

## **Theoretical and Practical Issues in the Study and Conduct of Initiatives and Referendums**

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*Prepared for discussion at the International IDEA workshop on Direct Democracy, London, 13-14 March 2004*

The usage of referendums and initiatives has increased dramatically in recent years around the world, both in the number of democratic countries employing such devices and in the number of issues being put to a direct vote (Butler & Ranney 1994; LeDuc 2003). **Has this increasing use of direct votes led to improvements in the quality of democracy, either on a global basis or in the specific countries or U.S. states that employ such devices with the greatest frequency (e.g. Switzerland, California, Australia, Ireland, Italy)?** While most jurisdictions that practice direct democracy do so in an effort to facilitate greater democratic participation of the citizenry in deciding important issues, other motives are sometimes present. Historically, referendums or “plebiscites” have also been employed by authoritarian rulers, either to create a veneer of democratic legitimacy for their actions or to counter political opposition. In other words, governments of various kinds have different reasons for calling a referendum on a specific issue or for entrenching an initiative or referendum law in a constitution. **We should consider how and why referendums or initiatives are used, by whom, and for what purposes. Is there a risk that they might be misused, or that their usage might conceivably lead to a less democratic political environment rather than a more democratic one?** Even in those countries where democratic practices are well entrenched, referendums are sometimes used to manage internal party divisions, to avoid dealing with complex issues, or to gain advantage over political opponents.

Modern democratic theorists (Sartori 1987; Budge 1996) are generally positive about the usage of initiatives and referendums to foster greater citizen participation and improve the quality of democracy, but they also raise some warnings. Referendums, and particularly initiatives, might sometimes threaten the civil rights of vulnerable minorities or exacerbate racial or ethnic tensions in a particular society. They also might be used by powerful interest groups to constrain the powers of the state in harmful ways, or to advantage specific economic interests. In the United States particularly, there is a growing literature that is critical of California-style ballot propositions on one or both of these counts (Broder 2000; Sabato et al 2000; Gamble 1997). On the other hand, the use of these devices is generally popular in those states that use them the most (e.g. California, Oregon), and there are also many supporters of direct democracy, both among academics and among practitioners (Bowler & Donovan 1998; Haskell, 2001). **We should ask however whether some of the concerns raised by their critics are legitimate, particularly with regard to the rights of minorities, the role of money in initiative campaigns, and their possible effects on representative democracy.**

Direct democracy comes in many forms (see Appendix A), and the issues that arise under these various forms are not always the same. The legal structures and issues associated with one form can be quite different than those in another (Suksi 1993). The debate about direct democracy found in many jurisdictions today is more often about the desirability of citizen *initiatives* than about consultative government sponsored *referendums*. Under the newly adopted New Zealand provisions, a non-binding vote of the people on any issue may be triggered *either* by citizen initiative or by the government. Italy employs what is generally called the *abrogative* referendum or popular veto, in which citizens may, by petition, force a public vote on a law which has already been adopted by the legislature. In many cases, more than one of these routes to a referendum is possible. Switzerland, for example, does not use consultative referendums initiated by the government, but all of the other types are found there. **We should consider whether one or more of these forms of direct democracy is better suited than the others to the goal of creating a healthier democracy, and examine the specific strengths and weaknesses of each form on its own merits.** Particular attention might be paid to Switzerland, where there is extensive experience with several different forms, and where it is possible to compare these within the same political and legal environment (Kobach 1993a; Kriesi 1993).

Another issue sometimes raised in debating the merits of direct democracy has to do with the interest, engagement, and capacity of ordinary citizens. Indeed, one of the persistent problems in a number of modern democracies is that of low citizen interest and involvement and declining voter turnout. Some advocates of direct democracy argue that greater use of initiatives and referendums might help to engage citizens in the democratic process in ways that elections often do not. However, referendums themselves often suffer from a problem of low turnout. In many jurisdictions, turnout in referendums is even *lower* than in elections. Butler and Ranney (1994) found that, on average, turnout in referendums was about fifteen percent lower than in comparable elections in the same countries. Cronin (1989) found a comparable rate of “drop-off” (the difference between voting the candidate and propositions sections of the ballot) in American state referendums. But turnout need not *always* be low. The turnout in some of the more important European referendums has generally been quite comparable to that found in national elections, and turnout in the 1995 Quebec sovereignty referendum registered an astonishing 94 percent (Pammett & LeDuc 2001). Other important referendums in which turnout registered *higher* than that of a comparable election, are the 1992 Canadian constitutional referendum, the 1994 Norwegian EU membership referendum, and the 2000 Danish referendum on the Euro. **We should consider however whether referendums or initiatives can achieve the goal of fostering greater citizen participation in politics. We should discuss also the conditions under which higher levels of citizen participation can be achieved and examine the risks of conducting referendums or initiatives in a political environment in which levels of participation in politics are chronically low.**

