

**REFERENDUMS IN CANADA:
THE EFFECT OF POPULIST DECISION-MAKING
ON REPRESENTATIVE DEMOCRACY**

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TABLE OF CONTENTS

	Page
INTRODUCTION	1
REPRESENTATIVE DEMOCRACY	1
INCREASING PUBLIC DISTRUST	3
POPULIST POLITICAL INSTRUMENTS	5
A. Recall	6
B. Popular Initiatives	8
C. Referendums	9
CANADA'S EXPERIENCE WITH REFERENDUMS	10
A. Federal Referendum Legislation	10
B. Provincial Referendum Legislation	11
ARGUMENTS FOR AND AGAINST REFERENDUMS	12
A. Political System	12
B. Issues of Transcending National Importance	14
C. Education, Participation and Special Interests	14
D. Canadian Identity and Unity	15
E. Leadership	16
F. Cost	18
A MIXED SYSTEM APPROACH	18
CONCLUSION	21
FURTHER READING	22



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INTRODUCTION

After a brief discussion of representative democracy, this paper explains why Canada's political culture has changed, and how this has led to the increasing interest in political instruments such as recall, popular initiatives, and referendums. The paper goes on to examine these instruments and the various arguments both for and against their use in the context of Canadian politics. The impact of populist political instruments on representative democracy in Canada is reviewed, especially since they are more in line with the tenets of direct, rather than representative, democracy.

REPRESENTATIVE DEMOCRACY

Norman Ward⁽¹⁾ has said that perhaps the best definition of Canadian representative democracy comes from John Stuart Mill, for whom representative democracy meant:

that the whole people, or some numerous portion of them, exercise through deputies periodically elected by themselves the ultimate controlling power, which, in every constitution, must reside somewhere.⁽²⁾

Thus, representative democracy is based on a transfer of authority from the people to representatives, a form of indirect rule necessary for governing a large population. Direct democracy, on the other hand, is based on the notion that the people should govern themselves. Since this can only happen in a country that is small in both territory and population, most states

(1) Norman Ward, *The Canadian House of Commons: Representation*, University of Toronto Press, Toronto, 1950, p. 4.

(2) John Stuart Mill, *Considerations on Representative Government*, first published 1861, new edition, R.B. McCallum, ed., Basil Blackwell, Oxford, 1946.

must resort to a representative system for the sake of efficiency. If the system is to be democratic, it must incorporate principles of political equality and government by consent.⁽³⁾ Constituents must be accorded equal representation in Parliament and representatives must be accountable to the electorate through periodic elections.

The theory of representative democracy consistent with the provisions of parliamentary government rests on the belief that Parliament is a supreme assembly of representatives from all regions of the province or country freely debating and determining public policy.⁽⁴⁾ Representatives elected by the people must be free to exercise their personal judgment and not be bound by constituency or group interests. Indeed, the *Canada Elections Act* makes it illegal for candidates to sign a document that would prevent them from exercising freedom of action in Parliament, and illegal for them to resign if called upon to do so by any person, or association.⁽⁵⁾

Representatives in a parliamentary system of government are elected on their merits and must act according to what they believe to be in the national interest; they must be leaders and educators, not simply delegates bound by particular interests. Further, representatives, unlike the average citizen, possess or will acquire the skills and knowledge to enable them to handle the complexity of decision-making in government. Representatives are better qualified to make such decisions because they are paid to dedicate their time to the functions of government, not necessarily because they are more intelligent or public-spirited than others.⁽⁶⁾

The main role of citizens in a representative democracy based on a parliamentary system of government is to legitimize the system by electing members to Parliament. The people have the power to elect their representatives; if these representatives do not perform satisfactorily, the people have the power to replace them in the next election. Thus, the underlying theme of representative democracy is clear – power ultimately resides with the people; while not physically present in the governing body, they should be considered as present by proxy.⁽⁷⁾

(3) For a detailed analysis of this subject, see Robert A. Dahl and Edward R. Tufte, *Size and Democracy*, Stanford University Press, Stanford, 1973. For a discussion of Rousseau's view that political freedom can exist only in states small enough for all the citizens to meet together, as in his native city of Geneva, see A.H. Birch, *Representation*, Macmillan, London, 1972, p. 35.

(4) John McMenemy, *The Language of Canadian Politics*, John Wiley & Sons, Toronto, 1980, p. 235.

(5) *Canada Elections Act*, R.S., 1985, c. E-2, s. 327, as amended.

(6) David Butler and Austin Ranney, *Referendums: A Comparative Study of Practice and Theory*, American Enterprise Institute for Public Policy Research, Washington, 1978, p. 34.

(7) Ward (1950), p. 4.

INCREASING PUBLIC DISTRUST

At one time, Canadian political culture was based on ordered and acquiescent public attitudes toward political authority, with individuals having little interest in influencing the political system.⁽⁸⁾ This political culture allowed for processes such as elite accommodation and executive federalism, where governments and elites could work out policies without much interference from the public. This is no longer true of Canadian political culture today.

