
Direct Democracy: The Wave of the Future?

by David Pond

A newfound enthusiasm for direct democracy, in the form of referenda and plebiscites, is spreading across Canada. In June 1991 the Quebec National Assembly passed a bill which empowers the Quebec government to hold a referendum on the constitutional future of the province in 1992. In the October 1991 elections held in Saskatchewan and British Columbia, referendum and plebiscite questions were on the ballot. (In Saskatchewan the voters agreed that the provincial government should be required to introduce balanced budget legislation, and that the public should have the right to approve through a referendum any proposed constitutional amendments; they also voted no to a question asking them whether the government should pay for abortions. In B.C., the voters voted yes to questions asking them whether they should have the right to recall their MLAs, and to propose referendum questions). This paper explains how referenda and plebiscites work, and assesses their impact in two of those democracies which have experimented with them.

A referendum is a vote of all eligible voters in a jurisdiction on a proposed policy or law. The wording will be in the form of a question, which the voters will be required to answer with a yes or a no. Referenda can be binding on the government which conducts them, or merely advisory.

Historically, the terms plebiscite and referendum have been used interchangeably. The former is the older term, dating back to 4th century B.C. Rome. The plebiscite has tended to be the term used to describe references to the

people of a specific question entailing the approval of a leader, regime, or a change in national boundaries. Plebiscites have been employed in Europe to sanction the unification of disparate city-states (into modern Italy), the creation of new nations (Norway's separation from Sweden in 1905), and the resolution of boundary disputes (Schleswig's with France and Germany in the 1920s). Napoleon used plebiscites to demonstrate popular support for annexations by France of other countries, and revisions of the French constitution.

In recent decades the term referendum has replaced plebiscite in common usage. For example, Denmark, Ireland, France, Norway and the United Kingdom held referenda, not plebiscites, on the question of membership in the European Economic Community in the early 1970s.

Saskatchewan's recent *Referendum and Plebiscite Act* revives the use of the term plebiscite, to describe a referendum held under its provisions whose result is not

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binding on the government. Under the Saskatchewan Act, a plebiscite must be held once a petition calling for one on a particular question is signed by at least 15% of the electorate. This kind of referendum or plebiscite is more commonly known as the initiative. The initiative is most used today in the United States and Switzerland. It is a device which enables the citizenry to vote on a measure before it becomes law. It differs from the referendum in that the decision to hold a vote originates with the electorate, not the government. The initiative procedure is attractive to enthusiasts of direct democracy because it empowers the voters to bypass a government reluctant to introduce a policy which enjoys popular support.

The initiative enables citizens to compel the government to hold a referendum on a measure supported by a specified percentage of the voters who have signed a petition indicating their support. Once the petition attracts the requisite number of signatures, a national vote is automatically triggered. When a majority votes yes in the vote, then the measure in question becomes law whether the government agrees with it or not, or (as in the case of the Saskatchewan legislation) the government is compelled to take whatever steps are necessary to implement the result of the referendum, such as introducing a bill into the legislature.

The United States

The referendum and the initiative have a long history in the United States, reflecting the country's populist traditions and distrust of government. The referendum was introduced in the Massachusetts Bay Colony as early as 1640 and the initiative in 1715. Today, 25 states and the District of Columbia use the referendum; 23 states and the District use the initiative. Twelve states allow municipalities to use the initiative. Congress has never adopted either the referendum or the initiative, though it has debated the possibility on a number of occasions. In the November 1988 elections in the U.S., there were more than 200 referendum questions and initiatives on the ballot in 41 states. In California alone there were 29 initiatives.

Perhaps the most famous initiative was Proposition 13 in California whose passage in 1978 slashed property taxes by half and compelled painful cuts in public services. Examples of initiative questions and referendum voted in recent US elections include:

- in Massachusetts, whether to shut down two nuclear power plants with poor safety records, and whether to cut state taxes;
- in Michigan and Arkansas, whether to continue public funding of abortions;

- in California, whether to require an HIV test for anyone charged with assault or sex crimes; and
- in Colorado, whether all proposed tax increases should be put to a public vote.

One of the most striking developments in the use of the initiative in recent years is the number of petitions aimed at modifying the operation of the state legislatures. The following are examples of initiative questions of this nature circulated among the voters in the last three elections.

