

A Comparison of Environmental Policy-making by Referenda in Germany, Japan, and the United States

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Introduction

Referenda can provide citizens with a chance to directly influence specific environmental policies at the voting booth. There have been strong trends towards greater direct democracy in the United States, Germany, and Japan in recent decades. The United States has the longest history with environmental referenda. Their popularity is growing in Germany and Japan. Influenced in part by the democratization of the former East Germany following unification, the use of the initiative referenda in Germany has rapidly expanded. In Japan, despite an absence of fundamental procedures for, and familiarity with citizen-based voting initiatives, the 1990s saw expanded use of the initiative referenda to influence the political process at all levels of government, particularly in regard to environmental issues.

The upswing in the use of referenda in Germany and Japan is an indication of local-level dissatisfaction with traditional forms of decision-making and the powerful demands of citizens to participate more directly in decision-making processes that affect them. Not all referenda are alike, however. Referenda are diverse in form, process, and outcome.

For example, in Japan referenda can only occur when they are explicitly permitted by local assemblies. This greatly restricts the number of referenda that have been held in Japan. In Germany, questions of taxation and official salaries are not allowed to be brought to a referendum. This prevents Germany from facing the kinds of problems caused by Proposition 13, an initiative that capped property taxes in California in 1978 and that triggered a firestorm of anti-tax political protest across much of the rest of the United States. Nor do referenda always lead to environmentally favorable outcomes. In the United States, referenda were initially a vehicle used by environmentalists to promote their causes. Of late, however, referenda have also become a tool of well-funded elite and corporate interests promoting development projects that threaten environmental interests. A comparison of the use of referenda in Germany, Japan, and the United States (with special attention to California and Oregon) suggests not only that the pros and cons of referenda need to be better understood, but also that the rules governing the use of referenda are critical.

Germany's Mixed Experiences with Direct Democracy

Prior to World War II, Germany had provisions for direct democracy in the form of popular initiatives, national referenda, and plebiscites. Under the Weimar Constitution (1919–33), the Reich president was elected by the direct vote of the people and was given the authority to decree that a law proposed by the Reichstag (parliament) be presented to the voters as a plebiscite. Adolf Hitler used the national plebiscite in 1934 to legitimize his combination of the positions of Reich president and Reich chancellor into the single position of Führer, or absolute leader of the German people. Since Hitler and the Nazis used this system of direct democracy to achieve absolute political power, direct democracy fell into disrepute in the postwar period. The West German Basic Law that was enacted shortly after the war ended did away with the plebiscitary elements that existed in the Weimar Constitution. The federal constitution adopted following German unification in 1990 also imposed tight restrictions on direct popular voting.

While this was the case at the federal level, several of the German states (Länder)—Bavaria, Berlin, Bremen, Hesse, Nordrhein-Westfalen, and Rhein-

land-Pfalz—introduced provisions for initiatives and referenda directly at the end of the war. In the 1970s Baden-Württemberg and the Saarland joined these Länder. After the fall of the Berlin Wall, other German Länder introduced referenda, so that by 1994 the right to initiatives and referenda had spread to most parts of Germany. Today in most of the Länder, there are provisions for popular participation in the proposing and amending of laws, on constitutional reform issues, and in decisions to dissolve state legislatures. Still, referenda are not common at the Länder level, which between 1946 and 1992 saw only 23 referenda. Seven of these, moreover, were referenda on the establishment of Land Constitutions in the American and French zones in 1946–47 and in North Rhine Westphalia. Many of the subsequent referenda dealt with voting age reform, electoral reform, and constitutional reform issues.¹⁾

In Germany, there are basically three stages involved in holding a referendum. In the first stage, the Volksinitiative (“popular initiative” or petition), citizens make a formal request to initiate a referendum. This requires a pre-determined number of signatures (ranging from 3,000 in Nordrhein-Westfalen to approximately 120,000 in Hesse. The second stage, the Volksbegehren (“Popular Demand” or Initiative) is based on the collection of signatures supporting the idea put forth in the petition. Most Länder have a signature quorum of between 8 and 20 percent of the state electorate although Brandenburg, Hamburg and Schleswig-Holstein require the support of only 4 to 5 percent of the electorate. The third stage, the Volksentscheid (“citizens’ decision” or referenda) takes place when the Länder parliament (Landtag) rejects the proposal as presented in the Volksbegehren. At this stage, the issue is taken to referenda. The state parliaments also have the right to propose alternative legislation.²⁾

Bavaria was the first German state to introduce the referendum; Article 74 of the 1946 Bavarian constitution established provisions for the use of

1) Arthur B. Gunlicks, *The Länder and German Federalism*, p. 282.

2) Ralph Kampwirth, *Direct Democracy in Germany*, in Bruno Kaufmann and M. Dane Waters, *Direct Democracy in Europe: A Comprehensive Reference Guide to the Initiative and Referenda Process in Europe* (Durham, North Carolina: Carolina Academic Press, 2004).

referenda. In a 1984 referendum, environmental protection was made a state priority under the constitution, and the state was obligated to address environmental concerns. Here 94.1 percent of the voters supported the referendum. Hesse followed suit in 1991. Bavaria's move also became the precedent for including environmental protection as a national responsibility in the unified German constitution.

A 1995 referenda, the fourth ever at the Länder level in Bavaria, expanded use of referenda to the municipality and local levels. Over the next three and a half years, 673 citizen petitions were circulated at the municipal level in Bavaria, leading to 389 referenda. Bavaria is now the most active region in terms of its use of referenda, similar to California in the United States.

Another strong impetus behind the diffusion of the referenda process in Germany in the 1990s was the role played by popular protest and direct action in bringing about the destruction of the Berlin Wall, the demise of the United Socialist Party (SED), and the collapse of the East German regime. Interestingly, the short-lived constitution passed by the German Democratic Republic (Deutsche Demokratische Republik, or DDR) in 1990 permitted the introduction of direct forms of democracy at the Länder and municipal levels. Though under unification, the GDR constitution ceased to exist, some of the ideals and language of this constitution influenced the designs of the new constitutions adopted in the Länder that were once part of East Germany.

