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Do rules matter? Categorizing the regulation of referendum campaigns

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ABSTRACT

In recent years, democracies around the world have begun to turn increasingly to referendums in order to engage citizens and lessen the distance between government and the governed. There has been a diffusion of guidance on good practice on the regulation of referendums with proposals from the Venice Commission of the Council of Europe and the Institute for Democracy and Electoral Assistance (IDEA), among others. Referendum campaign regulations in particular have proven controversial in many countries with changes often emanating from court rulings (Spain, Ireland and Denmark). The development of theories about the origins and impact of campaign regulations (elections and referendums) has not kept pace with newly emerging practices. This is especially true in the area of referendum campaigns. As a result, there are opportunities for researchers to systematically examine referendums. The field offers increasing scope for researchers to make policy-relevant contributions but first, it is necessary to understand and systematize which campaign regulations are in place before we can understand and assess what impact they have and whether they are in fact operating in the ways assumed. This article proposes an index of campaign regulation and an initial empirical application which allows for systematic cross national comparison of referendum campaign regulations.

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1. Introduction

The institutionalization of mechanisms through which citizens can directly take part in the democratic process is increasingly popular amongst public authorities at different levels of governance. These democratic practices have been implemented in, and spread across, established and emerging democracies and have been driven by both the growing recognition of democratic deficits (Dalton, 2004; Stoker, 2006) and by the imperatives of the third wave of democratization (Huntington, 1991, 1993). According to data from the Centre for Direct Democracy,

presented in Fig. 1, thnational referendums of all types between 1990 and 2013. The data display a clear upward trend with a peak in the 1990s.

For those concerned about democratic deficits and the growing disaffection of many western citizens, referendums provide at least a partial answer. Indeed, among groups who display political disaffection – ‘dissatisfied democratic’ and ‘stealth democratic’ – both are favourably disposed towards direct democracy (Webb, 2013; see also Schuck and de Vreese, this issue). At the same time, the third wave of democratization brought a particular focus on free and fair elections and institution building in emerging democracies. However, the new interest in institutions and in democratic processes was not confined to emerging democracies but became a more widespread international phenomenon Norris (2004: 5). Furthermore, the increase in the number of referendums worldwide has led to a focus on

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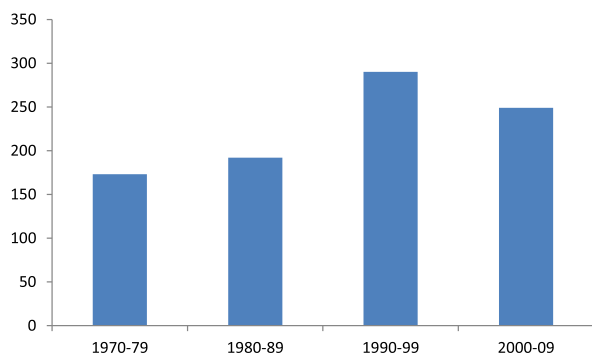


Fig. 1. Number of referendums 1970–2009.
Source: Centre for Direct Democracy

the mechanisms and dynamics of direct democracy (Gilland-Lutz and Hug, 2010; Butler and Ranney, 2004; LeDuc, 2003).

Since 1990, a veritable cottage industry of agencies, have been providing policy guidance on the practice of elections and referendums. Performance indicators, benchmarks and guiding principles are available from international organizations including the United Nations, the World Bank, European Union, Organization for Security and Co-operation in Europe (OSCE) but also smaller bodies with specific focus on electoral issues such as the Institute for Democracy and Electoral Assistance (IDEA), the International Foundation for Electoral Systems (IFES), ACE Electoral Knowledge Network and the Venice Commission of the Council of Europe (CoE).

The IDEA, IFES and CoE have been among the most active in the area of election and referendum management and have contributed a voluminous literature on electoral design, technical assistance on election administration up to and including volumes on the preconditions for a democratic election, regulation of political parties, and manuals on political participation and gender. Procedures for direct democracy votes have been considered as part of this wide focus on electoral design and democratic institution building. In particular, the Venice Commission of the Council of Europe made a series of contributions on direct democracy which culminated in a *Code of Good Practice on Referendums* which was adopted by the Council of Europe in 2007. It provides a comprehensive overview of the legislative and administrative framework in which referendums should be conducted, with a focus on minimum guidelines for good practice in democratic referendums. A year later, the IDEA handbook on *Direct Democracy* was published and it also considers the conduct of direct democracy and provides recommendations on best practice. Recommended referendum regulations range from guidance on the legal basis for holding a referendum to advice on who may initiate a referendum and under what circumstances. Specific campaign regulations usually include donation limits, broadcasting balance requirements and spending caps.

From the point of view of political scientists, the variety of regulations offers welcome opportunities to study the political effects of these rules under a range of institutional settings. Yet despite the long fascination and frequent controversies with money and media, and politics, the

study of regulations governing the interaction of these in a referendum setting, remains an under-theorized one, with few scholars making systematic efforts to find causal relationships or to make cross-national generalizations, due in part to an absence of useful comparable data (a notable exception to this point is Bowler and Donovan, 2013). In addition, underpinning most of the work on democratic assistance, are normative assumptions that particular electoral choices, design features and regulations can bring about predictable democratic outcomes (Ortiz, 1998). Hence, normative assumptions often underpin the predicted outcomes as well as the design features, providing an opportunity for scholars to examine whether these assumptions do indeed hold in practice.

To date much of the work on referendum regulations (IDEA, 2008; Gilland-Lutz and Hug, 2010) is descriptive and dominated by national details. Some researchers, perhaps propelled by the accumulating evidence of these individual country descriptions, have begun to compile more systematic cross-national data on referendum rules and practices however, they are often focused on referendum campaign finance regulations (Zellwegger et al. in Gilland-Lutz and Hug, 2010). Thus, a systematic and coherent comparable body of work is still missing and the first question this article will address is a descriptive one: how can we categorize cross national variation in referendum campaign regulations? Once we have systematically answered this question we can form clearer pictures of cross-national similarities and differences in regulatory environments. At that point, major questions arise which create a substantial research agenda for scholars: how do the regulations matter; what impact do they have, do they influence elections or other political outcomes, do they produce the outcomes assumed by the drafters? To address these questions we need extensive research and the initial step in this article is to create a more explicit comparative framework. Given the wide range and meticulous detail of campaign regulatory options, and the frequency with which the regulations change, this is a daunting task. There are many obstacles involved in assembling a comprehensive and accurate database of referendum regulation. Nonetheless this article endeavours to make an initial contribution in this area, namely by developing an index of referendum campaign regulation and presenting an initial empirical application.

Section two argues that classification of core concepts is a fundamental first step in the comparative study of referendum campaign regulations. Section three examines campaign regulations in detail and draws from the reports and guidance of international agencies and the academic literature. In section four, we go on to suggest an index of referendum campaign regulation. The penultimate section provides a first application of the index while the final section discusses the main findings and gives some suggestions on future applications for the index and further research.

2. Why regulate?

The comparative study of referendum campaign regulation is a lacuna in terms of the literature and as a

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