

Would UK democracy be enhanced by the increased use of referendums?

Terminology

Referendums and referenda are both commonly used as plurals of referendum. However, the use of referenda is deprecated by the Oxford English Dictionary, which advises that:

"Referendums is logically preferable as a plural form meaning ballots on one issue (as a Latin gerund, referendum has no plural). The Latin plural gerundive referenda, meaning things to be referred, necessarily connotes a plurality of issues."

Referendums are only occasionally held by the government of the United Kingdom. Nine referendums have been held so far (excluding referendums held under the Local Government Act 1972 - see below), the first in 1973; only one of these covered the whole UK. Although few referendums have been held at national or regional level, there have been numerous referendums at local level to determine whether there is support for a directly-elected mayor. The current Conservative-Liberal Democrat coalition government has promised a referendum on any further EU treaty that transfers any powers from the UK government to the European Union.

Status of referendums

Referendums have traditionally been rare in the UK. Major referendums have always been on constitutionally related issues. Before Tony Blair's Labour government came to power in 1997, only four such referendums had been held.

There are two types of referendum that have been held in the UK, pre-legislative (held before proposed legislation is passed) and post-legislative (held after legislation is passed). Referendums are not legally binding, so legally the government can ignore the results; for example, even if the result of a pre-legislative referendum were a majority of 'No' for a proposed law, Parliament could pass it anyway, because parliament is sovereign.

Legally, Parliament at any point in future could reverse legislation approved by referendum because the concept of parliamentary sovereignty means no Parliament can prevent a future Parliament from amending/repealing legislation. However, it is unlikely many governments would attempt to reverse legislation approved by referendum as it would probably be controversial and potentially damaging to its popularity.

Finally, under the Local Government Act 1972, there is a little-known provision under which non-binding local referendums on any issue can be called by small groups of voters. This power exists only for parish councils, and not larger authorities, it is commonly known as the "Parish Poll". Six local voters may call a meeting, and if ten voters or a third of the meeting (whichever is smaller) agree, the council must carry out a referendum in

14–25 days. The referendum is merely advisory, but if there is a substantial majority and the results are well-publicised, it may be influential.

Recent referendums

Since 1997, the Labour government has held five referendums on devolution, four of which received a yes majority. One concerning the Treaty establishing a Constitution for Europe was cancelled, given the French and Dutch rejections of the treaty. Another, on whether the UK should adopt the euro, did not happen as the Labour Government would only have gone ahead with it if they felt they could recommend the adoption of the Euro.

The Labour manifesto for the 1997 general election stated 'We are committed to a referendum on the voting system for the House of Commons.' Despite the research carried out by the Jenkins Commission in 1998 suggesting an AV+ system for Westminster elections, the 2001 manifesto did not make such a promise. After the inconclusive 2010 General Election the Liberal Democrats and Conservatives formed a coalition. As part of the coalition agreement, both parties formally committed to holding a referendum on changes to the electoral system.

Since the Government of Wales Act 2006 became law, there can be referendums in Wales asking the people whether the National Assembly for Wales should be given greater law making powers. The Welsh Labour Party - Plaid Cymru Coalition Government in the Welsh Assembly have promised such a referendum before 2011.

The Scottish National Party (SNP) government in Scotland planned to hold a referendum on Scottish independence prior to the next Scottish general election in May 2011. As stated in its 2007 manifesto, in its third year as the Scottish Government it intended to bring the Referendum Bill before Parliament in January 2010, in order to lead to a referendum to be held in November 2010. It did not however expect to pass due the SNP's status as a minority government, and due to the opposition to the Bill from the 3 unionist opposition parties in the Scottish Parliament.

Organisation

Until 2000, there was no body to regulate referendums. In 2000, the government set out a framework for the running of future referendums when the Political Parties, Elections and Referendums Act 2000 or PPERA was passed, giving the Electoral Commission responsibility for running referendums.

List of major referendums

- Northern Ireland referendum, 1973, on whether Northern Ireland should remain part of the United Kingdom or join the Republic of Ireland (UK)
- United Kingdom European Communities membership referendum, 1975, on whether the UK should remain part of the European Economic Community (yes)
- Scottish devolution referendum, 1979, on whether there should be a Scottish Assembly (small majority voted yes, but fell short of the 40% threshold required to enact devolution)
- Welsh devolution referendum, 1979, on whether there should be a Welsh Assembly (no)
- Scottish devolution referendum, 1997, Two questions: On whether there should be a Scottish Parliament (yes); On whether a Scottish Parliament should have tax varying powers (yes)

- Welsh devolution referendum, 1997, on whether there should be a Welsh Assembly (yes)
- Greater London Authority referendum, 1998, on whether there should be a Mayor of London and Greater London Authority (yes)
- Northern Irish Belfast Agreement referendum, 1998, on the Good Friday Agreement (yes)
- Northern English devolution referendums, 2004, on elected regional assemblies for North East England (no), North West England (vote postponed) and Yorkshire and the Humber (vote postponed)
- Welsh Devolution referendum 2011 (yes)
- United Kingdom alternative vote referendum, 5th May 2011 (no)

Alex Salmond, the leader of the Scottish National Party (SNP), stated prior to the Scottish parliamentary election in May 2007 that a referendum on Scottish independence would be a condition for his party joining a ruling coalition in the Scottish Parliament. The UK government has stated since that it would not oppose such a referendum.

Minor (local) referendums

Thirty-five local referendums have taken place in local authorities to establish whether there is support for directly-elected mayors. Twelve received a "Yes" majority and twenty-three a "No" majority. The highest turnout was 64% in Berwick-upon-Tweed and the lowest was 10% in Ealing. On average, the turnout was similar to that of local elections.

