

# The History of Direct Democracy in Switzerland

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Since 1993, some important constitutional changes have been legislated in Switzerland. In 1999, Switzerland accepted a new constitution. Therefore, some of the following assertions are no longer valid (such as total revision of the constitution, limits to direct democracy and formal protection of unofficial minorities). The following article is, nevertheless, very useful for the understanding of Swiss political institutions. (Europa-Magazin).

Although the Swiss federal referendum originated in 1848, its historical antecedents are as old as the Helvetic polity itself. Indeed, direct democracy is one of three defining elements of Swiss political culture, the others being federalism and (more recently) consociationalism. The direct involvement of citizens in important political decisions is inextricably woven into the fabric of Swiss history. As discussed below, traditional institutions of direct democracy have long been part of cantonal government. The introduction of the referendum at the national level was a predictable development. Not only did the device reflect longstanding notions of popular sovereignty, it also served as a channel for potential discontent and as a check on the enhanced power of the federal government. In order to fully understand the function of direct democracy in Switzerland today, one must first look to the past. This chapter traces the development of the referendum by highlighting various episodes and processes in the history of the cantons and the Confederation. For reference purposes, I include here three tables useful in analyzing the role that direct democracy has played. Table 1-1 presents a brief chronology of the most important events, Table 1-2 explains the several different types of referendum that have emerged, and Table 1-3 shows the overall success rate of each type. A brief historical narrative then follows, after which the present mechanisms of direct democracy are described in detail. The chapter concludes with an historical overview and a discussion of the applicability of Swiss experience in other countries.

## Early direct democracy

The Swiss polity dates to the Bundesbrief of 1291, the first Federal Charter uniting the cantons of Schwyz, Uri, and Unterwalden in a defensive alliance. In 1332 Lucerne joined the alliance; and in the 1350s, the Confederacy expanded to include Zürich, Bern, Glarus, and Zug. Although modern popular mythology sometimes characterizes the early alliance as an idyllic mountain democracy, most historians paint a less utopian picture. Like much of Europe in the Middle Ages, the Swiss cantons were ruled by local oligarchies that used a heavy-handed approach in dealing with the peasantry. However, the Swiss peasants are generally thought to have enjoyed a wider range of rights and freedoms than existed in most contemporary societies; the fact that the population was armed and skilled in battle undoubtedly helped to mitigate the oppressive instincts of Swiss rulers. An impressive string

of fourteenth-century military victories left little doubt as to the martial proficiency of the Alpine peasantry. The text of the Bundesbrief itself, which describes the union of 'the men of Uri, the corporate body of Schwyz', and 'the commune of the lower valley of the Unterwalden', suggests a degree of popular involvement in the forming of the alliance.

More seminal in the development of direct democracy was the Landsgemeinde, the annual, sovereign assembly of all male citizens possessing the requisite status to vote. This ancient form of ideal democracy is traceable to the thirteenth century, the first attested meeting of a Landsgemeinde being held in Schwyz in 1294. By the start of the fourteenth century, the Landsgemeinde was a well-established tradition in the three allied cantons and the other mountain cantons. All eligible citizens were required to attend this annual, open-air meeting to vote on cantonal laws and decrees. Votes were taken by a show of hands. In terms of size, the Landsgemeinden were impressive, the smallest consisting of less than 1,000 and the largest involving more than 10,000 people. Found only in German-speaking Switzerland, the Landsgemeinde cantons included Uri, Schwyz, Obwalden and Nidwalden (the two components of Unterwalden), Glarus, Zug, Appenzell-Outer Rhodes, and Appenzell-Outer Rhodes. Five retain the practice today, usually convening the meeting on the last Sunday in April or the first Sunday in May each year. The Landsgemeinde is one of only three documented institutions of direct government by citizen assembly in the world, the other two being the ancient Athenian ecclesia and the town meetings of New England. It is difficult to overstate how truly extraordinary the Landsgemeinde was, particularly in the early centuries of its existence. While the rest of Europe was laboring under oppressive forms of feudal government and absolutism, ideal democracy was flourishing in the mountain valleys of these Swiss cantons. In directness of participation on a relatively large scale, the Landsgemeinde has yet to be rivalled seven centuries later.

Shortly after the introduction of the Landsgemeinde in the central mountain cantons, a parallel development occurred to the east in the Raetian Republic of the Three Leagues (the Gotteshausbund, the Grau Bund, and the Zehngerichtebund) in what is now the canton of Graubünden. By the start of the fifteenth century, an early form of 'referendum' was instituted in the Republic. This procedure allowed for discussion and deliberation by citizens of each commune before policies could be adopted at the league or republic level. It was the primary instrument for deciding joint policies between the sovereign leagues, as well as for deciding policies between the constituent communes within each league. It was not as 'direct' a process as the Landsgemeinde, but it was based upon the same notion that the legitimacy of decisions rested in the assent of the people. This mutual commitment to a form of direct democracy fostered unity between the three leagues in spite of linguistic differences and geographic barriers.

The city cantons followed a different path of political development. In the thirteenth century, most were governed by oligarchic councils. However, a wave of urban unrest in the 1330s resulted in the widening of the circles of power. The creation of large assemblies such as Lucerne's 1336 'Council of Three Hundred' offered more citizens a role in government. Cantonal guilds were given new authority and strength, with full participation in the government of some cantons. This fourteenth-century empowerment of the guilds provided an impetus to the entrenchment of democratic processes, since most guilds were internally democratic. Indeed, the expression of opinion allowed by the guilds was not unlike that in the rural Landsgemeinden. In the city cantons of the fifteenth and sixteenth centuries, most notably in Bern, an early form of referendum was put into practice, in which all free men assented to cantonal decisions. However, this process was eventually terminated by absolutist

patriciates. The ruling body in each city became the Council of Two Hundred (Three Hundred, in Bern and Lucerne) or Great Council. In time, even these bodies lost power to the smaller Petty Councils. Both councils were invariably controlled either by the guilds or by a few powerful families. Bern, Lucerne, Fribourg, and Solothurn essentially became aristocracies; and the constitutions of Basel, Zürich, and Schaffhausen were only slightly more democratic.

However, after the Swabian war of 1499 established the autonomy the Swiss cantons and their freedom from Habsburg control, the thirteen-canton Confederacy of 1513 instituted the policy of taking central decisions back to the communes *ad referendum et instruendum*. In the allied republics of Graubünden and Valais, this practice was given meaningful democratic content; free men had the opportunity to pass judgment on the decisions of their ruling councils. Graubünden, in keeping with its traditions, was particularly enthusiastic in embracing direct democracy. According to Hughes, the canton underwent 'an experiment in total democracy, in continuous revolution, and anarchism'. Unfortunately, the institutions of direct democracy in Graubünden came to be plagued by warring gentry, popular violence, and intimidation. Nonetheless, the belief that political legitimacy rested in the direct assent of the people remained firmly planted.

### **The rise of the referendum: revolution, restoration, and regeneration**

In late 1797, revolutionary France launched an invasion of Switzerland. The pretext of liberating the Swiss from their outmoded political order scarcely concealed French designs on control of the strategic passes of the central Alps and on possession of Bern's well-filled treasury. French troops marched first into the Bernese Jura. Then, in January 1798, they used a minor frontier incident and the pretense of upholding an old treaty to sweep the Swiss canton of Vaud under their protection and take the Vaudois capital of Lausanne by force. Bern's politicians and military men knew that they would be the next and fell into dispute over whether to negotiate or fight. The key question was whether or not Bern could count on the assistance of the other cantons. The parties to the Oath of Aargau had vowed a united Swiss defense in the face of foreign invasion. However, the pact between the cantons crumbled when confronted with the French challenge. Not only was France's army too large to be resisted, its promises of liberation were too tempting to be ignored. Educated men outside the hereditary patriciates were eager to topple the old power structure in the cities. Basel defected from the Confederacy in January 1798, and Aargau followed shortly thereafter. The breakaway cantons constituted themselves as free territories in anticipation of the French troops. Thurgau soon joined them. In the end, Bern was the only city canton to offer any resistance the French invaders. On 5 March, a force of 24,000 Bernese soldiers, supported by only 4,900 men from other cantons, attempted to ward off a two-pronged attack by a French army nearly double its size. The city fell before the conqueror's musketry within the day. With the defeat, the Old Regime of Switzerland effectively collapsed, fatally weakened by internal forces seeking liberation from patrician rule.

The French soldiers brought with them a new political order for Switzerland. At an hastily-convened constitutional assembly in Aargau in April 1798, a draft constitution, which had been drawn up by the renegade Basel patrician Peter Ochs and proclaimed from Paris by Napoleon, was amended and adopted. In one swift stroke, Switzerland was outfitted with the trappings of the modern nation-state under the 'Constitution of the Helvetic Republic, one and indivisible'. A national representative assembly was established; twelve departments of state

were created and placed under the oversight of a five-member executive Directoire like that in France; and the separation of legislative, executive, and judicial powers was introduced. A number of basic freedoms were proclaimed, as was the principle of political equality. More importantly, manhood suffrage was introduced in all the cantons via a system of indirect elections. However, subsequent constitutions would add property qualifications that would remain for the next five decades. Equally important was the creation of a unitary Swiss state. The cantons, which had been virtually sovereign polities before 1798, were ruthlessly merged together for administration by federal prefects. The first article in the Constitution stated, 'There shall no longer be any frontiers between cantons and subject territories or between one canton and another.' This particular reform was the most ill-received, for it cut against the grain of cantonal autonomy and self-government which had long been part of Swiss political tradition.

The French-imposed Constitution met with different reactions in the various cantons. While Zürich under its guild rule was generally receptive to the new system of government; Bern with its aristocratic past was less cooperative. However, it was in the mountain cantons that the French scheme met with the greatest defiance. The great majority of male citizens in these cantons had enjoyed France's supposedly revolutionary rights of man for more than 500 years. Direct democracy in the form of the *Landsgemeinde* had offered them much greater control over their own affairs than that held by citizens in France. By and large, inhabitants of the mountain cantons were fully satisfied with their own political institutions. Consequently, there was no disgruntled class of citizens eager to usher in the French system. In three cantons, attempts to impose the new order encountered armed resistance. In the summer of 1798, Glarus and Schwyz rebelled. The French General Schauenbourg attacked and defeated the two cantons. In September, tiny Nidwalden rose in defiance. In the resulting battle against French forces vastly superior in number, every farm was transformed into a fortress. A slaughter ensued, in which 400 of the canton's inhabitants were killed, nearly one-third of them women and children. Although the rebellion was ultimately quashed, it cost the lives of more than 2,000 French soldiers.

The early years under the new order were disastrous. Forced into a military alliance with France, the Helvetic Republic became a frequent battlefield in the continental struggle between France and her opponents. The population was demoralized by the continued presence of skirmishing French, Russian, and Austrian troops. Equally burdensome was the tendency of French soldiers to pillage Swiss farms in order to keep themselves supplied. The financial pressures of the war forced the French to renege on a promise to eliminate feudal tithes and ground rents, a pledge which had been essential to gaining the support of the Swiss peasantry in some cantons. By 1802, the Helvetic Republic was bankrupt, 12 million francs in debt after taking over a 6 million franc surplus.

In addition to these difficulties, internal factiousness was gravely weakening the new government. The most explosive issue was the question of restoring a federal state versus maintaining a unitary state. The Swiss people were polarized between conservative advocates of a return to cantonal federalism, supported by Austria, and liberal advocates of unitarism, favoring close ties with France. The new cantons, which had been formed out of subject territories and recognized by the French, were strongly in favor of the latter. Between 1800 and 1802, there were five coups d'état in which the two factions succeeded each other. The three years of civil strife saw one unworkable constitution follow another.

Although the 1798 constitutional system was fraught with weaknesses and elements alien to Swiss convention, it echoed Swiss tradition in one important respect - it laid the foundation for direct democracy at the national level. The 1798 document itself was not submitted to the people, but provision was made for subsequent constitutional referendums. Amendments and revisions could be submitted to so-called *assemblées primaires*. In 1802, the provision came into effect when the fifth constitution was submitted to the people for approval. Switzerland saw her first nationwide referendum.

However, the cards were heavily stacked in favor of Napoleon's preferred outcome. In the June 1802 vote, it was publicly announced beforehand that abstentions would be considered affirmative ballots. Thus, the apathetic, the ambivalent, and the inconvenienced would all be counted as supporters of the new regime, as would be the many Swiss citizens who had lost all faith in the new order and opted out of the debate entirely. The Constitution was accepted with 92,500 votes against and only 72,500 in favor, because there were 167,000 abstentions.

