remembered, it was seen as but a quaint anomaly. The sovereignty of the people was seen not only as an unattainable ideal, but also as an undesirable one."<sup>50</sup> After early pushes for direct democracy, as seen in Switzerland, Germany, Ireland and the UK, further reforms and increases in the usage of referendums did not come about until the 1970s. After suffrage was expanded and representative democracy built on mass parties became an entrenched system, political questions turned from democratic participation to the economic.<sup>51</sup> However, since the 1970s there has not only been a tremendous increase in the use of authorities' referendums, but also the obligatory referendum has spread to six European countries (Ireland, Denmark, Lithuania, Slovakia, Liechtenstein and Switzerland) along with expansion of popular referenda to another six nations (Italy, Slovenia, Latvia, Liechtenstein, Switzerland and Germany on the local level.)<sup>52</sup>

#### EUROPE – EASTERN

Eastern Europe has followed a different path than the West, but the explosion of referenda post-Communism is even more dramatic. Many Eastern European countries experienced their first referendums to determine territorial borders and nation-states after World War I.<sup>53</sup> After World War II, this tradition was not followed despite early Bolshevik enthusiasm, "Bolshevik practice soon departed from these principals, and no referendums were ever held" on nation-building issues.<sup>54</sup>

Only six referendums were held until the fall of Communism. Of course, all were authorities' referendums held under unfair conditions. Nonetheless, they do show how even these can have some minor direct democratic value.

<sup>48</sup> Kaufmann, Büchi & Braun, 2007, 221-226

<sup>49</sup> Kaufmann & Waters, 2004, p5

<sup>50</sup> Butler and Ranney, 1994, p92-3

<sup>51</sup> Butler and Ranney, 1994, p92-6

<sup>52</sup> Kaufman and Waters, 2004, p4

<sup>53</sup> Butler and Ranney, 1994, p175

<sup>54</sup> Butler and Ranney, 1994, p178

The first three were held in Poland immediately after the war. The ruling Communist authorities chose three questions, worded in a way they felt any Pole would agree to. However, exiled opposition encouraged a no vote on one of them. Announced results were 68% yes on this measure, but as one Communist leader later said: "I found out afterward that the results had been faked. In reality the situation was probably just the reverse."<sup>55</sup> While not to claim that this is a powerful demonstration of direct democracy, it does point out that even on authorities' referendums, the authorities do not know what the result may be and may end up discovering that even on their carefully engineered referendum they have been rebuked.

Few communist parties risked their legitimacy on referendums afterwards. Of the three other referendums before the fall, they all had extreme results. "The 1986 referendum in Romania, probably the most repressive of all Eastern European countries by then, included the nicety of signed ballots and produced the dark burlesque of no negative votes and only 228 nonvoters in an eligible electorate of over 17 million."<sup>56</sup>

Referendums spread rapidly as communism collapsed. The first was held in Poland. "The military regime of General Jaruzelski had been slowly building support for a form of consultative democracy in which elections, while not offering competitive candidates, provided voters a chance to indicate their loyalty to, if not approval of, the regime."<sup>57</sup> After council and Senate elections, "Jaruzelski decided that the successes of the 1984 and 1985 elections might be repeated in a referendum that would allow the regime to institute some painful reforms."<sup>58</sup> Although winning a plurality, the large numbers of people daring to vote no or simply abstaining, contributed to the collapse of communism in Poland (and Europe).

Hungarians, while negotiating the end of communism, took advantage of the popular initiative allowed under negotiations to push reform even further.<sup>59</sup> Later the Soviet Union would hold its first and last authorities' referendum under Gorbachev. Gorbachev was not able to stay in control of its design and various other leaders reworked it. In the end, "only Azerbaijan, Belorussia, Tajikistan and Turkmenistan presented the referendum to their citizens as Gorbachev had intended."<sup>60</sup> It was followed by numerous authorities' referendums on independence. Yugoslavia also held a large number of independence referendums from 1990-1993.<sup>61</sup>

Authorities' referendums are very weak forms of direct democracy. However, along with the reforms in Eastern Europe, came support for popular and obligatory forms as well. However, the formats enabled under new democratic constitutions tend to be practically ineffective, (i.e., non-binding, large number of signatures, only popular proposals, etc.) While greatly expanded, direct democracy remains limited in Eastern Europe.

