
Our Referendums are not Direct Democracy

by Don Rowat

Though the referendum as used in Canada is often said to be a device of direct democracy, this is not true, because of our confused use of the word referendum. As used in the United States, the word means the reference of a legislative proposition, initiated by the citizens, to a popular vote, the result of which is binding. In other words, the voters pass laws directly, without reference to the legislature, and this is why it is called direct democracy.

Referendums were an extension for large populations of the practice of direct democracy in the Swiss canton meeting or the New England town meeting of voters, where legislation is still passed, and taxes are levied, directly by the voters. This type of referendum is direct democracy in the sense that the voters are actually passing legislation if they approve the proposition presented to them.

The other meaning of the word, and the one now meant in Canada, is the reference of a question to a popular vote, which is not binding on the government or legislature that referred it. A government or legislature may ignore the result and they have often done so. Thus the non-binding referendum is merely a kind of expensive public opinion poll. One can argue that polls are better because they are a scientific sample of the whole adult population, while in a Canadian referendum few may vote, so it can easily happen that a majority vote is not the majority view of the whole electorate. This type of referendum is more properly called a plebiscite. But often these terms are used interchangeably in Canada. For in-

stance, Patrick Boyer entitled his book of 1992, "Direct Democracy in Canada: The History and Future of Referendums," yet was mainly concerned with this type of referendum. I would argue that his title is misleading because most of the direct votes in Canada have been of the non-binding type, whether called referendums or plebiscites, and so are not really a form of direct democracy.

Unfortunately, it really muddies the water to use the same term for binding and non-binding referendums, and to call both "direct democracy," because they are basically so different. In discussions we should be careful to specify which one we are talking about, by using a qualifying word such as "non-binding", or calling it a plebiscite or a consultative referendum because the voters are merely being consulted.

We need to remember that a plebiscite or consultative referendum is not direct democracy because the legislature makes the ultimate decision.

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The type of referendum in the bill recently proposed by Ontario's Harris Government cannot properly be considered a device of direct democracy. Though it will re-

quire the government to hold referendums on constitutional changes or tax increases, and provides for a voter initiative on other matters, the result is not binding on the government or legislature. Recall that Metro Toronto held a consultative referendum and voted against amalgamation by a large majority, but the Harris Government ignored the vote and went ahead with amalgamation anyway. The voter initiative will require a petition for a referendum to be signed by 700,000 voters representing 10 per cent of the voters in each of Ontario's nine judicial districts. Critics argue that this is far too limiting for an initiated referendum to be used much, if at all. For instance, a petition to hold a referendum on the government of Toronto would require support from the whole province, including 10 per cent of the voters in a district in Northern Ontario. And in the referendum itself at least 50 per cent of the voters must vote. Thus a referendum could pass with a majority of only 25 per cent, plus one, of Ontario's voters.

The reason we in Canada nowadays use the term referendum to mean mainly the non-binding type is because at the beginning of the century the western provinces experimented with the binding referendum. But it was abandoned because the Manitoba law on the subject was declared unconstitutional in 1919, mainly on the ground that it usurped the power of the lieutenant-governor, as a representative of the crown, to veto legislation. It also interfered with the powers of the federal government, which appoints the lieutenant-governors and has the power to instruct them.

The western provinces had been influenced by the development of direct democracy in the western states of the United States, where it usually involved the initiative, the referendum and the recall. In about a quarter of the states, voter initiative could formulate a proposition and take it directly to the voters, thus completely bypassing the legislatures, many of which were in bad repute. As we can see, the initiative was closely linked to the binding referendum and the recall. It allowed a small percentage of the voters to: 1) initiate action by the legislature on a proposal, 2) initiate a referendum on a voter-proposed law, or 3) initiate a vote on the recall of a legislative member. For instance, the Saskatchewan bill of 1913 required for an initiative leading to a referendum a petition of 5 per cent of the voters. But the Saskatchewan bill failed to get the required 30 per cent approval by all voters. One could say it was defeated by its own principle: direct democracy. A similar bill in British Columbia was passed in 1919 but never proclaimed, probably due to the court decision on the Manitoba law in 1919. Alberta's law of 1913 got around the constitutional problem by not requiring its referendum to be binding. So the upshot is that the 1919 constitutional barrier to direct democracy

still stands, with little hope of a constitutional amendment.

As a result, the federal government and the provinces have passed laws providing for what are basically plebiscites, but in most cases they have still used the term referendums. All provinces except Nova Scotia and Ontario now have such a law, and this type of referendum has been used frequently in Canada since Confederation. In his book Mr. Boyer lists 60 federal or provincial referendums held before 1992, British Columbia leading the list with eleven. The provinces also have laws providing for municipal referendums, and there have been many more at the municipal level.

Provision for the recall of legislative members has not been as popular in Canada as it has in the U.S., perhaps because in Canada the binding referendum was thought to be a sufficient control of the legislature. Alberta was the only province to provide for the recall, and there not until 1936. But it ended in embarrassment for Premier Aberhart and his government. The only attempted recall was of the premier himself, in his own riding. So his government quickly had the recall law repealed, in October 1937.

The consultative referendum has often been used by authoritarian regimes to get a show of public approval for an arbitrary action. These regimes rig the vote to make sure they get a massive favourable majority.

Interest in the recall has been revived recently, however, especially by the Reform party. British Columbia is the outstanding recent example. In a consultative referendum held in 1991, 74 per cent of the voters supported recall legislation. Then a *Recall and Initiative Act* was passed in 1995. It allows a binding recall vote after eighteen months if 40 per cent of the voters in a riding sign a petition requesting it. The scheme was soon tested in October 1997 against two MLAs, one of them a minister in Premier Clark's Government. But the attempt failed to get the necessary 40 per cent. The next attempt to use it was a petition to recall MLA Paul Reitsma, initiated in April 1993, after it was revealed that he had written letters to the press praising himself but signed with a false name. Mr. Reitsma subsequently resigned. Meanwhile, the B.C. Civil Liberties Association has challenged the law in court as unconstitutional for much the same reasons as in the 1919 decision on the binding referendum.

Although the consultative referendum cannot be classed as direct democracy, it has been used frequently

in both democratic and non-democratic countries in this century, and its popularity has increased. An excellent survey is in a book edited by David Butler and Austin Ranney, *Referendums Around the World*, published in 1994. They collected information on about 550 important referendums, not counting those in Switzerland and the United States, the homes of direct democracy, which have had as many referendums as all the rest put together. They divided these important cases into two tables, one for nation-wide referendums, and the other for about 140 subordinate territories, including ones on independence and separation, such as those in Quebec. Hence readers interested in Quebec's "neverendum referendum" can easily study these in particular. In each

case the listings show the country, year, purpose and –very useful– the result of the vote and the voter turnout, especially since voter turnout is so crucial to getting a majority vote of the whole electorate.

The Butler-Ranney survey reveals that the consultative referendum is not necessarily a democratic device. One problem, as mentioned, is that a majority in a referendum may be far from a majority of the electorate. But a more serious one is that democracy means not only majority rule but compromise and the protection of minority rights. So a majority vote may override these rights, and is often referred to as "the tyranny of the majority."