REFERENDUMS:
Reflections on The Canadian Experience Since Charlottetown

BY Andrew Parkin

THE 1992 VOTE ON THE CHARLOTTETOWN ACCORD WAS ONLY THE THIRD NATION-WIDE REFERENDUM IN THE COUNTRY'S HISTORY. BASED ON THIS RECORD, IT WOULD SEEM THAT POPULAR VOTES ON IMPORTANT POLICY ISSUES ARE THE EXCEPTION RATHER THAN THE RULE OF CANADIAN POLITICS. A CLOSER LOOK, HOWEVER, SHOWS THAT CANADIANS ARE NO STRANGERS TO THE REFERENDUM DEVICE. IN FACT, SINCE CHARLOTTETOWN, THERE HAVE BEEN A NUMBER OF IMPORTANT PROVINCIAL OR TERRITORIAL REFERENDUMS (IN NEWFOUNDLAND, NEW BRUNSWICK, QUEBEC, BC AND NUNAVUT), AND FUTURE PROVINCIAL VOTES ON SUBJECTS SUCH AS ELECTORAL REFORM ARE LIKELY. MANY OTHERS REFERENDUMS HAVE OCCURRED AT THE LOCAL LEVEL, OR HAVE BEEN HELD BY FIRST NATIONS OR BY POLITICAL PARTIES SEEKING DIRECTION FROM THEIR MEMBERSHIP.

Generally speaking, Canadians welcome the use of referendums. When asked in a survey conducted by the Institute for Research on Public Policy (IRPP) in March of 2000, "Overall do you think that referendums are good things, bad things, or don't you think they make much difference?," a majority (57 percent) said they were good things. Eight percent said they were bad things, and 28 percent felt they didn't make much difference. In that same year, when asked in a CRIC survey a more general question about public involvement in decision-making – "If the general public was more involved in decision-making on our big national problems, do you think we would be more likely to solve our problems, less likely to solve our problems, or that it would make no difference?" – 51 percent of Canadians said "more likely." Only 26 percent said we would be less likely to solve our problems, while the remainder said it would make no difference or had no opinion.

While the public is willing to play a more direct role in political decision-making, however, there is little consensus on two important questions: on which types of issues should referendums be held, and under what types of rules should referendum campaigns be conducted?

Consider first the question of when referendums should be held. Most agree that major changes to the Constitution, or the secession of a province from confederation, should not go ahead without first being approved by referendum. There is little agreement, however, as to whether tax increases should require ratification by popular vote, as is currently required in Ontario, or whether it was appropriate to hold a referendum on the Aboriginal treaty process, as was done in BC. In New Brunswick, the decision to hold a referendum on video lottery terminals was welcomed by some who saw it as allowing the people to have their say, but condemned by others who felt the government was ducking its responsibility to make tough policy choices.

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In this context, it is worth noting that relatively few Canadians think that referendums should always be held on issues such as tax increases, Aboriginal land claims agreements, moral issues such as capital punishment or abortion, or even changes to the Constitution. When asked by the IRPP whether referendums should always, sometimes, rarely or never be held on these issues, most supported the use of referendums only "sometimes." On none of the issues just mentioned did a majority of Canadians feel that referendums should always be held. With no hard and fast rule to follow, political leaders must use their own judgement in deciding when to call a vote.

In practice, this exercise of judgement has not always been sound. More often than not, the motives of a government initiating a referendum are open to question. The simple truth is that governments usually turn to referendums to advance their own political goals, goals which have little to do with a genuine commitment to the enhancement of the democratic process. Consider the following example: why was there was no referendum in the United Kingdom on entry into the European Economic Community in 1973, a referendum two years later on continued membership, no referendum in the 1990s on the Maastricht treaty (even though votes were held in other member countries), and yet a pending referendum on the common European currency? The answer is that referendums are held when the governing party has no other way to manage differences of opinion on the issue among its own members, but are not held when the prime minister's preferred policy risks defeat.

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In the Canadian case, ulterior motives have also prevailed. Consider the legislation requiring referendums on tax increases. Although no such referendum has yet to be held in Ontario, the government's motive in passing the legislation was not to open the budgetary process to greater citizen participation, but to make it more difficult for future government's to reverse recent tax cuts. If citizen participation in setting budget priorities were the true goal, then the legislation should have allowed voters to choose between several options, such as tax cuts, debt reduction and greater spending on social programs.

Similarly, had the government of BC genuinely wished to involve citizens in setting the parameters for the treaty process in that province, they would have held a referendum that allowed them to choose between realistic policy options. There is little point is asking citizens to agree or disagree that, for instance, "Aboriginal self-government should have the characteristics of local government, with powers delegated from Canada and British Columbia" when both the courts and the federal government have already decided otherwise (that is to say that both have recognized that the Constitution protects Aboriginal people's inherent right to self-government, and this alone precludes the notion that the powers of such govern-

ments could be augmented or diminished at the pleasure of the province – as is the case with the powers of local governments). The fact that the referendum was not about making meaningful choices was underscored by the absence of a true "no" committee, that is, a coalition of interests campaigning for a "no" vote. Many British Columbians argued that the process should be boycotted (in fact, only 36% of eligible voters participated), but few felt that the questions were formulated in such a way as to make voting "no" worthwhile. The referendum, then, was conducted to consolidate the government's popular support and strengthen its negotiating position, and not for the purpose of allowing for more direct citizen input into political decision-making.

