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## THE USE OF DIRECT DEMOCRACY (REFERENDA AND PLEBISCITES) IN MODERN GOVERNMENT

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### Tools of Direct Democracy

As the pace of negotiations between Israel and Syria accelerates, the prospect becomes more real for Israel's first-ever referendum on the question of Israeli withdrawal from the Golan Heights. When Israel's present government first broached the idea of possible withdrawal from the Golan, Prime Minister Yitzhak Rabin accompanied the idea with a firm commitment on his part to place the matter before the Israeli voters in a referendum before any such agreement would be approved. At that time it was not precisely clear whether he would call general elections or simply have a separate vote on the Golan withdrawal question, or something in between.

When the negotiations began to look serious, Rabin at first tried to modify but then reiterated that promise, adding to it the statement that the referendum should be decided by a simple majority of those voting, and severely attacking those who wanted a special majority as undemocratic. This

was despite the fact that elsewhere, referenda normally require some kind of special majority to determine the results and only plebiscites, the tools of dictators, formally rely on simple majorities alone, because the dictators know that they will get 99.9 percent approval. Moreover, in Israel's case there is a sufficient percentage of Arab voters in the general Israeli population to be decisive in the decision which, after all, is on a matter of the security of the Jewish state and the Jews within it.

That is where the matter now stands. Media reports suggest that the Israeli government has already secretly agreed to withdraw from the entire Golan and Foreign Minister Shimon Peres has indicated that that would only be fair, but Prime Minister Rabin continues to insist that no lines have been drawn, nor have any decisions been made.

While this will be Israel's first experience with a referendum, referenda have been used as a tool of direct democracy for over a century. Direct democracy, that is to say, the opportunity for the

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total citizenry to determine issues on the basis of voting for or against specific measures, is a product of modernity just as much as any other aspect of modern democracy. It is grounded in the principle that political sovereignty resides in the people and therefore they may choose to determine certain policies directly rather than relying on their chosen representatives in government.

The original founders of modern democratic republicanism in the eighteenth century did not look kindly on direct democracy through referenda or plebiscites because they believed that governmental decisions of that kind required deliberation. Such deliberation was possible only in face-to-face groups small enough for the development of considered opinions through discussion, which was possible only in very small polities. Since they believed that modern states inevitably would be larger, they favored the use of federalism and representative government to overcome problems of scale and deliberation.

#### **The Plebiscite: A Distorted Referendum**

The French revolutionaries were the first to introduce direct democracy as a technique to help achieve their revolutionary goals. The Jacobins invented the plebiscite which, from the first, was a device to assist governments of the kind that the late Jacob Talmon referred to (in a useful oxymoron) as "totalitarian democracies" to achieve legitimacy. They would have the people vote on a single issue when it arose to provide backing for the revolutionary regime. Plebiscites have continued in that form and have been used principally by totalitarian regimes seeking an ersatz legitimacy through voting consent after the fact, after an action has been completed. Perhaps the best known were those used by Hitler in Nazi Germany to ratify his earliest breaches of the Versailles treaty or by the Communists to legitimize their regimes.

#### **Referenda in Switzerland**

The referendum, the other form of direct democracy, has a very different character and history. It was developed in Switzerland in the mid-nineteenth century to provide a democratic replacement for the traditional *landesgemeinde* or the assembly of all voters to make fundamental policy decisions. It was designed to offer a direct democratic way to solve the problem of scale recognized earlier, after the Swiss, too, perforce abandoned the small republics.

After Switzerland became a federation and it was no longer possible to assemble all the citizens for decision-making on federal issues, the referendum was

introduced as a tool to assist representative government, not replace it. It was organized as a standard constitutional device initiated by the voters or by their representatives under certain set conditions and in certain set ways, and conducted under set ground rules. It was not a ratifying device but a means whereby voters, exercising their ultimate political sovereignty, could make policy decisions in certain cases.

