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Direct democracy in the constitution: good or bad for democracy?

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ABSTRACT

Concerns about democratic decline and deficit have recently led to repeated calls for institutional changes that could enhance civil participation and direct voter participation in public decision-making (forms of direct democracy). An evergreen among the instruments proposed is the referendum, and in particular the constitutionally embedded referendum. This would grant a constitutional right to trigger a referendum and is something that is currently under consideration in the Netherlands. It is often assumed that constitutionally embedded referendums can correct systemic flaws in a representative democratic system, thus enhancing the overall democratic score of a country. This contribution considers these premises. By means of an empirical study, it examines whether the democracy index score of a country is related to constitutionally ratified rights to direct legislative influence of citizens, such as referendums and legislative initiatives by citizens. The initial results indicate that codifying referendum procedures as a constitutional right does indeed positively relate to the democratic scores of countries worldwide. This effect, however, does not hold true for the sample of EU countries studied.

KEYWORDS Direct democracy; constitution; referendum; citizen legislative initiative; democratic deficit; empirical legal studies

1. Introduction

A constitution is undoubtedly a country's single most important legal and political document. No wonder that in our day and age almost every country in the world has one.¹ Constitutions express and enshrine a society's most fundamental norms and values over time. They reflect its overall ideas and principles of governance, and they legitimise the existence and operation of its legal and political system. To achieve this,

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¹97.9% of the 193 countries in the world today have a written, single-document constitution. Some countries have multiple-document constitutions, some countries claim to have an unwritten constitution.

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constitutional democracies rely heavily on the participation of their citizens in decision-making, for example through frequent elections of representatives or officials who will participate in decision-making processes. The democratic election of representatives or officials in large societies, such as modern democracies, implies distance (in time and location) from the voters, therefore necessitating mandates. For this reason, modern democracies are prone to suffering from the principle-agent problem: agents, once elected, are unable to carry out their mandate satisfactorily and develop their own agenda. The overall legitimization of modern constitutional democracies, hinging on the equality of all men and the idea of government by and of the people, is also challenged by changes in the set-up and operation of government. According to Pierre Rosanvallon, we are currently witnessing governmentalisation and presidentialisation of democracies, a process in which governments outstrip representative assemblies (parliaments). As a result, the centre of political gravity in democratic societies has shifted from the relationship between representative and the represented (the electorate) to the relationship between the governors and the governed.² The underlying picture of legitimization seems to fit the frame less and less. Democracies are facing a decline in support for their decision-making more often. The rise of populism, according to some observers, is a consequence of this democratic decline.³ In search of remedies to tackle this decline, many democratic countries have turned to the referendum as a means to reclaim the position of voters in deciding on major policy issues. One recent example is the ‘take back control’ slogan that was used during the Brexit referendum. Supporters of referendums claim that they enhance the overall democratic character of the decision-making process.⁴

Concerns about democratic decline and deficit have led to recurrent calls for institutional changes that could enhance civil participation and direct voter participation (forms of so-called direct democracy). An ever-green among these instruments is the referendum; in particular the constitutionally enshrined referendum. This would grant a constitutional right to initiate a referendum, something currently under consideration in the Netherlands. Even though the Netherlands is a high-trust country with a high ranking in international democracy indexes,⁵ in recent decades persistent calls have been heard for institutional changes

²Pierre Rosanvallon, *Good Government: Democracy Beyond Elections* (Harvard University Press 2018).

³E.g. M.F. Plattner, ‘Is Democracy in Decline?’ (2015) 26(1) *Journal of Democracy* 5; <www.independent.co.uk/news/world/democracy-freedom-house-annual-report-civil-liberties-authoritarian-donald-trump-us-a8763196.html>.

⁴E.g. L. Topaloff, ‘The Rise of Referendums: Elite Strategy or Populist Weapon?’ (2017) 28(3) *Journal of Democracy* 127.

⁵Ranking 8th in the world according to the Economist Intelligence Unit, *Democracy Index 2018: Me Too? Political Participation, Protest and Democracy* (Economist Intelligence Unit 2019) 36.

to increase civil participation and direct democracy.⁶ Referendums seemed to be the instrument of choice, albeit a controversial choice. The binary character of referendums does not seem to rhyme well with the consociational set-up of the Dutch political system with its many political parties, minorities, and the constant need for compromise. Besides, the Dutch constitution does not allow for decisive or corrective referendums (at best only consultative). In order to have a corrective referendum, the Constitution needs to be amended – no mean feat in the Netherlands. The Dutch Constitution has a rigid amendment procedure, requiring two readings in two Houses of Parliament, the dissolution of parliament after the first reading, and a two-thirds majority in both Houses in the second reading. This tall order, however, has not stopped political parties from trying. In two decades of debate, with the heat turned up by a series of consultative referendums, this eventually led to three rejected constitutional bills (in 1999, 2017, and 2022).⁷ All three bills were intended to grant citizens a constitutional right to initiate referendums. The most recent bill,⁸ submitted in 2019 was adopted in both the Lower House of the Dutch Parliament (the Commons) and in the Upper House (the Senate) in the first reading. However, the bill was rejected by the Commons in the second reading on 5 July 2022, with 87 votes in favour of the bill and 55 against it, thereby not reaching the required two-thirds majority, but showing a large majority nonetheless.⁹ Directly after the minority rejection by the Commons in second reading, a new fourth bill has been submitted much to the same effect as the previous three rejected bills.¹⁰ Three failed attempts and a pending fourth attempt in two decades to grant citizens a constitutional right to initiate referendums illustrate that the matter of referendums is very much alive in the Netherlands.

But does the right to direct legislative influence, through referendums or initiating legislation, truly increase the democratic ‘quality’ of a country? Can it help to overcome democratic deficits and (thus) enhance a country’s ‘democratic score’? Or does it, to the contrary, tie in poorly with representative democracy and merely act as an impediment to effective government?

⁶E.g. Eindrapport Staatscommissie parlementair stelsel, *Lage drempels, Hoge dijken* (Boom 2018), (Final report of the State Commission on the parliamentary system in the Netherlands 2018).

⁷On 18 May 1999, the bill ‘Verandering In de Grondwet inzake het correctief referendum’ (*Kamerstukken I (parliamentary papers)* 1998/99, 26 156) was rejected by the Upper House (*the Dutch Senate*); On 23 November 2017, a similar bill ‘Voorstel van wet van het lid Van Raak Tot verandering in de Grondwet, strekkende tot opnemng van bepalingen inzake het correctief referendum’ (*Kamerstukken II* 2016/17, 34 724, nr. 2)’ was rejected in the Lower House.

⁸*Kamerstukken II*, 2018/19, 35 129, no. 3.

⁹*Kamerstukken II*, 2021/22, 35 729, TK,16; TK,17 (voting results).

¹⁰*Kamerstukken II*, 2021/22, 36 160, no. 2 and no. 3.

1.1 Constitutional referendums and initiatives in focus

Constitutionally embedded referendums often come under the premise and promise that they can correct systemic flaws in a representative democratic system, enhancing the overall democratic score of a country. This contribution considers these premises and examines empirically whether the *democracy index score*¹¹ of a country is related to constitutionally ratified rights to direct legislative influence of citizens, such as referendums and legislative initiatives by citizens. A democratic deficit implies a low democratic score. Referendums harbour – it is often believed – the potential to increase this score. They are, whatever their defects, arguably ‘the best way of knowing the popular will’ as Taillon recently put it.¹² The problem with measuring how referendums do or do not contribute to democracy, however, is that they come in very different sorts, shapes, and sizes, and that democracies differ in set-ups (consensus or majoritarian), traditions and contexts. Empirical studies on the democratic effects of referendums are, perhaps for these very reasons, still relatively new.¹³ One of the main findings up till now is that there are some indications that direct democracy ultimately seems to foster consensus democracy rather than the majoritarian type.¹⁴ But still, this does not tell us much about the particular effect of these instruments on the overall democratic score of a country. To understand this overarching effect on the national democratic score, this contribution, therefore, takes another route, and uses a different lens. Even though direct democracy, due to its differing forms and contexts, is elusive to comparatists, a thing that we *can* compare, nowadays, is whether the constitution of a country is equipped with a provision which grants citizens a right to initiate a referendum or legislation. The Constitute database contains the English text of all 192 constitutions in the world today, allowing for a complete textual comparison. This allows us to relate these provisions of a country’s constitution to the different (democracy) ‘scores’ of another country and see whether or not there are correlations. This also allows us to examine whether constitutional instruments like this ‘work’, by looking at what and how (much)

¹¹Henceforth referred to as ‘democratic score’.

¹²Taillon’s full quote: ‘Of course, referendums, like any means of aggregating the collective will, have many defects that can distort the results of a vote. However, those defects in no way alter the fact that referendums remain, among the available options, the best way of knowing the popular will.’ Patrick Taillon, ‘The Democratic Potential of Referendums: Intrinsic and Extrinsic Limitations’ in Laurence Morel and Matt Qvortrup (eds), *The Routledge Handbook to Referendums and Direct Democracy* (Routledge 2019) 184.

¹³L. Morel and M. Qvortrup (eds), *The Routledge Handbook to Referendums and Direct Democracy* (Routledge 2019).