Individuals played an important role in promoting the use of referenda. In 1951, Peter Schilinski helped organize the Alliance for a Free Citizen Referenda (Bund für Freie Volksabstimmung). In 1971, Joseph Beuys played a leading role in the Organization for Direct Democracy through Referenda (Organisation für Direkte Demokratie durch Volksabstimmung). These early citizen campaigns were followed by Action Referenda (Aktion Volksentscheid) in 1982 and Referenda Against Nuclear Power (Volksabstimmung gegen Atomanlagen), two grassroots efforts that created the basis for the formation of a network of people willing to support a direct democracy movement. In 1987, a bus was used as the symbol of direct democracy in local campaign events sponsored by the Omnibus für Direkte Demokratie campaign. The bus toured the former West Germany to expand a nationwide network of citizen

activists.

In 1988, the Initiative Democracy (Initiative Demokratie Entwickeln, or IDEE, which later became the Mehr Demokratie [More Democracy] campaign) was inaugurated to aid the Referenda Against Nuclear Power. The IDEE established an office in the same building used at the time by the Green Party and the Heinrich-Böll Stiftung, a green think tank and international policy network. Consequently, IDEE had a close working relationship with the Heinrich-Böll Stiftung, and in the fall of 1988 joined it in hosting a democracy assembly. IDEE also launched a Magazine for Direct Democracy (Zeitschrift fuer Direkte Demokratie) and led a campaign to collect 400,000 signatures in support of a referendum that proposed an immediate ban on the use of fluorocarbons (Volksentscheid über das sofortige Verbot von FCKW).

Following German reunification, in 1992 the IDEE proposed reform of the referenda process at the Länder level. It also held an IDEE conference to reorganize itself and adopted the organizational name of Mehr Demokratie. In October 1995, it succeeded in winning passage of a referendum in Bavaria allowing municipal referendum despite the huge hurdles that had made the holding and passage of the referendum appear highly unlikely.

As of 2004, Mehr Demokratie had 4,000 members, was active in 11 Länder and had developed an affiliation with the Direct Democracy Research Center at Marburg University (Forschungsstelle für Direkte Demokratie der Universität Marburg). Today, it is the main citizen organization in Germany promoting the use of the referenda process and has among its goals the expansion of the application of the referenda to address the national problems confronting Germany and issues confronting the European Union (EU) and its member countries.

Popular initiatives have become increasingly common in Germany. According to data compiled by the University of Marburg's Research Center on Citizens' Participation and Direct Democracy, as of mid-2008, initiatives and referenda are permitted in 13,153 townships, special administrative districts, and cities in Germany. The use of referenda began to grow in the early 1990s, peaking in 1996 and 1997 with well over 400 referenda per year. In 2007, there were somewhat more than 300 referenda held across the country. From 1956

through June 2008 there were 4,642 Initiatives and 2,181 referenda.³⁾

Not all Länder are equally permissive in the use of referenda. At the bottom of the list are Bremen, Saxony-Anhalt, Berlin, Hamburg and Thuringia. A number of reasons explain these regional discrepancies in the frequency of use of the referenda process. These include the range of policy issues that can lawfully be decided by initiatives and referenda, the number of signatures needed on a petition to place an initiative proposal before the public, signature quorums for the Volksbegehren (initiative), and registration procedures (e.g. the length of time signatures can be collected and the places they can be collected).

Referenda have empowered voters eager to oppose projects in their communities or to alter the status quo. Voters in Schönau, in the Black Forest, used a referendum to take over the electricity grid and shift local power production towards a more decentralized and renewable energy focused system.⁴⁾ Leipzig held its first referenda in April 2008 on the question of privatizing municipal businesses. The citizens voted overwhelmingly against privatization. In May 2008, Berlin's citizens voted against keeping open Tempelhoff Airport, used to keep West Berlin functioning during the Soviet blockade of the city at the time of the famous 1948 Berlin airlift. In Hesse, citizens voted to stop E.ON from building a new power plant. In Saarland, they voted to oppose the building of a new coal-burning power plant in Ensdorf.⁵⁾

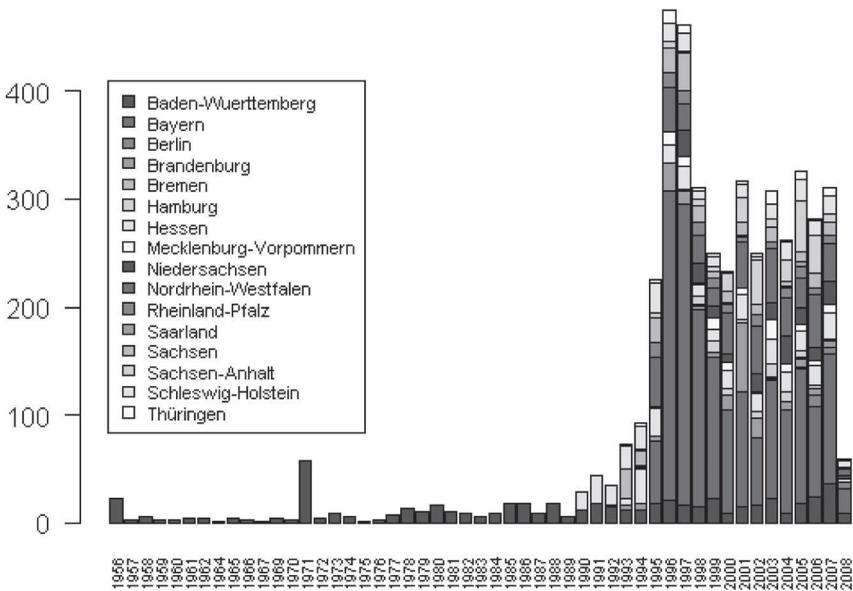
Referenda and Environmental Protection in Japan

Influenced by the experiences of Germany, the United States, and other countries, local referenda began to be used in Japan in the late 1990s although the numbers of referenda pale in comparison to either Germany or the United States. As of the summer of 2003, have been held 12 recognized local referenda

3) Bürgerbegehren und Bürgerentscheide in Deutschland, <http://www.datenbank-buerger-begehren.de/index.php>. Accessed June 28, 2008.