National surveys conducted from the mid-'60s to the early '80s reveal that, overall, Canadians had a low level of political trust (as measured by questions on politics and politicians).⁽⁹⁾ Although no major studies of this nature were performed in the '50s and '60s, it is doubtful that Canadians overall possessed such attitudes in that period of unprecedented economic growth, which saw the expansion of the welfare state, greater disposable income, and relative political stability and peace. As suggested by Clarke, political distrust is a phenomenon of the '70s and can likely be explained in part by the events, issues and personalities of that period. One reason cited as abetting an overall cynical attitude towards the political system and politicians was that

the decade of the seventies was dominated by major social and economic problems for which our political leaders were not able to provide solutions.⁽¹⁰⁾

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- (8) Richard Van Loon and Michael Whittington, *The Canadian Political System: Environment, Structure and Process*, McGraw Hill-Ryerson, Toronto, 1987, p. 161-163.
- (9) David V.J. Bell, "Political Culture in Canada," in Michael Whittington and Glen Williams, *Canadian Politics in the 1990s*, Nelson Canada, Scarborough, 1990, p. 142. Similarly, a study conducted by Simeon and Elkin found that Canadians have low expectations from politics. Another study, conducted by Clarke, Jensen, Leduc and Pammett in 1974, concluded that Canadians feel extremely negatively towards the political system, especially politicians and political parties.
- (10) Van Loon and Whittington (1987), p. 126. "Until the early 1970s, Canadians began to expect more from their governments; they were disappointed when they found out that government could not meet all their expectations or effectively deal with all problems": Thomas Hueglin, "The Politics of Fragmentation in an Age of Scarcity," *Canadian Journal of Political Science*, June 1987, p. 241.

The 1980s began in an atmosphere of citizen disengagement from the political process and dissatisfaction with the political authorities.⁽¹¹⁾

The attitude revealed in the studies of the mid-'70s has continued and may have actually grown in recent years. In a March 1992 Gallup poll, fewer than 1 in 10 Canadians reported having a great deal of respect for and confidence in political parties; in a subsequent poll, only 11% of Canadians said they believed that Members of Parliament have very high or high honesty and ethical standards.⁽¹²⁾ Indeed, the public's dissatisfaction with the constitutional process in Canada illustrates a growing distrust of the entire political class. As one observer suggested:

There's been an extraordinary decline of respect for authority in our country... Today, you ask people how they feel about politicians and they give you very negative comments. You see someone in power and anything goes. People in power have become objects, targets for abuse. The accumulated effect of this is to diminish, every day, more and more, the authority of those in power.⁽¹³⁾

Surveys and opinion polls indicate that Canadians believe that elected officials represent not the people but a combination of constituency, regional, national, and party interests, and in some cases fringe parties and special interest groups.⁽¹⁴⁾ Canadians' interest in correcting this by greater citizen empowerment through use of populist political instruments has put the legitimacy of the political system in question. When a political system experiences a crisis of legitimacy,

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- (11) H. Clarke *et al.*, *Absent Mandate: The Politics of Discontent in Canada*, Gage, Toronto, 1984, p. 183. A recent Gallup poll indicates that only 9% of Canadians have "a great deal of respect" or "quite a lot of respect" for political parties; the House of Commons is respected by only 16% of Canadians. These figures are down 50% and 30% respectively since 1989: *The Gazette* (Montreal), 1 February 1993.
- (12) Lorne Bozinoff and Peter Macintosh, "Political Institutions Earn Scorn of Canadians," Gallup, 16 March 1992, and "MPs Viewed as Having Low Honesty and Ethical Standards," Gallup, 3 August 1992.
- (13) O.D. Skelton Memorial Lecture, "The United States in Canadian Foreign Policy," Presentation by Allan Gotlieb, Toronto, 10 December 1992, p. 17. "Canadians have lost faith in both the political process and their political leaders. They do not feel that their governments, especially at the federal level, reflect the will of the people, and they do not feel that citizens have the means at the moment to correct this": *Report of the Citizens' Forum on Canada's Future*, Minister of Supply and Services, 1991, p. 96.
- (14) When there is significant disagreement over policy and/or process, disrespect for politics and the entire political system is bound to increase. The emergence of new political parties and the heightened prominence of special interest groups suggest many Canadians believe their existing political institutions are not sufficiently responsive to their views and interests. See Royal Commission on Electoral Reform and Party Financing, *Reforming Electoral Democracy*, Minister of Supply and Services, 1991, p. 229.

further demands for changes to the system will naturally arise, especially when an issue as important as the Constitution is being examined.⁽¹⁵⁾

It is clear that the attitudes of Canadians have changed and, as one observer put it:

This might prove to be the beginning of what will become a dominant strain in our political culture, or it might be a passing malady that will disappear as mysteriously as it appeared.⁽¹⁶⁾

The current political system and its established processes may not be suited for the current political culture and may have to be adapted to allow more direct involvement of the people in decision-making, perhaps through the use of populist instruments such as referendums.⁽¹⁷⁾ However, Canada's parliamentary tradition assumes that the collective will of the people is expressed through a legislature composed of representatives. A direct appeal to the people in the form of a referendum

embodies an important principle that can conflict with the theory and practice of representative government as we are familiar with in most mature parliamentary democracies.⁽¹⁸⁾

POPULIST POLITICAL INSTRUMENTS

Since the 1980s, there has been increasing pressure for the introduction of populist political instruments such as recall, popular initiatives, and referendums.⁽¹⁹⁾ The Citizens' Forum on

(15) "The system will remain stable as long as the outputs of the system remain marginally effective in satisfying active members of the political community, and the marginal level may be considerably depressed by the distraction of people's attention from issues to personalities. However, if there is an infusion into the system of people who were formerly politically inactive, as may occur when significant new issues arise, the system may become unstable unless its institutions can be adapted to accommodate the effective participation of many newly aroused citizens": Van Loon and Whittington (1987), p. 163.

(16) *Ibid.*, p. 164.

(17) "If a society's political structures are not congruent with its dominant political values, then either people's attitudes must change to conform to the institutional values, or the institutions must change to reflect societal values more closely": Michael Whittington, "Political Culture: Attitudes and Values as the Determinants of Politics," in John H. Redekop, *Approaches to Canadian Politics*, Prentice-Hall, Scarborough, 1983, p. 110.