A related issue has to do with levels of citizen information and competence. Voters in referendums routinely complain about insufficient information, confusing question wording, or contradictory lines of argument regarding the possible consequences of a referendum vote. Survey evidence in many contemporary democracies often raises doubts on one or more of these dimensions. In the United States, the most common complaints of voters about ballot

propositions are the sheer number of items appearing on the ballots and confusing or complex question wording. Oregon voters in the 2000 U.S. presidential election faced no fewer than twenty-six ballot propositions, dealing with subjects as diverse as education funding, gun control, tobacco settlements, and election campaign finance (LeDuc 2003). In some jurisdictions, governments assume responsibility for providing citizens with detailed information concerning the issues on the ballot, while in others this task is left to those involved directly in the campaign. In both Quebec referendums, question wording has been an important issue (see Appendix B). In Quebec, as in many other cases, the government is *not* a neutral party in the organization and conduct of a referendum. In the United States, propositions are often put forward by groups or organizations that treat question wording as merely one element of their campaign. **We should consider whether voting decisions are being made in referendums by a majority of interested, engaged, well informed voters, and also examine methods that might be used for facilitating the flow of accurate information to the public.**

Recently, there has been much emphasis placed on the concept of “deliberation” among democratic theorists. This idea meshes well with the fundamental concepts of direct democracy (Mendelsohn & Parkin 2001). Citizens, presented with a difficult political issue, discuss it, deliberate, and render their judgment in a referendum. This somewhat idealized version of direct democracy tends to ignore certain realities of the situation, such as a campaign. Governments that call referendums on an issue generally have a position of their own, and they seek not deliberation but victory for their point of view. Likewise, opposite sides in an initiative or referendum campaign, whether they be political parties, interest groups, or umbrella committees structured for the purposes of the referendum, aim to *win* the contest, not to foster deliberation. Certain tactics employed by activists in a campaign may serve to inhibit deliberation rather than promote it. Tactics such as changing the subject of the debate, questioning the motives of opponents, alleging “hidden agendas”, or employing one-sided advertising devices are all part of modern campaigning (Farrell & Schmitt-Beck 2001). The 1999 Australian referendum on the monarchy provides a good example of the difficulties involved in deliberating an important issue in the heat of an intense political campaign (Uhr 2000). Evidence from that contest, on which several important academic studies were conducted, seems to suggest that the campaign may have had the effect of defeating the option actually favoured by a majority of the public. **We should therefore consider whether there are ways to manage initiative or referendum campaigns that can assure a better quality of deliberation of an issue. Can (or should) the playing field be leveled in a referendum campaign? Should campaign expenditures be limited, access to television advertising controlled, or participation in the campaign restricted?**

To the most passionate advocates of direct democracy, all voters are “issue voters”. No party or candidate names appear on referendum ballots, and voters are supposed to consider only the issue on the ballot in casting their votes. But in most political contests, the messenger matters as much as the message. Referendum campaigns sometimes take on qualities of “second order” elections, in which the popularity or unpopularity of particular parties or leaders, the reputation of certain groups, the state of the economy, or the record of the government all may play a role. If the outcome of a referendum reflects not citizens’ preferences on a particular issue but their attitudes toward the prime minister of the day, one of the central purposes of direct democracy has been undermined (Franklin 1995; Svensson

2002). There are a number of technical questions related to this particular point. **Should referendums be held at the same time as elections or separately? Should the government be allowed to campaign? What happens when political parties become directly involved? Should multiple issues appear on the ballot?** But the more general question to be raised here relates to the totality of an initiative or referendum campaign. **Can ways be found to keep the campaign focused on the issue at stake, with a minimum of extraneous matters competing for the voters' attention?**

Finally, we might consider how the outcome of a referendum fits into the overall structure of governance in a particular country. **Is the referendum the final verdict on an issue? Is the result binding? Can (or should) it be reviewed by the courts? Or the legislature?** We might also consider the effects of holding multiple referendums on the same issue. In the earlier part of the last century, there were repeated referendums or plebiscites on prohibition in many jurisdictions. Quebec has had two referendums on sovereignty. Ireland has had three on abortion. In neither of these cases could the issue be considered “settled”. Given that one of the claims of proponents of referendums is that they provide a means of resolving difficult and complex issues, what happens in those instances where an issue is *not* “resolved”? **Can the losing side demand another referendum? Should the government be able to call repeated referendums until they get the desired result?** What happens to public confidence if the “referendum” becomes a “neverendum”?

