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Direct democracy as a liberal political regime

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Abstract: This article is a theoretical contribution to the understanding of direct democracy and its properties. It departs from common definitions of direct democracy by distinguishing between a hard meaning, according to which direct democracies are characterized by the fact that legislative initiative and veto rights are extended to the entire citizenry, and a soft meaning, according to which they are not. Building on previous findings, it argues that hard direct democracy profoundly alters the balance of power in representative systems and reinforces the liberal features of democratic systems, such as the independence of checks and balances and the empowerment of minorities. This analysis invites us to understand direct democracies as systems in which representatives of political groups and independent institutions negotiate to find a consensual way to implement legislation, and a direct vote of the people only takes place if agreement is not reached.

Keywords: Direct democracy, comparative politics, liberal democracy, constitutions

Direct democracy, which usually refers to a wide range of institutions that allow citizens to make the law directly, is growing in popularity. Survey data in established democracies show increasing levels of support. In the 1990s, about 50% of citizens supported direct democracy (Dalton et al. 2001). According to the International Social Survey Program, more than 60% of respondents in Western countries supported direct democracy in 2004 (Bowler et al. 2007). In 2012, the European Social Survey found more than 70% support (Rojon and Rijken 2020; Werner et al. 2020), also confirmed by the Pew Research Center in 2017. This support is not only visible in opinion polls, but large social movements such as the Indignados in Spain (2011), the Sunflower Movement in Taiwan (2014), the Yellow Vests in France (2018), and the Chilean protests (2019) have also called for more direct democracy. In Taiwan, this led to reforms to implement more effective institutions of direct democracy. More generally, these institutions have emerged in many young democracies over the last thirty years, especially in Latin America and Eastern Europe (Qvortrup 2017, Magni-Berton and Morel 2022). Currently, direct democratic institutions are sometimes seen as a potential solution to the decline of democratic legitimacy and are regularly discussed in established democracies.

Despite being the subject of rich and sophisticated empirical and theoretical literature, direct democracy has rarely been conceptualized within a more general framework of political systems (Hug 2009; Tierney 2012; Merkel 2014). This is mainly because almost all studies that rigorously capture the actual effects of direct democracy are within-country studies, focusing on the United States, Switzerland, and, more recently, Germany. Beyond simple descriptions (see Altman 2010; Qvortrup 2017), comparing direct democratic systems at the national level is much more challenging. The diversity of direct democratic institutions at the national level runs the risk of producing analyses that mix apples and oranges. Blume et al. (2009) published the first cross-country study analyzing the empirical effects of direct democracy. Based on 88 countries, they conclude that, contrary to what is found in within-country studies, "the mere

possibility of using direct democratic institutions is often not sufficient to induce significant effects”.

This extreme diversity of direct democratic institutions developing around the world requires a theoretical clarification of the characteristics that explain why in Switzerland direct democracy is at the core of the political system, while in many other countries, such as Russia, citizens don't even know that direct democracy exists in their country. This article aims to discuss how direct democracy works in combination with representative institutions such as parliaments and governments, and the resulting balance of power.

While the concept of direct democracy is usually used to describe institutions that allow citizens to vote directly on public policy, I argue that this definition is overinclusive, because it includes too many different institutions. This article focuses only on a more restrictive and demanding definition, limited to those political systems that provide citizens with initiative and veto rights (hereafter referred to as hard direct democracy, as opposed to soft direct democracy). I also argue that under this definition, direct democracy is closer to the ideal of liberal democracy than representative systems.

Suggestive evidence is consistent with this claim. Citizens benefit from initiative and veto rights in Switzerland, Uruguay, California and other American states. These countries are on different continents and have different histories and institutions. In all of them, direct democracy is an old institution born in times of widespread violence, poverty and illiteracy. Today, these democracies have one thing in common: an effective separation of powers that guarantees a solid rule of law. According to the V-Dem's Democracy Indices of liberal democracy in 2020, Switzerland is the European country with the highest score, together with the three Scandinavian countries (Denmark, Norway and Sweden). Uruguay is the highest-ranked country in South America. There are no scores for subnational entities, but some clues suggest

that the rule of law is particularly well established in California, such as its low level of corruption, as measured by the Corruption Perception Index.