In response to the perceived unfairness of the outcome, supporters of the Old Regime led Swiss soldiers in a rebellion that threatened to topple the government once and for all. Napoleon responded by reintroducing the French army and intervening personally as the self-proclaimed 'Mediator' in the conflict. Under the Act of Mediation of 19 February 1803, he imposed a new Constitution, which restored the sovereignty of the cantons in a federal system, officially legitimized the new cantons and set the cantonal boundaries that have persisted to the present day. The framework replaced the Helvetic Republic with a new Confederation, in which 19 cantons were formally recognized. The Confederation did not include Neuchâtel, Valais, or Geneva, all of which were annexed to France. A streamlined and more powerful Federal Diet was created. Respecting traditional Swiss democracy, Napoleon presented forms of cantonal government more closely related to those of the old confederate system. However, the hereditary basis of suffrage that had existed in some cantons was replaced by a straight wealth qualification. The structure of the new system would offer clear advantages to the liberal allies of France.

The 1803 Constitution functioned adequately and was generally well-received; this result was greatly aided by the fact that there were no battles on Swiss soil for more than a decade. However, the international environment changed drastically following the successful invasion of Switzerland by troops under Austrian command in 1813 and the final defeat of Napoleon at Waterloo in 1815. The French prop behind the constitutional structure collapsed; and in the ensuing power vacuum, Switzerland was left free to determine her own political framework. Austria and her allies, Russia, Britain, and Prussia, made no claim to mediate in Switzerland, leaving the Swiss wide leeway in shaping any new constitution. Adding to the confusion was the expansion of the Confederation. The cantons which had joined in 1803 (Aargau, Graubünden, St. Gallen, Ticino, and Vaud) were allowed to retain their equal status, and the three annexed by France were re-admitted.

The old rift between advocates of federalism and those of unitarism opened again, prompting the settlement of 1815. The conservative, anti-French federalists conceded recognition of the Federal Diet, as well as the office of the Landamman, the rotating national executive established in the Mediation Constitution. However, the net effect of the agreement was still a major retrenchment in the direction of the old cantonal Confederacy. Adopting the Constitution of 1815 without a referendum, the Diet abdicated much of its authority and acknowledged that the cantons were the sovereign bodies which had created the union. The Diet stated that the purpose of the federation was 'to maintain their [the cantons'] freedom,

independence and security against attacks of foreign powers, and to preserve peace and order within'. It could only act with the approval of a majority of the cantons. The period became known as the Restoration.

In 1830, referendums assumed a new importance in Switzerland. Influenced by the July Revolution in Paris, reform-oriented 'Liberals' in a number of cantons engineered successful coups. A wave of democratic reform ensued in the so-called Liberal Regeneration. Following every Liberal take-over except that in Fribourg, the new leadership established the constitutional referendum at the cantonal level. Subjecting proposed changes to a popular vote, the Liberal cantonal regimes rewrote their constitutions and legitimized the new power structures via direct democracy. However, they were reluctant to take any chances. They only offered a restricted franchise and sometimes insisted on a publicly spoken vote recorded by a carefully selected electoral committee. The role of legitimizing new regimes, so prominent in the use of the referendum outside of Switzerland in the twentieth century, was the first role it assumed in Switzerland as well.

The same period also witnessed the introduction of the optional legislative referendum, which allowed citizens to challenge routine laws by petition, thereby bringing the questions before the electorate. Valais and Graubünden had already established the institution by 1830. St. Gallen joined them in 1831, followed by Baselland in 1832. Then in 1841 the device was adopted by Lucerne, and by Vaud and Schwyz in 1845 and 1848 respectively. After 1848, the optional legislative referendum spread rapidly throughout the remaining cantons. In addition, a number of cantons proclaimed the right of their citizens to call a constitutional initiative for total revision. This institution enabled the people of a canton to demand a fundamental revision of the cantonal basic law. First proclaimed in several of the constitutions drafted after the 1830 movement, the institution was viewed by some as dangerous and destabilizing. However by 1848, it was widely recognized to be an effective safeguard against revolutionary violence, in that it channelled public discontent into a state-sanctioned avenue of reform.

The events leading up to the establishment of the cantonal referendums and initiatives in the 1830-1833 period demonstrated the extent to which the popularity of direct democracy stemmed from pervasive discontent with cantonal leadership. The conservative federalists had gone too far in their retrenchment after Napoleon's defeat. Nineteenth-century Switzerland was becoming too reminiscent of the old regime, reviving some of its undemocratic characteristics along with the generally-desired return to federalism. Many cantonal rulers had become aristocratic or oligarchic, betraying the democratic spirit of the times. A similar public discontent inspired the second surge in the establishment of referendums, which occurred in 1848.

The referendum was not only a response to undemocratic tendencies among the cantonal leadership, it was also seen as a viable replacement for communal direct assemblies and cantonal Landsgemeinden. Population growth was making such meetings impractical. As Geneva's Jean-Jacques Rousseau reasoned, 'Democratic government suits small states,... where the people may be readily assembled and where each citizen may easily know all the others'. In Rousseau's view, only diminutive states, such as the Swiss mountain cantons of the eighteenth century and earlier, could preserve direct democracy in its ideal form: 'All things carefully considered, I do not see how it will be possible henceforth among people like us for the sovereign to maintain an exercise of its rights unless the republic is very small.' Had he lived another 70 years, he would have seen referendums and initiatives widely adopted in his homeland as an answer to the problem. In some cantons, such as Schwyz and Zug in 1848, the

substitution was immediate and direct, with the referendum introduced as the Landsgemeinde was withdrawn. Others preserved their citizen assemblies alongside modern parliaments. This is still the case in the five cantons which retain their Landsgemeinden - Obwalden, Nidwalden, Appenzell-Inner Rhodes, Appenzell-Outer Rhodes, and Glarus.

A third force also contributed to the introduction of referendums and initiatives in the cantons - the ambition of enterprising politicians. Outsiders who wished admittance to the inner circles of power found that they could make their entrance on the shoulders of the people. Aspiring leaders in the cantons called for the adoption of various referendum devices, winning massive public support and personal acclaim by doing so. Opposing such a democratic call was difficult. As Hughes notes, nearly every canton had its dominant personality who rose to federal office while maintaining a secure base in referendum democracy.

In 1839, an important discovery was made by the Right in Switzerland. Although the Liberals had risen to power in many cantons by calling for the establishment of referendum procedures, the conservatives found that they could benefit from the referendum's operation. Beneath the enfranchised aristocracy was a vast pool of non-voting commoners. Far from revolutionary, this potential electorate was fundamentally conservative in political outlook, with a strong religious streak. The Right realized that if suffrage could be extended, they might achieve a lock on power. Consequently, both Protestant and Catholic conservatives became ardent defenders of broadening the franchise and extending the scope of the referendum. This pattern, in which progressive forces call for the referendum only to see conservatives reap the rewards, has been repeated many times since, in Switzerland as well as in many other countries.

The spread of cantonal direct democracy in the 1830s was well received by Switzerland's Catholic interests for another reason. Although the 1815 settlement left Catholic political factions in effective control of a number of smaller cantons, they were locked into minority status in the larger, liberal cantons. Conservative in character, the Catholic community was politically active and sought to solidify its position in government where possible. Consequently, Catholic political forces became fervent advocates for decentralized authority, cantonal sovereignty, and popular voting rights in referendums. The referendum was seen as a vital means of securing power in cantons with a Catholic majority.

## **1847-1891: The dawn of the federal referendum**

In 1847, Switzerland was torn apart by civil war. Ever since the sixteenth century the division between Protestants and Catholics had been a source of periodic crises, often of a violent nature. The Sonderbund War of 1847 was the culmination of several years of tension and bloodshed that had transformed Switzerland into the Ulster of nineteenth century Europe. The wave of political reform unleashed by the Swiss Liberals in 1830 had a strong secular tinge to it, which Swiss Catholics found particularly offensive. Enthusiastic Liberals attacked the authority of the Church and began implementing systems of free public schooling. Liberalism soon evolved into a more inclusive and broad-based form known as Radicalism, but it was no more accommodating toward Catholicism or conservatism. In the 1840s, the political environment became explosive. Catholics in Lucerne pulled off a successful counter-coup in 1841, ousting the Radical authorities and turning cantonal education over to the Jesuit Order. Gangs of Radicals responded by attacking Lucerne in 1841 and 1845. In neighboring Aargau,

an armed Catholic resistance challenged the Radical Party government as it dissolved the canton's monasteries.

It was in this volatile environment that the conservative and Catholic cantons concerted their resistance efforts and formed the secret Sonderbund alliance. It included Lucerne, Uri, Schwyz, Ob- and Nidwalden, Zug, Fribourg, and Valais. Under the Federal Pact of 1815, such a league was illegal. It was clearly secessionist at heart. The Sonderbund even began to conduct its own foreign policy. Konstantin Sigwart, the Schultheiss of Lucerne, conducted secret talks with Metternich of Austria. Seeking Metternich's assistance, he intended to redraw cantonal boundaries in a way that would completely separate the Radical cantons on either side of the conservative Catholic center. Once the Sonderbund was discovered, the Radical cantons immediately called for its abolition. Although the Radical grouping already represented 80 percent of the Swiss population and controlled an even larger slice of Switzerland's wealth, they still did not control the federal Diet. In 1846 and 1847, Radical governments took over in more cantons, enough to produce an absolute majority in the Diet. By 1847, they controlled 12 votes and two half-votes out of the total 22 cantonal votes. The political balance of power had now tipped as well. The Diet declared the Sonderbund dissolved and called for the expulsion of the Jesuits from Switzerland.

Civil war was inevitable. The Sonderbund selected as its military commander Johann Ulrich von Salis-Soglio, a Protestant. It also began to appeal for assistance from abroad. Many of the conservative, aristocratic regimes of Europe were annoyed by the Radical cantons and might have intervened if the conflict had been allowed to drag on. The Diet had no intention of allowing this to happen, voting to use force in the dissolution of the Sonderbund. General Henri Dufour, the commander of the federal forces, struck immediately with his army of 100,000, taking Fribourg and Zug, then Lucerne nine days later. In 26 short days in November and December of 1847, he brought the Sonderbund to its knees and accepted the rebel cantons' surrender. Casualties were remarkably low, with the federal side losing approximately 100 men and the Sonderbund even less. Bismarck dismissed the whole affair as a Hasenschiessen (rabbit shoot).

Nonetheless, the repercussions of the conflict shaped the political environment of Switzerland for decades to come. In early 1848, twenty-three Diet delegates drafted a new federal constitution for Switzerland. Although the document was imposed by the victorious Radical majority, it was fairly even-handed, representing a sincere effort to heal the nation's wounds. It guaranteed a host of civil liberties, including the freedom of association, equality before the law, and the right to choose one's place of residence. The cantons lost a degree of autonomy, including the right to levy customs duties. Currency was unified, as were weights and measures. However, considerable cantonal sovereignty was maintained, in deference to the wishes of the defeated cantons. In the newly-created Federal Assembly the bicameral structure of the US Congress was copied, in order to concede disproportionate influence to the smaller cantons in the second chamber, the Council of States. Composed of 44 members, two for each canton and one for each half-canton, the Council of States was explicitly intended to protect minorities and cantonal prerogatives in the new federal state. The larger chamber, the National Council, was chosen on a popular basis of one member for every 20,000 citizens. A seven-member executive, the Federal Council, was created. Within this collegial body, the Presidency of the Confederation would rotate on a yearly basis. Again, the framers sought to guard against the dominance of any single person or canton in the federal government.

More importantly for the purposes of this study, the 1848 settlement brought the referendum to the federal level. Although the Constitution itself was not subjected to a national vote (in which it would undoubtedly have been accepted by a large margin), it was submitted to the individual cantons for approval; and most held a binding referendum on the issue. The 1848 Constitution enshrined the obligatory constitutional referendum at the federal level, but only on future amendments to the Constitution passed by the Federal Assembly. It also established the constitutional initiative for total revision, by which 50,000 citizens could petition the government to call a referendum on a proposed rewriting of the document. Furthermore, the 1848 Constitution imposed both the constitutional initiative for total revision and the obligatory referendum (for constitutional amendments) upon the cantons which did not already possess the institutions. Although it did not adopt the optional (or 'facultative') referendum, the 1848 Constitution set the stage for its arrival by implying that all vital national decisions should be subject to a popular vote.

