The Referendum Experience in Europe

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DEMOCRAZIE E REFERENDUM (*co-editor*)

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1 Introduction

Pier Vincenzo Uleri

> In theory and in practice modern democracy has been haunted by the specter of direct popular action as an alternative to all kinds of representative schemes. The manipulation of mass psychology with a view to destroying any and all constitutional restraints in the name of His Majesty the People has taken concrete form in recurrent dictatorial regimes. ... Such forms of direct popular action, when introduced into the pattern of constitutional government, have worked with a reasonable degree of smoothness ... Direct popular action in its several forms serves to strengthen the democratic element. But if the dose is too strong, it will destroy the balance ... Direct popular action thus provides a genuine adjustment for modern constitutionalism (Friedrich, 1950, pp. 570–1).

DEMOCRACY AND THE REFERENDUM PHENOMENON IN EUROPE

The referendum phenomenon is an important part of the political process in Europe. Once seen as exceptional events, popular votes of this type are now more often used as part of the decision-making process in many countries (Butler and Ranney, 1994a; Caciagli and Uleri, 1994). Sometimes they have made life more complicated for governments, parliaments and political parties, sometimes they have been useful instruments to solve difficulties that these bodies seem unable or unwilling to tackle. To trace the origins of the referendum as an instrument of popular decision-making and participation in political life is a complex task that fascinates scholars of this phenomenon (Kobach, 1993, pp. 13–55; Möckli, 1994, pp. 32–80; Suksi, 1993, pp. 40–125). The referendum phenomenon needs to be considered in the light of the origins, tradition and development of liberal democratic representative institutions and government. Indeed, any development of a theory of the referendum phenomenon should deal with its genesis.

The referendum phenomenon in western Europe can be analysed in terms of mobilisation and political participation, and of legitimation, as well as being viewed as a decision-making process. According to Butler and Ranney, the defining constituent feature of the ref-

erendum phenomenon is that "In a referendum, a mass electorate votes on some public issue" (Butler and Ranney, 1994b, p. 1). The referendum phenomenon is characterised by the opportunity for electors to participate in a decision-making process by voting on an issue more or less specific and determined.[1] The forms through which electors are called to the polls, and the issues to be voted on are chosen, vary greatly from one country to another.

Considered as a decision-making process, the referendum phenomenon can be described as a set of decisional mechanisms and processes that interact with the mechanisms and decision-making processes of representative government. The two sets of decisional mechanisms and processes can be analytically and empirically distinguished, but the referendum phenomenon considered as a decision-making process is not an autonomous and independent phenomenon. The referendum phenomenon generally presupposes an interaction with the mechanisms and processes of the political system within which it works; different forms of referendum votes are characterised by different degrees of interaction. At least in terms of empirical analysis, though, there is no room for a contrast between representative democracy and "direct democracy", simply because we do not know political regimes characterised by the use of the referendum as the main decision-making system.

The interaction between the referendum phenomenon and the political system within which it operates can be analysed both with regard to the distinction among the main types of referendum votes and with regard to the linkages between types of political regime and the referendum phenomenon as such. Here we devote our attention only to the first point. Concerning the linkages between the referendum phenomenon and two models of democratic regimes – the Westminster model and the consensus model – Lijphart concludes: "we are forced to agree with Butler and Ranney that referendums 'fail to fit any clear universal pattern' " (Lijphart, 1984, p. 206).

As we have said, there is a large variety of popular votes generally called referendums. Some years ago, Gordon Smith (1975, p. 294) wrote that "the 'referendum' label includes a variety of situations and usages which bear only a superficial similarity to one another". And Samuel Finer noted that "caution is called for when talking about referendums, for they have many forms, *each of them implying very different consequences*. Moreover, the names these different varieties are known by change from one country to another" (Finer, 1980, p. 214; emphasis added). As David Butler wrote, "In the literature on referendums ... we find a sort of abstract animal, the referendum, with features that very few of the referendums that have actually taken place have. The real world of referendums is a different one" (Butler, 1981, p. 79). Suksi states that "there exists no universal referendum terminology" (Suksi, 1993, p. 10). A survey of classifications and typologies of the referendum phenomenon could easily highlight the conceptual and terminological confusion and disagreement that still exists here. Probably we still need a debate to improve a common comparative scheme. Among scholars from different countries, discussion in general turns around certain terms: first and most important *referendum* and *initiative*; then, according to specific experiences, also *plebiscite*, plus a series of adjectives to qualify them. Every writer has his or her own classifying and naming system, sometimes deriving from experience in their own country, to guide analysis and consideration of the referendum phenomenon.[2] Sometimes these classification systems are not brought out explicitly, either because it is felt that everything is clear, or because this is regarded as irrelevant to the analysis of the phenomenon. In the following pages we shall suggest a short and modest proposal simply to distinguish the concepts of the two most currently used terms: referendum and initiative.

Here we will say a few words about the term *plebiscite*. This is probably the oldest of the three terms: the Latin word *plebiscitum* goes back to the political experience of the Republic in Rome (Möckli, 1994, pp. 47–52). General agreement on the distinction between plebiscite and referendum is lacking (Butler and Ranney, 1978b, p. 4; Denquin, 1976; Suksi, 1993, pp. 9–11). The term plebiscite has been used – particularly after World War I – to denote popular votes held to solve sovereignty conflicts over territories and boundaries (Wambaugh, 1933). Ranney and Penniman (1985, p. xx) use it in the same sense, in accordance with the definition given by Denquin: a "plebiscite ... [is] a particular kind of referendum in which the voters of a jurisdiction vote directly upon its international and legal status". The same meaning, the plebiscite as a choice con-

1. In some forms of referendum vote promoted on the request of electors, the popular vote may be replaced – under specified conditions – by a parliamentary vote. This was the case with Article 48 of the 1922 Irish constitution (see p. 86 below), and such provision is included in the law implementing the abrogative initiative and referendum under Article 75 of the Italian constitution (see p. 108 below). The same applies to the distinction drawn by Magleby (1984, p. 35) between direct and indirect initiatives (the former is submitted direct to a popular vote, while the latter goes to a popular vote only if the relevant legislature rejects the proposal that is the subject of the initiative).

2. The literature on the referendum phenomenon is rich in classifications of various types of popular consultation, but often the terms and concepts are mainly of legal origin, and have been taken over rather uncritically by political science.

Figure 1.1: A typology of the referendum phenomenon

Criterion	*Value*	*Term employed*
Popular votes promoted according to:	General prescribed rules	Procedural vote
	Discretion of person or institution	Ad hoc referendum
A procedural vote is:	Pre-established and necessary for a decision to be valid	Mandatory referendum
	At request of an agent whom the constitution or the law so entitles	Optional vote
Outcome of popular vote is:	To be accepted and implemented by the relevant institution(s)	Binding
	Formally indicative as another institution has the final say	Advisory
Popular vote is promoted by:	A number of voters	Initiative
	Other agent	Referendum
Promoter of vote and author of object to be voted on are:	The same	Decision-promoting
	Different	Decision-controlling
In a decision-controlling vote, the object of the vote is:	A decision taken (for example, a law passed) but not yet implemented	Rejective vote
	An existing state of affairs (for example, a law or decree that is already implemented)	Abrogative (repealing) vote

1973), Portugal (1933), Spain (1947, 1966) and in past authoritarian regimes, both right-wing and communist, of central and east European countries.

Norwegian and British experience offer examples of ad hoc referendums; we also find this type of vote in processes of regime change, for instance in France (1945–46 and 1958–62), Greece (1974), Italy (1946), and Spain (1976 and 1978). Some constitutions (Austria, Denmark, Ireland, Switzerland) provide for mandatory referendums concerning different issues such as constitutional changes, delegations of sovereignty, international treaties, urgent decrees and others.

Some European constitutions provide also for optional referendums, mainly decision-controlling referendums. This is the case in Denmark, where one third of MPs can ask for a popular vote on a bill passed by parliament; in Ireland – in case of conflict between

the upper and lower houses – a minority of parliamentarians may ask for a popular vote, with the agreement of the president of the republic; in Italy and in Switzerland, five regional councils and eight cantons respectively may ask for an abrogative (in Italy) or a rejective (in Switzerland) referendum on a statute law; in Italy five regional councils or one third of MPs may ask for a rejective referendum on constitutional changes that on second reading failed to receive a two-thirds majority in either Chamber; in Spain one tenth of the members of either chamber can demand a referendum on constitutional amendments passed by parliament (Article 167.3); in Sweden a minority of MPs may ask for a referendum on a pending constitutional amendment.

The category of decision-promoting referendum is probably the class with the fewest forms. This category could also be the most controversial since it concerns forms that are prescribed in some constitutions but allow for rather discretionary rules. Indeed it can be difficult clearly to distinguish prescribed decision-promoting referendums from discretionary ad hoc referendums. Most of the experiences confirm this evaluation. Forms of decision-promoting referendum are provided by the Austrian constitution (Article 43) which allows the Nationalrat to call a popular vote on any act of legislation passed by the Nationalrat itself; and by the French constitution (Article 11, modified in 1995) which allows the president, on the proposal of the government, to promote a referendum on bills concerning the organisation of the public authorities and other issues such as ratification of treaties (see pp. 71–2 below). The Spanish constitution (Article 92) allows the holding of a referendum on major issues ("Las decisiones políticas de especial trascendencia") on the proposal of the prime minister, with the approval of parliament, and the referendum in March 1986 on NATO membership was held under the terms of this article. The Swedish constitution (Ch. 8, § 4) allows a majority in the Riksdag to promote consultative referendums on any kind of issue (see chapter 11, p. 171); here the distinction between a referendum according to the rules and a discretionary ad hoc referendum loses its significance, at least from the empirical point of view.