This coexistence of liberal properties and direct democracy might occur *despite* the latter. Liberalism might also be the cause of the introduction of direct democracy. This article argues that there are good reasons to believe that this association occurs *because* of direct democracy, however. More specifically, popular control over the constitution is the mechanism that enhances the independence of institutional powers and the empowerment of minorities.

What direct democracy is

In scholarship, direct democracy includes institutions that allow citizens – rather than representatives - to vote on policies (Altman 2010, Matsusaka 2020), regardless of the legislative status of such policies.

Comparing this definition with the classification of representative regimes, one can suspect that it is too inclusive. The existence of a parliament in which members vote on policies is not enough to define a regime as representative. The effective powers of parliaments must also be considered: if parliamentarians don't have the final say on decisions, the regime is not representative. Such cases are often referred to as electoral autocracies, where there is a parliament but the executive retains final control over all decisions (see, among others, Gandhi and Lust-Okar 2009). The same argument can be applied to the categorization of direct democratic institutions.

As with parliaments, a relevant feature for categorizing direct democratic institutions is the distinction between institutions that give citizens direct control over legislation and institutions that do not grant such rights (see Egger and Magni-Berton 2024). Citizens have direct control over legislation when they can overrule any kind of decision, including those made by

parliament, but their decisions cannot be overruled. This requirement is met when decisions taken by citizens' initiatives and popular vetoes are hierarchically superior to decisions taken by representative bodies. This is the case in Switzerland, Uruguay and some U.S. states, where the decisions taken directly by the citizens have a constitutional value and are hierarchically superior to ordinary laws made by the parliament.

While this distinction has been recognized in the academic literature, no existing typology considers this criterion predominant. Altman (2010), for example, does not consider the hierarchy between citizens and parliament to be relevant. His typology, which is based on the initiators of referendums (by law, top-down, and by citizens), does not classify systems according to the supremacy of citizen decisions versus parliamentary rulings.

More recent studies have mentioned this hierarchical aspect. Morel (2017) and Matsusaka (2020) distinguish between referendums on constitutional amendments and referendums on issues that fall under ordinary law. However, this distinction is used to discuss restrictions on the issues that can be submitted to a popular vote. Their reasoning is: if the constitution can be amended by referendum, then virtually all issues can be put to a referendum. This is not the case for referendums on ordinary legislation, which are limited by constitutional provisions. The distinction between constitutional and legislative referendums is, therefore, a proxy for measuring the limits on issues subject to direct democracy, rather than a way of hierarchizing legislative bodies.

Finally, all existing scholarly typologies (Altman 2010, Qvotrup 2017; Morel 2017, Matsusaka 2020) include referendums initiated by political authorities - the executive or legislative majority - because they allow citizens to vote directly on a policy issue. However, these types of referendums do not give citizens a permanent right to initiate or veto a legislative proposal. As Altman (2010) and Matsusaka (2020) show, these referendums increase the power of the executive, who can bypass a hostile parliament through a referendum and, conversely, bypass

a hostile electorate through a parliamentary vote. Thus, referendums initiated by political authorities give additional rights to the executive rather than to citizens.

In this article, therefore, direct democracy is understood in its strongest sense. This includes citizen-initiated constitutional amendment (or popular initiative) and mandatory referendum on constitutional matters, that make the citizenry the sovereign. According to this definition, direct democracy has important consequences for the role of parliaments. Since parliaments do not have the right to overrule the decisions of citizens, and their decisions can be overruled by citizens, they are no longer truly legislative bodies, but implementing ones. Like the government or the judiciary in representative systems, the parliament in direct democracies can make decisions that must be consistent with the legislation of another institution (initiative and referendum) and that can be overruled by that institution.

