

Making Voters' Voices' Heard? Citizens' Initiated Referendums in New Zealand

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Citizens in all of the stable democratic states have been disillusioned with the performances of their elected representatives, especially in terms of governments' responsiveness and accountability to voters. Efforts to improve parliaments and governments have included reforming electoral systems, as has occurred in Italy, Japan and New Zealand, for example. We also see this in Canada at present where, at both the provincial and national levels, proposals are being developed to change the voting rules.

But in many countries reforms have also aimed at bypassing the institutions of representative democracy rather than changing the ways in which the representatives are elected. Reformers in Australia, where there have been a number of calls for instituting citizens' initiated referendums, have looked to jurisdictions such as Switzerland and California where referendums are used to decide a range of issues.¹ Direct democracy is seen to be a better, or at least an alternative, way of expressing the preferences of citizens and requiring or persuading governments to comply with their views. One country that has experimented with citizens' initiated, although indicative (non-binding), referendums has been New Zealand. What does its experience tell us about these mechanisms for popular control?

Unusual for a country whose constitution originated from Westminster and which does not have a codified constitution, New Zealand has a history of national referendums. These have been of three varieties: referendums on liquor licensing and other policy matters conducted by governments wishing to avoid making tricky decisions; referendums on constitutional issues, and those conducted under the Citizens Initiated Referenda Act 1993.

From 1911 until their abolition in 1989 there were ‘General Licensing Polls’ held at the same time as the general elections.² Also polls took place on hotel closing times (1949 and 1967). The 1949 poll was held at the same time as another one, this time on off-Course Betting (approved). Later that same year the voters supported the introduction of compulsory military training. The only other use of a referendum held by a government on a policy issue was in 1997. At that time there was a coalition government comprising the National and New Zealand First parties. The latter had made it a condition of the 1996 coalition negotiations that a referendum be held on a proposed compulsory retirement savings scheme. A resounding 91.5 percent voted against. Indeed, even some National ministers openly opposed it.

The use of referendums conducted by governments on constitutional issues dates from the Electoral Act 1956. Its successor, the Electoral Act 1993, which set out the new rules for the Mixed Member Proportional (MMP) electoral system, continued this practice. Certain provisions were entrenched: the (triennial) term of Parliament; the voting age; the composition of the Representation Commission (responsible for determining constituency boundaries); the criteria by which the constituency boundaries are determined; and the method of voting. These provisions cannot be changed unless either a referendum is held, with a simple plurality of those who vote acquiescing (as happened with the switch from the single-member plurality to the MMP electoral system in 1993) or, alternatively, three-quarters of all the Members of Parliament have to vote in favour of the proposed change (as occurred with the reduction of the voting age to 20 and subsequently to 18).

In theory, a determined government with a simple majority of the House could legislate to change the entrenching provision, because that part of the legislation is not itself entrenched. This has never happened: respect for the entrenching clauses has become a convention of the constitution. Apart from the two referendums on the electoral system, a government-initiated indicative referendum in 1992 and the binding one in 1993, there have been a further two constitutional referendums conducted by governments, both on the same issue. In 1967 and again in 1990, voters were asked whether they preferred to retain the existing

three-year parliamentary term or extend it to four years. Given the few other constraints on the powers of governments, it was not surprising that, on both occasions, most people opted for the status quo.

The third and most experimental type has been the polls conducted under the Citizens' Initiated Referenda Act 1993. This legislation was enacted by a National Government, urged by supporters to listen to people who were unhappy with the sorts of socially liberal pieces of legislation passed by the previous Labour government. There are several stages to the legislation:³

1. Promoters give the topic of their choice, and \$500, to the Clerk of the House of Representatives.
2. The Clerk of the House of Representatives advertises the next stage and 28 days is allowed for public submissions. The Clerk determines the wording of the referendum and approves the form to be used for the subsequent petition.
3. Promoters then have twelve months to collect a minimum of ten per cent of the signatures of all enrolled electors in order to qualify for the next stage. They have a limit of \$50,000 for their expenditure promoting their petition.
4. The Clerk has two months to check the signatures (through a sampling procedure). If the petition is correct, the Speaker presents it to the House. If not, the promoters are allowed a further two months to collect signatures.
5. If certified as correct, the petition is presented to the House and the Governor-General has one month to set a date for the referendum (and there are regulations on this). Again, no more than \$50,000 may be spent promoting the referendum.
6. The results are indicative only: they are not binding on Parliament or government.