4) Jos Verhulst and Arjen Nijeboer, *Direct Democracy: Facts and Arguments about the Introduction of Initiative and Referendum*. Brussels: Democracy International, 2007. pp. 62-4.

5) Markus Deggerich, "Citizens' Uprisings: Germans Discover Direct Democracy," Spiegel Online, <http://www.spiegel.de/international/germany/0,1518,549794,00.html>.



Source: University of Magburg, Research Group on Citizens' Participation and Direct Democracy. Data as of June 28, 2008. <http://www.datenbank-buergerbegehren.de/index.php>. Note: 2008 data is only through June and thus, does not represent the full year's activities.

across Japan. The issues addressed by these local referenda vary, ranging from the construction of nuclear power plants and the relocation of American military bases, to the siting of industrial waste product management facilities, proposed dam construction, and local control over nuclear fuel management. Many of the referenda have been linked in some way to environmental issues.⁶⁾

With these referenda, local communities are making popular, frequently ecologically-based appeals in opposition to efforts by national and local governments and major corporations to advance industrialization through construction of nuclear power, industrial waste and other large-scale facilities

6) Regarding Japan's local referenda, see Yokota Kiyoshi, *Jumin tohyō* I [Local Referenda I], (Tokyo: Kōjinsha, 1997); Imai Hajime, *Jumin tohyō* [Local Referenda], (Tokyo: Iwanami Shoten, 2000).

or infrastructure.

While these referenda can be considered a form of “NIMBY” (Not In My Back Yard)-ism, they are also a sign of growing civic engagement. More and more Japanese local residents view as unfair attempts by national and local governing authorities and large corporations to arbitrarily impose industrial facilities on them.

The Emergence of Local Referenda in Japan

In Japan, like Germany, there is no legal basis at the national level for decision-making by local ballot initiative. Unlike in Germany, local community residents who wish to use the vehicle of a referendum must first convince a local government to enact an ordinance that permits the holding of a referendum. They must collect signatures in support of establishing a referendum process from more than one-fiftieth of the registered voters living in a particular locale, select a representative to present to the local assembly the petition to create an ordinance, and obtain the approval of the local assembly. However, local assemblies tend to make decisions based on economic factors and the connections assemblymen have to Japan's national legislature (the Diet), local governments, and local business and financial organizations. This means that residents face huge hurdles when initiating referenda. An example of a failed referendum was that drafted to oppose the construction of Kobe Airport. This failed even though more than 300,000 signatures (one-fifth of local registered voters in the affected sub-community of Kobe city) had been collected. As of 2003, there had only been a dozen successful petitions across Japan.

Prior to the 1980s, local residents often passively supported plans for industrial, nuclear energy, and waste facilities from which the local community might stand to profit, either financially or through infrastructure or other compensation. However, starting in the 1980s and 1990s, local community sentiment began to change. A series of nuclear power plant accidents in Japan and growing concerns about environmental damages, triggered local protests against various large-scale construction projects. At the same time, there was growing disapproval over the closed-door and often corrupt decision making

processes that kept local communities in the dark about their future until it was usually too late to change plans. As local residents became increasingly aware of what was happening, they sought to gain public access to previously secretive information and campaigned to hold local referenda in order to place important development and environmental issues of concern before the broader community.

A Local Referendum on the “Maki Nuclear Power Plant”⁷⁾

In the late 1960s, plans for building a nuclear power plant in Maki, a rice-growing community in Niigata Prefecture, were first secretly drawn up. When news of this plan was first leaked by the local newspaper in 1969, the land that had been chosen as the site for the plant had already been purchased under the pretense of using it for a tourist attraction. Kimi Takeo, then Vice-Governor of Niigata Prefecture and a future prefectural governor, had his most trusted staff purchase the property for the power plant. In the early 1970s, Tohoku Denryoku (Northeast Electric Power Company) unveiled a formal proposal for the building of the Maki Nuclear Plant. At a Maki local assembly meeting held to consider the proposal, assembly members needed police protection as they proceeded to vote 19 to 2 to approve the plan. In the meantime, the oil shock of 1973 led to the passage of three new national laws in 1974 for the promotion of electrical power development, including nuclear power. The prime minister at that time was Tanaka Kakue, who was from rural Niigata, and was eager to industrialize this less developed region of Japan. There was strong central government support for the building of nuclear power plants in Niigata, specifically in the towns of Kashiwazaki, Kariwa, and Maki.

In order to win local support for the building of a nuclear facility in Maki, Tōhoku Electric Company paid the Fishing Industry Joint Union of Maki and its neighbors nearly 5 billion yen in compensation. Iwamuromura, a neighboring town, was given compensation from the nuclear Plant Cooperation Fund. Maki officials, in expectation of receiving their own generous

7) The author has made numerous trips to Maki and conducted numerous interviews related to the referendum.

compensation from the Nuclear Cooperation Fund, planned the city's budget accordingly, scheduling hospital renovations and preparations for a waste management facility. Having accepted compensation, apparently around 28.9 billion yen, Maki's future as the site of a nuclear power plant seemed assured.⁸⁾

However, construction of the Maki nuclear power plant stalled due to years of political maneuverings among local political parties, supporting and opposing the plant's construction. In the meantime, two serious nuclear power plant accidents occurred: one at Three Mile Island in the United States in 1979 and a second at Chernobyl in the former Soviet Union in 1986. These accidents raise doubts over the safety of the proposed Maki plant among local residents. Moreover, a demographic and population shift was occurring in Maki. There were an increasing number of new residents settling in Maki, which had become a "bedroom community"⁹⁾ of neighboring Niigata City. Consequently, a proposal for a local referenda was put forward not by the leftist opposition parties but by people generally considered "conservative" — respected town notables and longtime landowners. The local residents of Maki expressed mixed feelings over holding a referendum, considering it a highly unusual action, yet they also had a high level of trust in the people promoting the referenda process.