¹⁴Stefan Vospernik, ‘Referendums and Consensus Democracy; Empirical Findings from 21 EU Countries’ in Morel and Qvortrup (n 13) 144.

they contribute the overall democratic score of a country. Hence, our research question reads:

Is the Democracy Index Score of a country positively related to constitutionally ratified rights and procedures guaranteeing direct legislative influence for citizens, through referendums and/or initiating legislation by citizens?

This contribution presents a cross-country analysis of the effects of such constitutional rights. The sample takes into account all countries throughout the world. Subsequently, a distinction is made between EU countries and non-EU countries. The reason for this distinction is that EU countries have a common treaty that features an executive and a common court guaranteeing democratic values and the *rule of law*, which converges their systems and therefore their democratic scores.¹⁵ Close geopolitical and historical relations have also influenced political regimes over time.¹⁶ The other subsample features non-EU countries. This provides interesting insights into the operation of direct forms of legislative influence by citizens, in both EU and non-EU countries alike.

To analyse and answer the research question, an empirical study was conducted. Section 2 of this paper summarises the literature on direct democracy, and referendums more specifically. Both concepts are the focus of much scholarly debate, not seldom asserting normative claims sensitive to political beliefs. Previous empirical studies on these subjects are also examined. Section 3 proceeds to introduce the methodology for this study, emphasising the variables taken into account. Relevant bivariate regressions are described in Section 4. Multivariate results of our empirical analysis are presented and discussed in Section 5, offering possible explanations for the results that were observed, and placing this research in a broader context and discussing its wider implications. Finally, Section 6 provides several conclusions.

2. The state of art of referendum studies

Even though referendums are age-old instruments (going back at least two centuries or more), in recent decades they have returned to centre stage as a result of democratic developments, volatile electorates, political drifts, and instability in many countries. Referendums were considered a remedy for various democratic ailments, and the instrument and its effect have been studied and analysed in much depth.¹⁷ The instrument of the citizen's right to initiate legislation, however, has not received the same level of attention. Up till now, the particular effects of *citizen's rights to initiate legislation*

¹⁵ibid 129.

¹⁶E.g. a large majority of EU countries features a parliamentary regime.

¹⁷Matt Qvortrup, *Government by Referendum* (Manchester University Press 2018), Chapter 1: The world history of referendums, 4–19.

have received scant academic attention and study, let alone empirical research. This may be due to the altogether less dramatic effect of such initiatives.¹⁸ They are more a form of *participating* in decision-making, rather than *deciding* on policy issues. In other words, legislative initiatives by citizens usually follow a legislative procedure including iterative exchanges of arguments and views, rather than a one-way process on a binary question or issue resulting in the full stop of a final decision in a referendum.

But before taking a closer look at the instrument of constitutionally enshrined citizen's legislative initiatives and the available studies and literature, some of the key concepts must first be considered more closely, well-distinguished and defined. What is direct democracy and what procedures qualify as a form of direct democracy? First of all: what is a referendum and what counts as a citizen's legislative initiative? Where do the constitutionally enshrined initiatives fit in? On this basis, we map the relevant literature on referendums and initiatives and look into their pros and cons discussed. Finally, since this study takes an empirical approach, we present an overview of some of the most important empirical research in this regard.

2.1 Definitions: direct democracy, referendums, and the legislative initiative

In this contribution we will stick to the following definition of direct democracy:

Direct democracy is any procedure which allows citizens to participate directly in political decision-making.

This is direct democracy broadly understood, and implies a great number of procedures, ranging from a direct ballot vote on policy issues or (legislative) propositions initiated by citizens or a governmental authority,¹⁹ to raising issues on the decision-making agenda without the mediation of parliamentary actors (an initiative).²⁰ Therefore, it includes both referendums and the initiation of legislation by citizens.

The initiation of legislation by citizens is considered to be included in the definition of direct democracy, because it allows citizens to directly participate in policymaking. Legislative initiatives, however, do not *decide* on

¹⁸Research on the use and effectiveness of the legislative initiative in particular States of the USA has been done, see D.B. Magleby, 'Direct Legislation in the American States' in D. Butler and A. Ranney (eds), *Referendums Around the World* (Macmillan 1994). See also Vospernik (n 14) and more in general Morel and Qvortrup (n 13).

¹⁹Theo Schiller, 'Local Referendums: A Comparative Assessment of Forms and Practice' in: Morel and Qvortrup (n 13) 60–80.

²⁰Maija Setälä, 'Introduction' in Maija Setälä and Theo Schiller (eds), *Referendums and Representative Democracy. Responsiveness, Accountability and Deliberation* (Routledge 2009) 1–14.

matters of policy in the way that referendums usually do. The legislative initiative, though initiated by citizens as a proposal to solve a policy issue, is still subject to (parliamentary) review, simply because it is an initiative. The initiative can therefore also be defined as a consultation initiated by *popular minorities*.²¹ The legislative initiative might also be considered as an extension of the representative democratic process, by bringing more actors to the table to set the agenda on policy. Referendums, on the other hand, are determinative in the sense that a majority votes for one side or the other. In other words, it is one thing to be able to participate in policy-making by raising issues (the legislative initiative), it is quite another to decide on policy through a vote (the referendum). Since direct democracy is an umbrella term, in this contribution it is also referred to as the right to direct legislative influence.²²

Moreover, the referendum itself is also an umbrella term, as there are many types of referendums. The word ‘referendum’ stems from the Latin verb ‘referre’: ‘to bring back’ something. Literally, referendum means something that must be or needs to be brought back. Nowadays, the term ‘referendum’ refers to any popular vote on a policy issue, and can be considered a *policy-making device*.²³

There is a range of different ways to determine types, forms and shapes of referendums that are useful in different situations. Morel writes that the high diversity of forms of referendums explains why it is so difficult to formulate one global theory on referendums. Morel’s very instructive chapter ‘Types of Referendums’ develops a typology that distinguishes seven types,²⁴ bringing order in the chaos. The scale or yardstick used to classify a referendum is based on the extent of legislative power granted to the people.²⁵ Morel introduces five key variables to further classify types of referendums: (1) *mandatory/optional referendum*; (2) *minority initiated/government initiated referendum*; (3) *propositive/semi-propositive/non-propositive referendum*; (4) *subject matter* further distinguished between *legislative/constitutional referendums*; and (5) *advisory/binding referendums*.²⁶ Though most types

²¹Laurence Morel, ‘Types of Referendums, Provisions and Practice at the National Level Worldwide’ in Morel and Qvortrup (n 13) 27–59, 28.

²²Cf. Matt Qvortrup, ‘The History of Referendums and Direct Democracy’ in Morel and Qvortrup (n 13), 22. Qvortrup in fact believes citizens’ initiatives go *one step further* than referendums, precisely because they allow citizens to initiate legislation rather than vote on proposals initiated by the elites.

²³Morel (n 21) 27.

²⁴ibid 34.

²⁵ibid 28.

²⁶ibid, with each variable entailing multiple extra distinctions. Other distinctions made in earlier literature include e.g. Markku Suksi, *Bringing in the People. A Comparison of Constitutional Forms and Practices of the Referendum* (Martinus Nijhoff 1993), who distinguishes between pre-regulated, passive, decisive and facultative forms, in either international, constitutional or legislative referendums or through policy votes; Butler and Ranney (n 18) categorize referendums by their subject matter: constitutional issues, territorial issues, moral issues and other issues, see: D. Butler and A. Ranney, *Referendums Around the World: The Growing Use of Direct Democracy* (Macmillan 1994) 2.

of referendums, based on these variables, have found their way into legal institutions – especially constitutions – throughout the world, minority initiated referendums come well behind mandatory and governmental referendums in terms of the percentage of countries that allow them.²⁷ Referendums have found their way into legislative institutions especially in countries that became democracies after 1989 and included referendum provisions as part of their democratisation process.²⁸

Besides different types of referendum, there are important differences among referendums depending on the type of political regime. Authoritarian or semi-authoritarian leaders who put issues to a popular vote rarely have to fear surprise outcomes of the sort that confronted the British prime minister following the Brexit referendum. Qvortrup argues that by grouping together the votes under the term ‘referendum’ held in fully democratic societies and those held in partially democratic or even authoritarian States, such a group becomes so broad that it is rendered analytically meaningless.²⁹ *Mutatis mutandis* one could argue that this would apply to the codification of the right to participate directly as a citizen in authoritarian States as well. It is precisely the goal of this study to examine whether the relationship between the constitutional right to initiate referendums and legislation and the democracy index score of a State is statistically significant and, if so, whether it really is analytically meaningless.

Notwithstanding the importance of a nuanced view on different types of referendums, this contribution does not distinguish between the different types of referendums or different forms and shapes that it can take in each constitution. This approach was adopted because each referendum is dependent on being initiated in the first place – which a constitutional procedural right to initiate a referendum guarantees (or should guarantee).

2.2 Prescriptive literature

Democracy – rule of and by the people – should be cherished. That said, referendums that directly consult the people on a specific political issue, have the potential to destabilise *representative* democracy. Representative democracy is a practical adaptation to increasing numbers of population. To what extent should this practical adaptation be sidelined by a direct consultation of the people, if this direct consultation interferes with all other political issues that have been trusted to the representatives? Debates on direct democracy usually centre precisely around the advantages and disadvantages of direct democracy, and to what extent citizen-initiated referendums and

²⁷Morel (n 21) 36.

²⁸*ibid* 35.

