

A Tale of Two Referendums

Elite Manipulation or Civic Engagement?

By Professor Matt Qvortrup

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Contents

About the Author	5
Introduction	6
What are Referendums?	6
The History of the Referendum	8
A.V. Dicey: Theorist of the Referendum	11
When are Referendums Held?	15
Voting Behavior in Referendums	18
Regulation of Referendums	20
Cameron's Referendums	31
The AV Referendum 2011	32
The Scottish Referendum	36
Conclusion	39

About the Author

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Introduction

It was the best of all referendums. It was the worst of all referendums. One represented “the age of wisdom”, the other the “age of foolishness”. To be more precise, the two major referendums held by David Cameron’s governments were qualitatively very different. The referendum on Scottish independence in 2014 was a model of civic engagement; the one on electoral reform in 2011 was the arch-type of elite manipulation.

Admitted, it might be ostentatious to paraphrase Charles Dickens *A Tale of two Cities* in a pamphlet about something as mundane as referendums. But, nevertheless, the two major votes held during the time of the Conservative-Liberal Democrat coalition signify the two extremes of referendums; one mildly farcical and the other approaching an ideal of popular involvement.

Can we make referendums work? This little pamphlet, hopefully, will provide a brief overview for the perplexed and give voters an understanding of how referendum works before the vote on British membership of the EU.

What are Referendums?

First of all a bit of terminological clarification. A referendum is vote taken by the whole of a people on a policy issue. Etymologically the word comes from the Latin *referre* – ‘to refer back’. The referendum is often – if mistakenly – seen as an example of pure direct democracy and is seen as detrimental to representative government.

This is somewhat inaccurate. The referendum is more properly regarded as a complement to indirect democracy; an addendum not an institution that challenged the principle of representative government. Under the referendum, the voters do not have the right to initiate legislation (as under citizens' initiatives, which exist in some American states¹); they can merely approve or reject proposals put forward by the legislature. For some, the referendum is thus a small first step towards more democracy.²

The referendum, consequently, is fundamentally a conservative institution. It allows the people – or a legally specified part of them – to veto a proposal or a law already adopted by the legislature.

Referendums or Referenda?

Grammatically speaking, as a Latin gerund referendum has no plural, the plural gerundive referenda, meaning 'things to be referred', necessarily connotes a plurality of issues, which could be misleading. Accordingly, 'referendums' is, grammatically the more correct plural of the word.³ However, it should be noted that some prefer the term 'referenda'. For example the Conservative English politician Alan Clark described the word "referendums" as "an exceedingly ugly term".⁴

- 1 Matsusaka, J. (2004), *For the Many or the Few: The Initiative, Public Policy and American Democracy*, University of Chicago Press, Chicago.
- 2 For a more radical view of democracy, including the use of modern technology see: Becker, Ted. (2001) "Rating the impact of new technologies on democracy." *Communications of the ACM* 44.1 (2001): 39–43.
- 3 www.oxforddictionaries.com/definition/english/referendum?q=referendums (Accessed 16th May 2014).
- 4 Hansard: House of Commons Debates 3 June 1998: Col. 282.

The History of the Referendum

The idea that the people should have the final say on the most important matters is almost as old as Western civilisation itself. The Roman historian Tacitus observed that, “on matters of minor importance only the chiefs decide; on major matters the whole community decides”.⁵ The idea that the people ultimately have the last word was also an axiomatic position of our earliest political philosophers

In the wake of the *Glorious Revolution* (1690), John Locke noted, in *The Second Treatise of Government* written in the same year, that “if a controversie arise betwixt a Prince and some of the people, in a matter where the law is silent, or doubtful, and the thing be of great consequence, I think the proper Umpire in such a case should be the Body of the People”.⁶ This has philosophically become the basis of the constitutional justifications for referendums. At this stage the term referendum had not yet been used in Britain. But elsewhere, namely in what was to become present-day Switzerland, the “thirteen-canton Confederacy of 1513 instituted the policy of taking central decisions back to the communes *ad referendum et instrumentum*”.⁷ And, in the wake of the War of Independence many American states adopted referendums before their constitutions could be changed, but no referendum was introduced at the federal level.

That the referendum could be used to resolve policy matters grew out of the dual events of the American and French Revolutions. Henceforth the ‘consent of the governed’ – to use the words of

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- 5 Tacitus, P.C. (1970) *The Agricola and Germania*, Penguin, London, p.110.
 6 Locke, J. (1988) *Two Treatises on Government*, Cambridge: Cambridge University Press, 42.
 7 Kobach, K.W. (1992) *The Referendum: Direct Democracy in Switzerland*: Aldershot, Dartmouth, p.18.

Declaration of Independence – became the gold standard of legitimacy. This was a change from the earlier age of absolutism. In 1791 Cardinal Carlo Rezzonico (the Pope’s envoy) complained that, as a result of the referendums on self-determination in Avignon in 1791, “everybody will be able to choose a new master in accordance with one’s pleasures”, something he found “absurd”⁸ Now even those whose commitment to free and fair referendums is less than sincere consider this ‘absurdity’ self-evident. As a prominent scholar of referendums wrote in a classic study;

*“The French Revolution proclaimed the dogma that we now term self-determination... The mental and logical process was simple. The people are the state and the nation; the people are sovereign. As such they have the right to decide, as the ultima ratio, by popular vote and simple majority, all matters affecting the state and the nation”.*⁹

Since 1980 literally hundreds of referendums have taken place worldwide.¹⁰ In the 19th Century there were few referendums; a couple in Italy in the 1840s, a similar number of plebiscites in France in the 1850s. There was a handful in America in the 1860s but nothing to write home about really.

The use of the referendum only picked up after the turn of the century and there has been a relatively steady increase in the number of nationwide referendums ever since. Plebiscites have become more frequently used, though the increase has not been linear. As Figure One shows there has been a steady

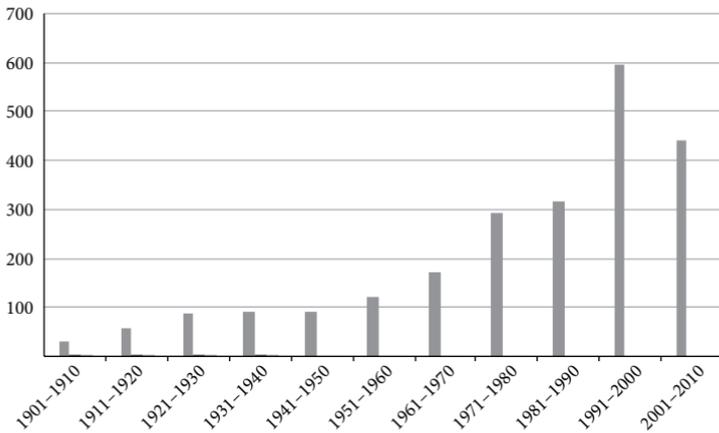
8 Freudenthal, F. (1891) *Die Volksabstimmung bei Gebietsabtretungen und Eroberungen. Eine Studie aus dem Völkerrecht*, Erlangen: Th. Blaesing, pp.3–4.