This gives constitutions a different meaning from the one usually used in representative systems. There, a constitution is a set of rules that require more consensus than ordinary laws to be changed. The most common rule for constitutional change requires a qualified majority in parliament (e.g., 2/3 of the members). In direct democracies, the constitution is what is voted on directly by the citizens. Since the citizens can also initiate constitutional amendments, these constitutions contain a much larger number of norms that go beyond basic rights and checks and balances, such as the ban on cutting the horns off cows or building minarets in Switzerland. As a result, these systems have a relatively high number of constitutionalized norms that are not necessarily highly consensual. In Switzerland, the constitution contains nearly 200 articles, more than in almost any other European country (except Poland and Portugal). The sixteen constitutions of the American states, which operate with direct democratic institutions, are also longer than the others. With citizen-initiated constitutional amendments, the median constitution contains about 48,000 words, while where direct constitutional initiative is not allowed, the median constitution contains only 25,000 words.

Why hard direct democracies are more liberal than representative democracies

Democracy is often conceptualized in two different ways: either liberal or populist (Riker 1982). According to the liberal approach, democracy is based on equal individual rights guaranteed by constitutions and the rule of law. These rights create a shared political power that protects individuals and minority groups from arbitrary decisions. In contrast, the populist approach to democracy is based on the majority rule, which minimizes the number of dissatisfied people and aims to achieve the ideal of popular sovereignty. The liberal approach aims to fight against tyranny, including the majority rule allowed by the populist approach. The latter promotes the principles of popular sovereignty that the former limits. Direct democracy is often conceptualized as an institution that privileges a populist approach to democracy over a liberal one (Sartori 1987; Scarrow 1999; Haskell 2001; Galston 2018), even though some scholars mitigate such opposition by stressing the continuity between representative and direct democracy (Kriesi 2005; Budge 2006). This article argues, on the contrary, that direct democracy – in its hardest form - produces more checks and balances, greater independence of countervailing powers, and more consensual procedures.

Strengthening countervailing institutions through a slow sovereign

There are two main ways in which countervailing powers, such as the judiciary and the executive, tend to lose their independence from the legislature (which is the sovereign) in representative systems. First, they can be appointed and removed by the legislature. This is the case with governments in parliamentary systems. They must follow the preferences of the coalition that supports them and cannot be overly independent. Second, they can be overruled by the legislature, this is the case with the judiciary. If the law is not implemented according to

the preferences of the parliamentary majority, the law is amended to force the judges to implement it according to these preferences (Tsebelis 2002).

In direct democracy, while the median voter is the sovereign, the transaction costs of changing the status quo are extremely high. Collecting signatures and then running a campaign costs money and time, and the whole process takes several years. Initiators must launch a new initiative, collect the required signatures, campaign, and hope for a successful referendum to correct the way the constitution is implemented. In many cases, these costs exceed the benefits of the preferred implementation.

This process makes the control of the legislature (the citizens) over the implementing institutions (parliaments, governments, judiciary) much more difficult than in representative systems, where the parliaments are the legislature. However, representative systems are not homogeneous in this respect. In consensual political systems, large coalitions are required to form a government, and the opposition has more room for maneuver. This leads to slower and less significant legislative production, which gives implementing institutions more independence from the legislature (Tsebelis 2002). Despite these constraints, legislation is significantly slower when it is initiated by citizens. In Switzerland, where the parliament requires consensual processes, about 1,700 bills were passed between 1995 and 2015 (Gava et al. 2021). In the same period, only 10 popular initiatives were enacted (out of 83 that were put to a vote), and 30 bills were rejected after a referendum. This shows that direct democratic processes are slow and demanding, even compared to consensual parliaments. Their ability to override parliamentary decisions is rarely used, but this possibility affects parliamentary activity. For example, Gava et al. (2021) show that in the Swiss parliament, amendment activity increases when the bill is threatened by direct democracy.