(18) Nevil Johnson, "Types of Referendum," in Austin Ranney, ed., *The Referendum Device*, American Enterprise Institute for Public Policy Research, Washington, 1981, p. 19.

(19) "Instruments of direct democracy, espoused in the 1920s by the Progressives, continue to have currency. Recall, initiatives and referendums have become commonplace in many other democratic countries, and their popularity is again ascending in Canada": Patrick Boyer, *The People's Mandate: Referendums and a More Democratic Canada*, Dundurn Press, Toronto, 1992, p. 40.

Canada's Future reported that for the most part, people do not find the present political system to be responsive to their needs and fundamental values, and thus many are prepared to

advocate and support substantial changes to the political system if these would result in responsive and responsible political leaders ... [The] desire for these changes is related to a loss of faith, on their part, that the existing political system will make decisions which reflect their values and aspirations for the country. To the extent that reforms can be made which would restore this faith, participants' demands for direct participation in decision-making would be less.⁽²⁰⁾

A. Recall

Recall is a procedure whereby constituents have the power to remove a Member of Parliament or a provincial legislature before his or her term has expired. It is a system "wherein voters can in effect de-elect their representatives in the legislature." Through an electoral procedure,

this power of removal, constitutionally, is either granted to or reserved by the people, depending on the theory of government and sovereignty in the country in question.⁽²¹⁾

Recall is an instrument of direct democracy, reflecting the theory that representatives are merely the delegates of electors, morally bound by the preferences of constituents.⁽²²⁾ With recall, the security of a representative's position is subject to constituency approval.

In the United States, recall was born of the populist movement in the mid-west and has since been established in a number of states.⁽²³⁾ Canadian farmers' organizations in the Prairie provinces were sympathetic to the populist movement, and, mainly because of its influence, each of

(20) *Report of the Citizens' Forum* (1991), p. 96.

(21) Patrick Boyer, *Lawmaking by the People: Referendums and Plebiscites in Canada*, Butterworths, Toronto, 1982, p. 22.

(22) According to delegate theory, the representative is not just influenced but controlled by those interests he represents; otherwise, he will represent the state to his subjects but not the subjects to the state: Roger Scruton, *A Dictionary of Political Thought*, Harper and Row Publishers, New York, 1982, p. 401.

(23) No constitutional provisions allow for recall at the federal level in the United States; however, approximately 15 states provide for the recall of state officials, and 36 states allow for the recall of local officials: Boyer, *The People's Mandate* (1992), p. 29.

the western provinces began initiating “direct legislation” laws, most of which did not receive Royal Assent or were repealed.⁽²⁴⁾

The only Canadian attempt to recall a member was made in the province of Alberta in 1937. The member was Premier William Aberhart, who in the 1935 election campaign had pledged that he would introduce recall legislation. In 1936, the *Recall Act* was passed by the provincial legislature. When, however, Aberhart himself became the first politician to be subjected to recall, the Act was repealed retroactive to the day it had received Royal Assent, and all pending proceedings in connection with the recall of any member were declared null and void. Subsequently, the principle of the recall mechanism disappeared from Alberta and from Canadian politics altogether.⁽²⁵⁾

Recently, there has been growing support for the use of recall, since many Canadians find that too many constraints prevent their elected representatives from being responsive to the wishes of their constituents. Although many have suggested that more free votes and more relaxed party discipline might help to overcome this problem, such a result cannot be guaranteed. Therefore, as the Citizens’ Forum reported, many Canadians would opt for

ways to discipline them [their elected representatives] more frequently than every four or five years ... a mechanism by which an MP can be recalled following a petition signed by an adequate number of his or her constituents.⁽²⁶⁾

Recall seems to correspond to the prevailing attitudes in Canada’s present political culture. In British Columbia, voters in the October 1991 provincial election approved the adoption of a statutory recall device. Although it remains to be seen whether this device will actually become law, it is clear that, given that the vast majority (82%) of the British Columbia voters who cast ballots were in favour of recall, the popularity of the measure is not in question. The Reform Party

(24) Between 1913 and 1919, the provincial legislatures of British Columbia, Alberta, Saskatchewan and Manitoba passed legislation that allowed for referendums and citizen-initiated referendums; however, such attempts to impose direct legislation laws were never fully implemented. See Royal Commission on Electoral Reform (1991), p. 231.

(25) Agar Adamson, “We Were Here Before: The Referendum in Canadian Experience,” *Policy Options*, March 1980, p. 53; Boyer (1982), p. 22-24.

(26) *Report of the Citizens’ Forum* (1991), p. 104.

of Canada also has recall as part of its political agenda, and recall legislation was recently introduced in Parliament through a Private Member's bill.⁽²⁷⁾

It is worth noting that as an instrument of direct democracy, the recall mechanism may pose a threat to representative democracy. Indeed, as the Royal Commission on Electoral Reform concluded:

In Canada, the particular vulnerability of the prime minister and cabinet ministers to the use and abuse of the recall would make this instrument of direct democracy especially detrimental to our system of representative democracy.⁽²⁸⁾

B. Popular Initiatives

Another mechanism associated with direct democracy is the popular initiative, a process whereby a specific number of voters initiate a bill or demand that a law be amended or repealed.⁽²⁹⁾ In the United States, 23 states authorize a number of types of popular initiatives, and in some the state Constitution may be amended through this procedure.⁽³⁰⁾

In Canada, popular initiatives are not institutionalized at the provincial or federal level, though they are found in numerous municipalities.⁽³¹⁾ Usually established through the use of a petition, popular initiatives allow voters the opportunity to be direct players in the law-making process. The prospects for the establishment of such a device at higher levels of government in

(27) The bill would allow electors to recall an MP by circulating a petition containing the names and addresses of at least 50% of the voters enumerated in that riding in the previous election, after which a by-election would be held. A Private Member's bill is debated and voted upon only if that bill is chosen randomly from among others in a lottery. Norm Ovenden, "Reform's Grey Introduces MP Recall Bill," *Edmonton Journal*, 11 December 1992.