9 Mattern, J. (1921), *The Employment of the Plebiscite in the Determination of Sovereignty*, Baltimore, Johns Hopkins University Press, 77.

10 For an overview see Qvortrup, M. (2014) ‘Introduction’ in M. Qvortrup (Editor) *Referendums Around the World. The Continued Growth of Direct Democracy*. London: Palgrave Macmillan.

growth until the high watermark in the 1990s, when a number of independence and constitutional referendums were held in the former communist countries. After that the average number of referendums dropped, though to a higher level than before the 1990s. To wit, there were 596 nationwide referendums (including Switzerland) in the 1990s, the following decade the number had fallen to 440. Despite this drop the number of referendums is still higher than the 317 referendums held in the 1980s.¹¹

Figure One: The Use of Referendums World Wide 1900–2010



Source: Qvortrup (Editor) *Referendums Around the World* 2014, p. 247

Interestingly these referendums were not accompanied by any great desire to introduce more radical forms of direct democracy. The view was essentially the same as that espoused by Tacitus; parliament decided on most matters and the people – if they were lucky – got to decide on important matters.

11 The figures for the other decades is a follows: 1911–1920: 58; 1921–1930: 86; 1931–1940: 91; 1941–1950: 91; 1951–1960: 121; 1961–1970: 172 (Source: C2D-University of Geneva).

A.V. Dicey: Theorist of the Referendum

A.V. Dicey – who is famous- or infamous – among lawyers for firmly establishing the doctrine of parliamentary sovereignty had a side interest; he was the first theoretician on these isles – and arguably elsewhere – to develop a rounded and coherent political theory of the referendum.

In a series of articles and papers, including in the 6th Edition of his influential treatise *An Introduction to the Law of the Constitution* and in the article ‘Ought the Referendum to be Introduced into England?’,¹² Dicey made a case for the referendum as an “alternative second chamber”.¹³

Unlike the House of Lords, the referendum was – in Dicey’s opinion – “the one available check on party leaders” and the only institution that could “give formal acknowledgement of the doctrine which lies at the basis of English democracy – that a law depends at bottom for its enactment on the consent of the nation as represented by its electors”.¹⁴ Concerned about irreversible and possibly revolutionary changes to the British constitution, Dicey advocated the use of referendums on major constitutional changes. He wrote:

I value the referendum first because it is doing away with the strictly speaking absurd system which at present exists, on acting on the presumption that electors can best answer the question raised, e.g. by Home Rule, when it is put together with such totally different questions of prohibition, ... and secondly though in a certain sense

12 A.V. Dicey (1981) [1915] *An Introduction in to the Law of the Constitution*, Indianapolis, Liberty Fund.

13 On this see: M. Qvortrup (1999) A.V. Dicey: The Referendum as the People’s Veto”, in *History of Political Thought*, Vol.20, No.3,, pp. 531–546.

14 A.V. Dicey (1911) *A Leap in the Dark*, London, John Murray, 2nd Edition, pp. 189–190.

*mainly because the referendum is an emphatic assertion of the principle that nation stands above parties.*¹⁵

For Dicey, therefore, the referendum was a strictly negative political instrument.; it was “nothing more nor less than a national veto”.¹⁶

Yet, although the referendum was advocated by Dicey, and even supported by some Conservative politicians in the Constitutional stand-off over the People’s Budget in 1910, the referendum was not used in Britain until the 1970s.

In the early 1970s, Edward Heath’s Conservative government proposed that the ‘troubles’ in Northern Ireland could be solved through a referendum. In 1973, a majority of the voters in province voted to stay within the United Kingdom (the poll was boycotted by the nationalist/republican communities). Two years later, in the first ever nationwide referendum, a majority voted to stay in the EEC (the forerunner for the EU) and in 1979 voters in Scotland and Wales rejected the Callaghan government’s schemes for devolution. In Wales the rejection was overwhelming 4:1 margin. In Scotland, the proposal for a Scottish parliament was only rejected because the majority voting in favour did not constitute 40 percent of the eligible voters as requested in the legislation.

During the 1980s no referendums were held. And while some Conservative backbenchers tried to win support for a referendum on the Maastricht Treaty, they were ultimately unsuccessful in their endeavours.

15 A.V. Dicey to J.Loe Strachey 6 May 1995, Quoted in Richard A. Cosgrove (1981) *Albert Venn Dicey: Victorian Jurist*, London, Macmillan, p.107.

16 A.V. Dicey to Lord Salisbury, 11 November 1892, Salisbury Papers, Quoted in Richard A. Cosgrove (1981) *Albert Venn Dicey: Victorian Jurist*, London, Macmillan, p.106.

Table One: Referendums in the United Kingdom

Area	Question	Turnout	Yes-Vote	Year
Northern Ireland	“Do you want Northern Ireland to remain part of the United Kingdom?”	58.6%	98.9	1973
United Kingdom	Do you think the United Kingdom should stay in the European Community (Common Market)?	65%	67.2%	1975
Scotland	Do you want the Provisions of the Scotland Act 1978 to be put into effect?	63.72%	51.6%	1979
Wales	Do you want the Provisions of the Wales Act 1978 to be put into effect?	59.0%	20.6%	1979
Scotland	I agree that there should be a Scottish Parliament	60.4%	74.2%	1997
Scotland	I agree that a Scottish Parliament should have tax-varying powers	60.4%	63.4%	1997
Wales	Do you agree that there should be a Welsh Assembly as proposed by the Government?	50.2%	50.3%	1997
London	Are you in favour of the Government’s proposals for a Greater London Authority, made up of an elected mayor and a separately elected assembly?	34.6%	72.01%	1998
Northern Ireland	Do you support the Agreement reached at the multi-party talks on Northern Ireland and set out in Command Paper 3883?	81.1%	71.1%	1998

North East	<p>You can help to decide whether there should be an elected assembly in the North East region.</p> <p>If an elected assembly is to be established, it is intended that:</p> <ul style="list-style-type: none"> the elected assembly would be responsible for a range of activities currently carried out mainly by central government bodies, including regional economic development; and Local government would be reorganised into a single-tier in those parts of the region that currently have both county and district councils. <p>Should there be an elected assembly for the North East region?</p>	47.71%	22.07%	2004
Wales	Do you want the Assembly now to be able to make laws on all matters in the 20 subject areas it has powers for?	35.6%	63.4%	2011
United Kingdom	At present, the UK uses the “first past the post” system to elect MPs to the House of Commons. Should the “alternative vote” system be used instead?	42.2%	32.1%	2011
Scotland	Should Scotland be an independent country?	84.5%	44.7%	2014

Source: The Electoral Commission

It was only after Tony Blair's New Labour was elected that referendums again became fashionable. Referendums on devolution for Scotland and Wales (1997), on whether to have an elected mayor in London (1998) and on the Good Friday Agreement (1998) were successful. However, in 2004 a referendum on a regional assembly in the North East of England was overwhelmingly rejected by the voters.¹⁷

Upon coming to power the Conservative-Liberal Democrat coalition government held two referendums; in March 2011 a majority of the voters supported further devolution to Wales (the Welsh Assembly would henceforth be able to pass primary legislation) and held a referendum on whether to replace the First-Past-the-post electoral system with the Alternative Vote (The proposal was rejected by a clear majority¹⁸). And finally, in 2014, 55 percent of the Scottish voters voted no to the question; *Should Scotland be an independent country?*¹⁹ We shall analyze these two referendums at some length below.