- in Alaska and Oregon, whether to reduce the salaries of state legislators;
- in California and Kansas, whether to reapportion the state legislature; and
- in Colorado, California and Oklahoma, whether to set limits on how many terms a state legislator can serve.

Until 1990 few of these initiatives passed. In 1990, however, the voters of Colorado and Oklahoma overwhelmingly approved an initiative proposal to limit the term of state legislators to eight years. In California the voters approved Proposition 140, which set strict limits on the number of years any statewide office-holder could serve, from governor to the superintendent of education. Under this Proposition, state senators, who serve a four-year term, are limited to two terms; and members of the state assembly, who serve a two-year term, are limited to a maximum of three. In addition, Proposition 140 cut by a third all legislators' salaries and their office budgets, and eliminated legislators' pensions. Students of Californian politics suggest that Proposition 140 has eliminated full-time professional politicians from state politics. Critics argue that a legislature composed of part-time, inexperienced legislators will be more vulnerable to lobbyists.¹

Another feature of contemporary "initiatie politics" which is worth pointing out is the significant number of initiatives introduced by politicians themselves. For example in California 15% of all initiatives circulated for signatures since 1970 have been authored by state politicians. Moreover, they have been the proponents of more than one-third of the initiatives which actually qualified for the ballot.²

A number of reasons have been offered for why politicians might want to start initiatives:

- he or she can draft the measure to read exactly as desired; a bill, in contrast, will often have to be amended to attract the support of other legislators;
- the initiative campaign, regardless of whether it is successful, can be used by a politician to raise his or her profile in the community and the media; and

- members of a minority party in the legislature can use the initiative process to introduce measures the majority party is blocking in the legislature.³

There is a long-running debate among students of initiatives over whether the process favours left- or right-wing causes. One study found that between 1977 and 1986, 43 out of 96 initiatives qualifying for the ballot across the country which were introduced by liberal, environmentalist or left-leaning groups passed, for a success rate of 43%, while 41 out of 91 initiatives introduced by right-wing groups passed, for a success rate of 45%.⁴ This suggests that the initiative is a politically neutral instrument which activists on both the left and the right can wield with roughly equal chances of success. However, critics point to the high costs of circulating a petition for signatures and the subsequent campaign, and argue that well-heeled business lobbying groups can afford to spend the money necessary to defeat measures proposed by reform and progressive groups.

A study of initiatives which qualified for the ballot in California shows that between 1980 and 1987, the side spending the most money 16 times won. Total spending by both sides in the 29 campaigns amounted to \$130 million.⁵ On the other hand, in recent years there have been a number of high-profile campaigns in which the big spenders lost. For example, in 1986 in California Proposition 65, the Clean Water-Get Tough on Toxics Initiative, passed though its opponents outspent its supporters by a margin of more than three-to-one. In 1988, Proposition 99, a 25-cent tax increase on cigarettes passed despite a massive spending campaign against it by business. It remains true, however, that critics of the initiative will always be able to cite campaigns in which it appears that money made the difference. A recent prominent example occurred in November 1990 when a recycling initiative in Oregon was defeated in a campaign which saw the oil and chemical industry outspend environmentalists by a margin of eight-to-one, which included a \$2.5 million television advertising campaign. The "yes" campaign was ahead in the polls before its opponents' negative television adds were aired.

Switzerland

Direct democracy also has deep historical roots in Switzerland. As early as the 13th century some Swiss cantons (the equivalent of provinces in Canada) regularly made decisions by popular assent in citizen assemblies. As the population grew and such assemblies became impractical (today they survive only in the more thinly populated mountain cantons), the referendum was adopted as a means of continuing this tradition of direct democracy.

All amendments to the Swiss constitution which are approved by the federal parliament must be submitted to a popular referendum. As well, 100,000 citizens (just under 3% of the electorate) can trigger a referendum on a proposed amendment by signing a petition containing its text within 18 months of its publication. This is known as a constitutional initiative. The Swiss National Assembly cannot change the text proposed in a constitutional initiative, but it can present a counter-proposal, which sometimes results in the withdrawal of the initiative by its sponsors. All constitutional amendments proposed in a referendum (including a counter-proposal) must win the support of a majority of those voting nationally, and a majority of the cantons. This latter requirement makes it impossible for the large urban cantons to impose an amendment on the smaller rural ones.