(28) Royal Commission on Electoral Reform (1991), p. 247.

(29) Pierre-F. Côté, *Instruments of Direct Democracy in Canada and Quebec*, Directeur Général des Élections du Québec, July 1992, p. 6.

(30) Government of British Columbia, "Background Paper: Initiative," *Referendum B.C.: The Decision is Yours!*, 1991, p. 3.

(31) "At the municipal level, the popular initiative device is used for matters such as the authorization of Sunday activities in a number of provinces, the fluoridization of water and changing the ward for municipal elections in Ontario. Popular initiatives did exist at the provincial level in western Canada, but only for a brief time. The form of initiative available at the municipal level in Canada is rather constrained; local councils play a role in the law-making process, and there is usually a provision allowing the provincial government (through its municipal affairs board or department) to overrule such an enactment according to certain criteria": Boyer, *The People's Mandate* (1992), p. 27.

Canada are unclear. However, in October 1991, 83% of British Columbia voters on the question approved implementation of popular initiatives.⁽³²⁾

C. Referendums

Signs point to an increasing trend towards the use of instruments of direct democracy in Canada. In particular, the concept of the referendum has figured prominently. The federal government recently called a national vote on constitutional amendments, while a number of provinces have enacted referendum legislation. Although the term “referendum” has been variously interpreted and defined, it may be said to constitute

a method of referring a question or set of questions to the people directly as opposed to allowing them to be settled by the people’s representatives in the legislature.⁽³³⁾

The term “plebiscite” is generally taken to mean the same as a “referendum.”⁽³⁴⁾ Political scientists often use the term “referendum” for cases where the government is obliged to act according to the expressed will of the majority of the electorate. They use the term “plebiscite” for

an expression of opinion by the people on a general course of action proposed by the government. The vote is not legally binding, although there may be a political and moral obligation to respect the result.⁽³⁵⁾

In Canada, “referendum” is now the term in general use for both binding and non-binding national votes and will be used in this sense in this paper.⁽³⁶⁾

(32) Royal Commission on Electoral Reform (1991), p. 247.

(33) David Robertson, *A Dictionary of Modern Politics*, Europa Publications Limited, London, 1985, p. 285.

(34) In popular usage, the terms are used interchangeably and the processes involved in both are virtually the same: Boyer (1992), p. 23.

(35) Boyer, *Lawmaking by the People* (1982), p. 12.

(36) While authors such as Jean-Marie Denquin have made numerous distinctions between the two concepts, others, such as David Butler and Austin Ranney, suggest that there is no clear or generally acknowledged differentiation between them. *Ibid.*

CANADA'S EXPERIENCE WITH REFERENDUMS

There have been no binding referendums in Canada; however, there have been three that were non-binding. In 1898, a national vote was conducted on the prohibition of alcohol sales, an issue that had become controversial and not easily resolvable.⁽³⁷⁾ The 1942 vote on conscription, whose results and debates have been well documented, was even more controversial.⁽³⁸⁾ It is significant that on both occasions, Quebec and English Canada voted on opposite sides. The conscription issue, in particular, divided the “two solitudes,” while the outcome of the vote confirmed and even exacerbated the division.

The latest national referendum, held on 26 October 1992, dealt with a number of proposed constitutional amendments commonly referred to as the Charlottetown Accord. The Accord was defeated in all but four provinces.⁽³⁹⁾ The Accord was defeated in both Quebec and English Canada, but for different reasons in each case. Many Quebeckers voted no because they thought the Accord offered them too little, many English Canadians voted no because they thought Quebec was offered too much.⁽⁴⁰⁾ Thus far, national referendums in Canada have only served to confirm that there is, and perhaps always will be, a wide divergence of views on many subjects between Quebec and English Canada.

A. Federal Referendum Legislation

At the national level, no general law governs the use of referendums, but there have been various unsuccessful attempts to introduce such legislation: Bill C-40 and Bill C-9 in 1978; Bill C-311 in 1988; and Bill C-287 in 1991. In June 1992, the federal government adopted a limited referendum Act entitled *An Act to Provide for Referendums on the Constitution of Canada* (Bill C-

(37) Royal Commission on Electoral Reform (1991), p. 235.

(38) Boyer, *Lawmaking by the People* (1982); Vincent Lemieux, “The Referendum and Canadian Democracy,” in *Institutional Reforms for Representative Government*, Peter Aucoin, ed., Vol. 38, Royal Commission on the Economic Union, University of Toronto Press, Toronto, 1985.

(39) The Accord was rejected in Nova Scotia, Quebec, Manitoba, Saskatchewan, Alberta and British Columbia. Ontario narrowly approved of the Accord by a margin of 49.8% to 49.6%, and strong approval for the Accord was found in Newfoundland, New Brunswick and P.E.I. Nationally, 44.5% voted yes and 54% voted no: Elections Canada (unofficial results).

(40) In a recent survey, 59% of those surveyed outside Quebec thought that Quebec was given “too much” in the Charlottetown Accord, while a similar percentage of Quebeckers believed that it “did not give enough to Quebec.” See “Canadians Still Split on Quebec in Survey,” *Winnipeg Free Press*, 28 September 1992.

81).⁽⁴¹⁾ This Act does not require the federal government to hold a referendum for amendments to the Constitution; rather, it provides the legal and administrative framework for conducting such a national referendum if the federal government decides to hold one.