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<sup>55</sup> Butler and Ranney, 1994, p182

<sup>56</sup> Butler and Ranney, 1994, p183

<sup>57</sup> Butler and Ranney, 1994, p184

<sup>58</sup> Butler and Ranney, 1994, p184

<sup>59</sup> Butler and Ranney, 1994, p186

<sup>60</sup> Butler and Ranney, 1994, p188

<sup>61</sup> Butler and Ranney, 1994, p207;209

### THE AMERICAS – THE UNITED STATES

Of nations that have been democracies since 1900, only the United States has never held a national referendum.<sup>62</sup> Thus, it may be surprising to discover that the United States has some of the longest history with, and most extensive use of, direct democracy in the world. This is due to its long history of active use within state and local government.

Like Switzerland, the United States had experience with another form of direct democracy before referenda: the popular assembly. New England town meetings allow all citizens to meet and decide issues. They have existed since colonial times, and continue to operate in small communities primarily in the Northeast.<sup>63</sup> Like all other popular assembly direct democracies, they are constrained to localities and in number of participants. Thus, it is not surprising that this tradition led to the world's first referendum in the Massachusetts Bay Colony in 1640.<sup>64</sup>

The founding of the United States saw a short-lived surge in the number of referendums, as states in the northeast had their new state constitutions approved by referendum. Citizens had freedom to reject them, and several required revisions before they were adopted.<sup>65</sup> By 1830 a norm for popular approval of constitutions was established. From 1830-1860 4/5<sup>ths</sup> were approved by referendum<sup>66</sup>. This became universal after 1860 (until the 1890s saw several non-popularly decided constitutions in the Jim Crow South.)<sup>67</sup>

As the early American leaders had great faith in representatives, and less in citizens, referenda were somewhat tentative affairs. Nonetheless, referendums were occasionally held in the Northeast (although courts would occasionally dismiss results and decide only representatives could make laws). Beyond authorities' referendums, obligatory referendums also took hold in the 1800s. Although most common for constitutional amendments (turn of the century 1899-1908 saw 472 constitutional amendments put to voters)<sup>68</sup>, by the mid-nineteenth century some states had obligatory referendums on taxes, debts or other policy<sup>69</sup>. Obligatory referendums, although representatives may design the law and determine when to hold it, still *must* pass through the citizens. Thus, citizens have a much stronger role in the decision-making process than under authorities' referendums. "Yet even though referenda had a long tradition in America, none of the previous reforms had lodged the power to initiate new laws directly with voters."<sup>70</sup>

Popular referendums and initiatives began to spread rapidly at the end of the nineteenth century. The Populist and Progressive Movements, believing legislatures were corrupt tools of corporations seeking unfair favors, sought to take away power from representatives and put it directly in their own hands. "When information about the existence of the [popular] initiative and referendum in Switzerland slowly filtered to the United States in the late 1880s and 1890s, American reformers enthusiastically embraced

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<sup>62</sup> Kobach, 1993, p1; (The Netherlands held its first in 2005.)

<sup>63</sup> Zimmermann, 1986, p68

<sup>64</sup> Zimmermann, 1986, p35

<sup>65</sup> Zimmermann, 1986, p35

<sup>66</sup> Goebel, 2002, p27

<sup>67</sup> Goebel, 2002, p92

<sup>68</sup> Goebel, 2002, p28

<sup>69</sup> Zimmermann, 1986, p35-37; Goebel, 2002, p29

<sup>70</sup> Goebel, 2002, p29

direct legislation as the solution to their problems.”<sup>71</sup> The reforms were most successful in the West where weak parties were overcome by coalitions of interests (like Single Taxers, Labor, Prohibitionists, Women Suffragists and farmer groups like the Grange) interested in putting their views directly before the people<sup>72</sup>. Although there were activists in the Northeast, a strong political establishment limited reform. Only a handful of states in the East adopted popular referenda, usually when “the established parties briefly lost their ability to control the political agenda, allowing reformers to step in and implement their program” often through constitutional conventions<sup>73</sup>. The South saw even less embrace of direct democracy. One party rule, weak interest groups and “a fear of black political empowerment stood as the basis of most of the resistance to direct legislation” in the Jim Crow South<sup>74</sup>.

From 1898-1918 nineteen states, all but three west of the Mississippi, adopted popular referenda or recalls.<sup>75</sup> The formation of the Progressive Party made the reforms a partisan issue, and ended the successful strategy of disparate coalitions. Since the flurry of reforms during the Progressive Movement, there has been slower growth in direct democracy in the United States in the second half of the 20<sup>th</sup> century. Today, all but one state (Delaware) require obligatory referendums for constitutional changes; 39 allow authorities’ referendums; 24 have the popular referendum; and 23 the popular initiative. Even more exist on county and municipal levels: there are approximately 10,000 local referendums per year in the United States.<sup>76</sup>

However, the quality varies greatly. While Oregonians have voted on 340 popular referenda,<sup>77</sup> Wyoming has only held seven due to the extreme number of signatures required.<sup>78</sup> While California has held 247 popular initiatives, it has not had a single popular referendum since 1952 due to restrictive time limits on signature gathering.<sup>79</sup> Nonetheless, the usage of direct democracy has increased greatly over the years. Still, while direct democracy has an extensive history in the United States, the depth of direct democracy varies greatly between states.