²⁹M. Qvortrup, ‘The Rise of Referendums: Demystifying Direct Democracy’ (2017) 28(3) *Journal of Democracy* 142–3.

legislation could either supplement or undermine representative democracy.³⁰ The debate whether to take up a constitutional right to initiate referendums (and/or legislation) is quickly side-lined, as a debate on this subject naturally gravitates towards the question of whether direct democracy undermines or supplements representative democracy. Broadly speaking, most authors contend that allowing for direct democratic intervention in representative political decision-making has advantages, but they disagree on the scope of such institutions. Some even argue that direct means to participate are necessary in a democracy for a State to be truly and fully democratic.³¹

It is difficult to analyse to what extent referendums, or other means to incorporate direct forms of democracy, actually complement the legitimacy of governmental action. There are two main theories on the utility and practical effects of referendums: the ‘Christmas tree’ theory, and the ‘correction’ theory. The former argues that procedures guaranteeing referendums do not necessarily complement representative democratic decision-making, but serve as constitutional Christmas decoration,³² dressing up the constitution to give it a more ‘democratic look’. The latter argues that referendums serve the purpose to correct and complement decision-making in a representative democracy, filling gaps in policy issues, and consequently enhancing legitimacy of government. There are two subvariants to the correction theory. The first subvariant, voiced by Dicey writing at the end of the nineteenth century, argued that the referendum should be introduced as a democratic safety valve. This could only be triggered if the representatives – parliament – violated the principle that statutes enacted were consistent with the will of the majority.³³ If such tensions were to arise, the referendum could serve as a last option to release popular pressure on topics that the ordinary political process failed to address. In this way, a referendum could supplement the representative democracy, as it strengthens the grip of the people on the representatives, while not simultaneously hijacking other political issues. Referendums are thus a *necessary* power to counterbalance the powers of the aberrations of representative democracy, placing it within the constitutional system of checks and balances.³⁴

³⁰Demonstrated throughout: Maija Setälä and Theo Schiller (eds), *Referendums and Representative Democracy. Responsiveness, Accountability and Deliberation* (Routledge 2009), stating in the preface that whether referendums supplement or undermine representative democracy depends on a range of institutional factors and also on a nation’s traditions and political culture.

³¹Vernon Bogdanor, *The People and the Party System. The Referendum and Electoral Reform in British Politics* (Cambridge University Press 1981) 91–93.

³²E.g. Suksi (n 26) 176, subsequently stating that ‘the function of the policy vote [referendums] is probably to increase the *prima facie* legitimacy of the constitution and the political system’.

³³Albert Venn Dicey, *Introduction to the Study of the Law of the Constitution* (First published 1885, Liberty Classics 1982) cviii–cix; see also Albert Venn Dicey, ‘The Referendum and Its Critics’ (1910) 212 *Quarterly Review* 538; Matt Qvortrup, *A Comparative Study of Referendums: Government by the People* (Manchester University Press 2002) 51–73.

The referendum could thus be seen as a consequence of a malfunction on the input side of the political system. If political parties do not respond to demands articulated by the groups outside the political system, this can be resolved by using an alternative aggregator, namely the referendum.³⁵

The other subvariant focuses on the complementary role of referendums in policymaking by political actors – usually advisory in nature. Referendums as proposed in this subvariant help steer government in the direction of the will of the people, even *before* bills are proposed that go against the will of the majority. The correction theories thus argue that ‘by developing mechanisms for letting off political steam in the form of referendums, the political system seems to have become more legitimate’, though it is recognised that hard evidence is hard to come by.³⁶

Besides forming a check on governmental action, direct democracy increases the participation of citizens,³⁷ indispensable for a healthy democracy. Even more so, in a modern society with highly educated and well-informed citizens, citizens should be taken more seriously and given more direct influence.³⁸ Introducing citizen-initiated mechanisms of direct democracy, such as citizen initiatives calling for referendums and legislation, constitute an important viable way forward among the menu of democratic innovations to reinvigorate current democratic regimes.³⁹ Referendums introduce an additional linkage mechanism into the political process of representative democracy,⁴⁰ improving the quality of the relationship between government and people,⁴¹ as well as increasing governmental legitimacy.⁴² This is most likely true for all variants of representative democracy regardless of their parliamentary, semi-presidential or presidential nature.⁴³

Bogdanor goes as far as to state that ‘arguments against the referendum are also arguments against democracy, while acceptance of the referendum is but a logical consequence of accepting a democratic form of government’.⁴⁴ He, therefore, argues for wide use of the referendum. It seeks to replace part of the sovereignty of parties by the sovereignty of the elector,

³⁴Qvortrup, *A Comparative Study of Referendums* (n 33) 53.

³⁵Qvortrup, *Government by Referendum* (n 17) 22.

³⁶ibid 24.

³⁷Butler and Ranney (n 18) 15; J.G. Matsusaka, ‘Direct Democracy Works’ (2005) 19(2) *The Journal of Economic Perspectives* 185.

³⁸A. Michiels, ‘Ideological Positions and Referendums’, 54–76 in Setälä and Schiller (n 30) 71–72.

³⁹D. Altman, *Citizenship and Contemporary Direct Democracy* (Cambridge University Press 2018).

⁴⁰See also: Dicey, ‘The Referendum and Its Critics’ (n 33) cviii–cix; D. Altman, *Direct Democracy Worldwide* (Cambridge University Press 2011); S. Binzer Hobolt, *Europe in Question: Referendums on European Integration* (Oxford University Press 2009).

⁴¹Bogdanor (n 31) 91–93.

⁴²Butler and Ranney (n 18), 14; A. Drummond, R.J. Dalton and W. Burklin, ‘Public Opinion and Direct Democracy’ (2001) 12(4) *Journal of Democracy* 141.

⁴³Setälä and Schiller (n 30) xv.

⁴⁴Bogdanor (n 31) 91. See also: C. Schmitt (translated by E. Kennedy), *The Crisis of Parliamentary Democracy* (first published 1926, MIT Press 1985).

as their functions are complementary. The referendum ensures that the electorate is consulted on major issues in case a decision by the government would not *prima facie* be accepted by voters as legitimate. However, Bogdanor does recognise that the referendum cannot do much to secure popular involvement on social and economic matters. In this sphere, decisions are often complex and interconnected, and cannot be separately referred to the voters. Therefore, the main instrument of popular participation must remain the choice of government.⁴⁵

There are arguments opposing direct democracy – or (constitutional) rights to initiate referendums. Opponents of direct democracy generally present direct democracy as the antithesis of representative democracy. First, ordinary citizens might not have the analytical skills nor the information to make ‘wise’ or well-considered decisions.⁴⁶ Decisions by elected officials involve weighing the intensity of preferences and merging the legitimate interests of many groups into policies that will give all groups something of what they want.⁴⁷ Second, initiated referendums or legislation by citizens might interfere with other democratic processes and the structure of democratic representation, causing political, constitutional, and economic problems.⁴⁸ Furthermore, it is argued that decisions made by representatives are more likely to protect the rights of minorities. Pleasing the majority does not necessarily make a policy ‘good’, and could potentially allow the majority to ‘tyrannise minority groups’.⁴⁹ Moreover, allowing elected officials to be bypassed and by encouraging officials to evade divisive issues by passing them on to the voters, referendums weaken the prestige and authority of representatives and representative government.⁵⁰ Subsequently, it could undermine the existing institutions of representative democracy, as representative democracy assumes that politicians should be competent to make political decisions. If they are not, democracy has an inherent mechanism by way of elections to filter out incompetent politicians.

In addition, holding too many referendums in a short time will make it difficult to govern adequately due to limited voting options and high unpredictability of the outcome.⁵¹ This might become especially problematic if citizens have a constitutional right to initiate referendums, and might overload the legislature. Simultaneously, frequent recourse to referendums can

⁴⁵Bogdanor (n 31) 259.

⁴⁶Butler and Ranney (n 18) 17; Topaloff (n 4) 135.

⁴⁷Cf. S. Issacharoff, ‘Democracy and Collective Decision Making’ (2008) 6(2) *International Journal of Constitutional Law* 231.

⁴⁸R. Podolnjak, ‘Constitutional Reforms of Citizen-Initiated Referendum’ (2015) 26 *Revus* 129; cf. Topaloff (n 4) 127.

⁴⁹Matsusaka (n 37) 200; see also: Butler and Ranney (n 18) 261.

⁵⁰Butler and Ranney (n 18) 18.

⁵¹Michiels (n 36) 71–72.

contribute to a special political culture in which politicians are inhibited for good or ill, from acting as representatives.⁵² Moreover, referendums and direct democracy introduce a competing source of legitimacy which is in tension with the basic constitutional principles of representative democratic systems.⁵³

Furthermore, Arrow has shown⁵⁴ it is impossible to create rank order voting systems with three or more alternatives that can convert the aggregate of individual preferences to a collective preference of the electorate, while simultaneously satisfying the criteria of (1) independence of irrelevant alternatives,⁵⁵ (2) citizens' sovereignty,⁵⁶ and (3) a non-dictatorship.⁵⁷ In other words, the result of a referendum or plebiscite as an aggregate of individual preferences cannot adequately reflect the electorate's (collective) preference, without also always allowing one voter, the dictator, to possess the power to determine the preference of the collective at will. It can be argued that the resulting impossibility as posed by Arrow leads to the conclusion that referendums as a method to deduce the people's will is therefore unsuitable because one of the three mentioned criteria can never be fulfilled. Therefore, even if referendums do not have a binary character but allow for a greater number of alternatives, it does not necessarily resolve the issue of a democratic deficit. Taking the axioms of Arrow's paradox leads to an inevitable skepticism towards referendums due to the conclusion that no alternative policy based on referendums does justice to the electorate's (collective) preference, without also always allowing for one voter that may flip the vote at will.

