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Development of Direct Democracy in Swiss Cantons between 1997 and 2003

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Abstract

This paper describes institutions of direct democracy between 1997 and 2003 in 26 Swiss cantons (states), specifically the statutory initiative and referendum, the constitutional initiative, and the fiscal referendum. In particular, it discusses their applications, but also the legal requirements for making use of them, including the signature requirements, the time available for their collection, and the financial thresholds. Optional and mandatory forms of these direct-legislative institutions are distinguished.

This paper also provides calculations of the index and sub-indices of direct democracy for the additional years 1997 to 2003, in continuation of Stutzer (1999), using the identical methodology. Extending Trechsel and Serdült (1999) and Stutzer (1999) this paper includes the political institutions of the so-called *Landsgemeinde* cantons. Description of these institutions is based on the author's reading of 26 cantonal constitutions in their versions between 1997 and 2003.

JEL-codes: H11; H73; K19; H40; H72; N40; D70; I31

Keywords: institutions; direct democracy; direct legislation; initiative; referendum; fiscal referendum; constitution; Switzerland; culture

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1 Introduction

1.1 Scope of paper

For an empirical analysis, the accuracy of data plays a decisive role. This paper tries to aid researchers interested in the study of direct democracy (1) by briefly introducing the institutions of direct legislation in all 26 Swiss cantons 1997 – 2003 and (2) by providing the necessary data for continuing empirical research. In particular, it describes the formal requirements (and changes therein) for the constitutional initiative, the statutory initiative, the statutory referendum, and the fiscal referendum for all 26 cantons between 1997 and 2003. Furthermore, this paper presents the corresponding values of the index of direct democracy (and its sub-indices for the single institutions). Given that the Swiss household panel, which constitutes the most important source of individual data in Switzerland, started in 1999, this period of investigation is of particular importance. Finally, the aspect of language should not be neglected: most of the literature on the Swiss institutions of direct democracy is still written in German or French (and so are the cantonal constitutions). Since there appears to be a void of English-speaking literature on this subject, this paper fills this gap by providing information on institutions of direct democracy in Swiss cantons to the Anglophone world, with the aim to facilitate the scientific discussions and the ongoing empirical research. Thus, this paper might equally serve as a bridge between local researchers and the international scientific community.

1.2. Definition of direct democracy

'Direct democracy', or more precisely, 'direct legislation', implies the direct influence of the people on the political decision-making process whose outcomes gain shape in both laws and decrees of the parliament. 'Direct democracy' means that a modern democracy, which takes place solely through representative institutions of political decision-making, is complemented by direct-democratic institutions. As economists, why should we care about political institutions such as means of direct legislation? Political decisions made in political (legislative and executive) organs influence economic processes and outcomes, and – according to political economic theory - means of direct legislation influence the political outcome in favor of the preferences of the citizenry (Besley and Coate, 2001; Feld and

Kirchgässner, 2001; Hug, 2004). The typical institutions of direct legislation are referenda and initiatives.

Few countries in the world offer direct-legislative opportunities to their people, particularly the opportunity to influence the daily political decision-making processes. Basically, only two nations offer an extensive range of such direct-democratic means: the United States of America and Switzerland¹. The political system of Switzerland is shaped by two important characteristics. First, in this federal country, direct legislative institutions exist on all three levels – i.e. the federal level, the cantonal ('state') level, and the communal level. Second, Switzerland shows a very strong fiscal decentralization, which, in contrast to Austria and Germany, gives each level in the state its own tax sources. Therefore, direct democracy provides an institutional link between the power to tax and the power to spend - providing local citizens with the political means to influence both sides of the local budget equally.

From an econometric viewpoint, Switzerland can be regarded as a perfect laboratory for studying the impact of direct democracy on political outcomes (see also e.g. Kirchgässner, 2002a, 2000): Switzerland provides a set of 26 cantons, of which each can be treated as one observation, with 26 varying degrees of direct democracy laid down in its state constitution. All the cantons, however, share an identical macroeconomic and political framework at a higher level, so that some difficulties arising in cross-national comparisons can be avoided. This common framework is shaped by policy-making at the federal level, international politics, and the economic situation of the rest of the world.

The statutory initiative and the fiscal referendum

In the case of Swiss cantons, particularly the statutory initiative and the fiscal referendum play decisive roles (see Frey and Stutzer, 2000a, 2000c; Feld et al., 2007; see the review by Kirchgässner, 2002b, for more fiscal aspects). Whereas the fiscal referendum is of a reactive nature, the statutory initiative provides citizens with an agenda-setting power. Another difference between these institutions is their focus: the fiscal referendum deals with expenditure projects of the cantonal government – i.e. it is related to administrative acts; in contrast, the statutory initiative directly influences the law-making process – i.e. it is either

¹ In many other countries, however, such as Austria, Canada, France, Italy, Ireland, Liechtenstein, a popular votes are held only on constitutional amendments.

used for proposing new laws or for revising/eliminating already existing laws². Other important institutions of direct legislation are the constitutional initiative and the statutory referendum³.

1.3. Theoretical context

Some strands of economic theory suggest that in a representative system resources are wasted and allocations of goods and resources occur that deviate strongly from the median voter's position. On the one hand, overspending is caused by (a) politicians who exploit the budget (and implicitly the tax base) to satisfy the needs of the electorate in their local districts ('pork-barrel legislation')⁴; (b) the forming of broad coalition governments leading to an inefficient expansion of budgets by the spending ministers ('budget as a common pool')⁵; or (c) logrolling in the political decision-making process, which brings about the financing of minority projects that would otherwise not have gained support from the parliamentary majority⁶. Moreover, (d) government administrations are headed by bureaucrats who aim at maximizing their budget and extracting rents, potentially leading to a preference for those expenditure projects that also cause a relative increase in administrative spending (e.g. through the foundation of new departments, etc.)⁷. Whatever the case, politico-economic theory predicts that in a purely representative system, expenses are undertaken that are not preferred by the median voter, leading possibly to an unwanted growth in budget, the provision of public goods that are not the first priority for, or are supplied in a way undesirable to, the median voter, or a deteriorating quality of the public good due to fewer means available for its provision.

² The constitutional initiative aims at changing, eliminating, or adding a new constitutional law. Usually, the requirements for this initiative are the same as those for the legislative one, so that in econometric analyses the impact of the two cannot be distinguished.

³ In some cantons, even more specialized forms of referenda exist, such as those on highway expenditure or international treaties. Examples are given.

⁴ According to Weingast, Shepsle and Johnsen (1981), this leads to a preference of projects in districts of the winning party at the expense of those of the losing party. See also Tullock (1959).

⁵ See Roubini and Sachs (1989), de Haan and Sturm (1997), Kontopoulos and Perotti (1999), or Volkerink and de Haan (2001). See Feld et al. (2003) for an empirical test with Swiss data.

⁶ See also Besley and Coate (1997, 1998) on inefficiencies in representative democracies, particularly through allowing the politicians to pursue their own goals between elections and the activities of interest groups. In addition, Besley and Coate (2001) on the role of initiatives to break up bundling of projects. See also footnote 10.

⁷ See Niskanen (1975). See also Besley and Coate (2003) for representatives aiding bureaucrats to seek rents.

Nevertheless, direct democratic institutions, many of their supporters argue, can serve as means to discipline the behavior of politicians and bureaucrats. Using a model of political economy, Feld and Kirchgässner (2001) show that the mere existence of such institutions (playing the role of a 'credible threat') leads to an allocation of goods and resources that is closer to the median voter's preferences than otherwise⁸. Therefore, three characteristics should be expected in direct democracies: first, less money is wasted on undesired projects because voters veto them through fiscal referenda and initiatives⁹; second, governmental budgets should be smaller because fewer financial projects or laws triggering new expenses are approved by the electorate - if voters are fiscally conservative¹⁰; and third, public goods might be provided more efficiently as bureaucrats' discretionary power is also limited¹¹. In a more direct democratic political system smaller governmental budgets should, in turn, bring about lower income and/or property tax rates, thereby relaxing the individual's budget constraint. In addition, because of the resulting increase in individual utility, persons living in a system with strong direct democracy should experience a higher level of well-being than those living under a purely representative political regime¹².

1.4. Some empirical findings

Most of the empirical analyses for Switzerland, but equally for the United States, provide supportive evidence. For example, an allocation closer to the median voter's preferences regarding fiscal issues is observed by Pommerehne (1975, 1978) for Switzerland and Matsusaka (2000) for the U.S.A. A shift of policy outcomes toward the median voter position

⁸ Deviation from the desired allocation could also be caused by the level of information asymmetry between politicians and citizens (Kessler, 2001), which might also be mitigated through the existence of institutions of direct legislation. For a discussion on the influence of interest groups, as well as why a mitigation of information asymmetry might take place in the Swiss political system, see Feld and Kirchgässner (2001) and Kirchgässner (2000).

⁹ For theoretical arguments, see Besley and Coate (1998, 2001, 2003); see also Feld et al. (2007) for arguments relating to welfare expenditures and tax revenue in Swiss cantons, and its final impact on income redistribution.

¹⁰ For more theoretical arguments, see Feld and Kirchgässner (2001), and Fischer (2008, 2005c).

¹¹ See the discussion in Fischer (2005c, 2008) on student performance and educational spending in Switzerland and the references for the USA therein. A contrasting view on the impact of logrolling on the production of public goods is presented in Breton (1996). He argues that in direct democracies an inefficiently low level of provision might be achieved because referenda on single projects prevent gains from vote trading. A strong counterargument can be found in Feld and Kirchgässner (1998).

¹² See the various papers by Frey and Stutzer (2002, 2000a, 2000b, 2000c), also discussed in Dorn et al. (2008) on happiness. The well-being raising effect is also discussed in analyses of suicide in Swiss cantons, e.g. Fischer and Rodriguez-Andrés (2008).

on non-budgetary issues like parental consent laws and capital punishment is detected by Gerber for the U.S. (1996, 1999).

As regards the budget and debt lowering impacts of direct legislation, to name some of the most important contributions, see e.g. Feld and Kirchgässner (2001a, 2001b) for the effect on cantonal and local revenue, expenditures and debt; Feld and Kirchgässner (1999) for Swiss municipalities; Feld and Matsusaka (2003) on sub-federal expenditure; Kirchgässner and Hauser (2001) on cantonal expenditure for administration; Schaltegger (2001) for the impact on various sub-federal budget components, Fischer (2005c) on educational spending and Feld et al (2007) on welfare spending and tax revenue; Pommerehne (1978) for Swiss municipalities; Schneider and Pommerehne (1983) on expenditure growth in Swiss municipalities.¹³ Similar empirical results have been obtained for the United States, for U.S. states, see e.g., Matsusaka (1995), Kiewiet and Szakaly (1996), Rueben (1997), Holcombe (1980), and the work by Shadbegian (1999, 2000, 2003) for local districts with TELs.¹⁴ Further, and possibly as a result of the budgetary impact, Feld et al. (2003) show that income tax and property tax rates are lower in more direct democratic Swiss cantons.¹⁵ In addition, Feld and Savioz (1997) as well as Freitag and Vatter (2000) observe that GDP per capita is also greater in such cantons.

Yet, given the spending dampening effect of direct democracy on sub-federal budgets, how is the regional and local provision of public goods affected by direct legislation?¹⁶ The empirical evidence is ambiguous in that respect. For a stronger reliance on user charges, see Feld and Matsusaka (2000) and Matsusaka (1995)¹⁷; for efficiency gains in general, see Kirchgässner and Hauser (2001); for quality gains occurring in the provision of garbage collection service, see the seminal paper by Pommerehne (1983)¹⁸; and for composition of educational spending, see Fischer (2005c); for income redistribution, see Feld et al. (2007). A detrimental impact on

¹³ An (incomplete but informative) overview can be found in Feld and Kirchgässner (2000). For evidence on the fiscal conservatism of voters in the U.S., see Peltzman (1992). For contrasting empirical evidence, see Matsusaka (2000).

¹⁴ See also an overview in Kirchgässner et al. (1999).

¹⁵ In addition, the studies conducted by Pommerehne and Weck-Hannemann (1996, 1989) reveal also a lower level of tax evasion (see next section for discussion). A decentralizing impact of direct democracy on tax revenue, income, and property tax revenues in particular, was detected in Schaltegger and Feld (2001), i.e. in direct democratic cantons tax collection occurs more at the local level.

¹⁶ Lower spending alone is not a valid indicator of efficiency gains; it might be caused by inefficiencies through insufficient vote trading in the political decision-making process (see Breton, 1996).

¹⁷ See also Pommerehne (1978, 1983) and Feld and Matsusaka (2000).

¹⁸ In addition, Pommerehne (1983) reveals that institutions of direct democracy decrease the costs of garbage collection in Swiss municipalities.

health (infant mortality rate) and equally educational outcomes (share of pupils with *maturité / Matura*) is found by Barankay (2002), while a deleterious budgetary effect which transmits into lower student performance in Mathematics and Reading is detected by Fischer (2005b, 2008).

The works by Frey and Stutzer (2000a, 2002) support the utility increasing aspect of direct democracy (see also Dorn et al., 2008; see Bjørnskov et al., 2008, for an international perspective; see Stutzer and Frey, 2003, for a focus on procedural utility). Similarly, significantly less tax evasion occurs than in more representative systems, as the studies by Weck-Hannemann and Pommerehne suggest (1989, 1996)¹⁹, possibly indicating a higher satisfaction of tax payers with the policy-making carried out by their governments and administrations. Thus, the analysis of the influences of direct democracy in political processes and outcomes remains an important and interesting research area.

1.5. Structure of paper

The rest of this paper is organized as follows. The next section describes briefly and very generally the main institutions of direct democracy in Switzerland, its various forms and requirements. Sections 3 to 6 form the core part of this paper, providing an overview of the changes in the cantonal constitutions from 1997 to 2003. Each section separately examines the institutional changes for one relevant direct democratic institution and describes its actual provisions. Addressed by section 3 the initiative (constitutional and statutory), the mandatory and the optional statutory referendum by section 4, and, finally, the mandatory and the optional fiscal referendum in section 5.

The outcome of this research is organized in the form of tables by type of institution, intended to serve as a 'manual' for information on the relevant constitutional requirements and for further consultation. These tables also allow construction of further controls of direct democratic institutions, such as the signature or the financial threshold requirements for various time points between 1997 and 2003. Finally, the implications of these changes for the construction of the index are discussed in section 6 and the changes of the index are described in section 7. The paper concludes with a brief discussion of some aspects of the index with

¹⁹ See also more recent analyses by Feld and Frey (2001, 2002).

section 8. Values of the index and sub-indices for 1997 – 2003 are presented in the end of this paper.

2 Introduction to institutions of direct democracy in Swiss cantons

In general, institutions of direct democracy are initiatives and referenda that are usually regulated in constitutional stipulations. This section contains a brief introduction to these instruments of direct democracy and a description of the so-called ‘index of direct democracy’ that measures the strength of these institutions at the cantonal level in Switzerland.

2.1. The initiative

The people’s initiatives constitute an element of active electoral participation in the political decision-making process. They allow the electorate to place a proposal for a law or constitutional amendment on the political agenda. The requirement for a successful launch of any initiative is that a specific number of signatures is collected from among the electorate during a certain period of time. It is not uncommon for the signature requirement to increase proportionally to the importance of the legislative act to which the initiative pertains (e.g. law, partial revision of constitution, total revision of constitution).

Accordingly, we speak of a *statutory initiative* for altering laws and a *constitutional initiative* for a constitutional amendment. In Switzerland, any proposed revision of the cantonal constitution must be approved by the electorate, i.e. any successfully launched constitutional initiative directly brings about a popular vote, as stipulated in the national constitution (art. 51, 1 Swiss Federal Constitution (SC)). In contrast, a people’s initiative that proposes a cantonal law (or changes thereof) is subject to a popular vote only if the cantonal parliament rejects the initiative or makes a counterproposal (hereby rejecting the initiative); only in some cantons does a popular vote generally follow a successfully launched initiative (i.e. without a government rejection/counterproposal). Non-rejection of (= agreement to) the people’s initiative by the cantonal government constitutes an act of legislating. In any case, the new law may then be challenged through a mandatory or optional statutory referendum, depending on the state constitution.

2.2. The referendum: mandatory or optional, ordinary or extraordinary

Referenda (Referendums), on the other hand, constitute a reactive element of direct legislation because they can only take the form of a reaction to preceding activities of the legislative body, putting government decisions on the ballot. Like an initiative, a referendum is usually triggered by collecting a certain number of signatures within a specific time window after (publication of the) the government decision.

Referenda at the cantonal level are, in general, applicable to laws, decrees, international and intercantonal treaties (concordats), and fiscal issues such as expenditure projects. Accordingly, we speak of a so-called statutory referendum for laws (*Gesetzesreferendum*), an administrative referendum for decrees (as they constitute an administrative act – *Verwaltungsreferendum*), a referendum for treaties (*Staatsvertragsreferendum*), and the fiscal referendum (*Finanzreferendum*). In theory, all referenda could exist in either a *mandatory* or an *optional* form: a mandatory referendum triggers a popular vote automatically following a decision by the representative body, whereas an optional referendum must be held only if some specific requirements have been met by the electorate – usually a signature requirement²⁰. In theory, all referenda can also exist in an *ordinary* or *extraordinary* form. If a referendum is ordinary, its (potential) application is directly stipulated in the cantonal constitution; it is, in a sense, part of the daily political decision-making process. An extraordinary referendum, however, can only be held if a minority of the representative organ members of the canton demands it: in this case, the requirements of this extraordinary optional referendum are stipulated in the legal act to which it refers. In general, not all types of referenda exist in one canton, and there is a huge variation in requirements between them.

2.3. The minimum of direct-legislative institutions

To ensure a minimum level of direct democracy in each Swiss canton, the federal constitution rules which institutions of direct legislation *must* exist at the cantonal level. Article 51, 1 SC states that 'each canton shall stipulate a democratic constitution', where 'democratic' refers to the organization of the canton, particularly the division of power, and to the fact that the cantonal parliament is elected by the cantonal citizenry (Ehrenzeller et al. 2002, p. 624, no. 8).

²⁰ In case of fiscal referenda, both forms require the meeting of a financial threshold in first place.

As regards institutions of direct legislation, as already mentioned above²¹, only the constitutional referendum and the constitutional initiative (both for a partial and total revision of the constitution) are required in addition by art. 51, 1 SC (Ehrenzeller et al., 2002, p. 624, no. 9). Although at the federal level a statutory referendum for federal laws is stipulated in its optional form (art. 141 SC), this institution is not prescribed for the 26 Swiss cantons. Nevertheless, all Swiss cantons guarantee their citizens more direct democratic rights than the required minimum. In fact, the statutory referendum of direct legislation exists in all 26 Swiss cantons, as do most of the other institutions such as the fiscal referendum and the administrative referendum²². In addition, changes in cantonal territory are subject to approval through a popular vote of the affected populations and cantons (art. 53, 3 SC), as are secessions or unifications of cantons (art. 53, 2 SC).

2.4. The index of direct democracy and scope of this paper

As regards the institutions of direct democracy to be analyzed in this paper, they are restricted mainly to those that serve as a basis for constructing the so-called *index of direct democracy* as developed by Stutzer (1999). This index is an unweighted average of four sub-indices that measure the strength of four specific institutions of direct legislation; in particular, the initiatives for constitutional and statutory changes, the fiscal referendum (ordinary optional and mandatory) on expenditure projects, and the (ordinary optional and mandatory) referendum for laws (and decrees)²³. To follow this paper's development more easily, the reader should recall that these sub-indices are based on an evaluation of the requirements for each institution: on the one hand, the signature requirements (number, time) necessary for optional referenda and initiatives, and, on the other, the financial threshold for the (optional and mandatory) fiscal referenda. In order to provide as complete a picture of constitutional changes in institutions of direct democracy as possible, however, the discussion also lists most of the changes in administrative referenda and any extraordinary referenda. The

²¹ Changes in the cantonal constitutions must be in accordance with the federal law that is ensured by the approval by the federal assembly (art. 51, 2 SC; art. 172, 2 SC). The federal assembly consists of two chambers: the federal parliament (*Nationalrat*) and the representatives of the 26 cantons (*Ständerat*) (art. 148, 2 SC). In general, any cantonal stipulation should not contradict federal law (federal law breaks cantonal law, art. 49, 1 SC).

²² For an overview of the (non)existence of the most important institutions of direct legislation in Swiss cantons, see Lutz and Strohmam (1998).

²³ In many cantons, the requirements for the statutory and administrative referendum are identical. However, in some cantons they differ, and Stutzer (1999) used either their average or either one of them to construct the sub-index of the statutory referendum.

administrative referenda are listed in the section on statutory referenda, because with respect to their political intention, they are closely related to the statutory referendum.

The original values of the index of direct democracy were calculated by Stutzer (1999) for the years 1970, 1992, and 1996 and were then updated for the missing years between 1980 and 1998 by Feld and Schaltegger (see their articles in the list of references). The relevant information on institutions of direct democracy for its construction up to 1996²⁴ can be found in Trechsel and Serdült (1999) (hereafter cited as T/S), in which the authors analyze the changes of these institutions from 1970 onwards (T/S 1999, p. 8). The index of direct democracy has since then been employed in various time-series cross-sectional analyses of the impact of direct democracy in Switzerland and is thus essential²⁵. It should also be noted that neither Trechsel and Serdült (1999) nor Stutzer (1999) describe the political institutions of the so-called *Landsgemeinde* cantons, i.e. those cantons that knew no form of legislative representation or delegation by 1996 but voted on everything in an open meeting²⁶. These *Landsgemeinde* cantons were *Appenzell Innerrhoden (AI)*, *Appenzell Ausserrhoden (AR)*, *Nidwalden (NW)*, *Obwalden (OW)*, and *Glarus (GL)* (see T/S 1999, p. 7²⁷). This paper also includes a description of these cantons.