When are Referendums Held?

In an ideal world all referendums would be held to give people a veto. In reality, referendums are used as political tools by the governing elites – though not always with the intended effects. In most countries, apart from Switzerland and some US states,

17 Knock, K. (2006). The North East Referendum: Lessons Learnt?. *Parliamentary Affairs*, 59(4), 682–693.

18 Qvortrup, M. (2012). Voting on electoral reform: A comparative perspective on the alternative vote referendum in the United Kingdom. *The Political Quarterly*, 83(1), 108–116.

19 P. Cairney (2015). The Scottish independence referendum: what are the implications of a No Vote?. *The Political Quarterly*, 86(2), 186–191.

referendums fall into two categories,²⁰ referendums that are constitutionally mandated and ones that are held to solve an immediate political problem.

Ireland is a prime example of the former. Since the High Court's decision in *Crotty v An Taoiseach* in 1987 it has been the established legal position that *all* constitutional changes must be submitted to the voters.

In Britain, we have – since the enactment of the *European Union Act 2011* – a similar situation – albeit on a smaller scale. If a UK government, for example wanted to remove any border controls, it would have to submit this decision to a referendum.²¹

But in the United Kingdom, as well as elsewhere, referendums are generally held for less than idealistic reasons. Not, mind you, because politicians are devious and scheming (though they can be that too!) but because referendums provide a practical solution to an immediate problem.

Generally, and with certain exceptions, referendums are used on three distinct occasions;

- ◆ **Referendums as Mechanisms for Managing Disagreement:** These are held to keep a party or a coalition together. When parties are split down the middle on an issue they can 'agree-to-disagree' by holding a referendum. This is what

20 In Switzerland 50,000 citizens can demand a referendum on any bill before it becomes law if they can gather signatures demanding this within a 100 days after the third reading of a Bill See: Serdült, Uwe (2014) 'Referendums in Switzerland'. In Matt Qvortrup (Ed) *Referendums around the World*. Basingstoke: Palgrave, pp. 65–121, p. 72. Similar provisions exist in some US states. In Italy 500,000 citizens can demand a referendum requesting a repeal of any law on the statute book. See Uleri, P.V. (1996) *Italy: Referendums and Initiatives from the Origins to the Crisis of a Democratic Regime*. M. Gallagher and P.V. Uleri (Eds) *The Referendum Experience in Europe*. Basingstoke: Macmillan, pp.106–126.

21 See European Union Act 2011, S.6(5)(j)(iii).

happened in 1975 when the Labour Party was split over the EU. This use of the referendum was also the main reason the Conservative-Liberal coalition government held a vote on electoral reform;

- ◆ **Referendums as Negotiating Tactic:** Referendums can also – though more rarely – be used as part of a bargaining or negotiating process. This is arguably why the Spanish government held a referendum on the European Constitution in 2005. By informing the negotiating partners that the fate of the treaty would depend on the consent of the Spanish voters, the Madrid government was able to get concessions for fear that the voters in Spain would reject the whole treaty. It was arguably also the logic behind the referendum held in Greece in early July 2015. Though it is debatable if the *Syriza* government were successful in using the referendum to get a better deal;
- ◆ **The Plebiscitary Referendum:** Lastly political leaders can by-pass a legislature by calling a referendum. In the 1960s the French President Charles de Gaulle submitted the issue of Algerian independence to the voters when he couldn't win the endorsement for his policy in the National Assembly. He used the same tactic in 1969, when he organized a referendum on regional government and reform of the Senate. But this failed and de Gaulle resigned.

That referendums often are held for these practical reasons does not mean that they are part of a sneaky plot and political calculation. Granted, politicians normally follow what we might call the 'logic of consequentiality'; they consider what is in their rational self-interest and act accordingly. But there are also examples of referendums which are held out of a political sense of appropriateness. For example, there was nothing that forced the British government to hold a referendum on the Good Friday Agreement in 1998.

Voting Behavior in Referendums

Do voters have the competence to vote in referendums? Or do these exercises just become proxies for elections? In short, do people vote for proposals proposed by politicians they like? There is evidence to suggest that referendums can be what political scientists call ‘Second Order-Elections’ and their outcome is determined by the popularity – or otherwise – of the incumbent.²²

Further elaborating on this, there is also evidence to suggest that voters mainly vote yes in referendums if the administration has been in office for a short period of time.²³ Or put differently, the longer a government has been in office, the less likely it is to convince the voters of the merits of the proposals. The logic is straightforward; governing is never cost-free. All governments break promises, fail to deliver and enact unpopular laws. In the words of V.O. Key, ‘to govern is to antagonize’.²⁴

These overall observations seem to suggest that campaigns do not matter. So do they matter? A couple of tendencies have been discerned. One of the overall assumptions about referendum campaigns is that the voters tend to be conservative. As a general rule of thumb, referendum campaigns are generally difficult to win if the yes-side does not have a substantial lead in the polls before the campaigns begin.²⁵ And even a considerable lead in the polls can be lost. The Danish referendum on the Maastricht

22 Mark Franklin, Mark, Michael Marsh, and Lauren McLaren. “Uncorking the bottle: Popular opposition to European unification in the wake of Maastricht.” *JCMS: Journal of Common Market Studies* 32.4 (1994): 455–472.

23 See the recent book Vospernik, S. (2014). *Modelle der direkten Demokratie. Baden-Baden: Nomos.*

24 V.O. Key (1966). *The responsible electorate* (p. 150). Belknap Press of Harvard University Press, p.30.

25 Lawrence LeDuc, (2003) *The politics of direct democracy: Referendums in global perspective.* Broadview Press, Toronto.

Treaty is a case in point. The government lost an overwhelming 20 per cent lead to go down to a narrow defeat in June 1992.