The case of Switzerland is a conjunction of hard direct democracy and consensual representative institutions, making it difficult to isolate the relative impact of direct democracy

on countervailing powers. Uruguay offers a different case in which representative institutions are much more majoritarian. In this country, initiatives are regularly launched by the opposition party, and the probability of winning the referendum depends largely on the popularity of the incumbents and their opposition (Antia and Vairo 2023). This results in relatively powerful governments as long as they are popular. However, the threat of being overruled by direct democracy significantly reduces the ability of unpopular governments to implement their agenda. In hard direct democracies, the implementation of referendum decisions is a crucial issue when the initiative for referendums comes from minority groups. In these circumstances, the body responsible for implementation - the government - which in parliamentary systems often represents the majority of the parliament, is by definition opposed to the decision taken in the referendum. Indeed, the very holding of a referendum means that the reform has not been accepted by the parliament (Vatter et al. 2019).

This is a very peculiar issue, almost unheard of in systems without direct democratic institutions. In parliamentary systems, the government is appointed by and accountable to the parliament. The parliament, therefore, makes the laws and selects the members of the executive branch who will implement the changes it approves. Policies are therefore almost always implemented by a body that agrees with the decision made. In presidential systems, the government is chosen by the president, who in turn is elected. Governments are therefore independent of parliament, and if the president and her government are not on the same side as parliament, the president may end up opposing laws that she must nevertheless enforce. This issue of law enforcement is thus most familiar in presidential systems, but it is far from being as crucial as when important decisions are made by referendum following popular initiatives. Under normal circumstances, when the constitution is silent on the status quo, the government and the parliament have relative freedom to legislate within the limits of the sword of Damocles imposed by the procedures of direct democracy (see Leemann and Wasserfallen 2016). On the

other hand, when the constitution provides precise guidelines, the parliament must abide by the limits set by these guidelines when passing legislation. Because these limits are relatively vague, implementation can sometimes run counter to them. In the United States, for example, state legislatures are responsible for reviewing previous budget agreements when a referendum leads to additional spending. If the legislature decides not to release the necessary funds, there are no resources available to implement the popular decision (Gerber et al. 2001; Gerber et al. 2004).

In the absence of a legislative provision, it is up to the executive branch to implement a referendum decision. According to the analysis of Gerber et al (2004), the referendum decision will simply not be implemented if the costs of implementation are prohibitive or if the government is so strongly opposed to the measure that it prefers to incur the electoral costs of not implementing it. More recently, Ferraiolo (2023) has also shown that the vote margins in referendums are important in determining the likelihood of strict implementation. Similarly, judicial interpretation is less constrained by popular decisions than when a legislative majority - especially a single-party majority - enacts laws. In interpreting legislation, judges follow their preferences within the limits of the sanctions they may face from the legislature. Faced with a homogeneous majority in representative systems, an interpretation that deviates from the spirit of the law would be immediately sanctioned by a new law specifying the terms of its application. As a precaution, judges therefore avoid deviating from the political ideas underlying the law (Tsebelis 2002). From this perspective, judicial autonomy is stronger when decisions are made in hard direct democracies, because transaction costs discourage people from overruling judges' decisions.

One of the most striking examples of this mechanism is the legislation surrounding the death penalty in the United States, where this policy is regulated at the subnational level. It exists in 27 states, while it has been abolished in 23 of them. The role of direct democratic institutions

is ambiguous. On the one hand, states with direct democratic institutions are significantly more likely to have the death penalty. On the other hand, these same states have, on average, sentenced fewer people to death than states without direct democratic institutions, even including those that have abolished capital punishment (Caron 2021). This seemingly paradoxical result can be understood by analyzing the implementation process. Consider the case of California. This state has the death penalty, and it is difficult to abolish it because most voters support it, as evidenced by the last referendum on the issue in 2016, in which 53% of them approved it. However, since 2006, not a single person has been sentenced to death in this state of more than 40 million inhabitants. At the root of this long period of non-enforcement lies a famous decision by Judge Jeremy D. Fogel. In 2006, he blocked the execution of a condemned man because of the legal controversy over California's lethal injection procedure, which could potentially cause suffering to the condemned. This human rights issue led to a *de facto* moratorium, as the California government did not attempt to resolve the problem, and the decision set a precedent. On the contrary, in 2019, the moratorium became official due to the executive order of Governor Gavin Newsom, who, to secure his decision, also decided to abolish the lethal injection protocol without replacing it with another one. As a result, the conditions for the application of the death penalty are now absentⁱ.