Initiatives play an important role in the Swiss and Italian referendum experiences. Different kinds of initiatives – both controlling and promoting – account for a major part of the Swiss experience; the other forms of popular votes belong to the category of mandatory referendums.[6] Considering the decision-promoting initiative,

6. In Switzerland both constitutionalists and political scientists generally distinguish between the "popular initiative", promoted at the request of a number

2 Austria: the referendum as an instrument of internationalisation

Anton Pelinka and Sylvia Greiderer

THE CONSTITUTIONAL BACKGROUND

Austria is very much a representative democracy, although the constitution does contain some elements of direct democracy. These consist of provisions for referendums, popular petitions (a literal translation from the German term *Volksbegehren* would be "popular initiatives", but they are more appropriately called petitions since they are submitted to parliament and not to the electorate), and the direct election of the president. However, these features are not really among the essential principles on which the Austrian constitution is based. Of greater significance are the first (Nationalrat) and second (Bundesrat) chambers of the Austrian parliament, which are responsible for federal legislation. In practice, the Nationalrat is the decisive arena, since the Bundesrat, although it may object to any legislation approved by the Nationalrat, has only delaying powers at its disposal. Furthermore, the cabinet and its individual members are answerable only to the first chamber of parliament.

The same dominance of the Nationalrat is apparent when it comes to direct democracy. Both referendums and popular petitions depend on the will of parliament to become effective. As far as referendums are concerned, any act of legislation passed by the Nationalrat can be submitted to the people. A simple majority of the Nationalrat is needed for such an optional ("facultative") referendum (Article 43 of the constitution). Such decision-promoting referendums (to use the term introduced in the previous chapter) could be used to obtain support for government or parliamentary policy.

Secondly, there is the mandatory referendum (Article 44 of the constitution), which arises when the legislation in question involves any amendment to or alteration of the fundamental principles of the constitution – these are the democratic principle, the republican principle, and the federal principle, as well as the principle that government activity is bound by law. In the case of constitutional legislation that does not touch on fundamental principles of the constitution and therefore does not require a referendum, an optional referendum must take place if at least one third of the members of either of the two chambers request such a referendum (Article 44(3)). There is also provision for a referendum to validate a decision of parliament to unseat the president of the republic. In all cases, the outcomes of referendums are binding.

Turning to petitions, a popular petition must generally be supported by at least 100 000 eligible voters or by at least one-sixth of the electorate in each of three federal provinces, in which case the Nationalrat is constitutionally obliged to debate, and to reach a decision on, the issue of the petition (Article 41 of the constitution). But it is in no way obliged to pass the proposed legislation, and in this the limited character of popular petitions becomes visible. Only three petitions (of a total of 16) have had any effect on legislation – the Nationalrat has usually taken no positive action after its debate. The most obvious example of this came in 1982, when the Nationalrat ignored a petition signed by over 1.3 million electors against the construction of an additional United Nations conference centre. The ruling Socialist Party (SPÖ) was in favour of the building, and so it took no heed of the demand not to construct it, a demand that was backed by the opposition.

Since the establishment of the Second Republic in 1945, the main institutions expressing the representative character of democracy – parliamentarianism and corporate institutions (see Tálos, 1993) – have dominated and penetrated nearly the whole of political (and to a great extent social) life in Austria, while offering little scope for direct democracy. The very setting up of the Second Republic, indeed, can be defined as an act of consensus among the political elite. The close cooperation and balance between the two major parties in the "Grand Coalition" left no room for initiatives that were not controlled by either the SPÖ or the People's Party (ÖVP). Furthermore, the system of consociational democracy was reinforced by the social partnership between the major economic interest groups, and this then became the most powerful supporter of the representative character of the state after 1966 when the Grand Coalition broke up.

The first popular petition, in fact, was not organised until 1964. It was initiated by independent print media (which over the years were to be partly responsible for the gradual extension of direct democracy). Following this, the presentation of popular petitions to put pressure on the government has occurred more frequently, although with diminishing effects since, increasingly, opposition parties have been (ab)using them for their own purposes.

As far as referendums are concerned, the rare use of this instrument is one indicator of the dominance of representative democracy.

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3 Denmark: the referendum as minority protection

Palle Svensson

Since the mid-1980s, three referendums have taken place in Denmark on European integration and, in addition, many demands and proposals have been put forward for further referendums, from both the government and the opposition. Moreover, there is broad political acceptance that any future change in Denmark's relationship with the European Union will have to be put before the voters for final approval or rejection.

Accordingly, referendums seem increasingly to be regarded as an appropriate measure for solving political conflicts in Denmark, despite the fundamentally representative character of the political system. Even if the Danes take high pride in their political system and think of it as a "democracy", the democratic idea is not realised any more completely in this country than elsewhere. Denmark is a small country with five million inhabitants and four million voters, but this does not mean that the political system is more perfect than in other countries, or that it is more direct than representative.

THE CONSTITUTIONAL BACKGROUND

The Danish political regime is not a realisation of any specific democratic theory. It should rather be seen as a result of a long process, where various ideas and group interests have confronted one another under changing social and political conditions. This process has led to continued democratisation of the political regime, despite occasional setbacks for the democratic forces. Unlike its counterparts in Sweden and Finland, the Danish constitution does not directly express the principle of the sovereignty of the people (Petersson, 1984, p. 25). Even so, it is reasonable to say that this principle forms the ideological basis of the regime (Sørensen, 1969, pp. 68–9).

The principle of the sovereignty of the people is realised by means of a representative form of government. The citizens directly elect the Danish parliament (the Folketing) and thereby have an influence on the composition of the government and thus, indirectly, on policy making. The combination of the two main principles in

Danish democracy – the principle of popular sovereignty and the principle of representative government – is expressed in universal suffrage; in proportional representation ensuring all political opinions an accurate representation in the Folketing; and in the parliamentary system making the government responsible to the majority in the Folketing.

The democratisation process has, in addition, allowed the citizens some opportunity for direct influence on policy making by means of referendums. Elements of direct democracy have come rather late in the process of democratisation in Denmark and have been met by severe opposition from defenders of representative democracy.

Today the Danish constitution offers five possibilities for holding referendums – there is no constitutional provision for any kind of initiative. Four of the five possibilities are explicitly mentioned in the constitution and in each case the result is binding: (1) a mandatory referendum on constitutional amendments (Article 88); (2) an optional rejective law referendum (Article 42); (3) a mandatory law referendum on the voting age (Article 29); and (4) a mandatory law referendum on the delegation of constitutional powers to international authorities (Article 20). In addition to these constitutional provisions, it is possible by law to call ad hoc referendums that legally have only an advisory status (Sørensen, 1969, pp. 178f).

The 1915 constitution introduced the mandatory referendum as a part of the procedure for constitutional amendments. Previously such amendments could be made if a bill was passed by parliament and, following an election, passed again by the new parliament. Under the 1915 constitution an amendment proposal – when passed by parliament and afterwards by the newly elected parliament – had to be submitted to the voters for approval or rejection. Approval of the amendment required a majority among the participating voters, and at least 45 per cent of the whole electorate (in the 1953 constitution, this was reduced to 40 per cent).[1]

This referendum gives effect to both the principle of popular sovereignty and the principle of minority protection. It is in accordance with the principle of popular sovereignty that the constitution must be based on the popular will and that amendments must be put direct to the electorate for decision by majority. On the other hand, it is in accordance with the principle of minority protection that it is very difficult to change the constitution, since this requires not just a majority among those voting but also the explicit approval of a substantial proportion of the electorate.

1. The specific proposals about mandatory referendums on constitutional amendment and optional law referendums mentioned below can be found in the *Rigsdagsaarbogen* (The Parliamentary Yearbook) for the relevant years.

The 1953 constitution introduced the optional or facultative referendum. Its history goes back to the beginning of the century, and as early as the 1930s a degree of agreement had been reached between the major political parties about the fundamental outlines. Under Article 42 of the constitution, one third of the members of the Folketing can demand that a bill passed by parliament be submitted to the voters for either approval or rejection. Rejection of the bill requires a negative majority that comprises at least 30 per cent of the electorate.

An analysis of the genesis and provisions of this referendum makes it quite clear that its basis is neither the principle of popular sovereignty nor the aim of giving the voters direct influence on decision-making. Rather, this rejective referendum must be seen as a protection of the minority in the Folketing against the majority.

Proposals for a rejective law referendum entered the constitutional negotiations late in the 1930s. The constitutional motion from the Social Democratic–Radical Liberal government contained no mention of referendums. Among other things, the Liberals and the Conservatives criticised the bill for abolishing the Landsting (the upper chamber) without combining this with some kind of protection of the interests of the minority. During negotiations, the government and the Conservatives reached a compromise, which included a provision for an optional law referendum. This compromise was a fundamental break with all previous ideas and proposals about referendums in Denmark. The principle of popular sovereignty was downplayed in favour of the protection of the minority in parliament, and direct democracy was disregarded in favour of representative democracy. The proposals would have given the people very limited opportunities to demand a referendum compared with some previous proposals (Rasmussen, 1972, p. 20). Representative democracy was clearly given the upper hand, since the decision of parliament on a law was to prevail unless there was a popular majority, comprising 35 per cent of the electorate, against it. Whereas abstention by voters in a referendum on a constitutional amendment has the effect of expressing opposition to a proposed amendment of the constitution, abstention in a referendum on a law is an expression of faith in and acceptance of the decisions of elected representatives.