But other referendums point in a different direction. For example, in the 1975 referendum on the renegotiated British membership of the EEC (as the precursor of the EU was called), the government managed to win the referendum by a 67–33 margin although it had trailed the no-side in the polls by a similar margin at the beginning of the campaign.²⁶

The suggestion that the no side always gains through a campaign was also rebutted in the 2012 *European Fiscal Compact Referendum* in Ireland. In this referendum, the yes-side steadily increased its lead from 4 per cent in January to 11 per cent in March and 12 per cent in April, and won by a handsome 21 per cent margin in May.²⁷

In the 15 referendum campaigns studied by Leduc the yes-side gained in five out of 15 campaigns, but lost ground in ten.²⁸ While there is a tendency for the no-side to win more support in referendum campaigns, there is no universal law that suggests that it is easier to defeat a referendum than to win one. One reason for these defeats is the economy. As a general rule governments tend to win referendums in times of crisis; when the economy is in recession it is easier to get the voters to experiment.

Other factors that are perceived to affect the outcome are regulatory matters; such as the wording of the question, campaign spending and the like. We therefore turn to these matters.

26 David Butler and Uwe Kitzinger (1976) *The 1975 Referendum*, Macmillan, London, p.178.

27 Polls reported in the *Irish Times* various issues.

28 LeDuc, Lawrence. *The politics of direct democracy*, p.152.

Regulation of Referendums

“The health of democracies, of whatever type and range, depends on a wretched technical detail; electoral procedure. All the rest is secondary. If the regime of elections is successful... all goes well; if not, though the rest progresses well, all goes wrong”, said Spanish political philosopher José Ortega y Gasset. A referendum cannot be held in a vacuum; it requires regulation and what Gasset called “*detalle técnico*”.

Referendums are intended to give democratic legitimacy to controversial (and often irreversible) decisions on public policy. Since the First World War referendums have increasingly been used to resolve matters pertaining to national self-determination (e.g. the referendums in East Timor in 1999 and Montenegro in 2006) and related issues.²⁹

Who can Vote?

Who is the *Demos*? In the debate about the European Referendum some have suggested that the franchise should be limited to British citizens. Indeed, this is the Government’s position. There are credible arguments that support this position. However, the general practice in referendums is that non-native residents are allowed to vote. Thus citizens from other European countries would normally be expected to have a vote in a referendum that affects their lives.³⁰

29 Examples include: 1) drawing of borders (e.g. the referendum on the future of Saar between Germany and France in 1955); 2) the establishment of new territorial entities within a federal state (e.g. the referendum in what became *République et Canton du Jura* in 1978), 3) transfers of powers to entities within a union state (e.g. devolution for Scotland 1979 and 1997), a unitary state (Corsica) and popular approval – or otherwise – of power/sharing accords (e.g. Burundi 2005).

30 İ. G. Şen (2015). *Sovereignty Referendums in International and Constitutional Law*. Heidelberg, Springer, p.245.

Conversely, it is questionable whether citizens living outside a jurisdiction have thereby forfeited their right to vote. Some litigation suggests as much. For example, an *obiter dictum* of the European Court of Human Rights points in this direction. The Court held; “The position is not analogous to that of persons who are unable to take part in elections because they live outside the jurisdiction, as such individuals have weakened the link between themselves and the jurisdiction.”³¹

The two quorums – turnout requirement and approval requirement

Turnout and quorum requirements are extremely rare in referendums. The only country that currently operates a supermajority is Israel, where a 60 percent majority requirement is needed in the event of Israel giving up the occupied territories.³²

It is common but inaccurate to cite the *Canadian Clarity Act* as a precedent for supermajority requirements. As the example is often mentioned, it is instructive to give a brief description on this model. After the 50.58% to 49.42% result in Quebec in 1995, the House of Commons in Canada sought to establish that a future referendum was not won by a narrow margin. The act, however, stops short of recommending a specific majority.³³

According to an inquiry carried out by the Venice Commission that provided information on 33 of the 48 member states of the

31 Matthews v. United Kingdom (1999) 28 EHRR 361, para. 64.

32 www.haaretz.com/hasen/spages/997608.html.

33 See Clarity Act, 2000, c. 26 [Assented to June 29th, 2000] 2. (1) The House of Commons shall consider “whether, in the circumstances, there has been a clear expression of a will by a clear majority of the population of that province that the province ceases to be part of Canada. Factors for House of Commons to take into account include (2) (a) the size of the majority of valid votes cast in favour of the secessionist option; (b) the percentage of eligible voters voting in the referendum; and (c) any other matters or circumstances it considers to be relevant.

Commission, 12 of these states, as well as Slovenia, have legal provisions setting a minimum threshold of participation of 50% of registered voters (the only exception is Azerbaijan that requires the participation of 25% of the registered voters). The report by the Commission states:

A quorum of participation of the majority of the electorate is required in the following states: Bulgaria, Croatia, Italy and Malta (abrogative referendum³⁴), Lithuania, Russia and “the Former Yugoslav Republic of Macedonia” (decision-making referendum³⁵). In Latvia, the quorum is half the voters who participated in the last election of Parliament and in Azerbaijan; it is only 25% of the registered voters. In Poland and Portugal, if the turnout is not more than 50%, the referendum is de facto consultative and non-binding (in Portugal, the quorum is calculated on the basis of the citizens registered at the census).³⁶

Government Spending

In referendums around the world, concerns are often raised about the government using public funds to support a favoured position. For example, in 1994, the Austrian government spent

34 An *Abrogative Referendum* is a plebiscite on an already existing law initiated by the voters.

35 A referendum initiated by elected representatives.

36 The relevant sections of legislation are as follows: Azerbaijan (article 139.1 of the election code); Bulgaria (electoral legislation); Croatia (article 87.4); Italy (legislative regulation, abrogative referendum); Latvia (article 79; it applies to constitutional revision); Malta (Article 20.1 of the Referenda Act); Portugal (article 115.11); Poland (binding if 50% of electors participate, article 125.3; 50% majority – no threshold – required for constitutional reform Article 235.6); Russian Federation (electoral legislation); Slovakia (article 98.1); Slovenia (article 170.2); and “The Former Yugoslav Republic of Macedonia” (article 73.2). *Le référendum en Europe – Analyse des règles juridiques des Etats européens – Rapport adopté par le Conseil des élections démocratiques lors de sa 14e réunion*. (Venise, 20 octobre 2005) et la Commission de Venise lors de sa 64e session plénière (Venise, 21–22 octobre 2005).

considerable sums on a pro-EU campaign, but without violating Austrian election and referendum laws. The same has been true, more recently, in Spain where the government is reported to have spent considerable sums on a (successful) campaign in support of the European Constitution.³⁷

In other countries – most notably in Ireland – similar examples of government spending in support of a proposition have been ruled illegal by the courts. In an often-cited case from Ireland in 1995, Patricia McKenna, a member of the European Parliament, argued that the government had breached the Irish Constitution by spending public funds on aspects other than the impartial organization of the process. While the Supreme Court held that: “The Government is clearly entitled to spend money in providing information... [and that] the Government, as such, is entitled to campaign for the change and the individual members of the Government are entitled either in their personal, party or ministerial capacities to advocate the proposed change”, it ruled that “the Government must stop short of spending public money in favour of one side which has the consequence of being to the detriment of those opposed to the constitutional amendment”.³⁸ Although legally non-binding, this judgment has inspired legislation in both Ireland and elsewhere. There is an emerging consensus that it is illegitimate for governments to spend taxpayers’ money on partisan information, or other partisan activities using state apparatus.