An ordinary law passed by the federal parliament is not subject to a referendum, unless this is demanded by 50,000 citizens (in the form of a petition) or eight cantonal governments within 90 days of its publication. If a referendum is held, only a simple majority of those voting is necessary for the law to carry. Certain categories of legislation, such as the budget, are exempt from the referendum process.

The use of referenda and initiatives by the cantons varies. In some cantons, including the populous ones of Zurich, Berne and Argau, a referendum is obligatory for all laws passed by the cantonal parliament, excluding certain kinds of financial legislation. (The legislative output of the cantonal legislatures is considerably smaller than that of Canadian provincial legislatures). In other cantons, a referendum can be triggered by a petition: the number of signatures required varies considerably from canton to canton. In addition, all cantons employ the legislative initiative, whereby the signatures of specified numbers of citizens on a petition can trigger a vote on a law passed by the cantonal parliament.

The only comprehensive statistical study in English on direct democracy in Switzerland was published in 1979, and it focused exclusively on federal politics. It found that between 1848 and 1978, 212 referenda on constitutional questions were held. In 199, the majority of the population and a majority of the cantons voted the same way (107 yes, and 92 no). In each of the five cases in which an over-all majority voted yes, but the cantons voted no and prevented the proposal from becoming law, the proposal would have given new powers to the federal government. In 18 cases the federal parliament put forward a counter-proposal: in seven out of the 18 the original initiative was then withdrawn.⁶

Another study, also published in 1979, found that between 1945 and 1977, 55% of all constitutional initiatives were started by political parties, mostly by the smaller ones which had little hope of forming the government.⁷ As in the U.S., therefore, direct democracy enables politicians excluded from power to circumvent the control exercised over the legislative agenda by the dominant political forces.

Conclusion

It is difficult to make generalizations about how political institutions developed in another society would work in one's own. However, the experience of the U.S. and Switzerland with the referendum and initiative do suggest that while these devices may well enable popular sentiment to be brought directly to bear on the political process, they will be utilized by those already involved in political activity — interest groups and the politicians themselves.

Critics of direct democracy suggest that in a parliamentary democracy the ready use of the referendum or initiative would undermine the legitimacy of representative government and downgrade that status of the individual Member. Whether or not this is likely can only be a matter of speculation. It is important to point out that under our system of government public policies can only be transformed into legislation by means of bills approved by the legislature and the government remains responsible for the administration of legislation. Under

the British Columbia and Saskatchewan statutes providing for referenda, a referendum result in favour of a particular policy simply requires the government to do whatever *it deems* "necessary or advisable" to abide by the referendum result, such as changing existing policies, or introducing new legislation into the legislature. Thus, the final arbiters of public policy remain the elected legislators.◆

Notes

1. See Ronald Grover, "The Little Word Heard Coast to Coast: No," *Business Week* 88:3 (19 November 1990): 47; and "Out You Go," *The Economist* (24 November 1990): 22-23.
2. Charles Bell and Charles Price, "Are ballot measures the magic ride to success?" *California Journal* 19 (1988): 380.
3. David B. Magleby, "Legislatures and the Initiative: The Politics of Direct Democracy," *Journal of State Government* 59:1 (1986): 32-33; Sandra Singer, "Should We All Vote On It?," *State Legislatures* (October 1988): 26; and Kenneth Reich, "The 64-Million Dollar Question," *Campaigns and Elections* (March - April 1989): 15.
4. Congressional Quarterly, "Initiatives: The Democracy or Bad Lawmaking?" *Editorial Research Reports* 30:1 (17 August 1990): 463.
5. Charles Price, "Afloat on a Sea of Cash," *California Law Journal* 19 (1988): 481.
6. Jean-François Aubert, "Switzerland," in *Referendums: A Comparative Study of Practice and Theory*, eds. David Butler and Austin Ranney (Washington, D.C.: American Enterprise for Public Policy Research, 1978), pp. 43-46.
7. Marjorie Mowlam, "Popular Access to the Decision-making Process in Switzerland: The Role of Direct Democracy," *Government and Opposition* 14:2 (1979): 185-187.