These proposals were not implemented, because the constitutional amendments proposed by the Social Democrats, Radical Liberals and Conservatives were narrowly defeated in the referendum in May 1939 – they were approved by 44.46 per cent of the electorate, compared with the required 45 per cent – and new discussions on constitutional changes did not start until the end of the war and the German occupation. In 1953 a comprehensive proposal for a new

4 Finland: the referendum as a dormant feature

Markku Suksi

Finland has traditionally relied on the representative form of government, with very limited experience of the deployment of the referendum in national decision-making. It may be said, however, that the institution of the referendum has been a dormant feature in Finnish politics, popping up occasionally at least as an idea and in the form of a policy vote – that is, as a consultative vote whose object is not a draft law but a policy choice to which representative institutions give effect (an ad hoc referendum, to use the terminology introduced in chapter 1).

The first Finnish referendum was held in 1931 (on the continued prohibition of alcoholic beverages) without the support of any express constitutional provisions concerning the referendum. The second referendum was organised on the EU issue in November 1994 on the basis of provisions added to the Finnish Form of Government (Constitution) Act in 1987.

THE CONSTITUTIONAL BACKGROUND AND PRACTICE

As indicated above, the institution of the referendum has existed in Finland at least from the 1930s, although the original wording of the Finnish constitution of 1919 contained no explicit provisions on the referendum; the mode of national decision-making was purely representative (Suksi, 1993, pp. 219–26, 228).

The need for a referendum on the Prohibition Act arose from political and practical considerations in the early 1930s. The act was being disregarded to such an extent that there was a threat of diminished respect for other legislation. However, parliament did not feel itself empowered to decide the issue, because the prohibition issue cut across the parties, including their parliamentary representatives. Swedish and Norwegian experiences were cited to show that a referendum could resolve such an issue (Suksi, 1993, p. 222).

Despite a recommendation by the Committee on the Constitution that only two alternatives – yes or no – be presented, the final version of the wording of the prohibition referendum proposal included

three alternatives of substance: 1) continuing prohibition; 2) permitting wines and weaker beverages; and 3) permitting strong liquor (i.e. abolishing prohibition). As a matter of fact, the Finnish prohibition referendum was, if not the first, at least among the first multiple choice ballots on a single issue (Suksi, 1993, p. 222). The division among the sexes was obviously perceived as important on this issue, because the government prescribed that female voters should use red ballot papers and males white ones.

The consultative referendum was held in December 1931. Less than half of the electorate voted, with the turnout of men (51.5 per cent) being higher than that of women (36.7 per cent). A clear majority voted for the third option, repealing the law in question (see Table 4.1). Women were more negative towards alcohol than men, with 33.3 per cent of women voters supporting the retention of prohibition and 65.3 per cent its abolition. The turnout could be viewed as surprisingly low, some 20 per cent below the turnout in the parliamentary elections of 1930 and 1933, but more or less at the same level as the turnout in the 1931 presidential elections. Because the legislature was not legally bound by the result, it could regard the result simply as a guideline when it repealed the Prohibition Act at an extraordinary session of parliament held immediately after the vote. At least in this case, the consultative referendum showed its utility for resolving a problem and for clearing the issue from the political agenda (Suksi, 1993, pp. 222–3).

Table 4.1: Consultative referendums in Finland, 1917–95

Date	Issue	Yes	No	Turnout
29–30.12.1931	Repeal of the Prohibition Act	70.6	28.0	43.6
16.10.1994	Membership of the European Union	56.9	43.1	70.8

Note: All figures are percentages. In the 1931 referendum, "Yes" refers to option 3 and "No" to option 1, as outlined at the top of the page. The remaining 1.4 per cent of voters chose option 2 (permitting wines and weaker beverages).

Concerning the advisability of the referendum as an institution, the policies of the Committee on the Constitution of the Finnish parliament became quite refined during the 1930s when some other issues were surfacing. The committee's authoritative interpretation of the constitution[1] was that (Suksi, 1993, p. 223):

1. It is worth noting that Finland has neither a constitutional court nor any provision for judicial review of legislation.

5 France: towards a less controversial use of the referendum?

Laurence Morel

Although France has experienced more referendums than most west European countries, French referendums have been clustered within several specific periods, corresponding to phases of political transformation, crisis, or authoritarian regime: the Revolution, the Napoleonic regimes, the years after the second world war, the Gaullist decennary. There have been few occurrences of the referendum after this last phase.

The use of the referendum in France has been largely confined to fundamental issues. The most important constitutional changes since 1945 have been introduced by referendum. The referendum has also been used in the decolonisation crisis, and in the "building" of Europe. In addition, the referendum has tended to be used in an instrumental way by its initiators. It is thus particularly interesting to look at its political consequences. As will be seen, the main cause for concern, regarding either the policies adopted by or the political effects of the referendum, relates to the democratic standard of referendums. This problem, traditionally associated with the tendency of French referendums to become bound up with the power of the individual who leads the regime, but also involving a great variety of circumstances surrounding the vote, accounts for the generally negative judgment on the practice. To what extent such a judgment has been justified, and still applies to the most recent referendums, will thus be a major concern of this chapter. A general appraisal appears all the more necessary since provisions for the referendum were extended in 1995 at the initiative of the newly elected President of the Republic, Jacques Chirac.

THE BACKGROUND TO REFERENDUMS

Tradition of direct participation in French politics

Popular involvement in public affairs was a key issue during the Revolution. The first constitution, adopted in September 1791, expressed quite a restrictive view of the idea. The dilemma for the

constitution-makers was to abolish the monarch's arbitrary power, although maintaining the monarchy, and yet at the same time to avoid an evolution towards a democratic regime. Consequently, they introduced the indirect and restricted vote, a choice that was repeated by the third revolutionary constitution (1795), and, after the Consulate and the Empire, by the Charters of 1814 and 1830. All these texts, of course, contained no provisions for direct democracy.

In contrast, the second constitution, drafted during the brief Jacobin Republic (August 1792–July 1794), was a very democratic text, introducing both direct universal suffrage and the popular initiative in constitutional and legislative matters. The first French referendum was organised specifically on this constitution, drawn up by the Montagnards, after the failure of the Girondins to promote their own text (see Table 5.1). In practice, the constitution was never applied because of the war, and the Montagnards did not call other referendums. But from this moment, the legitimacy of the constitutional referendum was instituted, and remained so strong during the period that even the Thermidoriens (July 1794–November 1799) organised a referendum on the 1795 constitution that they devised to replace the Montagnarde constitution, which they viewed as too democratic. Like the first referendum, this was characterised by a massive Yes. As well as being asked to approve the constitution, the people were also asked to decide whether they accepted that two-thirds of the members of the Convention would be automatically reelected.

Low participation, lack of information, and the absence of a secret ballot all made the revolutionary referendums very imperfect devices of popular decision-making. Even so, their democratic standard was probably higher than the referendums organised later by Napoleon I and Napoleon III, which were characterised by authoritarian mobilisation and fraud.[1] The electorate was also subjected to strong pressure, the consequences of a defeat being depicted as pure chaos. Only the last referendum (1870), which indeed had a more balanced result, took place within a more liberal context.

1. The An VIII Constitution (the Constitution of the Year 8, the subject of the first Napoleonic referendum) mentioned the referendum only in the context of the approval of the constitution itself. The 1848 constitution did not mention it at all. The 1852 constitution introduced the mandatory referendum for changes affecting the five fundamental principles, approved by the 1851 referendum, on which it was based. The referendum was also possible in the form of an "appeal to the people" by the President of the Republic. In the 1870 constitution, the referendum became obligatory for *any* constitutional change. The necessity for prior approval of the change by the Senate was abolished and the Emperor could consult the people on any revision wished by him.

6 Ireland: the referendum as a conservative device?

Michael Gallagher

The referendum plays a significant part in the political process in the Republic of Ireland. If referendums are not as frequent as in Switzerland or Italy, they nonetheless occur more often than in most countries. We shall examine the constitutional basis for the holding of referendums in Ireland, outline the history of referendums, examine voting patterns and draw some conclusions about the role that the referendum has played.

THE CONSTITUTIONAL BACKGROUND

Ireland's first post-independence constitution, promulgated in 1922, provided three opportunities for employment of the popular vote (for details see Manning, 1978, pp. 193–7; Ward, 1994, pp. 209–10). First, Article 47 provided for rejective referendums on items of legislation that were challenged by a sizeable minority within the Oireachtas (parliament). Second, Article 48 provided for the legislative initiative. To simplify its rather convoluted provisions, it envisaged a situation where, once the institution of the initiative had been established (which itself would require either an act of parliament or a petition signed by 75 000 people), 50 000 people could call for the enactment of a law, whereupon parliament would have either to enact the law or to put the issue to a popular vote. Kohn (1932, pp. 240–1) describes both Articles 47 and 48 as displaying a "minoritarian bias", since they would allow a small but active minority, confronted by an indifferent majority, to thwart the will of parliament. Third, Article 50 stated that after the first eight years of the life of the constitution (during which time parliament could amend it), any constitutional amendment would require a referendum.