2.5. Acknowledgement

This paper would not have been possible without the actual wording of the constitutional changes between 1996 and 2003 provided by courtesy of various cantonal legal services and administrations. Therefore, at this point I would like to thank again all the various civil servants and honorary collaborators, most particularly, among others, Mr. Jürg Fehner (ZH), Mr. Urs Rüegg (ZH), Ms. Elisabeth Vetter (LU), Ms. Kathrin Graber (LU), Ms. Judith Lauber (LU), Mr. Georg Zemp (LU), Mr. Heinz Bachmann (LU), Mr. Peter Huber (UR), Mr. René Zehnder (SZ) and Mr. Peter Gander (SZ), Mr. Notker Dillier (OW), Mr. Josef Baumgartner (NW), Mr. Hansjörg Dürst (GL), Mr. Bruno Zimmermann (ZG), Mr. André Schoenenweid (FR), Ms. Yolanda Studer (SO), Dr. Denise Mangold (BS), Mr. René Bolliger (BL), Mr.

²⁴ Sporadically, the description of the changes reaches 1998, particularly in the second part in Trechsel and Serdült (1999) which focuses on single cantonal constitutions.

²⁵ E.g., see the literature cited in Kirchgässner (2002a, 2002b, 2001, 2000).

²⁶ In various papers by Stutzer and Frey (e.g. 2000) index values for the *Landsgemeinde* cantons are also reported, without, however, a detailed description of their relevant constitutional stipulations.

²⁷ Today (2003), 2 cantons (*Glarus (GL)* and *Appenzell Innerrhoden (AI)*) are still *Landsgemeinden*; *Nidwalden (NW)* ceased before 1996, *Appenzell Ausserrhoden (AR)* in 1997, and *Obwalden (OW)* in 1998.

Christian Ritzmann (SH), Mr. Joe Müggler (AR), Mr. Köbi Frei (AR), Gabriela Küpfer (SG), Mr. Walter Frizzoni (GR), Mr. Urs Meier (AG), Mr. Claudio Franscini (TI), Mr. Alex Depraz (VD), Ms. Séverine Despland (NE), and Mr. Jean-Jacques Tombet (GE). I also thank Alois Stutzer, the creator of this index, for helpful comments and clarifications.

2.6. Constitutional changes between 1997 and 2003

The time span between 1997 and 2003 appears to have been a period favoring the adoption of new cantonal constitutions. Table 1 displays a list of all 26 cantons and their constitutional changes that affect those direct democratic institutions on which the index of direct democracy is based (state: 18th Aug 2004). The cantons *Freiburg (FR)*, *Schaffhausen (SH)*, *St .Gallen (SG)*, *Graubünden (GR)*, *Tessin (TI)*, *Waadt (VD)*, and *Neuenburg (NE)* – about one fourth of all Swiss cantons – all passed new, totally revised constitutions between 1997 and 2004 (the canton of *Luzern (LU)* is also currently drafting a new constitution, which should be voted upon in 2007²⁸). The reason for this 'clustering' could lie both in a "Year 2000" effect combined with a "200-years jubilee" effect of membership in the Swiss federation, which emerged from a confederation of single independent states. However, not all of these new constitutions necessarily brought about alterations in the existing direct democratic institutions: some of the new constitutions aimed primarily at rewriting the outdated nineteenth-century wording and giving it a more modern and accessible structure without altering its legal content. The rest of this section is devoted to an assessment of how these amendments affect the strength of direct democratic rights.

As regards the *statutory referendum*, in several cantons a shift of the political power from the electorate toward the cantonal parliament occurred, resulting in a weakening of direct democratic institutions. Quite often, the application of the mandatory statutory referendum has been restricted by the inclusion of a constitutional majority requirement of the cantonal parliament (*Solothurn (SO)*, *Appenzell Ausserrhoden (AR)*, *Graubünden (GR)*, *Schaffhausen (SH)*) or by restriction of the issues subject to legal stipulation (*Glarus (GL)*)²⁹.

²⁸ This paper was originally written in 2003. Constitutional changes after 2003 are not taken into account. See www.neueverfassung.lu.ch (07.10.2004) and personal communication with Mr. Zemp (20 Apr, 2005).

²⁹ In case the majority restriction serves only as a means for disciplining the cantonal parliament, the introduction of such a majority restriction has to be regarded as equivalent to a de facto elimination of the mandatory referendum. Only observation of the daily political usage over a longer period of time can provide a basis for a correct evaluation of this new institution.

Table 1: Changes of the institutions of direct democracy 1997 – 2003

Canton	Institutional Changes between 1997 and 2003	Comments	Index (1996)	Index (2003)
ZH	GRR*: 1 Jan 1999, FRR*: 1 Jan 1999		4.417	3.500
BE			3.020	3.021
LU			4.420	4.417
UR	VIR, GIR, GRR: 1 Oct 1997 FRR: 1 Oct 1997		5.290	5.125
SZ			4.990	4.927
OW	GIR, GRR*: 29 Nov 1998 FRR*: 8 June 1997, 29 Nov 1998	Abolishment of <i>Landsgemeinde</i> (29 Nov 1998)		4.625
NW				4.438
GL	GRR*: 5 May 2002 FRR: 5 May 2002	<i>Landsgemeinde</i>		5.500
ZG			4.420	4.479
FR		New constitution by 1 Jan 2005	2.850	2.792
SO	GRR*: 11 Dec 1998 FRR: 11 Dec 1998		5.670	5.250
BS	FRR: 1 Jan 1998	Change in cantonal law	4.400	4.396
BL	GRR*: 1 Jan 2000		5.690	5.479
SH	GRR*: 1 Jan 2003 FRR: 1 Jan 2003	New constitution by 1 Jan 2003	5.210	5.021
AR	GRR*: 1 June 2000	Abolishment of the <i>Landsgemeinde</i> (28 Sept 1997)		4.917
AI	FRR: 28 Apr 2002	<i>Landsgemeinde</i>		5.438
SG	VIR, GIR: 1 Jan 2003 GRR: 1 Jan 2003 FRR: 1 Jan 2003	New constitution by 1 Jan 2003 <i>Einheitsinitiative</i>	3.580	3.521
GR		New constitution by 1 Jan 2004	4.750	4.833
AG	GRR*: 1 Jan 2003 FRR: 1 Jan 2003		5.460	5.438
TG			4.330	4.333
TI	GRR: 1 Jan 1998 FRR: 1 Jan 1998	New constitution by 1. Jan 1998	2.100	2.250
VD	VIR, GIR: 1 Sept 2003 FRR*: 1 Sept 2003, 29 Nov 1998	New constitution by 1 Sept 2003	2.420	2.417
VS			3.580	3.583
NE	GRR: 1 Jan 2002, FRR*: 1 Jan 2002	New constitution by 1 Jan 2002	2.190	2.729
GE			1.750	1.750
JU			4.020	3.708

Notes. Empty cells indicate that no relevant revision of the constitution or relevant cantonal law had been observed³⁰. FRR: Fiscal Referendum, GIR: Statutory Initiative, GRR: Statutory Referendum (laws), VIR: Constitutional Initiative. *indicates abrogation or restriction of a mandatory referendum. The dates are dates of effectiveness. The index values of 1996 are taken from Stutzer (1999).

³⁰ The constitutions and their tracked changes are based on the versions as of the 18th of Aug, 2004. Updated cantonal constitutions can be obtained from <http://www.admin.ch/ch/d/sr/13.html#131>.

A complete abolishment of the mandatory statutory referendum has happened in four cantons (*Zürich (ZH)*, *Obwalden (OW)*, *Appenzell Ausserrhoden (AR)*, *Graubünden (GR)*); in these cantons it has been replaced by an optional statutory referendum. In general, such changes lead to a decline in the index of direct democracy.

Looking at the development of the *statutory initiative and the constitutional initiative*, three interesting changes should be noted. First, more and more cantons present these two existing types of initiatives jointly under the identical heading ('initiative') in their constitution, in order to group them together and indicate them as two possible variations of a people's initiative. This technical integration is particularly true for most of the new constitutions, and is part of a trend to make constitutions more transparent to the average citizen. In contrast, in the old constitutions, the organization of the people's rights was subject to a strict juristic way of thinking that reflected the organization of the state as understood in the nineteenth century. Traditionally, stipulations regarding revisions of the state constitution (including revisions initiated by the people) were given a separate paper in the back part of the constitution, signaling that revising the constitution was considered as being outside the daily law-making process (framed by the existing constitution). The statutory initiative, in contrast, was placed in the middle in the constitution, signaling its link to the legislative process. For this reason, integrating both types of (statutory and constitutional) initiatives under one heading constitutes not only a formal change but indicates a change in the underlying philosophy and understanding of the purpose of a constitution.

Linked to this change is a second most recent phenomenon: the introduction of the so-called *unitary initiative (Einheitsinitiative)* (e.g. in *St. Gallen (SG)*) art. 43 of the new constitution), which also aims to make it easier for the citizens to influence the legislative process. The unitary initiative is a binding motion of the electorate for which no specific legal form is required. During the readings (*Lesungen*) for the new cantonal constitution in *St. Gallen*, the introduction of the *Einheitsinitiative* was under hot debate and the most important aspects of this institution were discussed (Protocol 2000b, Protocol 2000a). According to the various speakers, this new type of initiative offers two advantages to its citizens: first, it is said to be relatively easy to carry out and, second, it is the legislative organ and not the initiator who decides whether a change in cantonal law or in cantonal constitution is the appropriate (re)action. This latter means that unitary initiatives can no longer be turned down on the formal ground that the wrong level of law-making had been chosen by the initiators, e.g. the proposal of a change in cantonal law when an amendment of the constitution would have been

correct, and vice versa. Additionally, the *Einheitsinitiative* allows the development of the cantonal law and the constitution in a juristically consistent and systematic way.

Nevertheless, the *Einheitsinitiative* should not be seen as a perfect substitute for the traditional initiatives. Both (traditional) statutory and constitutional initiatives are viewed as stronger instruments because the legal level of application and the content of the change are precisely specified. In addition, depending on the cantonal constitution, the *Einheitsinitiative* may serve as a mere suggestion of the electorate, and the cantonal parliament can decide whether to follow it or not: only if the parliament decides against it, a legislating referendum must be held. If it decides in favor and passes a cantonal law, no popular vote is needed, albeit this law may then be subject to the optional statutory referendum.³¹ Overall, some speakers in the cantonal parliament of *St. Gallen* pointed out, a hierarchy of types of initiatives can be construed in which the *unitary initiative* is at the lowest level of influence. Because of this hierarchy of initiatives, differences in the signature requirements appear justified, with the lowest number for the weakest instrument of direct legislation. There are, however, cantonal constitutions in which no differentiation is made between the number of signatures required for the unitary versus the statutory initiative³².

The third phenomenon linked to the new treatment of the statutory and the constitutional initiatives is that more and more cantons tend to regulate the time period for collecting signatures in the constitution itself and not in a cantonal (by-)law (usually a law on political rights of its citizenry). The advantage of this development could be increased transparency because now all requirements concerning one institution are laid down in the same legal act. Another advantage might be that any change in constitution must be approved by the electorate through a mandatory referendum³³, whereas an alteration of a simple cantonal law might only be subject to an optional statutory referendum, depending on the cantonal constitution. In this latter situation, political economic theory predicts larger deviations from the median voter's preferences than in the former (Feld and Kirchgässner, 2001). On the other hand, again depending on whether differences exist regarding the signature requirements for a statutory or constitutional initiative, it might have equally become more difficult for the

³¹ However, if a constitutional amendment is chosen, the cantonal people must have the final say in a popular vote, as stipulated in the federal constitution.

³² Because of its potentially low level of political influence and because it only complements the existing traditional initiatives, the *Einheitsinitiative* does not (yet) form part of the index of direct democracy. Only the future will show how important the institution becomes to the daily political process and whether it should be included in the index construction or not.

³³ As required by the Swiss federal constitution, see previous section.

electorate to change that requirement to its favor if regulated in a constitution. In political practice, however, between 1980 and 1998, time periods for signature collection, whether regulated by a law or the constitution, were rarely changed. Additionally, for all cantons during our investigation period, regulation at a new, higher level of lawmaking failed to bring about a different (shorter) time period for signature collection³⁴.

Table 1 provides information on how the index of direct democracy changed between 1996 (as found in Stutzer, 1999) and 2003 (based on own calculations). It must be noted that not all institutional changes automatically cause a change in its total index-value: index points are awarded for each institution based on ranges of signature requirements or financial thresholds so that relatively small alterations in the requirements do not necessarily translate into a change in category. In addition, the reader should keep in mind that each institution influences the composite index by only 25%: e.g. the change in signature requirement in *Basel-Land (BL)* for the optional statutory referendum caused a total change of just about 0.21 index points. At this point, I would like to emphasize that because the index is constructed on a yearly basis, revisions of the cantonal constitution becoming effective after April 1st are always counted as changes in the index of the subsequent year. Moreover, it is also possible that several, contrasting institutional changes – either occurring simultaneously or subsequent to each other – might cause a compensating impact. For example, in the canton *Uri (UR)*, a partial revision of the statutory and constitutional initiative and the fiscal referendum lead, overall, to no considerable change in the total value. Finally, it should be noted that small alterations in the index can be caused by changes in the residential population or the electorate, as some requirements enter the sub-index in the form of per capita values.

³⁴ A similar situation can be found in *St. Gallen (SG)* where the expenditure thresholds for the mandatory and the optional fiscal referendum are laid down in a cantonal law but not in the constitution.

3 The initiative

3.1 The constitutional initiative

Table 2: The constitutional initiative 1997 - 2003

Canton	Signature requirement	Articles in cant. constitution	Effective since	Time-limit for collection
Zürich (30 Mar 2004)	10 000	art. 29, 3 num.1	11 June 1969 (1 June 1969)	6 months art. 13, 2 <i>Initiativgesetz</i> (art. 126 <i>GPR</i>)
Bern (21 Oct 2003)	30 000 (TR) 15 000 (PR)	art. 58, 1 lit. a art. 58, 2	1 Jan 1995	6 months see also T/S 1999, p.190
Luzern (21 Oct 2003)	5 000	art. 32, 1 art. 35 bis, 2	1 Jan 1994 (28 Nov 1993) 1 Sept 1970 (7 June 1970)	1 year art. 136 lit. a <i>SRG</i> See T/S 1999, p.265
Uri (1 Apr 2003)	600	art. 27, 1 art. 28, 2	1 Oct 1997 (8 June 1997)	None
Uri (old)	300	art. 27, 1 art. 28, 2	(since 1985)	None See T/S 1999, p.362
Schwyz (18 Aug 2004)	2 000	art. 102, lit. a art. 103, lit. b	21 Dec 1899 (23 Oct 1898)	None See also T/S 1999, p.307
Obwalden (22. Oct 2002)	500	art. 61, 1 lit. a (until Nov 1998: art. 63 num. 1)	19 May 1968	None (29 Nov 1998 (29 Nov 1998): abolishment of the <i>Landsgemeinde</i>) changes in 1998 do not affect institution
Nidwalden (28 Dec 2001)	1 000 (TR) 500 (PR)	art. 54, 4, num. 1 art. 54, 4, num. 2 (Art 54a Abs.4)	1 Dec 1996 (1 Dec 1996)	2 months
Glarus (30 Mar 2004)	1	art. 138, 3	1 May 1988 (1 May 1988)	None <i>Landsgemeinde</i>
Zug (1 Apr 2003)	2 000	art. 79, 2 art. 35, 1	2 Dec 1990 (2 Dec 1990)	None (rules for the statutory initiative apply) See T/S 1999, p.397
Freiburg (18 Aug 2004) new constitution by 1 Jan 2005	6 000	art. 41 a art. 42, 2	1 Jan 2005 (16 May 2004)	90 days

Table 2: The constitutional initiative 1997 - 2003 (cont.)

Canton	Signature requirement	Articles in cant. constitution	Effective since	Time-limit for collection
Freiburg (old)	6 000	art. 78, 2 lit. b	3 Aug 1979 (24 Sept 1978)	90 days art. 115, 2 <i>PRG</i> art. 193, 3 <i>PRG</i> (old) see also T/S 1999, p. 214
Solothurn (30 Mar 2004)	3 000	art. 29, I lit. a; art. 30, 3	1 Jan 1988 (8 June 1986)	18 months
Basel-Stadt (4 July 2000)	4 000	art. 28, 1	3 June 1991 (2 June 1991)	None See T/S 1999, p.166
Basel-Land (22 Oct 2002)	1 500	art. 28, 1	1 Jan 1987 (4 Nov 1984)	None See also T/S 1999, p.144
Schaffhausen (21 Oct 2003) new constitution by 1st Jan 2003	1 000	art. 27, 1 lit. a	1 Jan 2003 (22 Sept 2002)	None
Schaffhausen (old)	1 000	art. 108 (TR) art. 107 (PR) art. 43, 2	6 Apr 1997 (6 Apr 1997) 1. June 1876 (14 May 1976) 20 May 1973 (29 Jan 1973)	None Change of 1997 concerns only TR and does not affect the VIR-index See T/S 1999, p.290
Appenzell AR (3 Apr 2001)	300	art. 51	1 May 1996 (30 Apr 1995)	None
Appenzell IR (30 Mar 2004)	1	art.7 bis art. 48	25 Apr 1982 (25 Apr 1982)	<i>Landsgemeinde</i>
St. Gallen (9 July 2002) new constitution by 1 Jan 2003	8 000	art. 41, 1 lit. a, b art. 45	1 Jan 2003 (10 June 2001)	5 months
St. Gallen (old)	8 000	art. 114 num. 2 art. 115	1926 see T/S 1999, p. 333	6 months
Graubünden (6 July 2004) new constitution by 1 Jan 2004	4 000	art. 12, 1	1 Jan 2004 (18 May 2003 / 14 Sept 2003)	1 year art. 53c, 1 <i>GPR</i>
Graubünden (old)	5 000	art.54, 3	2 Mar 1980 (2 Mar 1980)	1 year art. 53c, 1 <i>GPR</i>
Aargau (30 Mar 2004)	3 000	art.64, 1	1 Jan 1982 (28 Sept 1980)	1 year art. 54, 1 <i>GPR</i>
Thurgau (22 Oct 2002)	4 000	art.26	1 Jan 1990 (4 Dec 1988)	6 months

Table 2: The constitutional initiative 1997 - 2003 (cont.)

Canton	Signature Requirement	Articles in cant. constitution.	Effective since	Time-limit for collection
Tessin (30 Mar 1999) new constitution by 1 Jan 1998	10 000	art. 83 (art. 119, 2 <i>LEDP</i>)	1 Jan 1998 (14 Dec 1997)	60 days art. 119, 1 <i>LEDP</i>
Tessin (old)	10 000	art. 54, 1 lit. c art. 56	1970 (31 May 1970)	60 days art. 3 <i>LIRR</i> see T/S 1999, p.342
Waadt (21 Oct 2003) new constitution by 1 Sept 2003	12 000 (PR) 18 000 (TR)	art. 78 lit. a art. 79, 2	1 Sept 2003 (22 Sept 2002)	4 months (contradicts <i>LEDP</i> , art. 92, 1)
Waadt (old)	12 000	art. 100	1961 (11 June 1961) see T/S 1999, p.373	3 months art. 92, 1 <i>LEDP</i>
Wallis (21 Oct 2003)	6 000	art. 100, 1	1 June 1994 (24 Oct 1993)	None
Neuenburg (16 Oct 2001) new constitution by 1 Jan 2002	10 000 (TR) 6 000 (PR)	art. 101, 1 art. 102, 1	1 Jan 2002 (24 Sept 2000)	6 months art. 105, 1 <i>LDP</i>
Neuenburg (old)	10 000 (TR) 6 000 (PR)	art. 83, 1 art.84, 1 and 2	1959 see T/S 1999, p.275	6 months art. 105, 1 <i>LDP</i>
Genf (21 Oct 2003)	10 000	art.64 art. 65 A	(7 Mar 1993)	4 months art. 89, 1 c <i>LEDP</i>
Jura (4 July 2000)	2 000	art.75, 1	1 Jan 1979 (20 Mar 1977)	12 months Art 89, 1 <i>LDP</i>

In the column 'Canton', the date of the version of the cantonal constitution (or the date of the download, the 18th of Aug, 2004) is displayed in brackets. In case of *Freiburg (FR)* the source was http://www.fr.ch/constituante/doc/fichiers/proj_def/proj.pdf (18 Aug 2004). TR denotes 'total revision' and PR 'partial revision' of the cantonal constitution; if not otherwise indicated, the signature requirement applies to both initiatives equally. Signature requirements relate to the corresponding cantonal electorate. The *Einheitsinitiative*, which does not enter the index of direct democracy, has been excluded. In the column 'Effective since' the date of the popular vote is given in brackets. For an explanation of the abbreviation of the cantonal laws on political rights and their dates of enactment, see Table A.1 in the Appendix

3.2 The statutory initiative

Table 3: The statutory initiative 1997 - 2003

Canton	Signature requirement	Articles in cant. constitution	Effective since	Time-limit for collection
Zürich (30 Mar 2004)	10 000	art. 29, 3 num. 1	11 June 1969 (1 June 1969)	6 months see constitutional initiative
Bern (21 Oct 2003)	15 000	art. 58, 1 lit. b art. 58, 2	1 Jan 1995	6 months see also T/S 1999, p. 191
Bern (21 Oct 2003)	4 000	art.41 bis, 1	1 Sept 1970 (7 June 1970)	1 year art. 136 lit. a <i>SRG</i>
Uri (1 Apr 2003)	600	art. 27, 1 art. 28, 2	1 Oct 1997 (8 June 1997)	None
Uri (old)	300	art. 27, 1 art. 28, 2	(since 1985)	None See T/S 1999, p.362
Schwyz (18 Aug 2004)	2 000	art. 31, 2	21 Dec 1899 (23 Oct 1898)	None See T/S 1999, p.308
Obwalden (22 Oct 2002)	500	art. 61, 1, lit. b	29 Nov 1998 (29 Nov 1998)	None Nov 1998: abolishment of the <i>Landsgemeinde</i>
Obwalden (8 June 1997)	1	art. 63, num. 2	19 May 1968	None
Nidwalden (28 Dec 2001)	250	art. 54, 4, num. 3 art. 54, 5	1 Dec 1996 (1 Dec 1996)	2 months
Glarus	1	art. 69, 1; art. 58, 1	5 May 2002 (5 May 2002)	None <i>Landsgemeinde</i> Only important regulation in form of law
Glarus (old)	1	art. 69, 1 lit. b; art. 58, 1	1. May 1988 (1 May 1988)	None <i>Landsgemeinde</i>
Zug (1 Apr 2003)	2 000	art. 35, 2	2 Dec 1990 (2 Dec 1990)	None See T/S 1999, p.397
Freiburg (18 Aug 2004) new constitution by 1 Jan 2005	6 000	art. 41 lit. b art. 42, 2	1 Jan 2005 (16 May 2004)	90 days
Freiburg (old)	6 000	art. 28 ter, art. 28 quater	11 Mar 1921 (30 Jan 1921)	90 days art. 115, 2 <i>PRG</i> art. 193, 3 <i>PRG</i> (old) see also T/S 1999, p.215

Table 3: The statutory initiative 1997 - 2003 (cont.)