At The Meeting to Implement a Local Referenda on the Maki Nuclear Power Plant, it was emphasized that "for Maki, the building of a nuclear plant is a decision of grave importance that comes once in a lifetime. In order to decide whether to build a nuclear plant, we must return to the foundations of democracy and decide by listening to the voices of the residents." This referenda "implementation meeting" was an appeal to the people of Maki to engage in direct democracy. The group backing the referendum sought to enlist the mayor of Maki's support for administering the referenda, but they were turned down. Maki's mayor resisted stating, "the local referenda is a

8) Niigata Nippo Hôdôbu, ed., *Genhatsu wo kobanda machi* [The town that prevented a nuclear plant], (Tokyo: Iwanami Shoten, 1997).

9) A Japanese neologism indicating a town that serves as a residential area without any industry of its own.

challenge to [parliamentary] democracy.” Undeterred, the six anti-nuclear power plant citizen groups in Maki joined forces to conduct the referenda. The independent referendum was held in January 1995 in Maki’s town hall over a period of 15 days. The turnout was 10, 378 people, or 45.4% of the entire population of 22, 858 Maki residents. The result totalled 474 votes for and 9,854 votes against the building of the nuclear power plant.

The committee that implemented the referenda used these results to urge the mayor to reconsider the plans for the plant. In response, the mayor took a stance of indifference stating, “This was a vote taken along legitimate democratic rules.” Several days after the independent local referenda, Tôhoku Electric made an offer to purchase a piece of land at the center of the planned construction site. Those promoting nuclear power held a large majority of the seats in the town assembly, thus ensuring the approval of the land-purchasing proposal. However, the provisional assembly, which had been gathered to vote on this issue, was cancelled due to a sit-in by groups opposing the nuclear power plant, and the selling of the land was postponed. In April a local assembly election was held. Normally, this election involved the election or re-election of assembly members who come from powerful local landowning families. The election usually happens without much fuss, but this time a fierce battle was waged between candidates representing the landowning families and candidates who supported the recent local referenda.

The election resulted in pro-local referenda assembly members winning a majority, 12 of the 22 assembly seats, and the defeat of five pro-nuclear power plant incumbent members. Three women, who ran on platforms that were anti-nuclear power plant and pro-local referendum, achieved the highest vote totals. Following the election, the Maki townspeople expressed their amazement at the result. Reported comments included “the increase of people who vote based on their own volition,” and “many. . . felt that this was the last chance to stop the nuclear plant.” The pro-nuclear power plant groups, in analyzing their loss, were quoted as saying their defeat resulted from a “sense of distrust among voters toward the established political parties and systems.” The groups supporting the ordinance that provided for the holding of the referenda now proposed a new ordinance that would include a provision requiring the mayor

“to abide by the majority votes cast by registered voters through local referenda.” When it came time for the Maki local assembly to consider the newly proposed ordinance, the pro-nuclear power plant faction managed to convince two assembly members who had supported the initial ordinance to join their side to form an opposing majority. Nevertheless, apparently because of some procedural error by the pro-nuclear power plant faction, the ordinance managed to pass.

Those in Maki who supported the nuclear power plant next decided to delay the local referenda beyond the 90-day window dictated in the ordinance. The pro- and anti-ordinance groups fiercely clashed. The mayor again stated, “I support parliamentary democracy. I have doubts about the ordinance. The precedent in this town has been that it is better to proceed by holding meetings among the assembly members, who are the townspeople’s representatives.” The result of that vote was that the mayor would decide when the local referenda would be held. But because he did not respond, the Implementation Committee stated, “the mayor is trying to silence the voices of the people,” and demanded that the mayor step down, gathering 10,231 signatures, which easily surpassed the 7,700 signatures (one-third of registered voters) needed under the law. At first, the mayor expressed confidence in his position, but then abruptly resigned.

In January 1996, a new mayoral election was held, and Sasaguchi from the Implementation Committee was elected. Under Sasaguchi, the date for the local referenda was set, thus paving the way for the first real local referenda ever to be held in Japan. In an attempt to defeat the referenda proposition, the pro-nuclear power plant group distributed flyers, invited the public to attend information meetings and “study groups,” sponsored lectures and symposiums, and conducted an aggressive publicity campaign. The Tōhoku Electric utility company and Energy Resource helped fund the pro-plant side. The side opposing the nuclear power plant also distributed flyers and held study meetings, inviting critics of nuclear energy from all over Japan to give guest lectures. The town of Maki itself also hosted a symposium for the purpose of disseminating “information for making a choice.” The result of the vote: 61 percent (12,478 votes, or 53 percent of registered voters) to 39 percent (7,904

votes) against the selling of the land. Voter participation was a strong 88.3 percent. Following the election, Mayor Sasaguchi declared, “residents, who received sufficient materials to think about the nuclear power plant issue, decided against living with a plant in their town. This vote will absolutely stand until the passing of this generation, regardless of a change of mayor or attempts by the assembly to repeal the decision.”¹⁰⁾

The reasons why authorities had decided on the location of Maki and other nuclear power plants was kept secret and never made public. Shortly before the local referenda, a government official in Japan’s International Trade Ministry provoked the anger of Maki residents by stating that, in the event of a nuclear power plant accident, “a sparsely populated area would mean fewer casualties.” This remark alone may have been one of the main factors motivating a group of Maki residents to work together to create a process that allowed the public to make a just decision about the wisdom of the plant free of political pressure. At the same time, the entire episode served as one of the first major lessons in post-war Japan in local democratic empowerment.