However, no referendums were ever held under the 1922 constitution. The Article 50 requirement was by-passed when, in 1929, parliament simply amended the eight-year period to one of 16 years. As for the initiative, the Oireachtas never made any provision for it. When, in May 1928, the opposition Fianna Fáil party (founded by those opposed to the 1921 Treaty with Britain, the major political

issue of the 1920s and 1930s) presented a petition, signed by 96 000 registered voters, in order to try to bring about a popular vote under Article 48 to remove the "oath" of allegiance to the British monarch that all TDs (members of the Dáil, the directly-elected lower house of parliament) had to take under the terms of the Treaty, the government responded instead by using its parliamentary majority to abolish the provision for the initiative and, for good measure, the Article 47 referendum provision (which had never been invoked) as well (Kohn, 1932, pp. 242–4). This has been said to be the only case in the world where the right to hold a popular vote has been narrowed (Butler and Ranney, 1994, p. 262).

This affair produced the only real debate that has taken place in Ireland to date on the intrinsic merits of the initiative and the referendum. Fianna Fáil speakers argued in favour of both in principle, portraying them as valuable elements of democracy. They observed that at general elections many issues of policy, together with personalities, are mixed up together, so to ascertain the people's view on any one issue it was best to hold a nationwide vote on that issue alone (speeches of Eamon de Valera and Seán Lemass, *Dáil Debates* 24: 209–10, 7 June 1928 and 24: 853–4, 20 June 1928). For the government, ministers argued that while referendums might be all very well for a village deciding where to site the parish pump, they were not suitable for nationwide votes because of the impossibility of citizens generally becoming adequately informed about the issues at stake. The Minister for Justice declared himself a believer in representative government "pure and simple", and described "added things" like the referendum and initiative as "clogs and defects and difficulties in respect of the system of representative government" (speeches of Ernest Blythe and James Fitzgerald-Kenney, *Dáil Debates* 24: 883–4 and 24: 865, 20 June 1928).

Of course, both parties had their own partisan axes to grind. The government (composed of ministers from the Cumann na nGaedheal party, founded by those who supported the 1921 Treaty with Britain and the precursor of today's Fine Gael) was cynically moving the goalposts by removing the referendum provisions from the constitution as soon as Fianna Fáil attempted to use them; it did this largely because it feared that any referendum on the issue of the oath would produce the result it did not want, i.e. a vote for abolition. Indeed, since 1926 the government had planned to abolish these provisions in any case, since it "was uncomfortable with the prospect of loss of control represented by the initiative and referendum" (Ward, 1994, p. 223). Similarly, there was more than an element of hypocrisy and opportunism in Fianna Fáil's eloquent defence of Articles 47 and 48, given that the party made no move either to reinstate these arti-

(1988), p. 141). By the time of the next European integration referendum five years later – when Labour for the first time advocated a Yes vote – the impact of party cues seemed to have declined. The pro-integration vote was less strongly correlated with the election vote for the parties advocating a Yes vote ($r = 0.58$), and the impact of the abortion issue (see above) was felt; anti-abortion groups had a clear impact on voting patterns, with support for integration falling most in the more conservative parts of the country (Holmes, 1993, p. 109). Opinion poll evidence showed that many voters felt cross-pressured, with over a third of Yes voters reporting that they had had reservations about supporting the Maastricht Treaty.

The six referendums on divorce and abortion can be viewed together because of the strong similarity between the voting patterns produced by all but one of them (the "right to life" vote in 1992), as shown by Table 6.2. For many voters, evidently, the same basic issue was involved in each case, most plausibly the place of traditional Catholic values in Irish society. In each case the most active conservative groups (such as the Society for the Protection of the Unborn Child) were explicitly Catholic in outlook, and the Catholic church made its position clear at both national and local levels. In some ways the near identity of votes is surprising, given the different paths the various campaigns took. Whereas the Catholic ethos featured strongly in 1983, the debate on the rights to travel and information in 1992 was largely swamped by a simultaneous general election, while the two divorce referendums were, ostensibly at least, fought on more tangible and materialistic issues. Opponents claimed that if divorce were legalised, marriage breakdown would become more widespread and deserted wives and children would be left in poverty. Doubts were also raised about the impact on inheritance rights, particularly where farming land was concerned.

In five of these referendums (the exception was that of 1983) there was a pronounced shift in opinion, in a conservative direction, during the campaign. In 1986, an opinion poll conducted two months before the divorce vote had shown a majority in favour of liberalisation, but once the campaign began there was a major slide in support. The percentage favouring change fell from 57 in April to 40 in a survey conducted a week before polling day. Support fell among all social groups, with the greatest drop being among women (from 58 per cent in April to 31 per cent in June). Consequently, the last pre-vote poll found that men actually favoured legalising divorce, albeit by a small margin, whereas women were opposed by almost a two to one margin. This gender gap testified to the effectiveness of the anti-divorce campaign, which had sought to instil doubts among women voters in particular. In 1992, surveys tracked

Table 6.2: Correlations between "conservative" votes in Irish referendums on abortion and divorce, 1983–95

	Divorce 1986	Right to travel 1992	Right to information 1992	"Right to life" 1992	Divorce 1995
Abortion 1983	0.97*	0.90*	0.91*	0.18	0.96*
Divorce 1986		0.89*	0.91*	0.12	0.98*
Travel 1992			0.99*	-0.16	0.89*
Information 1992				-0.17	0.91*
"Right to life" 1992					0.09

Note: "Right to life" 1992: correlation coefficients refer to the Yes vote. Figures are Pearson's *r*; * denotes coefficient significant at .01 level.

a major turnaround on the abortion proposal, with a 67–33 majority 18 days before polling day becoming a 45–55 minority six days polling day (and a 35–65 minority in the actual vote). The change picked up by the polls on the travel and information issues was minor (from about 4–1 to about 3–1 over the course of the campaign up to the last poll), and the actual vote was much closer (about 3–2) than any poll had suggested. In 1995, as we have seen, the same slide in pro-divorce sentiment took place during the campaign.

The referendum on abortion in 1992 deviates from the rest of the matrix in Table 6.2 because the issue was one that divided conservatives, as explained above. While "centrists" supported the aim of the amendment, and "realistic" conservatives supported it as the "best" they were ever likely to be offered, "fundamentalist" conservatives opposed it because it did not give them exactly what they wanted, namely the complete outlawing of abortion. Consequently, while the other five referendums in Table 6.2 pitted liberals against conservatives, this one aligned liberals and ultra-conservatives against moderate conservatives. Analysis suggests that about a third of voters in this referendum held liberal attitudes, a third were centrists or realistic conservatives, and a third were fundamentalist conservatives (Kennelly and Ward, 1993, pp. 129–30; Sinnott, 1995, pp. 230–1).

Surveys have showed that attitudes on these issues are consistently related to socio-demographic variables. The old are more conservative than the young, rural dwellers are more conservative than their urban counterparts, farmers are more conservative than the working class, and the working class are more conservative than the middle class (see also Sinnott, 1995, pp. 231–9). In addition, women are more conservative than men – even, surprisingly, on the issues of the right to travel and information in 1992. A post-election survey on the "right to life" vote in 1992 found that among those who voted

Table 6.4: Initiators and outcomes of Irish referendums

Issue	Body mainly responsible for initiating referendum	Outcome favoured by government of the day?	Outcome favoured by main opposition party?
Approve new constitution (1937)	Government	Yes	No
*Abolish PR electoral system (1959)	Government	No	Yes
*Abolish PR electoral system (1968)	Government	No	Yes
*Over-represent certain voters (1968)	Government / Courts	No	Yes
Permit membership of EC (1972)	Parliament	Yes	Yes
Lower voting age from 21 to 18 (1972)	Parliament	Yes	Yes
"Special position" of RC church (1972)	Parliament	Yes	Yes
Legalise contested adoptions (1979)	Courts	Yes	Yes
Graduate Seanad representation (1979)	Parliament	Yes	Yes
"Pro-life" amendment (1983)	Interest group / Parlmt	No?	Yes
Allow votes for non-citizens (1984)	Courts	Yes	Yes
*Allow legalisation of divorce (1986)	Government	No	Yes
Ratify Single European Act (1987)	Courts	Yes	Yes
Ratify Maastricht Treaty (1992)	Parliament	Yes	Yes
*Restrict availability of abortion (1992)	Government / Courts	No	Yes
Affirm freedom to travel (1992)	Courts	Yes	Yes
Affirm freedom of information (1992)	Courts	Yes	Yes
Allow legalisation of divorce (1995)	Parliament	Yes	Yes

Note: in all cases, the approval of parliament was needed for the holding of a referendum, as explained on p. 88 above.
* indicates that the proposal was defeated in the referendum.

be said to have been initiated by parliament, in the sense that the proposals put to the people had either all-party agreement, or at least support from both government and the major opposition party. In the other six referendums, it was at the behest of other groups that the referendum was initiated: in five cases the referendum was necessitated by decisions of the courts, and in the other (in 1983) parliament was responding to the pressure exerted by an interest group. Of course, the distinction between proposals directly prompted by court judgments and those that were not is in a sense unreal, as most of the other changes were prompted by the belief that the courts would have struck down some piece of legislation had no constitutional change been made.

Twelve referendums have produced the result wanted by the government of the day and five have witnessed government defeats. The remaining case, that of the "pro-life" amendment of 1983, is ambiguous, in that the government itself was divided, but since very few ministers were wholeheartedly in favour of the proposal actually put to the people, this contest is best seen as a reverse for the

government. Surprisingly, opposition parties have derived more satisfaction from referendums than have governments. Only in 1937 did the main opposition party favour an outcome that did not materialise – other than that, the record is one of straight success for the opposition. Only one case is ambiguous: in 1984, as indicated above, some elements of Fianna Fáil opposed the proposal to allow British citizens to vote at Irish elections, but this position was never explicitly endorsed by the party leadership.