Canton	Signature Requirement	Articles in cant. constitution	Effective since	Time-limit for collection
Solothurn (30 Mar 2004)	3 000	art. 29, 1 lit. b; art. 30, 3	1 Jan 1988 (8 June 1986)	18 months
Basel-Stadt (4 July 2000)	4 000	art. 28, 1	3 June 1991 (2 June 1991)	None
Basel-Land (22 Oct 2002)	1 500	art.28, 1	1 Jan 1987 (4 Nov 1984)	None See also T/S 1999, p.145
Schaffhausen (21 Oct 2003) new constitution by 1st Jan 2003	1 000	art. 27, lit. b	1 Jan 2003 (22 Sept 2002)	None
Schaffhausen (old)	1 000	art. 43, 2	20 May 1973 (29 Jan 1973)	None
Appenzell AR (1 Apr 2001)	300	art.51	1. May 1996 (30 Apr 1995)	None
Appenzell IR (30 Mar 2004)	1	art.7 bis	25 Apr 1982 (25 Apr 1982)	<i>Landsgemeinde</i>
St. Gallen (9 July 2002) new constitution by 1 Jan 2003	6 000 (4 000)	art. 42 art. 45 (art. 43)	1 Jan 2003 (10 June 2001)	5 months <i>(Einheitsinitiative)</i>
St. Gallen (old)	4 000	art. 49	1926 see T/S 1999, p.334 11 Apr 1996 (<i>RIG</i>)	3 months <i>RIG</i> art 41, 1
Graubünden (6 July 2004) new constitution by 1 Jan 2004	3 000	art. 12, 2	1 Jan 2004 (18 May 2004, 14 Sept 2003)	1 year art. 53c, 1 <i>GPR</i>
Graubünden (old)	3 000	art. 3, 1	2 Mar 1980 (2 Mar 1980)	1 year art. 53c, 1 <i>GPR</i>
Aargau (30 Mar 2004)	3 000	art. 64, 1	1 Jan 1982 (28 Sept 1980)	1 year art. 54, 1 <i>GPR</i>
Thurgau (22 Oct 2002)	4 000	art. 26	1 Jan 1990 (04 Dec 1988)	6 months
Tessin (30 Mar 1999) new constitution by 1 Jan 1998	7 000	art. 37 art. 119, 3 <i>LEDP</i>	1 Jan 1998 (14 Dec 1997)	60 days art. 119, 1 <i>LEDP</i>
Tessin (old)	7 000	art. 59, 4 art. 56	1970 (31 May 1970)	60 days art. 3, 3 <i>LIRR</i> , 1954 see T/S 1999, p.343

Table 3: The statutory initiative 1997 – 2003 (cont.)

Canton	Signature Requirement	Articles in cant. const.	Effective since	Time-limit for collection
Waadt (21 Oct 2003) new constitution by 1 Sept 2003	12 000	art. 78 lit. b art. 79, 2	1 Sept 2003 (22 Sept 2002)	4 months (contradicts <i>LEDP</i> , art. 92, 1)
Waadt (old)	12 000	art. 27, 1	1978 (4 Dec 1977) see T/S 1999, p.373	3 months art 92, 1 <i>LEDP</i> see also T/S 1999, p.373
Wallis (21 Oct 2003)	4 000	art. 33, 1	1 June 1994 (24 Oct 1993)	None
Neuenburg (16 Oct 2001) new constitution by 1 Jan 2002	6 000	art. 40, 1 art. 40, 2	1 Jan 2002 (24 Sept 2000)	6 months art. 105, 1 <i>LDP</i>
Neuenburg (alt)	6 000	art. 38, 2 art. 38. 3	1960 see T/S 1999, p.276	6 months art. 105, 1 <i>LDP</i>
Genf (21 Oct 2003)	10 000	art. 64 art. 65 B (art. 65)	 (7 Mar 1993)	4 months art. 89, 1 c <i>LEDP</i> (Einheitsinitiative)
Jura (4 July 2000)	2 000	art.75,1	1 Jan 1979 (20 Mar 1977)	12 months Art 89, 1 <i>LDP</i>

Notes: See Table 2.

3.3 Comments on the changes in constitutional and statutory initiatives

Tables 2 and 3 provide an overview of the 26 Swiss cantons and their constitutional stipulations concerning the constitutional and the statutory initiative between 1997 and 2003. In several cantons, alterations in these institutions of direct legislation have occurred since 1997. In the constitution of *Zürich (ZH)*, the time period available for constitutional and statutory initiatives is not fixed (art. 29, 4 cantonal constitution (CC))³⁵; instead, it is stipulated that a cantonal law should determine this limit. As of the 1st of June, 1969, the time period for signature collection was set at 6 months for people's initiatives (art. 13, 2 of the *Initiativgesetz*). On the 1st of September, 2003, a new cantonal law on political rights (*Gesetz über die politischen Rechte, GPR*) was passed in the *Kantonsrat* that fixed an identical time

³⁵ Henceforth, CC stands for 'cantonal constitution'.

period (art. 126, 1 *GPR*) and became effective the 1st of January, 2005. In other words, in terms of the requirements for statutory and constitutional initiatives, no changes that affect the index of direct democracy have been undertaken in *Zürich* since 1969, despite the enactment of a new cantonal law on political rights.

Uri (UR) is one of the cantons in which important changes in the requirements for the constitutional and statutory initiatives occurred after 1997. In this canton, the number of required signatures doubled from 300 to 600 as of the 1st October, 1997 (art. 28, 2 CC; art. 27, 1 CC), which caused a duplication of the relative signature requirement from 1.18 per voter to 2.36 per voter and, finally, lowered the sub-index for either initiative from 1998 onwards. Since the identical stipulations are valid for both initiatives, an identical drop is noted for the sub-index relating to either types of initiatives (VIR and GIR). The time period for collection, however, was not altered by this constitutional revision.

In the canton of *Obwalden (OW)*, on the 29th of November, 1998, the electorate decided against maintaining the status of *Landsgemeinde*. This choice meant that (a) the open vote in a yearly citizens' meeting was replaced by a secret vote at the ballot box and (b) the role of the representative organ of legislation was strengthened. As regards the constitutional initiative, however, no change in institutional requirements occurred after 1968 except for a formal renumbering of articles in the constitution. In contrast, as regards the statutory initiative, the abolishment of the *Landsgemeinde* in November 1998 brought about a substantially higher signature requirement than before. As a result, the stipulated number of supporters rose from 1 in June 1997 to 500 in November 1998, which caused a jump in the relative signature hurdle from about 0.005 to 2.27. The time period available for collection, however, remained the same. In effect, this change led to a substantial decline in the sub-index for the statutory initiative (GIR).

For the canton of *Nidwalden (NW)*, there have been no apparent changes in the institutional requirements for either initiative since 1996. It might be interesting to point out, however, that in addition to the usual initiatives, the citizens can also make a counterproposal to an existing decision of the *Kantonsrat* either to revise the constitution or to make a new/change in cantonal law. This institution is very similar to the initiative – in a way it can be viewed as a reactive initiative. The requirements for the counterproposals are identical to that for the statutory initiative and the constitutional initiative, respectively (see art. 54a, 4 CC).

The canton of *Glarus (GL)* is one of the two cantons in which direct democracy in the form of the *Landsgemeinde* still exists. In this canton every citizen has the right to make a motion to the *Landsgemeinde*, the assembly of its citizens, on issues that concern the *Landsgemeinde* (art. 58, 1 CC). Hence, according to art. 58, 1 CC and art. 138, 3 CC, it takes one vote to launch a constitutional or statutory initiative. Art. 69 CC then specifies the fields on which the *Landsgemeinde* can exert its decision-making power, which is comprised of the constitution and cantonal laws. Art. 69 CC, however, was amended in May 2002, leading to a seemingly indirect restriction of the statutory initiative³⁶, because only fundamental regulations should be determined in the form of laws, whereas before 2002 any issue could have been in a statutory form. The intention of this new regulation was to give the cantonal parliament the power to regulate organizational issues, particularly the execution of the federal law, which the Swiss federal constitutions stipulates to be carried out in Switzerland by cantonal administrations in the form of parliamentary decrees that, as administrative acts, cannot be challenged by direct democratic rights³⁷. This change in the scope of the statutory initiative, however, does not affect the value of the index of direct democracy because no distinction is made between a statutory initiative that includes or excludes implementations of federal acts. In the same period, the requirements of the constitutional initiative remained unchanged.

In the canton of *Freiburg (FR)*, a new constitution took effect on the 1st of January, 2005. Regarding the institutional setup of either the statutory or the constitutional initiative, however, no change was introduced. Thus, the index of direct democracy remains unaffected. The sole difference to the old legal system is that for both types of initiatives the signature requirements are now explicitly stated in the constitution instead of being regulated exclusively by a cantonal law. In general, a complete regulation at the constitutional level makes the requirements for these initiatives more transparent to the citizenry; it does not, however, diminish the power of the electorate to change these requirements through an initiative because in *Freiburg* the requirements for launching a statutory initiative and a constitutional one are identical, also before and after 2005.

³⁶ As well as of the mandatory statutory referendum – see section 4.

³⁷ According to Mr. Dürst, *Ratsschreiber* in the *Regierungskanzlei* of *Glarus*, in practice this restriction was only carried out to solve an academic battle over whether all executions of federal laws needed to be based on a so-called cantonal introductory law (*Einführungsgesetz*) that would, under the old constitution, have been subject to a mandatory referendum. In political practice, he emphasizes, no restriction of direct democratic rights was caused by this amendment in May 2002.

The people of *Schaffhausen (SH)* adopted a new constitution that came into force on the 1st of January, 2003. This new constitution is one of those total revisions that aimed to modernize the structure and wording without changing the legal content – at least as far as the initiatives are concerned. In the new constitution, both types of initiatives are now regulated in one article (art. 27 CC) rather than being dispersed within the constitution (art. 108, 107 old CC and art. 43 old CC). Therefore, no change is observed in the values of the subindices of either the constitutional or the statutory initiative.

During the time period under investigation, the people of *St. Gallen (SG)* also adopted a new constitution in 2002, which took effect on the 1st of January, 2003. This new constitution brought about decisive changes for the statutory and constitutional initiatives. Specifically, in the new constitution, the time for collecting signatures was fixed at 5 months for either initiative (for reasons of 'harmonization'³⁸), while the number of signatures was raised substantially (from 4,000 to 6,000) for the statutory initiative, but maintained at 8,000 for the constitutional initiative. Hence, the time requirement has become stricter for the constitutional initiative (6 months => 5 months) but more relaxed for the statutory one (3 months => 5 months). As a consequence, the sub-index for the constitutional initiative (VIR) stayed the same³⁹, but the sub-index for the statutory initiative (GIR) declined from 4 points down to 3.66 points. One new feature in this constitution is the introduction of the so-called *Einheitsinitiative* (unitary initiative), which is easier to launch in comparison to a traditional statutory or constitutional initiative (4,000 signatures in 5 months, art. 43, 1 CC and art. 45 CC). The advantages and disadvantages of this kind of initiative have already been described in the previous section. As a final change, the minimum time gap between passing a new law and starting a new initiative appears to have been erased in the new constitution. Neither the unitary initiative nor the change in minimum time gap is reflected in the sub-index for the statutory initiative.

Like many other cantonal people, the citizens of *Graubünden (GR)* also opted for a new constitution, which became effective on the 1st of January, 2004, the reason for which it is outside the scope of this investigation. The new stipulations brought about a rise in the people's empowerment through a decrease in the number of signatures necessary for a constitutional initiative (from 5,000 signatures down to 4,000). This development should be well reflected in a higher value of the sub-index of the constitutional initiative (from 4.333 up

³⁸ See Protocol 1 and Protocol 2.

³⁹ As the index is constructed, both 180 and 150 days of time for collection fall in the same category.

to 4.666). Regarding the statutory initiative, however, the old requirements remained unchanged at 3,000. For both initiatives, the time for collecting signatures is set at one year in a cantonal law (art. 53c, 1 *GPR*), which has remained unaltered since 1962.

Also counted among the new cantonal constitutions has to be that of the Italian-speaking canton of *Tessin (TI)*, which was adopted in December 1997 and became effective on the 1st of January, 1998. Regarding both constitutional and statutory initiatives, no changes are observable in the constitutional stipulations. The sole observed change is that the time period available for collection is now regulated at the constitutional level and not (exclusively) through a cantonal law (art. 3, 3 *LIRR* for the old constitution; art. 137, 1 *LEDP* since 1 Jan, 1999). Hence, the index of direct democracy is unaffected. As the number of signatures for launching a constitutional initiative is significantly higher than the number necessary for a statutory one (10,000 vs. 7,000), it is now more difficult for the people to induce a change in the requirement of the time period for collection than prior to the new constitution. At this point, it should be noted that the information given in T/S 1999, p. 343, on the signature requirement for the statutory initiative in the proposed constitution does not reflect the number actually set in the new constitution.

The canton *Waadt (VD)* also experienced the introduction of a new constitution, which entered into force on the 1st of September, 2003. As in many other cases, however, only small institutional changes were introduced through this process. The time period for collecting signatures for either initiative was increased from 3 months to 4 months for all initiatives (art. 79, 2 *CC*)⁴⁰; however, the number of signatures was augmented to 18,000 for a initiating total revision of the constitution but stayed the same for the launching a partial revision and the statutory initiative. Since the index of direct democracy does not take into account a total revision of the constitution (which occurs less than once in a human lifetime on average), its value is not affected by that latter change. Nevertheless, due o the more flexible time limit, the sub-indices for either initiative (*GIR*, *VIR*) should increase from 2004 onwards. In addition, as in many other cantons and in contrast to the old legal setup, the time period for collecting signatures is now regulated at the constitutional level. As, however, the requirements for changing a cantonal law and amending the constitution are identical in *Waadt*, regulating such

⁴⁰ The new constitutional stipulation contradicts the time limit laid down in the cantonal law on political rights (*LEDP*, art. 92, 1). The *Grand Conseil* of *Waadt*, however, amended this law on the 5th of Apr, 2005. This revision will come into force after a delay of 40 days if the electorate of *Waadt* does not carry out a statutory referendum to overrule this change.

an issue in the constitution does not weaken the institution-setting power of the people. The old regulatory setup facilitated, in theory, changes by the parliament to their advantage because cantonal laws were then subject only to an optional statutory referendum. The cantonal parliament in the past, however, has never abused its power as can be concluded from the unchanged stipulation of 3 months signature collection time, having been unchanged at least since 1978⁴¹.

Finally, the people of *Neuenburg (NE)* also totally revised their old constitution and voted on a new one on the 16th of October, 2001, which took effect on the 1st of January, 2002. In the new constitution, the stipulations are more transparently and logically structured, but this did not cause any change in the institutional setup for either initiative. Therefore, the two subindices of the statutory and the constitutional initiatives remain unchanged. Additionally in this case, the requirement of the time period, originally solely regulated in the cantonal law *LDP*, became part of the constitutional provisions. Given that signature and time limit requirements are identical for both types of initiatives, and also prior and after the constitutional change, the electorate's influence on the institutional framework remained unaffected.

4 The statutory referendum

Tables 4 and 5 describe the legal status quo and recent amendments concerning the mandatory and optional statutory referenda, referring either to laws, decrees, or by-laws, as they influence the degree of direct democracy in a canton as measured by the sub-index of the statutory referendum (GRR). For reasons of completeness, I have also included information on the extraordinary statutory referendum. Not reported are referenda referring to international or intercantonal treaties or on special issues. To understand the impact of these requirements on the composite index of direct democracy, it must be recalled that in most cases, the sub-index of the statutory referendum (GRR) is constructed either (1) based on the optional statutory referendum only, in case of non-existence of the mandatory referendum, or, (2) as an average of the optional and the (restricted) mandatory statutory referendum; a restriction usually pertains to a majority in the legislating organ or the type of laws/by-laws.

⁴¹ See T/S 1999, p. 375 cont. for an account of the institutional development of the initiative.

However, if an (unrestricted) mandatory statutory referendum exists, only the latter counts to the sub-index. Again, I will only include in the verbal description those cases in which actual alterations of the optional statutory referendum between 1997 and 2003 have occurred.

4.1 The mandatory statutory referendum

Table 4: The mandatory statutory referendum 1997 - 2003

Canton	Article in cant. const.	Effective since:	Remarks
Zürich (30 Mar 2004)	art. 30, num. 1	1 Jan 1999 (27 Sept 1998)	Non-existing for laws
	art. 30 bis, 1 art. 30 bis, 3	1 Jan 1999 (27 Sept 1998)	Extraordinary mand. stat. ref. for laws and decrees
Zürich (old)	art. 30, num. 1	1869	All formal laws, including those treaties which have an impact on the cantonal legislation (see T/S 1999, p.405)
Bern (21 Oct 2003)	art. 61, 2	22 Sept 2002	Extraordinary stat. mand. referendum on issues which are subject to the optional referendum
Luzern (21 Oct 2003)	art 39, 1	1 Jan 1977 (5 Dec 1976)	Extraordinary mand. stat. ref. for laws and concordats
Uri (1. Apr 2003)	art. 24 lit. b	1 Jan 1985 (28 Oct 1984)	All formal laws
	art. 25, 4		Extraordinary mand. stat. ref. for decrees of the <i>Landrat</i>
Schwyz (18 Aug 2004)	art. 30, 1 art. 32	1969 / 1970	All Laws Extraordinary mand. stat. ref. for decrees and by-laws enacted by the <i>Kantonsrat</i>
Obwalden (22 Oct 2002)	art. 58 lit. c	29 Nov 1998 (29 Nov 1998)	Only initiatives which are not accepted by the <i>Kantonsrat</i>
	art. 59, 2 lit. a		Extraordinary mand. stat. ref. for laws
Obwalden (old)	art. 65	19 May 1968	All laws were passed in a popular vote at the ballot box, (<i>Landsgemeinde</i>) ⁴² . For optional referendum, see Table 5
Nidwalden (28 Dec 2001)			Non-existing

⁴² Personal communication with Mr. Dillier of *Rechstsdienst* of *Obwalden*, 24 Aug 2004.

Table 4: The mandatory statutory referendum 1997 - 2003 (cont.)

Canton	Article in cant. const.	Effective since:	Remarks
Glarus (30 Mar 2004)	art. 69, 1	5 May 2002 (5 May 2002)	<i>Landsgemeinde</i> : only important regulations and provisions are passed in the form of laws
Glarus (old)	art. 69, 1 lit. b, c	1 May 1988 (1 May 1988)	<i>Landsgemeinde</i> : All laws and treaties, including those for execution of federal laws
Zug (1 Apr 2003)	art. 34, 4 art. 34, 1	2 Dec 1990 (2 Dec 1990)	Extraordinary mand. stat. ref. for laws and decrees of the <i>Kantonsrat</i>
Freiburg (18 Aug 2004) new constitution by 1 Jan 2005		1 Jan 2005 (16 May 2004)	Non-existing
Freiburg (old)		11 Mar 1921 (30 Jan 1921)	Non existing (see also T/S 1999, p. 210)
Solothurn (30 Mar 2004)	art. 35 1, lit. c	11 Dec 1998 (29 Nov 1998)	Laws which have been passed by less than 2/3 of the present members of the <i>Kantonsrat</i> ;
	art. 35, 2; art. 35, 1 lit. k	1 Jan 1988 (1 Jan 1988)	Extraordinary mand, stat. ref. for decrees (no change)
Solothurn (old)	art. 35, 1 lit. d	1 Jan 1988, and before 1887	All laws See T/S 1999, p. 313.
	art. 35, 2; art. 35, 1 lit. k	(1 Jan 1988 / (8 Jun 1986))	Extraordinary mand. stat ref. for decrees of the <i>Kantonsrat</i>
Basel-Stadt (4 July 2000)	(art. 28, 3) art. 29, 1	1890 / 1991 (1978 / 1979)	(all laws stemming from unformulated initiatives) Extraordinary mand. stat ref. for
Basel-Land (22 Oct 2002)	art. 30 lit. a	1 Jan 2000 (7 June 1998)	Laws passed with less than 4/5 of the present members of the <i>Landrat</i>
	art. 30 lit. b	1 Jan 2000 (7 June 1998)	Extraordinary mand. stat. ref. for laws and nomothetic international treaties
Basel-Land (old)	art. 30 lit. b	1 Jan 1987 (4 Nov 1984)	All laws and important decrees

Table 4: The mandatory statutory referendum 1997 - 2003 (cont.)

