

the referendum reconsidered

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1. introduction



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"The proposal to establish the referendum in this country seems to have entered, temporarily at least, the sphere of practical politics" (Clifford Sharp, *The Case Against the Referendum*, Fabian Tract 155, 1911).

In 1975, probably in June if the timetable allows, this country will witness its first nationwide referendum (Harold Wilson, 23 January 1975). This is the final outcome of the Labour Party's contingent commitment to the referendum: Labour's 1973 *Programme for Britain* promised that the next Labour Government "would immediately institute renegotiation of the Treaty of Accession to the European Communities (and) would insist that the people of Britain then decide on the course of Common Market policy through a consultative referendum or a further general election". This commitment was reaffirmed at the 1973 Party Conference and in the February and October 1974 election manifestos.

To many people, a Labour Party commitment to the referendum will seem surprising. Some of them will recall Attlee's forthright views on the subject when, in May 1945, Churchill proposed a referendum on whether the life of the wartime Parliament should be prolonged. Attlee replied: "I do not think that it would be right or possible to obtain from Parliament another prolongation of its life. I could not consent to the introduction into our national life of a device so alien to all our traditions as the referendum, which has only too often been the instrument of Nazism and Fascism. Hitler's practices in the field of referenda and plebiscites can hardly have endeared these expedients to the British heart" (*Times*, 22 May 1945).

It may be that the referendum has more merit than Attlee saw in it, and in the pages that follow we try to explore the entire range of likely results, good and bad, of adopting the referendum in Britain. But before we do this we must look at a view which is in a sense quite different from both the Attlee view and that of the referendum's most ardent advocates. According to this, the referen-

dum in particular and constitutional issues in general do not matter very much. It would follow that a party commitment to the referendum would not be a matter of principle but merely of tactics. In that event there would be little point in giving the referendum careful and serious attention. Such attention would only serve to inhibit the freedom of politicians to offer the referendum when tactics seem to require it and to abandon it when they suggest something else.

In our view, however, it is this sort of excessive and cynical attention to political tactics that has contributed a great deal to the present distrust of politicians. We hold strongly to the belief that constitutional changes matter a great deal, and feel such changes should only be made when they are seriously thought to offer an improvement—a general and lasting improvement—over what was done before. If the constitution is changed in response to every new tactical situation, its provisions may be as transitory as today's newspaper headlines. In contrast, a single ill-thought out change, adopted in haste, may do a great deal of damage before sober judgement catches up with impulsive action.

It is particularly necessary to bear in mind that constitutional changes may have serious consequences beyond those intended or foreseen by their proposers: in this country Anthony Wedgwood Benn's success in renouncing his peerage helped to make the Earl of Home Prime Minister.

In short, we have no sympathy whatever with the view that constitutional changes do not matter, or matter only in the twilight world of political tactics. The Labour Party's commitment to the referendum should be challenged or supported in the recognition that basic constitutional principles—and political realities—are at stake.

If Britain adopts the referendum, it may do so in order to register popular sentiment towards the Common Market. But the wider result is likely to be a new way of deciding or "consulting" on a great variety of major political issues. Today

the EEC, tomorrow independence for Scotland and Wales, thereafter hanging and flogging. If the referendum is a useful device, we can be quite sure that its usefulness will be realised and exploited outside, as well as within, the Labour Party. And there is certainly nothing reliably left wing, or even "progressive" about referendum results, as can be seen from chapter three.

Nevertheless there is great concern across the political spectrum, and recorded most recently in the Kilbrandon Report, about the shortcomings of our political system, particularly the remoteness and lack of responsiveness on the part of those who govern and the very limited opportunities for the governed to make their views felt.

Some of the current interest in the referendum may derive from that concern. If such concern is well-founded, then there is every reason for looking at the whole range of possible remedies available, including primary elections, more frequent general elections, different voting systems, devolution, and the prospects of loosening the iron grip of the party machines. Some of these points are taken up in chapter five.

All these possible remedies need to be looked at very carefully. We have focused on the referendum because that is the constitutional change to which Labour is committed. We oppose it not because it is a change but because we believe its drawbacks far outweigh its advantages.

2. the referendum in theory

Our system of government is widely criticised for being unresponsive, for putting too great a distance between governors and governed, and for giving ordinary people too little opportunity of having their views made known and taken into account. This well founded criticism was made by the Kilbrandon Commission, as well as many other individuals and groups (*Royal Commission on the Constitution*, HMSO, 1973; see also Woodrow Wyatt, *Turn against Westminster*, 1973). Given this view, the referendum might appear to offer a relevant solution. It clearly provides an opportunity for the voters to make their views known (and possibly heeded) and it ought to narrow the gap between governors and governed, and to make the system more responsive. As Dicey put it: "Under the referendum an elector may begin to find it possible to vote for or against a given law in accordance with his real view as to its merits or demerits, without being harassed through the knowledge that if he votes against a law which his conscience and his judgment condemns, he will also be voting that A, whom he deems the fittest man in England to be Prime Minister, shall cease to hold office, and that B, whom the elector happens to distrust, shall at once become Prime Minister" (*Law of the Constitution*, 8th edition).

Probably it is easier to see the likely advantages of the referendum in relation to a specific issue. To take the obvious example, the question of whether this country stays in the Common Market or leaves it, is clearly a very important one and whatever the answer, it should no doubt enjoy what Ted Heath called "the full-hearted consent" of the British people. The most direct and specific way to get such consent would apparently be to ask the electors about that single issue in a special vote.

Unless the Common Market decision is the only one for which the voters' full-hearted consent is needed (an engagingly single minded view), it follows that every decision of a certain magnitude—which must somehow be defined—will necessarily be put to a special vote. Indeed, the most enthusiastic supporters of the refer-

endum have felt that there should be provisions for referring *any* issue to a special vote of the people. But whether the use of the referendum is frequent or infrequent, the attraction is not only that the wishes of the people are registered, but also that there is (or should be) no doubt as to how they feel about the issue submitted to them. In contrast, the trouble with a general election is that though the people are consulted their wishes may be far from clear, since some are voting to protest against the cost of living, some to show their support for the Prime Minister, and so on.

In theory, then, the referendum is a democratic device, and it appears to have the further advantage of precision in posing and answering questions about what the voters want.

These, then, are some of the general and particular advantages which the referendum would be thought to offer. Are they enough to warrant the introduction of the referendum into Britain?

So far as this country is concerned, the effects of using the referendum at the national level can only be guessed at. However, there is no reason why the guess should not be an informed one. The best source of information is the experience of other countries, and this is what we have looked at in the following chapter. Clearly, any British use of the referendum would not be exactly like that of the Australians or the Swiss. Each country has a total political environment from which institutions, like some local wines, cannot be exported without losing something of their characteristic flavour.

Nevertheless, it would not be sensible to expect that this country would escape all the problems and benefits of operating the referendum which other countries have encountered.

It will be seen that we have so far assumed that there is no British experience of a referendum at national level. This assumption, which hardly seems controversial, is challenged by Philip Goodhart (Conservative MP for Becken-

ham) in his book *Referendum* (Tom Stacey, 1971). "The idea of a referendum" he says "may not have been born in Great Britain but it has certainly lived here long enough to claim naturalisation as of right." He goes on to discuss past occasions when adoption of the referendum was urged by prominent (and almost invariably Conservative) politicians.

In substance these occasions amount to three. One was the 1945 Churchill proposal forcefully rejected by Attlee, mentioned in chapter one. Another was the adoption by the Conservatives of "the idea that any important Bill which was passed by the Commons but defeated in the House of Lords should be submitted to a referendum." This proposal was conceived in the crisis following the House of Lords' rejection of Lloyd George's 1909 Budget in which, of course, the Conservative majority in the hereditary House defied the elected majority in the Commons. That crisis ended in the curbing of the Lords by the Parliament Act of 1911. (The possibility of using the referendum in the event of clashes between the two Houses was further considered, and rejected, by the Conference on the Reform of the Second Chamber, in 1918. One reason for the rejection was that the referendum "could not be confined to the cases for which it was in this instance proposed" and "that it might tend to lower the authority and dignity of Parliament"—Emden, *The People and the Constitution*, 1956.) The third occasion was in 1930 when Baldwin announced that the Conservatives would hold a referendum on the introduction of Empire Free Trade if this meant putting a tax on food (Goodhart, *op cit*). It need hardly be added that none of these proposals led to a permanent commitment to the referendum, let alone to its actual use.