Within the cantons, direct democracy received a new boost. Demands for a stronger federal union had frequently been accompanied by demands for greater democracy in political institutions. Once the settlement of 1848 achieved the former, citizens in the cantons began to press for the latter. It was argued that the centralization of power embodied in the federal constitution must be compensated by a democratic dispersal of power in the cantons. One of the most 'direct' of the various types of referendums is the legislative initiative (as opposed to constitutional initiative), in which citizens enjoy the right to propose routine pieces of legislation and enact them by popular vote, circumventing the legislature entirely. Vaud had already pioneered the institution in 1845, and the idea was spreading rapidly. Aargau introduced the device in 1852. After 1860, the cause gained new momentum. Baselland established the legislative initiative in 1863, followed by Zürich, Thurgau, and Solothurn in 1869.

For several decades after 1848, the Radicals enjoyed political hegemony in Switzerland. Their faction in the Federal Assembly, the *Freisinnige*, held a considerable majority in both houses. The seven-member Federal Council was drawn exclusively from their ranks; and would continue to be so until 1891. However, their control of Swiss political institutions since the 1830s had not been based upon universal manhood suffrage; and they were reluctant to remove property qualifications for fear of losing electoral strength. As Hughes speculates, the Radicals may not have represented the will of the majority in Switzerland. After 1848, they fortified their position with more subtle devices such as the intimidation of employees, exclusions from the voting register, and gerrymandering. Such tactics were successful in ensuring continued Radical majorities in the Federal Assembly.

This was not a situation the defeated *Sonderbund* cantons accepted happily. Switzerland was very much a majoritarian polity at the national level, with little political influence left for the Catholics and the conservatives. One means by which they could express their opposition to the Radicals was through the federal constitutional referendum. In the mid-1860s, Radical governments introduced a number of proposed amendments to the Constitution. They repeatedly found Catholic and conservative interests allied in opposition to the proposals. These two groups were able to mobilize their membership to vote in large numbers. Combined with Radicals and Protestants dissenting on any given issue, the alliance could be quite effective. By January 1866, the Radical Parliament had passed nine constitutional amendments, which were presented together on one national referendum ballot. The issues under consideration were diverse. Weights and measures were to be standardized, suffrage qualifications at the cantonal and communal level were to be set, lotteries were to be

prohibited, and certain criminal punishments were to be eliminated. All were rejected in the popular vote but one, an amendment banning discrimination against Jews which passed narrowly, with 53.2 percent approval. In referendum after referendum until the turn of the century, the cantons defeated in the Sonderbund War would be found on one side of the issue, while most of the victorious cantons lined up on the other side. The scars of the 1847 conflict ran deep and would remain for generations.

Although political out-groups used the referendum effectively at the federal level to oppose the government, the scope of the device was limited to constitutional issues raised by those in power. The federal referendum from 1848 to 1874 was essentially a controlled one. The facultative legislative referendum, by which citizens could challenge any statute and place it before the people, existed only in the cantons.

This was to change with the constitutional revision of 1874. The ruling Radicals wanted to expand the central government's powers in various ways. They sought the centralization of the Swiss military, as well as greater uniformity in economic legislation. The once laissez-faire Radicals were becoming more interventionist in their old age, desiring the constitutional authority to regulate Switzerland's economy. At the same time, a diverse coalition of progressives, socialists, rural populists, and supporters of the old ruling families was bound together by the common desire for more direct democracy, specifically the facultative legislative referendum at the federal level. This broad democratic movement, in combination with the conservative and Catholic opposition, challenged Radical hegemony. Conceding the desirability of a federal legislative referendum, the Radical government placed the proposal alongside its own list of constitutional reforms. In 1872, the first Radical attempt at a total revision of the Constitution was put to a popular vote. Of course, the term 'total' was a misnomer, since the proposed document retained virtually all of the 1848 political institutions without alteration. The proposal was defeated closely, with 50.5 percent of the electorate voting against it. Federalists from the Catholic central cantons combined with federalists in the Protestant west to block an unacceptable expansion of central authority.

Two years later the Radical government tried again. The federal legislative referendum was retained as part of the revision package. It served as a concession to the democratic movement and to the conservative minority. The device was also viewed as a counterbalance to the removal to Bern of some of the cantonal governments' powers; it offered federalists a means of fighting future attempts to erode cantonal authority. The primary change in the second draft was that the much-resented centralizing clauses were scaled back, while the anti-Catholic ones were enhanced. The tactic worked; the Protestant federalist opposition was enticed to come on board and separate itself from the Catholics. The 1874 Federal Constitution passed with a popular endorsement of 63.2 percent.

Although the new Constitution was a triumph for the Radical Party, particularly in achieving the unification of Switzerland into a single economic entity, it opened the door to forces that would end the era of Radical dominance. These forces would find expression in a new stage of direct democracy. With 30,000 signatures - not difficult to achieve in a country of 2.7 million - or with the vote of eight cantons, any non-urgent law could be challenged in a nationwide referendum. Dieter Fahrni describes the introduction of the federal legislative referendum as 'one of the most important turning points in modern Swiss history. To this day the referendum has remained the lynchpin of the Swiss political system.'

The 1874 Constitution exacerbated the alienation felt by Swiss Catholics in national politics. At the same time, it gave them a valuable new device for challenging and obstructing Radical policies. The Catholic-conservative alliance was particularly strong in its defense of federalism. Employing the referendum repeatedly, federalist forces struck down numerous statutes which threatened cantonal prerogatives. Voting rights acts were rejected in 1875 and 1877. A statute introducing paper currency was stopped in 1876. Legislation on primary schools was defeated in 1882, and attempts to organize a Department of Justice and a national criminal code were blocked in 1884. In addition to this federalist alliance, the Catholics successfully established common cause with the growing socialist movement on numerous occasions to defeat government proposals. These alliances, both of which were organized to negate Radical legislation, eventually threatened to bring federal political life to a standstill. During the ten-year period of 1875-1884, 14 federal laws were challenged by referendum; 11, or 79 percent, were rejected. As *Der Bund*, the pro-government paper in Bern, lamented: 'In this way the popular referendum, which was supposed to consolidate the bonds between liberty and order, is being degraded to an instrument of revolution and is bringing about the disintegration of the state.'

This account captured the frustration felt by Radicals at the time. However, its conclusion was inaccurate. The effect of the referendum was not revolutionary; it was conservative and obstructionist. The Swiss political system between 1848 and 1891 was not a *Konkordanz-Demokratie*; it was a majoritarian system in which the Radical majority jealously guarded its monopoly of power in federal representative institutions. The referendum was a tool used exclusively by alliances of political minorities as a brake on Radical policies. In this way, it was proving to be an extremely effective check on the legislature and the Federal Council. Although gerrymandering, superior campaigning, and voter loyalty kept the Radicals firmly in the majority in the Federal Assembly, direct democracy continually revealed majorities in the electorate opposed to Radical policies. These repeated defeats foreshadowed the coming end to Radical domination of Swiss representative institutions.

The referendum in Switzerland had evolved into a completely different animal from that in France. The French used controlled referendums throughout the nineteenth century to legitimize new regimes and constitutional structures. It was a self-affirming way of hailing institutional progress. Consequently, it was not unusual to see affirmative majorities of more than 90 percent. In Switzerland, the referendum was uncontrolled. The Swiss people used it to preserve the status quo and question the so-called 'progress' advocated by those in power.

In 1884, following a decade of referendum defeats, the Radicals finally gave in and opened the circle of political power. In an effort to co-opt the opposition, a Catholic (who was also a conservative) was elected to the Federal Council and made President - Josef Zemp. This concession resulted in a degree of referendal success for the Radicals. Between 1885 and 1890, only two laws were challenged; and neither was ultimately rejected by the people. However, the election of Zemp was not enough to enlist the full support of Catholics and conservatives. Early in 1891, a law providing pensions to federal officials was challenged and defeated in a referendum. Later the same year, a crucial statute nationalizing the Swiss railways was rejected by 68.9 percent of the electorate. What then resulted was a rare occurrence in the Swiss political system - a Federal Councillor resigned. The Councillor concerned was Emil Welti, one of the most prominent Swiss politicians of his era.

The vacancy was filled by a second Catholic conservative, a move which finally gave the Catholics a meaningful level of participation in the national executive body. The event

marked an important turning point in Swiss political history. It was the first step in the process of making the composition of the federal executive proportional to the strength of parties in the electorate. The process would culminate in 1959 with the establishment of the 'magic formula' whereby the Federal Council would henceforth be composed of two Radicals, two Christian Democrats, two Social Democrats, and one member of the agrarian Swiss People's Party. In 1891, Switzerland left behind the majoritarian concept of democracy in which government and opposition theoretically alternated between full possession of political power and relative powerlessness. The sharing of power embodied in the concept of Konkordanz-Demokratie was born. The role of the referendum in bringing about this transformation is difficult to exaggerate. Without it, the Catholics and conservatives would never have been able to force open the doors of power. The 1874 introduction of the federal legislative referendum also demonstrated how one structural innovation could have far-reaching consequences on informal (but crucial) distributions of political power.

1891 was an important year in the history of direct democracy for another reason. The constitutional initiative for partial revision was introduced at the federal level. The 1848 Constitution established the people's right to demand the total revision of the Constitution, which logically implied the right to demand specific amendments. The delegates at the Federal Constituent Assembly had clearly stated that this was the case. However, subsequent Radical governments were not eager to concede this extra measure of direct democracy in a period when they were taking beating after beating in national referendums. In 1879, a petition with 50,000 signatures was submitted, requesting a partial amendment of the Constitution. In what was seen as a somewhat autocratic response, the Federal Assembly refused to consider it. Widespread feelings of discontent began to emerge. A year later, an initiative for a constitutional amendment concerning paper currency was submitted under the guise of a total constitutional revision. Although the initiative failed in the popular vote, it established a dangerous precedent to which the government felt it must respond. Proposals for minor constitutional amendments were being treated as total revisions of the Constitution. It became clear that a constitutional initiative for partial revision was necessary to complement the initiative for total revision. However, there was considerable disagreement as to the likely consequences of introducing the device. Some politicians feared that it would have a destabilizing, even revolutionary, effect. Others predicted that it would have just the opposite effect by giving voice to popular discontent before it erupted in civil unrest. National Council MP Albert Gobat warned that allowing initiatives for constitutional amendments would result in the possibility of a 'friedlichen Staatsstreich' (peaceful coup d'état) whenever the government was defeated on such issues. He assumed that the logic of majoritarian democracy would prevail, in which defeat on important matters would prompt calls for the resignation of the government and the dissolution of the parliament. His prediction was subsequently proven wrong, as the passage of initiatives to which the government was opposed rarely resulted in even the suggestion of resignation.

In 1891, the government finally conceded and placed before the people an amendment introducing the partial constitutional initiative. It succeeded, with 60.3 percent voting in favor, but the distribution of votes indicated that the majority of Radicals in the population were opposed. The Radicals in the Federal Assembly were also uneasy about the opportunities afforded to their political opponents by this new device. The threat of anti-government initiatives being launched by the opposition intensified the need to accommodate the Catholic and conservative minorities. Thus, the constitutional initiative for partial revision also contributed to the decision later in 1891 to elect a second Catholic conservative to the Federal Council.

The adoption of the initiative for partial constitutional revision placed Switzerland in the curious position in which the highest law of the land was more easily amendable by popular action than were routine statutes. The timing of political events prevented the federal legislative initiative from emerging before 1891, and it still does not exist today. This situation has encouraged proponents of reform to cast as constitutional amendments proposals that otherwise might have been enacted as normal laws, allowing the Swiss Constitution to become a hodgepodge of fundamental law mixed with routine legislation. An attempt was made to introduce the federal legislative initiative in 1961, but the move was rejected by 70.6 percent of the voters.

## **1891-1945: Direct democracy on the road to consensual politics**

In the first 20 years of the initiative's operation, nine constitutional amendments were launched which also received the 50,000 signatures necessary to qualify for the ballot. Of the nine, only two passed; and another was withdrawn in favor of a government counterproposal which succeeded. The onslaught of initiatives dreaded by some opponents of the device had not occurred. It is worth noting that none of the initiatives urging dramatic structural reform or concerning fundamental rights won popular approval. The Swiss people rejected a right to work amendment (1894), proportional representation in the national legislature (1900 and 1910), popular election of the Federal Council (1900), and an amendment concerning seats in the lower house, the National Council (1903). The two initiatives that won at the polls resembled normal legislation. The first was an 1893 measure prohibiting the slaughter of cattle according to Hebrew rite. This intolerant and prejudiced proposal encountered indifference by the general public. However, a peculiar combination of antisemites and societies for the prevention of cruelty to animals succeeding in mobilizing their ranks and pushing it through to win 60.1 percent of the vote. Swiss minorities, unprotected by a bill of rights, were extremely vulnerable to this sort of popular abuse, and remain so today. However, as public attitudes became more tolerant, the 1893 amendment came to be ignored by police and the courts, as it is today.