Campaign Length

“Democracy is discussion” said Czechoslovakia statesman Tomáš Masaryk. And discussion requires a modicum of time to ensure the

37 El País 5 January 2005, “*Periodistas, futbolistas y actores abren el viernes la campaña del referendun europeo*”.

38 *McKenna v An Taoiseach*, an Tanaiste and ors. 1995.

issues are debated properly. For this reason a referendum campaign must allow for weeks of debate. On this count the referendum in Greece (on the Euro Bailout) in July 2015, for example, was ill served by the very short campaign period – nine days. By most campaign standards, a week is considered insufficient time for debating, refuting or challenging allegations made by the different campaigns. Yet the Greek referendum was not unique in this respect. The campaign in Slovakia (on EU membership) in 2004 was shorter (only one week!), and those in Malta and Slovakia were respectively only two and three weeks in duration. In this country we have allowed ourselves a bit more time; *The UK Political Parties, Elections and Referendum Act* prescribes 28 days of campaigning.

Moreover, even a long campaign cannot prevent one side from presenting disinformation late in the process. The question is whether legal mechanisms can prevent the dissemination of deliberately false information. Ways of doing this include rules on campaign spending, a Purdah and equal broadcasting.

Campaign Spending

The issue of whether there ought to be a ceiling on campaign expenditure is contentious. Some argue that expenditure ceilings keep costs within manageable limits, ensure that referendums cannot be ‘bought’ by the richer side, and increase public confidence in the result. Others contend that ceilings prevent a truly effective information campaign.

This is not a conclusive debate. Many argue that the outcome of the referendum seems to be driven by other structural factors, such as the economy, the length of tenure of the respective governments and other factors.³⁹ Some doubt on the importance

39 M.H. Qvortrup, “How to Lose a Referendum”, *The Political Quarterly* Vol. 72, No. 1, 2001.

of money in ballot campaigns, though it has been reported that ‘negative’ spending in many cases has been successful.⁴⁰

Unlike America, where it is possible to spend almost limitless amounts in referendums, we have introduced limits here in the UK.

The Political Parties, Elections and Referendum Act 2001 places limits on campaign spending.⁴¹ The restrictions on campaign spending are: (Sections 117–118):

- ◆ Political parties may spend money in proportion to its percentage of votes in the last general election;
- ◆ For other permitted participants the limit is £0.5 million;
- ◆ Individuals may not spend more than £10,000;
- ◆ Designated umbrella organisations may spend a total of £5 million.

Purdah

Purdah periods are conventionally defined as rules – whether constitutional, statutory, or conventional – prohibiting the government, in a period immediate before an election or referendum, from making “statements or undertaking actions, that might influence the outcome of the vote”.⁴²

Government interference – whether perceived or real – has often been considered to have an effect on the outcome of referendums

40 Elizabeth Gerber, an American political scientist, has found that campaign spending in support of a proposition was ineffectual. However, negative campaign spending, i.e. spending against a proposition was often effective. See E. Gerber, *The Populist Paradox. Group Influence and the Promise of Direct Legislation*, Princeton, Princeton University Press, 1999.

41 See also: *The Local Authorities (Conduct of Referendums) (Wales) Regulations 2004*.

42 Per Dr W. Elliot Bulmer, *IDEA-International*.

in developed democracies. For example, in Denmark in 1972, the Government issued reports on looming inflation shortly before the vote on EEC membership in October of that year, which were perceived to have altered the result.⁴³ The fear that a government might use the machinery to influence the outcome has led to the establishment of rules, the codification of norms and in some countries court cases restricting and regulating how governments could make statements and use the machinery of government in the period before a referendum. The current UK government initially wanted to suspend the *purdah* rule for the forthcoming referendum on continued EU membership.

It should be said at the outset that these rules vary considerably and there is no common terminology, which in some cases make comparison difficult. Further, the word *Purdah* is not generally used in other jurisdictions – not even in English speaking countries.⁴⁴ The *Political Parties Election and Referendum Act 2000* introduced for the first time restrictions on the publication of promotional material by central and local government (Section 125).

Three referendums have been held under its provisions; on a Regional Assembly in the North East in November 2004, in the Welsh devolution referendum in March 2011 and in referendum on the Alternative Vote electoral system in May 2011. The Scottish referendum on independence in September 2014 was held under a different legal framework, although the regulations and restrictions were essentially the same (See below).⁴⁵

43 Ole Borre and Jørgen Elklit (1972). 'Nogle resultater fra TVA's analyse af EF-folkeafstemningen'. *Økonomi og Politik*, 46(3), 256–274. (Results from the TVA's Analysis of the EEC Referendum).

44 On regulations in general see: İlker Gökhan Şen (2015) *Sovereignty Referendums in International and Constitutional Law*, Springer, Heidelberg, pp.209–268.

45 See: Tierney, Stephen. "The Referendum on Scottish Independence: A Process as well as an Event." *Edinburgh Law Review* 18.2 (2014): 245–250.

The rules in *Political Parties Elections and Referendums Act* are relatively flexible and do not force the government to refrain from making statements and issuing information. In the case of the North East Referendum, the Government “agreed to a self-imposed ‘purdah’ period starting on 10th of September”. This decision, and the fact that it was billed as ‘self-imposed’ would perhaps indicate that the Government was aware that the rules were flexible and that it consequently needed to be seen as extra-neutral.