A Local Referendum on the Mitake Industrial Waste Management Site

Japan produces about 450 million tons of waste annually; nearly 400 million tons of industrial waste, and 50 million tons of general waste from households. This waste is largely produced in cosmopolitan areas, but brought to surrounding rural areas for land filling or incineration. As a result, a battle over waste management inequities erupted at a national level. Procedural issues also contributed to the perceived unfairness, as many of the decisions were made behind closed doors.¹¹⁾

Toshiwa Industries, a major industrial waste producer with its main offices

10) Niigata Nippō Hōdōbu, *ibid.*

11) For information on the Mitake industrial waste management site issue and the local referendum see Asahi Shinbun Nagoya Shakaibu, *Chochō ryugeki: sanhai ni yureta machi* [Attack on the mayor: a town shaken by industrial waste and terrorism], (Tokyo: Fubaisha, 1997); and Asahi Shimbun Nagoya Shakaibu *Dokumento jumintohyō: “sanhai nō!” Mitake jumin no ketsudan* [The local referenda, a documentary: “No to industrial waste!” The residents of Mitake decide], (Tokyo: Fubaisha, 1997)

in Kaji, Gifu Prefecture, submitted a request to build an industrial waste management site in the forests of nearby northern Mitake. Wanting to build a 200 hectare industrial waste site-which would be the largest in Asia-they exchanged memoranda of understanding with ten households on whose lands they planned to build this site. Toshiwa Industries paid upfront over 10 million yen as a deposit on the 100 million yen they promised as compensation. Mitake residents resisted this proposal at first. Toshiwa Industries then made a request to Gifu Prefecture for permission to build the industrial waste site in Mitake. The town, however, did not agree and took its case to the prefecture, calling the siting "inappropriate" because: "at the mouth of the river just below the planned waste area there is a head gate for the area's waterworks, and thus a danger that the treated water from the site could pollute it. The planned area is also designated as a special area for a national park, and environmental preservation is favored."

The town's stance changed, however, in 1994. First, the town assembly's special committee conducted a probe into a possible change in the conditions that would place "safety first." They submitted a proposal to the prefecture promising to "take a forward-looking stance" toward the conditions being offered for funding of pollution prevention, resident right to entry, and designing a community of good living. The town sealed an agreement for 3.5 billion yen over a 15-year period with Toshiwa Industries. But the real reason why the town's leaders signed the agreement remained unknown to the townspeople. Although it is telling that around 1993, Gifu prefecture began to insistently appeal to the town to accept Toshiwa Industries' proposal.

In April 1995, former NHK commentator, Yanagawa Yoshirô, won a sweeping victory in the mayoral race, beating the previous mayor's right-hand man. Yanagawa had spent his junior high and high school days in Mitake; and his deceased wife's father was a former mayor of the town. Receiving passionate pleas from his former classmates to "help change this stagnating city," Yanagawa had acquiesced and made the decision to run in the mayoral race. In July of that year he won. Mayor Yanagawa publicly promised a "clean and transparent administration." In April 1996, he persuaded the assembly, despite abstentions and calls to slow down, to enact an information release

ordinance which clearly enshrined “residents’ right to know” and “the rules of release to the public.” This was unprecedented in Gifu.

In September 1995, the secret agreement made between the town and Toshiwa Industries was divulged by a local newspaper. Mayor Yanagawa sifted through the buried papers and in February 1996 released a query to Gifu Prefecture entitled, “Questions and Doubts concerning the Mitake Industrial Waste Management Site Plans.” In that letter, he complained about the lack of an objective analysis of the scientific, social, and economic consequences of constructing such a site. He also pointed out that as a site located near the Kisô River, the possibility of water pollution in the event of an accident was great. Moreover, when Toshiwa Industries made an offer to buy the land, the purpose given was not “construction of a waste site,” but “holding of assets” and “storage for materials.” In addition, Toshiwa Industries had begun to distribute compensatory fees even before permission had been granted. Moreover, in September 1994, the Environmental Minister had submitted a ban on the construction of an industrial waste dump on national, and nationally-funded parks. However, Gifu Prefecture disregarded this notice and changed the date of the notice from March 1995 to April 1996. They then announced that it would not consider any notifications beyond that time. Toshiwa Industries made a request that abided by the laws of park preservation.

In response to Mayor Yanagawa’s inquiry, Gifu Prefecture noted in March 1996 that Toshiwa Industries “has set a stricter goal for water quality.” This response did not satisfy Mayor Yanagawa.¹²⁾ In October of that year, Mayor Yanagawa was attacked and injured, nearly fatally. During the year leading up to this incident, Yanagawa had been carrying out a personal campaign through a small newspaper. A bugging device was subsequently found in his home telephone. Right-wing groups had been threatening and harassing members of an environmental group who was holding a town study group. Thus, many of

12) The Diet ordered an inquiry into the facts raised by Yanagawa’s questions. The National Land Agency declared Gifu Prefecture’s actions inappropriate. The Environmental Agency denied the claim that Gifu Prefecture had discussed and cleared the matter with it. In addition, it was revealed that Toshiwa Industries had incurred 55 million yen in undeclared funds between 1989 and 1994. *Asahi Shinbun Nagoya Shakaibu*, pp. 33-37.

the townspeople regarded the attack on the mayor as “an act of terror involving the industrial waste issue.”

The day after the attack, Mayor Yanagawa’s supporters from the mayoral election gathered together and decided to schedule a “local referenda to express their ideas” on the industrial waste dump issue. Ten days after the attack, a town meeting to eliminate violence was held, and signatures began to be collected to request an ordinance to implement a local referendum. Three local environmental groups and the mayor’s support group spearheaded the campaign. Numerous townspeople ardently took part in collecting signatures, and within one week, they had collected 100 signatures, three times as many as necessary for the request. Tanaka Tamotsu, who was to deliver the request, hid the original copy of the signatures in a garbage bin and wore a bulletproof vest for protection against a potential attack.

In January 1997, a meeting was held at the Mitake Town Assembly to discuss the ordinance for a local referendum that would put the matter of the industrial waste site construction to a vote. The following are comments made by participants: “Decisions that would lead to a point of no return were discussed without the presence of town residents and were proceeded under the shadow of confidentiality, and were almost passed. I’m at a loss as to how the town, while shouting protests against a bothersome facility, one day suddenly accepted it. There must have been something going on behind the scenes.” “The referendum proposal must have made things difficult for the town assembly. However, past assemblies were so cloaked in secrecy that local residents were forced to make a direct petition. Also, is it right that a town has to give its approval for an unwanted facility in exchange for money to be poured into the town? There was no basic discussion of this issue. The stance that Mitake had taken in the past had been the easy way out.” “The townspeople’s will is against building the site. If this had been made even clearer with the local referenda then the unfortunate incident with the mayor would never have happened.” “The issue of the local referenda is not limited to Mitake, but influences the entire nation by creating a new precedent for those involved in similar predicaments, and is significant as an instructive case.” “I support the enactment of the public referenda ordinance. The local referenda is

a vehicle to reinforce and invigorate direct democracy, and its use should be accepted as an expression of the people's will." "Low voter turnout in recent elections reflects the people's general apathy. Yet, we are arriving at an era in which major decisions affecting the course of Japan and its respective local governments can be made by an alternative of direct ballot."¹³⁾ The discussion led to a vote, and of the 18 members, excluding the assembly chairman, 12 members agreed to the ordinance.