#### THE AMERICAS – CANADA

Western Canada nearly followed the Western United States in spread of referenda during the Progressive Movement. By the end of the nineteenth century, Canada and its provinces had held authorities referendums (primarily on prohibition). At this point, populists were demanding popular referendums, initiatives and recalls like in the US. Moreover, these activists were successful in passing referenda laws throughout Western Canada.<sup>80</sup>

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<sup>71</sup> Goebel, 2002, p23

<sup>72</sup> Goebel, 2002, p76-79

<sup>73</sup> Goebel, 2002, p104

<sup>74</sup> Goebel, 2002, p93

<sup>75</sup> Zimmermann, 1986, p37

<sup>76</sup> Kobach, 1993, p236

<sup>77</sup> Kaufmann, Büchi & Braun, 2007, p200

<sup>78</sup> Ballotpedia, 2009

<sup>79</sup> Kobach, 1993, p236

<sup>80</sup> Boyer, 1992, p78-94

However, governments blocked the laws from taking effect. One was declared unconstitutional under the argument that popular legislation took away the monarchy's rights. Another was simply never proclaimed by the monarch's representative and hence never took effect. A third existed unused until 1958. When a citizen sought information on how to use it, the legislature responded by overturning the law.<sup>81</sup>

While nearly following the US in popular referenda, Canada did not substantially add direct democracy to its political system. Authorities' referendums are held, (often only subsets of citizens are allowed to take part, for instance fruit growers or property owners).<sup>82</sup> There has also been the recent addition of the obligatory referendum for constitution changes in Western States.<sup>83</sup>

#### THE AMERICAS — LATIN AMERICA

Until recently, much of Latin America has had most of its experience with referendums under undemocratic regimes. Chile demonstrates how, while such referendums do not allow for high levels of citizen's direct decision-making, they do allow some. Pinochet, after seizing power conducted an authorities' referendum to legitimize his rule. He controlled the timing, wording, and held the referendum under undemocratic conditions. Pinochet conducted two more referendums on his legitimacy in following years. After unexpectedly losing the third one (1988), he conceded defeat ending military rule in Chile.<sup>84</sup> While weak in their power, Chilean citizens did have influence even under undemocratic authorities' referendums.

Latin America has seen a great increase in the use of referendums as it has democratized in recent years.<sup>85</sup> Many of the rewritten constitutions of the 1990s were approved via referendum, and more importantly, "most of the constitutions reformed during the nineties introduced varying levels of direct democracy."<sup>86</sup> Similar to elsewhere, these direct democracy additions were enabled by outsiders taking control of constitution process and leaders gaining power by promoting populism. Populist presidents were often instrumental (using the belief that legislators were beholden to interests other than citizens) in the push for direct democracy.<sup>87</sup> Most countries only include authorities' referendums or popular proposals. At most, they have obligatory referendums for constitutional changes. These limited forms of direct democracy have rather weak roles for citizens in the process.

However, Uruguay, Colombia, Guatemala and Venezuela have popular tools.<sup>88</sup> Most, though, are very weak in practice. For instance, Venezuela's requires high numbers of signatures that make it largely unworkable.<sup>89</sup> Also, "Colombia is a very instructive example of how mechanisms of direct democracy can be included in a constitution with

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<sup>81</sup> Boyer, 1992, p78-94

<sup>82</sup> Boyer, 1992, p190

<sup>83</sup> Boyer, 1992, p78-94

<sup>84</sup> Butler and Ranney, 1994, p7

<sup>85</sup> Madroñal, 2005, p3

<sup>86</sup> Madroñal, 2005, p4

<sup>87</sup> Barczak, 2001, p37-43

<sup>88</sup> Madroñal, 2005, p13

<sup>89</sup> Madroñal, 2005, p15

sufficient design flaws to make their real use impossible.”<sup>90</sup> In fact, there have been “only eight results from a popular initiative launched through the collection of voters’ signatures, and all of them in a single country: Uruguay.”<sup>91</sup>

Uruguay is the direct democratic leader in Latin America. Not only is Uruguay “the only country that already had direct democratic rights” before the 1990s, but it is the only country that has implemented popular referenda in a usable format.<sup>92</sup> The country has had history with referendums since the beginning of the 20<sup>th</sup> century.<sup>93</sup> Since emerging from dictatorship, it has joined the ranks of the few countries in the world with popular referenda. Although the system is still restrictive, it has at least proven useable, and has made Uruguay a leader in direct democracy.