Outside scholarly literature, reports on enhancing democratic participation have also addressed the adding of constitutional rights to the direct legislative influence of citizens. The International IDEA Constitution-Building Primer for example recommends 'Constitution-makers [...] to consider mechanisms of direct and participatory democracy that have been developed to complement the representative process.'⁵⁸

⁵²Butler and Ranney (n 18) 260.

⁵³Topaloff (n 4) 137.

⁵⁴K.J. Arrow, 'The Concept of Social Welfare' (1950) 58(4) *Journal of Political Economy* 328.

⁵⁵*ibid* 337; Indicating that if every voter's preference between alternative A and B remains unchanged, then the group's preference between A and B will also remain unchanged (even if voters' preferences between other pairs like C and D, A and D, or B and C change). For further proof of this theorem, see also: A. Gibbard, 'Manipulation of Voting Schemes: A General Result' (1973) 41(4) *Econometrica* 587; and M.A. Satterthwaite, 'Strategy-Proofness and Arrow's Conditions: Existence and Correspondence Theorems for Voting Procedures and Social Welfare Functions' (1975) 10(2) *Journal of Economic Theory* 187.

⁵⁶*ibid* 338; Indicating that if every voter prefers alternative A over B, then the collective prefers A over B.

⁵⁷*ibid* 339.

⁵⁸E. Bulmer, *Direct Democracy* (International IDEA Constitution-Building Primer 3) 5.

2.3 Previous empirical studies

Qvortrup asks why people have begun to demand referendums, especially after 1970, and follows this up with the question whether this indicates that the world has become more democratic.⁵⁹ The relationship between democracy – or the perception of what democracy means to citizens – and referendums is latent, but providing evidence to answer such questions has proven difficult. Studying the effects of direct democracy through empirical research has become commonplace, proving it a viable way forward to show the effects of direct democracy – especially referendums. Empirical studies throughout the literature have shown various methodological approaches, ranging from the usage of referendums globally or limited to a specific country, to studies concerning the effects of direct democracy on public trust in government and its relation to democratic or authoritarian regimes, to comparing the utility of different institutions ensuring direct democratic procedures. This section provides a non-limitative overview of empirical studies that have previously been conducted on the effects of direct democratic procedures. The present study provides a contribution to these earlier studies. It complements the field with the relationship between democratic scores and constitutionally enshrined procedures of direct democratic participation, and it also touches on other variables that might be valuable in understanding (the viability of) direct democracy.

First, Suksi's research dating from 1993, one of the first large empirical studies conducted on this topic, indicates that the referendum is not necessarily detrimental as such to parliamentarism, answering part of the debate on whether direct democracy and representative democracy are mutually exclusive. However, there might be types of referendums, such as the policy vote, which contain a potential for disrupting the workings of a parliamentary system.⁶⁰ Suksi's empirical work tested whether the referendum is related to certain constitutional elements and different social indicators, attempting to discover whether there are general patterns which could explain the existence or form of the institution of the referendum. Based on his results, he finds that 'there might be something of a case for calling the institution of the referendum a Christmas-tree decoration used to brighten up constitutions'. Though these results are interesting and provide valuable insights, especially into the historical development of rights to initiate referendums in constitutions, the statistical results remain ambiguous and point in different directions.⁶¹

In 2009, Sager and Bühlmann studied whether direct democracy undermines or supplements representative democracy in Switzerland, by shifting

⁵⁹Qvortrup, *Government by Referendum* (n 17) 21.

⁶⁰Suksi (n 26) 274.

⁶¹*ibid* 176.

the focus from the dominant perspectives on politics (e.g. voter turnout, influence seeking) to the question of policy preferences and actual decision outcomes – that is, the output side of the political system.⁶² Their results show a gap between the electoral strength of all parties recommending acceptance and the actual acceptance in a referendum.⁶³ They conclude that there is a clear gap between the citizenry's policy preferences expressed in elections and those expressed in popular votes, which indicates that direct democracy serves as a means of administering checks.⁶⁴ So, direct democracy supplements rather than undermines representative democracy.⁶⁵ This point is strengthened by Peters, who shows that institutions that support direct democracy while complementing representative democracy have a positive effect on voter turnout, strengthening democracy as a whole.⁶⁶ However, Peters also suggests there is a qualitative difference in the effect of the type of institutions that allow people to participate directly. When direct democracy institutions compete with representative democracy, a *zero-sum effect* is observed.⁶⁷

Matsusaka has further shown that referendums as instruments increase the participation of citizens on local legislation.⁶⁸ Moreover, he argues that allowing the general public to participate in law-making improves the performance of government,⁶⁹ subsequently increasing perceived legitimacy of political decisions. Kapstein and Converse made a compelling case that political institutions play a crucial role in democratic consolidation. Especially institutions that place effective constraints on executive power are taken to be of special importance for democratic consolidation.⁷⁰ Direct democratic procedures in the constitution may further strengthen constitutional constraints on the executive power.

Though referendums might look favourable to authoritarian States, increasing legitimacy for autocratic decisions by claiming to represent the 'will of the people', Qvortrup has instead shown that the use of referendums (or plebiscites) in autocratic countries has decreased, indicating that direct democracy is not an instrument authoritarian regimes are likely to use. He states that constitutional constraints are in fact the

⁶²F. Sager and M. Bühlmann, 'Checks and Balances in Swiss Direct Democracy' in Setälä and Schiller (n 30) 186.

⁶³ibid 194–97, table 10.1.

⁶⁴ibid 200.

⁶⁵ibid 201.

⁶⁶Y. Peters, 'Zero-Sum Democracy? The Effects of Direct Democracy on Representative Participation' (2016) 64(3) *Political Studies* 593; See also: D.C. Mutz, *Hearing the Other Side: Deliberative Versus Participatory Democracy* (Cambridge University Press 2006); G. Smith, *Democratic Innovations: Designing Institutions for Citizen Participation* (Cambridge University Press 2009).

⁶⁷Peters (n 66) 594.

⁶⁸Matsusaka (n 37) 189–90.

⁶⁹ibid 201.

⁷⁰E.B. Kapstein and N. Converse, 'Poverty, Inequality, and Democracy: Why Democracies Fail' (2008) 19(4) *Journal of Democracy* 57.

actual driving forces behind many referendums in democracies. This is particularly interesting, as it seems to argue that guaranteeing constitutional rights to initiate referendums provides a vital or fundamental check in a democracy on government,⁷¹ indeed placing the referendum under the correction theory.

More recently, Vospernik studied the interplay between direct democracy and both Lijphart's models of democracies: the majoritarian Westminster model and the consensus or consociational model.⁷² Vospernik operates from the assumption that direct democratic procedures, especially referendums,

may either reinforce the normal circulation of power that originates from the executive, which binds the legislature and subsequently the people. Or it may revert to an 'idealistic' power cycle, originating from the people who bind the legislature and subsequently the executive.

The former is defined as *governmental* direct democracy, while the latter is defined as *oppositional* democracy. He shows that governmental democracies tend to pair with the majoritarian model of democracy, while consensus democracy tends to pair with oppositional democracies, empirically confirmed with data from over 200 referendums held between 1990 and 2015 in the EU. Particularly important from an empirical perspective, is the operationalisation to measure the 'amount' of direct democracy in a State by introducing a value system for features of institutions of direct democracy, as well as the operationalisation of features of a political system.

With this vast amount of literature (and more) available to build on, it seems appropriate to expand and supplement these existing studies with the relationship between the constitutional right to direct democratic influence and the degree of democracy in a country. Remarkably, empirical studies have found evidence for the correction theory, yet have found no indisputable evidence for direct democracy being detrimental to democracy as such. The present study contributes to insights on the practical working of direct democratic tools embedded in constitutions.

3. Research method

Inspired by the literature and empirical studies mentioned above, this study will shed light on the question whether constitutionally enshrined rights and procedures that guarantee direct legislative influence of citizens do in fact positively correlate with a higher democratic index score. This

⁷¹Qvortrup, 'The Rise of Referendums' (n 29) 142.

⁷²Vospernik (n 14) 123–46; A. Lijphart, *Patterns of Democracy: Government Forms and Performance in 36 countries* (2nd edn, Yale University Press 2012) 9–45.

Table 1. Variable coding and data sources.

Variables	Coding and sources
Democracy Index Score	The dependent variable, sources: The Economist Intelligence Unit 2019, <i>Democracy Index 2018: Me Too? Political Participation, Protest and Democracy</i> . https://worldpopulationreview.com/countries/democracy-countries
Constitutional right to initiate referendums/citizen legislative initiatives	0 if the constitution contains neither of the rights, 1 if the constitution only contains the right to initiate referendums, 2 if the constitution contains both rights, ^a source: https://www.constituteproject.org
Political system/regime	0 if the regime is neither parliamentary nor presidential, 1 if the regime is presidential, 2 if the regime is semi-presidential, 3 if the regime is parliamentary.
Corruption rate	0–10, with 0 meaning highly corrupt and 10 meaning non-corrupt/very clear, source: ^b https://www.transparency.org/en/cpi/2019/results/table
GDP per capita	Measured in US dollars, source: https://data.worldbank.org/indicator/NY.GDP.PCAP.CD
Population	Source: https://www.worldometers.info/world-population/population-by-country/

^aThere is no constitution with only the right to legislative initiatives for citizens, see Section 3.2 for further explanation.