One would have thought that these examples—each with a hint of drowning men clutching at straws—would offer little encouragement to Conservatives (to say nothing of the Left) but curiously enough Goodhart does not draw this inference. On the contrary he approves these words of Balfour's from the final debates in 1911 on the Parliament Bill:

"In the referendum lies our hope of getting the sort of constitutional security which every country but our own enjoys. . . . I am convinced that whatever is done now . . . before very long, and practically in the lifetime of all of us, we may see this great democratic engine brought into practice."

Just what constitutional security countries using the referendum enjoy, and what sort of "great democratic engine" the referendum has proved to be, are questions to which we now turn.

3. the referendum in practice

"The word Referendum is a foreign expression derived from Switzerland" (Dicey, *Law of the Constitution*, 8th edition).

Switzerland

We begin this discussion of the use of the referendum in other countries with the Swiss experience. We shall look at the compulsory constitutional referendum and the legislative referendum (and in passing at the initiative). Switzerland is a good place to start because it has experienced a uniquely extensive—and intensive—use of the referendum.

extent and frequency of use

Switzerland was the only member of the League of Nations to ask for the specific approval of the voters before joining. The country's free trade association agreement with the EEC was put to the voters at the end of 1972. Its modern constitution of 1848 and the substantial changes to it in 1874 were also approved by referenda. Furthermore, many much less momentous issues, whether at the federal level or within the individual cantons have been put to the voters over the last century and a quarter. At the federal level, to which we confine our attention, some 200 referenda have been held since 1848. Over the last hundred years (since the constitutional changes of 1874) the frequency of referendum use has increased from an average of 1½ a year in the last quarter of the 19th century to almost 3 a year in the period since the second world war. Curiously enough, weariness among the voters is not very pronounced; the average turnout in the 1950s was just over 50 per cent.

Clearly, there is a great deal of Swiss experience to draw on. Nevertheless we deal with it quite briefly because, for special and indeed unique reasons which we examine below, we think its relevance to our present concerns is limited.

A point which should be constantly kept in mind is that the context in which the

referendum is used matters a great deal. In Switzerland it is one of many political habits that over time have proved themselves helpful in dealing with the special circumstances of Swiss history and politics. For example, the civic harmony of Switzerland is remarkable in view of the religious and linguistic differences to be found among its population.

In the past, these differences, and particularly Catholic-Protestant divisions, gave rise to bitter conflicts. Even today, harmony is something to be worked at carefully and constantly. A major contribution is made by the Federal Council—the government of seven members elected by the Federal Assembly or Parliament. Its membership is drawn from all the major parties, including Radicals, Conservatives and Social Democrats. This form of stable, multi-party coalition government is one Swiss means—the referendum is another—of making sure that the governors and the governed do not get significantly out of step. In Switzerland such harmony is not just desirable; it may be a *sine qua non* of national survival.

procedure

Since 1848 the use of the referendum has been compulsory for any changes to the Swiss constitution. Proposed changes usually go to the voters from the two Houses of the Federal Assembly. For a change to be approved a majority of all voters and a majority of the cantons is needed. But the voters are not compelled to wait for issues to be put to them: they have the right of popular constitutional *initiative*, which means that, provided at least 50,000 voters can be found to sign a petition, the voters can themselves propose an amendment. This can be done in the form of either a detailed draft amendment or a statement of principle which the legislature then converts into a specific draft before it is finally referred to the voters.

In 1874, when the constitution was revised, an additional form of referendum was introduced at the federal level. This was the *legislative referendum*. As a

result (with some exceptions) laws passed by the Federal Assembly (the Swiss Parliament) and major treaties can be challenged by the voters. If within 90 days of the publication of the law a petition is signed by 30,000 voters, the law must be put to a referendum: if a simple majority of voters vote no the law is rejected. (Exceptions to this rule occur with legislation which is not "of general application" or which is "of an urgent character"; these phrases have been interpreted as excluding from the referendum the budget and some treaties. The net result is, as Michael Stewart says, that "for all major changes of the ordinary law, the Swiss people may have a referendum if they wish" *Modern Forms of Government*, 1964)

results and conclusions

The results have been cautious, conservative and frugal. They showed the Swiss people "to be anxious for liberal political rights, severe to murderers, unfriendly to centralisation, in favour of tariff duties, occasionally anti-Semitic, a drag on state activity in the control or management of industries, supporters of domestic virtue . . . steadily austere . . . in relation to the payment of public officials, and unenlightened regarding public health measures" (Herman Finer, *Theory and Practice of Modern Government*, 1962). Probably the most striking example of conservatism has been the question of votes for women. As late as 1959 the (male) Swiss voters decided by a two-to-one majority that women should not have the vote. It was not until 1971 that women were allowed this most basic of political rights.

the USA

Thus the Swiss experience of the referendum is not an especially heartening one from the progressive standpoint. What ought, however, to make other countries still more cautious about imitating it is an awareness of the special habits and needs of Swiss politics, where wide consent, and not merely majority approval,

must constantly be looked for, and be seen to have been given.

Though they are surpassed in this respect by the Swiss, the Americans have a strong faith in decision making by popular vote. That faith is evident both at the national level, notably in presidential elections, and at state and local level, where a great number and variety of offices are filled by elections held at regular and frequent intervals. In the heyday of the "Progressives" (from the 1890s to the first world war) the agenda for political reform included not only the "petition" referendum, but also the initiative, primary elections and the recall. (Some 20 states in the USA make use of the initiative: the recall, available in 14 states, allows the removal of a public official from office: a percentage of voters can petition that a public official be removed and a new election held).

All these devices were adopted in at least some states, and indeed the primary election (though many states do not use it in choosing presidential candidates) has become a standard feature of American political life. And while few Americans now feel as enthusiastic about submitting decisions to the voters as the Progressives felt 70 years ago, nevertheless the habit of letting the voter decide is far more marked in America than in the UK.

extent and frequency of use

The referendum is, of course, only one way of letting the voter decide and, despite its widespread use at state and local level, the device is not used, and has never been used, at the federal level for a nation wide vote. It is however used by every state for approving or rejecting amendments to the state constitution. Roughly three fifths of the states, mostly western or mid-western, use the referendum for other purposes.

In states and localities which use the referendum (other than for amending the constitution) the normal practice is for it to be combined with the general elections (which are of course, unlike British elec-

tions, held at fixed and regular intervals). This means that the referendum questions—there may be only one, there may be a great many—are simply added to the election ballot paper.

context and procedure

The referendum in America should be seen in its particular historical and political context, which is one where great emphasis is placed on choice by the voter. Of particular relevance is the old American practice of adult male suffrage (a rather less venerable institution in this country) which, though it was not available to Southern blacks, has been accepted for virtually 150 years. The Americans use their vote more often than most Europeans: the entire federal House of Representatives is elected every two years, the President every four years, and a wide range of state and local officials at intervals not usually exceeding four years. Given first this frequency of voting and secondly the complete absence of the referendum from federal politics and from questions of choosing, endorsing or rejecting the President, it has scarcely been possible for an American referendum to matter as much as any of the French votes discussed later in this chapter or as much as a future English referendum on the EEC. On the other hand, the American voter probably has much more continuous influence on those who govern than have the voters of France or Britain. In particular, the primary elections tend to prevent any elected official from treating his constituency as a sinecure (for example, a Democratic Senator may be secure against any Republican challenge but, like Senator Fulbright, vulnerable to a rival for the Democratic nomination) and the President himself must win his party's nomination as well as the general election. In short, the American voter has real, significant and frequent choices to make. If the referendum is among them it will usually occupy a modest place in the hierarchy of choices.

Each type of referendum has its characteristic procedure. There are three main

types: the compulsory, the legislative and the petition (the advisory referendum is used only in Wisconsin) (Penelope J. Gazey, "Direct Democracy—A study of the American Referendum", *Parliamentary Affairs* Volume 24 number 2, 1971).

The *compulsory referendum* has the longest continuous history. As early as 1777, the constitution of Massachusetts was changed following a proposal of the state legislature which was submitted to and approved by the voters (Gazey, *op cit*). The compulsory referendum is also the most widely used. Every state is required to submit new constitutions and constitutional amendments to the special vote of the people. The proposed change is formulated in some states by the legislature, in some by a specially summoned constitutional convention, and in some by means of the initiative. But whichever method is used, the verdict of the voters in a referendum is the crucial element. Compulsory referenda are used in some states for additional purposes, such as seeking popular approval for new state bond issues or for establishing a state bank.