These cases involved changes in the Swiss federal constitution or the constitutions of the cantons where cantonal referenda were introduced. It was also used for approval or disapproval of public policies of an especially controversial nature or around which there were special disagreements; or that had far-reaching implications. If Swiss legislatures had doubts about the acceptability of particular policies, they could recommend taking them to referenda. Or if enough of the citizenry expressed their will through the signing of petitions to that effect, and wished to have an opportunity for the whole citizenry to consider an act or to propose one, then a referendum would be held. In such cases, initiation came from outside the government. For the Swiss and those who emulated them, the referendum became another tool of governance, used in tandem with the other tools of democratic republicanism.

Switzerland remains the major example of regular use of the referendum. By now there are so many referendum proposals that the Swiss have established very strict conditions for holding referenda. A certain number of signatures is needed to conduct a referendum, no more than a set number of referenda can be conducted in a particular year, ones in excess of that number must wait their turn, and passage of a referendum requires special, extraordinary, and dispersed majorities. With all that, the referendum has become a major tool in the Swiss arsenal of democracy and Switzerland has held over 330 nationwide referenda since 1866.

#### **Referenda in the U.S. States**

The other major users of the referendum are the state and local governments of the United States. The U.S. federal constitution does not make any provision for referenda nor has there ever been a national referendum or plebiscite in the United States. The American founders opposed the idea out of their belief in the necessity for deliberation, which led them to favor representative government, but in the late nineteenth century the American states began to introduce provisions for referenda in an effort aimed to improve

popular control of governments deemed to have become captives of special interests. Today, 49 of the 50 states (only Delaware has not) provide for referenda in one form or another. As in Switzerland, they have been made very much a part of the normal governance process and the procedures for holding them have been constitutionalized and regularized. The U.S. states held approximately 5,500 constitutional/statutory referenda/initiatives between 1898 and 1976; localities in the U.S. hold some 10-15,000 referenda/initiatives annually.

In the American states there are three forms of direct democracy known as initiative, referendum, and recall. An initiative comes from outside the government, when the designated percentage of citizens initiate a proposition to be placed on the ballot, upon which all of the citizens will vote. Referendum is when either a designated percentage of the citizens or the legislature itself requires a particular legislative action — an amendment to the state constitution or local charter or some policy measure — to be submitted for the approval of the voters. Recall is when a designated percentage of the citizenry is able to place on the ballot a measure that will provide for reconsideration of the election of some public official who can be removed from office ("recalled") if a majority of the voters so choose. Some states use all three devices, others one or two of the three.

In most other countries, direct democracy is used sparingly and involves some combination of the plebiscite and the referendum. In such cases it is the design of the measure and the majority required for it that will make the difference with regard to success or failure at the polls. For example, the British, whose constitution also opposes the use of direct democracy as an infringement on the sovereignty of Parliament, did conduct a referendum in recent times on increased home rule for Scotland and Wales. The Conservative government in power when the referendum was held designed it so that to be enacted the vote had to secure a majority of at least 40 percent of the registered (Scottish or Welsh) voters, whether they participated in the election or not. If less than that percentage turned out to participate in the referendum or even if the total favorable vote came to less than that, the measure automatically failed, thereby setting up a situation in which failure was virtually guaranteed.

#### **Special, Extraordinary, and Dispersed Majorities**

Plebiscites characteristically do not require special majorities. Fifty percent of the votes cast plus one is usually enough for passage, but they are so structured

that normally the percentages in favor are overwhelmingly (and artificially) high. Referenda, on the other hand, normally require special majorities, that is to say, either a certain percentage of the total eligible electorate participating or a certain percentage of those voting in the general election also participating in the referendum. For example, in American states where elections are frequent, perhaps two to four times annually, referenda are held at regular election times. Thus it is possible to require that a certain percentage of those voting in the regular election must participate in the referendum and, if that number does not, the referendum automatically fails even if it wins a majority of those who do participate.