In the meantime, Gifu Prefecture did not slow its efforts to building on the site. In 1987, Kajiwara Hiraku, originally a construction bureaucrat, moved from the position of Tokyo City Director to Vice-Governor of Gifu Prefecture, in 1989 he was elected governor whereupon he promptly filled his prefectural cabinet with loyalists. In 1996, in neighboring Mie Prefecture, the building of the Nagara River Dam caused great destruction to the environment and attracted national attention. The Environmental Minister came to inspect the damage and asked the Minister of Construction to open the dam gates. Governor Kajiwara threatened, "if the Minister of Construction opens the gates, I will deter him by force."

After the public referenda ordinance passed, the gubernatorial elections were held. Kajiwara won a race supported by large economic organizations. Still, there were two opposing candidates from Mitake and their combined votes exceeded Kajiwara's. In the election, Mitake's industrial waste site issue had been a central topic.

At the Prefectural Assembly, the only opposition was the single seat for the Communist Party, giving the Liberal Democratic Party overwhelming power. Gifu Prefecture is the archetypal "conservative monarchy" in which the Liberal Democratic Party pulls the strings. When Mitaka townspeople visited prefectural officials to seek a representative to present their opposition letter on the industrial waste dump issue, not a single member agreed to take on the job. The Prefectural Assembly had lost its capacity to keep the administration in check.

When the public referenda ordinance was established, residents and former

13) Asahi Shinbun Nagoya Shakaibu, p. 79.

officials of the pro-industrial waste site group established a group for “A Brighter Mitake,” headed by the former mayor. At the inaugural meeting, the call was for “an emphasis on nation and prefecture, and the gathering of the will of the townspeople who have common sense.”

Mayor Yanagawa also began organizing information meetings hosted by the town. There were over 40 such information meetings held between February and May of that year. In addition, a symposium was organized in which citizens concerned with the site, members of local government, and lawyers from across the country participated.

In late April, the prefecture government announced that it had developed a revised proposal for the waste facility. This proposal would have a third party construct and manage the site; it would consist of representatives of the prefecture, town, and Toshiwa Industries. They also announced that areas within the national park would be excluded from the site. However, though on-site inspections were mentioned, the proposal offered no specifics on any monitoring measures. The fact that the prefecture submitted a “revised proposal” just before the local referenda implicates it as a likely “derailment tactic.” It increased the sense of distrust among the people.¹⁴⁾

On the day of the polling, big banners hung from the entrance of twelve polling booths reading, “June 22 is the day of local referenda. Let us decide the future of our town.” A businessman said after casting his vote, “This is a crucial vote. I felt that elections for politicians didn’t matter because they were all the same, but with a hazard like this at hand, we can’t take that chance.” Voter turnout was 87.5%, far exceeding the goal of 80%. The number of votes opposing the construction of the waste management site was 10,373 (79.65%, about 69.7% of the entire constituency), also exceeding the goal of 10,000. In contrast 2,422 votes endorsed the plan; there were 203 invalid votes. Mayor Yanagawa stated clearly in the press conference afterwards that the town’s property included in the planned site for the waste disposal facility could not be sold or loaned, thus the plan itself would have to return to square one.

After the local referenda, Mayor Yanagawa stated his fundamental

14) Asahi Shinbun Nagoya Shakaibu, *Dokumento jumintohyō*, p. 105.

understanding on the issue of industrial waste management:

At this point, a great change in thinking is required to deal with the issue of industrial waste management. For this change to happen, we must first recognize that the period of enormous production, consumption and waste is over. The keywords for this shift are waste reduction, recycling, and detoxification. Surely, these things will prove costly. But this cost should be as equal a burden as possible for everyone as a social cost. I heard that there is a rule that “waste always moves along the cheapest road,” but I think this is where the biggest issue with waste problem lies. The town of Mitake fell victim to this rule. Waste should not move along the cheapest road.

Also on the site location, the mayor said:

I understand that the prefecture wants to have a waste management facility somewhere within its boundaries. But there is a difference between wanting it to be “somewhere” and choosing “anywhere.” I think it is necessary to nominate several possible locations and to conduct thorough research on each one of the locations, and then select one place conclusively. If Owazawa of Mitake was selected through such a process, I believe that the majority of those who voted against it in the local referenda, including myself, would have accepted their decision. People say things like ‘regional egotism’ and such, but no action was taken to perform such an investigation. I feel of all the places, why here, just 50 meters from the Kiso River?¹⁵⁾

As these two cases of referendum demonstrate, a just method for the approval of plans and facilities has not yet been established in Japan. These two local referenda shifted the movement of such decisions from the “controlling elite” in a democratic direction through freedom of information. As Mayor

15) Asahi Shinbun Nagoya Shakaibu, *Dokumento jumintokyô*, pp. 231, 233.

Yanagawa proved, it is possible to solve the problem of location choice by seeking a more transparent, objective process, narrowing down the candidates by multifaceted investigation, including technical, social and economic considerations. This procedure would likely improve public acceptance of final decisions.

However, there are cases in which such selection processes are impossible. For instance, if the acceptance of the plan and the facility prove to be impossible for all areas, we must reconsider whether the nature of such a plan and a facility can coexist with society and the environment at all. A classic case is that of the risks of nuclear power plants. In such cases, it is necessary to alter the plan and the facility so that it can be accepted by the society. If such alteration is impossible, then we should abandon the plan and the facility themselves, and consider alternative plans.