Canton	Article in cant. const.	Effective since:	Remarks
Schaffhausen (21 Oct 2003) new constitution by 1 Jan 2003	art. 32 lit. c art. 32 lit. e art. 32 lit. i	1 Jan 2003	All Laws which are not subject to an optional statutory referendum; i.e. those to which less than 4/5 of the present members of the <i>Kantonsrat</i> have agreed; Decrees of the <i>Kantonsrat</i> , stipulated in a cantonal law Extraordinary mandatory statutory referendum for any decree of the <i>Kantonsrat</i>
Schaffhausen (old)	art. 42, 1 art. 42, 1 num. 6	8 June 1980 (1895, 1960, 1977, 1978)	All laws which are not subject to the optional statutory referendum (art. 42 bis). (see T/S 1999, p.18, p.283) Decrees based on art. 23 extraordinary mand. stat. ref. for laws and decrees and possible treaties (see T/S. 1999, 283-284)
Appenzell AR (3 Apr 2001)	art. 60, 1 lit. d art. 60, 1 lit. h	1 June 2000 (21 May.2000) 1 June 2000 (21 May 2000)	Fundamental decrees (<i>Grundsatzbeschluss</i>) Extraordinary mandatory stat. ref. for issues subject to the optional stat. ref.
Appenzell AR (28 Sept 1997)	art. 60, lit b, c	1 May 1996 (30 Apr 1995)	Mandatory statutory referendum for laws and treaties with law-creating character; voting at the ballot box
Appenzell IR (30 Mar 2004)	art. 1, 2 art. 19, 1, art. 20, 1	27 Apr 1873 (24 Nov 1872)	<i>Landsgemeinde</i> (i.e. mand. stat. ref. is unrestricted and existing)
St. Gallen (9 July 2002) new constitution by 1 Jan 2003	art. 49, 1	1 Jan 2003 (10 June 2001)	Extraordinary mandatory stat. ref. for - laws and nomothetic international treaties - on issues subject to the optional stat. ref.
St. Gallen (old)	art. 47, 1	(16 Nov 1890)	Extraordinary mand. stat. ref on issues subject to the optional stat. ref. (T/S 1999; p. 327 cont.)
Graubünden (6 July 2004) New constitution by 1 Jan 2004	art. 16, num. 2 art. 16, num. 5, 6	1 Jan 2004 (18 May 2003, 14 Sept 2003)	Treaties which affect the constitution extraordinary mand. stat. ref. for all issues regulated in art. 16

Table 4: The mandatory statutory referendum 1997- 2003 (cont.)

Canton	Article in cant. const.	Effective since:	Remarks
Graubünden (old)	art. 2, 2 num. 3 art 2, 2 num. 4 art. 2, 2 num.5	1 Jan 1894 (2 Oct 1892)	Organic laws, laws regarding the administration, cantonal laws and regulations regarding the execution of federal laws; decrees which establish new branches of cantonal administration de facto no exclusion of any law, see T/S 1999, p.237 Extraordinary mand. stat. ref. for any other decrees not regulated in art. 2, 2 see also T/S 1999, p. 237 cont.
	art. 2, 2 num. 7	1 Jan 1894 (2 Oct 1892)	
Aargau (30 Mar 2004)	art. 62, 1 B, lit. e	1 Jan 2003 (2 June 2002)	Laws and decrees subject to an optional referendum but not passed with absolute majority of the <i>Grosser Rat</i> Extraordinary mand. stat. referendum for the same laws and decrees
	art. 62, 1 B, lit. e	1 Jan 2003 (2 June 2002)	
Aargau (old)	art.62, b	1 Jan 1982	All Laws (as in T/S 1999, p. 124)
Thurgau (22 Oct 2002)	art. 22 art. 24, 2	1 Jan 1990 (4 Dec 1988)	Extraordinary mand. stat. ref. for laws and decrees see also T/S 1999, p.347
Tessin (30 Mar 1999) new constitution by the 1. Jan 1998	art. 39	1 Jan 1998 (14 Dec 1997)	Art 135, 137 <i>LEDP</i>
Tessin (old)	art. 21, 2	29 Oct 1967	Only unformulated statutory initiatives (see T/S 1999, p.339)
Waadt (21 Oct 2003) New constitution by 1 Sept 2003		1 Sept 2003	Non-existing
Waadt (18 Jan 2000)		29 Nov 1998	Non-existing
Waadt (old)		1981 (1885)	Non-existing (see T/S 1999, p.369 cont.)

Table 4: The mandatory statutory referendum 1997 - 2003 (cont.)

Canton	Article in cant. const.	Effective since:	Remarks
Wallis (21 Oct 2003)	art. 31, 2; art. 32, 2	1 June 1994 (24 Oct 1993)	Extraordinary mand. stat. ref for laws, decrees, and nomothetic treaties see also T/S 1999. p.384
Neuenburg (16 Oct 2001) new constitution by 1 Jan 2002		1 Jan 2002	Non-existing
Neuenburg (old)		21 Nov 1858	Non-existing (see also T/S 1999, p. 271)
Genf (21 Oct 2003)		1993	Non-existing (see also T/S 1999, p. 230)
Jura (4 July 2000)	art. 79	1 Jan 1979 (20 Mar 1977)	Extraordinary mand. stat. ref for all decisions (decrees, laws, etc.) of the parliament
Notes: See Table 2. In some cases the dates of effectiveness were obtained from T/S 1999, particularly for <i>Zürich (ZH)</i> , <i>Freiburg (FR)</i> , <i>Basel-Stadt (BS)</i> , <i>St. Gallen (SG)</i> , <i>Solothurn (SO)</i> , <i>Thurgau (TG)</i> , <i>Tessin (TI)</i> , <i>Waadt (VD)</i> and <i>Genf (GE)</i> .			

Table 4 describes the existence and scope of the mandatory statutory referendum. In many cantons, a mandatory statutory referendum exists that is applicable solely to very specific laws and contracts but not to all cantonal laws in general. For example, since 1999 in *Nidwalden (NW)*, the new mandatory referendum is applicable solely to administrative permissions on subterraneous exploitation or storage (art. 52, 6. CC) and in *Bern (BE)* exclusively to intercantonal treaties and alterations in the cantonal demarcations (art. 61, 1 lit. c, d). In such cases, the mandatory referendum is treated and regarded as nonexistent for the construction of the index of direct democracy because these special cases do not form part of the daily political decision-making process. For this reason, I have largely excluded these mandatory referenda on treaties and special issues in Table 4. Included, however, are the extraordinary statutory referenda because they might shed light on the entire range of statutory referenda (jointly with the optional statutory referendum) that exists in a canton. In general, however, the analysis in Table 4 addresses all those mandatory statutory referenda applicable to all cantonal laws in general.

4.2 **Comments on the changes in the mandatory statutory referendum**

Between 1997 and 2003, a considerable constitutional change regarding the mandatory statutory referendum could be observed in *Zürich (ZH)*: the mandatory statutory referendum was abolished and an optional statutory referendum was introduced instead. This change became effective on the 1st of January, 1999. To evaluate how this change affects the sub-index for the statutory referendum (GRR), the interplay with the optional statutory referendum must be taken into consideration (see section 4.3), causing a drop in the sub-index (from 6 to 3.33). On the other hand, in 1999, an additional extraordinary mandatory referendum was introduced for laws and decrees (art. 30 bis, 1 and 3 CC).

In canton *Bern (BE)*, a restriction with respect to extraordinary mandatory referendum was introduced in September 2002. Prior to this change any law could be subject to such an extraordinary referendum if 120 members (out of 200) of the *Grosser Rat* decided so (see T/S 1999, p. 177). Now it is stipulated that 100 members (out of 160, art. 72 CC) can put a law or decree on the ballot if it is subject to an optional referendum anyway according to art. 62. CC, - to which all laws, international treaties, and most decrees are subject. Excepted are specific expenditure projects that are below the threshold for an optional fiscal referendum. This change, however, did not affect the index of direct democracy because the extraordinary mandatory statutory referendum does not form part of it.

In the canton of *Obwalden (OW)*, the abolishment of the *Landsgemeinde* in 1998 led to a dramatic change regarding the mandatory statutory referendum. Traditionally, before the popular vote on the 29th of November, 1998, the assembly of the cantonal electorate voted on all laws at the ballot box (art. 65 old CC) and by open ballot in case of optional statutory referenda on decrees of the *Kantonsrat* (art. 61 old CC). In the new partial revision of the constitution in 1998, this mandatory statutory referendum was eliminated and replaced by an optional statutory referendum for laws (art. 59, 1 CC), and the old optional referendum on decrees (art. 61, num.1) was completely abolished⁴³. According to the revised constitution, a statutory initiative must be voted upon by the people if the *Kantonsrat* does not agree or if it makes a counterproposal (art. 58 lit. c CC). According to art. 59, 2 lit. a, an extraordinary mandatory statutory referendum can be held if a third of the members of the *Kantonsrat*

⁴³ Personal communication with Mr. Dillier of the *Rechtsdienst* of *Obwalden*, 24.08.2004

agree. This development led to a decline of the sub-index of the statutory referendum (GRR) in *Obwalden* from 6 in 1998 to 4.33 in 1999.

A similar but less drastic revision of the cantonal constitution took place in canton *Glarus (GL)*, one of the still existing *Landsgemeinden*, which, on the surface, appears to have shifted power from the direct democratic town meeting to the representative legislative organ *Landrat* on the 5th of May, 2002. The mandatory statutory referendum became restricted to only 'fundamental and important regulations and provisions' (art. 69 CC), whereas, as implicitly expressed, the remaining legal acts can be determined in the form of decrees and by-laws by the *Landrat* (see also art. 82, 4 CC and 89, lit. b - d CC). In contrast, in the old constitution, the *Landsgemeinde* was responsible for the legislation of all types of laws (art. 69, 1 lit. b old CC), which also encompassed acts aimed at regulating the execution of federal laws. Accordingly, in the new version of article 89 CC, the *Landrat* is given the power to legislate for the execution of both federal and intercantonal law (art. 89, d). Further, it can enact decrees if empowered either by the *Landsgemeinde* or by the constitution (art. 89, lit. b and c CC). This development is analogous to that observed for the initiative. In practice, however, this partial revision does not play a relevant role in the daily political decision-making in *Glarus* and thus, as already discussed in the section on initiatives, does not constitute a real restriction of direct legislative power of the electorate.

The people of the canton *Freiburg (FR)* have passed a new constitution that will come into force on the 1st of January, 2005. However, as regards the mandatory statutory referendum, no significant change between the old and new constitutions can be observed: in both, it is basically nonexistent.

In *Solothurn (SO)*, laws are subject to the mandatory statutory referendum when they have been passed by less than a two-thirds majority in parliament. This majority constraint was added in the constitutional referendum of the 29th of November, 1998, which became effective on the 11th of December, 1998 (see also T/S 1999, p. 312). Hence, since then, a mandatory statutory referendum has been taken place more rarely, in contrast to when the unrestricted version of this referendum was in force before November 1998. A similar case applies to *Basel-Land (BL)*, where the mandatory statutory referendum is applied to cantonal laws passed by less than four-fifths of the votes in the cantonal parliament (see also T/S 1999, p. 137). This constraint was added through a decision of the *Landrat* on the 12th of March, 1998, which became effective on the 1st of January, 2000. In the course of this revision, the

extraordinary mandatory statutory referendum was also introduced (art. 30 b CC). In the two cases of *Solothurn* and *Basel-Land*, the revisions in the cantonal constitutions in 1998 lead to a decline in the sub-index value of the statutory referendum (GRR) for both cantons (from 6 to 5.33 and from 6 to 5.167, respectively).

On the 1st of January, 2003, the new constitution of the canton *Schaffhausen (SH)* came into force, which imposes fewer restrictions on the mandatory statutory referendum than the old constitution. As with the old constitution, all laws not subject to an optional statutory referendum (art. 32 lit. c CC) must be passed by the cantonal electorate; thus, the mandatory referendum also applies to those laws by less than four-fifths of the present members of the cantonal parliament ('*Grosser Rat*' old CC; '*Kantonsrat*' new CC). In contrast to the new constitution, however, the old regulations exempted laws referring to cantonal administration and execution of federal laws, as those laws did not bring about new expenses or new taxes (art. 42 old CC, T/S 1999, p. 283). In contrast, in the new constitution, the ordinary mandatory statutory referendum appears to apply, leaving room also for an applicability in its extraordinary form (art 32, 1 lit. h CC; art 33, 1 lit. f CC). This widening of the scope of the mandatory statutory referendum in the new constitution, however, does not affect its evaluation in the (sub-)index.

Decisive changes after 1997 can also be observed in the case of *Appenzell Ausserrhoden (AR)*. On the 28th of September, 1997 (effective as of the same date), the annual open *Landsgemeinde* meeting was replaced by secret voting at the ballot box. At that time, however, the principle character of the direct democratic institution remained unchanged (and thus did not affect the value of the index of direct democracy⁴⁴). On the 21st of May, 2000, however, a distinction between the optional and the mandatory statutory referendum was introduced that includes the abolishment of the statutory mandatory referendum for both laws and international treaties and its replacement by an optional statutory referendum (art. 60 lit. b, c old CC, art. 60 bis CC, see also Table 5, effective: 1st June, 2000). Only fundamental decrees remained subject to a mandatory statutory referendum (art. 60, 1 lit. d CC). According to Mr. Sigrist⁴⁵, this new mandatory referendum on fundamental decrees has been applicable only once since its introduction in June 2000 and plays a negligible role. He further stated that the laws referring to the execution of such a fundamental decree would, again, be subject to

⁴⁴ The index of direct democracy does not take into account the type of voting procedure (e.g. at the ballot box vs. by open ballot).

⁴⁵ Personal communication on the 15th of October, 2004.

the optional statutory referendum. At this point, it should also be noted that laws triggering a new expense are still subject to the mandatory fiscal referendum.

The same constitutional revision in *Appenzell Ausserrhoden (AR)* also affected people's influence on decrees of the *Kantonsrat*. The new constitution introduced an extraordinary mandatory referendum that can be applied to decrees of the *Kantonsrat* if a third of its present members so demand (art. 60, 1 h CC). This change can be regarded as an improvement in the degree of direct democracy (although not one affecting the index) because prior to this last revision in 2000, decrees of the *Kantonsrat* were not subject to any referendum whatsoever (see 74, 2 old CC). In sum, through the abolishment of the mandatory statutory referendum, however, a decline on the sub-index for the statutory referendum (GRR) was recorded (from 6 to 4.666).

The people of *St. Gallen (SG)* adopted a new constitution on the 10th of June, 2001, which came into force on the 1st of January, 2003. It brought no changes regarding the non-existence of the ordinary mandatory statutory referendum, while its extraordinary version remained with identical requirements, but couched in revised and more modern wording (if demanded by one-third of the members of the cantonal parliament, '*Kantonsrat*' replacing '*Grosser Rat*'). In both constitutions, the issues that are potentially subject to this type of referendum are identical to those potentially subject to an optional statutory referendum (art. 49, 1 CC; art. 47 old CC, see also T/S 1999, p. 327 cont.). It is readily apparent that these minor changes do not affect the index of direct democracy for the canton of *St. Gallen*.

The abolishment of the mandatory statutory referendum can also be observed in canton *Graubünden (GR)*, becoming effective on the 1st of January, 2004. Before this constitutional revision, basically all laws, even those only regulating the execution of a federal law, as well as decrees that established new branches of administration, were subject to the mandatory statutory referendum. In the new constitution, the newly introduced optional statutory referendum applies only for laws. In both the old and the new constitution, however, an extraordinary mandatory statutory referenda exist. As observed earlier, the abolishment of the mandatory statutory referendum for cantonal laws can be expected to cause a decline in the index of direct democracy from 2004 onwards.

In the canton of *Aargau (AG)*, both the diminishing power of the mandatory statutory referendum for laws and its strengthening for decrees can be noted simultaneously. Through a popular vote in June 2002, which became effective on the 1st of January, 2003, the application of the mandatory referendum for laws was restricted by the new requirement that it applies only to those laws not passed by an absolute majority of all members of the *Grosser Rat* (art. 62, 1 b CC). Probably to ease this change, the possibility of an extraordinary mandatory referendum was also introduced in the case that a quarter of all members of the cantonal parliament demanded it (art. 62, 1 lit. b CC). In the course of this revision, article 62 was appended a letter 'e' (art. 62, 1 e CC), which extends the mandatory statutory referendum to decrees of the *Grosser Rat* (according to art. 63, 1 lit. b - d and f CC). This extension means that this referendum is now applicable to decrees to which, prior to its revision, only the optional statutory referendum applied. The constitutional requirement for the mandatory referendum is, again, that decrees have been passed with a majority below the absolute majority of the *Grosser Rat*. Analogous to art. 62, 1 lit. b CC, the extraordinary mandatory referendum is also applicable to such decrees. Given that the index of direct democracy assigns a higher value to an unrestricted mandatory statutory referendum (old CC) than to a combination of restricted mandatory referendum with an optional statutory referendum (new CC), a decline in the sub-index GRR is induced by the new majority requirement (from 6 in 2002 to 5.167 in 2003).

Among the remaining cantons, *Tessin (TI)*, *Waadt (VD)* and *Neuenburg (NE)* adopted new constitutions in 1998, 2003, and 2002, respectively. These, however, did not bring about any changes with respect to the nonexistence of the mandatory statutory referendum for cantonal laws.

4.3 The optional statutory referendum

Table 5: The optional statutory referendum 1997 - 2003

Canton	Signature requirement	Time-limit for collection	Articles in cant. constitution	Effective since
Zürich (30 Mar 2004)	5 000	60 days	art. 30 bis, 1 (art. 30 bis, 3) (extra. opt. stat. ref.)	1 Jan 1999 (27. Sept 1998) (1 Jan 1999)
Zürich (old)				Mandatory statutory referendum See table 4
Bern (21 Oct 2003)	10 000	Three months	art. 62, 2	1 Jan 1995 (6 June 1993)
Luzern (21 Oct 2003)	3 000	60 days	art. 39, 1 art. 40, 1	1 Nov 1969 (art. 40, 1) 1 Jan 1977 (art. 39, 1)
Uri (1 Apr 2003)	450	90	art. 25, 1 art. 25, 2 lit. b	1 Oct 1997 (8 Jun 1997) for by-laws; mandatory stat. ref. for laws see Table 4
Uri (old)	300	90	art 25, 1	Only for by-laws (see T/S 1999, p.359) (1985) mandatory stat. ref. for laws see Table 4
Schwyz (18 Aug 2004)*	2 000	30 days	art. 31, 1	21 Dec 1899 (23 Oct 1898) decrees and by-laws mandatory stat. ref. see Table 4
Obwalden (22 Oct. 2002)	100	30 days	art. 59, 1 lit. a art. 59, 2 lit. b	29. Nov 1998 (29.Nov 1998) laws
Obwalden (old)	100	30 days	art. 61, no. 1 art. 73, 1	<i>Landsgemeinde</i> : optional statutory referendum for decrees of the <i>Kantonsrat</i> ; mandatory stat. ref. see table 4
Nidwalden (28 Dec 2001)	250	2 months	art 52a, .1	1 Dec 1996 (1 Dec 1996) laws

Table 5: The optional statutory referendum 1997 - 2003 (cont.)

Canton	Signature requirement	Time-limit for collection	Articles in cant. const.	Effective since
Glarus (30. Mar 2004)	1	0	art. 57, 1 lit. b art. 58, 1	1 May 1988 (1 May 1988) <i>Landsgemeinde</i> mandatory stat. ref. see Table 4
Zug (1 Apr 2003)	1 500	60 days	art. 34, 1; art. 34, 2	2 Dec 1990 (2 Dec 1990) laws and decrees
Freiburg (18 Aug 2004)** new constitution by 1 Jan 2005)	6 000	90	art. 46	1 Jan 2005 (16 May 2004) laws
Freiburg (old)	6 000	90 days see also <i>PRG</i> , art. 130, 2	art. 28 bis, 1 art. 28 quarter	11 Mar 1921 (30 Jan 1921) laws and decrees
Solothurn (30 Mar 2004)	1 500	90 days	art. 36 1, lit. b	11 Dec 1998 (29. Nov 1998) laws and decrees, which are not subject to the mand. Stat. ref.
Solothurn (old)	1 500	90 days	art. 36, 1 and 2	1988 – 1998 By-laws, decrees mandatory stat. ref. see Table 4 see T/S 1999, p. 314
Basel-Stadt (4 July 2000)	2 000	6 weeks	art. 29, 1 and 2	21 June 1979 (24 Sept 1978) laws and decrees
Basel-Land (22 Oct 2002)	1 500	8 weeks	art. 31, 1 lit. a art. 31, 1 lit. c	Decrees by the <i>Landrat</i> (<i>Planungsbeschluss</i>) (1 Jan 1987, (4 Nov 1984)) Laws not being subject to the mand. Stat. ref. (1 Jan 2000, (7 Jun 1998))

Table 5: The optional statutory referendum 1997 - 2003 (cont.)

