Comparative Referendum Frameworks and Procedures
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The Swiss Referendum in Law and Practice

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Overview

I  Introduction to the Swiss political system
II  Basic Elements of Direct Democracy
III  History: The Transatlantic Circuit of Direct Democracy
IV  Current Institutions of Swiss Direct Democracy
V  Limits of Direct Democracy
I Introduction to the Swiss political system

• Separation of powers
  – Bi-cameral Militia Parliament
  – Collegial Government elected by Parliament
  – Mutual independence between Parliament and Government
  – Weak judiciary

• Direct Democracy
  – The people as the most important organ of State

• Federalism
  – 26 sovereign cantons as the pillars of the Swiss Confederation

• Rule of Law
  – Civil liberties and procedural guarantees

• Government of limited powers
  – Weak State – strong civil society
II Basic elements of (direct) democracy

• What is political democracy?
  – Establishing the people as an organ of the state

• First step: Who are the people?
  – Political definitions of the people
  – Legal definition of the people: the voters

• Second step: What powers to the people?
  – The power to elect: election of parliament, president
  – The power to vote: referendum
  – The power to sign: initiative, petition
II Basic elements of (direct) democracy

• Third step: How can the people make decisions?
  – Assembly system (Town meeting, Landsgemeinde)
  – Ballot system
  – Postal voting
  – E-voting

• Singularities of the people as a state body
  – Majority rule
  – Incomplete composition
  – Dependency
  – Unaccountability
III History: The Transatlantic Circuit of Direct Democracy

• Ideological precursors (16\textsuperscript{th}/17\textsuperscript{th})
  – Hobbes, Locke, Montesquieu, Rousseau

• American Revolution (New England) 1770ies
  – Constitutional convention, written constitution, referendum

• French Revolution 1789
  – Human Rights, Referendum, Initiative, Recall

• Swiss cantons from 1830ies, Federal Constitution 1848, 1874
  – The hidden reception of revolutionary institutions

• US States from 1890ies
  – The open reception of Swiss institutions
IV Current Institutions of Swiss Direct Democracy

A Referendum in general

• Popular vote on legal norm or basic principle: Yes or No
• People only vote on acts adopted by Parliament
• Subject: constitution, law, treaty, decision, policy
• Mandatory: the act can not enter into force without popular approval
• Optional: the vote only takes place if it is requested
  – by the people: gathering of signatures, bottom-up
  – by Parliament or President, top-down
• Binding: the result of the vote binds all other state organs
IV Current Institutions of Swiss Direct Democracy

B Referendum in Switzerland

• Mandatory referendum (since 1848)
  – Constitutional amendments and revisions
  – Amendments are frequent (approx. three per year)
  – Major treaties (Free Trade Agreement EC 1972; UN membership 2003)
  – Double majority requirement: people and cantons
  – Experience 1848-2013: 215 votes, 160 Yes, 55 No
Current Institutions of Swiss Direct Democracy

B Referendum in Switzerland

- Optional referendum (since 1874)
  - Federal statutes, important treaties
  - Three tier process
    - Enactment by Parliament
    - 50’000 signatures in 100 days
    - Popular vote
  - Suspensive effect
  - Experience: 1874-213: 172 votes (7% of all statutes), 96 Yes, 76 No
  - Trend towards consensual democracy
IV Current Institutions of Swiss Direct Democracy

C Popular initiative in general

• Gives the people the right to initiate a normative or decisional process
• Ends up in a referendum: Appeal by the people to the people
• Direct initiative: bypasses Parliament and goes to the people
• Indirect initiative: is addressed to parliament, that can accept or reject
• Formal requirement: gathering of signatures in given time
• Material limits: no violation of higher law
• Single-subject rule
IV  Current Institutions of Swiss Direct Democracy

D  Popular initiative in Switzerland

• Only on constitutional level: right to initiate a constitutional amendment process
• Formulated proposal or general wish
• Formal requirements: 100’000 valid signatures in 18 months
• Parliament controls validity: single subject rule and binding international law
• Parliament may oppose a counter-proposal
• Must be submitted to the people (constitutional referendum)
• Experience 1891-2013: 194 votes; 22 Yes, 172 No
• Indirect effect
IV  Current Institutions of Swiss Direct Democracy

E  On the cantonal level

• Assembly system (Landsgemeinde) in two cantons
• Mandatory referendum on constitutional amendments
• Optional referendum on statutes and important conventions
• Mandatory/optional referendum on expenditures
• Popular initiative on constitutional level
• Popular initiative on legislative level
• Popular initiative on administrative level
• Recall (rare)
VII  Limits of Direct Democracy

• As a state body, the people are bound by the Constitution
• No democracy without rule of law
• Federal Court 2003 limits local referendum: no municipal ballots on naturalization
• The fate of popular initiatives violating human rights
  – Anti-Minaret vote of November 2009
  – Random expulsion of foreign criminals: vote of November 2010
• Federal Court 2012: limits federal initiative process:
• Swiss Democracy in a learning process
Swiss Referendum in Law and Practice

Thank you for the invitation and your attention

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