^bThe corruption perception index score has been divided by 10 for the purpose of this research.

would further substantiate the body of literature on the topic of direct democracy.

The null-hypothesis (H_0) of this study is therefore that the democratic score of a country is *not positively* related to constitutionally ratified rights and procedures to direct legislative influence of citizens, such as referendums and legislative initiatives by citizens. Note that this study does not claim a *causal* relationship between rights or procedures in the constitution that ensures direct influence of citizens and the democratic index score, but merely seeks to clarify the relationship or correlation between the two. It should also be noted that national regulations or laws that allow a form of direct democracy are not included in this study. This article solely concerns forms of direct democracy being enshrined in the constitution.

Six variables are coded to test the null-hypothesis. The dependent variable is the democracy index score. The five explanatory variables are: the presence of a constitutional right to referendums/citizen legislative initiatives; the political system/regime; the corruption rate; the GDP per capita; and the population (see Table 1). Each independent variable might influence the dependent variable in its own way, as discussed under sections 3.1–3.7. All data was gathered from open sources, using the most recent data available (2018/2019/2020). Of course, there are other factors that may influence the democratic score, and so the explanatory capacity of our analysis is open to improvement. It should also be noted that some countries were dropped due to less availability of data (for

example, not every country has a constitution,⁷³ or a democratic score). Still, using the following variables it is hoped that at least some understanding can be gained of the importance of these variables in relation to the democratic score.

3.1 Democratic score

The dependent variable – the Democracy Index Score – is an index compiled by the Economist Intelligence Unit (EIU). The index measures the scores of democracy in 167 countries. Each country was given a score between 0 and 10 based on 60 indicators; 0 indicating not democratic at all, and 10 indicating extremely democratic.⁷⁴ The Netherlands, for example, has a high democratic score of 8.89, while Vietnam has a democratic score of 3.08.

3.2 Constitutional right to initiate referendums/citizen legislative initiatives

The database provided by [Constituteproject.org](https://www.constituteproject.org) served as the primary source. This database contains all the world's constitutions with an English translation. Each constitution was checked to see whether it contained a provision that allows for direct influence on legislation by citizens, by initiating referendums or legislation.⁷⁵ For instance, the constitution of Brazil has a provision about initiating referendums;⁷⁶ the constitution of Italy has a provision about initiating legislation by citizens;⁷⁷ the Netherlands has none.

Constitutions featuring only the right to initiate legislation by citizens do not exist. However odd, this might be practically explained since referendums could be considered a more definitive step in the process of challenging policies, or repealing, amending, or initiating legislation. Furthermore, one might expect that during the drafting of a constitution it seems unnatural to grant citizens the right to initiate legislation. This would launch a legislative procedure which leaves open the possibility that parliament will not

⁷³According to [Constituteproject.org](https://www.constituteproject.org), there are 195 constitutions in force (checked 5 May 2020). The constitution of the U.K. is a difficult case, due to its unwritten nature. It is, therefore, debatable whether the constitution of the U.K. has any of the (constitutional) rights to initiate legislation or referendums. For the purposes of this research, the U.K. was considered to be an outlier, using written constitutions only, avoiding debates on whether a constitution contains certain rights or not.

⁷⁴The Economist Intelligence Unit (n 5) 48–50.

⁷⁵The constitutions of Chile, Iceland and Libya have a draft of a Constitution that includes a right to initiate legislation by citizens, but these have not yet entered into force. Therefore, the constitutions of these States received a 1, and not a 2. The Chilean draft of the constitution was rejected by referendum on 5 September 2022. The drafting process, however, continues.

⁷⁶Art. 14 Brazilian Constitution: *Popular sovereignty shall be exercised by universal suffrage, and by direct and secret vote, with equal value for all, and, as provided by law, by: [...] referendum.*

⁷⁷Art. 71 Italian Constitution: *The people may initiate legislation by proposing a bill drawn up in sections and signed by at least fifty-thousand voters.*

budget, while not simultaneously codifying the right to directly challenge a policy issue through a single ballot vote in a referendum, be it initiated by the people or the government. Still, it is worth mentioning that it is not out of the question that a State allows for a legislative initiative based on national law, but not for a referendum. For example, the Dutch constitution currently does not allow for binding referendums on national law (parliamentary acts, statutory instruments, etc.),⁷⁸ but it does allow citizens to initiate legislation through a legislative initiative (*burgerinitiatief*). Even though the right to table bills is exclusively granted to government and (Members of) Parliament under the Dutch Constitution (Article 82), legislative initiatives are considered as the exercise of the constitutional right to petition (Article 5), a fundamental right of every Dutch citizen.

Because of the three possibilities in our constitutional reality, three groups were distinguished and coded as follows: 0 if the constitution contains neither the right to initiate a referendum nor the right to initiate legislation; 1 if the constitution only contains the right to initiate referendums; and 2 if the constitution has both procedures codified in its constitution.

3.3 Political system/regime

The second independent variable is the political system or regime of each country. Countries that, for example, do not have absolute monarchies, sultanates, or other autocratic regimes, were coded as 0; countries featuring a presidential system score 1; countries featuring a semi-presidential system score 2; and countries featuring a parliamentary system score 3. This scale was chosen because it reflects to some extent the power that the executive has in relation to a parliament.⁷⁹ Presidential regimes, in particular, are more prone to gravitating towards authoritarianism than parliamentary regimes, justifying the 0–3 scale.

Incorporating the political regime as an explanatory variable is indispensable. First, countries that do not intend to be democratic, will not invest in becoming more democratic. Second, countries that aim to be democratic vary in institutional set-up, with presidential and parliamentary regimes being the most common systems for achieving that aim. In academic literature, it has been debated whether parliamentary or presidential regimes serve democratic institutions better.⁸⁰ The degree to which States function well

⁷⁸Though the Netherlands did briefly have such an act, the *Wet Raadgevend Referendum* which allowed for non-binding referendums (Consultative Referendum Act). It was repealed in July 2018.

⁷⁹Cf. Morel (n 21).

⁸⁰There is an immense amount of literature on this topic. One example of such a debate was started by J. Linz, 'The Perils of Presidentialism' (1990) 1(1) *Journal of Democracy* 51; which was answered by S. Mainwaring and M. Shugart, 'Juan Linz, Presidentialism, and Democracy: A Critical Appraisal' (1997) 29(4) *Comparative Politics* 449; R. McManus and F. Gulcin Ozkan, 'Who Does Better for the Economy? Presidents Versus Parliamentary Democracies' (2018) 176 *Public Choice* 361. Semi-

democratically, could be related to the influence of parliament on legislation or the executive in the form of a president on policy.⁸¹ Lastly, as Qvortrup notes, regime type matters if one is to truly understand whether direct democracy enhances democracy or whether it is just used as a vehicle for an authoritarian regime.⁸²

3.4 Corruption rate

Since corruption and the strength of a democracy seem to be related,⁸³ it is essential to include corruption rates in this empirical analysis to gain a better understanding of this dependent variable. As Larry Diamond has written, ‘Economic inclusion is closely related to political inclusion and, thus, to democratic deepening.’⁸⁴ Citizen participation forms a check on government in democracies. With lower citizen participation, or possibilities to participate, a higher corruption rate is likely. If this indeed affects the democratic score, then it probably also affects citizen participation in democratic processes and vice versa. The Corruption Perception Index 2019, which ranks the perceived corruption, served as the source for this contribution. Denmark has the highest score (8.7) being least corrupt, while Sudan has the lowest score (1.6), indicating that it is the most corrupt country.

3.5 GDP per capita

The GDP per capita is also taken into account. A lot of literature indicates that there is a certain correlation between income and democracy.⁸⁵ The GDP per capita is usually higher in countries with a higher democratic score.⁸⁶ The data came from the World Bank⁸⁷ which provided data from 2018. The data on the GDP of 2019 has been estimated, and thus final figures were not yet available at the time of writing this article.

presidentialism is discussed in: R. Elgie, ‘A Fresh Look at Semi presidentialism: Variations on a Theme’ (2005) 16(3) *Journal of Democracy* 98, aiming to isolate the independent impact of semi-presidentialism on democratic performance.

⁸¹Cf. Vorspernik (n 14).

⁸²Qvortrup, ‘The Rise of Referendums’ (n 29) 142–43.

⁸³See e.g. M. Jetter, A. Montoya Agudelo and A. Ramírez Hassan, ‘The Effect of Democracy on Corruption: Income is Key’ (2015) 74 *World Development* 286; See also: ‘How Corruption Weakens Democracy’, <www.transparency.org/news/feature/cpi_2018_global_analysis>.

⁸⁴Larry Diamond, *Developing Democracy: Toward Consolidation* (Johns Hopkins University Press 1999) 85.

⁸⁵See e.g. G. Fayad, R.H. Bates and A. Hoeffler, *Income and Democracy: Lipset’s Law Inverted* (Department of Economic, OxCarre (Oxford Centre for the Analysis of Resource Rich Economies) 2011); D. Acemoglu and others, ‘Income and Democracy’ (2008) 98(3) *American Economic Review* 808.

⁸⁶Kapstein and Converse (n 70) 60–61.

⁸⁷<https://data.worldbank.org/indicator/NY.GDP.PCAP.CD> (last checked 13 September 2020).