Extraordinary majorities often are also required to secure passage, that is to say, a percentage that is more than fifty percent plus one. It may be fifty-five percent or two-thirds or higher, but it means that even if a majority vote for a particular measure, unless a sufficient majority do, the measure fails. The use of dispersed majorities also is common. For example, in Swiss federal elections not only must a federal majority be obtained, but majorities must be obtained in a majority of the cantons. In some American states majorities have to be obtained in a majority of counties. Sometimes if an action affects a particular part of a state, a majority has to be obtained statewide and in that particular part. All of these are considered legitimate means to assure that matters deserving referendum are decided not by the accidental results of a particular vote on a particular day but by a more clear-cut expression of public opinion.

#### **The Wording of the Question**

A major element in determining the results of a referendum is to be found in the way that the question is put before the voters. Hence the wording of the question becomes a matter of considerable importance. In the American states, for example, it was found that legislatures forced to submit certain measures to the voters would word the questions to be placed on the ballot in statutory language so that the average voter could not understand what he or she was being asked and in many cases would not vote at all in the referendum. That, coupled with the requirement for a special majority, usually sufficed to defeat the measure. As a result, reform groups in many states successfully pressured for all referenda placed on the ballot to be expressed in terms understandable to the voters, either establishing a special commission to undertake all wordings or to approve wordings submitted. Thus the

wording of the question and who does it are important issues in the politics of referenda.

### **Scheduling**

The matter of scheduling referenda is also one of considerable importance in influencing the result. If a referendum is held at the same time as a regular election, there will be a greater voter turnout which may make a difference in the result. If the referendum is held separately, that also may make a difference because often fewer voters turn out so the matter is decided only by those with a special interest in it.

The posing of the same question in multiple forms can confuse the voters and is sometimes used where it is legal to do so. For example, in California a few years ago, efforts to introduce ceilings on auto insurance premiums led to the introduction of six referenda on the subject, each representing a slightly different variant of the idea or opposing it altogether. California is just the opposite of Switzerland in the sense that holding referenda is similar to a free-for-all. Whoever qualifies gets on the ballot for the next election. In this case, voters were presented with a situation in which six propositions, each cleverly worded, confronted them when they went into the voting booth. That matter finally had to be untangled by the courts after years of wrangling.

### **Financial Regulation**

In addition to these more general and preliminary considerations, the more specific regulation of referendum campaign financing is, as with electoral campaigns, critical to the proper conduct of the referendum. In terms of financial regulation of a referendum campaign, the key issues concern public disclosure, prohibitions of certain contributors, expenditure ceilings, restrictions on contributions, and expenditure floors and public subsidies.

The United Kingdom's referendum on continued EEC membership, held in 1975, provides an excellent model for the financial organization of a referendum campaign. Each side had one officially designated national "umbrella" organization — Britain in Europe (BIE) for the pro-marketeters and the National Referendum Campaign (NRC) for the anti-marketeters. Each organization served as the recipient of all public monies and as the agency responsible for observing campaign regulations.

A direct treasury grant of 125,000 pounds sterling was awarded to each side for campaign expenses. Full public disclosure was required of all receipts and

expenditures and of the names of all persons contributing 100 pounds sterling or more. There were no ceilings on either contributions or expenditures. Three pamphlets were printed and circulated to all voters: one prepared by BIE setting forth its case for a yes vote; one prepared by NRC setting forth its case for a no vote; and one prepared by the government information unit setting forth the government's reasons for recommending a yes vote.

### **Arguments For Referenda**

From the time of the Progressive Era in the U.S. and Switzerland (1890-1920) to the present, the arguments in favor of initiative and referendum have remained essentially unchanged and rest on two fundamental premises: first, that all political decisions should be as legitimate as possible, and second, that the highest degree of legitimacy is achieved by the direct, unmediated vote of the people. The logical conclusion, given these two premises, is that all political decisions should be taken by the direct, unmediated vote of the people, i.e., by referendum.

There are several other reasons often given in support of referenda. Direct legislation is said to reduce the power of political parties and party bosses by creating a direct link between the government and the people, and direct legislation may reduce the power of special interests as well. Direct legislation is also seen to serve as a political safety-valve, i.e., as a means for avoiding legislative stalemate and deadlock.