Canton	Signature requirement	Time-limit for collection	Articles in cant. const.	Effective since
Basel-Land (old)	1 500	8 weeks	art. 31, 1 lit. a art. 31, 1 lit. c	Decreets by the <i>Landrat</i> (1 Jan 1987, (4 Nov 1984)) Statutory mand. ref. see Table 4 (see T/S 1999, p. 137 cont.)
Schaffhausen (21 Oct 2003) new constitution by 1 st Jan 2003	1 000	90 days	art. 33, 1 lit. a art. 33, 1 lit. b	All laws to which at least 4/5 of the Rat have agreed Statutory mand. ref. see Table 4 International treaties
Schaffhausen (old)	1 000	90 days	art. 42 bis, 1	8 Jun 1980 laws concerning organization of administration or execution of laws; all remaining laws to which at least 4/5 of the Rat have agreed
Appenzell AR (3 Apr 2001)	300	60 days	art. 60 bis	1 June 2000 (21 May 2000) laws, treaties with law-like character
Appenzell AR (old)				1 May 1996 (30 Apr 1995) mandatory statutory referendum, see table 4
Appenzell IR (30 Mar 2004)				27. Apr 1873 (24 Nov 1872) statutory mand. ref., see Table 4
St. Gallen (9 July 2002) new constitution by 1 Jan 2003	4 000	40 days	art. 49 1 lit. a, b art. 50, 1	1 Jan 2003 (10 Jun 2001) laws and international treaties with law-like content

Table 5: The optional statutory referendum 1997 - 2003 (cont.)

Canton	Signature requirement	Time-limit for collection	Articles in cant. const.	Effective since
St. Gallen (old)	4 000	30 days	art. 47	Laws, general decrees not subject to art. 55 or not of an urgent nature T/S 1999; p. 327 cont.
Graubünden (6 July 2004) new constitution by 1 Jan 2004	1 500	90	art. 17, 1 num. 1 art. 17, 1 num. 2	Laws International treaties with law-affecting content 1 Jan 2004 (18 May 2003, 14 Sept 2004)
Graubünden (old)				Non-existing 1 Jan 1894 (210.1892) Statutory mand. ref see Table 4
Aargau (30 Mar 2004)	3 000	90	art. 63, lit. a art. 63, lit. f art. 63, 1 lit. b (art. 62, 1 lit. b, lit. e)	1 Jan 2003 (2 Jun 2002) - laws - specific decrees of the <i>Grosser Rat</i> which are determined by law - fundamental plans of state activity which are all not s.t. a mandatory referendum (see Table 4) art. 40 <i>GPR</i>
Aargau (old)	3 000	90	art. 63, 1 lit. f art. 63, 1 lit. b art. 63, 1 lit. a	1 Jan 1982 Specific decrees of the <i>Grosser Rat</i> which are determined by law Treaties Fundamental plans of state activity art. 40 <i>GPR</i> see also T/S 1999, p. 124 cont.

Table 5: The optional statutory referendum 1997 - 2003 (cont.)

Canton	Signature requirement	Time-limit for collection	Articles in cant. const.	Effective since
Thurgau (22 Oct 2002)	2 000	3 months	art. 22	1 Jan 1990 (4 Dec 1988) laws, decrees on treaties see also T/S 1999, p.346
Tessin (30 Mar 1999) new constitution by 1 Jan 1998	7 000	45 days	art. 42 lit. a art. 42 lit. c	1 Jan 1998 (14 Dec 1997) laws and decrees treaties with nomothetic character
Tessin (old)	7 000	30 days	art. 60, I	(31 May 1970) laws and decrees See T/S 1999, p. 339 for further application
Waadt (21 Oct 2003) new constitution by 1 Sept 2003	12 000	40 days	art. 84 1, lit. a art. 84 1, lit. b	Laws and decrees Treaties with nomothetic content
Waadt (old)	12 000	40 days	art. 27, 2	1978 / (29 Nov1998)* laws and decrees see also T/S 1999, p.369 *changes concerning fiscal referendum, see Tables 6 and 7
Wallis (21 Oct 2003)	3 000	90 days	art. 31, 1 art. 31, 2	1 June 1994 (24 Oct1993) laws and decrees, treaties with nomothetic content see also T/S 1999, p. 380 cont.
Neuenburg (16 Oct 2001) new constitution by 1 Jan 2002	4 500	40 days	art. 42, 1 art. 42 2, lit. a art. 42, 2 lit. e art. 42, 2 lit. g art. 42, 2 lit. c	1 Jan 2002 (24 Sept 2001) laws treaties extraordinary optional statutory referendum decrees based on people's initiatives

Table 5: The optional statutory referendum 1997 - 2003 (cont.)

Canton	Signature requirement	Time-limit for collection	Articles in cant. const.	Effective since
Neuenburg (old)	6 000	40 days	art. 39, 2 <i>LDP</i> art. 120	1879, 1959 (see T/S 1999, p.271) Laws and specific decrees,
Genf (21 Oct 2003)	7 000	40 days	art. 53	1983 (7 Mar 1982) Laws See also T/S 1999, p. 221-2
Jura (4 July 2000)	2 000	60 art. 94 <i>LDP</i>	art. 78 art. 78 lit. a art. 78 lit. c	(1 Jan 1979) 20 Mar 1977 Laws Treaties with nomothetic character See also T/S 1999, p. 250 cont.
Notes: See Table 2.				

4.4 Comments on the changes in the optional statutory referendum

After 1997, many cantons introduced some alterations regarding the optional statutory referendum. To begin with, *Zürich (ZH)* introduced in January 1999 such a referendum as a new institution replacing the abolished mandatory statutory referendum. The optional referendum is fitted out with the requirement of 5,000 signatures to be collected within 60 days. As discussed before, in the case of *Zürich*, this change in the constitution led to a decline of the sub-index for the statutory referendum (GRR) from 6, the maximum, down to 3.33.

In *Uri (UR)*, the optional statutory referendum applies only to by-laws, not to laws. The signature requirement for this referendum was raised from 300 to 450 votes in June 1997. In this special case, the sub-index of the statutory referendum (GRR) is negatively affected by this development. For the treatment of *Uri* concerning the index of direct democracy, see the section 6.

The next canton in which a considerable development could be observed is *Obwalden (OW)*. In the course of the introduction of a (partly) representative system that became effective in 1998, an optional statutory referendum for laws was introduced as a new institution with a signature requirement of 100 and a collection time of 30 days, simultaneously abolishing the old optional referendum for decrees of the *Kantonsrat* (with the identical requirements). According to my source in the Obwalden administration, as a result, decrees can no longer be challenged by a referendum⁴⁶. This abolishment of the mandatory statutory referendum has led to a lower sub-index value for the statutory referendum (GRR) of just 4.33 compared to the previous maximum value achieved in 1998 and 1997.

On the 1st of January, 2005, a new constitution entered into force in the canton of *Freiburg (FR)*. This new constitution did not, however, bring about any new stipulations regarding the optional statutory referendum (6,000 signatures within 90 days). The only difference lies in the fact that the time period for collection is now regulated at the constitutional, not any more at the statutory level.

The people of the canton *Solothurn (SO)* partially revised their constitution in November 1998. Before 1998, the optional statutory referendum was only applicable to decrees but not to laws, to which the mandatory statutory referendum applied (T/S 1999, p. 313 cont.). Now the restricting the mandatory statutory referendum in the new constitution, almost all laws and decrees of the cantonal parliament can be subject to an optional statutory referendum. The signature requirement of 1,500 votes and a time limit for collection of 90 days were kept in the amended article. The value of the sub-index for the statutory referendum (GRR) was brought down to 5.333 from the maximum value of 6 achieved before.

In *Basel-Land (BL)*, the optional statutory referendum for laws was also introduced as a new institution because the use of the mandatory statutory referendum became restricted. The number of signatures required was set to 1,500 in a popular vote in 1998, and the time available for collection was stipulated as 60 days, identical to the requirements for the old optional statutory referendum for decrees, which continues to exist (see T/S 1999, p. 137, for the old constitution). The former restriction of the old mandatory statutory referendum caused the sub-index for the statutory referendum (GRR) to decline from 6 to 5.167.

⁴⁶ Personal communication with Mr. Dillier, 24.08.2004, *Rechtsdienst of Obwalden*.

In *Schaffhausen (SH)*, the new constitution of the 1st of January, 2003, brought about a restriction of the optional statutory referendum in comparison to the old constitution: only all those laws, including laws concerning administrative issues, to which more than four-fifths of the *Rat* have agreed, are subject to this institution. In the old constitution, however, all laws related to administration and organization were subject to only the optional referendum (while the remaining laws were subject to the mandatory referendum). The inclusion of ‘administrative’ laws in the scope of the mandatory statutory referendum led to no change in the index of direct democracy.

In the canton of *Appenzell Ausserrhoden (AR)*, the electorate decided to introduce an optional statutory referendum in 2000, which was not known prior to this date. This optional referendum applies to laws and international treaties with a nomothetic impact and can be carried out if 300 signatures have been collected within 60 days after the publication of that law or treaty. Since this new optional statutory referendum replaces an old mandatory referendum, a decline in the level of the sub-index of the statutory referendum (GRR) occurred, from 6 down to 4.66.

On January 1st, 2003, a new constitution became effective in the canton *St. Gallen (SG)*. One of the prominent differences between the optional statutory referendum of the old and that of the new constitution is the time available for the signature collection, which has been increased from 30 days to 40 days, while keeping the required number of signatures unaltered. The scope of this referendum has been narrowed because, generally, binding decrees of the *Grosser Rat* (now: *Kantonsrat*) are no longer subject to this referendum (and hence not subject to any referendum at all), whereas cantonal laws can still be challenged through this referendum (art 49, 1 lit. a CC; art. 47 old CC). In the new constitution, however, regulations concerning the wages of civil servants and teachers are explicitly exempted from the optional statutory referendum (art. 49, 2 CC). On the other hand, the scope of the optional referendum has been widened as international and intercanton treaties are now subject to it if their content is nomothetic (art. 49, 1 lit. b). The increase in the time available for the signature collection has caused an increase in the sub-index of the statutory referendum (GRR) from 3 to 3.33, which is also reflected in the change in the overall index of direct democracy.

The electorate of *Graubünden (GR)* also voted on a new constitution both on the 18th of May and the 14th of September, 2003⁴⁷, which took effect on the 1st of January, 2004. Similar to the development observable in other cantons, the mandatory statutory referendum was replaced by an optional referendum for laws. This new optional statutory referendum is applicable to both cantonal laws and treaties whose stipulations are nomothetic. The requirement of 1,500 signing supporters out of the electorate must be met within 90 days after publication. From 2004 on, this constitutional change will cause the sub-index of the overall statutory referendum (GRR) to fall from its old level of 6 points.

Observable in the canton *Aargau (AG)* is another example where the scope of the optional statutory referendum was broadened at the expense of the mandatory statutory referendum. On the 2nd of June, 2002, the electorate of *Aargau* opted for a revision of art. 63, 1 lit. a CC. This amendment led to an abolishment of the old unconstrained mandatory referendum by including an absolute majority constraint and making 'laws' a new field of application of the optional referendum. Additional potential applications of the optional referendum are laid down in art. 63, 1 CC (except for lit. e), which also include (among others) decrees of the *Grosser Rat*, as already known in the old constitution. The constitutional requirements for taking the optional statutory referendum remained unchanged (3,000 signatures within 90 days). As the index of direct democracy takes into account statutory referendums for laws rather than for decrees, a decline in the level of the overall index of statutory referendum (GRR) occurred due to this new restriction (from 6 to 5.167), as discussed in the preceding section, which also transmits to the total index (see Table 9 for the overall index change).

The cantonal electorate of *Tessin (TI)* passed a new constitution effective on the 1st of January, 1998, that raised the number of days available for the collection of 7,000 signatures from 30 to 45 (art. 42 CC). The optional statutory referendum is applicable to both laws and decrees. This change caused an increase in the index for the statutory referendum (GRR) from the low level of 1.66 to 2.00 (comparable values are observable for Jura, Geneve, and Vaud).

In the canton of *Waadt (VD)*, a partial revision of the constitution took place in 1998 that, however, did not affect the optional statutory referendum for laws (and decrees), only the fiscal referendum (see Tables 6 and 7). In 2003, the electorate passed a completely new

⁴⁷ Because the official result of the first popular vote on the vote system for electing the *Grosser Rat* appeared to be scanty and changed after a recount in May 2003, it was decided to hold a second popular vote in September 2003 for reasons of clarification (personal communication with Mr. Frizzoni, September 10, 2004).

constitution (effective the 1st of September, 2003)⁴⁸ that extends the application of the optional statutory referendum from laws and decrees to international treaties and concordats - in case their stipulations contradict cantonal law or are of a law-giving character in general (art. 84 1, lit. b CC). In the old constitution it was not possible for the people to challenge these treaties (see T/S 1999, p. 368 cont.). The requirements for taking an optional referendum, 12,000 signatures and 40 days, have remained unchanged since 1997, leaving the value of the sub-index unaffected.

Finally, in *Neuenburg (NE)*, a new constitution was also adopted in 2001 that entered into force as of the 1st of January, 2002. This new constitution brought, first, a change in the scope of application of the optional statutory referendum and, second, a facilitation of carrying it out. Both in the old and new constitutions the optional statutory referendum is applicable to laws, while in the new constitution the specific (general) decrees (art. 39, 2 old CC) are now exempted from its application. As regards requirements, the number of signatures was lowered from 6,000 down to 4,500, whereas the number of days for collecting them remained the same; this new requirement is now entirely regulated in the constitution itself (*LDP* art. 120: for the old constitution; art. 42, 1 CC: for the new constitution). New to the scope of the optional referendum, however, is its application to international and intercantonal treaties (art. 42, 2 e CC) that are either nomothetic or equivalent to a decree leading to government expenses⁴⁹. Finally, an extraordinary optional statutory referendum was also introduced, applicable to “other acts of the *Grand Conseil*” in the case that 35 of its members so decide (art. 42, 2 g CC). The relaxation of the signature requirement in the new constitution has caused the sub-index of the statutory referendum (GRR) for *Neuenburg* to rise, from 1.66 to 2.33.

⁴⁸ The date of effectiveness given in the new constitution (art. 175 CC) was altered through a decree of the *Grand Conseil* of *Waadt* (2nd of July, 2003).

⁴⁹ For a discussion of the non-applicability of the optional referendum to treaties in the old constitution, see T/S 1999, p. 272.

5 The Fiscal Referendum

The next two tables are devoted to the description of the development of both the mandatory and optional fiscal referendum (Tables 6 and 7) on expenditure projects in the Swiss cantons between 1997 and 2003.

In general, fiscal referenda refer to resolutions (decrees) of the cantonal parliament that are administrative acts (from a legal perspective); in some cantons, the fiscal referendum also refers explicitly to specific cantonal laws. For the fiscal referendum to be applicable, these decrees and laws have to involve a substantial expense that must be borne by the cantonal budget and thus by the cantonal taxpayers. In some constitutions, in which the optional fiscal referendum refers solely to expense-triggering decrees of the parliament, it is the (optional) statutory referendum that serves as a control device over expenses induced by cantonal law. In this sense, the fiscal and the statutory referendum do constitute two institutions whose scope of application might partly overlap.

The following Tables 6 and 7 describe only fiscal referenda on expenditure projects (the most important type). They do not take into account the existence of either extraordinary fiscal referenda or of fiscal referenda related to tax rates, acquisition or disposition of real estate, bond loans, and so on, because these latter do not form part of the index of direct democracy. For constructing the sub-index for the fiscal referendum (FRR), usually the greater value of the points awarded to either the optional or the mandatory referendum is chosen.

5.1 The mandatory fiscal referendum

Table 6: The fiscal referendum – mandatory (ordinary) between 1997 and 2003

Canton	Financial threshold	Article in cant. const.	effective since	Remarks
Zürich (30 Mar 2004)			1 Jan 1999 (27 Sept1998)	Non-existing
Zürich (old)	> 20 million (> 2 million)	art. 30 num. 2	6 June 1971	Decrees of the <i>Kantonsrat</i>
Bern (21 Oct 2003)			1 Jan 1995 (6 June 1993)	Non-existing See T/S 1999, p. 183
Luzern (21 Oct 2003)	>25 million (> 25 millions = 10 times annual expense)	art. 39 bis, 1 lit. c; art. 39, 2 art. 39 bis, 3	1 Jan1977 (5 Dec 1976)	Decrees and laws of the <i>Grosser Rat</i>
Uri (1 Apr 2003)	> 1 million (> 100 000 at least 10 years)	art. 24, lit. c, art. 24, lit. d	1 Jan 1994 (28 Nov 1993)	Expenditure projects, i.e. decrees; laws see Table 4
Schwyz (18 Aug 2004)	> 250 000 (> 50 000)	art. 30, 2	31 Dec 1958	Decrees of the <i>Kantonsrat</i> See T/S 1999, p.305
Obwalden (22 Oct 2002)			29 Nov 1998 (29 Nov1998)	Non-existing
Obwalden (8 June 1997 - 29. Nov 1998)	> 1 million (> 200 000)	art.61, num. 3	8 June 1997 (8 June 1997)	(<i>Landsgemeinde</i>) Laws and decrees
Obwalden (old)	> 300 000 (> 50 000)	art.61, num. 3	8 June 1986 (8 June 1986)	(<i>Landsgemeinde</i>) Laws and decrees
Nidwalden (28 Dec 2001)	> 5 million (> 500 000)	art. 52 num.4	1 Dec 1996 (1 Dec1996)	Decrees of the <i>Landrat</i>
Glarus (30 Mar 2004)	> 1 million (> 200 000)	art. 69, 2 lit. b	5 May 2002 (5 May 2002)	(<i>Landsgemeinde</i>) Decrees
Glarus (old)	> 500 000 (> 100 000)	art. 69, 1 lit. d	1 May 1988 (1 May 1988)	(<i>Landsgemeinde</i>) Decrees
Zug (1 Apr 2003)			At least since 1970	Non-existing See also T/S 1999, p.401

Table 6: The fiscal referendum – mandatory (ordinary) (cont.)

Canton	Financial threshold	Article in cant. const.	effective since	Remarks
Freiburg (18 Aug 2004) new constitution by 1 Jan 2005	> 1 % of the overall spending of the last cantonal budget	art. 45 lit. b	1 Jan 2005 (16 May 2004)	Decrees and Laws of the <i>Grand Conseil / Grosser Rat</i>
Freiburg (old)	> 1 % of the overall spending of the last cantonal budget	art. 28 bis	7 Oct 1986 (8 June 1986)	Laws and decrees of the <i>Grosser Rat / Grand Conseil</i>
Solothurn (30 Mar 2004)	> 5 million (> 500 000)	art. 35, 1 lit. e	11 Dec 1998 (29 Nov 1998)	Decrees of the <i>Kantonsrat</i>
Solothurn (old)	> 2 million (> 200 000)	art. 35, 1 lit. e	1 Jan 1988 (8 June 1986) (new const.)	Decrees of the <i>Kantonsrat</i> See T/S 1999, p.317
Basel-Stadt (4 July 2000)			Since 1954 or earlier	Non-existing See also T/S 1999, p.161
Basel-Land (22 Oct 2002)			1 Jan 1987 and before	Non-existing See T/S 1999, p.139
Schaffhausen (21 Oct 2003) new constitution by 1 Jan 2003	3 million (> 500 000)	art. 32 lit. e	1 Jan 2003 (22 Sept 2002)	Decrees of the <i>Kantonsrat</i>
Schaffhausen (old)	> 1 million (> 100 000)	art. 42 ter	(23 Apr 1989)	Decrees of the <i>Grosser Rat</i>
	> 300 000 < 1 millions (> 50 000 < 100 000)	art. 42, 1 num. 2	(23 Apr 1989)	Decrees of the <i>Grosser Rat</i> passed with less than 4/5 majority (see T/S 1999, p.287)
Appenzell AR (3 Apr 2001)	> 5% of a taxing unit (> 1% of a taxing unit)	art. 60, 1 lit. e; art. 76, 2 lit a, b	1 May 1996 (30 Apr 1995)	(28 Sept 1997: abolishment of <i>Landsgemeinde</i>); via voting at the ballot box
Appenzell AR (old)	> 5% of a taxing unit (2003: 1,650,500) (> 1% of a taxing unit) (2003: 331,000)	art. 60, 1 lit. e; art. 76, 2 lit. a, b	1 May 1996 (30 Apr 1995)	(<i>Landsgemeinde</i>) Decrees of the <i>Kantonsrat</i>

Table 6: The fiscal referendum – mandatory (ordinary) (cont.)