B. Provincial Referendum Legislation

Many consultative referendums have been held at the provincial level, but mandatory referendums will very likely be held in the future as some provinces have recently enacted legislation making adoption of constitutional amendments subject to the outcome of a provincial vote.⁽⁴²⁾ In the October 1991 Saskatchewan election, the electorate voted in favour of holding a provincial referendum to ratify constitutional agreements. Thus, Saskatchewan adopted referendum legislation, the *Referendum and Plebiscite Act*, which stipulates that the results of a referendum will be binding on government if 50% of the electorate vote 60% to support, or 60% to reject the referendum question(s). British Columbia recently passed the *Constitutional Approval Amendment Act*, under which the government of the province is obliged to hold a referendum for any amendment to the Canadian Constitution before it is put to a vote in the provincial assembly. In Alberta, the *Constitutional Referendum Act* requires that constitutional amendments be subject to a provincial referendum.⁽⁴³⁾ All provinces except Nova Scotia, Ontario and Manitoba have a provision for the enactment of a plebiscite. Most of these provisions take the form of a statute stating:

whenever it appears that an expression of opinion of the voters is desirable on any matter of public concern, the Lieutenant-Governor in Council may direct that a plebiscite be held to obtain that expression of opinion.⁽⁴⁴⁾

(41) Côté (1992), p. 8.

(42) A total of 44 consultative referendums or plebiscites have been held in Canadian provinces, 31 in the four western provinces. No province has held a mandatory referendum. New Brunswick is the only province not to have held at least one referendum. Most referendum questions involved either the prohibition of liquor sales or the adoption of daylight savings time. There were some notable exceptions: sovereignty association in Quebec; the two Confederation referendums in Newfoundland; women's right to vote in B.C.; and the fixed link issue in P.E.I. No referendums (binding votes) are permitted in New Brunswick. Of the 44 referendums, 31 were held before 1945. See Royal Commission on Electoral Reform (1991), p. 233.

(43) Notes from this section were taken from: Pierre Marquis, "Provincial Referendum Legislation and Declined Ballots," Elections Canada, July 1992.

(44) *Ibid.*; *Newfoundland Election Act*, section 169. Referendums in provinces except Quebec and P.E.I. are held either under specific legislative statutes or under provincial electoral law. Most provinces have legislation that permits local and municipal level referendums and plebiscites. See Royal Commission

While plebiscites have been used at all levels of government in Canada, such use, especially at the national level, has been infrequent. Yet, given the referendum requirements for constitutional change in some provinces, it is highly unlikely that future attempts at constitutional change will go forward without a national vote.⁽⁴⁵⁾ Some commentators have concluded that the 26 October 1992 national plebiscite set a binding precedent making the future use of such national votes inevitable, and that it will be all but impossible politically for the provinces to rescind referendum legislation now in place.⁽⁴⁶⁾

ARGUMENTS FOR AND AGAINST REFERENDUMS

The increasing popularity of recall, popular initiatives and referendums is a testament to the change in Canadian political culture and the increasing demand for citizen political involvement that goes beyond simple ballot box participation. Will these mechanisms enhance our system of government?

A. Political System

Claims of problems in Canada's political system abound. Specifically, it has been suggested that

our procedures for defining and resolving public issues are obviously out of sync with the outlook and imperatives of most Canadians. A responsible citizen cannot observe all of this without also inquiring into the way in which the political system might be reformed.⁽⁴⁷⁾

Demands for political reform today have similarities with the early 20th century populist movements in both Canada and the United States, whose underlying principle was "the cure for ills of democracy is more democracy." It was believed that instruments of direct

on Electoral Reform, p. 234.

- (45) According to political scientist Alan Cairns, Canadians will demand and probably receive the right to vote on any future constitutional deals: *Vancouver Sun*, 16 October 1992.
- (46) Roger Gibbons and David Thomas, "Ten Lessons from the Referendum," *Canadian Parliamentary Review*, Winter 1992-93, p. 3.
- (47) Patrick Boyer, "Is a Mandate from the People on Fundamental Issues Essential to a Healthy Democracy?" *Parliamentary Government*, No. 41:3-17, 3 June 1992, p. 3.

democracy would have the effect of cleansing and enriching the political process.⁽⁴⁸⁾ Based upon popular belief in the freedom of individuals and the undesirability of intermediary organizations, the basic reasoning of the populist movement was that

if the fear of being bypassed by popular initiatives or overridden by popular referendums was enough to force public officials to behave honestly and responsively, well and good; if not, the people themselves would simply take over.⁽⁴⁹⁾

According to one current observer, what ails the Canadian body politic is a combination of political realities such as executive federalism, party discipline, lobbyists, and single issue groups.⁽⁵⁰⁾ In other words, the democratic system is not responding adequately to the needs and desires of the people and referendums are necessary to correct the situation.

Although there is little doubt that the aforementioned political realities have contributed to current criticisms of our political system, it must be asked whether they are solely responsible. Surely, factors such as unpopular political personalities, a series of bitterly contested government policies and the process of constitutional amendment handed down by the Fathers of Confederation have also soured the public mood. If so, while the greater use of referendums and plebiscites might make the system more responsive, it would not be a cure-all, since problems with personalities, policies and process would continue.

As one observer has suggested, major policy initiatives developed without public consultation may have contributed to the current level of political disenchantment.⁽⁵¹⁾ It is difficult to imagine, however, that public consultation alone would be enough to overcome this disenchantment. Major issues are, by their very nature, controversial, and thus resist consensus; for example, despite best efforts at public consultation, the Charlottetown Accord initiative failed, and disenchantment continues. Referendums that make irreconcilable differences more apparent can surely not benefit the political system, let alone Canadian unity.