The second successful initiative banned absinthe, a particularly strong liquor, in 1908. The initiative withdrawn in favor of a government counterproposal provided for federal legislation concerning hydraulic resources when national interests were at stake. This was more 'constitutional' than the other two initiatives, since it implied a potential transfer of powers from the cantons to Bern. However, the government's counterproposal did so only in a minimal way. In effect, Switzerland had a legislative initiative rather than a constitutional one, after all. Table 1-4 illustrates the operation of the device during its first two decades of its existence.

In 1906, a bill establishing the legislative initiative at the national level was introduced in the Federal Assembly. It was debated, tabled, and reconsidered for several years; but it was never enacted. Meanwhile, direct democracy continued to expand in the cantons. By 1912, all but three of the 18 cantons with representative assemblies had adopted the legislative initiative. Four of the Landsgemeinde cantons still enacted all of their legislation by popular vote at that time. Concurrent with this expansion of direct democracy at the cantonal level was a surge in the establishment of referendums and initiatives at the local level of government. Between 1880 and 1912, all of the larger Swiss cities introduced both devices. In many cities, the referendum was also made compulsory in matters of public finance.

1891 also saw the entrenchment of another key feature of Swiss politics: the formulation of policy through the conflict and bargaining of major interest groups. It was in that year that the referendum battle over the revised Tariff Act was fought. This was the first legislative dispute in Swiss history to be argued primarily by competing interest groups rather than by the cantonally-based political parties. All four of Switzerland's most influential interest groups (known as Verbände) were formed either slightly before or soon after this debate. In 1870, the Vorort des Schweizerischer Handels- und Industrienverein (Swiss Union of Commerce and Industry), commonly known as the Vorort, was established on the federal level. By 1881, it was being subsidized by the federal government. The Schweizerischer Gewerbeverband (Swiss Union of Small Businessmen) was founded in 1879. In the same year, a Labor Secretary was charged with the task of collecting statistics on labor; and the process of government consultation with union officials commenced. The Schweizerischer Gewerkschaftsbund (Swiss Federation of Trade Unions) was formed out of the older Workers' Association in 1880. The last of the big four interest groups to take shape was the Schweizerischer Bauernverband (Swiss Farmers' Union), created early in the twentieth century. All four started receiving financial support from the government shortly after their creation and continue to do so today. The government has always justified this public expenditure by pointing to the need for reliable technical information which the minuscule Swiss bureaucracy has been unable to provide on its own.

The early rise to prominence of these interest groups was aided by the structure of Swiss federalism. The focus of Swiss politics had always been at the cantonal level. However, the modernization and growth of the economy at the end of the nineteenth century presented complications which required the attention of the central government. The federal bureaucracy in Bern was too small to cope with such problems alone, and there were few suitable institutions outside of the government that were organized on a national level. Interest groups were summoned to fill the gap.

The organizations' expanding administrative influence was accompanied by impressive strength in the arena of direct democracy. They enjoyed large memberships, mounting finances, and a prominent position in virtually all of the cantons. The threat of a referendal challenge from one of these organizations was not taken lightly in the Federal Assembly. As a result, the process of 'consultation' emerged. Early in the twentieth century, legislative committees started inviting representatives of the major interest groups to collaborate in the shaping of legislation in the earliest stages of the lawmaking process. Today, the practice of consultation is the very cornerstone of policy making in Switzerland. In both its formal and informal guises, it is yet another institutional spin-off resulting from the introduction of the facultative referendum in 1874. Consultation is examined in detail in Chapter Six.

The major Swiss interest groups gained an important edge in the Swiss political system by virtue of the fact that they preceded the development of national political parties. Although most cantonal parties were already well established by the middle of the nineteenth century, national party organizations emerged relatively late. The Social Democrats (Sozialdemokratische Partei der Schweiz - SPS) were the first. Although some claim that the SPS dates back to 1880 with the establishment of the Gewerkschaftsbund, the political party was actually organized in 1888. The Radicals responded to this challenge and established the national Radical Democratic Party (Freisinnig-demokratische Partei der Schweiz - FDP) in 1894. The Catholic Conservatives, later to evolve into the Christian Democrats (Christlichdemokratische Volkspartei der Schweiz - CVP), organized nationally in the same

year by one account, or in 1905 by another. The Agrarian Party, eventually to become the Swiss People's Party (Schweizerische Volkspartei - SVP), came even later, breaking off from the Radicals in 1919. None of the parties employed proper party secretariats until the 1920s. Due to their late arrival, the national parties developed in the shadow of the dominant interest groups, whose influence over government policy was more pervasive. The federal referendum played a critical role in the evolution of the parties. Indeed, one of the primary motivations for the creation of national party organizations was the desire to wield greater influence in the national referendums. They were geared more for this purpose than for the task of winning seats in the Federal Assembly.

Although the Social Democratic Party was the first to organize, it was only the third Swiss party to acquire any real influence in national politics. It began to expand its ranks after 1900, making its presence felt through referendum campaigns which brought about the popular rejection of several laws. Like socialist parties in other European nations, it gained a considerable number of parliamentary seats during and after the First World War. During the war, Switzerland had served as a meeting point for socialists and Marxists around the continent. After the war's close, the Social Democrats began to make effective use of the federal initiative. In 1918, the Social Democratic Party achieved its most important victory with the long sought-after introduction of proportional representation (PR) in National Council elections. Proportional representation had appeared in some cantonal legislatures as early as the 1890s. In 1913, the Social Democrats and Catholic Conservatives co-sponsored and submitted a constitutional initiative for proportional representation in the National Council; but the voting was postponed by the war. On 13 October 1918, the polling took place; and the initiative succeeded, with 68.8 percent of the voters and 19 1/2 cantons in favor. This was the parties' third PR initiative; the previous two attempts failed in 1900 and 1910. The victory in 1918 brought about a fundamental structural change in the Swiss political system, demonstrating that the initiative was not only a vehicle for routine legislation, but a device of genuine constitutional reform as well.

Events at the close of 1918 pushed the new electoral system into use sooner than had been planned. Socialist ferment among industrial workers and fears of civilian unrest in Zürich prompted Ulrich Wille, General of the Swiss Army, to send in troops. The Federal Council apparently concurred. The ensuing display of force prompted a one-day protest strike in Zürich, which was followed by the nationwide General Strike beginning on 11 November. On 13 November, the 'Olten Action Committee' representing the strikers finally capitulated to an ultimatum delivered by the President of the Confederation. Instilling fears of revolutionary violence, the crisis induced the government to bring the next elections forward. In 1919, a very different National Council was elected. The Radical Democrats (with 28.8 percent of the vote), their conservative allies in the small Liberal Party (with 3.8 percent), and their governing partners, the Catholic Conservatives (with 21.0 percent), could still produce a parliamentary majority. However, it was a greatly reduced one, in which they controlled 110 of 189 National Council Seats, compared to 157 in the 1917 election. The Social Democrats won 23.5 percent of the vote and 41 seats; and the newly-formed Agrarians broke away from the Radical Democrats to win 15.3 percent of the vote and 30 seats in their first election. Radical hegemony was dead. The introduction of proportional representation made it virtually impossible for any party in the Swiss system to achieve a parliamentary majority. In virtually every election since, the three largest parties - the Radical Democrats, the Catholic Conservatives, and the Social Democrats - have each received between 19 and 26 percent of the vote. The Agrarians have regularly received 10-13 percent. The Independent Alliance, founded in 1935 primarily on a platform of consumer interests, has usually claimed 4-8

percent of the vote. The Communist Party formed in the 1920s has never received more than 2.9 percent of the vote, with the exception of 1947, when it won 5.1 percent.

At the start of the First World War, the primary political cleavage in Switzerland shifted from the old Catholic-Protestant rift to one of language. The German-speaking Swiss had cultural and linguistic ties to Germany and Prussia, while the French- and Italian-speaking Swiss were sympathetic to France and Italy. During the war, General Wille conducted intelligence operations for the Germans, a move which deeply angered French and Italian speakers. In 1917, Federal Councillor Hermann Hoffman was forced to resign when his secret diplomacy on behalf of Germany to Russia was exposed. To placate the infuriated French-speakers of Western Switzerland, the government offered them a French-speaking seat on the Federal Council. In this way, proportionality in the executive was used to bridge a second political cleavage. In the same spirit of reconciliation, Switzerland joined the League of Nations in 1920. However, this decision was fervently opposed by many who argued that it compromised the country's long-standing posture of neutrality. They maintained that it was precisely this policy of neutrality which had prevented the nation from tearing itself apart during the war. In spite of their objections, the decision to join the League was narrowly ratified in the ensuing referendum, with 56.3 percent in favor.

After the industrial violence of 1918, the socialist-bourgeois cleavage stole the spotlight from the linguistic divide. The Radical Democrats and Catholic Conservatives allied against the new socialist threat. However, after Switzerland's Social Democrats refused to follow the directives of the third Communist International in 1919 - a move which provoked the communists to jump ship and form their own party - the SPS began to drift slowly back toward the center. Beginning on the local level, the SPS and the moderates of the bourgeois parties gradually reconciled themselves to working with one another. In 1937, an accord was reached on the industrial front with the conclusion of the Peace Agreement of 19 July, which ended the rash of strikes witnessed in the first half of the 1930s. The unrest had forced a drastic devaluation of the Swiss franc. Facing the imminent threat of unwanted government mediation, the metal industry employers and the principal metalworkers' unions concluded a settlement to maintain industrial peace. The first Peace Agreement lasted two years; and subsequent agreements have been renewed every five years since. Although the rift between the Social Democrats and the governing parties gradually healed during the 1930s, it was not until 1943 that a Social Democrat was elected to the Federal Council by the legislature. It was the last of the four major parties to be brought on board. Like the Catholics, the Social Democrats had used direct democracy as political outsiders in their bid to win an insider role in the Swiss political system.

In the 1930s, a new cleavage began to supplant the socialist-bourgeois rift, in the form of the center parties versus extremists on the Left and the Right. As the Social Democrats reached an accommodation with industry and the bourgeois parties, the Communist Party drifted further to the left in support of Moscow. Meanwhile, the right-wing Agrarians allied with staunchly anti-socialist and anti-communist elements in the Catholic community. They were joined at the extreme right of the political spectrum by various military groups and rapidly expanding 'Fronts', patterned after those in Nazi Germany. The largest of these, the fascist National Front, attained 15 percent of local election votes in some communes during its strongest years (1935, 1937, and 1940). However, its share in most localities during this period was only half this percentage. In national elections, the Fronts were only able to elect a one member to the National Council (in 1935, with 1.5 percent of the vote). Against both extremist factions was

the besieged political center, which looked for support to the League of Nations powers, Britain and France, as well as to the United States.

The right-wing fringe organizations attempted to use the referendum to open the doors of power as the Catholic Conservatives had done in the 1870s and 1880s and as the Social Democrats had done in the 1910s. In 1935, they launched an initiative for the total revision of the Constitution. The attempt failed, winning only 197,000 votes versus 512,000 opposed (27.7 percent voted in favor). Two years later, the Right brought forward an initiative to prohibit Freemasonry. It too failed, winning only 31.3 percent of the vote. As these examples illustrate, the reactionary Right of the 1930s failed to pry open the doors of power with direct democracy. The referendum had been used in this way previously, but only because the population was ready to accept such changes. It cannot confer political power on those groups lacking a sufficiently broad base of popular support.

During the Second World War, the parties of the center rallied together in the face of potential German and Italian aggression against Switzerland. After the fall of France in 1940, the tiny democracy was surrounded on all sides by the Axis powers. Although the granting of asylum to refugees was limited because of German pressure, and several senior political officials made controversial suggestions that Switzerland should accede peacefully to German demands, the Swiss ultimately refused to cave in. The cause of resistance was strengthened massively by General Guisan's famous address on the Rütli meadow in 1940. The nation came together behind the policy of Widerstand (resistance) and the strategy of the alpine redoubt. Strangely, the plan would have conceded 90 percent of Switzerland's population and two-thirds of its territory to the invaders. The key was that, if attacked, the army would remain steadfastly committed to blocking the vital mountain passes linking Germany and Italy, ready to destroy them in the end if necessary. The war years eventually discredited the political extremists in Switzerland, and the surge of patriotism mitigated the expression of the various social cleavages. A powerful unifying sentiment was created which permeated the political environment well into the 1960s.