These are only a few of the issues that are typically raised in discussions of the role of initiative and referendum devices in modern democratic politics, and in the relevant academic literature. The examples here are drawn from, what are in effect, several different literatures, dealing with political theory, legal structure, and advocacy, as well as citizen participation and behaviour. My tone is deliberately critical, so as to promote discussion of some of the more difficult questions that arise. However, there is no doubt that direct democracy *has* enhanced the quality of democratic political life in many of the countries where it is used, and that its fundamental premises remain popular with the citizens of many democratic countries. Since our particular concern at this meeting is with Latin America, we should perhaps pay particular attention to **Uruguay** and **Ecuador**, which are the Latin American countries that have the most experience with these institutions and processes. Since 1975, Uruguay has conducted eight separate referendums involving ten different issues, and Ecuador has conducted five involving some thirty-four issues. Placed alongside European and U.S. examples which are more prominently treated in the academic literature, these cases may serve to provide new insights into the functioning of direct democracy in different political environments.

## Appendix A: Forms and variations of the referendum

### **Mandatory constitutional referendum**

Also called: compulsory referendum, binding referendum

A vote that is required in order to effect a change in the constitution or basic law, the result of which is binding. Rules and procedures for such a referendum are generally entrenched in the constitution or defined by law.

Used in: Australia, Denmark, Ireland, Switzerland

### **Abrogative referendum**

Also called: rejective referendum, facultative referendum, popular veto

A procedure to force a vote of the people on a law that has been passed by the legislature. Once initiated, the result is generally binding. In Switzerland, the procedure may be initiated by a petition of citizens (50,000), while in Sweden or Austria it is triggered by members of parliament (1/3).

Used in: Austria, Italy, Sweden, Switzerland

### **Citizen initiated referendum**

Also called: initiative, direct legislation

A referendum on any subject which is brought about by petition of citizens. The number of signatures required varies widely and is typically specified in the constitution or in the law authorizing such votes. Results are normally binding, but can be subject to review by the courts or legislature. CIR's in New Zealand are non-binding.

Used in: Switzerland, New Zealand, U.S. states

### **Consultative referendum**

Also called: advisory referendum, plebiscite, ad hoc referendum

A vote on any subject usually initiated by the government or legislature. The result is generally non-binding. The rules and procedures for such a vote might be entrenched in the constitution (France) or specified in legislation providing for a referendum to be held on a particular issue (Britain).

Used in: France, Britain, Canada, Finland

## Appendix B: Question wording in the Quebec referendums

### **1980**

*The Government of Quebec has made public its proposal to negotiate a new agreement with the rest of Canada, based on the equality of nations. This agreement would enable Quebec to acquire the exclusive power to make its laws, levy its taxes, and establish relations abroad – in other words, sovereignty – and at the same time, to maintain with Canada an economic association including a common currency. No change in political status resulting from these negotiations will be effected without approval by the people through another referendum. On these terms, do you agree to give the Government of Quebec the mandate to negotiate the proposed agreement between Quebec and Canada?*

### **1995**

*Do you agree that Quebec should become sovereign, after having made a formal offer to Canada for a new economic and political partnership, within the scope of the bill respecting the future of Quebec and of the agreement signed on June 12, 1995?<sup>1</sup>*

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<sup>1</sup> The bill in question declared that Quebec is a sovereign country, stated that an independent Quebec would continue to use the Canadian dollar, and would allow its residents to retain concurrent Canadian citizenship. It authorized the Quebec government to negotiate a new association between Quebec and Canada. The bill was to come into force one year following its approval in a referendum. The June 12th agreement referred to in the question was reached between Premier Jacques Parizeau, Bloc Québécois leader Lucien Bouchard, and Mario Dumont, the leader and (at the time) the only elected member of the Parti Action Démocratique du Québec. The agreement stated that an offer to negotiate a formal treaty of economic and political partnership would be made to Canada following a YES vote in the referendum.

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