Of course, Californians could reinstate the death penalty by writing into their constitution the conditions under which it may be carried out. But so far this has not happened, probably because, despite most Californians supporting the death penalty in principle, those who support making it an effective tool are in the minority. The California case is not anecdotal, as similar experiences prevail in Oregon, Montana, or Ohio. Moreover, this kind of dynamic can be found in many areas. Recent systematic analyses provide similar evidence for marijuana legalization and governance policies (Ferraiolo 2023).

This independence of the judiciary from the legislature has concrete consequences for the functioning of direct democracies. The index developed by Feld and Voigt (2003) moves Switzerland from 67th place in terms of judicial independence as measured by constitutional texts to third place in terms of its actual functioning. Their updated index (Voigt et al. 2015) confirms this mismatch between de jure and de facto judicial independence in Switzerland. Interestingly, Uruguay follows the same pattern. According to its de jure judicial independence, Uruguay has the second lowest score in the Americas after Guatemala. Its de facto score is much higher, ranking it third after Costa Rica and Brazil. Similarly, the struggle between the use of direct democracy and the judiciary in the United States, detailed by Manweller (2005) and Miller (2009), is a subtle balance between two mutually reinforcing forcesⁱⁱ.

Strengthening bargaining between countervailing powers by a sovereign without agency

The independence of countervailing institutions must be complemented by the rule of law. These institutions should not be able to use their independence to disobey the rules. Direct democracies are expected to provide incentives to follow the rule of law for two mutually reinforcing reasons. First, while the electorate has no agency to enforce its decisions, the popular vote signals what is the most widely shared preference. Each person with that preference knows that she is in the majority and can potentially mobilize many people if that preference is not implemented. This pressure raises the cost of ignoring popular decisions. Second, the threat of a popular vote creates incentives for social groups to bargain to avoid the referendum.

Initiating a referendum is not only costly, but also risky. It produces uncertain outcomes that depend on voter preferences, voter turnout, the campaign, exogenous events during the campaign, the policies that have been implemented between the beginning and the end of the

process, and, when allowed, the counterproposal of parliament. If voters are thought to be irrational or easily swayed, the outcome of the election is even more uncertain.

Given these characteristics, the referendum can be thought of as a final-offer arbitration in which two disputants submit final offers to an arbitrator who selects as the binding solution the offer that comes closest to his preference (Wittman 1986). The arbitrator is the median voter.

According to the formal theory of bargaining problems (see, for example, Farmer 1980), if the parties to a dispute had complete information about the outcome of a referendum, they would always prefer to reach an agreement rather than to support the costs and risks of a referendum.

This means that under perfect information, no referendums are held in hard direct democracies, and all decisions are made through a large bargaining process in which the median voter's preference (combined with the public and private costs of holding a referendum) is the outcome if no agreement is reached. Note that without such a bargaining process, social choice theory has shown that minorities can always form a coalition to defeat any majority bill (see Miller 1983).

The number of groups involved in the bargaining process is equal to the number of groups that can initiate and win a referendum. Therefore, the size of the set of groups involved in the bargaining process increases with the competitiveness of initiatives and the non-conservatism of referendums. The competitiveness of popular initiatives determines the number of groups that can initiate a referendum and the conservatism of referendums determines the number of groups that can win them (Hug and Tsebelis 2002).

First, the competitiveness of the popular initiative is defined by the threshold of signatures required to trigger a referendum. Competitiveness is higher when the threshold is low, because groups can reach it more easily. Thus, the more competitive the popular initiative, the more numerous groups can initiate a referendum. For example, the Swiss threshold of 2% of registered voters is more inclusive than the 10% required in Uruguay, because policy

implementers have incentives to negotiate with all the groups that can collect 2% of signatures. In comparison, in Uruguay, only those who can collect 10% of signatures are included in the negotiations.