The majority of those were held between June 2001 and May 2002—a further eight have been held since. In 2008 a reorganisation of Stoke-on-Trent's system of local government required a further referendum; this abolished the post of Mayor.

Prohibition referendums

The Temperance (Scotland) Act 1913 provided that polls could be held in small local areas in Scotland to determine whether to instate a level of prohibition on the purchase of alcoholic beverages; the provisions were later incorporated into the Licensing (Scotland) Act 1959. Between 1913 and 1965 1,131 such polls were held, with the vast majority (1,079) held before 1930.

The Sunday Closing (Wales) Act 1881 mandated that all public houses in Wales be closed on Sundays. The Act was extended to Monmouthshire in 1921. Under the terms of the Licensing Act 1961, on the application of 500 local electors, a referendum could be held in each local government area at seven-year intervals on whether that district should be "wet" or "dry" on the Sabbath. Most districts in the border area and the southern

industrial area went "wet" in 1961 or 1968, with most others following suit in 1975. In 1982, the last district, Dwyfor, in western Gwynedd, went "wet" and it was thought that the influence of the Sabbatarian temperance movement had expired and few referendums were called, but surprisingly a further referendum was called in Dwyfor in 1989 and the area went "dry" for another seven years on a 9% turnout. The whole of Wales was "wet" from 1996, and the facility for further referendums was removed by the Sunday Licensing Act 2003.

Transport referendums

The City of Edinburgh Council held a postal-ballot referendum in February 2005 over whether voters supported the Council's proposed transport strategy. These plans included a congestion charge which would have required motorists to pay a fee to enter the city at certain times of the day. The result was announced on 22 February 2005 and the people of Edinburgh had rejected the proposals. 74% voted against, 26% voted in favour, and the turnout was 62%

Criticisms of Referendums

Although some advocates of direct democracy would have the referendum become the dominant institution of government, in practice and in principle, in almost all cases, the referendum exists solely as a complement to the system of representative democracy, in which most major decisions are made by an elected legislature. An often cited exception is the Swiss canton of Glarus, in which meetings are held on the village lawn to decide on matters of public concern. In most jurisdictions that practice them, referendums are relatively rare occurrences and are restricted to important issues.

Advocates of the referendum argue that certain decisions are best taken out of the hands of representatives and determined directly by the people. Some adopt a strict definition of democracy, saying elected parliaments are a necessary expedient to make governance possible in the large, modern nation-state, though direct democracy is nonetheless preferable and the referendum takes precedence over Parliamentary decisions.

Other advocates insist that the principle of popular sovereignty demands that certain foundational questions, such as the adoption or amendment of a constitution, the secession of a state or the altering of national boundaries, be determined with the directly expressed consent of the people.

Advocates of representative democracy say referendums are used by politicians to avoid making difficult or controversial decisions.

Criticism of populist aspect

Critics of the referendum argue that voters in a referendum are more likely driven by transient whims than careful deliberation, or that they are not sufficiently informed to make decisions on complicated or technical issues. Also, voters might be swayed by strong personalities, propaganda and expensive advertising campaigns. James Madison argued that direct democracy is the "tyranny of the majority."

Some opposition to the referendum has arisen from its use by dictators such as Adolf Hitler and Benito Mussolini who, it is argued, used the plebiscite to disguise oppressive policies as populism. Hitler's use of the plebiscite is argued as reason why, since World War II, there has been no provision in Germany for the holding of referendums at the federal level.

Patten's criticism

British politician Chris Patten summarized many of the arguments used by those who oppose the referendum in an interview in 2003 when discussing the possibility of a referendum in the United Kingdom on the European Union Constitution:

" I think referendums are awful. They were the favourite form of plebiscitary democracy of Mussolini and Hitler. They undermine Westminster [parliament]. What they ensure, as we saw in the last election, is if you have a referendum on an issue politicians, during an election campaign, say oh we're not going to talk about that, we don't need to talk about that, that's all for the referendum. So during the last election campaign the Euro was hardly debated. I think referendums are fundamentally anti-democratic in our system and I wouldn't have anything to do with them. On the whole, governments only concede them when governments are weak. (BBC, 2004) "

'Never-end-um'

A further perceived flaw of the referendum is that, in some circumstances, the democratic spirit of the referendum may be flouted by the repeated submission to the referendum of a proposal until it is eventually endorsed, perhaps due to a low turn-out or public fatigue with the issue. This is especially a problem where a proposal may be difficult to reverse, such as secession from a larger country or the abolition of a monarchy. The repeated holding of a referendum on a single issue has been pejoratively referred to as a "never-end-um".

Many critics of the EU point to the Treaty of Nice's ratification procedure in Ireland, where the government submitted the Treaty to a referendum twice, getting the required "Yes" vote on the second attempt. Closed questions and the separability problem

Some critics of the referendum attack the use of closed questions. A difficulty which can plague a referendum of two issues or more is called the separability problem. If one issue is in fact, or in perception, related to another on the ballot, the imposed simultaneous voting of first preference on each issue can result in an outcome that is displeasing to most.

Undue limitations on regular government power

Several commentators have noted that the use of citizens' initiatives to amend constitutions has so tied the government to a mishmash of popular demands as to render the government unworkable. The Economist has made this point about the US State of California, which has passed so many referendums restricting the ability of the state government to tax the people and pass the budget that the state has become effectively ungovernable. Calls for an entirely new California constitution have been made.

Review exercise

1. Write out five examples of different types of referendum held in the UK
2. Answer the question in the title of this handout by constructing a table which lists the pros and cons of holding referendums in a democracy (remember that the UK is a representative / parliamentary democracy)

Additional exercise:

Compare the use of referendums in the UK to their use in the USA