Referenda are further viewed as a vehicle to educate the people and assist them in developing civic virtue, as well as to decrease public apathy and popular dissatisfaction with government. Finally, it is seen as a means to strengthen democratic government and more fully realize pure democratic ideals.

### **Arguments Against Referenda**

The arguments against referenda typically center around the virtues of representative as opposed to direct government and the dangers of turning over the reins of government to the unskilled, untrained and/or unknowledgeable mass of citizenry. Direct legislation is seen to weaken representative government. Elected officials may shirk their legislative responsibilities and "hide" behind the electorate. Referenda may also bring about forced decisions, not through consensus, and may thereby deepen social divisions and intra-party splits.

Some claim that ordinary citizens are unable to make wise decisions. They argue that only specially trained and qualified civil servants and elected officials

should participate directly in the very complex and demanding decision-making of modern politics. The consequences of excessive participation might lead to egregious legislative errors, gross inefficiencies, and a bevy of "frivolous" legislation. The true beneficiaries of direct legislation will not be the people but the special interests. Special interest and pressure groups with vocal and wealthy advocates will be expected to exert undue and self-serving influence on the referendum process.

Despite these disagreements over the wisdom of conducting referenda, the primary aims and concerns of both advocates and opponents are essentially shared. Both are concerned with such matters as the responsiveness of government to the popular will and prudent government decisions. The advocate believes that the good polity is best attained through direct popular participation in most or at least some aspects of governmental decision-making; the opponent believes that the good polity is best attained through constitutional, representative government.

To summarize, referenda have become legitimate tools in the arsenal of democratic self-government,

especially if they are anchored in the constitutional governance process of the polity and are not used as plebiscites simply to ratify government actions. The use of occasional referenda in the manner of plebiscites can be justified if they are used in a non-plebiscitory manner. Referenda are best used in the policy process when their enactment requires either special, extraordinary, and/or dispersed majorities so that the results are clear and cannot be interpreted as overaffected by the vagaries of timing. The wording of the question posed to the voters is of great importance and, for fairness, should be done as neutrally as possible. If all these matters are attended to, then the referendum can be a useful tool. If not, it merely confuses and obfuscates.

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JUST PUBLISHED!

**Community and Polity:  
The Organizational Dynamics of American Jewry**  
Revised and Updated Edition

*By Daniel J. Elazar*

The organized life of American Jewry is of interest in its own right. It is the largest Jewish collectivity in the world today, perhaps of all time. For students of politics, the American Jewish community is an example of a voluntary political order that functions authoritatively for those who acknowledge their connection with it, but does not seek a monopoly on the loyalty of its members.

The first edition of *Community and Polity* offered a description and analysis of the developments in the American Jewish community through the first postwar generation — roughly, 1946 through 1976. Since the appearance of the original edition of *Community and Polity* in 1976, the aggressive advancing Jewish community of the late 1960s and early 1970s has given way to a far more quiescent and even troubled one.

This edition of *Community and Polity* explores in depth these and other issues. Like the first edition, it is designed to serve two purposes: to provide a basic survey of the structure and functions of the American Jewish community and to suggest how that community should be understood as a body politic, a polity that is not a state but is no less real from a political perspective.

This revised and updated edition of *Community and Polity* examines the transformations taking place in local community federations and in the countrywide federation movement, the decline of the mass-based organizations, the shift in the forms and organization of Jewish education, the changes taking place in the synagogue movements, and the problems of Jewish unity generated by inter-movement competition.

The book also looks at the new ambiguity in the sphere of community relations, the impact of demographic shifts on Jewish community organization, the institutionalization of new relationships between the American Jewish community and Israel, and the emergence of new model organizations to mobilize and serve the Jewish community.

This book is a product of four decades of study of the American Jewish community. It took its present form as a result of a growing need for an understanding of the importance of the structural and institutional aspects of American Jewish life. While the commitment of individual Jews and Jewish families to Jewish life is obviously a prerequisite to the life of a Jewish community, the character of Jewish life is ultimately shaped by the institutions that Jews create collectively.

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