Have referendums in Ireland have had a conservative or a progressive impact? Most of the issues resolved (such as the electoral system or European integration) do not fit easily on this dimension, and no referendum has concerned issues that relate to the traditional left-right spectrum, such as taxes versus spending. Only eight referendums can be clearly placed on the conservative–progressive dimension, and the result of one of these (the "right to life" vote in 1992) is impossible to sum up as either conservative or reformist since it was defeated, as explained, by a combination of the most liberal and the most conservative sections of society. Five (the referendums of December 1972, those on travel and information in 1992, and the 1995 divorce vote) marked defeats for ultra-conservative forces, but the 1983 and 1986 contests produced conservative victories. The 1986 divorce referendum might be cited as evidence that in Ireland the referendum has sometimes been a force for conservatism, especially given the way in which public opinion favoured divorce until the campaign began and returned to a pro-legalisation position a few months after the vote (Darcy and Laver, 1990, pp. 2–6). In this referendum, and in the referendums on travel and information in 1992 as well as on divorce in 1995, a rapid mobilisation of conservative sentiment occurred during the campaign. If the legalisation of divorce had not required a constitutional change and thus a referendum, parliament might well have taken this step in the 1980s. It is also interesting to speculate on whether Ireland's formerly restrictive contraception laws would have been liberalised, or whether homosexuality would have been legalised (as it was in 1993) if these steps had required approval at a referendum. Overall, then, the referendum seems to have allowed fuller scope for conservative forces in society than purely representative democracy would have done.

In addition, the requirement that every constitutional change, no matter how minor or uncontentious, needs a referendum has led to the retention of articles that embody values not widely shared in the 1990s (for example, Article 41.2, which sees women's place as being within the home and speaks of their "duties" there – see Galligan, 1993, p. 218). More changes would have been made if the constitution could be amended by a weighted majority of parlia-

7 Italy: referendums and initiatives from the origins to the crisis of a democratic regime

Pier Vincenzo Uleri

During the process of state unification between 1848 and 1860, some referendums were called to ratify the annexation of Italian regions and provinces to the Kingdom of Piedmont and Sardinia. These votes were generally called plebiscites: all males who were already 21 years old could vote even though the franchise was then much more restricted on various grounds of age and education. Many communal referendums took place in the first two decades of the twentieth century (Basile, 1994). However, the first two national popular votes were promoted by the fascist regime in 1929 and 1934 to compel and make visible a popular consensus in favour of the authoritarian regime. Those two votes were neither fair nor competitive.

The growth of the referendum phenomenon as an aspect of democracy began after World War II when, in 1946, a national referendum decreed the end of the monarchy in favour of the republic as the institutional form of the state. It was 28 years before a second popular vote took place: in May 1974 the request to annul the divorce law was rejected. Between 1971 and December 1995, 38 questions were put before the Italian electorate, in 9 ballots, to annul – completely or in part – existing laws. The pressure of the referendum phenomenon has, in fact, been even broader and more intense than this. Over this period, a total of 75 requests have been promoted, mainly by electors. The Constitutional Court found about three-fifths of these admissible and the rest inadmissible; 38 requests led to popular votes, while the others were dealt with by parliamentary decision (see Table 7.1).

CONSTITUTIONAL PROVISIONS AND OPERATION OF THE REFERENDUM PHENOMENON

Forms of referendum votes are provided for by four articles (75, 123, 132 and 138) of the Italian constitution of 1948 (Ambrosini, 1993). These constitutional provisions, like other parts of the constitution, remained frozen for over two decades, despite the numerous bills brought forward for implementing them. Mention should also be made of the constitutional law n° 2 (1989) on the holding of an ad hoc "guideline referendum on the conferring of a constituent mandate on the European Parliament" elected in 1989. Another article of the constitution, Article 71, provides for *iniziative di legge popolare* ("popular law initiatives"), which need to be signed by at least 50 000 electors. Parliament is not obliged to put these either on its agenda or to a popular vote: for this reason they do not belong to the range of the referendum phenomenon, and there has been a very limited use of this institution, which has had little significance.

Table 7.1: Topics of requests for abrogative initiatives and referendums promoted and voted in Italy, 1970–95

Issue areas of requests	Requests promoted	—Constitutional Court— Rejected	Approved	Parliamentary vote	Popular vote
Institutions and state organisation	21	9	12	3	9
Justice	12	5	7	1	6
Moral and social issues	8	2	6	2	4
Environment/Energy	12	5	7	0	7
Economic and financial issues	17	7	10	2	8
Mass media	5	1	4	0	4
Total	75	29	46	8	38

Note: 70 of the 75 requests were promoted by collecting signatures of electors; the other 5 were promoted by regional councils.

After the 1946 institutional referendum, and except for the ad hoc referendum of 1989, the phenomenon of popular votes – at the national level – has run along the lines set out in Article 75 of the constitution, by constitutional law n° 1 (1953) assigning to the Constitutional Court the power to decide the admissibility of requests for the *referendum abrogativo* (abrogative referendum), and by law n° 352 (1970) implementing the constitutional provisions relating to referendum votes. Tax and budget laws, amnesties and pardons, and acts authorising the ratification of international treaties cannot be submitted to popular votes; it is the Constitutional Court that adjudicates on whether requests submitted by electors concern such issues. The constitution and the law simply use the term *referendum abrogativo* and *referendum*. In fact, according to the typology introduced in chapter 1 (see p. 12 above), Article 75 of the constitution provides for both the decision-controlling initiative (promoted by elec-

8 The Netherlands: national debates and local experience

Joop van Holsteyn*

The mere fact that it is *possible* to devote attention to the Dutch experience with referendums will come as a surprise to some. Two English-language texts (Gladdish, 1991; Andeweg and Irwin, 1993) do not even mention the referendum, undoubtedly because no national referendum has ever been held in the Netherlands. Yet academic treatments of referendum have existed since the nineteenth century (Van Balveren, 1888; more recently Gilhuis, 1981) and political circles have regularly given attention to referendums. In the 1990s this attention has focused upon the presumed gap between voters and their elected representatives and whether the referendum could be a means to reduce this gap.

At the national level the renewed interest in the referendum has produced considerable discussion, but nothing has actually changed. However, at the local level, debates over the desirability of local referendums have led, in a few instances, to decisions to hold a referendum. In general, these have explicitly been designated as experiments; there is the desire to evaluate an instrument that was previously known only from books and from other countries.

THE REFERENDUM DEBATE

The debate over the referendum goes back to at least the early years of the century, and it did not pass the Netherlands by (Gilhuis, 1981, p. 15; Bijvoet, 1925, p. 289). In 1903 the socialist SDAP introduced a proposal for alteration of the constitution, under whose terms a non-obligatory initiative could have been held on a law that had been passed by the Estates General, if at least 50 000 voters signed a petition to that effect. The outcome would be binding if the number of voters in the majority was equal to at least one third of all eligible

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voters. When it became clear that the proposal would not receive enough support, it was withdrawn (*Relatie kiezers-beleidsvorming*, 1984, p. 137). At the time of the constitutional revision of 1922 a majority of the committee considering the referendum and initiative was opposed to introduction. The referendum was seen as a "non-indigenous plant" and it would be a "dangerous undertaking" to attempt to graft this branch onto the existing Dutch constitutional tree.

The question of the referendum and initiative played virtually no role in the constitutional revisions of 1946 and 1953, but emerged strongly in the revision in 1983. This revision led indirectly to the *Relatie kiezers-beleidsvorming* report from the state advisory commission (the "Biesheuvel commission") on the relation between voters and policy formation. This commission had been established in 1982 by the Minister of Internal Affairs and consisted of independent experts, although it was clear that the partisan leanings of the members had been taken into account.

The report of the Biesheuvel commission has had considerable impact on the debate on the referendum in the Netherlands. It unanimously recommended the introduction of the rejective initiative, which it termed the "non-obligatory corrective legislative referendum" (*Relatie kiezers-beleidsvorming*, 1984, p. 148).[1] This would allow for a popular vote on legislative proposals that had already been considered and passed by parliament. Such a vote could be held at the request of a preset number of voters and would be valid if a minimal turnout was achieved and the number of opponents of the legislation exceeded a certain portion of the electorate.[2] Predictably, these proposals "in the 'no-nonsense' atmosphere of these years in Dutch politics [did] not get far" (Daalder, 1989b, p. 159; see also Andeweg, 1989, p. 52). There was strong opposition from the Christian Democrats (CDA) and Liberals (VVD), in which the common thread of opposition was the presumed incompatibility between the proposals and the primacy of the representative system.

However, the debate on constitutional reform did not fall silent. Shortly after the parliamentary elections of September 1989, the D66 leader Hans van Mierlo picked up the theme again, this time coupling it with his perception of a growing gap between the citizen and politics. And again – as is so customary in the Netherlands

1. In its second report it even recommended the (promotive) legislative initiative.
2. In the interim report, neither the number of signatures necessary to request a referendum nor the level of minimal turnout was specified. A later report suggested that the number of signatures required for an initial request be set at 10 000; for actually holding a direct vote the support of 300 000 people would be required.