3.6 Population

The last variable is population. Traditionally, scholars have argued that the size of the population matters for the degree to which a democracy can sustain itself. Both sides have been argued throughout the centuries. The Federalists (Madison and Hamilton) argued that democratic institutions require a larger populace spread out over larger areas. This would decrease the chances of majority rule since no single political entity can seize the absolute majority.⁸⁸ On the other hand, both Montesquieu⁸⁹ and Rousseau,⁹⁰ usually not very philosophical brethren, agreed that a smaller populace might make a democratic or republican regime work better. Suksi's empirical study from 1993, showed that there is no significant correlation between population and referendum provisions in the constitution.⁹¹ Due to the ongoing debate on the matter, incorporating population as a variable would therefore appear to be compulsory for this research. The most recent available data was collected from 'Worldometers'.

3.7 Regression tools

The method used to test our hypothesis (H_0) is the regression tool (Simple Ordinary Least Squares). The Simple OLS regression equation used was:

$$\text{Democracy Index Score} = a + b*[\text{Constitutional right to initiate referendums/citizen legislative initiatives}] + c*[\text{Political system/regime}] + d*[\text{Corruption rate}] + e*[\text{GDP per capita}] + f*[\text{Population}]$$

Several regressions were conducted on the basis of this regression equation. First, each explanatory variable in relation to the dependent variable was tested in a bivariate regression. This tests the individual relationship between the explanatory variable and the dependent variable. Second, a multiple regression with all explanatory variables was conducted. Each regression was repeated for: (1) Worldwide (all data); (2) non-EU countries; and (3) EU countries.

4. Description of data

Our first raw dataset consisted of all self-acclaimed countries in the world, which subsequently have a constitution claiming sovereignty over a people

⁸⁸The Federalist (J. Madison and A. Hamilton), *The Federalist Papers*, papers 9 and 10.

⁸⁹C.-L. de Montesquieu, *L'Esprit de Lois*, Book XXIII, chapter 17, 1758.

⁹⁰J.-J. Rousseau, *The Social Contract* (first published 1762, Penguin Books 2004), particularly book III, chapter 15, 78.

⁹¹Suksi (n 26) 166.

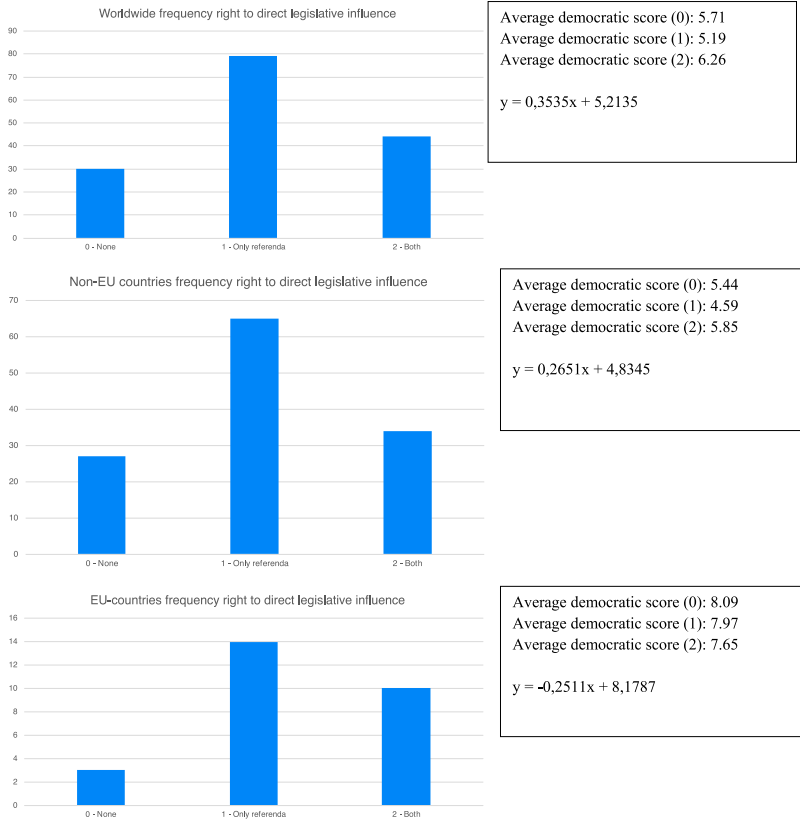


Figure 1. The relationship between the democratic score and the right to direct legislative influence worldwide; non-EU countries; EU countries.

and a territory accordingly. This amounted to a total of 207 countries. Each variable was coded as indicated in Table 1. Countries missing a certain variable, were taken out of the sample. As a result, our remaining dataset contains 153 countries. The remaining countries were divided into two subsamples: Non-EU countries and EU countries.

4.1 Democratic score and the right to direct legislative influence

Figure 1 presents the frequency of constitutional provisions that allow direct legislative influence of citizens from all samples (World; non-EU countries; EU countries) including the corresponding formulas. This figure shows that most countries *worldwide* have codified a right to initiate referendums (79), and yet have the lowest average democratic score (5.19). The same goes for non-EU countries. Having no codified right to direct legislative influence in the constitution and having both the right to initiate referendums *and*

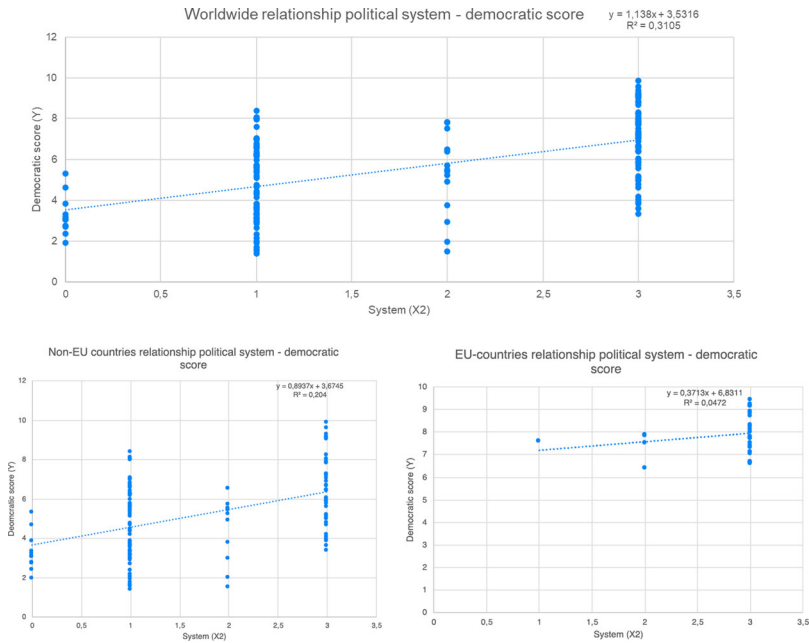


Figure 2. The relationship between the democratic score and the political system/ regime worldwide; non-EU countries; EU countries.

legislation improves the overall democratic score on average. However, for EU countries the trend is different. This sample shows that the more direct legislative influence is constitutionally codified in a country, the average democratic score decreases slightly ($-0.2511x$). Looking at the simple regression, none of the scores are significant.

4.2 Democratic score and the political system/regime

Figure 2 presents the relationship between the democratic score and the political system/regime of countries worldwide compared to EU and non-EU countries. Most countries worldwide have a presidential system (44%, coded with 1). 7% of the countries does not have a democratic political system/regime, scoring a 0. Of the democratic regimes, the least common is a semi-presidential system (coded with 2), concerning only 9% of the countries investigated. The results alter looking at just EU countries, featuring only one presidential system (Cyprus), with the large majority having a parliamentary system (coded with 3). Parliamentary systems in general average the highest democratic score. The bivariate regression applied to this variable shows very significant results for both the *worldwide* sample and the non-EU sample, though this is not the

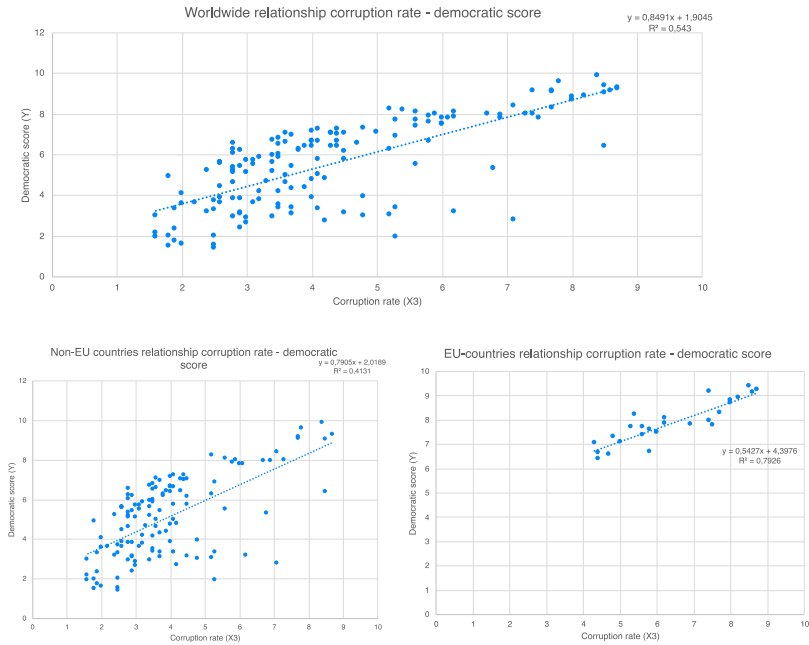


Figure 3. The relationship between the democratic score and the corruption rate worldwide; non-EU countries; EU countries.

case for the EU sample. This is probably due to the relatively small number of EU countries, while simultaneously having 22 out of 27 States featuring a parliamentary regime.

