

# Referendum

Research Paper 95/23

21 February 1995



This Paper considers the use of, and suggestions for, referendums in the United Kingdom. It considers the arguments for and against the referendum in our constitutional system, as well as some of the mechanics of a referendum in practice. The use of a referendum in a number of constitutional contexts - Northern Ireland, Europe, devolution, electoral reform - has recently been or is currently the subject of political debate.

This edition, which is a revised and updated version of Research Paper 93/80, 20 July 1993, is also intended to provide background to the second reading debate of Teresa Gorman's short *Referendum Bill* on Friday 24 February.

**Oonagh Gay**  
Home Affairs Section

**Barry Winetrobe**  
Home Affairs Section

**House of Commons Library**

## CONTENTS

	<b>Page</b>
<b>I Background</b>	<b>1</b>
<b>II The 1975 Referendum</b>	<b>4</b>
<b>III Other Referendums in the UK</b>	<b>7</b>
<b>IV The Referendum and Maastricht</b>	<b>10</b>
<b>V The Debate since Maastricht</b>	<b>23</b>
<b>VI A Referendum on the Voting System?</b>	<b>26</b>
<b>VII Northern Ireland and the Referendum</b>	<b>28</b>
<b>VIII Referendums : the international experience</b>	<b>30</b>
<b>IX The Referendum : Arguments for and against</b>	<b>33</b>
<b>X Practical aspects of the Referendum</b>	<b>35</b>
<b>XI Selected Bibliography</b>	<b>39</b>
 <b>Appendix</b>	
<b>Results of referendums in the United Kingdom</b>	<b>40</b>

## I Background

The first major advocate of the referendum in Britain was the constitutional lawyer A V Dicey in 1890 [*Contemporary Review* April 1890 "Ought the Referendum to be Introduced into England?"]. Dicey, as a Liberal Unionist, had a political reason for supporting the introduction of a device first made popular in Switzerland - as a possible barrier to Home Rule for Ireland:

What is more serious, change has become the order of the day. An age devoid of the genuine revolutionary enthusiasm which a century ago carried away the best minds in Europe, is also devoid of the conservative instincts or passion which saved England from succumbing to the fanaticism or violence of the French Revolution. Everything is now deemed changeable, and there is nothing from the Crown downwards which Parliament cannot legally change. The experience of 1886 has taught the country one lesson which will be remembered when the agitation for Home Rule is at an end. A Bill which in effect repealed the Act of Union with Ireland might conceivably have become law without the country having ever expressed assent to a change amounting to a constitutional revolution. The measure, moreover, which might have been carried in 1886, is one which, as regards its most important provision, is now in 1890 neither advocated nor defended, by Gladstonian Home Rulers. A calm critic, indeed, may doubt whether the Bill of 1886 would not lose its one merit by the omission of the clauses which excluded Irish members from the British Parliament. With this matter we need not concern ourselves. The noteworthy point is that in 1886 Parliament might have passed a law which, if reproduced in the same form in 1890, would assuredly be vetoed on an appeal to the people. Here we come to the root of the whole matter. Englishmen have, in accordance with our curious system of bit-by-bit reform, at last established a democracy without establishing those safeguards which in avowedly democratic commonwealths, such as the United States or Switzerland, protect the Constitution from sudden changes, and thus ensure that every amendment in the fundamental laws of the land shall receive the deliberate sanction of the people; the object, be it noted, of these safeguards is not to thwart the wishes of the democracy, but to ensure that a temporary, or factitious, majority, shall not override the will of the nation.

The time may come when Englishmen may borrow from America the constitutional provisions which, by delaying alterations in the Constitution, protect the sovereignty of the people. But to frame a written and rigid Constitution is not the work of a day or of a year. Whether in England such a polity when framed would answer its purpose, is, moreover, a question not to be answered without most careful consideration. Meanwhile the Referendum, which might be introduced with comparative ease, and, what is equally important, might be introduced as an experiment, supplies the very kind of safeguard which all true democrats feel to be required. It is an institution which admirably fits a system of popular government. It is the only check on the predominance of party which is at the same time democratic and conservative. It is democratic, for it appeals to and protects the sovereignty of the people; it is conservative, for it balances the weight of the nation's common sense or inertia against the violence of partisanship and the fanaticism of reformers. This check has one pre-eminent recommendation, not possessed by any of the artful, or ingenious, devices for strengthening the power of a Second Chamber, or placing a veto in the bands of a minority. Its application does not cause irritation. If the Lords reject a Bill people demand the reform of the Peerage; if the French Senate (a popularly elected body) hesitates to approve a revision of the Constitution, the next scheme of revision contains a clause for the abolition of the Senate. Popular pride is roused, voters are asked to make it a point of honour that a measure, which an aristocratic or select Chamber has rejected, shall be carried. A Bill's rejection turns into a reason for its passing into law. Should a regular appeal to the electors result in the rejection

## Research Paper 95/23

of a Bill passed by Parliament, this childish irritation becomes an impossibility. The people cannot be angered at the act of the people.