The *legislative referendum* (which was introduced in some states in the middle of the last century) is now a constitutional feature of some 13 states. There the state legislature decides whether or not to submit a particular law to the people's vote. Those so submitted are typically controversial measures, and often those on which the legislature is closely divided or on which the two houses of the legislature take different sides.

The measure referred may be added to the ballot at the next general election, or it may be dealt with in a special vote (Gazey, *op cit*).

The *petition referendum* is used in 23 states. This device gives a specified minimum number of voters the power to compel the legislature to submit a designated law to a popular vote. The specified minimum varies from 7,000 in North Dakota to Nevada's 50 per cent of the registered voters in the last general election (*ibid*). Petition forms identifying the

measure to be referred are issued by the State government and circulated locally. Signatures on the forms must be certified as genuine. When sufficient signatures have been obtained and authenticated, the measure is put before the voters, usually at the next general election, though in some states there is provision for holding a special election.

results

It is difficult to generalise about or to summarise the vast number of referenda held in the states and local communities (the nationwide total may be as high as 15,000 a year. See Howard D. Hamilton, "Direct Legislation: some implications of open housing referenda", *American Political Science Review*, March 1970). The general—and not very startling—reluctance of the voters to accept tax increases is certainly quite clear. In Illinois, for example, consistent attempts to enlarge the tax base for almost 25 years were uniformly unsuccessful. By contrast, bond issues have enjoyed a more favourable reception. This may be due, as Gazey suggests, to "some feeling that the cost will be borne by the next generation". More generally, the use of the petition referendum has tended to be conservative in its results. Petition campaigns, which are usually won by those launching the petition, are characteristically aimed at preventing either increases in state governmental powers and responsibilities, or increases in taxation. But it is difficult to see a clear conservative trend in the use of the referendum as a whole (there are no signs at all of a leftward trend).

Similarly, if one looks at particular controversial issues which have been put to the voters in recent years, there are results to hearten liberals and results to encourage the Right. In 1964 the voters of California were asked to mark their (enormous) ballot papers so as to record 30 decisions including their choice for President of the United States and their verdict on 17 referendum "propositions". One of these "prohibited state or local governments from limiting an owner's

right to sell or rent residential property—in effect it repealed acts of the legislature which had been designed to halt racial discrimination in housing" (John E. Mueller, "Voting on the Propositions: ballot patterns and historical trends in California," *American Political Science Review*, December 1969). It was approved by a massive 65 per cent majority of the voters. (Hamilton, *op cit*, notes that between 1963 and 1968, ten cities, as well as the state of California, conducted such "open housing" referenda. "All were initiated by opponents who utilised the referendum provisions of city charters or state constitutions in an effort to cancel open housing legislation by vote of the sovereign electorate. In some communities the petition drive was a project of John Birch Society activists. The strategy of nullifying the public policy set by the processes of representative democracy worked consistently until 1968. Indeed, until the surprising victory of one city ordinance in February 1968, by a paper thin margin on a recount, it appeared that open occupancy could never win at the polls".) On the other hand Governor Ronald Reagan's attempt to freeze the level of state taxation (and to protect the better-off) was turned down in 1973.

As we have seen, referenda are not used in the USA for national, and hence the most crucial, issues. Presidential and Congressional politics are conducted without help or hindrance from the referendum. But in those states where the referendum is used for purposes additional to amending the state constitution, it is a familiar device, fully assimilated into the citizen's voting habits. In those circumstances there is some protection, probably a great deal, against stampeding the voters with the novel excitement of a special isolated vote on a matter of hot controversy.

Indeed, voter excitement is far from being typical of American referenda, particularly at local level. "Although voting rates for local referenda fluctuate considerably, turnout is rarely high and occasionally below 10 per cent" (Hamilton, *op cit*). What determines the size of the poll is the significance of the concurrent election (if any). In 1967 the city

of Toledo, Ohio, held an "open housing" referendum which was separated from presidential and state elections. 36 per cent of the electorate voted—and heavily defeated open housing—but at the subsequent city election the turnout was 44 per cent, and at the 1968 presidential election, 80 per cent. "Evidently referenda alone, even on critical issues, will not move most people to the polls" (*ibid*). This difference in turnout is not simply a matter of numbers; the non-voters include a disproportionate number of the less well-off and the less educated. In short, because of low turnouts, "local referenda are likely to have more class bias than major elections" (*ibid*).

If a huge electorate like that of California (the largest state in terms of population) is thought to provide more significant examples of referendum voting, then no clear political lessons emerge. The voters of California are markedly inconsistent, as could be evidenced, from 1966 to 1970, by their choice of a conservative Governor (Reagan) and two liberal Senators (Cranston and Tunney). In over 60 years of experience with the referendum, they have shown similar whimsicality or—it may be thought—a wish to hedge their bets. The story is certainly not one of disaster, but neither is it one which suggests that those voters who do not have the referendum are politically underprivileged.

France

In the postwar years no country has used the referendum so controversially as France. The Fifth Republic of De Gaulle and Pompidou repeatedly looked to the referendum for answers to major political questions (though not always to the question on the ballot paper).

extent and frequency of use

The referendum was, of course, a favourite political device of General de Gaulle. It had also been extensively used by the two Napoleons as a means of ratifying imperial decisions. In fact its use

by Napoleon III aroused great controversy—as even De Gaulle himself admitted—so much so that the description "plebiscite", which was then the normal usage, itself became discredited.

(The communists constantly referred to the 1958 referendum as *le référendum-plebiscite*. The essence of the earlier complaint against the plebiscite was that it did not provide, nor was intended to provide, a real choice. A Napoleonic plebiscite in effect asked the voters: "Do you approve of me? Bear in mind that even if you say No, I will still be in control of your destiny".)

Despite this not very encouraging experience, the Third Republic was pronounced dead, and the Fourth Republic was born, as a result of referenda held in 1945 and 1946, and De Gaulle's constitution for the Fifth Republic was approved by referendum in 1958. After that (and in this section we shall focus on the Fifth Republic) the use of the device has been more politically complicated. The constitution seems to indicate that the referendum is to be used to settle the basic questions concerning the organisation of the state: constitutional amendments, changes to the machinery of national and local government, treaties which would affect domestic political institutions. We return below to the specific constitutional provisions concerning the referendum, but at this stage we simply note that in practice it has been the President (whether De Gaulle or Pompidou) who has determined when, and for what purpose, the referendum has been used. De Gaulle's inclination was to ask for the voter's approval of himself, as well as for their answer to the specific referendum question. Pompidou was more prudent but perhaps not prudent enough.

In the first 15 years of the Fifth Republic, six referenda were held: 1958: to approve the new Constitution; 1961/1962: to endorse De Gaulle's Algerian policy; 1962: to vote on De Gaulle's proposal that the President should henceforward be elected by direct popular vote (the Constitution originally provided for, and De Gaulle was first

elected by, an "Electoral College"); 1969 : to vote on plans for strengthening regional government and for reforming the Senate (as De Gaulle threatened to resign if the vote was hostile, he turned the referendum into a vote of confidence ; the vote was hostile and he resigned) ; 1972 : to approve the enlargement of the EEC (that was the question which was formally put to the voters. The one they preferred to answer and the one Pompidou was, obliquely but deliberately, raising was "do you approve of the Government?". The answer was sufficiently negative to confirm that Pompidou had been wise not to stake his survival on the outcome).

context and procedure

Since its first great Revolution, France has experimented with both parliamentary regimes and personal rule. It would be misleading to suggest that the Fifth Republic was a form of personal rule similar to that of Napoleon III. It is, rather, in essence a presidential regime, and in practice the most important choice the French voters make is that of President. That has been true since 1958 when the Fourth Republic, totally unable to solve the Algerian conflict, collapsed. General de Gaulle emerged from retirement as the one man acceptable to most of France and white Algeria. De Gaulle was given almost complete freedom to write his own constitution. He took the opportunity to end the unstable rule of parties and factions and to substitute a stronger, more durable and of course more personal form of government. For at least as long as De Gaulle was indispensable—and in 1958 it was difficult to regard him as anything less—his political ideas and techniques would be accepted by the French people. The referendum, or more exactly De Gaulle's use of it, was a key technique.