EU countries do not score 0, due to the EU treaties and institutions obliging EU countries to run a democratic regime, with democratic values.

4.3 Democratic score and the corruption rate

Figure 3 presents the relationship between the democratic score and the corruption rate (from 0 to 10) of all countries worldwide, as well as the EU and non-EU samples. The results spread around the line of correlation very neatly. The lower the corruption rate (approaching 0), the lower the democratic score, and vice versa. The EU countries score a lot better on the corruption scale compared to non-EU countries. The simple regressions are significant at the 1% level for all three samples.

4.4 Democratic score and the GDP

Figure 4 presents the relationship between the democratic score and the GDP per capita. The GDP per capita has a very low amount of \$14,892.38 on

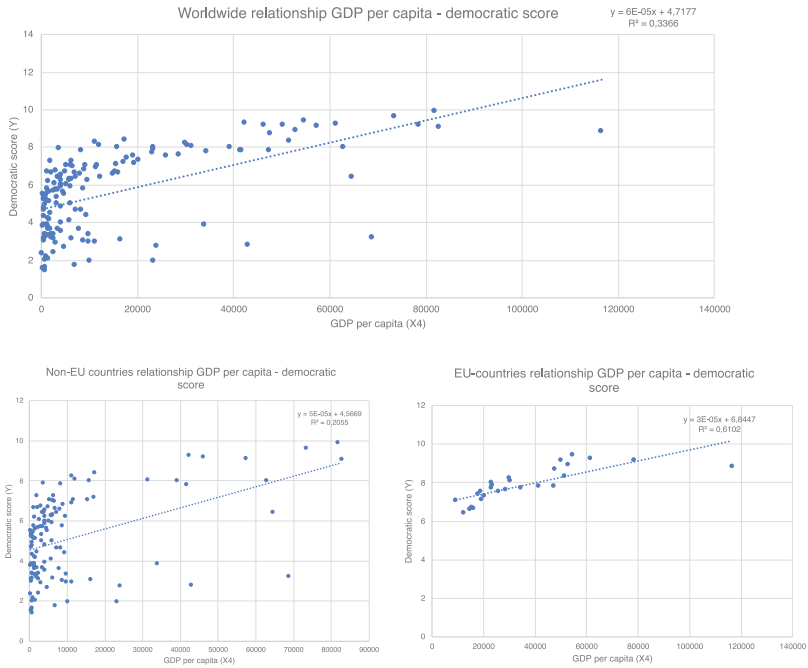


Figure 4. The relationship between the democratic score and the GDP per capita worldwide; non-EU countries; EU countries.

average, with an average democratic score of 5.59. The sample of EU countries shows an average of \$35,797.15 GDP per capita with an average democratic score of 7.86 – much higher than the other samples. The farthest dot on the right is Luxembourg, with a GDP of \$116,597.30. The R^2 of the sample EU countries shows a moderate positive relationship.

The simple regressions of the three samples show that all relationships are significant at the 1% level.

4.5 Democratic score and the population

Figure 5 presents the relationship between the democratic score and the population of the countries worldwide, as well as the EU and non-EU subsample. There are two notable outliers with a very high population: China and India. The simple *bivariate* regressions do not show a significant result in any sample. This remains true even when the outliers are taken out of this regression. However, removing the outliers India and China in a *multiple* regression does give mildly significant results (worldwide 0.097; subsample non-EU 0.069). Furthermore, the EU sample indicates that population does not significantly affect the democratic score.

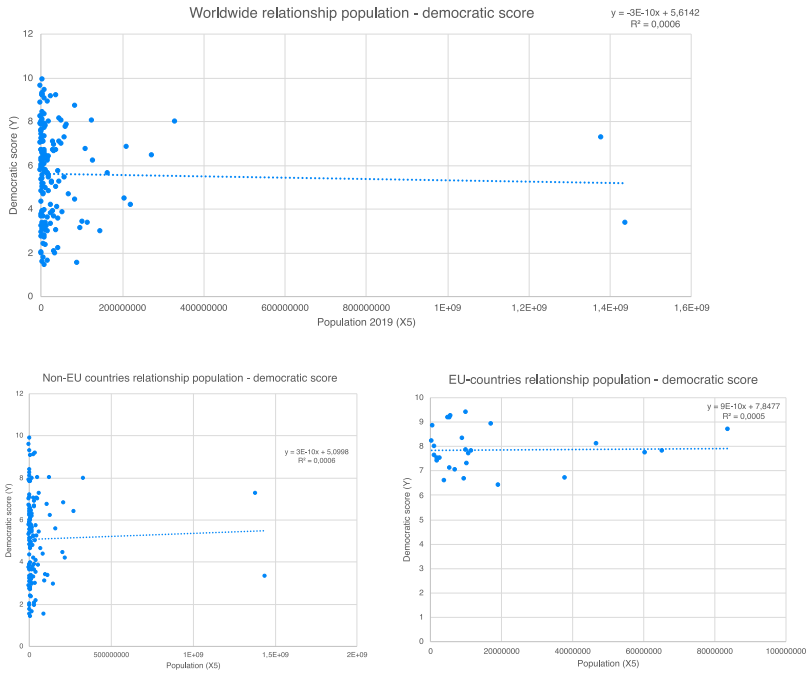


Figure 5. The relationship between the democratic score and the population worldwide; non-EU countries; EU countries.

5. Regression results

Section 4 showed the individual relationship between the democratic score and each explanatory variable. This section shows the relationship between all explanatory variables using a multiple OLS regression test. This analysis shows to what extent each explanatory variable contributes to the variation in democratic scores across countries.

Table 2. Multiple regression results on democratic scores across 153 constitutions worldwide.

	Intercept	Constitutional Right to direct influence	Political regime/ system	Corruption rate	GDP	Population	Adj. R ²
Worldwide	0.644* (0.099)	0.484*** (0.002)	0.668*** (0.000)	0.740*** (0.000)	0.000 (0.752)	0.000 (0.283)	0.645
Non-EU	0.419 (0.374)	0.569*** (0.003)	0.678*** (0.000)	0.771*** (0.000)	0.000 (0.607)	0.000 (0.249)	0.536
EU	4.606*** (0.000)	-0.004 (0.976)	0.085 (0.603)	0.428*** (0.000)	0.000 (0.107)	0.000 (0.741)	0.782

Notes: *P*-value between brackets. Adj. *R*² refers to the adjusted correlation coefficient.

*Significant at the 10% level.

**Significant at the 5% level.

***Significant at the 1% level.

5.1 Multiple regression

Multiple regression accommodates a regression equation that includes more than one explanatory variable, paired with its own regression coefficient.⁹² Table 2 shows the results of the multiple OLS regressions describing each variable's standardised coefficients, with *p*-values in parentheses. Also noted is the adjusted correlation coefficient (approximating the power of explanation).

Looking at the *GDP* and *Population*, it appears that no result is significant. Population does matter to some extent, but only if the outliers (India and China) are negated. However, this negation accounts for one-third of the world's population, a substantial figure that cannot justifiably be ignored. The fact that the results for these two variables are not significant is not problematic for this research, as these variables help determine the effects of the other variables on the relationship to the democratic index score more precisely. However, the following conclusions can be made based on the other three variables.

Worldwide, the results for the remaining variables are significant at the 1% level. Also, for *non-EU countries* the results for the remaining variables are significant at the 1% level. In particular, the explanatory power of a constitutional right to direct influence differs from our bivariate regression results, indicating that other independent variables catch most variance in democratic scores across countries. However, *EU countries* differ. In this sample, only the corruption rate is significant at the 1% level. This is likely due to the small number of countries and the low variance of independent variables.

All relationships feature a rather high adjusted R^2 . The adjusted correlation coefficient of the worldwide sample is 0.645, which is considered a moderate to strong positive relationship. The adjusted correlation coefficient of the non-EU sample is 0.536, which is a moderately positive relationship. The adjusted correlation coefficient of the EU sample is 0.782, which is considered a strong positive relationship. This means that there is a linear positive relationship between the variables in relation to these formulas.

5.2 Discussing results: worldwide and non-EU

The *worldwide*⁹³ sample shows that codifying constitutional rights to direct influence on legislation positively correlates moderately to strongly with the democratic score.⁹⁴ Various explanations in different contexts can be offered.

⁹²D. Cope, *Fundamentals of Statistical Analysis* (Foundation Press 2005) 83.

⁹³Note, the subsample of *non-EU countries* logically shows extremely similar trends to the worldwide sample in all cases since this subsample still consists of 126 countries out of the 153 in the primary sample (worldwide).

⁹⁴It is noted again that the simple regression shows that having no constitutional provision to direct legislative influence and having both the right to initiate referendums *and* legislation is positively

First, many constitutions were drafted following a revolution (or at least after the 1960s when democratic rights were put central to the legitimation of governance), claiming to give power back to the people. Countries that have gone through this process are likely to be more democratic than countries that did not. Second, and perhaps more obvious, having such a constitutional right, and subsequently the opportunity to influence legislation and government as a citizen, will increase democratic participation.