However, even under these circumstances there were complaints that the Government did not abide by the rules or by their ‘self-imposed purdah’. Two days before the vote, the Secretary of State, Mr. John Prescott gave an interview to the *Newcastle Journal* in which he made comments that touched upon the issue before the voters. A complaint from a member of the public was rejected by the Cabinet Office on the grounds that, “The statement by Mr. Prescott... about the transport responsibilities of the proposed elected regional assembly, was made in his political capacity and not as a Minister of the Crown. The press notice concerned was issued by the Labour Party, and not by a Government Department, and subsequent enquiries have been directed to the Labour Party”.⁴⁶ As a consequence no further action was taken. Further, it should be noted that a violation of the Purdah does not constitute a criminal offence. The consequences of a breach are, consequently, minimal – though they can be politically embarrassing.⁴⁷

Before the referendum on Scottish independence in 2014, the *Edinburgh Agreement 2012* stated (Para 29) “The UK Government

46 Cited on www.conservativehome.com/platform/2006/07/william_norton_-2.html (Accessed 8th July 2015).

47 There were no reported violations of the purdah rules in the referendums on Welsh devolution and the AV referendum.

has committed to act according to the same PPERA-based rules during the 28-day period.” The interpretation of this was that the UK and Scottish Government would follow *purdah* in the same way as set out in the UK legislation, i.e. PPERA.⁴⁸ Hence Paragraph 25(2) of the *Scottish Independence Referendum Act 2013* provided that for 28 days before the referendum the Scottish Ministers, SPCB and any Scottish Public Authority will be in *purdah*. This was interpreted widely to mean that the Scottish Government and a wide range of other public bodies were not allowed to engage in promotional activity in the four weeks prior to the referendum.

While there were no formal legal complaints, it was generally the impression (on the Yes-side) that the BBC, arguably a public body, showed a bias during the campaign.⁴⁹ It was also suggested that Chancellor George Osborne’s intervention on the 10th of September (on further powers to Scotland) could be seen as a violation of the *Purdah*.⁵⁰

The Conclusion from the referendums held thus far under PPERA and under the similar provisions in the *Scottish Independence Referendum Act 2013* would suggest that the rules governing *purdah* are too loose and need to be strengthened rather than weakened lest the exercise of the referendum be seen as illegitimate and lead to an erosion of trust in the political system. Yet, in the Spring of 2015, the Conservative government proposed that

48 This was confirmed by the then Deputy First Minister Nicola Sturgeon. See Scottish Parliament Referendum (Scotland) Bill Committee, 13 June 2013, Official Report, cols 554 and 560.

49 For example: www.theguardian.com/media/2015/jun/02/peter-mullan-bbc-referendum-harry-potter (Accessed 8th July 2015).

50 www.independent.co.uk/news/uk/scottish-independence/scottish-independence-what-is-purdah-and-why-is-it-important-9723201.html (Accessed 8th July 2015).

the *Purdah* rules would not apply in the referendum on British membership of the EU. The argument was that the *purdah* would prevent the government from commenting on EU legislation and decisions during the campaign period. The proposal to suspend the *purdah* rules raised concern among Parliamentarians – and not just among Eurosceptic MPs. In late August David Cameron indicated that the government was willing to compromise on the matter. However, the administration's attempt was rejected by the House of Commons by 312 votes to 285. 27 Conservative MPs voted for a Labour amendment “reinstating the usual *purdah* rules for the 28 days before the poll”. It was David Cameron's first defeat in the Commons since winning a majority in the 2015 general election.

The Question on the Ballot

It has often been suggested that that loaded questions in referendums and the presence of words such as ‘agree’ or ‘approve’ create a bias and prompt the voters to vote for propositions that they do not agree with. In January 2012 a *YouGov* poll suggested that 41 per cent would vote for Scottish independence if asked *The Scottish National Party's* preferred question “Do you agree that Scotland should become an independent country?”. However only 39 per cent would support the proposition “Do you agree or disagree that Scotland should become an independent country?” And support would plummet to a mere 33 per cent when respondents were asked “Should Scotland become an independent country or should it remain part of the United Kingdom?”⁵¹ Does the wording of the question in a referendum make a difference? Or, are these discrepancies only present in opinion polls where the respondents have a few moments to

51 <http://newsnetscotland.com/index.php/scottish-opinion/4256-polls-damned-polls-and-lord-ashcroft>, Accessed 7th August 2012.

make up their minds, as opposed to in a referendum where the voters have been subjected to months of debate?

The argument that the wording matters – credibly enough – holds that a biased and one-sided question can prompt the voters to vote yes to a question which they – had they understood it – would have rejected. That biased questions could determine how people answered the questions has always been acknowledged by pollsters. Indeed, no less a figure than George Gallup was one of the first to admit this in his classic article ‘Question Wording in Public Opinion Polls.’⁵² But it does not follow that voters in referendums would react in the same way as those polled in a mass-survey. True, in research dating back to the early 1980s, David Magleby hinted that wording might matter if there are many propositions on the ballot at the same time. That is, if the voters read the question for the first time when they enter the polling-booth they might be swayed by emotive language.⁵³ But the same does not necessarily hold true if the voters are faced with a single question that has been debated for weeks or even months, as is the case with most referendums outside the US and Switzerland.

In most countries, referendums are held rarely and mainly on controversial issues.⁵⁴ In Northern Ireland, in 1998, the voters were asked the question “Do you support the agreement reached in multi-party talks on Northern Ireland and set out in Command Paper 3883?” 71.2 percent did. “Command Paper

52 George Gallup (1941) Question Wording in Public Opinion Polls, *Sociometry* Vol. 4, No. 3, pp. 259–268.

53 David Magleby (1984) *Direct Legislation: Voting on Ballot Propositions in the United States*, Baltimore MD, Johns Hopkins University Press, 196.

54 Butler, D and Ranney, A. ‘Practice’ in Butler, D., Ranney, A., (eds.) 1978. *Referendums: A Comparative Study of Practice and Theory*. American Enterprise Institute for Public Policy Research, Washington, D.C, p. 221.

3883” was a coded reference to the official document containing the Belfast Agreement on power-sharing, but despite the lack of references to the policy contained in the ‘Command Paper’ voters were seemingly aware of the issues.⁵⁵ There are some examples of biased questions but there is, as yet, not definitive statistical evidence that proves that voters are misled by biased words. You can’t prove a negative.

These findings notwithstanding, there is still a perception that the wording and a ‘leading question’ my somehow influence the result. It was for this reason the *Electoral Commission* recommended that the Government’s proposed ‘yes’ or ‘no’ question was changed to a different one. This was accepted by David Cameron. Voters will now be given an amended question: ‘Should the United Kingdom remain a member of the European Union or leave the European Union?’ To which they can answer either: ‘Remain a member of the European Union’ or ‘Leave the European Union’.

Overall Britain’s referendums are regulated to ensure fairness. Many of the rules and regulations are warranted but the problem is that the Electoral Commission, the independent body tasked with the oversight of referendums, has very few powers and has to rely on the good will of the campaigners. There are no penalties for breaking the rules. This makes otherwise excellent and detailed regulations less efficient than could be desired.

Cameron’s Referendums

Referendums have played a dominant role during the Cameron premiership, though not in the sense that the Prime Minister since 2010 has expressed a particular preference for direct democracy.

55 McGarry, J. & O’Leary, B. (2006) ‘Consociational Theory, Northern Ireland’s Conflict and its Agreement. Part I: What Consociationalists Can Learn From Northern Ireland?’, *Government and Opposition*, 41, (1), pp. 43–63.