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9 Norway: six exceptions to the rule

Thomas Chr. Wyller

The position of the referendum in the Norwegian constitution is easily stated: no written rules exist whatsoever. The constitution unambiguously adopts the representative system, with the Storting (parliament) as the centre of democratically based power. However, legal interpreters can make even silent texts speak. Thus, the formal vacuum has been filled by interpretations and practice; this has not encompassed either the compulsory or the binding referendum variant, but has created an undisputed opening for the ad hoc and consultative forms. The Storting is empowered, by simple majority, to consult the voters at any time and on any issue. But it is not authorised to delegate to them the final decision on any topic.

This means that the control of the instrument is entirely in the hands of the Storting. There is no sequence of events that leads automatically to the involvement of the voters, nor can a referendum be brought about by any kind of public initiative. The Storting decides not only whether to hold a referendum, but also the details of its implementation. In strict constitutional terms, the Storting also decides whether or not to accept the voters' advice (Bogdanor, 1994, p. 27 is in error in stating that the Norwegian referendum is constitutionally binding).

This constitutional silence is therefore compatible with the use of direct democracy. The opening that exists for the use of the referendum is both restricted and widened by the Storting's consistent reluctance to formalise it. Several times since 1905, constitutional amendments on the subject have been explicitly rejected, most recently during the EU campaign in 1994. The Storting has neither wanted to adopt the mandatory/binding variant proposed by the Conservatives in the 1920s, nor supported proposals empowering MPs to submit passed bills to the electorate. Generally, referendums have been regarded as a weapon for the minority, and constitutional amendments have therefore, logically perhaps, been defeated by the majority. Fears have also been expressed that a formalised referendum procedure would sit uneasily with the parliamentary system of government.

A referendum is a rare occurrence in Norway. Decisions are normally taken by representative bodies, something that seems to be congruent with the political culture in the community. On the local level, however, there are long-standing traditions of public participation in decision-making regarding the sale of liquor, the choice of language in elementary schools, and the merging of municipalities. But on the whole there is no real popular pressure to formalise the use of referendums. The Norwegian constitution was adopted in 1814, and it is significant that almost a century elapsed before the first national referendum was called.

HISTORY OF REFERENDUMS

Norway has so far experienced six referendums (see Table 9.1). The first occurred in 1905, after, in June of that year, the Storting and the government had taken a unilateral decision to dissolve the union with Sweden. This step was endorsed by close to a 100 per cent majority in the referendum two months later; the voters were in effect granted the role of legitimising a decision that had already been taken. The second case came in November the same year, when a clear majority expressed a preference for a monarchy rather than a republic. There followed two referendums on prohibition, which was upheld in 1919 (the electorate now included women) but overturned in 1926. Finally, there have more recently been two votes on the EC/EU, both of which have produced narrow No majorities.

Table 9.1: Referendums in Norway, 1905–95

Date	Issue	Yes	No	Turnout
13. 8.05	Separation from Sweden	99.9	0.1	85.4
12.11.05	Approve monarchy	78.9	21.1	75.3
6.10.19	Retain prohibition	61.6	38.4	66.5
18.10.26	Repeal prohibition	55.8	44.2	64.8
25. 9.72	Join the EEC	46.5	53.5	79.2
28.11.94	Join the EU	47.8	52.2	89.0

Note: All figures are percentages.

For the analyst, this record presents a warning: data are both scarce and not easily manageable for comprehensive analysis. The complete absence of binding rules means that each referendum can be understood only within a concrete historical and political context.

In the history of the institution, there are no general principles, only practice, making each separate occurrence to some extent *sui generis*.

The holding of an ad hoc referendum can be regarded as a political process in its own right. It entails three stages: the decision to hold it, the implementation, and the ultimate impact. Such a model facilitates the search for interrelated dimensions, focusing on contexts, decision-makers, issues, party stands and actors' motivations; we shall look at each in turn.

In August 1905, the context was a national festival, whereas in November of that year there was a genuine political conflict. The prohibition affair was dominated in 1919 by postwar moral and economic aspects, and in 1926 by commercial and international complications. The two referendums on the European question had contexts that in many respects were similar, though by 1994 the entire European situation had changed significantly. On the domestic front, one important difference was simply that in 1994 the precedent of the 1972 contest existed, and the elections in 1993 had been dominated by the EU conflict.

The issues themselves fall into three pairs: two concerned the dissolution of the union with Sweden and its aftermath, two more the prohibition question, and the last two the question of surrendering state sovereignty. Or, looked at in another way, there have been three purely domestic issues and three with an international orientation. But there is no easy explanation as to why referendums were held on these occasions and not on others, for example when Norway joined the United Nations and NATO. The issues can be listed, but they have no explanatory force.

The decisions to call a national vote were formally made by the Storting, but of course the actors behind these decisions were politicians and parties. To find the real decision-maker(s), close examination of the historical details would be necessary. It suffices here to indicate that in August 1905, the prime minister, Chr. Michelsen, the dominant political figure of the day, took the decision more or less by himself. In November, however, the position was more complex. The issue of the monarchy was tangled up with emotions concerning peace and war with Sweden, and complicated further by the Storting's reluctance to call a national vote and the Danish throne candidate's wish to have one. The prime minister personally cut through a veritable gordian knot. In 1919, the dominant groups were the teetotallers' organisations, representing the largest social movement at the time, but the referendum was in fact – as was also the case in 1926 – a way out of a number of party dilemmas. Moving ahead to the first EC referendum, in 1962 the

a challenge of that magnitude. The referendum will remain, for the foreseeable future, a peripheral part of a system that functions tolerably well.

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10 Russia, the former Soviet Union and Eastern Europe: the referendum as a flexible political instrument

Stephen White and Ronald J. Hill

On 17 March 1991 the Soviet people voted in a referendum for the first and last time in their history, to express their views on a subject that could not have been more momentous: the very future of their country. As it turned out, whereas they voted in favour of the question put – for a reformed Union of Soviet Socialist Republics – events over the next few months, partly in consequence of that referendum, made the exercise redundant: by the end of the year the Soviet Union no longer existed. The referendum is part of the political practice of post-Soviet Russia, and it has been used considerably in other former communist countries of Eastern Europe before, during and after communist rule (17 questions were submitted to nationwide referendum from the beginning of the century up to 1986, and a further 33 between 1987 and the end of 1993, including 25 on the territory of the former Soviet Union (Brady and Kaplan, 1994, p. 176; for a full listing to 1993 see the tables in ibid., pp. 178–9, 193–4)).

REFERENDUMS IN THE COMMUNIST ERA

The referendum in Soviet political thought

While little used until the 1980s, the referendum had a long history in Soviet thought, the ideology that dominated Eastern Europe under communist rule. Lenin and Stalin spoke positively of it as a means of exercising the right of national self-determination, and it was approved in the same sense by the Petrograd Soviet and then by the Bolshevik government (Towster, 1948, p. 53; Brady and Kaplan, 1994, pp. 178–9). The 1936 "Stalin" constitution went further, indicating in Article 48 that the USSR Supreme Soviet Presidium might conduct a "national poll (referendum) on its own initiative or on the demand of one of the union republics"; no such exercise was ever held, however, and the constitution itself was adopted by a Congress of Soviets (Studenikin, 1957, pp. 734, 728). The referendum was

mentioned again in the 1961 Communist Party Programme and thoroughly debated in the social science literature of that time (Hill, 1980, pp. 100–3). It was conceived under Khrushchev as part of a broad process of democratisation in post-Stalin politics: power was supposedly being transferred from the state administrative apparatus to elected institutions, in a process of preparing society for communism and the withering away of the state, to be superseded by "communist self-administration". The principle of a national poll conformed with notions of "direct democracy", fashionable in those years, and the idea was retained as it came to be recognised that a diversity of interests could exist under communist rule, and that mechanisms were needed for expressing and reconciling them.

In the early 1960s some scholars expressed considerable enthusiasm for the referendum, and examined pertinent questions concerning its use in a democratic process. The most substantial of such studies was a monograph by Viktor Kotok (1964), who identified the referendum as "occupying a conspicuous place" among the various "new forms of social and state structure corresponding to the period of the rapid building of communism" (which the 1961 Party Programme had declared the Soviet Union to have entered). According to Kotok, the referendum would be "enriched with new features that are characteristic of the genuine democracy of socialist society" (pp. 4–5). It was, he stated, a referendum of a new type (much as the newly-announced "state of the whole people" was a "state of a new type"), and would take its place within the system of other democratic institutions for the evocation and juridical formulation of the will and interests of the whole people. Kotok took issue with Rafael' Safarov (later the country's most enthusiastic student of public opinion and government), particularly with his notion that a referendum is "an independent state institution".

The debate between these two scholars – in which others such as M. I. Baitin (1965) also joined – raised theoretical issues that transcend the introduction of the referendum into the Soviet-style socialist system: whether or not the referendum should be consultative or mandatory (that is, whether this was an exercise in popular sovereignty); whether different voting procedures from those used in elections were appropriate; whether a valid result should require a minimum turnout and a qualified or simple majority; whether certain legislative acts were so important that they should as a matter of constitutional law be subjected to a referendum. As late as the mid-1970s, the dissident historian and commentator Roy Medvedev still referred positively to the earlier debate. The referendum was, he believed, "a particularly effective form of direct democracy", of value in extending knowledge of civic responsibility as well as in

resolving fundamental constitutional issues, and it was a way in which the willingness of republics to remain part of the Soviet Union could regularly be tested: he proposed a "compulsory referendum in each republic at least once every ten years" (Medvedev, 1975, pp. 147, 280; interestingly, these comments did not appear in the Russian original, even though that was not published in the Soviet Union). Such issues are of universal interest, and the debate illustrates the quality of scholarly argument in the late Khrushchev period.