Canton	Financial threshold	Article in cant. const.	effective since	Remarks
Appenzell IR (30 Mar 2004)	> 1 million (> 200 000 for at least 5 years)	art. 7 ter, 1	28 Apr 2002 (28 Apr 2002)	(<i>Landsgemeinde</i>) Decrees of the <i>Grosser Rat</i>
Appenzell IR (old)	> 500 000 (> 100 000 for at least 5 years)	art. 7 ter, 1	25 Apr 1982	(<i>Landsgemeinde</i>) Decrees of the <i>Grosser Rat</i>
St. Gallen (9 July 2002) new constitution by 1 Jan 2003	> 15 million (> 1 500 000 for at least 10 years)	art. 48 lit. d; art. 6 <i>RIG</i>	1 Jan 2003 (10 June 2001); <i>RIG</i> : IV. NG 1 Apr 1997 (11 Apr 1996)	Laws and decrees; threshold specified in cantonal law <i>RIG</i>
St. Gallen (old)	> 15 millions (> 1 500 000 for at least 10 years)	GS 14, 27; nGS 6, 38* art. 6 <i>RIG</i>	20 Jan 1924 (17 Nov 1923) <i>RIG</i> : IV NG 1 Apr 1997 (11 Apr 1996)	Laws and decrees, threshold specified in cantonal law <i>RIG</i> through last amendment IV NG see T/S 1999, p.330
Graubünden (6 July 2004) new constitution by 1 Jan 2004	> 10 million (> 1 million)	art. 16, num. 4	1 Jan 2004 (18 May 2003, 14 Sept 2003)	Decrees of the <i>Grosser Rat</i>
Graubünden (old)	> 5 million (> 500 000)	art. 2, 2 num. 6 a	(28 Jan 1973)	Decrees of the <i>Grosser Rat</i>
Aargau (30. Mar 2004)	> 5 million (> 500 000)	art. 62, 1 lit. e	1 Jan 2003 (2 June 2002)	Decrees of the <i>Grosser Rat</i> if not passed with absolute majority
Aargau (old)			1 Jan 1982 (28 Sept 1980)	Non-existing See also T/S 1999, p.127
Thurgau (22 Oct 2002)	> 3 million (> 600 000)	art. 23, 1	1 Jan 1990 (4 Dec1988)	Decrees of the <i>Grosser Rat</i>
Tessin (30 Mar 1999) new constitution by the 1 Jan 1998			1 Jan 1998 (14 Dec1997)	Non-existing Also non-existing in 1997 See also T/S 1999, p.341

Table 6: The fiscal referendum – mandatory (ordinary) (cont.)

Canton	Financial threshold	Article in cant. const.	effective since	Remarks
Waadt (21 Oct 2003) new constitution by 1 Sept 2003			1 Sept 2003 (14 Apr 2003)	Non-existing
Waadt (18 Jan 2000)	> 20 million (> 2 million at least for 10 years)	art. 27, 2 bis	29 Nov 1998 (29 Nov1998)	Decrees of the <i>Grand Conseil</i> is subject to the assembly of the communal electorate (<i>assemblées de commune</i>)
Waadt (old)			1885	Non-existing See T/S 1999, p.371
Wallis (21 Oct 2003)			1 June 1994 (24 Oct 1993)	Non-existing See T/S 1999, p.382
Neuenburg (16 Oct 2001) new constitution by 1 Jan 2002			1 Jan 2002 (24 Sept2000)	Non-existing
Neuenburg (old)	> 1.5 % (> 1.5 per mill) of total cantonal revenues	art. 39, 3	1992 (8 Dec 1991)	Laws and decrees See also T/S 1999, p.273
Genf (21 Oct 2003)				Non-existing See also T/S 1999, p.223
Jura (4 July 2000)	> 5% (> 5 per mill) of the revenues of the last budget	art. 77, lit. d art. 77, lit. e	1 Jan 1979 (20 Mar 1977)	laws and decrees, all expenses not determined by a law see also T/S 1999, p.253
Notes: See Table 2. In the column 'Financial threshold', the threshold for recurring expenses is displayed in brackets, while the expenditure threshold for nonrecurring expenses is displayed above. All numbers are in Swiss Francs.				
* Decree of the <i>Grosser Rat</i> of <i>St. Gallen (SG)</i> (<i>Grossratsbeschluss</i>) of the 17th of November, 1923.				

5.2 Comments on the changes in the mandatory fiscal referendum

Since 1997, only a few developments regarding the mandatory fiscal referendum (of the ordinary type) could be observed. In most of the cantons, the mandatory fiscal referendum was either abolished and replaced by an optional fiscal referendum, or its threshold was increased substantially. Certainly, such developments might cause a decline in the sub-index for the fiscal referendum (FRR).

The most prominent change is probably that which occurred in *Zürich (ZH)*. After years of the existence of a mandatory fiscal referendum (from at least 1970 on; see T/S 1999, p. 406), the electorate of *Zürich* decided to abolish it and keep only the optional fiscal referendum. This new constitutional amendment became effective on the 1st of January, 1999. An elimination of the mandatory fiscal referendum and its replacement by the optional fiscal referendum also occurred in *Obwalden (OW)* (effective: the 29th of November, 1998) after the threshold for the mandatory fiscal referendum for laws and decrees had already been increased substantially on the 8th of June, 1997, from 300,000 to 1 million Swiss Francs. A similar development could also be observed in the canton of *Neuenburg (NE)*, where on the 1st of January, 2002, the mandatory fiscal referendum was abolished in the new constitution. Before that total revision, the mandatory fiscal referendum existed for nonrecurring expenses of more than 1.5% of the last total cantonal revenues (art. 39, 3 old CC). Additionally, in the canton of *Waadt (VD)*, an elimination of a previously existing mandatory fiscal referendum took place in Apr 2003. The development in this particular canton is described in more detail below. For all these cantons, an obvious decline is noticeable in the level of direct democracy.

An increase in the threshold for the mandatory fiscal referendum could be observed in various cantons. One of them is *Glarus (GL)*, in which the threshold for decrees was raised from 500,000 to 1 million Swiss Francs on the 5th of May, 2002. The canton *Solothurn (SO)* also partially revised its requirements for a mandatory fiscal referendum for decrees of the *Kantonsrat* and more than doubled the old financial threshold, from 2,000,000 (valid since 1988) to 5,000,000 Swiss Francs in 1998. Similarly, the new constitution of the canton of *Schaffhausen (SH)* brought about a tripling of the old threshold for decrees from 1 million to 3 million Swiss Francs for nonrecurring expenses, from the 1st of January, 2003, onward. At this point, it is also worth pointing out that the special mandatory fiscal referendum with a substantially lower hurdle of 300,000 Swiss Francs for decrees passed with less than a four-

fifths majority in the *Grosser Rat* was not kept in the new constitution. In the canton of *Appenzell Innerrhoden (AI)*, on the 28th of April, 2002, the old threshold for decrees was doubled to now 1 million Swiss Francs. For their new constitution, the people of the canton of *Graubünden (GR)* approved also new and higher expenditure thresholds for the mandatory fiscal referendum (effective as of the 1st of January, 2004): the figure is now 10 million Swiss Francs for nonrecurring expenses triggered by decrees of the *Grosser Rat* – twice as high as before the change. In general, increases in thresholds let the sub-index of the mandatory fiscal referendum (FRR) decline.

Amendments to the constitution, that, however, that did *not* lead to an alteration of the legal stipulations with respect to the mandatory fiscal referendum also occurred in some cantons between 1997 and 2003. One is *Freiburg (FR)*, in which a new constitution entered into force on the 1st of January, 2005, which, other than a renumbering of articles, did not affect the fiscal referendum. Another example is *Appenzell Ausserrhoden (AR)* in which, in 1997, the *Landsgemeinde* was abolished without touching the requirements for the mandatory fiscal referendum. (The last change concerning the financial hurdle had occurred the year before, on the 1st of May, 1996, when it was set at 5% of a taxing unit, equaling 1,650,500 Swiss Francs in 2003.) In the canton of *St. Gallen (SG)*, a new constitution also came into force (1st of January, 2003) that did not affect the requirements for the mandatory fiscal referendum. The financial hurdles for laws and decrees are stipulated in a cantonal law (art. 6 *RIG*) and since 1996 the figure has been 15 million Swiss Francs for nonrecurring expenses. From a political economy perspective, the regulation of hurdles at the statutory and not at the constitutional level is very interesting, as already discussed in the introductory section of this paper on the statutory referendum. A new constitution that became effective in the canton of *Tessin (TI)* on the 1st of January, 1998, also led to no alteration with regards to the mandatory fiscal referendum. In case legal stipulations do not change, the index of the fiscal referendum is unaffected.

In a few cantons, there has been an empowerment of the people through the introduction of a mandatory fiscal referendum. One of these cases is the canton of *Aargau (AG)*, in which, after years of nonexistence since 1982 (see T/S 1999, p. 341), effective since 1st of January, 2003, a mandatory fiscal referendum was introduced again – although its power is mitigated by the inclusion of a majority restriction. The evaluation of this restriction was discussed in the introductory section of this paper. The new expenditure hurdles are fixed at 5 million Swiss

Francs for nonrecurring expenses and at 600,000 Swiss Francs for recurring expenses. Similarly, on the 29th of November, 1998, *Waadt (VD)* also passed a partial revision of its constitution, introducing a new fiscal mandatory referendum with a financial threshold of 20,000,000 Swiss Francs for nonrecurring expenses (art. 27, 2 bis old CC), which had never before been known in the history of *Waadt* (see T/S 1999, p. 368 cont.). It must be noted, however, that this mandatory fiscal referendum did not lead to a people's vote, but one of the assembly of the local communes. In the new constitution (effective: the 1st of September, 2003), however, this mandatory fiscal referendum was again abolished. Only law-changing financial measures by the government to aid a budgetary disequilibrium are now subject to a mandatory referendum (art. 83, 2 CC). This regulation seems to aim at restricting raises in income tax rates in order to equilibrate expenses and revenue (cf. art. 165, 2 CC). Through this stipulation, the electorate of *Waadt* can influence, at least indirectly, the level of income tax rates in times of overall economic hardship.

5.3. Optional fiscal referendum

Table 7: The fiscal referendum – optional (ordinary) 1997 - 2003

Canton	Sign. requ.	Time-limit for collection	Financial threshold	Article in cant. const./ effective since (date of vote)
Zürich (3 Mar 2004)	5 000	60 days	> 3 million (> 300 000)	art. 28 bis, 1 num. 1, art. 30 bis 1, 2 1 Jan 1999 (27 Sept 1998) decrees of the <i>Kantonsrat</i>
Zürich (old)	5 000	45 days	> 2 million (> 200 000)	art. 30 num. 2 1 Jan 1996 (25 Sept 1994)
Bern (21 Oct 2003)	10 000	3 months	2 million (> 400 000)	art. 62, 1 lit. c 1 Jan 1995 / (6 Jun 1993) and extraordinary optional fiscal referendum (art. 62, 1 lit. f) (1 Jan 1995) decrees of the <i>Grosser Rat</i>

Table 7: The fiscal referendum – optional (ordinary) (cont.)

Canton	Sign. requ.	Time-limit for collection	Financial threshold	Article in cant. const./ effective since (date of vote)
Luzern (21 Oct 2003)	3 000	60 days	laws: > 10 million (> 1 million on average for 10 years) decrees: > 3 million (> 300 000 on average for 10 years)	art. 39, 2 1 Jan 1977 (5 Dec 1976) art. 39 bis 1 lit. a (25 Jun 1995) art. 39 bis, 1 lit. b (27 Sept 1998) (revision only w.r.t. extraordinary fisc. ref.) art. 40 1 Nov 1969 (14 Sept 1969) art. 39 bis, 3 1 Nov 1969 (14 Sept 1969) laws and decrees of the <i>Grosser Rat</i>
Uri (1 Apr 2003)	450	90 days	> 500 000 CHF (> 50 000 CHF for at least 10 years)	art. 25, 2, c, d 1 Jan 1994 (28 Nov1993) art. 25, 1 1 Oct 1997 (8 June 1997) art. 25, 3 1 Jan 1995 (28 Oct 1984) " new expenses": laws and decrees see also T/S 1999, p. 359
Uri (old)	300	90 days	> 500 000 CHF (> 50 000 CHF for at least 10 years)	art. 25, 2, lit. c, d 1 Jan 1994 (28 Nov1993) art. 25, 1 1955 art. 25, 3 1 Jan 1995 (28 Oct 1984) " new expenses": laws and decrees see also T/S 1999, p. 359
Schwyz ⁵⁰ (18 Aug 2004)*				non-existing stat. ref not applicable to decrees of the <i>Kantonsrat</i> , but applicable to laws and by-laws ⁵¹ See also Tables 4 and 5

⁵⁰ See the tables in the back of this paper for the calculation of the index value.

⁵¹ Personal communication with Mr. Gander, *Staatsschreiber* of Schwyz (SZ).

Table 7: The fiscal referendum – optional (ordinary) (cont.)

Canton	Sign. requ.	Time-limit for collection	Financial threshold	Article in cant. const./ effective since (date of vote)
Obwalden (22 Oct 2002)	100	30 days	> 1 million (> 200 000)	(vote at the ballot box) art. 59, 1 lit. b art. 59, 2 lit. b 29 Nov 1998 (29 Nov 1998) decrees of the <i>Kantonsrat</i>
Obwalden (8 June 1997 – 29 Nov 1998)	100	30 days	(> 500 000) (> 100 000)	(<i>Landsgemeinde</i>) art. 61, num. 4 8 June 1997 (8 June 1997) art. 71, 1 8 June 1997 (8 June 1997) decrees of the <i>Kantonsrat</i>
Obwalden (old)	100	30 days	> 100 000 (> 20 000)	(<i>Landsgemeinde</i>) art. 61, num. 4 8 June 1986 (8 June 1986) decrees of the <i>Kantonsrat</i> art. 71, 1 8 June 1986 (8 June 1986) decrees of the <i>Kantonsrat</i>
Nidwalden (28 Dec 2001)	250	2 months	> 250 000 (> 50 000)	art. 52 lit. a, 1 1 Dec 1996 / (1 Dec 1996)
Glarus (30 Mar 2004)				no optional fiscal referendum mandatory fiscal referendum see Table 6
Zug (1 Apr 2003)	1 500	60 days	> 500 000 (> 50 000)	art. 34, 1 art. 34, 2 2 Dec 1990 (2 Dec 1990) laws and general decrees of the <i>Kantonsrat</i>
Freiburg (18 Aug 2004)** new constitution by 1 Jan 2005	6000	90 days	> 0.25% of the total expenditures of the last budget (approved account)	1 Jan 2005 (16 May 2004) art. 46, 1 lit. b art. 46, 2 all acts of the <i>Grand Conseil</i>
Freiburg (old)	6 000	90 days	> 0.25% of the total expenditures of the last budget (approved account)	art. 28 bis, 3 7 Oct 1986 (8 June 1986) art. 130, 2 <i>PRG</i> all laws and decrees also applicable: art. 28 ter see also T/S 1999, p.211 cont.
Solothurn (30 Mar 2004)	1 500	90 days	> 1 million (>100 000)	art. 36, 1, lit. a art. 36, 2 1 Jan 1988 (8 June 1986)

Table 7: The fiscal referendum – optional (ordinary) (cont.)

Canton	Sign. Requ.	Time-limit for collection	Financial threshold	Article in cant. const./ effective since (date of vote)
Basel-Stadt (4 July 2000) (new)	2 000	6 weeks	> 1,5 million (or = sum of all annual expenses over all years)	art. 29, 3 lit. c 21 Jun 1979 (24 Sept 1978) see T/S 1999, p.163 art. 22 <i>Finanzhaushaltsgesetz</i> (1 Jan 1998)
Basel-Stadt (old)	2 000	6 weeks	> 1 million (> 200 000)	art. 29, 3 lit. c 21 Jun 1979 (24 Sept 1978) see T/S 1999, p.163 art 1, 1 <i>ArefG</i>
Basel-Land (22 Oct 2002)	1 500	8 weeks	> 500 000 (> 50 000)	decrees of the <i>Landrat</i> art. 31, 1 lit. b art. 31, 1 art. 31, 3 1 Jan 1987 (4 Nov 1984)
Schaffhausen (21 Oct 2003) new constitution by 1st Jan 2003	1 000	90 days	> 1 million (> 100 000)	decrees of the <i>Kantonsrat</i> art. 33, 1 lit. d art. 33 , 2 1 Jan 2003 (17 Jun 2002)
Schaffhausen (old)	600	60 days	> 300 000 (> 50 000)	decree of the <i>Grosser Rat</i> if 4/5 of present members have agreed art.42ter, 1 art. 42ter, 2 (23 Apr 1989)
Appenzell AR (3 Apr 2001)			1 May 1996 (30. Apr 1995)	non-existing (<i>Landsgemeinde</i>) (28 Sept 1997: abolishment of the <i>Landsgemeinde</i> and replacement of open vote by voting at the ballot box)
Appenzell IR (30 Mar 2004)	200	30 days	> 250 000 CHF > 50 000 CHF	art. 7ter, 2 art. 7ter, 3 (26 Apr 1992) (<i>Landsgemeinde</i>) decrees of the <i>Grosser Rat</i>
St. Gallen (9 July 2002) new constitution by 1 Jan 2003	4 000	40 days	> 3 million (> 300 000 for at least 10 years)	art. 49, 1 lit. c; art. 50, 1 1 Jan 2003 (21 June 2001) art. 7, 1 RIG: IV NG (11 Apr 1996) decrees of the <i>Grosser Rat</i>

Table 7: The fiscal referendum – optional (ordinary) (cont.)

Canton	Sign. requ.	Time-limit for collection	Financial threshold	Article in cant. const./ effective since (date of vote)
St. Gallen (old)	4000	30 days	> 3 million (> 300 000 for at least 10 years)	art. 47 art. 7, 1 <i>RIG</i> : IV NG 1 Apr 1997 (11 Apr 1996) higher upper limits through mandatory fiscal referendum decrees and laws
Graubünden (6 July 2004) new constitution by 1 Jan 2004	1 500	90 days	> 1 million (> 300 000)	art. 17, 1; art. 17, 1 num. 3; art. 17, 3 1 Jan 2004 / (18 May 2003 / 14 Sept 2003) decrees of the <i>Grosser Rat</i> change in upper limits through mandatory fiscal referendum
Graubünden (old)	3 000	90 days	> 1 million (> 300 000)	art. 2, 2 num. 6 lit. b (28 Jan 1973) decrees of the <i>Grosser Rat</i>
Aargau (30 Mar 2004)	3 000	90	> 5 million (> 500 000)	art. 63, 1 lit. d art. 63, 1 1 Jan 2003 (2 June 2002) decrees of the <i>Grosser Rat</i> art. 40 <i>GPR</i> (10 Mar 1992)
Aargau (old)	3 000	90	> 3 Mio (> 300 000)	art. 63, 1 lit. c art. 63, 1 decrees of the <i>Grosser Rat</i> 1 Jan 1982 / (28 Sept 1980) art. 40 <i>GPR</i>
Thurgau (22 Oct 2002)	2 000	3 months	> 1 million (> 200 000)	art. 23, 2 1 Jan 1990 (4 Dec 1988) decrees of the <i>Grosser Rat</i>
Tessin (30 Mar 1999) new constitution by the 1 Jan 1998	7 000	45 days	> 1 million (> 250 000 for at least four years)	art. 42 lit. b 1 Jan 1998 / (14 Dec 1997) decrees and laws (“ <i>gli atti</i> ”)
Tessin (old)	7 000	1 month	> 200 000 (> 50 000 for at least 4 years)	art. 60, 2 (31 May 1970) see also T/S 1999, p. 338 cont.

Table 7: The fiscal referendum – optional (ordinary) (cont.)

Canton	Sign. requ.	Time-limit for collection	Financial threshold	Article in cant. const./ effective since (date of vote)
Waadt (21 Oct 2003) new constitution by 1 Sept 2003	12 000	40 days	No threshold	art. 84, 1 lit. a art. 84, 2 lit. b art. 84, 3 1 Sept 2003 (14 Apr 2003) optional statutory referendum applies to decrees (see also Table 5) exceptions: art. 84, 2 lit. b
Waadt (18 Jan 2000)	12 000	40 days	> 2 million (> 200 000 for 10 years)	art. 27, num. 2 29 Nov 1998 (29 Nov 1998) all decrees of the <i>Grand Conseil</i>
Waadt (old)	(12 000)	(40 days)	no threshold	optional statutory referendum applies (see Table 5) see also T/S 1999, p. 369 art. 27, num. 2 1978
Wallis (21 Oct 2003)	3 000	90 days	> 0.75% (> 0.25 %) of the total gross expenditure of the last administration and investment account	decrees, but only for extraordinary expenses (art. 31, 3 num. 2) art. 31, 1 num. 3 1 June 1994 (24 Oct 1993)
Neuenburg (16 Oct 2001) new constitution by 1 Jan 2002	4 500	40 days	None	decrees and laws which trigger expenses art. 42, abs. 2 lit. b art. 42, 1 1 Jan 2002 (24 Sept 2000)
Neuenburg (old)	6 000	40 days	art. 39, 2 art. 120 LDP > 3 per mill of the approved budget	simple decrees which trigger a new expense
Genf (21 Oct 2003)	7 000	40 days	> 125 000 (> 60 000)	laws art. 56 (2 Febr 1986) art. 53 (7 Mar 1982)

Table 7: The fiscal referendum – optional (ordinary) (cont.)

Canton	Sign. Requ.	Time-limit for collection	Financial threshold	Article in cant. const./ effective since (date of vote)
Jura (4 July 2000)	2 000	60 days	> 5 per mil (> 0,5 per mil) of the revenue of the last budget	art. 78 lit. b all expenses not determined by a law 1 Jan 1979 (20 Mar 1977) art. 94 <i>LDP</i>
Notes: See Tables 2 and 6.				