As we have seen there have been three referendums under Cameron thus far. In 2011, a vote was held on whether the Welsh Assembly should be granted primary legislative powers. It passed without difficulty on a low turnout. But the two referendums that caught the attention were, respectively, the referendum on the Alternative Vote in 2011 and the referendum on Scottish independence.

These two major referendums represented almost polar end of a continuum; one was characterised by elite manipulation the other was approaching a model of civic engagement.

In the former 68.9 per cent of the British voters rejected a proposal to change the electoral system from the-First-Past-the-Post to the Alternative Vote (AV). The turnout was 42 per cent. In the latter, a majority of 55 per cent of the Scottish voters on a whopping 84 per cent turnout rejected independence.

The AV Referendum 2011

The 2011 referendum was criticised by many. Idealistic campaigners who wanted a more engaged democracy and who saw the referendum as a vehicle for providing this were disappointed by what they saw as one-sided and populist rhetoric based on – at best – half-truths. One of the concerns was that these tactics, seemingly, were able to sway the voters away from what they initially believed.

There is some truth in this. It is, for example, interesting that the opinion polls early on pointed to a vote in favour of electoral reform (See Table Two).

Table Two: Poll of Opinion Polls for the AV Referendum 2010–2011

Date	Yes	No	Don't Know
May 2010	59%	32%	10%
Oct 2010	41%	36%	18%
Nov 2010	48%	35%	17%
Dec 2010	36%	30%	34%
Jan 2011	37%	20%	37%
Feb 2011	40%	30%	30%
Mar 2011	33%	30%	30%
Apr 2011	39%	53%	9%

Sources: Angus Reid, YouGov, ComRes, ICM

Some might think that the drop in support was part of the general trend that referendums on electoral reform are unsuccessful.⁵⁶ Yet, the adage, ‘if in doubt vote no’ does not universally apply to such referendums. Of the nineteen referendums on this issue held since 1980, nine have been successful (Andorra 1992, Russia 1993, Uruguay 1996, Ecuador 1997, New Zealand 1992, New Zealand 1993, Canberra 1992 and Italy 1992 – and under very special circumstances Iraq in 2005). Ten have been unsuccessful, though of these five were due to failure to meet the turnout requirement, namely in, British Columbia (2005), Italy (1999, 2000, 2009), and in Romania (2007).

That the AV referendum ended in defeat for those in favour of another electoral system was largely due to unique circumstances and campaign dynamics.

⁵⁶ See e.g. interview with Paul Whiteley in Nick Stevens ‘A Passion for Politics’, The Economic and Social Research Council, *Britain in 2011*, ESRC, 2010, pp.50–51, “in almost all referenda over the end result is a no vote”, p.51.

The referendum in 2011 was a rough and tumble ride. Proponents of referendums – who have often argued that referendums lead to a more mature politics – may have been shocked by the campaign and the tone, attacks and apparent disinformation. The No-campaign more or less invented – by their own subsequent admission⁵⁷ – a claim that the introduction would cost more than 250 million pounds. And the Yes-side – despite Deputy Prime Minister Nick Clegg’s call for a ‘mature debate’ – compared the Conservative Chairman Baroness Sayeeda Warsi to Dr Josef Goebbels!⁵⁸

Realising that the *Yes-to-fairer-votes* were in line with the median voter (a majority of voters were in favour of electoral reform),⁵⁹ the *No-to-AV* camp effectively utilized a familiar tactic of referendum campaigns, namely that of capturing the middle-ground by changing the agenda. No-to-AV combined two strategies. The first of which was focussed on the unpopularity of Liberal Democrat leader Nick Clegg. The main leaflet from the No campaign featured an unflattering photo of Mr Clegg holding a placard with a pledge to vote against tuition-fee rises and the caption ‘Nick Clegg is unpopular because he broke his promises’, a reference to the Liberal Democrats’ much debated decision to vote for student fees after the election. This much publicised leaflet – as well as billboards with the same message – effectively turned the poll into a referendum on the popularity – or otherwise – of the Liberal Democrat Leader.⁶⁰

57 Dan Hodges, ‘No we can’, *New Statesman*, 16 May 2011, 37.

58 The Daily Telegraph, Leader, ‘Referendum voters want clarity – not mud-slinging’, *The Daily Telegraph*, Monday 25 April, 2011, 14.

59 Reuters/Ipsos MORI Political Monitor – AV Questions, Published: 25 February 2011, Fieldwork: 18–20 February 2011.

60 No-to-AV, ‘Keep One Person One Vote: Vote No in the Referendum on 5 May’, No Campaign Ltd, London, 2011, 6.

In addition to this strategy, No-to-AV focussed on the alleged economic implications of a yes-vote. The opponents of electoral reform relied on, what a senior No-campaigner called a “simple, if contentious ... figure of 250 million”⁶¹ (a figure that suggested that the cost of AV would be over 250 million pounds due to the cost of voting machines). In full pursuit of their strategy, the opponents explained that the cost of voting machines and the cost of explaining the system to the voters could pay for 2,503 doctors, 35,885 hip replacements or 69,832 school places.⁶² With these claims – dubious though they were – the No-to-AV effectively won the battle over public opinion, and was able to set the agenda to which the Yes-to-fairer-votes had to react and respond.

Yes-to-fairer-votes – dominated by the Liberal Democrats and reform groups such as *Unlock Democracy* and the *Electoral Reform Society* – took the bait, and reacted with fury. Chris Huhne, threatened with legal action – an empty threat as the *Political Parties, Elections and Referendum Act 2000* does not give the *Electoral Commission* powers to intervene.⁶³ This intervention effectively secured that the claim became the focus of the debate. By reacting to the claim and by seeking to counter it, the proponents of reform moved the focus away from the discussion about the electoral system (on which they were in agreement with the voters) to the issues of economic reform. The defeat of the AV electoral system provides a master class of how to secure a no-vote. That the campaign was directed from Downing Street suggests that David Cameron is no novice when it comes to winning referendums. But before he and his advisors become

61 Dan Hodges, ‘No we can’, 37.

62 No-to-AV, ‘Keep One Person One Vote: Vote No in the Referendum on 5 May’, No Campaign Ltd, London, 2011, 2.

63 Andrew Grice, ‘Huhne warns of Legal Action over Claims by No-to-AV Campaign’, *The Independent*, 25 April, 2011, A10.

too cocky they should, perhaps, recall the Scottish referendum on independence; a poll that – as we shall see shortly – was conducted in a way that was less surefooted.

The Scottish Referendum

The Scottish on the 18th of September 2014 was arguably the most important poll in British history; it concerned the very existence of the nation. The referendum had been a manifesto commitment when the Scottish National Party surprisingly won an outright majority in the Scottish Parliament in the election in 2011. (They were elected on the same day as the AV referendum). Some of the unionist parties argued – with some justification – that a referendum was what lawyers call *ultra vires*; basically the Scottish government, their popular mandate notwithstanding, did not have a legal right to hold a referendum.