The second major choice the French voters make is that of the lower house of parliament, the National Assembly, which has a maximum life of five years, but can be dissolved prematurely. The Gaullists, with or without their allies and sympa-

thisers, have controlled the National Assembly for almost the whole of the period since 1958. The 1973 general election, though it produced substantial gains for the alliance of Socialists and Communists, left the Gaullists and their supporters in control.

Looking at the political reality, however, we see a President with the real power and a National Assembly which, though it is far from powerless, has so far submitted to the President in every major conflict. Furthermore, it was the referendum which, at any rate during the first four years of De Gaulle's rule, gave the President a peculiarly effective means of undermining the National Assembly.

The relevant provisions of the French Constitution are Articles 11 and 89. Under Article 89, the referendum is in France one of two possible procedures for amending the Constitution. Under Article 11, provision is made for certain parliamentary bills to be submitted to referendum. The Constitution envisages that the President will not initiate, though he may refuse, a referendum. The reality has been that the decision to hold or withhold a referendum has been taken by the President, who has also had the means of deciding the detailed arrangements for each vote. Some examples are given below.

results and conclusions

Two kinds of issue have been put to a referendum during the life of the Fifth Republic. First, issues concerning the life and death of the Republic. Its very birth was secured by the referendum of 1958, in which the French voters overwhelmingly approved the new constitution. Its continued survival was threatened by the Algerian War and the political crises associated with it. The referenda of 1961 and 1962 not only helped to end the war, but to finish off politically the extremists of the Right by demonstrating massive support for De Gaulle's settlement. Second, there are the issues which have significant constitutional or political effects, but do not

in themselves affect the survival of the regime. Examples of this include the 1962 referendum on changing the method of electing the President, the 1969 vote on regional and parliamentary reform, and the 1972 verdict on the EEC's enlargement. The contrast, however, is much more apparent than real. De Gaulle turned the 1962 and 1969 referenda into votes of confidence. This may have been against the spirit of the constitution but at least he had the courage of his commitment and (as we have seen) resigned once that confidence seemed to have been withdrawn. Even the 1972 referendum, which Pompidou did not formally or openly treat as a confidence vote, was clearly something more than a taking of the popular temperature on the EEC; whatever the referendum was about, it was manifestly not about the question on the ballot paper. For Pompidou, the referendum seems to have been a tempting opportunity to divide the opposition; they for their part saw it as a chance to register disapproval of the government, certainly by voting NO, but more effectively by staying away from the polls.

The meaning of 1958-72 results is not easy to set down, but certain things are clear. Firstly, every referendum was initiated by the President (or, in 1958, the President-presumptive). Secondly, one referendum, that of 1969, resulted in a narrow but decisive defeat for the President. Thirdly, the 1972 result was technically a victory for Pompidou, though in substance a defeat. And fourthly, the results of the 1958-1962 referenda were all highly satisfactory to De Gaulle.

In the Fifth Republic's use of the referendum in France, it is very hard to see evidence of a healthy democracy at work even in the results that might widely be regarded as beneficial to France. One might well see the Algerian referenda, and perhaps the 1958 vote too, as constructive developments. But in those votes the very survival of the Republic was at stake, and the fact that the voters chose survival is unremarkable.

Nor does it seem obviously desirable or efficient to get rid of (or for that matter

endorse) a President through a vote on regional and parliamentary reform, or on changes in the EEC. But it is the 1962 referendum on direct election of the President which is the most difficult to reconcile with democratic practice.

First, De Gaulle put that referendum directly to the people, instead of putting it to Parliament first, as the constitution required. Second, he was attempting to change the rules in his own favour half-way through the game. And although opposition politicians pointed these things out, their reaction was portrayed as, "either the familiar incomprehensible quibbling of professors of law or the politicians' self-interested defence of their claim to decide issues behind the ordinary voter's back" (Phillip M. Williams, *French Politicians and Elections*, 1970). The Government made sure that this view would prevail. They did so by means of a thorough and expensive propaganda campaign. French radio and television were, for practical purposes, government controlled, and the admirably objective outside stations like Luxembourg could not redress the balance.

There are also more general points to be made. The first concerns the possibilities of abuse—or alternatively, De Gaulle's ingenuity in bending the rules in his own favour. For example, in 1961 there was much dispute over the referendum question itself. The issue was Algerian self-determination, and the electorate was asked: "Do you approve the bill submitted to the French people by the President of the Republic and concerning the self-determination of the populations of Algeria and the organisation of the public authorities in Algeria prior to self-determination?". Some of De Gaulle's opponents criticised the form of the question. Others simply said that it was the wrong question (the right one being "Are you for negotiations with the FLN?"). Another matter for criticism was that the official envelope sent to each elector "contained the question, ballot-papers—and a speech by President De Gaulle" (Williams, *op cit*).

In 1969 the voters were formally invited

to decide two issues (strengthening of regional government and reform of the Senate) and informally, but crucially, to decide a third (the political survival of De Gaulle). What is much more basic to the issue of the referendum's fairness, however, is the fact that the President held a referendum when he wanted one, and at no other time, and that nobody else held a referendum at any time, whether it was wanted or not.

(The British Prime Minister's power to call a general election at whatever time (in the 5 year maximum) that suits him best is comparable. Like the referendum, it is a weapon that can fire the wrong way, as Harold Wilson discovered in 1970 and Edward Heath in 1974. But the French President's referendum power gives still less scope to the Opposition or to free choice by the voters. At a general election, everyone and everything is (in principle) at risk. In a referendum there is no chance to vote for alternative men, and little, if any, chance to vote for alternative policies).

One does not need to be totally cynical to suspect that most politicians are willing to consult the people at a time and on a question of their own choosing. The Fifth Republic institutionalised this willingness. To be sure, political judgement can be fallible, even that of De Gaulle or Pompidou, and the consequences may be unpleasant for the man who holds the wrong referendum at the wrong time. But to point out that a weapon is double edged is to offer, at best, only limited reassurance.

Australia

Of all the countries making regular use of the referendum, the one with the closest ties to the UK, both of kinship and of parliamentary government, is undoubtedly Australia. Consequently that country's experience is particularly interesting and relevant. The Commonwealth of Australia is a federation, founded in 1901, of six separate states (the terms "Commonwealth" and "Federal" are equivalent in the Aus-

tralian context and are used interchangeably here).

extent and frequency of use

Article 128 of the Commonwealth Constitution provides for the use of the referendum only in changing the constitution. Nevertheless referenda have been held on issues which do not fall within that category, for example the 1916 and 1917 referenda on conscription during the First World War; the 1933 vote on the proposed secession of Western Australia from the Commonwealth; and the 1967 referendum on the proposed formation of a new state to be known as "New England."

Provision for the use of the referendum is also made at state level in New South Wales in the event of a deadlock between the two state Houses of Parliament. This provision has never been used, and neither was a somewhat similar provision which originally existed in Queensland but which lapsed on abolition of the upper house there in 1922.

From federation in 1901 up to 1974 Commonwealth referenda under Article 128 have been held on 32 occasions. There have been referenda in every decade, although half were held in the first 20 years. Hence the sum total of constitutionally significant referenda of all kinds, including the above four is 36.

context and procedure

The first formal stage in the building of the modern Australian state was the founding of the convict colony of New South Wales in 1788. During the next century five further colonies were founded, namely Victoria, South Australia, Queensland, Western Australia and Tasmania (originally Van Diemen's Land). Responsible government was granted to all six in the latter half of the 19th century. Difficulties between the various colonies over intercolonial tariff barriers, problems in providing for the defence of the entire continent, and the

need for coherent development of areas which did not fall neatly within colonial boundaries (such as the Murray River basin), led to a gradually increasing awareness of the benefits that would result from some form of national unity.

A strong federal movement developed in the late 19th century, ultimately proving successful.

In drafting a federal constitution, the founding fathers had to take account of a very strong and articulate opposition to the idea of a powerful central government; there were many who thought that federalism was only acceptable if the loss of sovereignty on the part of the new states was held to a bare minimum. In the result, the central government was granted only a restricted and specific list of powers the undefined residue being left to the states. In consequence, the largest proportion of referendum issues has been concerned with attempts by the federal government (whatever its political complexion) to enlarge its powers.