## **Direct democracy in the postwar period**

The Second World War was followed by 25 years of unprecedented economic growth in Switzerland. An influx of foreign workers, virtually all of whom were denied political rights under Switzerland's stringent naturalization requirements, made the boom possible. Huge Swiss multinational corporations arose in various industries, particularly in chemicals, machine-building, and food products. Today, most carry out the bulk of their production abroad. Nestlé, the largest, earns 98 percent of its turnover in foreign countries. Meanwhile, the Swiss financial sector expanded to colossal proportions, generating much of its income by investing foreign funds beyond Swiss borders on behalf of its clients. By 1973, revenue earned abroad accounted for 44 percent of net social product in Switzerland.

This prosperity affected the operation of direct democracy. In the 1950s, a number of controversial laws were passed without having to face the test of a referendum. For example, a 1956 act made collective agreements between management and labor binding on both parties. An expensive national highway program in 1960 went unchallenged, as did many extensions of the old-age pensions scheme. Once-frugal Swiss governments began to spend enormous sums of money improving public facilities. Total spending by all three levels of Swiss government tripled in real terms between 1959 and the mid-1970s. Arguably, these

outlays would have met much greater resistance had the government attempted to introduce them during the recession of the late 1970s.

In 1959, the development of consensual government culminated in the 'magic formula', by which all four major parties were represented on the Federal Council in a 2:2:2:1 ratio. The Social Democrats, after six years' voluntary withdrawal, returned to the Council with two seats. The other parties were undoubtedly anxious to bring the SPS back on board after its referendum campaign in opposition to a 1958 tax hike which was seen as insufficiently progressive. The finance measure succeeded narrowly, with only 54.6 percent approving. The Christian Democrats and the Radical Democrats retained two seats each on the Federal Council, with the Swiss People's Party allotted one. This informal distribution of seats has continued unchanged to the present day. In 1959, the four governing parties represented 85 percent of the electorate. For the next three decades, roughly 80 percent of Swiss voters were continuously represented by their party on the national executive. In 1987 the governing parties' share of the vote dropped to 72.3 percent, falling again in 1991 to 69.5 percent. This shift has primarily been due to the rise of small, issue-oriented parties since the early 1970s, described in detail in Chapters Four and Five. In addition to proportionality according to party, seats on the Federal Council are informally distributed according to language. There are usually four German speakers, two French speakers, and one Italian speaker.

After the narrow adoption of a popular initiative in 1949 ruling out certain wartime restrictions on referendums, the initiative in Switzerland entered a long dry spell. In the next 33 years, no less than 40 initiatives were rejected by the Swiss electorate. The next successful initiative did not occur until 1982, when 56.1 percent voted to introduce price controls to stem inflation. In 1961, an attempt had been made to introduce the federal legislative initiative device. The effort failed badly, winning only 29.4 percent of the vote. Kenneth Libbey argues that this remarkable string of initiative failures was largely a popular reflex against the expansion of government activity. However, this explanation must be viewed skeptically, for the unchallenged growth of the Swiss government in the 1950s and 1960s contradicts it; and it fails to account for the resurgence of the initiative in the more fiscally conservative 1980s.

The Swiss people are generally conservative in economic matters, particularly when it comes to raising government revenues. One might suspect that the presence of direct democracy would make modern government impossible, because all tax increases are susceptible to referendal challenge. Furthermore, many direct and indirect tax hikes require constitutional change in Switzerland and must therefore pass an obligatory referendum. The Gewerbeverband and the Vorort campaign against most tax increases; both organizations have been reluctant to countenance additional burdens upon the taxpayer. The Bauernverband typically adds its voice to the chorus of opposition when the farming community is seen to be disadvantaged. Nonetheless, politicians in the major parties usually go along with such tax increases if their leaders agree to them in the Federal Council. However, there are occasional mutinies. In 1967, the Social Democrats pledged to oppose a federal tax reform package, supported by the other parties, by fighting it in a referendum. The threat dissuaded the Radical Democrats, the main proponents of the measure, from even standing by their bill through the final legislative debate. Between 1945 and 1992, the Swiss electorate passed judgment upon 25 proposals involving tax increases or the imposition of new taxes. Of this number, 13 succeeded and 12 failed. Clearly, the Swiss people have not made it impossible for their government to finance itself.

In some cases, such as in 1970 and 1974, government plans to raise taxes are defeated narrowly in a referendum the first time around, only to succeed later. In 1970, 55.4 percent of voters favored the hike, but the measure failed to gain the necessary majority of cantons, winning only nine. In 1974, a similar measure lost the popular vote as well, with 44.4 percent in favor. However, in both cases the government came back the next year with another tax hike proposal and won the popular referendum. Certain types of taxes have been more successful than others. The Swiss people voted for federal highway taxes on two occasions, in 1975 and 1984. The federal value-added tax has met with less success. Its introduction has been rejected four times, in 1952, 1977, 1979, and 1991. The Swiss population holds a similar distaste for income taxes at the federal level. Ever since it began trying in 1918, the federal government has been unable to impose a regular income tax upon the Confederation. Instead, it has been forced to rely upon indirect taxation to finance its expenditures.

The governments of the cantons levy a mix of income and property taxes. However, most decisions to raise the rates of taxation are subject to cantonal referendums. Although new expenditures are often approved, attempts to increase revenues accordingly are frequently voted down. This has long been a source of irritation to cantonal governments. In some cantons, the obstacles to raising revenue are particularly great; the governments must win an obligatory financial referendum every time they wish to raise taxes. This requirement saves opposition groups the trouble of collecting signatures. It may only take a few vague comments or editorials in newspapers to spark public skepticism and mobilize anti-tax sentiment. The potentially embarrassing consequences of this arrangement were demonstrated in Aargau in 1964. The citizens of the canton refused to approve the credits necessary to present a cantonal day at the Swiss National Exposition, and the canton was conspicuously absent. In some cantons, such as Bern, the citizens relish this right of veto. In others, such as Vaud and Geneva, the cantonal governments were able to persuade their voters to surrender this prerogative.

The postwar era has seen federal referendums in numerous sensitive areas of government activity. The Swiss have repeatedly brought measures affecting national defense and foreign policy to a popular vote. In this way, the left wing of the Social Democratic Party began to challenge the military establishment and its policies in the late 1950s, with mixed success. In 1957, the introduction of a national civil defense system was rejected narrowly (with 48.1 percent in favor), due in large part to Social Democratic opposition. However, two years later a similar measure won popular approval. In 1962, the Social Democrats launched an initiative to prohibit nuclear armaments; but only 34.8 percent of the people supported the ban. The following year the SPS took a smaller bite, proposing that any future decision to acquire nuclear arms be required to pass an obligatory referendum. The new proposal won the support of only 3 percent more of the electorate. In 1972, anti-military groups very nearly succeeded with an initiative stopping the export of armaments; and in 1987, the Left brought forward two more anti-military initiatives. The first attempted to make all military appropriations subject to obligatory referendum and failed. The second, an initiative to prohibit the construction of the Rothenthurm military base, was a surprise success. Because the base was to be constructed in a particularly scenic moor region, the initiative attracted the support of environmentalists as well as those loath to damage Switzerland's beautiful scenery. Vital to the all-important tourism industry, the Swiss landscape is also a matter of national pride. The Rothenthurm initiative was only the second initiative to succeed since 1949, winning 57.8 percent of the vote. Heartened by this victory, the leftist Young Social Democrats launched an even more ambitious initiative - one calling for the total abolition of the Swiss army. The proposal challenged what has traditionally been considered the backbone of Swiss neutrality

and citizenship. The November 1989 initiative was rejected, with 35.6 percent voting yes. Few expected the measure to pass; but most were surprised by the magnitude of support that it received. No longer able to take its existence and social role for granted, the army must now be prepared to defend itself against popular attacks which employ the weapons of direct democracy.

In the 1930s, the far Right was unsuccessful in its attempts to use direct democracy to its advantage. In 1967, a new generation of conservative extremists tried again. James Schwarzenbach, a journalist and publisher by profession, entered the National Council that year as a non-partisan representative of the 'Aktion gegen Überfremdung von Volk und Heimat' (Action against Aliens of Race and Home) pressure group. He was alone in Parliament, but his interest group could operate the machinery of direct democracy as effectively as any party or Verband. Shortly after Schwarzenbach's election, his organization launched an initiative demanding that one-third of Switzerland's foreign workers be forced to leave and that aliens compose no more than 10 percent of the population in any canton. Geneva, with its plethora of international organizations, would be allowed 25 percent. The xenophobic measure promised the forced exodus of some 300,000 registered foreign workers. Deeply worried industrial and commercial interests responded by launching an expensive campaign against the 'Schwarzenbach initiative'. When it became evident that the initiative might still succeed at the ballot box, the Federal Council attempted to undercut the proposal's popularity by taking a few limited steps in the same direction of restricting foreign workers. The government did not want to draft a counterproposal because any anti-foreigner clause in the Constitution would almost certainly be condemned by the outside world. Instead, the Federal Council used its ordinance power in 1968 and 1969 to lower the number of foreign workers permitted in each firm. In 1970, a law setting national limits was passed. In the June 1970 vote on the Schwarzenbach initiative, 46 percent of Swiss voters supported the measure, nearly achieving a startling victory. The initiative lost by less than 50,000 votes. The distribution of support was particularly interesting. Schwarzenbach carried six full and two half cantons - Bern, Lucerne, Uri, Schwyz, Fribourg, Solothurn, Nidwalden, and Obwalden. If Valais had replaced Solothurn and Bern, it would have repeated the Sonderbund alliance exactly. Schwarzenbach's strongest support had come from Catholic and rural regions.

The near-victory encouraged him to construct a new political party, the Republicans. At the same time, a similar party was formed by others on the extreme Right, the National Action. In the 1971 elections, the two parties received 7 percent of the vote in total, sending 11 representatives to the 200-member Nationalrat. It was the largest electoral shift seen in decades. Normally, party loyalties in postwar Switzerland had been extremely high, with only slight swings in support from election to election. Even more remarkable was the fact that this right-wing alliance drew most of its votes in 1971 from the working class, traditionally a source of Social Democratic support. The highly-vocal 'National Opposition' achieved some legislative success, introducing additional limits on foreign workers in 1973 and a law controlling seasonal workers in 1974.

In 1972, the National Action Party launched an initiative demanding the total reduction of foreign workers to 500,000 by 1977. Involving the expulsion of 540,000 people, this measure was even more extreme than the 1970 initiative. Estimates of the economic impact of the measure showed that the Swiss economy would be gravely endangered. Whole branches of industries would face almost certain collapse if it passed. By 1974, 17 percent of the Swiss work force was foreign, coming primarily from Spain and Italy. The President of the Confederation delivered a public speech condemning the initiative and imploring the public to

vote against it - a rare occurrence in Switzerland. Then, in March 1974, Schwarzenbach dissociated himself from the National Action initiative, stating that 'his conscience would not permit him to support proposals which would lead Switzerland to the brink of a catastrophe'. Relations soured between the two groups, and the movement lost steam. In the October vote, only 34.2 percent favored the initiative, considerably less than in 1970. It carried no cantons. The 1975 parliamentary elections confirmed the waning of the extreme Right; the two parties lost five seats. However, they enjoyed a resurgence in the mid-1980s which has continued into the early 1990s. In 1991, combined under the new party label of the Swiss Democrats, they won 3.3 percent of the vote and retained their five seats from the previous Parliament. In all, seven separate initiatives to restrict the number of foreigners in Switzerland were launched by the xenophobic Right, decisively influencing Switzerland's treatment of its foreign workers in spite of the fact that none of the initiatives succeeded at the polls.

The Schwarzenbach episode also demonstrated an important facet of Swiss direct democracy in the twentieth century - what I refer to as the initiative entrepreneur - a person who builds a political career or national fame by launching initiatives on specific topics. Although the practice was pioneered by Gottlieb Duttweiler in the 1930s, recent advances in telecommunications and mass-advertising have greatly facilitated such national campaigns. The phenomenon of the initiative entrepreneur is discussed further in Chapters Four and Five.