(48) Such assertions apply specifically to the Progressive movement in the United States, a reform movement operating within both the Republican and Democratic parties in most American states and to a lesser degree in national politics from the 1890s to America's entry into World War I. See David Butler and Austin Ranney, *Referendums: A Comparative Study of Practice and Theory*, American Enterprise Institute, Washington, 1978, p. 27.

(49) *Ibid.*

(50) Boyer, *The People's Mandate* (1992), p. 5.

(51) Patrick Boyer, "Is a Mandate ... Essential?" (1992).

B. Issues of Transcending National Importance

It has been suggested that if referendums were held on issues of transcending national importance, the health of our democratic system and the effectiveness of our process of self-government would improve.⁽⁵²⁾ One problem, however, is determining the criteria for choosing these issues. To some, taxation is of transcending national importance; others consider free trade or electoral reform to be so. In the spirit of direct democracy, the people would have to help determine the issues on which to vote; it would be unthinkable for only governments to decide on them. With the potential for such public involvement, however, the likelihood of disagreement increases dramatically.

C. Education, Participation and Special Interests

There is no doubt that the use of referendums can be educational, bringing people closer to the issues and familiarizing them with public policies. Voters who know they will have a direct effect on the future of a policy initiative will probably make a concerted effort to study the problems, and subsequently feel less alienated from the system. As Patrick Boyer suggests, the process would change Canadians from “passive spectators into active participants.”⁽⁵³⁾ Further, it has been suggested that legislation ratified by citizens enhances public confidence in the democratic process.⁽⁵⁴⁾

In the mass public debate over the Charlottetown Accord, many Canadians learned a great deal about their Constitution and became active in the decision-making process; however, this was not true of all the electorate. Some may have voted against the Charlottetown Accord simply because they did not like the politicians who supported it or because they did not like government policies such as taxation or free trade.⁽⁵⁵⁾ Some voters may have dismissed the Accord out of hand as a massive transfer of powers in order to appease Quebec, even though the Accord was designed

(52) *Ibid.*

(53) *Ibid.*

(54) “Citizen empowerment would promote a greater sense of attachment, on the part of Canadians, to the central institutions of the country, as well as a stronger feeling of participation in the decisions that concern us all”: Vincent Lemieux (1985), p. 138-9.

(55) Attitudes toward the politicians involved, and toward the process that led to the referendum, have determined how people are likely to vote as much as specific contents of the Charlottetown Accord. Hugh Windsor, “Poll Gets the Word from Cranky Electorate,” *Globe and Mail* (Toronto), 9 October 1992.

to meet the demands and desires of all Canadians. At the same time, it is reasonable to assume that many voters in Quebec rejected the Accord because they considered Canadian unity not to be in their best interests.⁽⁵⁶⁾

It is claimed that referendums give citizens the power to override the significant political clout of special interest groups and a greater degree of knowledge about the political system. In the referendum on the Charlottetown Accord, however, advertisements, speeches and other campaign tactics were short on substance, and even at times biased and misleading. Further, the role of special interest groups was significant. Indeed, the Accord may have failed in large part because it attempted to court too many interest groups and in so doing provided other groups with reasons to object. Further, many Canadians may have felt obliged to reject the whole Accord because of one aspect that directly affected them; the Accord was perhaps too all-encompassing to be answered by a single yes or no.

In summary, referendums may be of limited educational value if they are subject to misleading interpretations and easily manipulated by special interest groups. Further, referendums involving numerous and complex proposals may undermine the people's ability to comprehend what they are voting for.

D. Canadian Identity and Unity

It has been suggested that the use of referendums would serve to strengthen Canadian identity because it would lead to Canadians' greater interaction with, participation in, and responsibility for the type of nation they desire. Opponents of referendums might argue the opposite. Certainly, the use of referendums in Canada in the past may have done more to exacerbate the differences in our society than enhance Canadian identity; moreover, it has provided governments with a convenient mechanism for backing out of commitments while shifting responsibility to the electorate.⁽⁵⁷⁾

(56) A survey conducted at Simon Fraser University following the referendum found that voters in Vancouver and Montreal could correctly answer only 60% of basic questions about the Accord. Further, from questions about people's attitudes toward governments, politicians, natives and Quebec, Professor Jim Ogloff concluded that people voted with their hearts and not their minds. See "Canadians Score C+ on Accord," *Vancouver Sun*, 28 October 1992.

(57) On the other hand, Patrick Boyer suggests that the conscription crisis actually helped Mackenzie King keep the country together, since the vote demonstrated how views differed between Quebec and the rest of Canada. See Boyer, *The People's Mandate* (1992), p. 5.

Referendums necessarily result in a forced decision, rather than one based on consensus. Further, referendums are based on an unrealistic assumption that there is a simple yes or no answer to complex questions, and set up confrontation between their supporters and opponents.⁽⁵⁸⁾ Some commentators have suggested that the ultimate goal of the democratic process is not identification of differences of opinion, rather,

consensus, a sense of the meeting, a general agreement that a particular course of action is the best way of promoting the interests of all citizens. The ideal solution can only be realized by discussions among people who know and respect each other and who seek the truth, not forensic triumphs over their neighbours.⁽⁵⁹⁾

Referendums do not allow for defining the best way of dealing with a problem or for continuing discussion on alternative solutions or methods of reaching a compromise.⁽⁶⁰⁾

Referendums also pose a danger to minorities. If issues lend themselves to being settled on a majority-minority basis, as was the case during the conscription crisis in Canada, minorities will always lose out. Governing by referendum would in effect constitute a system of majority rule, in which the only possible position for the minority was complete submission. A system of government by consent and compromise, on the other hand, allows for a more equitable balancing of interests. Certainly where a nation is divided along minority-majority lines, be these ethnic, religious or linguistic, referendums are not in the best interests of the minority.