#### ASIA – EAST ASIA

There have been a number of referendums in Asia, but many countries remain transitional democracies or authoritarian regimes. For instance, Central Asian countries have held a number of authorities’ referendums under questionable democratic situations. Even among democratic countries, such as India, only authorities’ referendums have been important.<sup>94</sup> However, there are several direct democratic innovators in Asia.

In South Korea, Japan and Taiwan, despite a lack of legal support, referenda have been hoisted on the governments by citizens angry over environmental concerns. In Japan, development decisions are often seen as corrupt and lack opacity.<sup>95</sup> Although local assemblies are allowed to hold authorities’ referendums, citizens have not been able to initiate popular ones. Japan’s first referendum occurred when there was a plan to build a nuclear power plant. “Citizens sought to wrest control of the administration of the local referendum from the mayor, and when they were denied, they held an independently run local referendum.”<sup>96</sup> This extra-legal referendum indicated major opposition; however, the authorities did not accept the result. The local council, then mayor, were replaced with pro-referendum representatives, who then held Japan’s first authorities’ referendum in 1996; the nuclear plant was not built.<sup>97</sup>

Similarly, in South Korea citizens were even more successful in their opposition to a nuclear waste site. Again, while local authorities could call an authorities’ referendum, the citizens found it necessary to hold an unofficial popular referendum. Unlike Japan, not only did the local authorities accept the result, the national government decided that any new nuclear waste sites must be decided via referendums. South Korea has followed its rule and placed nuclear wastes sites only after obligatory referendums were held.<sup>98</sup>

Like elsewhere in East Asia, Taiwan has held unofficial local referendums on environmental issues. However, extra-legal popular referendums are not limited to Asia.

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<sup>90</sup> Madroñal, 2005, p17

<sup>91</sup> Madroñal, 2005, p3

<sup>92</sup> Madroñal, 2005, p4

<sup>93</sup> Kaufmann, Büchi & Braun, 2007, p107

<sup>94</sup> Hwang, 2006

<sup>95</sup> Hwang, 2006, p313

<sup>96</sup> Hwang, 2006, p318

<sup>97</sup> Hwang, 2006, p319-320

<sup>98</sup> Hwang, 2006, p323-331

Colombia's new constitution came from one,<sup>99</sup> and this year Cataluña held one on independence<sup>100</sup>.

Taiwan demonstrates how a constitutional right to popular referenda can be made impractical through the need for enacting legislation. "In the ROC Constitution, Article 17 states, 'The people shall have the right of election, recall, initiative and referendum,' Article 136 states, 'The exercise of the rights of initiative and referendum shall be prescribed by law.'"<sup>101</sup> The rulers of Taiwan since 1949, (the 国民党,) upon losing control of their one-party military state, first simply opposed any law to enable the new right in legislation. Upon losing power, they sought to enable it without making it practical. A law was passed in 2003; "by international standards, it is a very restrictive law, which satisfies the pan-blue opposition camp's goal of disallowing the public to have a direct say on key national identity and interest issues as well as major legislation bills."<sup>102</sup> The most workable part is the president's ability to call an authorities' referendum. We will have to wait to see if the new system, despite limits, proves usable. So far, local authorities have taken advantage of their ability to hold authorities' referendums to challenge the policies of the central government.<sup>103</sup>

#### ASIA – OCEANIA

Two countries, Australia and New Zealand, require obligatory referendums on constitutional reforms. Both also allow authorities' referendums. New Zealand also allows the popular initiative, but a heavy signature threshold and a non-binding nature neuter its power.

Australia demonstrates the relative weakness of obligatory referendums. Even though they are required, and thus unavoidable by representatives, representatives control what they are, when they are held, etc. They thus can become a battleground of representative rather than direct democracy. In Australia, the opposition's representatives always advocate against referendums called by the majority, even if they must change their policy positions to do so.<sup>104</sup> In fact, at least five times "the two parties ended up campaigning against positions found in their own policy statements."<sup>105</sup> This is because they are treated as ways to challenge the opposing parties, and the aim is to try to make them lose legitimacy and thus power. Despite the relatively large numbers of referendums held in Australia and New Zealand, direct democracy remains limited.