The second aspect is the degree of conservatism of the referendum. To validate a change in the status quo, a simple majority is the least conservative rule, since popular decisions can easily thwart parliamentary laws. The Swiss double majority is only slightly more demanding, because the two majorities (voters and cantons) are highly correlated. In contrast, before 1992, Palau required $\frac{3}{4}$ of the voters and the states. With such a constraint, no constitutional revision was possible, even when the Compact of Free Trade with the United States (an international trade treaty), which was very popular with the public, was put to referendum no less than seven times in ten years. The consequence of this requirement is a status quo that is very difficult to challenge, and thus a lower risk for the parliamentary majority of losing control over the way it implements the constitution.

Thus, the more conservative the referendum, the smaller the number of groups that can win a referendum, and thus the fewer the groups that will be involved in negotiations. Therefore, contrary to intuitive expectations (see, for example, Vatter 2009), requiring quorums or qualified majorities in referendums leads to less inclusive, and thus less consensual policies.

Beyond the level of inclusiveness, direct democracies can be viewed as systems in which the representatives of political groups and institutions negotiate to find a consensual way to implement the legislation such that, if they fail to reach an agreement, the people vote directly. Under these conditions, calling upon the arbitration of the median voter in a referendum reflects a bargaining failure due to a lack of information on the part of at least one of the parties. The fact that the citizen-initiated referendums rarely win – about 9% in Switzerland and less than 30% in California – is an indication that such bargaining is often effective.

Interestingly, the initiative and referendum process not only provides incentives for bargaining by allowing political groups to use the threat of referendums when their preferences are ignored, but also improves the quality of the bargaining over time. For bargaining to work, individuals must be able to express their preference intensities as accurately as possible. Direct democracy enhances such transparency by providing many ways for citizens to express their preferences (Eichenberger 2021). In particular, referendums provide accurate information about the preferences of social groups and the median voter, allowing for future improvements in the bargaining process (Osborne and Turner 2010).

Conclusion

I define hard direct democracy as a particular institutional setting in which the median voter has the final say through citizen-initiated constitutional amendments and mandatory referendums. This is the most extreme form of direct democracy in which its potential effects are the most clearly evident.

I argue that this institutional setting produces more liberal properties than representative systems. First, there is less control over the institutions that implement policy decisions, because citizens' decisions are slow and costly. The implementation of constitutional norms is delegated to various representatives: the parliament, the government, the judiciary, and others. All of these bodies must take into account the preferences of the median voter in their decisions, in addition to their own. This makes them more independent than in representative regimes, where these institutions are interdependent and there is no external arbitration. Second, direct democracy is more liberal, because these relatively independent bodies have strong incentives to find cooperative applications in policy implementation, not only among themselves, but with all groups that can successfully engage the median voter. Without such bargaining, appeals to the

median voter are more frequent, and the outcome is most costly and less favorable to most political groups.

In cases where popular arbitration is convened, its decision also offers interesting properties from a liberal perspective. Indeed, unlike an expert or an arbitrator, the median voter also produces information about the preferences of the voters, providing more social pressure to follow the rules and more information to improve future bargaining.

This claim contradicts many analyses of direct democracy as a populist tool, and undermines the liberal premise that liberalism requires stable and hard-to-change constitutionsⁱⁱⁱ. A good and stable constitution is not enough to ensure effective checks and balances if it does not provide incentives to abide by it^{iv}. Achieving this goal is facilitated by giving people full control over constitutional texts that provide adequate incentives for compliance. In short, granting sovereignty to the people simultaneously increases compliance with constitutional norms, provides incentives for the inclusion of minorities in decision-making processes, and makes the implementing institutions more independent of the legislature, which are three requirements of the liberal approach to democracy.