E. Leadership

Proponents of referendums claim that submitting an issue of national importance directly to the electorate does not constitute an abdication of leadership.⁽⁶¹⁾ Not many would disagree, if referendums were used only occasionally. Again, the crucial point would be determining the issues on which the electorate would vote. If referendums became commonplace,

(58) Joseph Zimmerman, *Participatory Democracy: Populism Revived*, Praeger Press, New York, 1986, p. 57.

(59) David Butler and Austin Ranney, *Referendums: A Comparative Study of Practice and Theory*, American Enterprise Institute, Washington, 1978, p. 35.

(60) "Referendums set up confrontations rather than encourage compromises, dividing the population into victors and vanquished": *Ibid.*

(61) Boyer, "Is a Mandate ... Essential?" (1992), p. 6.

with most issues being considered of transcending national importance, then there would be no leadership.

Further, since granting one referendum may lead to demands for others, the power of elected officials over the long term might be usurped.⁽⁶²⁾ In a referendum, final decisions take place in the privacy of voting booths and are not made by elected representatives. The electorate is completely unaccountable to others for its preferences and biases and its commitment to a consistent and fair course of conduct can be neither measured nor questioned.⁽⁶³⁾ Frequent use of referendums may result in representatives without responsibility or accountability. Thus, the responsibility and accountability of our political leaders would be eroded at a time when their expertise and statesmanship were needed to achieve consensus.⁽⁶⁴⁾ After Canada's recent constitutional referendum, in which the consensus reached by the first ministers was defeated, any future consensus will probably have to be put to a referendum. The power of elected leaders and their legislative assemblies to change the Constitution, rightly or wrongly, has been usurped.

Referendums can have the effect of making governments "reluctant decision-makers." In other words, when governments are faced with difficult decisions, referendums are a convenient method of allowing them to shirk their decision-making responsibility. As has been suggested:

Rather than provide for direction or leadership on controversial or volatile issues, governments may use referendums to obfuscate or shun responsibility.⁽⁶⁵⁾

To deny the value of referendums entirely is to lack an understanding of basic democratic principles; however, we cannot merely trust that referendums would be used intelligently. Proper rules would have to be established for their use, in full awareness of their potential for divisiveness.

(62) Butler and Ranney (1978), p. 34.

(63) Julian N. Eule, in Aaron Wildavsky, "Foundations of Democracy: On Respecting Politicians," *Current*, No. 347:21-5, November 1992, p. 21.

(64) Butler and Ranney (1978), p. 34.

(65) Royal Commission on Electoral Reform (1991), p. 238.

F. Cost

According to proponents of referendums, their costs, while significant, constitute a good argument for creating a permanent voters' list, since the largest component of electoral costs is preparing and revising a voters' list.⁽⁶⁶⁾ Furthermore, the cost of public consultations such as the Spicer Commission, which hear from only a small percentage of Canadians, could be better spent on a genuine dialogue through a referendum, where all are consulted.⁽⁶⁷⁾

Referendums might indeed offer a consultative exercise in which all eligible voters could participate; however, the cost of a permanent bureaucracy for maintaining a permanent voters' list would be greater than the cost of our current system.⁽⁶⁸⁾ Furthermore, public consultations tend to attract the active participation of those who are genuinely interested in an issue, while participation in a referendum may not extend beyond the ballot box. The permanent voters' list tried in Canada from 1934 to 1938 proved less satisfactory than our current system.

A MIXED SYSTEM APPROACH

The current mood of Canadians reflects a political system that has not adapted quickly enough to the processes and policies of a changing political culture. The judicious use of populist political instruments may yet prove to be an effective means to lend the system credibility by making it more responsive and decreasing Canadians' feeling of alienation. One observer has termed this blending of principles of direct democracy and representative democracy:

“the politics of engagement” – where the Canadian people themselves are engaged in the risk and the consequences of deciding issues.⁽⁶⁹⁾

This approach to government and politics would reap the benefits of direct democracy, with people actively participating in the political process, bearing responsibility and

(66) According to supplementary federal spending estimates, it cost taxpayers \$103.86 million to hold the 26 October 1992 referendum. It cost Quebec approximately \$46 million to hold its referendum of the same day. See Directeur Général des Élections du Québec.

(67) Boyer, *The People's Mandate* (1992), p. 7.

(68) Van Loon and Whittington (1987), p. 277. Another drawback of this system is the difficulty of maintaining the list in a large country with a transient population.

(69) Boyer, “Is a Mandate ... Essential?” (1992), p. 4.

dealing with the consequences of their actions; it would also recognize that political representation is needed for the sake of efficiency. Proponents of such a mixed system argue that

individuals should not be bound by law they did not help make or participate in making. In other words, the individual, all individuals, must be consulted in the making of laws which will affect them. If they are not consulted, the law is invalid... This is again an attempt to make the representative more responsive to the wishes of constituents and, in a broader sense, to bring the whole representative system more in line with the ideals of direct democracy.⁽⁷⁰⁾

Yet, the so-called “politics of engagement” may not, in the end, provide Canadians with better public policies. Further, it has been suggested that, given the role of the media and the significant weight accorded to public opinion in Canada, the people may already have the power at least to narrow the range of choice for public policy. Indeed, according to one observer:

There is much evidence to support the view that public opinion, and perceptions of it by elected officials, guides and constrains policy.⁽⁷¹⁾

Furthermore, there is much legitimacy in concerns about whether the proposed system would provide constitutional renewal. Mass public consultations through the use of referendums now seem inevitable for constitutional issues, yet, given the apparent irreconcilability of Canadians’ views, chances of constitutional renewal seem slim. Moreover, some Canadians may vote against any constitutional referendum in order to register their protest against the politicians who drafted it.⁽⁷²⁾ One observer noticed signs in Australia stating “vote no to all constitutional referenda” and suggested that, generally speaking,

people are starting to vote negatively out of pique at being manipulated.⁽⁷³⁾

(70) Lyman Tower Sargent, *Contemporary Political Ideologies: A Comparative Analysis*, Dorsey Press, Homewood, Illinois, 1984, p. 51.