Between 1993 and October 2002, there were 27 attempts to collect sufficient signatures to hold a referendum that went as far as the Clerk of the House determining the questions to be asked.⁴ The issues raised included policy and constitutional concerns. The following went right through to the referendum stage:

- 1995: Should the number of professional firefighters employed full time in the New Zealand Fire Service be reduced below the number employed on 1 January 1995? (Yes: 12.2 per cent; No: 87.8 per cent)
- 1999: Should the Size of the House of Representatives be reduced from 120 members to 99 members? (Yes: 81.5 per cent; No: 18.5 per cent)
- 1999: Should there be a reform of our justice system placing greater emphasis on the needs of victims, providing restitution and compensation for them and imposing minimum sentences and hard labour for all serious violent offences? (Yes: 91.8 per cent; No: 8.2 per cent)

Both of the 1999 referendums were held at the time of a general election.

Citizen Initiated Referendums and Democracy

Do citizens' initiated referendums add to the quality of democracy? The strongest argument in their favour is that citizens' initiated referendums give voters the opportunity to place issues that concern them on the public agenda, whether these are policy or constitutional issues, as is illustrated by the three questions mentioned above. On the other hand, however, there are strong arguments against these sorts of referendums.

First, and most worryingly, they can allow majorities to discriminate against minorities. If a referendum is indicative rather than binding, a government is not bound to implement the majority verdict, but this depends on the wisdom and sense of justice of those in power: it is not difficult to imagine a government taking a majority referendum verdict as legitimising a potentially repressive measure. Conversely, it can be very difficult for a minority to initiate a referendum on an issue of concern and persuade the majority to vote their way.

Second, there are few issues that can be couched in simple 'for or against' alternatives that actually make sense in public policy terms, as the firefighters' issue demonstrates. Subtleties and conditions are lost in the contest to win; adversarialism dominates over discursive argument.

Third, the existence of indicative referendums can increase citizen disillusionment with governmental responsiveness when those in power do not implement the majority verdict. Of course a government might have excellent reasons for disregarding the people's voice: the referendum might contravene an international agreement (as could happen with a rights-based issue); it might be too difficult to implement; a government might wish to implement the policy but might be unable to get the numbers for it in Parliament (almost certainly the case had the government decided to reduce the number of MPs); or it might simply be against the public interest.

Again take the number of MPs issue, this time as an example of the public interest problem. In countries where the cabinet is drawn from amongst the members of the legislature—as is the case in Australia and New Zealand—the smaller the size of that legislature, the less choice there is of talented people for ministerial office and, furthermore, the more likely it is that the government will completely dominate its own backbenchers and the opposition parties. In New Zealand there was another factor: the representation of women and Maori, which had risen under MMP with its party lists and expanded Parliament, might be detrimentally affected with 21 fewer elected members. So, if Parliament had been reduced in size in accordance with the overwhelming vote of the 1999 referendum, governments would have become less accountable for their actions and MPs would have become less representative of the people. The outcome would have been detrimental to the public interest.⁵

There is another problem with these sorts of referendums, one that relates to the public dissemination of good quality information, although this disadvantage could be overcome, albeit with costs to the public purse. One side can dominate an argument unless two conditions are put in place. Strict funding limits on advertising must be adopted, and this must apply to all protagonists, not only those who promote the referendum (as happens in New Zealand). Further, a public education programme must be carried out to ensure that people are given full, unbiased information. In New Zealand, there are no resources made available by government, either financial or intellectual, to educate the voters faced with making their choices in citizens' initiated referendums (although good programmes were in

place for the two referendums on the electoral system). This was a problem for the 99 MPs referendum when the only public information supplied by government that set out the various arguments was a brief pamphlet published by the Electoral Commission. Democracy is not furthered by one-sided arguments.

Referendums are certainly an essential part of the democratic process when it comes to constitutional issues, although it can be difficult to distinguish between those constitutional concerns that should go to the citizens to decide and those that do not. But the New Zealand experience shows that citizens' initiated referendums are flawed decision-making instruments that ought to be avoided by other countries. Binding citizens' initiated referendums, however, are even worse. There are many better ways of voicing citizens' views than instituting these sorts of devices.

References

¹ See especially George Williams, 'Distrust of Representative Government: Australian Experiments with Direct Democracy', in Marian Sawer and Gianni Zappala, eds., *Speaking for the People: Representation in Australian Politics* (Melbourne, Melbourne University Press, 2001), pp. 80-99.

² See Neill Atkinson, *Adventures in Democracy: A History of the Vote in New Zealand* (Dunedin, University of Otago Press with the Electoral Commission, 2003), pp. 125-9 and 209. This book also discusses citizens' initiated referendums and electoral system reform in New Zealand.

³ See: http://www.justice.govt.nz/pubs/other/pamphlets/2001/citizens_referenda.html

⁴ Electoral Commission, *The New Zealand Electoral Compendium*, 3rd edn. (Wellington, Electoral Commission, 2002, pp. 38-41).

⁵ These arguments were put by political scientists but were roundly criticized by some newspapers as the biased viewpoints of those involved.