Normatively, this article does not defend this liberal approach, nor does it consider it to be the main value of democratic systems. Liberalism can be criticized in many respects, and other democratic properties may be more worth promoting, such as inclusiveness, efficiency, or participation. How direct democracy fares concerning these desirable characteristics is a relevant question for determining how liberal political systems should be. These questions will not be answered here. Before discussing these aspects, however, it is worth analyzing the characteristics of these rare and little-studied regimes. It is not obvious that political systems that give full sovereignty to the majority of voters tend to protect minorities, strengthen countervailing powers, and promote bargaining. This article argues that they do. This conclusion could be inconsistent with the fact that many populist (and therefore antiliberal)

parties tend to support more direct democracy (see Mudde 2007, Mohrenberg et al. 2021). This support is not confirmed in large-scale studies, however (Gherghina and Pilet 2021). Populist parties seem to be slightly more supportive of direct democracy when they are in opposition, and less likely to defend it once in power (Gherghina and Silagadze 2020). The fragile link between direct democracy and populism can be explained in another way: like other power-sharing institutions, direct democracy is preferred by the losers of the party competition. Despite their electoral success, populist parties rarely come to power. When they do come to power, they are less inclined to implement these reforms than other parties that win party competition.

More generally, this article limits the analysis to what I call hard direct democracies. It is difficult to deduce the impact of soft direct democracy has on representative regimes. When direct democracy is soft - whether it is used often, as in Italy, or more rarely, as in Slovakia - the parliament has the legislative power, so the impact of direct democracy is expected to be different and probably much smaller.

By this definition, and beyond subnational states, only a few political systems in the world have both mandatory referendums and popular initiatives at the constitutional level. This small group includes Switzerland, Uruguay and the Palau Islands. The latter two are not known as direct democracies, and the practice of referendums on constitutional amendments is much rarer there than in Switzerland. This is due to the lack of competitiveness of the initiative and, especially in the case of Palau, a very conservative referendum. In the United States, 16 states provide for citizens-initiated constitutional amendments and mandatory referendums. However, if we consider only those states where there are no subject matter restrictions - where the initiative is competitive (less than 10% of the voters in the last gubernatorial election and no need for support from any part of the legislature) and the referendum is not conservative (a simple majority of voters is sufficient) - there are only four

states that meet these criteria: California, Colorado, North Dakota and Oregon. These four states are responsible for more than 45% of the 2609 state initiatives that have been conducted up to 2018 (Matsusaka 2020), a fact that confirms that these properties - competitive initiative and non-conservative referendum - are decisive in making direct democracy procedures influential in the political life of a country. It is also worth noting that in Taiwan, an amendment to the Referendum Law in 2017 abolished the Initiative Review Committee, meaning that rejection is almost impossible, even if the initiatives are likely to violate the constitution (Ho and Huang 2021). Since referendums are also mandatory there, Taiwan may be strongly shaped by its new direct democracy in the coming years.

Although direct democracies are still rare today, they deserve further study and conceptualization for two reasons. First, their success in public opinion in many countries and the proliferation of direct democratic institutions around the world suggest that debates about direct democracy will continue to develop. These debates would be greatly facilitated by further theorizing these institutions. Second, at a time when representative regimes are in crisis and sometimes turn to illiberalism, direct democracy may be a reasonable option to protect the liberal inspiration of our contemporary political regimes.

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ⁱ More information is available in the online report of the *California Department of Corrections and Rehabilitation*.

ⁱⁱ Unfortunately, there is no comparative study of judicial autonomy in the American states. However, according to the Urban Institute, per capita spending on state and local courts is on average higher in direct-democratic states.

ⁱⁱⁱ This approach is called “liberal constitutionalism” following Hayek’s (1973) expression. However, according to “constitutional liberalism”, individuals should be free to choose their constitutional environment (Vanberg 2011) that is much more compatible to directly revised constitutions.

^{iv} According to Leeson (2011) “constitutional rules, which determine what their executors are supposed to do, are no substitute for incentives, which determine what their executors will actually do”. He demonstrates that democracy improves such incentives.