The Constitution requires that if a proposal is to be formally approved by the voters in a referendum, it must win an overall majority (a majority of all those voting, nationwide) and a majority of votes in a majority of states. On certain issues, for example proposals to amend the powers of the Senate or matters affecting the constitutional relationship between the federal government and an individual state, a majority is required in all states or in that particular state. A proposal for an amendment to the Constitution can originate only in one of the two federal Houses of Parliament and must be approved by both Houses; in practice this has meant that such a proposal must be government sponsored. In the event of continued deadlock over the proposal between the two Houses, the Governor General may submit the proposal to the electorate.

Referenda are submitted in the form of "proposed laws." Each proposal may contain one or more constitutional amendments; two or more proposals may be submitted concurrently. Referenda may

be held simultaneously with general elections or separately. Voting in referenda (as in parliamentary elections) has been compulsory since 1924. The ballot paper carries only the title of the proposed law; the full text is available at the polling station.

results and conclusions

Proposals under Article 128: since federation in 1901, there have been 86 clear attempts to initiate constitutional amendments (the figures are based on those of R. S. Parker and contained in a paper read to the 15th summer school of the Australian Institution of Political Science. They can be found in F. W. Cheshire, *Federalism in Australia*, 1949, and have been updated to include the referenda held up to and including 1974). Almost half of them were initiated by the federal government, including all those on which a referendum was actually held. 54 of the 86 attempts lapsed or were defeated without being submitted to the voters; of the remaining 32 which were so submitted, only 5 achieved the requisite majorities and were eventually incorporated in the Constitution. Following the classification adopted by Parker, we find that the 86 attempts at constitutional amendment encompassed some 120 subjects, of which 95 involved a request for increased federal legislative powers, 13 related to the machinery of government, 7 to the overhaul of the Constitution, 4 to state-federal financial relations, and one to the rights of aborigines. Measures approved and subsequently incorporated in the Constitution have been as follows: (a) a change in the starting date of senatorial terms of office (1906); (b) and (c) proposals concerning the responsibilities of state and federal governments for loans and public debts (1910 and 1928); (d) the power to legislate for the provision of certain social services (1946—submitted to referendum only after a High Court decision that had cast doubt on a power the government thought it already possessed); and (e) the granting of full citizenship to aborigines (1967—a proposal so overdue that the result approached unanimity as closely as might

be considered possible in a free vote). It will be seen that despite the preponderance of "more federal powers" proposals only one succeeded in gaining acceptance, while despite the wide terms of Article 128 the only fundamental change attributable to it has been the setting up of the Loan Council by the 1928 referendum decision (as a result of this change the federal government has become increasingly more powerful in financial matters). But, notwithstanding these persistently negative results from the standpoint of the federal government, that government has gained considerably in power and authority as against the state governments owing partly to favourable High Court decisions, partly to usage, and partly to increasing federal dominance of the Loan Council.

Other proposals : (a) the Federation Polls of 1898-1900 : two separate polls were held. Turnout was low and, although pro-federation votes were obtained in all states, the first poll produced affirmative votes from only 30 per cent of qualified voters and the second poll from only 43 per cent. Some difficulties were encountered in meeting the aspirations of the most populous state, New South Wales, but these were eventually overcome and federation was declared on January 1, 1901 (b) the Conscription referenda 1916-17 : two polls were held by Prime Minister Hughes, who was determined to increase participation by Australian forces in the 1914-18 war. Both were, however, convincingly defeated, the second more decisively than the first (c) the Western Australian Secession referendum 1933. A move to secede from the Commonwealth by Western Australia actually obtained a two to one majority of that states' votes. The result however at this time still required approval by the British Parliament in Westminster. This was not forthcoming and the affair was consequently ignored and eventually forgotten (d) the New England State referendum 1967 : another form of secessionist movement by the mainly pastoral district of New England in north east New South Wales, which sought separation as an independent state within the Commonwealth, was decisively rejected in a local poll.

Over the years there has been wide agreement about the need to expand federal powers. Nevertheless, constitutional changes designed to meet this need have frequently been the subject of an adverse referendum vote. This is not easy to explain, but the reasons are probably to be found amongst the following.

1. The average Australian is notoriously apathetic about political matters. The prestige of politicians is low and it may be that the voters resent being asked to make decisions on matters about which they know little and care less.

2. Many referendum issues have been raised because the party in power sought constitutional changes to assist it in carrying out a legislative programme. The opposition of the day, though it might have pursued the same changes had it been in power itself, has characteristically responded by opposing the changes, whether out of political opportunism or a too literal devotion to the maxim that it is the duty of an opposition to oppose. As a result, most referendum issues have been fought on strict party lines. As Labour and the parties opposed to Labour have almost always been nearly equal in strength the vote has also tended to split nearly equally, with the residue of uncommitted voters usually favouring the negative response (for the kinds of reason canvassed in (1) above). The five successful referenda all attracted substantial support across party lines ; but a dramatic departure from loyalty to party, and its advice on how to cast one's referendum vote, came in the 1967 "nexus" referendum. This was a proposal to change the relative sizes of the House of Representatives and the Senate. The Constitution provides (Article 24) that the House shall have "as nearly as practicable" twice as many members as the Senate. All the major parties agreed on the desirability of this measure, which would have taken account of population changes. But the disaffected, right wing, minority Democratic Labour Party opposed it in an unedifying campaign which sought to focus on the supposedly low prestige of politicians in Australia. The overwhelming rejection of the proposal by the electorate

was a disquieting indication that the Democratic Labour Party assessment was correct.

3. Geography and distance tend to breed insularity in parts of the country, and a consequent reluctance to entrust broad new powers to a remote federal parliament. Moreover the press, which has strong links with commercial radio and television networks, tends to form and reflect a parochial rather than a national climate of opinion. So strong is the local or provincial bias of the press that even anti-Labour federal governments, which can normally count on the support of these substantial private interests, have had to tread warily to avoid their opposition in referendum campaigns (L. F. Crisp, *Australian National Government*, 1965).

4. If a referendum proposal is to be approved it must, as we have seen, get over several difficult hurdles. It is, however, true to say that of the 27 proposals rejected in referenda, only three would have been approved even if the sole test had been a simple majority, and only one if such a test had been only a majority vote in a majority of states. In contrast, the Swiss electors, with similar requirements for approval by referendum, have approved some 50 amendments to their constitution in 70 years.

5. Over eagerness by various governments to win approval for their proposals has probably had some negative effect. Submission of more than one proposal at a time or of more than one question in a single proposal has apparently tended to push the voters towards rejection.

6. A proposed amendment must in practice originate with the party in power and that party's supporters, although they would not stray far from the fold at a general election, can and sometimes do use the referendum vote to show their disapproval of government policies without, of course, putting the government at risk.

The six points considered above relate primarily to the Australian experience,

but that experience suggests some further points which are of more general interest in assessing the referendum. These are as follows.

1. Although the use of compulsory voting since 1924 makes any study of voter turnout since then meaningless, there is some evidence that before this date referenda held separately attracted fewer voters than referenda held concurrently with general elections (R. S. Parker, *Federalism in Australia*, 1949).

2. Any referendum held concurrently with a general election tends to be overshadowed in the press and other media by that election. A clear example of this was afforded recently by the four concurrent referenda held in 1974 on the same day as a general election.

3. Of the five referendum proposals accepted, four were approved by all the states (6-0) and the other by all except one (5-1). It appears that for approval to be given at all, public opinion must very heavily favour the change, which probably means that it is long overdue. Any farsighted or adventurous proposal is likely to be foredoomed to failure and quite probably to crushing defeat.

4. According to Parker, "One caution suggested by these results is that we should never say what "the people's attitude" is towards the Constitution or any other issue. Public opinion is never unanimous or even overwhelmingly on one side. It is always deeply and evenly divided. We can only say which of two widely held views has majority support for the time being" (Parker, *op cit*).

5. The method of presenting the question in Australia by putting just the title on the ballot paper does not assist the voter to know exactly what he is voting about, since the majority will make no effort to read the full text even though it is available.