5.4 Comments on the changes in the optional fiscal referendum

Most of the constitutional revisions regarding the optional fiscal referendum after 1997 concern alterations of its signature requirement or its financial threshold. Only in a few cantons was an elimination of the mandatory fiscal referendum (see preceding section) accompanied by an adaptation/extension of the optional fiscal referendum.

After 1997, a major change regarding the optional fiscal referendum occurred in the canton *Zürich (ZH)* when the mandatory fiscal referendum was abolished at the end of 1998 and only a revised version of the optional fiscal referendum remained. In the same partial revision of the cantonal constitution, the period allotted to the collection of the signatures was increased from 45 to 60 days. The financial threshold was augmented to 3,000,000 CHF in contrast to 2,000,000 CHF, which prevailed until the end of 1998 (see T/S 1999, p. 408 cont.). From 1999 on, the value of the sub-index of the fiscal referendum (FRR) reached only 4, lower than the value of 5 achieved in 1998 and 1997.

The canton *Luzern (LU)* also introduced a change with respect to optional fiscal referendum, but as this did not relate to any of the requirements that form the basis for the derivation of the index, it had no impact on the index value for the optional fiscal referendum. Only with respect to the extraordinary optional fiscal referendum did a change occur concerning the number of members necessary to call in such an institution (art. 39 bis, 1 lit. b). This amendment became necessary because the size of the cantonal parliament had been reduced from 170 to 120 seats⁵².

⁵² Personal communication with Mr. H. Bachmann, January 21, 2004.

The canton *Uri (UR)* is one of the rare cases in which the index value for the optional fiscal referendum remained the same for the period between 1997 and 2001, although a partial revision with respect to the requirements did take place. From 1997 to 1998, the number of signatures requested was raised from 300 to 450 (see T/S 1999, p. 359), applicable to all optional referenda. This revision, however, neither changed the results of evaluation of the absolute quantity of signatures nor that of the relative number of signatures, because both numbers (still) fall into the identical categories before and after the change.

In the canton *Obwalden (OW)* the electorate voted successfully for a supersession of the *Landsgemeinde* status on the 8th of June, 1997. An optional fiscal referendum was introduced with a signature requirement of 100 voters to be collected within 30 days, and a financial threshold of 500,000 CHF for nonrecurring expenses was set. In 1998, this threshold was then again doubled to 1,000,000 CHF; the identical development occurred for recurring expenses. Hence, the index for the optional fiscal referendum was negatively affected in both 1998 and 1999. The overall index of fiscal referendum (FRR) therefore reflects the (lower) value of the optional fiscal referendum as no mandatory referendum has existed since 1998.

The optional fiscal referendum was also revised in the canton of *Tessin (TI)* on the 14th of December, 1997, which became effective with the new constitution on the 1st of January, 1998. The number of signatures necessary for such a referendum was kept at 7,000, but the time allotted for their collection increased from 30 to 45 days (see also T/S 1999, p. 340). The financial threshold was also augmented to 1,000,000 Swiss Francs from the original 200,000 Swiss Francs (see also T/S 1999, p. 341). This development meant an increase in the value for the fiscal referendum from 1997 onwards.

Changes also occurred in *Waadt (VD)* starting in 1999. This canton (re)introduced the optional fiscal referendum as a new institution in its cantonal constitution⁵³, with a signature requirement of 12,000, 40 days allowed for their collection, and a financial threshold set at 2,000,000 Swiss Francs. These new characteristics of the optional fiscal referendum allowed canton *Waadt* to achieve an index value of 3 between 1999 and 2001 for the optional fiscal referendum. At this point, it should be noted that in canton *Waadt* before 1999, financial expenditure projects were (theoretically) covered by the statutory referendum (see T/S 1999,

⁵³ An optional fiscal referendum also existed in the constitution of 1961 until 1978 (see T/S 1999, p. 371).

p. 371). However, according to my source⁵⁴, because the statutory referendum was never applied to financial issues, its potential scope was never fully exploited by the electorate. When Stutzer (1999) calculated the index values of direct democracy, however, he counted the *de iure* applicability of the optional statutory referendum toward the index of the fiscal referendum. Interestingly, the requirements for this new optional fiscal referendum were copied from those for the already existing optional statutory referendum, which shows the closeness of these two institutions. However, in contrast to the new stipulation of 1999, the optional statutory referendum of the old constitution fixed no financial threshold. Therefore, a higher index value is observed for the optional fiscal referendum before 1999.

In October 2003, the people of *Waadt (VD)* adopted a new constitution that became effective on the 1st of September, 2003. Besides the abolishment of the mandatory fiscal referendum for expenditure projects, it introduced a ‘*référéndum facultatif*’ that serves both as a statutory referendum (art. 84, 1 a CC) and as fiscal referendum. Exempted from this referendum are the cantonal budget, supplementary credits, bonds, bound expenses, and accounting (art. 84, 1 lit. b CC)⁵⁵. This stipulation means, then, that unbound (non-budgeted) expenses – i.e. expenditure projects and also tax-related issues – can be subject to an optional (fiscal) referendum. The advantage of this stipulation, from a direct democratic perspective, is that, as in the old constitution before its November 1998 revision, no expenditure threshold exists.

According to the new constitution in *Neuenburg (NE)*, which became effective on the 1st of January, 2002, 4,500 voters can demand a referendum on a law or decree that triggers expenses within 40 days after its publication. This new optional fiscal referendum applies to acts of the *Grand Conseil*, the cantonal parliament (as in the old constitution, see T/S 1999, p. 273). On the surface, there appears to be no financial threshold for the optional referendum; however, the state organ responsible for making financial decisions on expenses above 400,000 Swiss Francs is the *Grand Conseil* (the parliament), whereas for those below this threshold the responsibility falls to the *Conseil d'Etat* (the executive organ). Thus, the optional referendum appears only to apply to decrees with expenses above 400,000 Swiss Francs. (For laws, the optional statutory referendum applies with the exception of the fields stated in art. 42, 3 CC, such as budget.) There are, however, some differences with respect to the regulation in the old constitution: first, a reduction of the signature requirement has occurred (6,000 to 4,500); second, in the new constitution, the referendum is applicable to all decrees that meet

⁵⁴ Personal communication with Prof. G. Kirchgässner, March 2004.

⁵⁵ This article resembles the regulation of art. 27, num. 2 ter, old CC for the mandatory referendum.

the threshold requirement, not only to decrees that trigger a 'new' expense. It must also be noted, however, that there existed in the old constitution a mandatory referendum on expenditure projects for both laws and decrees that did not survive the recent total revision of the constitution. For more details of how the system of financial referenda worked under the ancient rule in *Neuenburg*, see T/S 1999, p. 272 cont.

6 Reconstruction of the index between 1997 and 2003

6.1. Definition of the index of direct democracy

The index of direct democracy is an unweighted average of four different sub-indices that reflect different constitutional settings regarding four institutions of direct legislation: the constitutional initiative (VIR), the statutory initiative (GIR), the fiscal referendum (FRR), and the statutory referendum (GRR). These four sub-indices are based on an assessment of the following requirements: the number of signatures (both absolute and relative), the time period for their collection, and, in the case of the fiscal referendum, the financial threshold. Both Stutzer (1999) and Stutzer and Frey (2000) describe the construction of this index. The reader should note, however, that each article presents a different version of the index. The difference lies in the question of whether the expenditure threshold per electorate or per residential population is used in constructing the sub-index of the fiscal. In the case of this study, the number of signatures per voter and the financial threshold per resident is used to reflect the financial burden. According to L.P. Feld, this latter setup was also chosen for the construction of the index between 1980 and 1997 carried out by Ch.A. Schaltegger.

6.2. General comments on constructing the index of direct democracy

Regarding the updating of this index, a few general comments need to be made. The constitutional initiative that forms part of the index refers exclusively to the partial revision of the constitution (see Stutzer 1999). In many cantons, it is easier to launch a partial revision than a total revision of the constitution. Concerning the mandatory and the optional statutory referendum, in general, this study only takes into account those referenda referring to all types of law, not those referring to by-laws or decrees, passed by the cantonal parliament or the

executive. Hence, the loss or gain in citizen power with respect to by-laws should not affect the (sub)index of direct democracy for a canton. There are, however, a few exceptions; in addition, in most of the cantons, the statutory referendums on laws and on decrees are equivalent in their requirements. Concerning the fiscal referendum, only the threshold of nonrecurring expenses is taken into account, and changes in thresholds for recurring expenses are not reflected in the index of direct democracy (see Stutzer 1999). The index does not distinguish whether the expense is a consequence of a law or of a decree; however, in daily political practice, expenditure projects induced by an administrative act are more often the object of a fiscal referendum. Changes that occur after April 1st in any given year are accounted for in the following year; for example, the changes in the constitutions of *Obwalden (OW)* in June 1997 and of *Glarus (GL)* in May 2002 influence the index of direct democracy only from 1998 and 2003 onwards, respectively. As regards the signature requirement, a month is counted as corresponding to 30 days, 6 weeks to 45 days, and so on.

6.3. The sub-index for the statutory referendum (GRR)

Regarding the statutory referendum, 6 index points are awarded to those cantons in which a mandatory statutory referendum exists. In the case of an optional referendum, index points are awarded based on its requirements (absolute and relative signature requirement, time period for collection). The difficulty with this index lies in the question of whether decrees and by-laws of the cantonal parliament are regarded as 'laws' or as administrative acts, and whether they should be included in this index or not. This distinction differs from canton to canton, and a decision can only be made according to the legal and political practice. For example, in the case of *Uri (UR)*, both the mandatory and the optional referendum exist, although the optional referendum concerns only parliamentary by-laws not formal laws. In this case, Stutzer (1999), taking into account that both types existed in parallel, decided to calculate the average of both referenda (p. 5). In my opinion, it would have been more logical either to make a decision based on the importance of the by-laws in *Uri* or to ignore referenda on by-laws and decrees in general for all cantons equally. For consistency, I have maintained the averaging of both institutions for the case of *Uri*. In addition, for the canton of *Schwyz (SZ)*, the mandatory referendum applies to laws and the optional referendum to by-laws, so here again the average of the two referenda is used because some by-laws in particular areas aim at substituting for formal laws (Stutzer, 1999, p. 5). Again to maintain consistency, I will also follow this approach. In a few cantons (*Solothurn (SO)*, *Basel-Land (BL)*, *Schaffhausen (SH)*,

Aargau (AG)), a majority restriction was introduced for the application of the mandatory statutory referendum during the period from 1997 to 2003; if this requirement is not met, the optional referendum applies. In these cases, I replicate the approach chosen by Stutzer (1999) and calculate the average of both types of statutory referenda. As the constitutional change in *Glarus (GL)* led de facto to no restriction of the use and scope of the mandatory statutory referendum for cantonal laws, only this institution will be taken into account for the index construction. It must be noted that except for these few cases, there usually exists in Swiss cantons only one of the two types of statutory referenda referring to cantonal laws, and hence a final sub-index value for the statutory referendum is out of the question.

6.4. The sub-index for the fiscal referendum (FRR)

As regards the fiscal referendum, both the optional and the mandatory referenda are awarded index points separately, and an index value is calculated for each. The higher value of the two is then chosen, which constitutes the sub-index of the fiscal referendum (FRR). In general, no distinction is made as to whether the fiscal referendum applies to a law or to a decree. For most of the cantons, the threshold for expenditure projects induced by laws or decrees is identical. Only the canton of *Luzern (LU)* makes an exception: here, the considerably lower financial threshold for decrees is employed as done in Stutzer (1999). These thresholds have remained unchanged since 1995. In the canton of *Schaffhausen (SH)*, the fiscal referenda apply solely to decrees, not to laws; hence, the value of the sub-index is based exclusively upon these constitutional stipulations. In the old constitution prior to January 2003, a lower threshold for the mandatory fiscal referendum was fixed when a decree was passed with less than a four-fifths majority. Stutzer (1999) did not take this specific regulation into account, probably because it did not apply often in practice. Consequently, in the new constitution of *Schaffhausen*, this particular regulation was dropped, and no majority requirement any longer applies to any fiscal referendum.

In the canton of *Aargau (AG)*, a mandatory fiscal referendum was introduced in January 2003 after a time of non-existence, but accompanied by a majority restriction. This new development is taken into account by averaging the index points for the optional and the mandatory fiscal referenda, analogously to similar cases for the mandatory statutory referendum in other cantons. Regarding the canton of *Schwyz (SZ)*, in which no ordinary optional fiscal referendum exists, Stutzer (1999) reports taking into account the optional fiscal

referendum for state highways; in this case, the average points of the mandatory and the optional fiscal referendum (for state highways) is calculated and used as a fiscal referendum sub-index (FRR). Personally, I find this approach inconsistent because other cantons such as *St. Gallen (SG)* have similar optional fiscal referenda on special issues, particularly on infrastructure projects; for these cantons, however, this type of optional fiscal referendum is not taken into consideration during calculation of the fiscal sub-index. Nevertheless, to keep the index consistent over time, I will maintain the special treatment for the canton *Schwyz (SZ)*. In 1999, a new cantonal decree on streets (*Strassenverordnung*) was adopted by the *Kantonsrat* (effective: the 1st of January, 2000), which brought about a higher threshold for this optional fiscal referendum (new: art 20, 2 CC) with an expense of more than 20,000,000 Swiss Francs (prior to change: 2,000,000 Swiss Francs). As regards the signature requirement and the time for collection, the regulations have remained unchanged since 1972.

In Stutzer (1999), for the cantons *Wallis (VS)* and *Genève (GE)*, the requirements for the optional fiscal referendum were not taken into account during calculation of the sub-index value for the fiscal referendum (FRR) because “only non-budgetary or extraordinary” expenses are subject to this referendum. In Stutzer’s opinion, this omission weakens this political institution so considerably that it leads to a de facto nonexistence. Since the publication of his calculations in 1999, the constitutional requirements in *Wallis* have not changed (art. 31, 1 num. 3 CC). In art. 31, 1 num. 2 CC, it is explicitly stated that ordinary expenses are not subject to an optional (fiscal) referendum. A mandatory fiscal referendum exists only in its extraordinary form (since 1994) and hence does not influence the sub-index of fiscal referendum (FRR). In the canton of *Genève*, no constitutional change concerning the optional fiscal referendum for expenditure projects occurred between 1997 and 2003, so that the reasons for a considerable restriction of its use stated in Stutzer (1999) still apply. Hence, in these two cantons *Wallis* and *Genève*, the optional fiscal referendum has been awarded an index value of 1 as if this referendum were nonexistent.

Interesting also is the case of *Vaud (VD)*. As a very innovative step, this canton introduced a mandatory fiscal referendum in 1998. In contrast to the stipulations in the other constitutions, this mandatory fiscal referendum could only be used by the assembly of the communes, not by its cantonal electorate. I have, however, decided to regard this mandatory referendum as a fully valid mandatory referendum as if the electorate had been given the right to vote⁵⁶. Since

⁵⁶ Since in this case both mandatory and optional fiscal referenda are awarded identical points for the period in question, an averaging over the two institutions as an alternative would have brought about the identical

there are about 380 communes in the canton of *Waadt*, the size of each of them will be so small that a single citizen can be assumed to have quite a decisive (indirect) influence on the outcome of the mandatory fiscal referendum. In the new constitution of 1 Sept 2003, however, this mandatory fiscal referendum was again abolished.

Finally, and most importantly, I must point to the case of *Zürich (ZH)*. Until the end of 1998, a mandatory fiscal referendum existed that was then replaced by an optional fiscal referendum. The existence of this important institution seems to have been overlooked by Trechsel and Serdült in a first unpublished version of a table summarizing the mandatory fiscal referenda in Switzerland, on which Stutzer (1999) then based the calculation of the index for 1992⁵⁷. As a consecutive fault, the sub-index for the fiscal referendum (FRR) in *Zürich* in Stutzer (1999) is based on incorrect information and is significantly lower than it should be (4.00 instead of 5.00). In Stutzer and Frey (2000), however, this mistake has been corrected and the index values reported for *Zürich* are correct.

7 The development of the index of direct democracy from 1997 to 2003

Table 9 displays the values that the index of direct democracy takes on for the 26 cantons during the relevant years, while Tables A2 – A8 in the Appendix report the values for the four sub-indices. Table 8 compares three different versions of the index: that published by Stutzer (1999) for 1996, that constructed by Feld and Schaltegger for a synthetic panel running from 1980 to 1998, and, finally, my own calculations for the years 1997 and 1998. I note that in T/S 1999, and consequently Stutzer's analysis, the so-called *Landsgemeinden* (OW, NW, GL, AR, AI, see section 1) – i.e. those cantons that knew no representative power of legislation in or until shortly prior to 1996 – were excluded from the description of institutions.

A comparison of Stutzer's version with that of Feld for 1996 in Table 8 reveals that the value of *Zürich (ZH)*, which was correct for 1992 (see e.g. Stutzer and Frey 2000) was perpetuated by Feld and maintained until 1998, when at least since 1996, it should have been substantially higher (4.417 instead of 4.17). Minor differences can also be observed for the cantons *Luzern*

points. In addition, taking into account only the optional fiscal referendum would not have changed the value of the sub-index for the fiscal referendum (FRR).

⁵⁷ In a personal communication with A. Stutzer, this mistake in Stutzer (1999) was admitted.

(LU), Uri (UR), Schwyz (SZ), Schaffhausen (SH), St. Gallen (SG), Graubünden (GR), Tessin (TI), Wallis (VS), and Jura (JU). Unfortunately, I was not given access to the calculations by which Feld and Schaltegger constructed their version of the index, so the causes for these differences cannot be traced. However, the main reason for the differences between their index and mine may lie in the fact that, according to a personal communication with Ch.A. Schaltegger, they also took into account the so-called recurring expenses in the index for the fiscal referendum (FRR). The original sub-index developed by Stutzer (1999) was, however, constructed solely on the basis of one-time (i.e. non-recurring) expenditures and neglects the thresholds for recurring expenses. The reader should note, however, that in most of the cantons, the nonrecurring threshold equals the recurring threshold times the number of years in which it reoccurs, so the differences in the index resulting from different evaluation of financial thresholds should be influential only in a few cantons. The correlation between the three versions of the index of direct democracy, however, exceeds the 90% level so that econometric analyses using either version should not produce substantially different results.

Comparing my values for 1997 with the values obtained by Stutzer for 1996, only a few differences can be observed. The cantons in question (besides *Zürich*, ZH) are *Freiburg* (FR), *Graubünden* (GR), and *Jura* (JU). First, it should be noted that no new or altered constitutional stipulations were observed in these cantons between 1997 and 2003 that could affect the index of direct democracy. However, small variations in the index can occur even if constitutional revisions are absent: that is, since relative numbers also play a significant role, a change either in size of residential population or cantonal electorate can lead to different values of institutional sub-indices. In addition, changes are possible when the expenditure thresholds are defined as a percentage of some types of cantonal budget, revenues, or investments known to vary over the years. In the case of *Freiburg* (FR), for example, the variation in the index is induced by the expenditure threshold for the optional fiscal referendum, whereas in the cases of *Graubünden* (GR), and *Jura* (JU), it is mainly the change in the size of the electorate that makes the relative signature requirement tighter (JU: VIR, GIR, GRR, FRR are affected) or looser (GR: VIR is affected)⁵⁸. (Since the index points vary across certain brackets and not linearly in the underlying requirement, however, not all minor changes in a relative requirement lead automatically to an index change.)

⁵⁸ All other requirements remained unaffected.