Worldwide parliamentary regimes also significantly outperform semi-presidential and presidential regimes when it comes to the democratic score. First, this may be practically explained by the larger influence of parliament in governance. Second, presidential regimes suffer from a very strong executive, are less bound by compromises, potentially decreasing influence of the people, or at least minorities. Third, some presidential systems feature a dual legitimacy, creating a tension which does not necessarily help democratic decision-making.⁹⁵ Finally, many former dictatorial regimes established a presidential democratic regime, taking the United States constitutional set-up as a leading example. These are still fairly young democracies. Parliamentary regimes (usually EU countries) on the other hand, in many cases developed their own democratic tradition over a longer period of time.

Furthermore, the higher the corruption rate, the lower the democratic score. This is true for all samples. At the same time, in both the multivariate and the bivariate regressions and for all the samples, this variable is extremely significant. This can be explained because citizen participation forms a check on government in democracies. With lower citizen participation, or possibilities to participate, a higher corruption rate is likely. Vice versa, higher corruption rates discourage democratic participation. If citizens do not believe the government will treat them fairly, they will not feel inclined to take part in democratic processes. Therefore, the democratic score affects the corruption rate, and the corruption rate affects the democratic score, revealing a two-way causation effect.

5.3 Democratic score and direct legislative influence in the EU: a negative relationship

The subsample of *EU countries* shows a positive relationship between the democratic score and the regime. However, in both regressions these results are *not* significant. This is partly due to the small number of countries and low variance. The intercept scores higher (4.606). This can be explained

correlated with the overall democratic score on average. Having only a codified right to initiate referendums has the worst score. This can be largely explained by the high *n* compared to the (0) and (2) under this variable.

⁹⁵Specifically in regard to multi-party presidential regimes, cf. Linz (n 80).

by the aforementioned shared EU treaties and values, increasing the democratic score, as well as the shared geopolitical and historical traditions and reciprocal influence. These shared influences result for example in an absolute majority of EU States having a parliamentary system, influencing the score minimally by a factor of 0.085. The explanatory power of this variable multiplies almost eight times to 0.678 for the subsample of non-EU countries, as these countries do not share a common background.

The subsample of EU countries also differs from non-EU countries in the relationship between the democratic score and a constitutional right to direct legislative influence. This relationship is slightly *negative*, contrary to the other samples.⁹⁶ Though the result is not significant, it is still worth mentioning. First, this result could imply that – for EU countries – adding such a constitutional right has no effect on the democratic score. At the very least, it does not influence it positively. Also, specifically in regard to EU countries, an explanation for the negative relationship *can* be offered. Once a country reaches a certain democratic score, more influence of citizens might diminish the legitimate decision-making of democratic government, interfering in political and legislative processes, and affecting the balance of State powers, as is suggested in normative literature on direct democracy. For example, it could take a well-functioning democracy to majority rule.

Second, in this regard it is interesting to note that the Netherlands and Belgium as parliamentary regimes (as well as Norway as a similar non-EU country) have a very high democratic score, but lack constitutional provisions or procedures that allow direct legislative influence. These constitutions show great similarity throughout, and are the eldest of the EU (stemming from the same era: 1814 and 1831 respectively), and in the case of Belgium, its constitution was drafted after seceding from the Netherlands. The age in which these constitutions were drafted as well as in which particular constitutional culture, might very well play a role here. First, the constitution being drafted 200 years ago gives a country more time to consolidate its parliamentary and democratic values. Second, once a constitution is in force, it is harder to amend the constitution since that would alter the nature of the document. When drafting a new constitution, it is easier to include a provision allowing direct democratic influence for citizens, especially when drafted after democratic uproar by the people.

The results of this study are relevant to consolidated democracies, such as the Netherlands, especially in light of its current pending constitutional bill. This study provides further background on the effectiveness of constitutional provisions allowing direct legislative influence. However, whether direct legislative influence is beneficial to the democratic score depends also on the reach of the constitutional provision of the country in question. The

⁹⁶See also Section 4.1; figure 1.

pending constitutional bill in the Netherlands allows only for a corrective referendum, which means that the provision can only be used to call for a referendum to block existing or pending legislation. From a normative standpoint, it has been argued that this specific form of the referendum provides a direct form of pressure on representative democracy, that will function as a *check* in the myriad of checks and balances in the Dutch political system, thus solidifying and strengthening Dutch democracy.⁹⁷ This reasoning is validated by Peters' research, which shows that direct democracy can supplement representative democracy under the right circumstances.⁹⁸ Notwithstanding, the empirical findings in this study indicate that it is not possible to tell in advance that such a constitutional provision – however well regulated – will improve the democratic score of the Netherlands, and may even still compromise the consociational setup of Dutch politics.⁹⁹

Interestingly, the only other EU country that does not feature a constitutional provision allowing for direct legislative influence is Cyprus which, perhaps coincidentally, has the only presidential regime in the EU. Presidential regimes appear to have lower democratic scores in general. Cyprus as the third EU country might very well influence both the coefficient and significance in the simple and multiple regression test at the expense of better democratic scores for countries that do not include a constitutional right to direct legislative influence in the EU.

Thus, even though the results are not all statistically significant, they do still tell us something about the political and constitutional reality in the world and in the EU specifically.

5.4 Broader perspective and future studies

This section puts the results provided above in a broader perspective, and suggests possible future research into the effects of constitutional provisions that promote direct democracy.

In a broader constitutional perspective, our research indicates that constitutional rights form only part of the full constitutional reality. Even though constitutional provisions might look very appealing on paper, and tend to attract much of our focus as scholars, these provisions will remain void if they are not readily available to be put into practice. In some cases, the adoption of a right to direct legislative influence for citizens in the constitution is only to furbish the constitution, *prima facie* giving it a democratic look – indeed, in line with the Christmas tree theory. The chances of ever establishing a constitutional culture around such provisions that have no

⁹⁷Eindrapport Staatscommissie (n 6) 141.

⁹⁸Peters (n 66).

⁹⁹Cf. Vospernik (n 14).

consequences in the real world are slim. Vice versa, the lack of certain constitutional provisions of course does not mean that no practice has been developed around democratic values at all – for example, access for citizens to influence policy and legislation. Still, it seems that adopting a provision that allows for direct democratic procedures does indeed tilt the odds in favour of becoming more democratic as a nation.

This research can serve as a stepping stone for more detailed research regarding the effectiveness of direct democratic procedures. Worthwhile research might, for example, entail relating the democratic index score to the typologies of referendums as developed by Morel. This could provide further insights into which types of referendums are most common in high scoring democracies. The quantitative empirical approach of this research could also be extended to research concerning other constitutional provisions. For example, research into the relationship between provisions on freedom of speech and the Democracy Index Score might reveal insights on how effective such provisions truly are, and which factors could contribute to strengthening or weakening the constitutional culture around such provisions.

Finally, the data in this article covers a single point in time – a snapshot, so to speak. Research concerning results *over* time, monitoring whether constitutional changes in regard to provisions on direct democratic influence for citizens, could prove invaluable in deepening our understanding of the long-term effects of these provisions. For example, there are currently at least four countries¹⁰⁰ that will potentially either codify or extend the constitutional right to direct legislative influence. This means that if this research were to be replicated several years from now, it could measure the increase or decrease of the democratic score in relation to this democratic right, using a ‘differences in differences’ method. Changes might also be observed in the democratic score, as such provisions take time to ‘settle in’ and become part of the constitutional culture. One question that could be asked, for example, is whether countries that have had such provisions for longer have a higher democratic score.

6. Concluding observations

This article set out to answer the question whether the democratic score of a country can be either positively or negatively related to constitutionally ratified rights and procedures promising direct legislative influence for citizens, through referendums and/or initiating legislation by citizens. In other words, does a constitutional right to direct legislative influence, through referendums or citizens having the constitutional right to initiate legislation, truly increase the ‘amount’ or ‘level’ of democracy in a country?

¹⁰⁰Cuba, Iceland, Libya, and the Netherlands.

The purpose of this article was thus to contribute to the debate on whether more direct democracy actually increases the democratic score of a country. Our null-hypothesis (H_0) was: 'the democratic score of a country is *not positively* related to constitutionally ratified rights to direct legislative influence of citizens, such as referendums and legislative initiatives by citizens'. Looking at the samples *worldwide* and *non-EU countries*, the null-hypothesis can be rejected. However, the relationship between the democratic score and legislative influence of citizens is not significant in the sample of EU countries. Still, this does not mean it has no explanatory power at all because, since the relationship was negative contrary to the other samples.

In addition to answering the research question, other interesting findings are provided. First, there is a very strong correlation between corruption and the democratic score of a country. Second, the size of the population *does* matter, but only if outliers are removed from the figures. Third, the single regression results show that having only a constitutional right to initiate referendums, scores worse than either having no such rights or having both the right to initiate referendums *and* legislation. Fourth, it is confirmed that parliamentary regimes have the best democratic performance on average.

Finally, based on these results it is not possible to provide the constitutional legislature in the Netherlands with a policy recommendation on whether or not to adopt the newly issued constitutional bill. On the one hand, the result of having a codified constitutional right to direct legislative influence was not significant in the case of EU countries; it may potentially even have negative effects. On the other hand, the codification of such constitutional rights does have a significantly positive effect worldwide. Which hand to pick is beyond the scope of this article, and a choice we will leave to politics.

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