6. "The conservative's fears (in the 1890s) of the referendum as a radical democratic weapon of the masses have almost completely given way to the oppo-

site view of it as a blessed assurance of constitutional immobility" (L. F. Crisp, *Australian National Government*, 1965).

some recent European referenda

The referenda held in Norway and Denmark on the issue of joining the EEC illustrate some of the problems inherent in referenda, particularly the problems of timing. There is, of course, a tactical problem of timing—as with a general election—but there is another and more serious difficulty. An issue may be thought so special that the people must decide it in a separate vote—but when? Suppose a referendum had been held in this country on British membership of the EEC—in 1962. Would "full hearted consent" to British entry then (if permitted by De Gaulle) remain a valid consent in 1975? And if not, would a further change of heart in, say, 1976, require yet another vote? The Norwegian referendum in question was held in September 1972 and in it the voters were asked "Do you think Norway should join the European Communities?" 2.6 million voters were eligible to give an answer: of these 1.1 million (or 53.5 per cent of the total poll) answered in the negative and 0.9 million (46.5 per cent) in the affirmative, the total vote cast being 77.6 per cent of the electorate. A contrasting result emerged from the Danish referendum on the EEC held in October 1972 (a week after the Norwegian vote). There was a 90 per cent turnout from an electorate of 3.5 million. The final figures showed nearly 2 million in favour of the EEC (63 per cent) and 1.1 million against (37 per cent). But in both countries later public opinion polls suggested that the voters had changed their minds.

In Greece a referendum was held in 1973, under the regime of the Colonels, in which the voters may have felt that their minds were not the primary target. They were asked to confirm the change from monarchy to republic, and to endorse Papadopoulos as President until 1981. As one Athens newspaper pointed out, there were two things a NO vote could not do: restore the monarchy or overthrow Papa-

dopoulos. 78 per cent of the voters voted YES to the regime's proposals, and were congratulated (by Papadopoulos) on their "great political maturity" (*The Times*, 18 June and 31 July 1973). The Colonels were prudent enough never to test that maturity in a general election.

A rather different problem was highlighted by the divorce referendum held in Italy in May 1974—the only referendum held since the Italians adopted their present constitution. The issue was whether the recently passed law allowing divorce should be kept or abolished. The question on the ballot paper, however, was "Do you wish the abrogation of law number 898 of 1 December 1970—rules for cases of dissolution of marriage?" A survey showed that over a third of the electorate did not know the meaning of the word "abrogate" (*The Observer*, 12 May 1974). Despite—or perhaps because of—this mind spinning question, the vote resulted in a solid majority for keeping the divorce law. But it is difficult to see what useful purpose, and in particular what useful democratic purpose, was served by holding the referendum at all.

A similar question arises in relation to Northern Ireland, where in March 1973 (following the Heath Government's Northern Ireland (Border Poll) Act 1972) a referendum was held on the border question. The result, strange to relate, was a clear majority for Unionist and Protestant views. If the cause of peace and progress in Northern Ireland was advanced by this vote it was evidently done by stealth. However, the Northern Irish referendum has had the further consequence of providing a precedent, of sorts, for a referendum within Britain ("If that part of the UK can have a referendum there, why can't we have one here?"). In the light of the collapse of democratic politics in Northern Ireland and the other troubles of the province, that is a curious precedent. No doubt it is not the most foolish political parallel ever suggested; on the other hand its claim to this distinction should not be overlooked.

4. the referendum in perspective

Referenda can be classified broadly into four major categories relating to different order of decision. These are :

1. Self-determination—the initial decision that a country shall be formed as a separate entity. Such decisions have frequently followed wars of independence or revolutions, and the results have reflected the intensity of the political emotions felt in the country at the time. For example, it is interesting to compare the huge support rendered to de Gaulle in 1958, when France was in a state of turmoil and the possibility of civil war was in the air, with the peaceful and apathetic turnout of 1898/9 in the Australian colonies that heralded the birth of a new nation on that continent. This no doubt reflects the difference between a people in trouble turning to a saviour, and one in comfort and security placidly letting matters run their own course. The need for some sort of special popular vote thus appears more pressing only at times of traumatic political upheaval.

2. Constitutional change—a change in the scheme or rules of government. This is probably the most characteristic use of the referendum, and in many countries a referendum is the only way in which the constitution can be changed. Under these circumstances the referendum is a crucial and (as chapter three suggests) a sometimes uncontrollable device. In the UK where there is no written or entrenched constitution, there can be no automatic or formally necessary resort to the referendum. But it would of course be possible to legislate *ad hoc* for a referendum (as on the EEC issue) or even to hold one whenever a fundamental issue had to be decided, although defining the term “fundamental” would create obvious problems.

3. Legislation—the routine enactments of government. This is a very difficult area for referendum decisions. The necessity for all parts of a government's programme to dovetail together, the requirement for expert surveys and consultation in many matters, the constraint that taxes should be adequate for a proposed programme—all these make arbitrary

referral a difficult and at times dangerous procedure. The idea of the referendum for use in legislative matters has fallen out of favour in many western democracies although in Denmark and Italy there is provision, under certain conditions, for its use to repeal Acts of Parliament. There is also provision for consulting the voters on legislation in several communist countries, notably the USSR (Stewart, *Modern Forms of Government*) although these referenda are all merely consultative and have no power to bind the government.

4. Local government decisions — those made at state, county or municipal level. Use at this level has reached quite a high frequency in parts of the USA and in Switzerland. As we argue below the danger of organised minorities bulldozing referendum votes through is always real, and at this level the risk becomes particularly acute.

In chapter two the ideas behind the adoption of the referendum as a method of determination were discussed, and in chapter three the practical results for several countries of this type of decision making were studied. Of the various countries adopting some form of referendum as part of their system of government, we began our investigation with Switzerland—the first country (in modern times) to adopt the device as a regular part of its system and the one making the greatest use of it. Secondly we considered the USA for its experience both of democracy and of material power. Thirdly France, geographically our nearest neighbour and one of our main partners in the EEC and finally Australia, a country which for all its physical remoteness is as close to the UK in parliamentary method and democratic tradition as is any in the world. These examples considered together should help us realistically to assess the likely effects of introducing the referendum into this country.

The evidence collected in chapter three shows that in practical use the referendum does not tally very well with the theories of it as a radical democratic weapon, giving the ordinary citizen the right to

determine his own future. In fact some of the evidence would suggest that it has proved a conservative, unenlightened, and at times almost repressive device which offers scope for abuse by a strong leader with dictatorial leanings. This is a rather startling conclusion and the reasons for it need stating in some detail.

1. The choice as to what decisions shall be put to a referendum must necessarily be somewhat arbitrary and under most systems is essentially in the hands of the government of the day. An unfortunate feature has been that sometimes issues have become obscured and the actual point on which voters have made their decision has been anything but that printed on the ballot paper. This was particularly noticeable in the Gaullist use of the referendum as a vote of confidence, rather than an expression of opinion on a specific question. It is relevant here that it was possible for a strong President to circumvent even a written constitution in order to make a direct and emotional appeal to the electorate, and thus to introduce extraneous influences into the campaign. At a more mundane level it has been seen how the factor of blind party advantage has been used at times in Australia, where oppositions have repeatedly campaigned against measures that they themselves had proposed when in power. If the referendum is seen as a means of lifting politics above the level of mere party manoeuvring, this use (or abuse) of the method should be borne strongly in mind. The idea of the initiative, as used in Switzerland, is an answer in some measure to these objections but, although there are attractive features about this in theory, the practice can again leave much to be desired.

2. The influence of professional public relations techniques is a very strong weapon to be taken into account when considering any form of mass decision making (the chances are that the weapon is still more potent when it is used in a single issue campaign). There are also greater opportunities for manipulation of opinion by popular orators with a mass audience than in an assembly conducted under the proper rules of debate, and

consequently less opportunity for cutting any would-be demagogue down to size. Dictators have found this situation has enabled them to legitimatise personal rule. As mentioned in the introduction, Clement Attlee, in rejecting Churchill's proposal for a referendum in 1945, pointed out that the referendum had "only too often been the instrument of Nazism and Facism" and explicitly mentioned Hitler's use of it. On a less spectacular level the use of the media by de Gaulle has been seen to have the potential to sway opinion in a one sided manner, and the Australian experience, with big business interests holding great influence over the means of communication, would also appear to be biased strongly towards sectional interests. An instructive use of propaganda in this latter case was seen very clearly in the 1967 "nexus" referendum where a discreditable campaign by the extreme right wing Democratic Labour Party, aimed at the known susceptibilities of an apathetic electorate, successfully threw sufficient red herrings across the trail to confuse the issues and thereby to negate the hopes of responsible politicians from all the major parties.