Most voters in Scotland would have preferred what was known as ‘devo-max’, more powers to the Scottish parliament. But this was not on offer – not at the time, anyway.

This legal hick-up was resolved when David Cameron and the Scottish First Minister Alex Salmon signed the Edinburgh Agreement in October 2012. This agreement allowed the Scots to hold a vote in September 2014. At this stage the opinion polls were still massively in favour of the status quo ante. Only about 30 per cent of the Scottish voters were in favour of independence. From a political point of view, Cameron’s acceptance of the SNP-administration’s demand seemed low risk and gave him an air of magnanimity.

Table Three: Selected Opinion Polls: Scottish Independence: 2014

Date	Yes	No	Don't Know
25 Feb	38%	55%	7%
12 May	34%	46%	20%
6 Aug	37%	50%	13%
2 Sept	47%	45%	8%
10 Sep	49%	42%	9%
16 Sep	45%	49%	6%

Sources: Angus Reid, YouGov, ComRes, ICM

Throughout 2013 and in the early part of 2014 the polls began to narrow, though still with a clear majority in favour of No. In February 2013, the yes-vote stood at 32 per cent according to YouGov. It remained relatively static until the last month of the campaign when it rose to 40 per cent and sensationally, on the 10th of September, with only eight days to go, an ICM poll showed the yes-side had nudged ahead with 49–42 per cent lead. In the last week of the campaign, following the intervention of Gordon Brown, the no regained the lead.

What happened during the campaign? Why didn't the 2011 tactics work?

David Cameron and his allies certainly tried to use the same tactics as in the AV referendum but seemingly without the intended effect. In the early spring of 2014 the British government issued a number of statements intended to show the consequences of independence. Chancellor of the Exchequer George Osborne suggested – backed up by his opposite number Ed Balls – that Scotland would not be allowed to use the Pound in the event of a yes-vote. And later the UK government issued

calculations that purported to show that the costs of setting up a new administration would cost costs of £1.5 billion (or one per cent of GNP).

Both of these interventions back-fired. In the latter case the data was based on figures from Professor Patrick Dunleavy. However, the academic – who had not been consulted personally – said the figures had been misinterpreted and called the interpretations ‘ludicrous’⁶⁴

Likewise, the suggestion that Scotland would not be allowed to share the pound or enter into a so-called currency Union was rebuffed by SNP who pointed out that the international practice is that the successor state is saddled with the debt after a break-up. Instead of stopping the slow move towards ‘yes’ the government interventions arguably had the effects of spurring on the debate. Even the tabloids were full of discussions about policy issues and at town hall meetings around the country, ‘ordinary’ voters were discussing the referendum and its implications.

The discussions seemed to favour the yes-side. With one week to go the Prime Minister intervened and promised that in the event of a No-vote far more powers would be transferred to Scotland. This message was reinforced by former Prime Minister Gordon Brown in a barnstorming speech on the 8th of September, in which he effectively promised devo-max before St Andrews Day. Brown’s intervention stemmed the tide and the no-campaign regained its lead and went on to win by a ten per cent margin.

In the aftermath of the referendum it was universally acknowledged that the campaign had been tough but fair. More importantly still, the high turnout proved that politics can fire

64 www.bbc.co.uk/news/uk-scotland-scotland-politics-27611563
(Accessed 20th July 2015).

people up. Unlike the 2011 referendum, the 2014 referendum led to a more engaged public as evidenced by the highest turnout in British referendum history and well above the paltry 65 per cent who voted in the general election 2010. The Scottish referendum was a model to be emulated in other countries. Not least because the two sides had sufficient time to present their case to the voters.

Conclusion

Under David Cameron referendums have represented the ridiculous as well as the sublime. The 2011 poll on a new voting system was a damp squib for those advocating more referendums. The vote was rich on demagoguery and unsubstantiated claims with no empirical foundation. On the contrary the longer and much more deliberative referendum on Scottish independence was almost a model of civic engagement in which hitherto disengaged citizens took an active part in politics and voted in massive numbers. The latter represented the ‘best of all times’ in terms of referendums. As this pamphlet has shown, in an ideal world, referendums should be a constitutional safeguard. In reality referendums are often held to solve practical political problem. But that does not necessarily make them problematic. Provided the legal frameworks are in place and that the citizens are allowed enough time to discuss and deliberate, the referendum can be an effective addendum to the system of representative government. To be more specific, the government needs to make sure that the referendum is fairly conducted – and is perceived as this. The government must ensure that both sides have access to equal airtime, that neither of the two sides outspend the other and that the government machinery is *not* being used to support the government’s position. To be in line with international practice this means that civil servants (other than special advisers) should *not* draft speeches, provide memos

and the like for ministers on issues pertaining to the referendum during the referendum period. It also means that the government should not make changes to the *Purdah* rules – or even disapply – Section 125 of PPERA (the section that deals with this). Such attempts will inevitably be perceived illegitimate and will provide the other side with a reason to cry foul. Whether Britain's voters decide to leave the EU or not, the decision *must* be seen to be fair, just and reasonable.

In Britain we have a reasonably efficient system of organizing referendums. But the Electoral Commission needs stronger powers in the event that one of the designated campaigns breaks the rules. Before the EU referendum it is imperative that we give the Electoral Commission or other relevant body the powers to police the referendum. Provided that this is done, the vote on UK membership can become a model to the world like the Scottish referendum.

We can only hope that the forthcoming referendum lives up to the hopes of A.V. Dicey who – 125 years ago – wrote;

The referendum is, or may be, an education in the application of men's understandings to the weightiest of political concerns – namely the passing of laws – such as in absolutely unobtainable by voters who are trained to think that their role or duty as citizens consists in supporting the conservative or radical party, and that their blind acceptance of every proposed enactment which happens to form part of the party platform⁶⁵

65 Dicey, A.V. (1890) 'Ought the Referendum to be Introduced into England?' *Contemporary Review*, Vol.57, p.508.

A Tale of Two Referendums

Elite Manipulation or Civic Engagement?

By Professor Matt Qvortrup

Can we make referendums work? This pamphlet provides a brief overview for the perplexed and provides an understanding of how referendums operate before the vote on British membership of the European Union.

The author holds that the two major referendums held by David Cameron's governments so far have been qualitatively very different. The referendum on Scottish independence in 2014 was a model of civic engagement; the one on electoral reform in 2011 was the arch-type of elite manipulation. After considering the historic background to referendums and some of the theoretical issues, he makes recommendations designed to ensure that the EU referendum is conducted in the most appropriate way.

This pamphlet presents the personal views of the author and not those of The Constitution Society, which publishes it as a contribution to debate on this important subject.



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