Presently the role of the local referenda in Japan is as a political tool with which to reject plans and facilities imposed from above — in effect a public veto. However, as I have demonstrated, the process of organizing a local referendum creates opportunities to have open debates, and in that process, a “resolution by consent” can arise.

The United States

Plebiscitary Voting in California

The initiative and the referenda were introduced from Switzerland to South Dakota and other U.S. states in 1898. During the Progressive Era (1890-1920), a social reform movement swept across the country. As a result of the reform movement, in 1911 an overwhelming number of California citizens voted to amend the state’s constitution to establish the initiative and the referenda, the recall and women’s suffrage. Already at this early stage, the debate over the desirability of the referendum was held. Hiram Johnson, the leader of the California reform campaign and a Republican governor from 1911-17, underscored the justice of the decision made by California’s voters by declaring in his second inaugural address in 1915, “While I do not by any means believe the initiative, the referenda, and the recall are the panacea for all our political ills, yet they do give the electorate the power of action when desired, and they

do place in the hands of the people the means by which they may protect themselves.” Johnson’s words provoked a strong backlash, especially from *The New York Times*. In an editorial entitled “Anti-Democracy in California,” the newspaper had these acid remarks: “While pretending to give greater right to the voters [the initiative] deprives them of the opportunity effectively and intelligently to use their powers … the number and variety of the votes they are called on to cast does away with all chance of really using sense and discretion as to all of them.”¹⁶⁾

For several decades following the 1940s, the direct legislation tradition became less and less influential in American political life. But interest in this tradition was revitalized at the end of the 1970s. There are several reasons why this tradition was reborn. First, there was a decline in public trust in politics during the 1970s in the wake of the quagmires of the Vietnam War and the Watergate scandal. Second, there was rising frustration with local and national legislative processes that were ineffective in the face of the gridlock caused by special interest politics. Third, direct democracy campaigns were recognized as a means of bringing issues to the attention of the public and legislative bodies that were otherwise difficult to get on the agenda. Fourth, successful initiative campaigns increased public interest in direct democracy.¹⁷⁾

Referenda in California

“In many respects, California is seen as a leader both in the issue agenda of initiatives and in the development of the process.”¹⁸⁾ California initiative proposals have been held on a variety of policy themes, ranging from taxation issues to environmental regulation, civil rights, smoking restrictions, automobile insurance rates, transportation policy, and limits on immigration. While the ballot initiative has opened up channels for citizens’ to express their

16) David B. Magleby, *Direct Legislation; Voting on Ballot Propositions in the United States*, Baltimore and London, The Johns Hopkins University Press, pp. 20-25.

17) Lisa Whitehill, “Direct legislation: A Survey of Recent Literature,” *Legal Reference Service Quarterly*, Vol. 5 (Spring 1985), pp. 4-5.

18) David B. Magleby, ‘Direct Legislation in the American States’ p. 240.

political will directly to policy makers, it has also opened up channels for powerful special interests to try to influence policy development in their favor.

Citizens' initiatives have a mixed history. For example, a 1980 petition to introduce no smoking/ sections in public places, which had strong public backing, was successfully prevented by Phillip Morris, which launched a major campaign against government regulation. On the other hand, Proposition 99 (1988), proposing a 25 cent cigarette tax hike, succeeded after anti-smoking activists formed a coalition with the American Cancer Society (ACS). The ACS and a group representing doctors spent \$1.8 million to achieve victory, overcoming a lavishly funded \$21 million anti-cigarette tax campaign that included TV advertising run by the tobacco industry. Other examples are the defeat of Measure A (2006) and Proposition 90. Measure A would have given property owners the right to demand payment, a waiver of the law, or the right to sue, if Napa County authorities' land-use policies (including environmental protection regulations) decreased the value of their property.¹⁹⁾ At the state level, Proposition 90, similarly supported by property rights activists, called for an amendment to the California constitution to require the government to pay property owners for substantial economic losses resulting from new laws and rules, and limit government authority to assume ownership of private property. This measure could also have greatly restricted environmental protection controls. The proposition was defeated in November 2006.²⁰⁾

In the United States popular referenda and initiatives are commonly used in competing ways by actors with differing interests—for example, by environmentalists to support environmental protection and property rights advocates to restrict land use regulations. There are many examples of citizen ballot initiatives that have preserved California's environment from urban sprawl and development. The Greenbelt Alliance, an NGO based in San Francisco, for example, began working with ballot initiatives in the 1960s to

19) "Vote No on Measure A", Napa Valley Registry, May 19, 2006, http://www.naparegister.com/articles/2006/05/19/opinion/editorial/iq_3435206.txt.

20) League of Women Voters of California Education Fund, "Proposition 90, Government Acquisition, Regulation of Private Property, State of California," <http://www.smartvoter.org/2006/11/07/ca/state/prop/90/>.

preserve open spaces and farmlands and improve the quality of life in the nine counties grouped together in the San Francisco Bay Area.

Environmental activist Jerry Meral, who runs the Planning and Conservation League, is credited with developing a “citizens’ initiative industry.” He has been behind numerous propositions and has found ways to successfully build coalitions of sometimes unlikely actors to pass otherwise costly measures. He was a critical player in building up a coalition of actors to pass Proposition 99 described above. He was also behind Proposition 70 (1988), which authorized \$776 million in bonds to help preserve California’s natural beauty and wildlife through the purchase of park lands and coastal areas. The proposal bundled a large number of specific causes together (such as the protection of specific tracks of land across the state). Meral’s efforts were successful in part because of his ability to pull together environmentalists, builders, farmers, Democrats and Republicans, sportsmen, private land trusts and major corporations to support the initiative. After Proposition 70 passed, Meral moved on to help Proposition 116, the Rail Bond Measure specifying just shy of \$2 billion in funds for inter-city rail, commuter rail, and urban rail transport statewide, to victory in 1990. As with Proposition 70, Proposition 116 designated specific projects that would be funded, minimizing the risk that funds would subsequently be used on pork barrel projects.

At the same time, an entire industry has emerged in California around running referenda. Political professionals are contracted to do everything from gathering lists of key voters and signature gathering, to devising television ads and direct mail solicitations designed to appeal to broad segments of the voting public. Even though the initiative was supposed to be an exercise in direct democracy, it has also been perverted to serve purposes that render it difficult for citizens to participate fairly and equally in the political process.