3. The method of voting, the timing of the vote, and the turnout obtained at a referendum all call into question the validity of the result. Under the Australian system the method of compulsory voting has obvious advantages in so far as the possibility of a vote being decided by an overall minority is minimised. However, this is offset by the evidence that a compulsory vote is in many cases not a considered vote and it removes the democratic right of the individual to abstain. Again the exercising of this latter right can lead to ludicrous results as in the 1972 referendum in France "approving" the enlargement of the Common Market. Such were the confusions of the issues involved, and such the success of an organised boycott of the referendum, that the result was capable of virtually any interpretation one wanted to give it. In the absence of compulsory voting it would appear highly probable from the evidence that, except in a real national emergency, turnout figures would

be relatively low on even quite important matters (the federation referenda in Australia provide a remarkable example) and the dangers of a highly organised minority wielding a totally disproportionate influence are very real. In this latter context must be mentioned the possible abuse of the initiative as a democratic weapon—it is easy to see how a highly organised group, operating with the assistance of a competent public relations team and with access to the media, could nullify the work of a democratically elected government. It would seem that this sort of threat would most probably emanate from the forces of the Right, since they would be more likely to have access to the necessary resources and expertise for this type of campaigning than would those of the Left.

4. A sobering lesson to be learned from the referendum in practice is that public opinion as expressed by popular vote is often well in the rearguard of public opinion as it comes to be formulated following the consequences of that popular vote. This is seen quite clearly in practice. As late as 1959 a two to one majority of (male) voters in Switzerland decided that women should not have the vote. Comment is superfluous. And the Australian experience is chilling—continually shackled by the need to obtain constitutional amendment by way of referendum, successive governments have been unable to introduce legislation in keeping with modern times. Some liberalisation has been noted more recently—the rejection of the call to suppress communism in 1951 was narrow; more heartening to people of progressive views was the overwhelming assent in 1967 to the revolutionary proposal that aborigines were people; however, more retrogression came in 1973 when Gough Whitlam failed in his attempt to secure powers to legislate on prices and incomes, and again in 1974 when four different topics of varying degrees of merit (whatever one's political standpoint) were presented to the electorate, each to be rejected by similar margins—a point also relevant to the arguments of the previous paragraph with regard to the “considered” nature of a compulsory vote.

5. The method adopted as to the wording of the referendum question is of fundamental importance. In democratic countries this seems to be largely a civil service function but the form is doubtless influenced by the proposing politicians. In Australia the actual question is not entered on the ballot form, but only the title, with the full text being available in the polling booth. Whatever its apparent limitations this is probably a good practical approach since most voters are unlikely to wade through a legalistically phrased question in full. But if the alternative approach of shortening the question is adopted then the exact wording becomes critical, since very few issues are capable of a simple yes or no answer without some reference to possible alternatives, and a proposal including strings of alternative conditions is not practicable for decision by referendum.

6. Most legislative proposals cannot usefully be considered separately since their purposes and effects may necessarily be interdependent. Effectively this means that the number of such questions capable of answer outside a legislative chamber is very small. Particular measures cannot be divorced from a governmental programme without reducing its efficiency and blunting the responsibility of the government, and that responsibility is normally considered a cornerstone of the democratic structure. These are doubtless some of the reasons why most countries that have the referendum as a built-in part of their legislative system make comparatively little use of it (though Switzerland is an exception).

7. Compulsory use of the referendum with regard to certain decisions, as in Australia over constitutional matters, can lead to a marked lack of flexibility in dealing with changing circumstances—the “nexus” referendum in Australia in 1967 is a good case in point. If referral is optional the decision whether a referendum should be called or not can cause more problems than those it is meant to solve. A good illustration of the effect of holding a referendum in a country where this form of referral is an

unaccustomed novelty was afforded by the emotional Scandinavian campaigns over EEC entry.

8. From the examples quoted it can be inferred that by shrewd timing a referendum could well be used to manufacture political capital out of short term public sentiment. In this respect the question of deciding when referenda should be held becomes a very vexed one. If it is left to the government in power then an unfair advantage is afforded for obtaining approval of certain measures at a moment when governmental popularity is high for probably quite unrelated reasons. In Britain, even with our present arrangements, the government of the day gains too much power from its freedom to choose the date of a general election, and it is desirable to lessen this particular abuse rather than enhance it by adding the referendum to the stock of government-controlled weapons. If instead referenda are held back through a whole parliament and then held concurrently with a general election (as in some American states and also occasionally in Australia), the referendum issues tend to be overshadowed by the general election itself. The 1974 referenda in Australia are a good case in point.

9. The use of the referendum as a consultative measure only can, under certain circumstances, be made in a number of countries, notably Egypt, Yugoslavia, and the USSR. No details of the efficacy of this method are to hand but there seems little to commend it. If a referendum is considered to be a legitimate device, then surely its decisions should be binding. If not, then it is difficult to see why one should be held at all. The only realistic use for the consultative referendum appears to be as a means of gaining approval, by astute timing, for doubtful government measures. (What, for example, would have been the likely outcome of a government sponsored consultative referendum resulting in a defeat for the late Conservative administration? Undoubtedly vigorous calls for the Heath government's resignation, but it would be a bold assumption that that would have had any effect on Ted

Heath). In our view this form of referendum is either pernicious or a waste of time.

10. A brief extract from the minutes of evidence of the Royal Commission into the Constitution of Australia in 1927 summarises one aspect of the whole problem succinctly: Eric Pratt (a witness from the study group of the Constituency Association): "Our own existing method of altering the Constitution by referendum under section 128 . . . suffers severely from the fact that it provides for the submission of questions of very vital importance, but often of a technical nature . . . to an indiscriminating and uninformed body of electors, the bulk of whom consequently exhibit a lack of interest and accurate comprehension of the scope of the questions". Sir Hal Colebatch (Commission member): "Do you think that rejection of the proposals put forward at different referenda is a convincing proof of a lack of judgment on the part of voters?"—"It is not convincing proof but strong evidence."—"Could it not be regarded as proof of lack of judgment on the part of the people submitting the proposals?"—"Yes, it may be; I think we make it clear that whether they were wisely rejected or not, they were not always rejected on their merits" (Parker, *op cit*)

5. the context of reform

The present study has concentrated on the referendum as a constitutional change which has recently commanded increasing support. As with any proposal of this kind there is an obvious responsibility upon all of us to think hard about its likely effects.

As a decision making tool, the referendum has been tried, in many guises, by many different forms of government. On the evidence presented in the earlier chapters we would claim that it has been found wanting, and that it has fallen well short of the claims made for it by its supporters. Why then has the cry for some form of referendum on certain issues been so loud? Regrettably it must be said that there is a widespread tendency to call for a referendum when it is expected to produce a favourable result, and steadfastly to uphold traditional parliamentary methods when the outlook is unpropitious. There can however be no doubt that some support for the referendum is genuinely motivated by a desire to broaden the base of decision making, and to increase the accountability of parliament to the electorate. There is the additional advantage that "let the people decide" makes an easily understood slogan of immediate popular appeal, and one which apparently offers an instant panacea for all the ills of the current system. Unfortunately much of this enthusiasm is based on insufficient knowledge of past experience in other countries, and it is our submission that there is no reason to suppose that Britain would make any better use of the referendum than those countries have done. Indeed, with our long political tradition in which the referendum has played no part, there would be sound reasons for expecting us to do worse. The lesson seems clear that the referendum is not a magic elixir for the cure of democratic ills and could well prove to be a poison.

Nevertheless it must be recognised that part of the attraction of the referendum is that it appears to help in the attainment of certain thoroughly democratic aims—greater popular participation in government; the curbing of a faceless and monolithic bureaucracy; and the opening

up of seemingly impenetrable corridors of power.