Another notable postwar development was the resurgence in the canton of Bern of linguistic and religious conflict. In the 1950s, citizens living in the Francophone districts of the Jura region formed a separatist movement known as the *Rassemblement jurassien*. Two cantonal referendums were held in the late 1950s and early 1960s on the question of secession from the rest of Bern to form a separate canton. The referendums revealed a majority in favor of secession in the three French-speaking, Catholic districts of the northern Jura. However, the separatist voters were outweighed in the total count by the three German-speaking, Protestant districts of the southern Jura. Deciding that direct democracy offered them no hope as long as entire Jura region was counted, the younger members of the movement turned to terrorism. The latent *Sonderbund* cleavage was again erupting in violence, albeit in a confined region. Finally, in a series of district-specific and communal referendums held in 1974 and 1975, the issue was settled. The canton of Jura was to be created out of the three northern districts. In 1978, the solution was ratified overwhelmingly by the Swiss people in a federal referendum (with 82.3 percent voting in favor). Direct democracy had been successfully employed as a means of defusing the conflict. However, the situation was conducive to settlement by plebiscite, because the linguistic and religious cleavages coincided with geographic lines. This is not always the case, as Northern Ireland demonstrates.

In the 1970s, a new issue dimension emerged in Switzerland, as it did in several other European democracies. Post-materialist environmentalism embodied by the Green movement confronted the traditional dedication to economic growth espoused by the major parties. As with older political cleavages, this new rift found expression initially through direct democracy. In order to pre-empt initiatives on the subject, the Federal Assembly passed two constitutional amendments preserving the environment and protecting wildlife. In 1971 and 1973 respectively, the amendments were approved overwhelmingly by the voters. Emboldened by this concession, the movement used the initiative to demand more. In 1977, they advocated a federal initiative restricting noxious emissions from automobiles. It did not meet with the same success, capturing only 39 percent of the vote and 1 1/2 cantons. A 1978 initiative to establish twelve Sundays a year on which motor traffic would be prohibited received even less support. Similarly, a 1985 initiative prohibiting vivisection was quashed by

the electorate. In spite of these failures, the post-materialist Greens eventually achieved two stunning successes - the Rothenthurm initiative adopted in 1987 and the initiative for a ten-year moratorium on the construction of nuclear power plants adopted in 1990. This latter victory was presaged by initiatives against nuclear power which were nearly accepted in 1979 and 1984, with 48.8 and 45.0 percent of the vote. In the late 1980s, the 'Autopartei' was formed in order to protect the rights and privileges of motorists, largely in response to the initiatives of the environmentalists. The party also looked to direct democracy as a vehicle for conveying its own agenda. In 1989, the Autopartei attempted to raise the federal speed limit from 100 to 130 kph. via the initiative. The proposal failed, winning only 38 percent of the vote. This pattern of new political groups entering the scene with petition in hand is a recurring one in Switzerland and is likely to continue.

## **The mechanisms of direct democracy today**

Before continuing, it is necessary to briefly explain the rules and procedures of direct democracy at the federal level. As mentioned above, there are no controlled or consultative referendums in Switzerland. The government may not call referendums at will. The only sense in which this is possible is through the passage of a constitutional amendment, which requires a referendum for enactment. All referendums represent sovereign and binding decisions, in that they cannot be overruled except by another referendum. However, the government is free to attempt to pass a law or constitutional amendment again after it has been rejected in a referendum. The institution of direct democracy is higher than any branch of government. The Federal Assembly and the Federal Council must obey the popular will so expressed, and the Supreme Court cannot declare a referendum or initiative unconstitutional (unless it is not carried out according to the correct procedures). Thus, it is impossible for the high court to strike down a referendum outcome on the grounds that it violates basic human rights enshrined in the Constitution. In theory, there is no hindrance to 'tyranny of the majority' except in the requiring of double majorities, explained below. Furthermore, the fact that a law is not challenged by referendum is usually interpreted by the judiciary as a sort of tacit consent by the sovereign. Therefore, Swiss courts will rarely entertain appeals against the unconstitutionality of a federal law.

With all acts of legislation except those designated as matters of urgency, direct democracy has a delaying effect. That is, the law in question cannot go into effect until the referendum procedure has been carried out. At a minimum, this entails a delay of 90 days during which citizens may circulate petitions to demand a referendum on the law. If the signature collection effort is successful, then there will be approximately six months of additional delay until the issue can be placed on the ballot. With urgent decrees, the measures take effect immediately but can be cancelled by referendum after one year.

There are four basic types of referendum at the federal level in Switzerland:

1. the 'obligatory' referendum on constitutional amendments;
2. the constitutional initiative;
3. the optional or 'facultative' referendum on legislation;
4. the optional treaty referendum.

The obligatory referendum on constitutional matters stems from the requirement that all constitutional amendments be submitted to a popular vote. The same rules that apply to cases

of total revision apply to cases of partial amendment as well. The former have been extremely rare, occurring only in 1872, and 1874. On all constitutional questions, a double majority is required for the change to be approved; it must receive both a majority of votes nationally and a majority of votes in more than half of the 23 cantons. The double majority provision was established in 1848 as a concession to the smaller cantons, most of whom were in the defeated Sonderbund alliance. It was envisioned as a means of safeguarding cantonal prerogatives, and it has had exactly that effect. There have been only six obligatory referendums in which the people said yes and the cantons said no (1866, 1955, 1970, 1973, 1975, and 1983), and two in which the cantons said yes and the people said no (1910 and 1957). In each of the six cases where the cantons prevented a constitutional measure from being accepted, the change involved giving new powers to the federal government. For example, in 1970 the proposal concerned new taxing powers; in 1973 it regarded authority over educational matters; in 1975 it involved powers of economic management; and in 1983 it concerned control over energy policy. These instances exemplify the way in which the double majority provision has served to reinforce federalist arrangements in Switzerland.

The second category of direct democracy at the federal level is the constitutional initiative. Any seven Swiss voters can begin the process by submitting a request for an initiative and a description of the desired change in the Constitution. They then have eighteen months to collect 100,000 signatures in support of the petition. Before 1977, the required number of signatures was 50,000. There are two types of constitutional revision that may be pursued via the initiative, total or partial. Total revisions are sent directly to the people after the signatures are deposited. If a majority of the nation votes in favor of revision, then the parliament is dissolved and new elections are held to elect a constitutional assembly to undertake the revision. The subsequent document must then achieve a double majority in a referendum. There have been only two attempts at a total revision of the Constitution via initiative - in 1880 and 1935 - although the first case was merely a partial revision in the guise of a total revision. Both were unsuccessful.

Partial revisions can take one of two forms: they can either suggest the general terms of the change, or they can present the exact text of the proposed amendment. In the generally-worded case, if the Federal Assembly agrees with the suggestion, it simply draws up a specific amendment and submits it to the people. It takes effect if a double majority is achieved. However, if the legislature disagrees (which is more likely), then the proposal must pass a preliminary referendum in which a double majority is not required. Then, if it is approved, the legislature must draft an appropriate text and send it to the people again. The second time around, a double majority is required.

A specifically-worded initiative need go to the people only once. Not surprisingly, the great majority of initiatives take this form. Before the proposal is placed on the ballot the government can either endorse it, recommend rejection, or recommend rejection and submit a counterproposal of its own. Typically, such counterproposals accept some of the petitioners' demands while omitting others. For example, in a 1972 initiative Switzerland's small Communist Party (Partei der Arbeit - PdA) proposed the restructuring and strengthening of social services for the elderly. The Federal Council, conceding that services had fallen behind the rest of Europe and sensing popular support for the initiative, drafted a counterproposal which included the primary structural changes, but stopped short of the overhaul desired by the Communists. The strategy worked. The Communist initiative was rejected, with only 15.6 percent support and no cantons in favor; but the counterproposal won an impressive 74 percent of the vote and 22 cantons. Until 1987, the voter was only allowed to vote yes on

either the original initiative or the counterproposal, but not on both. This procedure often led to confusion and ambiguous results. It also made it possible for a government to defeat an initiative by diverting some of its votes to a decoy proposition. Situations in which voters were divided over whether change should come via the original initiative or the counterproposal frequently resulted in the failure of both ballot issues, whereas either might have succeeded alone. Finally in 1987, after this problem led to the defeat of a widely accepted initiative to subsidize the arts, the government proposed a constitutional amendment to allow 'double yes' voting on initiatives and their counterproposals. The change was approved by 63.3 percent of Switzerland's voters. This new rule has improved the odds considerably for initiatives that are pitted against government counterproposals. It is no coincidence that the counterproposal has lost its popularity as a government tactic in the years since.

It is not uncommon for the entire initiative process to take up to seven years or more. For example, the December 1988 initiative against land speculation was originally launched in November 1981. Although a time limit of 18 months was imposed upon the collection of signatures in 1977, the Federal Council and Federal Assembly remain free to take years in their subsequent consideration of the proposals. Often, delay is an intentional tactic designed to break an initiative's momentum.

The third type of referendum is the optional (or 'facultative') referendum. Any law or decree passed by the Federal Assembly is susceptible to challenge by referendum. A referendum will be called if, within 90 days after the law's publication, 50,000 voters or eight cantons demand one. The question is then placed on an upcoming ballot, typically alongside other unrelated referendums or initiatives. For example, the April 1987 ballot confronted Swiss voters with two facultative referendums (one on granting political asylum to refugees, the other on a revision of the laws governing aliens), a constitutional amendment introducing the 'double yes' procedure, and a popular initiative that would have subjected all military outlays to a popular vote. Other than in Australia, Italy, Ireland, Denmark, and several US states, this loading of unrelated issues on one 'omnibus' ballot is rare elsewhere in the world. This is largely due to the fact that most other polities are faced with a much smaller volume of referendums. In most years, 2-4 separate ballots take place in Switzerland, each dealing with 2-4 issues.

With optional referendums, the entire process is much faster than with initiatives because the government's position is already known. Quite often, the referendum can be held within nine months of the law's passage. Nonetheless, nine months' delay is still considerable. The government is therefore permitted to designate vital legislation as 'urgent' if both houses of the Federal Assembly agree. This prevents minority interests from rendering exigent legislation useless. A law classified as such goes into effect immediately. It may be challenged in the same way as a normal law, but if it is rejected by the people it goes out of force at the end of one year. The Federal Assembly can also, in cases of urgency, adopt decrees that are unconstitutional. If the decree has effect for more than one year, a referendum must then take place; and it must be approved by a double majority. Otherwise, it lapses after a year.

Only legislative acts and decrees may be challenged by facultative referendum. There is no provision in Switzerland for federal referendums against fiscal estimates, the government's budget, or executive ordinances of the Federal Council. However, direct democracy may be used to challenge the legislative acts delegating such authority to the executive. In other

words, the only way for the citizen to block such delegated decisions is through a constitutional initiative to take away the authority to make them in the first place.

The fourth and final category of referendum in Switzerland is also the most recently adopted. The optional treaty referendum proceeded from the widely held view in Switzerland that the country's long-established tradition of neutrality ought to be as difficult to alter as any clause in the Constitution, if not more so. Therefore, the people should be allowed to veto any treaty which might impinge on this hallowed aspect of Swiss foreign policy. The question of exactly how to treat foreign agreements first arose in 1920 with the decision to join the League of Nations. The Federal Council possessed the authority to ratify international treaties. But it could only do so with the approval of the Federal Assembly. Therefore, given the necessity of legislative action, it was argued that the voters ought to be able to challenge the Federal Assembly's decision in a referendum, as with any other parliamentary decree. Furthermore, if Switzerland's neutrality was indeed to be placed on a par with the Constitution, then any change in the country's international posture ought to need a double majority to take effect. In addition, the government in 1920 was keen to reward the smaller, Catholic cantons for their assistance in suppressing the General Strike of 1918. These considerations prompted the decision to require a double majority of people and cantons to approve League of Nations membership, rather than just a popular majority. In effect, the issue was treated as a constitutional amendment. Curiously, it was not treated as such when Switzerland left the organization. The earlier decision to take the cantonal vote into consideration had undercut one of the most significant aspects of the 1848 Constitution, that of removing the cantons completely from foreign policy.

In 1921, it was decided that all treaties concluded between Switzerland and foreign states for an unspecified period, or for more than 15 years, should be submitted to the people for approval if 30,000 voters or eight cantons so demanded. Two treaties were submitted to a referendum under these rules, a 1923 agreement with France concerning the customs-free zone of Upper Savoy and a 1975 attempt to provide a new loan to the International Development Association. Both were rejected. However, in 1972 when Switzerland concluded a free trade agreement with the European Community, the move was treated as a constitutional amendment; and the required double majority was received. Clearly, some ambiguities still remained in the treatment of foreign agreements.