(71) Wildavsky (1992), p. 21.

(72) “Voters may vote against constitutional reform in order to pass judgment on the popularity of the leader and/or the government of the day. The recent Panamanian referendum, on constitutional reform, strongly rejected, was widely seen as a referendum on the President and his government”: *Ottawa Citizen*, 16 November 1992, p. A9.

(73) Wildavsky (1992), p. 22.

Evidence suggests that many Canadians voted no in the recent constitutional referendum, not because of what the Accord contained, but because they felt the exercise was not sincere. According to a recent poll, a majority of Canadians felt that the referendum

was simply an attempt on the part of politicians to push their own views on the public rather than ... a sincere attempt to consult the Canadian people on their common future.⁽⁷⁴⁾

The use of populist instruments may have some ramifications for representative democracy. For example, although not strictly adhered to in practice, constitutional convention regarding responsible government dictates that a government must resign if it is defeated on a vote in the House of Commons.⁽⁷⁵⁾ If a law is ratified by Parliament but defeated in a referendum, what becomes of this basic tenet of representative democracy? Moreover, if elected officials are not accorded a significant degree of responsibility, the incentive for holding public office will wane, as will the incentive for political leaders to reach consensus on various issues.⁽⁷⁶⁾

Would the use of recall encourage political opponents to abuse the mechanism for their advantage? Would the use of popular initiatives be hijacked by powerful groups to further their own interests?⁽⁷⁷⁾ Such concerns are valid and practical and must be addressed.

To suggest that populist decision-making instruments may pose a threat to the basic principles of representative democracy does not imply that such mechanisms have no place in a parliamentary political system. The question is how often can referendums, recall, and popular initiatives be employed without superseding the traditional political process?

(74) The poll also found that people fear that a referendum, rather than binding the country closer together, may worsen the country's divisions. This poll was conducted by Angus Reid/Southam/Star Phoenix, and the results appeared in "Referendum Divisive: Poll," *Star-Phoenix*, 17 September 1992.

(75) On assessing the historical evolution of the confidence convention, the Special Committee on Reform of the House of Commons (McGrath Committee) concluded that clearly not every vote involves confidence and that governments in future should specify what votes should be considered confidence matters. See Van Loon and Whittington (1987), p. 601.

(76) "As legislatures lose power, they will lose popular respect, and outstanding citizens will be less inclined to seek public office. Even those who remain in office are likely to behave less responsibly, since they are aware that anything they do, good or bad, may be overridden by a referendum": Butler and Ranney (1978), p. 37.

(77) This has been described as happening in California, where the entrenchment of popular initiatives has been, in effect, taken over by well-organized and financed interest groups to put forth their own agendas.

CONCLUSION

The apparent shift in Canada's political culture and the deficiencies of our present political system have led to the blending of two theories of government. Elements of direct democracy, particularly referendums, are gaining credibility and have gained the force of law in some parts of the country. While the effects remain to be seen, it is important to establish a proper framework for the use of such instruments, even if they are to be used only rarely.⁽⁷⁸⁾

Canada can gain immeasurably from its own experience with populist political instruments and from analyzing the advantages and disadvantages of their use in other countries, bearing in mind the particularities of Canadians, our system of government, and political realities. Political parties must also be open to change; some suggest that the entire political system has been adversely affected by the evolution of the structure and workings of political parties.⁽⁷⁹⁾

It is possible that the occasional use of referendums on questions of transcending national importance, together with the use of other instruments of direct democracy, could cure the ailments of today's system. Much work remains to be done, however, on incorporating such innovations without undermining a system which, at least for Canada's first hundred years, has worked reasonably well. Some observers have concluded that referendums

have often proved to be useful devices for solving or setting aside problems too hot for representative bodies to handle. They have often given legitimacy to new regimes or boundaries or constitutions that would otherwise have lacked. In short, they have been and can continue to be valuable adjuncts to representative democracy. We would hate to see them abolished altogether, and we would hate to see them overshadow or replace representative institutions.⁽⁸⁰⁾

In Canada, it seems that the main reason to use populist instruments would be to bring the political system more into line with the political culture. Certainly, such a change would require a set of explicit rules governing the use of populist instruments. Otherwise, they could bring

(78) Patrick Boyer outlines a number of factors that could be used to determine whether a referendum should be held. Some of these include: whether the proposed change affects positive principles going to the root of our institutions; whether the public was not informed of possible changes at the time of election and, if so, might have voted otherwise; and whether an issue needs to be resolved separately from political personalities. See Boyer, "Is a Mandate ... Essential?" (1992), p. 14.

(79) Johnson, in Ranney (1981), p. 30.

(80) Butler and Ranney (1978), p. 226.

about simplification while taking away essential motivating factors, such as responsibility, from elected representatives.

Some believe democracy is about the processes of making decisions. If so, the adoption of populist political instruments may be beneficial. Others believe that democracy is about the attainment of substantive public policies. If so, then such instruments must be used cautiously, as they are not certain to provide benefits in such terms. Since, in fact, democracy probably rests equally on both beliefs, the solution may be a practical balance with clearly established rules. In this way, populist reforms could serve to enhance representative democracy rather than working to its detriment.

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