Running an initiative campaign requires large sums of money and this favors special interest group lobbyists, wealthy individuals, and corporations.

California’s Proposition 13

No ballot initiative has had as big an impact as Proposition 13, an anti-property tax ballot initiative passed in 1978 which completely changed the

Californian political landscape. During the administration of Democratic Party Governor Edward G. "Pat" Brown (1959–67), the state launched an ambitious program of massive public works projects, civil rights legislation, and social welfare protections. Before long, the state began witnessing high population growth. A large flux of immigrants brought new energy to business, but also contributed to rising education and other public service costs. The rapid pace of land development resulted in sky rocketing real estate and housing prices. Taxes on fixed property assets also rose sharply, resulting in a growing level of voter disgruntlement.

Reacting to this, Howard Jarvis, a Republican activist created the Howard Jarvis Taxpayers Association in 1978. Speaking on behalf of angry California homeowners and giving voice to their frustrations, Jarvis became the main promoter of Proposition 13. With generous financial support from a large number of homeowners, Jarvis organized a grassroots campaign in support of the proposition. While fending off opposition from minority groups, college students, tenants and members of the establishment alarmed by his populist politics, Jarvis made dramatic appeals that struck a favorable chord with much of the public. Proposition 13 was passed, and the California "tax revolt" was launched. Proposition 13 required that taxes on fixed property assets be reduced and imposed a nearly impossible hurdle to any future property tax increases as any increase would require a two-thirds vote in favor by the California legislature.

Proposition 13 led to a significant cut in property tax rates. It capped taxes on property to one percent of the assessed full cash value of the property and limited increases to the assessed value to two percent a year. While on the surface this may seem desirable, it has had numerous problematic affects. Most of the benefit of this reduced tax burden went to those who already owned expensive homes and hurt those trying to get into the market, a regressive result that Jarvis did not focus on during his campaign. A second result was the advent of a new political constituency, comprised of individuals who had their property asset position enhanced by Jarvis' campaign victory. These "Proposition 13 babies" became the leading edge of a tax-cutting populism that rolled over the Democratic and Republican California state political parties and

began shaping the outcome of public policy formation. A third result was that local public agencies across the state saw their tax revenues reduced by nearly half under the mandated property tax cuts. Given an absence of alternative sources of funding, public financing at the county government level was especially devastated. This has had major implications for public services in the state. The problem was further exacerbated in the 1980s when California found itself facing higher demand for tax revenues, as subsidies from the federal government dwindled and medical and other costs rose.

In 1986, Proposition 58 added yet more favorable provisions for property owners in California when they were successful in pushing through an initiative blocking reassessment transfers of real property between parents and children. Combined these propositions have led to wide disparities in property taxation levels, which mainly hurt immigrants and young upwardly mobile workers. California has led by example. The idea of reducing property taxes through referenda has spread to over a dozen other U.S. states.²¹⁾

A New Shock: The Passage of Proposition 37 in Oregon

To help protect the environment, Oregon has had among the most restrictive land-use regulations in the United States. For some 30 years, various interest groups have been looking for ways to bypass these regulations. Their opportunity came when Proposition 37 passed on November 2, 2004 by a comfortable 60 to 40 percent margin. The nominal purpose of Proposition 37 was to protect landowner property values by forcing the state to reimburse the owner if any changes in state, county or local municipal land-use regulations in any way lowered the property value, such as by restricting development or subdividing property for sale. Any landowner, even corporate owners, could demand reimbursement of lost value. Moreover, the measure is retroactive to any existing cases of lowered property values attributable to regulatory changes. Thus, a present landowner could submit a claim for reimbursement for past “damages” suffered by the owner’s parents or grandparents. Oregon

21) Alan Brinkley, “Reagan’s Revenge—as Invented by Howard Jervis,” *New York Times*, June 19, 1994.

has the distinction of turning into law one of the severest restrictions on land use policy ever seen in the United States.

The guarantee against lost property value promised in Proposition 37 may initially seem fair, but is in fact unfair for at least two reasons: it ignores the interests of the community at large and it ignores the fact that city and town government planning and imposed restrictions affect, and often enhance property values and protect the environment.

In the last analysis, Proposition 37 is an expanded version of California's Proposition 13. As opponents point out the people who in fact profit from passage of this kind of initiative tend to be land developers. If initiatives similar to Oregon's Proposition 37 and California's Proposition 13 spread to other U.S. states, the kinds of environmental regulatory protections won by citizen groups like the Greenbelt Alliance will be put in jeopardy. A select minority will benefit, but at the expense of the welfare and continued viability of the community at large as well as future generations that are made to suffer lower property values because of weakened environmental regulations.

Conclusion

As described in this article, in Germany, Japan and the United States, plebiscitary voting has emerged in response to public discontent with and criticism of the political status quo and indirect democratic practices. Differences in institutional structures and rules governing referenda, however, mean that the potential to employ referenda to promote environmental protection or protest construction plans differs significantly in these countries. As we have come to see, there is no legal basis for local referenda in Japan. Instead, when residents decide they want to settle something through a referendum, voting regulations must be drawn up by means of a direct proposal. However, because local assembly members consider such voting an intrusion on their power, most proposals for direct voting have failed to pass. Thus the referendum remains a rare event in Japan. In contrast, in Germany referenda have become common place at the local level, although not in all Länder. Likewise, referenda are also now a common component of the electoral process in California.

Referenda have empowered local citizens and opened up decision making processes. As all three country examples illustrate, the referenda has become a powerful tool for citizens interested in protecting the environment. There are, however, several deeply rooted problems with the direct legislation system that threaten environmental protections as well, as can be seen with California Proposition 13 and Oregon Proposition 37. While such measures contain promises of lower tax burdens that voters find alluring, they are in fact Trojan Horses for gutting environmental protections. It is not only citizens, but also development interests that can make use of the referendum. Special interests, groups moreover, are more likely to have the capital resources necessary to exploit the powerful influence of the mass media and other public institutions.