In the Brezhnev era, despite much talk of "further perfection of socialist democracy", positive steps to democratise the system were suspended, as the regime slid into complacency and inertia under the slogan of "developed socialism". Nevertheless, the idea of the referendum was not wholly abandoned: the 1977 USSR constitution made explicit provision for such a device in Article 5. This inclusion, though, was essentially symbolic – no enabling legislation was adopted to establish the terms on which questions might be "submitted to nationwide discussion and put to a popular vote (referendum)", or to determine whether the results should be binding or merely consultative, or indeed to resolve any of the other issues aired in the earlier discussion. Only after Mikhail Gorbachev's adoption of "democratisation" in early 1987 did the referendum became anything more than a constitutional abstraction. Then in the last years of communist rule, it became "as important as strikes, protests and elections as tools for refashioning authority" (Brady and Kaplan, 1994, p. 175).

In the summer of 1987 a new law on "the national discussion of important questions of state life" was adopted, marking a halfway step, and then on 27 December 1990 a law "On Voting by the Whole People (Referendum of the USSR)" was adopted by the Congress of People's Deputies and came into effect immediately. This identified a referendum as "a means for the adoption, through voting by the whole people, of laws of the USSR and other decisions on the most important questions of the life of the state" (Article 1). Under Article 4, a referendum could be conducted (i) to adopt a new law of the USSR; (ii) to amend or rescind a law of the USSR, or part of such a law; (iii) to adopt decisions "predetermining the basic content or laws of the USSR or other acts"; or simply (iv) as a means of determining public opinion on "the most important questions within the jurisdiction of the USSR" (*Vedomosti*, 1987, item 387; *Vedomosti*, 1991). A Russian law, on similar principles, had been adopted in October 1990 (*Vedomosti RSFSR*, 1990, item 230). More than a quarter of a century after specialists had seriously examined the issue, and more than a half-century after the USSR

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11 Sweden: the referendum as an instrument for defusing political issues

Olof Ruin

The Swedish political system, as it has developed during the twentieth century, is of a traditional parliamentary type. There are regular elections to parliament, the Riksdag; the cabinets have all been dependent on the Riksdag regardless of whether they have been minority or majority governments; the same five parties have competed for parliamentary seats for 70 years, with a few more parties recently appearing on the stage. But there have also been provisions in the constitution for the kind of direct democracy that referendums constitute. The referendum has been regarded as a complementary although exceptional feature of the traditional national decision-making process, and to date five referendums have been held.

THE CONSTITUTIONAL BACKGROUND

The present day Swedish constitution (the 1974 Instrument of Government) includes provisions for two different types of referendum: a consultative referendum, regulated in Ch. 8, §4 and a decisive referendum, regulated in Ch. 8, §15.

The clause concerning the consultative referendum is short and simple. It states only that this kind of referendum is regulated by a special law, and according to this special law it is up to the Riksdag to decide whether a referendum is to be held at all, and also to decide the timing of such a referendum as well as the formulation of the questions to be posed. There are no limitations on the range of issues that may be referred to the citizens. All the decisions taken by the Riksdag on these matters are furthermore determined by straightforward majority rules; in other words, a minority cannot trigger off a consultative referendum.

A paragraph on consultative referendums had also been in the previous Swedish constitution. This paragraph had been inserted in 1922, despite fears that it might undermine the existing representative system. The decision then to add provisions for holding referendums was influenced by demands generally for more democracy

in the immediate postwar era, and by specific demands from the Swedish temperance movement, which hoped that the prohibition of alcoholic beverages could be achieved by means of a referendum (Wallin, 1966).

The other clause in the present constitution concerning referendums – §8:15, regulating decisive referendums – dates from the late 1970s. The provisions are fairly complicated. A pending constitutional amendment must be referred to a referendum if requested by a tenth of the members of the Riksdag and if the request is supported by a third of MPs. A referendum of this type ("rejective", according to the terminology introduced in chapter 1) must take place simultaneously with a general election. The proposal is rejected if a majority of the voters have voted No and furthermore – this is one more complicating condition – if their number is more than half of those who have voted in the simultaneous general election. This type of referendum has often been called "semi-decisive", taking into account that the final word on the matter still rests with the Riksdag if a majority have not voted against the proposal (Ruin, 1992).

This decision to supplement the existing constitutional provisions with a referendum of a new type resulted from a public debate that began after the second world war. Proposals had been put forward for expanding the referendum institution. The main reason for this renewed Swedish interest in referendums was the political situation of the country, perceived to be overpowering in its stability. Governmental activity had expanded; the position of the political parties had been consolidated; the strength of one of them, the Social Democrats, had seemed to be insurmountable as the party remained in government decade after decade after having entered office in 1932. It was not to be ousted from power until 1976, at which stage it had ruled the country alone or in coalition with other parties for almost four and a half decades. The postwar proposals for an enlarged referendum institution had not only dealt with changes in the existing rules regulating consultative referendums but had also, and foremost, included requests for a decisive referendum, not necessarily to be confined to constitutional issues. The decision finally taken in the late 1970s, however, restricted the use of the decisive referendum to constitutional matters.

A referendum of this nature has not yet been held. All five Swedish referendums, the first of which immediately followed the insertion of the original clause in the constitution in 1922, have been regulated either by this 1922 clause or by the one replacing it in the present constitution. This means that all Swedish referendums to date have formally been consultative.

Although the party system as a whole remained the same during the 60 years between the first and second insertions of a referendum clause in the constitution, the Swedish political parties have shifted in their attitudes towards the value of referendums. These changes in attitudes coincided to some extent with variations in the position that the parties themselves held in parliamentary life: parties in opposition or in an underdog position tend to favour referendums whereas parties in government or in a leading position tend to be sceptical.

The Social Democrats had already explicitly expressed themselves in favour of the idea of the referendum several years before the 1922 decision. A clause along these lines had been included in the party programme itself, and the decision of the Riksdag was unanimously supported by the Social Democratic members. Thirty years later, though, when a new interest in referendum matters was awakened, the attitude of the party was different. Although the Social Democrats were not totally against changing the rules regulating advisory referendums, they were unambiguously against the introduction of decisive referendums, which they argued would undermine the existing representative system, particularly if they encompassed other legislative matters than constitutional ones. Furthermore, many Social Democrats feared that decisive referendums might be used by the opposition in their attempts both to weaken the position of the government generally and to hinder concrete legislative steps in the endeavours of the party to transform Swedish society. The referendum institution was now seen as mainly a conservative device.

Attitudes in the Conservative party followed the opposite trajectory. In the early 1920s, the Conservative members of the Riksdag had argued energetically against the introduction of a referendum clause in the constitution. They maintained that such an institution, although meant to be only of a consultative nature, would tie the hands of the Riksdag in an unacceptable way; furthermore, the population at large was regarded as totally unqualified to wield such real legislative power. In the decades after the second world war, however, the Conservatives took a very different stand. A pro-referendum clause was even inserted in the 1946 party programme: "An enlarged referendum institution is to be considered as a means of strengthening the control of the people over the government and the Riksdag" (Wallin, 1966, p. 300). In the following years the party argued repeatedly for such an enlargement. The views of the citizens on specific issues were said not always to be properly reflected in positions taken by party caucuses in parliament; an expanded referendum provision was therefore required. In this campaign the Con-

the status quo. The reverse applies to those with a contrary view on Europe; they are often found on the left of the political spectrum, where historically there has been scepticism about referendums because of their supposed tendency to sustain the status quo.

One constitutional problem remains unsolved as far as referendums are concerned in Sweden. The last of the referendums organised in the country was in all respects and for all purposes treated as decisive even though it was, as the four previous ones had been, still formally only a consultative one. A kind of double-entry bookkeeping is thereby maintained that might lead to difficulties in the future: citizens think of themselves as the ultimate decision-makers even though the ultimate power still rests with the Riksdag. No plans are under consideration at the moment to correct this inherent contradiction, that is, to expand the constitutional possibilities for holding referendums of a formally decisive nature on all kinds of political issues.

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12 Switzerland: the referendum and initiative as a centrepiece of the political system

Alexander H. Trechsel and Hanspeter Kriesi

Switzerland is certainly the world leader in the use of direct democratic devices. According to Kobach (1993a, p. 1), "Switzerland has held more nationwide referendums since it introduced the institution in 1848 than all other countries combined, since the emergence of the modern nation-state". Lijphart (1984, p. 201) finds that Switzerland held more than two-thirds of the referendums that he could identify in the 21 democracies analysed in his study. The referendum and the initiative have profoundly shaped the Swiss political system and the history of this small federal state generally. Since 1848, the Swiss people have made a significant proportion of their political decisions through direct legislation. Although today an increasing number of critics are asking for a suppression, or at least a significant restriction, of the existing popular rights, the Swiss are most likely to continue to use their direct democratic institutions at least as intensively as they have done in the past.

THE HISTORICAL BACKGROUND OF DIRECT DEMOCRACY IN SWITZERLAND

Why has direct democracy become such a strong component of the Swiss political system? The origins of direct democracy reach back to a period long before the foundation of the Swiss Confederation in 1848. Historically speaking, we can distinguish three main sources of direct democracy in Switzerland.