Table 8: Comparison of Index Values of Direct Democracy

Canton	(1996) Stutzer	(1996) Feld	(1997) Feld	(1997) Fischer	(1998) Feld	(1998) Fischer
ZH	4.17	4.167	4.167	4.417	4.167	4.417
BE	3.02	3.021	3.021	3.021	3.021	3.021
LU	4.42	4.000	4.000	4.417	4.000	4.417
UR	5.29	5.125	5.125	5.292	5.125	5.125
SZ	4.99	4.656	4.656	4.990	4.656	4.990
OW		5.833	5.833	5.833	5.833	5.333
NW		5.000	5.000	4.438	5.000	4.438
GL		5.500	5.500	5.750	5.500	5.333
ZG	4.42	4.417	4.417	4.417	4.417	4.417
FR	2.85	2.854	2.917	2.854	2.917	2.854
SO	5.67	5.667	5.667	5.667	5.667	5.667
BS	4.4	4.396	4.396	4.396	4.396	4.396
BL	5.69	5.688	5.688	5.688	5.688	5.688
SH	5.21	5.000	5.000	5.208	5.000	5.208
AR		5.500	5.500	5.500	5.500	5.500
AI		5.250	5.250	5.375	5.250	5.375
SG	3.58	3.167	3.167	3.458	3.167	3.458
GR	4.75	4.500	4.500	4.833	4.500	4.833
AG	5.46	5.458	5.458	5.458	5.458	5.458
TG	4.33	4.333	4.333	4.333	4.333	4.333
TI	2.10	1.854	1.854	2.104	1.854	2.250
VD	2.42	2.417	2.417	2.417	2.417	2.417
VS	3.58	3.250	3.250	3.583	3.250	3.583
NE	2.19	2.188	2.250	2.188	2.250	2.188
GE	1.75	1.750	1.750	1.750	1.750	1.750
JU	4.02	3.708	3.708	3.708	3.708	3.708

Table 9: Overview of the Index of Direct Democracy 1997 - 2003

Canton	1997	1998	1999	2000	2001	2002	2003
ZH	4.417	4.417	3.500	3.500	3.500	3.500	3.500
BE	3.021	3.021	3.021	3.021	3.021	3.021	3.021
LU	4.417	4.417	4.417	4.417	4.417	4.417	4.417
UR	5.292	5.125	5.125	5.125	5.125	5.125	5.125
SZ	4.990	4.990	4.990	4.927	4.927	4.927	4.927
OW	5.833	5.333	4.625	4.625	4.625	4.625	4.625
NW	4.438	4.438	4.438	4.438	4.438	4.438	4.438
GL	5.750	5.750	5.750	5.750	5.750	5.750	5.500
ZG	4.417	4.417	4.417	4.417	4.479	4.479	4.479
FR	2.854	2.854	2.792	2.792	2.792	2.792	2.792
SO	5.667	5.667	5.250	5.250	5.250	5.250	5.250
BS	4.396	4.396	4.396	4.396	4.396	4.396	4.396
BL	5.688	5.688	5.688	5.479	5.479	5.479	5.479
SH	5.208	5.208	5.208	5.208	5.208	5.208	5.021
AR	5.500	5.500	5.500	5.500	5.167	4.917	4.917
AI	5.375	5.375	5.375	5.438	5.375	5.438	5.438
SG	3.458	3.458	3.458	3.458	3.458	3.458	3.521
GR	4.833	4.833	4.833	4.833	4.833	4.833	4.833
AG	5.458	5.458	5.458	5.458	5.458	5.458	5.438
TG	4.333	4.333	4.333	4.333	4.333	4.333	4.333
TI	2.104	2.250	2.250	2.250	2.250	2.250	2.250
VD	2.500	2.500	2.500	2.500	2.500	2.500	2.500
VS	3.583	3.583	3.583	3.583	3.583	3.583	3.583
NE	2.188	2.188	2.188	2.188	2.188	2.729	2.729
GE	1.750	1.750	1.750	1.750	1.750	1.750	1.750
JU	3.708	3.708	3.708	3.708	3.708	3.708	3.708

Source: Own calculations by Justina A: Fischer

Finally, I would like to point out that there exists a difference in definition between the index constructed in Stutzer (1999) and the one employed in Frey and Stutzer (2000a). Whereas the last paper uses the threshold per vote, Stutzer (1999) uses the threshold per capita, which includes not only the cantonal electorate but also foreign residents holding a permit of one year or longer⁵⁹. The first version of the relative threshold seems to take into account the decision-making power of the single citizen with respect to financial matters of the canton, while the second version is based on the view of the threshold as a financial burden shared among all residents of the canton. As the studies of Frey and Stutzer also focus on the procedural utility gained by Swiss citizens in contrast to foreign residents, the use of the first version of this index makes sense in their research context. However, as regards the signature requirement, both versions of the index are constructed using the number of signature divided

⁵⁹ In some cantons, foreign permanent residents account for up to 20% of the population. It takes 13 years of residence to gain Swiss citizenship.

by the electorate. Again, the correlation between these two index versions exceeds the value of 0.9.

8 Brief critique of the index of direct democracy

This paper will conclude with a brief critique of the composite index of direct democracy as constructed by Stutzer (1999). The index of direct democracy has many advantages: it combines the necessary requirements for utilizing a particular right and makes cantons with contrasting institutional equipments comparable. The sole prominent disadvantage is the lack of an inflation adjustment: that is, a financial threshold introduced decades ago loses its strictness over time, whereas in other cantons a threshold based on an annual budget or some of its components not only tends to grow with inflation but also varies with business cycles. In practice, however, as can be seen in the case of *Freiburg (FR)*, changes in the threshold caused by altering cantonal budget sizes affect the final index of direct democracy only on a very small scale. In addition, the missing adjustment of thresholds for inflation has no major influence on the value of the index: such an adjustment would only be decisive if it led to a switch in the category for evaluation of the relative financial hurdle. If the sub-index value of the mandatory fiscal referendum is higher than that for the optional referendum, a switch in brackets for the mandatory fiscal referendum causes an alteration of the final index of direct democracy by 0.25 index points. In case the value of the optional fiscal referendum is the highest, the sub-index for the fiscal referendum (FRR) can switch by 0.25, and the final index then by 0.0625 points. In 1997, in 8 cantons, the mandatory fiscal referendum was the stronger direct legislative institution. Hence, the majority of the cantons would not be strongly affected by an adjustment of threshold for inflation. In addition, a comparison of the index of direct democracy over time is only useful for a description of leaps in direct democracy, not small changes.

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Appendix

Table A1: Cantonal Laws Related to Institutions of Direct Democracy

Canton	Law	Abbreviation	Date of Enactment
	Gesetz über die politischen Rechte	<i>GPR</i>	1 Sep 2003 effective: 1 Jan 2005
ZH (Zürich)	Gesetz über das Vorschlagsrecht des Volkes	<i>Initiativgesetz</i> (outdated)	1 Jun 1969 effective until 1 Jan 2005
BE (Bern)			
LU (Luzern)	Stimmrechtsgesetz	<i>SRG</i>	21 Oct 1988
UR (Uri)			
SZ (Schwyz)			
OW (Obwalden)			
NW (Nidwalden)			
GL (Glarus)			
ZG (Zug)			
FR (Freiburg)	Gesetz über die Ausübung der politischen Rechte	<i>PRG</i>	6 Apr 2001 effective: 1 Aug 2001 18 Feb 1876 effective until 1 Aug 2001
SO (Solothurn)			
BS (Basel-City)	<i>Finanzhaushaltsgesetz</i>	<i>Finanzhaushaltsgesetz</i>	(16 Apr 1997) effective: 1 Jan 1998
	<i>Gesetz über das Ausgabenreferendum</i>	<i>ArefG</i> (outdated)	(29. June 1978) effective until 1 Jan 1998
BL (Basel-Land)			
SH (Schaffhausen)			
AR (Appenzell Ausserrhoden)			
AI (Appenzell Innerrhoden)			
SG (St. Gallen)	Gesetz über Referendum und Initiative	<i>RIG</i>	27 Nov 1967 effective: 1 Jan 1968
GR (Graubünden)	Gesetz über die Ausübung der politischen Rechte	<i>PRG</i>	7 Oct 1962
AG (Aargau)	Gesetz über die politischen Rechte	<i>GPR</i>	10 Mar 1992
TG (Thurgau)			
TI (Tessin)	Legge sull'esercizio dei diritti politici	<i>LEDP</i>	7 Oct 1998 effective: 1 Jan 1999
	Legge sull'iniziativa popolare, sul referendum e sulla revoca del Consiglio di Stato	<i>LIRR</i> (outdated)	22 Jan 1954
VD (Vaud)	Lois sur l'exercice des droits politiques	<i>LEDP</i>	16 May 1989 effective: 1 Jan 1990
VS (Vallis)			
NE (Neuchâtel)	Lois sur les droits politiques	<i>LDP</i>	17 Oct 1984
GE (Geneve)	Lois sur l'exercice des droits politiques	<i>LEDP</i>	15 Oct 1982
JU (Jura)	Lois sur les droits politiques	<i>LDP</i>	26 Oct 1978

Table A2: Values of Indices of Direct Democracy in 1997

	Index (VIR)	Index (GIR)	Index (GRR)	Index (FRR)	Index
Zürich	3.333	3.333	6.000	5.000	4.417
Bern	2.667	2.667	3.000	3.750	3.021
Luzern	4.667	5.333	3.667	4.000	4.417
Uri	5.667	5.667	5.333	4.500	5.292
Schwyz	5.333	5.333	4.667	4.625	4.990
Obwalden	5.333	6.000	6.000	6.000	5.833
Nidwalden	4.000	4.333	4.667	4.750	4.438
Glarus	6.000	6.000	6.000	5.000	5.750
Zug	5.000	5.000	3.667	4.000	4.417
Fribourg	3.000	3.000	2.667	2.750	2.854
Solothurn	5.333	5.333	6.000	6.000	5.667
Basel-Stadt	4.667	4.667	4.000	4.250	4.396
Basel-Landschaft	6.000	6.000	6.000	4.750	5.688
Schaffhausen	5.333	5.333	5.167	5.000	5.208
Appenzell A.Rh.	6.000	6.000	6.000	4.000	5.500
Appenzell I.Rh.	6.000	6.000	6.000	3.500	5.375
St.Gallen	3.333	4.000	3.000	3.500	3.458
Graubünden	4.333	5.000	6.000	4.000	4.833
Aargau	5.667	5.667	6.000	4.500	5.458
Thurgau	4.000	4.000	4.333	5.000	4.333
Ticino	1.333	2.667	1.667	2.750	2.104
Vaud	2.333	2.333	2.000	3.000	2.417
Valais	4.333	5.000	4.000	1.000	3.583
Neuchatel	2.667	2.667	1.667	1.750	2.188
Geneve	2.000	2.000	2.000	1.000	1.750
Jura	4.667	4.667	3.000	2.500	3.708

Notes: VIR denotes “Verfassungsinitiativrecht, Constitutional Initiative”, GIR “Gesetzesinitiativrecht, Statutory Initiative”, FRR „Fiscal Referendum“, and GRR „Gesetzesreferendum, Statutory Referendum“.

Table A3: Values of Indices of Direct Democracy in 1998

	Index (VIR)	Index (GIR)	Index (GRR)	Index (FRR)	Index
Zürich	3.333	3.333	6.000	5.000	4.417
Bern	2.667	2.667	3.000	3.750	3.021
Luzern	4.667	5.333	3.667	4.000	4.417
Uri	5.333	5.333	5.333	4.500	5.125
Schwyz	5.333	5.333	4.667	4.625	4.990
Obwalden	5.333	6.000	6.000	4.000	5.333
Nidwalden	4.000	4.333	4.667	4.750	4.438
Glarus	6.000	6.000	6.000	5.000	5.750
Zug	5.000	5.000	3.667	4.000	4.417
Fribourg	3.000	3.000	2.667	2.750	2.854
Solothurn	5.333	5.333	6.000	6.000	5.667
Basel-Stadt	4.667	4.667	4.000	4.250	4.396
Basel-Landschaft	6.000	6.000	6.000	4.750	5.688
Schaffhausen	5.333	5.333	5.167	5.000	5.208
Appenzell A.Rh.	6.000	6.000	6.000	4.000	5.500
Appenzell I.Rh.	6.000	6.000	6.000	3.500	5.375
St.Gallen	3.333	4.000	3.000	3.500	3.458
Graubünden	4.333	5.000	6.000	4.000	4.833
Aargau	5.667	5.667	6.000	4.500	5.458
Thurgau	4.000	4.000	4.333	5.000	4.333
Ticino	1.333	2.667	2.000	3.000	2.250
Vaud	2.333	2.333	2.000	3.000	2.417
Valais	4.333	5.000	4.000	1.000	3.583
Neuchatel	2.667	2.667	1.667	1.750	2.188
Geneve	2.000	2.000	2.000	1.000	1.750
Jura	4.667	4.667	3.000	2.500	3.708

Notes: VIR denotes “Verfassungsinitiativrecht, Constitutional Initiative”, GIR “Gesetzesinitiativrecht, Statutory Initiative”, FRR „Fiscal Referendum“, and GRR „Gesetzesreferendum, Statutory Referendum“.

Table A4: Values of Indices of Direct Democracy in 1999

	Index (VIR)	Index (GIR)	Index (GRR)	Index (FRR)	Index
Zürich	3.333	3.333	3.333	4.000	3.500
Bern	2.667	2.667	3.000	3.750	3.021
Luzern	4.667	5.333	3.667	4.000	4.417
Uri	5.333	5.333	5.333	4.500	5.125
Schwyz	5.333	5.333	4.667	4.625	4.990
Obwalden	5.333	5.333	4.333	3.500	4.625
Nidwalden	4.000	4.333	4.667	4.750	4.438
Glarus	6.000	6.000	6.000	5.000	5.750
Zug	5.000	5.000	3.667	4.000	4.417
Fribourg	3.000	3.000	2.667	2.500	2.792
Solothurn	5.333	5.333	5.333	5.000	5.250
Basel-Stadt	4.667	4.667	4.000	4.250	4.396
Basel-Landschaft	6.000	6.000	6.000	4.750	5.688
Schaffhausen	5.333	5.333	5.167	5.000	5.208
Appenzell A.Rh.	6.000	6.000	6.000	4.000	5.500
Appenzell I.Rh.	6.000	6.000	6.000	3.500	5.375
St.Gallen	3.333	4.000	3.000	3.500	3.458
Graubünden	4.333	5.000	6.000	4.000	4.833
Aargau	5.667	5.667	6.000	4.500	5.458
Thurgau	4.000	4.000	4.333	5.000	4.333
Ticino	1.333	2.667	2.000	3.000	2.250
Vaud	2.333	2.333	2.000	3.000	2.417
Valais	4.333	5.000	4.000	1.000	3.583
Neuchatel	2.667	2.667	1.667	1.750	2.188
Geneve	2.000	2.000	2.000	1.000	1.750
Jura	4.667	4.667	3.000	2.500	3.708

Notes: VIR denotes “Verfassungsinitiativrecht, Constitutional Initiative”, GIR “Gesetzesinitiativrecht, Statutory Initiative”, FRR „Fiscal Referendum“, and GRR „Gesetzesreferendum, Statutory Referendum“.

Table A5: Values of Indices of Direct Democracy in 2000

	Index (VIR)	Index (GIR)	Index (GRR)	Index (FRR)	Index
Zürich	3.333	3.333	3.333	4.000	3.500
Bern	2.667	2.667	3.000	3.750	3.021
Luzern	4.667	5.333	3.667	4.000	4.417
Uri	5.333	5.333	5.333	4.500	5.125
Schwyz	5.333	5.333	4.667	4.375	4.927
Obwalden	5.333	5.333	4.333	3.500	4.625
Nidwalden	4.000	4.333	4.667	4.750	4.438
Glarus	6.000	6.000	6.000	5.000	5.750
Zug	5.000	5.000	3.667	4.000	4.417
Fribourg	3.000	3.000	2.667	2.500	2.792
Solothurn	5.333	5.333	5.333	5.000	5.250
Basel-Stadt	4.667	4.667	4.000	4.250	4.396
Basel-Landschaft	6.000	6.000	5.167	4.750	5.479
Schaffhausen	5.333	5.333	5.167	5.000	5.208
Appenzell A.Rh.	6.000	6.000	6.000	4.000	5.500
Appenzell I.Rh.	6.000	6.000	6.000	3.750	5.438
St.Gallen	3.333	4.000	3.000	3.500	3.458
Graubünden	4.333	5.000	6.000	4.000	4.833
Aargau	5.667	5.667	6.000	4.500	5.458
Thurgau	4.000	4.000	4.333	5.000	4.333
Ticino	1.333	2.667	2.000	3.000	2.250
Vaud	2.333	2.333	2.000	3.000	2.417
Valais	4.333	5.000	4.000	1.000	3.583
Neuchatel	2.667	2.667	1.667	1.750	2.188
Geneve	2.000	2.000	2.000	1.000	1.750
Jura	4.667	4.667	3.000	2.500	3.708

Notes: VIR denotes “Verfassungsinitiativrecht, Constitutional Initiative”, GIR “Gesetzesinitiativrecht, Statutory Initiative”, FRR „Fiscal Referendum“, and GRR „Gesetzesreferendum, Statutory Referendum“.

Table A6: Values of Indices of Direct Democracy in 2001

	Index (VIR)	Index (GIR)	Index (GRR)	Index (FRR)	Index
Zürich	3.333	3.333	3.333	4.000	3.500
Bern	2.667	2.667	3.000	3.750	3.021
Luzern	4.667	5.333	3.667	4.000	4.417
Uri	5.333	5.333	5.333	4.500	5.125
Schwyz	5.333	5.333	4.667	4.375	4.927
Obwalden	5.333	5.333	4.333	3.500	4.625
Nidwalden	4.000	4.333	4.667	4.750	4.438
Glarus	6.000	6.000	6.000	5.000	5.750
Zug	5.000	5.000	3.667	4.250	4.479
Fribourg	3.000	3.000	2.667	2.500	2.792
Solothurn	5.333	5.333	5.333	5.000	5.250
Basel-Stadt	4.667	4.667	4.000	4.250	4.396
Basel-Landschaft	6.000	6.000	5.167	4.750	5.479
Schaffhausen	5.333	5.333	5.167	5.000	5.208
Appenzell A.Rh.	6.000	6.000	4.667	4.000	5.167
Appenzell I.Rh.	6.000	6.000	6.000	3.500	5.375
St.Gallen	3.333	4.000	3.000	3.500	3.458
Graubünden	4.333	5.000	6.000	4.000	4.833
Aargau	5.667	5.667	6.000	4.500	5.458
Thurgau	4.000	4.000	4.333	5.000	4.333
Ticino	1.333	2.667	2.000	3.000	2.250
Vaud	2.333	2.333	2.000	3.000	2.417
Valais	4.333	5.000	4.000	1.000	3.583
Neuchatel	2.667	2.667	1.667	1.750	2.188
Geneve	2.000	2.000	2.000	1.000	1.750
Jura	4.667	4.667	3.000	2.500	3.708

Notes: VIR denotes “Verfassungsinitiativrecht, Constitutional Initiative”, GIR “Gesetzesinitiativrecht, Statutory Initiative”, FRR „Fiscal Referendum“, and GRR „Gesetzesreferendum, Statutory Referendum“.

Table A7: Values of Indices of Direct Democracy in 2002

	Index (VIR)	Index (GIR)	Index (GRR)	Index (FRR)	Index
Zürich	3.333	3.333	3.333	4.000	3.500
Bern	2.667	2.667	3.000	3.750	3.021
Luzern	4.667	5.333	3.667	4.000	4.417
Uri	5.333	5.333	5.333	4.500	5.125
Schwyz	5.333	5.333	4.667	4.375	4.927
Obwalden	5.333	5.333	4.333	3.500	4.625
Nidwalden	4.000	4.333	4.667	4.750	4.438
Glarus	6.000	6.000	6.000	5.000	5.750
Zug	5.000	5.000	3.667	4.250	4.479
Fribourg	3.000	3.000	2.667	2.500	2.792
Solothurn	5.333	5.333	5.333	5.000	5.250
Basel-Stadt	4.667	4.667	4.000	4.250	4.396
Basel-Landschaft	6.000	6.000	5.167	4.750	5.479
Schaffhausen	5.333	5.333	5.167	5.000	5.208
Appenzell A.Rh.	6.000	6.000	4.667	3.000	4.917
Appenzell I.Rh.	6.000	6.000	6.000	3.750	5.438
St.Gallen	3.333	4.000	3.000	3.500	3.458
Graubünden	4.333	5.000	6.000	4.000	4.833
Aargau	5.667	5.667	6.000	4.500	5.458
Thurgau	4.000	4.000	4.333	5.000	4.333
Ticino	1.333	2.667	2.000	3.000	2.250
Vaud	2.333	2.333	2.000	3.000	2.417
Valais	4.333	5.000	4.000	1.000	3.583
Neuchatel	2.667	2.667	2.333	3.250	2.729
Geneve	2.000	2.000	2.000	1.000	1.750
Jura	4.667	4.667	3.000	2.500	3.708

Notes: VIR denotes “Verfassungsinitiativrecht, Constitutional Initiative”, GIR “Gesetzesinitiativrecht, Statutory Initiative”, FRR „Fiscal Referendum“, and GRR „Gesetzesreferendum, Statutory Referendum“.

Table A8: Values of Indices of Direct Democracy in 2003

	Index (VIR)	Index (GIR)	Index (GRR)	Index (FRR)	Index
Zürich	3.333	3.333	3.333	4.000	3.500
Bern	2.667	2.667	3.000	3.750	3.021
Luzern	4.667	5.333	3.667	4.000	4.417
Uri	5.333	5.333	5.333	4.500	5.125
Schwyz	5.333	5.333	4.667	4.375	4.927
Obwalden	5.333	5.333	4.333	3.500	4.625
Nidwalden	4.000	4.333	4.667	4.750	4.438
Glarus	6.000	6.000	6.000	4.000	5.500
Zug	5.000	5.000	3.667	4.250	4.479
Fribourg	3.000	3.000	2.667	2.500	2.792
Solothurn	5.333	5.333	5.333	5.000	5.250
Basel-Stadt	4.667	4.667	4.000	4.250	4.396
Basel-Landschaft	6.000	6.000	5.167	4.750	5.479
Schaffhausen	5.333	5.333	5.167	4.250	5.021
Appenzell A.Rh.	6.000	6.000	4.667	3.000	4.917
Appenzell I.Rh.	6.000	6.000	6.000	3.750	5.438
St.Gallen	3.333	3.667	3.333	3.750	3.521
Graubünden	4.333	5.000	6.000	4.000	4.833
Aargau	5.667	5.667	5.167	5.250	5.438
Thurgau	4.000	4.000	4.333	5.000	4.333
Ticino	1.333	2.667	2.000	3.000	2.250
Vaud	2.333	2.333	2.000	3.000	2.417
Valais	4.333	5.000	4.000	1.000	3.583
Neuchatel	2.667	2.667	2.333	3.250	2.729
Geneve	2.000	2.000	2.000	1.000	1.750
Jura	4.667	4.667	3.000	2.500	3.708

Notes: VIR denotes “Verfassungsinitiativrecht, Constitutional Initiative”, GIR “Gesetzesinitiativrecht, Statutory Initiative”, FRR „Fiscal Referendum“, and GRR „Gesetzesreferendum, Statutory Referendum“.