A detailed review of all that might be done to realise these desirable aims is beyond the scope of this paper. But as we take the view that the referendum is neither the only nor the best measure available, we think it right to refer to some other proposals (the list is not exhaustive) that are worth further study and which may well prove to be fruitful. It should not be assumed that we ourselves favour all these proposals: what we strongly believe is that it makes no sense to ignore them when considering the benefits and drawbacks of the referendum. What follows is a list of proposals which aim at producing government that is more open, more accountable, and more subject to the influence of the electorate (the question of devolution, which has been comprehensively reviewed in the Kilbrandon Report, is not dealt with, though we are not necessarily in agreement with its recommendations). The subjects we have in mind are:

1. Changing the maximum duration of a parliament. A shortening of the expected term of office of a newly elected government is one possible way of increasing its accountability. Obviously there are limits to this approach but even a shortening from five to four years might well prove salutary. But this idea would lose much of its value unless it were linked with fixed term parliaments.
2. Fixed term parliaments. In other words removing the right of the government of the day to call an election whenever it might feel the moment propitious. "At a stroke" this approach would remove one of the greatest abuses of the current system, under which the party in power can wait upon a favourable opportunity (or even artificially cause such an opportunity to occur) and then seek a mandate from the country under circumstances that make the whole procedure little more than an elaborate confidence trick. Obviously this approach would raise difficult problems, and there would need to be safeguards against the continuing in office of a government that had lost the

confidence of parliament, but the principles at stake are of such fundamental importance that this is an area deserving of the most thorough investigation.

3. Removal of the dependence by political parties on outside sources of finance, and the prohibition of financial contributions from such sources—an approach likely to reduce the influence of wealthy pressure groups and to make the parties more truly independent. Careful investigation of alternative methods of providing finance would obviously be necessary—such as some sort of Treasury grant linked to the degree of support the party held in the country—but such problems would seem capable of solution, and the advantages to be gained in lessening the power of extraneous influences are likely to be of real value.

4. Primary elections. In many areas of the country electors are effectively disenfranchised because (a) the election of the member in constituencies where there are safe majorities is effectively made by the local party selection committee, the subsequent parliamentary election being a mere formality with neither interest nor meaning (b) as long as the member thus elected toes the party line and does not quarrel with his local party association (and it must be remembered that this association represents a very small minority indeed of even that party's supporter's), there is in reality no further election in that constituency until he retires through old age or boredom (c) there is absolutely nothing that the ordinary elector can do, no matter what his political views, to change the situation.

We feel that in such circumstances there is an argument for some form of primary to be held between different candidates from the same party in order to select the final candidate for the parliamentary election. Again there are obvious difficulties to be overcome but we think this is nonetheless a promising area for investigation (we note with interest the proposals of Newman and Cranshaw *Political Quarterly* volume 44 number 4, October/December 1973) with regard to the closed primary, but feel that this only

goes part of the way towards meeting the current deficiencies).

5. A review of electoral systems. Even if there were no other grounds for such a review, it would be justified by the situation in which 13 MPs (in this case Liberal) "represent" over 5 million electors. One does not have to be an absolute devotee of proportional representation to find this gross disparity offensive to democratic politics. The single transferable vote, the alternative vote, and other systems should be carefully investigated.

6. A new Bill of Rights. As the Fabian Task Force Report *Towards a Radical Agenda* pointed out, such a bill would have the great value that it would not only identify rights and freedoms but would also inhibit a government from introducing legislation violative of its provisions (Fabian Tract 414, 1972). This would also be a further means, albeit an indirect one, of increasing the accountability of government.

7. Disclosure of information by government departments to the official parliamentary opposition and to parliamentary committees. This aim should be pursued in the interests of more open government which are at present ill served by the Official Secrets Act and a self-interested habit of reticence and minimal disclosure—a habit which is indulged in by both major parties when in power.

6. conclusions

The referendum is now proposed as the means of registering a popular verdict on the terms of British membership of the EEC. This fact makes it all the more urgently necessary for the merits and drawbacks of the referendum to be given the most careful attention.

This study has sought to contribute to the discussion by reviewing such experience of the referendum as is likely to be relevant for this country. Of course it is true that such experience must be treated with caution. What happens here will necessarily be different in some degree from what has happened elsewhere. But it would be foolish to expect that we would entirely escape the difficulties that have been encountered in other countries. In short, experience of the referendum elsewhere is both relevant and discouraging.

We sympathise with many of the criticisms made of the present system of government in this country; we think it right and necessary that efforts to improve the system should always be made, and that the task should be pursued in the context of wide ranging inquiry and criticism, which should encompass the possible changes listed in chapter five.

The present reality, however, is that the only innovation offered is the referendum. That offer should have been rejected. Reasons for rejecting its soundness in national matters are given in chapter four (in local affairs there may be more persuasive reasons for its use, though there are dangerous possibilities of powerful pressure groups having too much influence in local referenda; this, is nevertheless, a subject that needs further study).

Of course the use of the referendum for the EEC decision might be acceptable because entry into the EEC is itself a constitutional innovation. The referendum also has attraction for some as a seemingly democratic means of deciding an issue of great importance. But in assessing these views one should emphasise the distinction between (a) a settled country with a stable representative government and (b) an "emergent" nation—for

example a colony gaining independence, or a country where a democratic form of government has been instituted following the revolutionary overthrow of a non-democratic regime. The present authors believe that in case (a) the referendum is neither necessary nor desirable, but that in case (b) some form of direct popular decision making is probably essential at the birth of the new state, although it is desirable that true representative government be instituted as quickly as possible.

Entry into the EEC necessarily entails some constitutional changes, but the referendum is not one of them. In any event it is probable that the crucial constitutional battles will still be fought within the national, rather than the European, community. The experience of the six original EEC members makes this clear. In France, for example, it is obvious that the constitutional and political results of the change from the Fourth to the Fifth Republic were far more serious than the changes attributable to France's joining the EEC (indeed the French never held a referendum concerning *their own* membership of the Community).

As to the matter of democratic decision making, there is much facile sloganeering when what is needed is careful judgment. The essential point is that it is necessary, but not sufficient, to say that the voters shall decide. Two illustrations of this are as follows.

First, the rights of minorities are inherently at risk under a system which depends upon a direct popular vote for ultimate decision. The following words of Clifford Sharp are as true now as when they were written in 1911: ". . . any form of democratic government must stand or fall not so much by its perfect subservience to majorities as by its treatment of minorities—a far more difficult condition to fulfil. That minorities must not rule is only the first canon of good government; the second is that they must not be ignored. Yet how, under a system of direct legislation, can they be other than ignored? It must handicap them in two ways. In the first place, it is obviously

far easier for a minority to submit their claims to a representative than to the whole body of electors; in the second place, representatives are far more likely than are electors to give such claims adequate consideration. An individual elector in casting his vote for or against any proposal has naturally and properly no other object than to give expression to his own individual opinion upon the matter as it affects himself. But the same individual voting on the same proposal in the capacity of a representative would approach the question in quite a different way, and would feel it his duty, on account of the trust reposed in him, to take into account claims which as a mere elector he would ignore" (Clifford Sharp, *The Case Against the Referendum*, Fabian Tract 155, 1911).

Secondly, the referendum is often regarded by its proponents as a finding out of the "will of the people", but this is an ambivalent criterion when it comes to analysing just what a referendum vote has decided. A case where 51 per cent of voters favour a proposal and 49 per cent reject it obviously provides an affirmative vote, but can it reasonably be argued that the "will of the people" has endorsed the proposal? It is much more plausible to argue either that there is no clear "will" or that the "will" is for a compromise about half way between rejection and acceptance (there is a clear parallel here with the extravagant claims about "receiving a mandate from the people" for a certain programme of legislation invariably made by whichever party wins control following any general election, no matter how small its majority might be). Nor can a referendum take account of the relative depth of feeling held by individual voters—40 per cent of passionately committed voters may well be counter balanced by 60 per cent of apathetic ones, and on a pure count of heads would be comfortably defeated. A representative form of decision taking is surely better able to take such eventualities into consideration. Again the true "will" of the people is not always amenable to being revealed by a single vote which may be cast without an appreciation of all its consequences. Obvious

examples of popular votes that would almost certainly have been negative had they been taken at the time of the appropriate legislation are Catholic emancipation, compulsory education, and women's suffrage, although a year or two after the new laws had come into effect the true (and by now informed) "will" would undoubtedly have approved all these changes.

In conclusion, there is every reason to be sceptical about the value of introducing the referendum into national politics in this country. We ourselves, as we have indicated, are more than sceptical: we believe that the referendum should be rejected altogether. Its adoption we would see as at best a political white elephant. At worst it would tend to undermine democratic government itself.

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