First, direct democracy is rooted in medieval forms of popular communal government. The first forms of direct democracy can be traced back to the twelfth century, mainly in the Italian-speaking part of today's Switzerland. Influenced by the north Italian community development, the members of communes (*vicini*) in Ticino gathered in so-called "consiliums" in order to solve collectively all pending problems of the commune (Marchal, 1986, p. 147). Other early forms of direct democracy can be found in the thirteenth century (Hottelier, 1995). At that time, representatives of the early Swiss cantons met and decided to build an alliance, which grew

over the centuries to incorporate an ever-increasing number of cantons. These cantons traditionally gave male citizens the opportunity to gather in a so-called "general assembly" (*Landsgemeinde*), an institution that can be compared to the early town-meetings in New England (Auer, 1989) and that survives in five cantons to this day.[1]

The second major source of direct democratic institutions in Switzerland is the French Revolution. The ideas of the enlightenment, in particular the idea of popular sovereignty, as well as the American experience with constitutional referendums at state level, reached the Swiss cantons as the French Revolution was spreading across Europe. The first Swiss constitution (1798), framed under the influence of the French Directorate, stated that a mandatory referendum was to be held for all constitutional amendments (Suksi, 1993, p. 47). In 1802, now under the rule of Napoleon, the Swiss held their first federal referendum to adopt the modified, second constitution. This constitution was deemed accepted, even though a majority of the voters had rejected the proposed text, because Napoleon had decided to count the non-voters as supporters of the new text (Kölz, 1992). Thus, the first national experience of direct democracy had the character of a veto – while opponents had to express their opinion explicitly, the silent masses were considered to be consenting.

The "Movement of Regeneration" constitutes the third source of direct democracy on the federal level. Having started to mobilise immediately after the French revolution of July 1830, this liberal movement rose to prominence in eleven cantons, and in most of these it triggered the introduction of the mandatory constitutional referendum, the legislative referendum or initiative and the constitutional initiative. Given the long-standing tradition of direct democratic institutions on the cantonal level, the introduction of some of these institutions on the federal level was only a matter of time (Kobach, 1993a, p. 13).

THE INSTITUTIONS OF DIRECT DEMOCRACY

On the federal level, the Swiss political system knows a wide range of direct-democratic institutions. These institutions (and the legal provisions upon which they are based) will be briefly presented, in the chronological order of their introduction (see table 12.1).

The Swiss federal state as we know it today was founded in 1848. The new constitution introduced the mandatory constitutional refer-

1. The first reported *Landsgemeinde* can be traced back to 1294 in the Canton of Schwyz (see Möckli, 1994, p. 57; Kobach, 1993b, p. 342).

Table 12.1: Swiss federal forms of initiatives and referendums

Form of direct democracy	Year of introduction	Promoter	Object of the vote	Majority required
Mandatory constitutional referendum	1848	—	Constitutional amendment	Double
Mandatory constitutional referendum on the principle of a total revision of the constitution	1848	—	Constitution	Simple
Initiative for a total revision of the constitution	1848	100 000 electors	Question of principle	Simple
Rejective initiative for legislation	1874	50 000 electors	Federal law or federal decree of general application	Simple
Initiative for a partial revision of the constitution (precisely formulated)	1891	100 000 electors	Constitutional amendment	Double
Initiative for a partial revision of the constitution (formulated in general terms)	1891	100 000 electors	Question of principle	Simple
Counterproposal to an initiative (constitutional referendum)	1891	Parliament	Constitutional amendment	Double
Rejective initiative for international treaties	1921 (extended in 1977)	50 000 electors	International treaty	Simple
Mandatory referendum for unconstitutional, urgent decrees applicable for more than one year	1949	—	Urgent decree	Double
Abrogative initiative for constitutional, urgent decrees applicable for more than one year	1949	50 000 electors	Urgent decree	Simple
Mandatory referendum for certain international treaties	1977	—	International treaty	Double

Note: all federal forms of direct democracy are binding, not consultative. A simple majority denotes that a proposal needs to receive only a majority of votes cast; a double majority denotes that both a majority of the votes cast, and a majority in at least half of the cantons, are needed. See also note 2 on next page for a clarification of the terminology employed.

The rejective and abrogative initiatives (1874, 1921 and 1949) may also be launched by 8 cantons, but this has never occurred.

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13 The United Kingdom: constitutional pragmatism and the adoption of the referendum

Denis Balsom

Britain, almost uniquely amongst mature democracies, does not have a written constitution. Constitutional practice is uncodified and evolves by precedent and convention. Formally, absolute sovereignty remains with the Crown in parliament and although this constitutional myth remains intact, it is wearing increasingly thin in the era of an enlarged European Union. It follows therefore that referendums can have no formal status under the British constitution, but even so their usage is not proscribed, and their occasional usage in the future appears probable.

In Britain the tradition of representative democracy, rather than any form of direct or participatory democracy, is especially entrenched. The concept of representation as the prevailing ethos of British politics even predates the advent of the popular franchise. It was Edmund Burke who informed his electors in Bristol: "Your representative owes you not his industry alone but his judgement; and he betrays, instead of serving, you if he sacrifices it to your opinion" (Burke, 1902, p. 447). The tradition of an MP's individual freedom of action and the convention of the sovereignty of parliament create circumstances where any discussion of constitutional questions, such as the adoption of referendums, is particularly subjective. A referendum is predicated upon ultimate authority resting with the people, but no such principle underlies British constitutional convention. Through custom and practice such a presumption might normally be assumed, but the sovereignty of parliament is a surrogate for the sovereignty not of the people, nor the nation, but, literally, the Crown. The Crown is no longer solely embodied in the monarch of the day, but remains the institution to which all those in Britain, rather than enjoying any particular rights and privileges associated with citizenship, are subject.

A referendum, the most formal device for consulting the popular will, cannot sit comfortably within this constitutional framework. Still, Britain remains the most pragmatic of political cultures and has had recourse to referendums as and when this has been thought appropriate. Such a cavalier approach to constitutional practice

14 Conclusion

Michael Gallagher

In this chapter we shall review the patterns outlined in the preceding chapters and ask whether evidence from a number of European countries enables us to draw any general conclusions about the use, the consequences, the benefits, the dangers and finally the future of the referendum phenomenon. First, we need to sum up briefly the provisions made for the referendum in European constitutions.

CONSTITUTIONAL PROVISIONS

Constitutional provisions vary significantly across the continent. In only seven west European countries are national referendums ever mandatory, as Table 14.1 shows. In each case, constitutional change is involved; in Austria, Iceland, Malta and Spain only specific (usually fundamental) changes need to be put to a vote of the people, and in Austria, Denmark, Iceland and Switzerland other acts also require popular approval. Only in Austria, Denmark, Ireland and Switzerland have such mandatory referendums taken place since 1945.

Table 14.1: Constitutional provision for mandatory referendums in western Europe

	Subject
Austria	Major constitutional change; dismissal of president (after qualified majority in parliament has voted for this)
Denmark	Constitutional change; changes to voting age; delegations of sovereignty (in absence of five-sixths majority in parliament)
Iceland	Constitutional change affecting state church; dismissal of president (after qualified majority in parliament has voted for this)
Ireland	Constitutional change
Malta	Constitutional change affecting duration of parliament
Spain	Major constitutional change
Switzerland	Constitutional change; certain international treaties; unconstitutional urgent decrees

Source: Chapters 2–13 of this book; Blaustein and Flanz.

Decision-promoting popular votes (that is, votes where the initiator of the vote and the author of the act put to the vote are one and the same) are more rarely to be found in constitutions – the constitutions of only eight countries contain such provision (see Table 14.2). Two of these cases are less straightforward than the rest. In Greece, a decision-promoting referendum can come about only if this is requested by government and approved by parliament (Article 44.2), and since these bodies will almost certainly be the authors of any decision to be put to the people, the referendum can be seen as decision-promoting, although the final decision on letting the issue go to a referendum rests with the president. In Portugal, both parliament (Article 164(l)) and government (Article 200(e)) may ask the president to put a matter of national interest "by way of approval of an international convention or a legislative act" (excluding financial matters) to a referendum – as in Greece, the president may accede to or reject this request. Except in the highly unlikely event of a conflict between government and parliament (in which case one of these bodies might ask the president to put to the people a decision made by the other body, rendering this a "decision-controlling" referendum), this is an example of the decision-promoting referendum. Since 1945, procedural decision-promoting referendums have taken place in Austria, Finland, France, Spain and Sweden (as well as many initiatives in Switzerland).

Table 14.2: Constitutional provisions for optional decision-promoting referendums and initiatives in western Europe

	Subject	Promoter
Austria	Any law	Parliament
Finland	Any subject	Parliament
France	Certain bills	President, in conjunction with government or parliament
	Constitutional change	President, in conjunction with prime minister or parliament
Greece	Any "crucial national issue"	Government, with approval of parliament and agreement of president
Portugal	International agreement or a law	Government or parliament, with agreement of president
Spain	Any issue	Prime minister, with approval of parliament
Sweden	Any subject	Parliament
Switzerland	Any subject (if framed as an amendment to constitution)	100 000 electors

Source: Chapters 2–13 of this book; Blaustein and Flanz.
Note: In Switzerland the constitutional provisions are for the initiative, in the other countries for the referendum.

and his two most recent books in Swedish are *Spänningar: Finland speglat i en familj* (Cleavages: Finland reflected in a family), 1987, and *Amerikabilder: anteckningar om USA från 50-tal till 90-tal* (American impressions: notes on the USA from the 50s to the 90s), 1994.

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