The direct democratic leader in Asia is the Philippines. The history of direct democracy in the Philippines is not long, but "as the regional champion in the quantitative use of initiative and referendum processes, the Philippines always offers plenty of practical experience."<sup>106</sup> Upon overthrowing a military dictatorship in 1986, the new democratic constitution gave citizens the power: "(a) To propose or repeal national and local laws; (b) to recall local government officials, and propose or repeal local laws;

<sup>99</sup> Madroñal, 2005, p18

<sup>100</sup> Rainsford, 2009

<sup>101</sup> Hwang, 2006, p345-346

<sup>102</sup> Hwang, 2006, p340

<sup>103</sup> Hwang, 2006, p354-355

<sup>104</sup> Kobach, 1993, p223

<sup>105</sup> Kobach, 1993, p223

<sup>106</sup> Kaufmann, Büchi, & Braun, 2007, p204

and (c) To propose amendments to the Constitution.”<sup>107</sup> Also, referendums are required for territorial changes. Each right required enablement by legislation, but unlike many other countries around the world, their legislature immediately allowed citizens to take advantage of this right.

Referendums have become common in the Philippines. However, despite being promised in the constitution, and in legislation, the power of the popular initiative for *constitutional* amendment has been blocked by the courts.<sup>108</sup> Rather than let an initiative go to the polls that sought to end term limits on the president, the courts simply blocked the initiative by declaring that the People’s Initiative and Referendum Act to be “incomplete, inadequate, or wanting in essential terms.”<sup>109</sup> Despite the fact that the court agreed it was a constitutional right, and that the law was designed and intended to enable that right, they were unwilling to risk allowing citizens to end presidential term limits.

#### AFRICA AND THE MIDDLE EAST

Neither Africa nor the Middle East have had significant experience with direct democracy. Authorities’ referendums have been held, often for the establishment of new states, new constitutions and new electoral rules.<sup>110</sup> “In the nondemocratic world the outcomes are different. Only nine out of ninety-two referendums in Africa have failed to yield a 90 percent Yes vote. In a majority (fifty-two), the outcome was, implausibly, more than 98 percent Yes.”<sup>111</sup>

Like elsewhere in the world, under democratic regimes, authorities’ referendums may more clearly allow citizen decision-making, but still they are primarily tools of representative democracy. For instance, in South Africa, de Klerk held a referendum on ending apartheid. While this of course allowed citizens to choose whether or not to end it, it was held so to as make the opposition to it in the government concede defeat.<sup>112</sup> It was thus, like other authorities’ referendums, a tool to provide legitimacy to a decision made by an authority, be that authority a democratic representative or authoritarian dictator.

#### CONCLUSION

The authority referendum is the most common form of referenda. They have been used, since Napoleon’s time, to legitimize authorities and their decisions, to attack opposition, or avoid issues too divisive for an authority to handle without implosion. They can be found in some of the world’s most repressive regimes, but representative democracies are more likely to use them.

Referenda emerged from traditions of assembly direct democracy in Switzerland and New England. They became established in Switzerland in the mid-1800s, and in the United States at the turn of the century. Since that time, there was little growth in politics with popular referenda until after latter half of the 20<sup>th</sup> century. Today, although exceptions among a world of representative democracy, direct democracy has been

<sup>107</sup> Hwang, 2006, p372; Estrella & Iszatt, 2004

<sup>108</sup> Hwang, 2006, p375

<sup>109</sup> Santiago v. COMELEC, 1997

<sup>110</sup> Kaufman and Waters, 2004, p145; Kaufmann, Büchi & Braun, 2007, p209

<sup>111</sup> Butler and Ranney, 1994, p4

<sup>112</sup> Butler and Ranney, 1994, p9-10

spreading and increasing in depth around the world. Thus, Switzerland and the United States have the most history with direct democracy. (Italy is approaching half a century of use as well).

Today, a diverse group of nations, the Philippines, Switzerland, Uruguay, Germany, the United States, Lichtenstein and Italy have the most extensive use of direct democracy. These would be the polities that should be most strongly transformed by direct democracy, as it plays a powerful role in their politics.

Thus, the polities most fruitful for learning what the effects of more direct democracy are Switzerland and the United States. They have an extensive history of deep usage that may be particularly useful for understanding what the rapid growth of direct democracy means for the world. Other polities, such as the Philippines and Germany (and Italy longer ago) may be interesting to study, as they have recently to systems with much direct democracy. Thus, whatever effects direct democracy has on a society, they may be appearing there. Countries that are currently potentially transitioning to more direct democracy, such as Taiwan, New Zealand and various countries in Latin America and Eastern Europe, could also be of interest for understanding direct democracy.

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