In a 1977 constitutional amendment, the rules were finally spelled out exactly. Any agreement involving a collective security organization or a supranational community is treated as a constitutional amendment and must achieve a double majority in an obligatory referendum. All other treaty arrangements, including joining an international organization like the General Agreement on Tariffs and Trade, subscribing to a multinational standardization of law, concluding an international agreement of long duration, and embarking on any international arrangement that the Federal Assembly deems important enough, are subject to a referendum if one is demanded by 50,000 voters. Only a popular majority is required. Three international agreements have faced referendums under these rules. In 1986, the government's attempt to join the United Nations was treated as a constitutional amendment and was rejected overwhelmingly. In 1992, the decision to join the International Monetary Fund and the World Bank fell under the provisions governing the optional treaty referendum. The decision was challenged by petition and put to a referendum, in which it was approved by 55.8 percent of the voters. Later the same year, the treaty drawing Switzerland into the European Economic Area (EEA) with the other European Free Trade Association (EFTA) countries was treated as

a constitutional amendment. The treaty was defeated narrowly, with 49.7 percent of the voters and seven cantons voting in favor.

There is nothing prohibiting the authors of any measure defeated in a nationwide vote from raising the issue again as soon as they wish. Many laws have been defeated once, only to be approved the second time around. In 1891, the Swiss people rejected a move to nationalize the railroads. Yet in 1898, 67.9 percent approved a similar measure. In 1978, a law introducing summer daylight-saving time in Switzerland was narrowly rejected in a national referendum. In 1979, Germany introduced daylight-saving time. Retaining the old summer hours no longer seemed practical, since France, Italy, and now Germany had made the switch. The law was passed again. This time, no referendal challenge was mounted. There are numerous other examples of such reversals, for the Swiss sovereign frequently changes its mind.

## **An historical overview**

Tracing the development of the referendum from the dawn of the Swiss state to the present day reveals a number of patterns. These historical lessons are well worth bearing in mind when considering the current role of the referendum. Below is a brief summary of what I believe to be the most important conclusions that can be drawn from the foregoing historical account.

### 1. The cantons led the way in the introduction of direct democracy.

Virtually every type of referendum at the federal level in Switzerland today was copied from institutions already existing in the cantons. In pioneering new devices such as the legislative referendum and the constitutional initiative, the cantons served as useful testing grounds in which national leaders could observe the effects of these innovations. This process in nineteenth-century Switzerland lends credence to the claim that federal systems facilitate effective change through sub-national experimentation. If the cantons continue to lead the way in the future, which seems probable, the next device introduced at the federal level will most likely be the legislative initiative. Although a constitutional initiative proposing its establishment was defeated convincingly in October 1961, it was nonetheless endorsed in 1977 by a federal commission appointed to investigate the possibility of a total revision of the Constitution. The cantons have also experimented with the obligatory financial referendum. However, it is the only institution of direct democracy that has been withdrawn by some cantons. Thus, it is less likely to be introduced at the federal level.

### 2. The referendum evolved from ideal forms of direct democracy.

By 'ideal forms', I mean citizen assemblies that carried out the business of governing through a direct vote of the governed. The plebiscite imposed by Napoleon in 1798 and carried out in 1802 was the first nationwide referendum held in Switzerland; but it was not an indigenous institution as such. Introduced by outsiders and heavily weighted in favor of regime approval (by counting abstentions as yes votes), it was an artificial development. The Swiss federal referendum adopted in 1848 descended from cantonal referendums, which in turn descended from the tradition of rural *Landsgemeinden* and urban Great Councils. Switzerland enjoyed a strong tradition of direct democracy long before the introduction of the referendum. Although nineteenth-century political opportunists sometimes hijacked the referendum for their own

advancement, they probably could not have done so without a political culture sympathetic to the use of direct democracy. The impact of frequent, uncontrolled referendums in a system without this tradition might therefore be very different. Chapter Eight presents a detailed examination of the referendum's influence in other polities.

3. The referendum and the initiative have long been used by minor parties and political outsiders as a minority veto against the governing majority, or as a way of opening the doors of power.

The Radicals of the 1830s were the first to use direct democracy in this way, legitimizing their attacks on the waning political establishment. The Radicals gradually rose to become the dominant party of the nineteenth century and have remained in the government to the present day. The perceived utility of the referendum to Radicals declined accordingly. Then, starting in 1839, conservative forces and Catholic groups began to use the referendum as effective brake on Radical power. This process reached its apogee in the 1870s when Catholic-led referendums nearly brought the Radical government to its knees. In the late 1880s, The Catholic Conservatives gained for themselves a perpetual seat on the Federal Council through the effective use of referendums. After 1900, it was the Social Democrats' turn. They fought the legislation of the ruling bourgeois parties with the facultative referendum, and they were the first out-group to successfully change the structure of the political system via the constitutional initiative. In bringing about proportional representation, they made their eventual position on the Federal Council a virtual certainty. It is difficult to overstate the importance of direct democracy in fostering Swiss consociationalism. The pressure generated by referendum campaigns led directly to the inclusion of the four major parties in a grand coalition government.

After the completion of Switzerland's Konkordanz-Demokratie with the magic formula in 1959, there were no major political parties left outside the government. The devices of direct democracy then fell to the ascendant interest groups and the minor parties. The referendum and the initiative continue to be used to undermine the position of those in power. Even a consensual system like Switzerland's cannot achieve absolute agreement among all concerned parties on every political issue. Interest groups who feel that their needs are not being met by the existing political consensus have recourse to the referendum or the initiative. Outsider parties like the Greens, the Auto Party, and the anti-foreigner Democrats utilize the devices of direct democracy much as the Catholics and Social Democrats did in the past. Post-1959 facultative referendums might therefore be interpreted as indicators of failed attempts to build consensus. Most laws that are challenged by referendum have failed to win the assent of a significant portion of the electorate. Even if only 25 percent of the voters in a referendum with 40 percent participation reject the law, more than 450,000 citizens (out of a total electorate of 4 1/2 million) will have officially registered their disapproval. The frequency of referendal challenges in Switzerland implies that even a highly consensual polity cannot always accommodate the narrow interest groups and other political minorities not present at the bargaining table. Thus, direct democracy plays a critical role in compensating for the failure of consociational political arrangements in this regard.

4. The referendum has at times been used as a means of venting general unease with the government.

Although the calling of referendums represents specific and sometimes intense dissatisfaction with particular policies or circumstances, negative votes in referendums also give voice to

general discontent with the government. Widespread frustration with economic and social conditions, political leadership, or even the entire political system can lead many citizens to strike out blindly at the government position, regardless of its merits. This contributes to a phenomenon known in Switzerland as the Neinsager (naysayer) vote. Even seemingly harmless proposals which entail no obvious disadvantages, cost little or nothing, and are opposed by none of the major interest groups routinely run into a negative vote of 10-25 percent. This figure is usually higher in rural regions.

Arguably, the vote of 1 April 1990 demonstrated the Neinsager phenomenon in its most extreme form. The referendum followed two major political scandals. In November 1989 Elisabeth Kopp, the Minister of Justice and Police, resigned after it was discovered that she had provided confidential government information to her husband, which he then used in his business dealings. Following the parliamentary commission investigation that ensued, an even greater scandal was unveiled. In January 1990, it was revealed that the political branch of the Federal Police (the Bundesanwaltschaft) had compiled secret, Cold War-style files on 900,000 Swiss citizens, organizations, and resident aliens. Unhindered by parliamentary scrutiny, the political branch (dubbed by its critics the 'Schnüffelpolizei,' or 'snooping police') had undertaken extensive wiretapping and intrusive investigations into the private affairs of citizens. The resulting public fury over what became known as the Fichenskandal was immense. The April 1990 referendum saw the rejection of all six measures on the ballot. Along with four anti-highway initiatives that were widely expected to fail, two fairly uncontroversial federal laws (concerning wine import standards and a change in the definition of which civil court cases could be taken to federal courts) were rejected. It seems that many disillusioned citizens assumed a Neinsager attitude and cast six negative votes in a row. Arguably, the tense political environment in the wake of the scandals also strengthened the naysayer faction.

However, the baseline Neinsager vote of 10-25 percent should not be taken as a sign of unusual levels of discontent in the Swiss political system. On the contrary, a 1972 study by Dusan Sidjanski found that the Swiss were more 'satisfied with the way their government was being run' than citizens in any other European democracy or in the United States. In the survey, 68 percent reported being satisfied in Switzerland, compared to 65 percent in the United States, 44 percent in West Germany, 44 percent in the United Kingdom, 41 percent in France, and 27 percent in Italy. However, this survey did not distinguish between satisfaction with the present government and satisfaction with the political system. A 1979 study measured support for the overall political system and found that more than 70 percent of Swiss citizens rated it as highly or very highly responsive to their needs. The fact that the percentage of habitual Neinsager voters is significant even in a system registering such high regime approval suggests that there is likely to be a sizeable core of disaffected citizens in every democracy. Uncontrolled referendums outside of Switzerland encounter the naysayer, sometimes in even greater numbers. Australian referendum outcomes clearly exhibit this tendency. On the other hand, infrequent plebiscites legitimizing new regimes or new territorial arrangements are unlikely to run into this phenomenon. Such referendums often register affirmative votes of well over 90 percent.

5. The referendum and initiative have given the Swiss voter a say on policy questions in what has become a highly solidified political system.

Consociational democracy may allow more groups to be represented in the national executive, but it can have the side effect of making elections virtually impotent with regard to

influencing policy. Shifts in support for the parties have no effect on the composition of the government. Therefore, voter choices in elections are unlikely to result in policy changes. A clear policy mandate only becomes possible when a party with a very narrow agenda suddenly experiences a surge in support, as happened with the National Opposition in 1971. However, on the whole, the Swiss parties' electoral support has been remarkably static. The 2:2:2:1 distribution of seats on the Federal Council has an aura of permanence about it. Consequently, the average Swiss voter is not likely to believe that switching his vote from the candidate of one party to that of another party will result in concrete changes in national policy. As Henry Kerr suggests, it may be a case of *plus ça change, plus c'est la même chose*. The same 1972 survey cited above asked Swiss voters how much the outcome of the 1971 election was likely to change federal policy. Only 1 percent said 'a lot', 32 percent said 'somewhat', 43 percent said 'not at all', and 24 percent said 'don't know'. If the 'don't know' response can be taken as reflecting a low level of confidence in the policy impact of elections, then three out of five Swiss voters felt that even the relatively turbulent 1971 elections made little difference.

Swiss parliamentary elections in the last three decades have been primarily about choices between political personalities. The referendum and initiative have assumed the function of conveying citizens' policy preferences - a function that might have gone unserved if such institutions had not existed. It is through direct democracy that Swiss voters decide how high taxes will be, express preferences about domestic and foreign policy, and determine the role of their military. It may be that consociational democracies need referendums if their citizens are to have a meaningful influence upon the direction of policy. In this fashion, referendums complement consociational systems rather than contradict them.

6. Institutions of direct democracy can give political expression to prejudice against minority groups and can facilitate emotional decision making.

The first successful initiative in Switzerland resounded with a disturbing message - one of anti-Semitism. Quite clearly, empowering a majority of citizens with the authority to overrule the Constitution leaves little room for minority rights. In 1970, bigotry nearly triumphed again with the Schwarzenbach initiative. In the final analysis, direct democracy conveys the desires of the voting public; and those desires may not always be admirable.

They may also be charged with emotion. This was the case in 1908 with the prohibition of absinthe. The initiative to ban the strong liquor was launched immediately after a sensational murder by a drunkard of several members of his own family. The event facilitated the success of the initiative, which won approval from 63.5 percent of the voters. An outraged public, eager to do something about an intractable problem, may use direct democracy to vent their emotions. Of course, this does not necessarily imply that institutions of direct democracy must be condemned. It may be that legislative assemblies are no more sober than the people they represent. Power can always be abused, whether it be in the hands of elected leaders or the people.

The danger that voters will behave in an emotional or bigoted fashion is unavoidable. This is the darker side of Swiss direct democracy. Although it may seem that the only thing preventing tyranny of the majority has been the conscience of the majority, referendums do not necessarily pose a threat to minority groups. Direct democracy in Switzerland has hindered the formation of cohesive or consistent governing majorities. As Chapter Six explains, the referendum can also serve as a shield for political minorities. Furthermore, there

is no reason that direct democracy cannot coexist with a judicially-enforced bill of rights. Australia, Italy, and several US states all use referendums within an overriding construct of judicial review. Popular sovereignty does not have to be unfettered to be meaningful.