This brings us to the question of the rules that govern the process. Many advocates of the referendum argue that their use should be encouraged as a means of transferring power from the hands of the political elite to the hands of the people. Whether or not this is achieved in practice, however, depends on the rules under which referendums are conducted. If referendums can be launched only after an expensive process of gathering signatures from eligible voters, and if they can be won only by engaging in a costly, all-out television ad campaign, then the notion that the device serves to give voice to "the people" is put into question. Similarly, if governments retain a monopoly on the power to decide which issues are put to the voters, when, and in what terms, then it is more likely than not that the process will be engineered, not to allow the public to set the agenda, but to enable the government to give its own agenda the veneer of a popular endorsement.

The drafting of the questions is particularly important. Governments that launch referendums carefully guard their prerogative to write the questions, for one obvious reason: the way a question is worded is likely to affect the final result. As is well known, frustration among some federalists with the Parti Quebecois's knack for writing referendum questions promising both sovereignty and partnership with Canada led directly to the federal government's clarity act, which stipulated, among other things, that Ottawa might ignore the results of a referendum in the event that the question (and the answer) was not "clear."

It would be wrong to think that only in the high-stakes debate among federalists and sovereigntists do arguments over the wording of the question arise. The questions put to voters in the recent BC referendum were rejected by many critics as being misleading and unclear. One can only imagine how much more meaningful the vote would have been have the government and the key organizations representing Aboriginal peoples agreed on the questions, or had the government's critics been allowed to include some questions of their own choosing on the ballot.

Rules governing spending are also crucial. Not every referendum in Canada has been conducted as under a regulatory framework that places ceilings on campaign spending, ensures both the "yes" and "no" forces have the

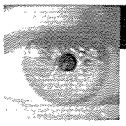
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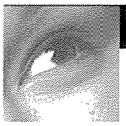
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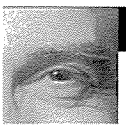
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means to make their views known to voters, or requires the disclosures of the names of those financing one of the two sides. Some commentators argued that the New Brunswick referendum on video lottery terminals was somewhat tarnished by the fact that the "no" side did not have the financial resources needed to counter the gambling industry's newspaper, radio and TV ad campaign. Voters were thus much more likely to hear about the revenues that the provincial government would lose if VLTs were banned, than they were to hear about the costs of gambling addiction.

Where does all this leave us? As mentioned at the outset, Canadians have often been called upon to give their verdict on public policies in referendums conducted at the local and provincial levels. But in many cases, the process governing the use of the referendum has not been well thought out. Referendums have been used (or in some cases promised) by governments as a strategic device for advancing their own party interests, not as a tool for allowing greater citizen-participation in decision making. Many referendums have also been conducted in the absence of an adequate system of rules designed to ensure fairness and balance. Governments initiating referendums have fought hard to make sure that they exercise complete control over the process – most importantly by jealously guarding their prerogative to chose when to hold a referendum, and on what precise question. The irony is that, under these conditions, a device that has the potential to reinvigorate Canadian democracy may end up contributing to the public's growing cynicism about politics and political leaders.

If Canadians want to get serious about referendums, then, new alternatives should be explored. One is to allow citizens themselves to have a say in choosing which issues should be put to a vote. The Canadian Alliance was mocked in the last election for making such a suggestion, but the fault lay not with the idea itself, but with the party's failure to trump their critics by offering a scheme for citizen-initiated votes that meshed with Canada's political traditions and values. It is true that few Canadians would support a California-style device that would allow a relatively large number of questions put to a popular vote, most because they served the purposes of well-funded but narrowly based interest groups. Yet Canadians might support a less radical innovation, one that would enable citizens who collect the required number of signatures across the country to compel parliament to respond to an issue, first through committee hearings, and subsequently by passing legislation or, if necessary, by calling a referendum. This "indirect" form of citizens' initiative is in use in some US states, and provides a way for citizens to provide direction to governments without necessarily locking the country into a referendum that only a small minority of voters would really welcome.

Innovations in the rules governing the process would also be welcome. Ideally, questions should be agreed upon by both sides in a referendum, or approved by the vote of two-thirds of the members of the legislature. Alternatively, the government could make room on the ballot for questions phrased by their opponents. At the very least, judicial committees could be asked to review questions in order to mitigate overt bias. Clearly, spending in all referendums should be regulated, as it was at the time of Charlottetown or the two Quebec referendums on sovereignty. Governments should act to ensure that both sides are able to get their message across by, for instance, paying for a balance information package, summarizing the different arguments, to be distributed to all voters.

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Other possibilities should be considered. Writing in the *Canadian Journal of Political Science* (Volume 23, No. 2), Matthew Mendelsohn insists that the lesson to be learnt from Charlottetown is not that constitutional change cannot be accomplished if the people insist on having their say, but that better mechanisms of involving the public in constitutional bargaining, at all stages of the process (and not only at the very end), need to be developed. He argues that mechanisms such as constituent assemblies or people's forums have been successfully used elsewhere to allow for "public brokerage" – that is, a process in which selected members of the public deliberate together and build compromises. These are not referendums per se, but they can accomplish the same objectives: greater public involvement in political decision-making, and greater popular legitimacy for the policy outcomes. Their use need not be limited to constitutional renewal. They are equally appropriate as part of a process of electoral reform or as a means of setting social policy priorities.

In conclusion, it should be stressed again that referendums are an inescapable part of the Canadian political landscape. As citizens become more informed and more demanding of governments, the pressure for their use will likely increase. The experience of the last ten years leaves a good deal to be desired; it is evident that too little thought has been put into designing a referendum process that is fair and that serves the interests of the people, not just the party in power. Alternatives are available, for those with the imagination and the inclination to put them into practice.

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