## **Is Switzerland sui generis?**

It is often asserted in political science writings that Switzerland is in a class by itself, a source from which few applicable lessons may be drawn. The nation is extremely small and exceedingly prosperous, claiming the highest GDP per capita in the world. Its unique seven-member collegial executive, classified by Lijphart as the only hybrid of presidentialism and parliamentarism among modern democracies, stands out as an oddity. Some observers point to the remarkable conservatism of a democracy which did not give its female citizens the right to vote in national elections until 1971 and continues to demand military service from all men aged 20-50 in spite of the fact that its last international conflict was against Napoleon.

However, these well-known facts obscure less obvious considerations. For example, Switzerland has had an exceptionally high percentage of women in Parliament due to the operation of its party list system - 10.5 percent, compared to 3.7 percent in the United States and 1.7 percent in France. Although women were granted suffrage rights much later in Switzerland than in other democracies, it is the only country in the world in which a majority of the male citizens voted to extend the franchise to women. If all democracies had been required to follow this procedure, it is likely that some would still only allow men to vote. It would also be wrong to regard the Swiss as an abnormally militaristic people. In 1989, more than a third of Swiss voters opted to abolish their army entirely. Many of those who supported the army did so because they viewed military service as an important unifying experience for citizens of different languages. Unfortunately, it seems that observers often find it easier to label the Swiss system as an anomaly, rather than brush away this veneer of uniqueness.

It is an easy mistake to make, given the singular circumstances that have surrounded Switzerland throughout its history. In the medieval period, when the rest of Europe was torn between feudal centrifugal forces and papal centripetal forces, the Swiss region remained a power vacuum. This was due in large part to its mountainous terrain and to the notorious martial proficiency of its population. The Swiss economy also progressed on a separate path from that followed by its neighbors. Switzerland never had an industrial revolution in the conventional sense, mainly because it possessed no coal and relied instead upon water power. The specialized manufacturing of watches, textiles, and other quality goods allowed Switzerland to become the richest, yet least urbanized, nation in Europe at the end of the nineteenth century. As Jonathan Steinberg maintains, 'Switzerland has grown into its "exceptionalism" and no amount of tinkering with machinery in some other society can reproduce that peculiar set of circumstances'.

Although one certainly cannot duplicate Swiss machinery elsewhere, one can apply the principles governing the machine's operation. Swiss experience with the referendum has been, and will continue to be, repeated elsewhere. As long as the incongruities between systems are taken into account, valid comparisons are possible. Certainly, Switzerland's wealth does not disqualify it as an example, since Luxembourg, Sweden and other democracies generally regarded as unexceptional have usually been quite close to Switzerland in per capita GDP. Although the Swiss executive is one of a kind, the peculiar shape of the institution has not significantly influenced the nature of the country's direct democracy. Rather, the causal

relationship has gone in the other direction, with referendums shaping the executive. The referendum and initiative devices are unmistakably in the hands of Swiss citizens, parties, and interest groups, with executive leadership rarely playing a role in referendum campaigns. Indeed, the Federal Council has made a conscious effort to steer clear of most referendum debates. Admittedly, it is possible that executives may dominate instruments of direct democracy in other nations. However, when referendums are uncontrolled, this is unlikely. Where such executive domination does occur, the Swiss experience may be less relevant.

There are two other characteristics of Switzerland which, some contend, make its experience inapplicable to most other nations - its heterogeneity and its federalism. According to Lijphart's classification scheme, a nation is heterogeneous in some dimension if no single group constitutes 80 percent or more of the population. Under this definition, there are only two democracies in the world that are heterogeneous in both the language dimension and the religious dimension - Switzerland and Canada. Under a slightly looser definition it is possible to include the United States, Belgium, India, Israel, and others in a list of heterogeneous democracies. In 1847, Switzerland's religious cleavage exploded in the Sonderbund War. For a short period, Switzerland was the Ulster of nineteenth-century Europe. With four official languages, two religions, and a powerful sense of cantonal identity, it is fair to say that Switzerland is divided by more salient cleavages than exist in most democracies. Nonetheless, a powerful sense of 'Swissness' bridges these gaps. Thus, a German-speaking citizen of Zürich feels much closer akin to his French-speaking countrymen in Geneva than he does to the nearby Germans and Austrians. As in many other European nations, the Christian Democratic Party arose to unite Protestants and Catholics (replacing the Catholic Conservative Party); and the sectarian division receded in the wake of issues pitting religious groups against secular interests. Furthermore, three decades of consensual politics at the national level have served to mitigate the political expression of these cleavages.

Although referendum outcomes in the nineteenth century often followed the contours of these divisions, such concurrence occurs less frequently today. Many issues, particularly those with heavy ideological overtones, cut across social cleavages. Consequently, the battle lines are rarely drawn on a linguistic or religious basis. If anything, the postwar referendum is usually a unifying instrument in this respect. Any issue set forth by German-speaking Protestants (the largest religious-linguistic group, but not a majority) in terms that offend French-speakers or Catholics stands little chance of success in a referendum. Thus, this group must bridge at least one cleavage for success, and all other groups must appeal across both religious and linguistic lines. In the end, the best policy is to avoid measures that divide voters along either cleavage. Thus, in the postwar era Switzerland's heterogeneity has not skewed its experience with direct democracy in ways that would not occur elsewhere. In fact, some observers maintain that the success of the Swiss political system in dealing with deep-set and potentially violent social cleavages is a powerful argument in favor of its imitation elsewhere. One commonly mentioned candidate is the European Community. According to Ghita Ionescu, in Switzerland, 'the three most important cultures of the continent have been transcended in a new unity, without losing their original identity, which is the supreme task of a successful federalization'. As Jacques Freymond suggests, the Swiss political system might be used as model for further European integration in the future. Whether or not referendums should be a part of that model remains an open question.

The remaining factor to be considered is federalism. It is arguably a stronger force in Switzerland than it is in the United States, Canada, Germany, or Australia. Cantons in Switzerland have preserved their authority more effectively than have sub-national entities

elsewhere. This is reflected in the fact that the federal government's expenditures are only 31 percent of gross public spending in Switzerland, a figure which has been decreasing steadily over the last four decades. This percentage is lower in Switzerland than in any other federal system, largely because the Swiss central government relies upon the cantons for the administration of most national laws, a relationship which offers the cantons obstructionist powers. As Freymond maintains, 'the cantons are still the center of our political life'.

However, Article Three of the Swiss Constitution, like the Tenth Amendment to the US Constitution, has failed to completely check the erosion of cantonal power to the central government. Revenue inequities between cantons have put intense pressure on federal authorities to assume responsibility in areas that have traditionally been the cantons' domain. It is here that the referendum has played a role in Switzerland that it has not played in unitary states. It has operated as an additional check on the transfer of power to the central government, particularly when the double majority rule comes into effect. Referendums have tended to preserve cantonal prerogatives by giving expression to the federalist sentiment of the Swiss population. Generally, the Swiss are reluctant to concede additional powers to the government in Bern. However, as is noted in Chapter Four, the initiative has been used successfully in a few instances to centralize authority. Nonetheless, the primary impact of direct democracy in this regard has been to reinforce federalism. According to Butler and Ranney, in both Switzerland and Australia, 'the necessities of their federal systems have given a peculiar dynamic to the use of referendums'. Such a dynamic would be replicated to a degree if uncontrolled referendums became a common feature of the political landscape in Canada, Germany, or the United States (at the national level).

Of course, the application of lessons learned in Switzerland is neither easy nor obvious. Each and every referendum in the world is a unique occurrence; different political actors debate different issues in widely divergent political systems. There are no hard and fast, universal rules of direct democracy. However, discernible patterns exist which repeat themselves in a variety of settings. This study seeks to unearth such patterns in the case of Switzerland.

## Table 1-1

### Chronology of the development of direct democracy in Switzerland

- 1291 Conclusion of the Bundesbrief unifying Schwyz, Uri, and Unterwalden.
- 1798 Napoleon imposes the Constitution of the Helvetic Republic, unifying Switzerland and providing for an obligatory constitutional referendum.
- 1802 The first nationwide referendum in Switzerland; voters approve the 'Mediation' Constitution.
- 1815 New constitution of the Restoration returns Switzerland to confederal form.
- 1830s Liberal Regeneration in cantons leads to the introduction of the constitutional referendum, the optional legislative referendum, and the constitutional initiative (all at cantonal level).
- 1847 The Sonderbund War. Radical, Protestant cantons are victorious.
- 1848 The Constitution of 1848 enshrines the obligatory constitutional referendum and the constitutional initiative for total revision at the federal level.
- 1860s Numerous cantons introduce the legislative initiative.
- 1874 The Constitution of 1874 introduces the optional legislative referendum at cantonal level.
- 1884 A Catholic conservative is allowed on the Federal Council after a decade of referendum battles.
- 1891 A second Catholic conservative enters the executive, starting Konkordanz-Demokratie.
- 1891 The partial constitutional initiative is introduced at the federal level by constitutional amendment.
- 1918 Proportional Representation in National Council elections is introduced by initiative.
- 1921 The optional treaty referendum introduced.
- 1929 The first Agrarian is elected to the Federal Council.
- 1943 The first Social Democrat is elected to the Federal Council.
- 1959 The 'magic formula' of 2:2:2:1 Federal Council seat distribution is institutionalized.
- 1977 The required number of signatures for initiatives is raised from 60,000 to 100,000; and for referendums from 30,000 to 50,000.
- 1987 The possibility of voting 'double yes' on an initiative and its accompanying government counterproposal is introduced.

**Table 1-2**

**Types of referendum used at the federal level in Switzerland**

<b>Type</b>	<b>Subcategory</b>	<b>Signatures</b>	<b>Description</b>
Constitutional referendum	—	None required	Introduced in 1848. In cases of total revision of the Constitution, as well as in cases of amendments, the change must pass a referendum to take effect. All constitutional referendums must win a double majority - more than 50 percent of the vote nationwide and a majority of voters in a majority of cantons.
Constitutional initiative	For total revision	100,000	Introduced in 1848. The question is sent to the people first. If a popular majority agrees, the parliament is dissolved and an assembly is elected to draft a new constitution. The resulting document is then submitted to a referendum, in which it must gain a double majority.
	For partial revision (Amendment)	100,000	Introduced in 1891. Specifically-worded amendments go to the government, which either endorses or rejects the change and is given the opportunity to offer a counterproposal. The initiative (and counterproposal, if there is one) is then presented for popular approval. A double-majority is required for passage. In cases of generally-worded changes, if the government agrees, a text is drafted and is submitted to the people for double-majority approval. If the government disagrees, the general text must first win a popular majority before specific drafting takes place. Then, a double-majority is required.
Optional legislative referendum	—	50,000 (or the vote of 8 cantons)	Introduced in 1874. Also known as a 'facultative' referendum. Any law or decree of the Federal Assembly can be challenged. If a popular majority vote no, the law is nullified. In cases deemed 'urgent,' the law takes effect after passage, but loses force after one year if it is rejected in a subsequent referendum.
Optional treaty referendum	Supranational communities	None required	Considered a Constitutional Amendment. See above.
	All other treaties	50,000	Introduced in 1921 and revised in 1977. The agreement must face a referendum if a petition with the required signatures is submitted. Only a popular majority is required.

**Table 1-3****Outcomes of Swiss referendums by type, 1848-1992**

Type of referendum	Total Number	Successful (Yes Vote)	Failing (No Vote)	Percentage Successful
1. Constitutional Amendment Propose by Federal Assembly				
Total Revision (1872 and 1874)	2	1	1	50.5%
Partial Revision	136	97	39	71.9%
2. Constitutional Initiative				
Total Revision (1880 and 1935)	2	0	2	0.0%
Partial Revision	104	10	94	9.6%
3. Parliamentary Counterproposal	27	17	10	63.0%
4. Facultative (Optional) Referendum on Laws and Decrees	112	53	59	47.3%
5. Optional Treaty Referendum	4	2	2	50.0%
6. Urgent Decrees Deviating form the Constituion	11	11	0	100.0%
Referendums on all Government-Initiated Measures (total of 1,4,5 and 6)	265	164	101	61.9%

a The votes concerning entry into the League of Nations (1920), the free trade agreement with the EC (1972), and membership in the United Nations (1986) are all counted as constitutional amendments.

b Parliamentary counterproposals were not include in this category because they are usually reactions to ideas presented form outside, rather than projects originatong in the government.