In the 1890s these arguments made little headway, as Home Rule could be defeated without the aid of the referendum. The idea however once raised had been introduced into British politics, and before World War I was advocated to hasten tariff reform and to resolve the crisis between Commons and Lords caused by the 1909 Lloyd George "People's Budget". In an amendment to the Parliament Bill of 1910/11 (which was designed by the Liberal Government to transform the Lords' absolute veto into a suspensory veto) the Unionists proposed that certain categories of legislation be excluded from the operation of suspensory veto until after a referendum. The categories were as follows:<sup>1</sup>

A Bill which

- (a) affects the existence of the Crown or the Protestant Succession thereto; or
- (b) establishes a National Parliament, or Assembly, or a National Council in Ireland, Scotland, England or Wales, with legislative powers therein; or
- (c) affects the constitution or powers of either House of Parliament or the relations of the two Houses one to the other
- (d) (added later) affects the franchise or distribution of seats

The amendment did not however succeed nor did subsequent attempts to introduce a referendum up to World War I and Bogdanor concluded "The Unionists therefore were unable to secure a consensus within the party on the proper use of the referendum and their advocacy frequently gave the impression of political opportunism rather than a considered response to the constitutional crisis. For this reason, Unionist proposals failed to arouse a widespread response in the country, and they did not succeed in convincing the electorate - nor perhaps even themselves - of the value of the referendum".<sup>2</sup>

Proposals for referendums continued to be made in British politics in the post World War I period; examples include an ambiguous promise by Baldwin to have a referendum before a Conservative Government would introduce protection, and a proposal by Churchill in May 1945 that a referendum be held to determine whether the wartime coalition be continued until the end of Japanese war. Both Liberal and Labour parties rejected the proposal with Clement Attlee commenting as follows:<sup>3</sup>

---

<sup>1</sup> HC Deb 8/5/1911 c915 (cited in *The People and the Party System: the referendum and electoral reform in British politics* V Bogdanor 1981 p.27-28)

<sup>2</sup> p.31

<sup>3</sup> Cited in *Bogdanor* p.35

I could not consent to the introduction into our national life of a device so alien to all our traditions as the referendum, which has only too often been the instrument of Nazism and Fascism. Hitler's practices in the field of referenda and plebiscites can hardly have cildeared these expedients to the British heart.

The referendum did not emerge as a major political issue again however until its value as a device for dealing with internal party dissent was recognised in the 1970s.

## II The 1975 Referendum

Although the idea of a referendum on EC membership was first raised in the late 1960s all three leaders of the main parties expressed their opposition to a referendum in the 1970 General Election. At this stage, all three parties were committed to entry. However, with the detailed negotiations over entry now the responsibility of the new Conservative Government, the Labour Party position gradually focused on the detailed terms, and internal divisions with the party emerged. Bogdanor relates how the decision was taken to support a referendum:<sup>4</sup>

On 14 March 1972, however, the Conservative anti-Marketeer Neil Marten put forward an amendment to the European Communities Bill providing for a referendum on the EEC, and this forced the Labour Party to make a definite decision on what course of action it should adopt. Accordingly, on 15 March, the Shadow Cabinet decided not to support the Marten Amendment. On the 16th, however, President Pompidou, for domestic political reasons, announced that a referendum would be held in France on whether Britain and the other countries seeking entry into the EEC should be admitted. Not only was Britain the only country of the four then seeking admission to the EEC (Britain, Denmark, Ireland and Norway) which would not be holding a referendum, but it now appeared that the French electorate would be offered the right denied to the British of determining whether there was 'full-hearted consent' for British entry.

The Labour Party's National Executive Committee met on 11 March, and, under the impact of the Pompidou decision, voted 13 to 11 in favour of a motion moved by Benn calling for a referendum, at a meeting at which Wilson, Roy Jenkins, the Deputy Leader, and James Callaghan, the Shadow Foreign Secretary, were absent. Two days later, Heath announced that, with the introduction of direct rule in Northern Ireland, a series of regular plebiscites on the border would be held; and on 29 March, the Shadow Cabinet approved by 8 votes to 6 (with two members, Denis Healey and Willie Ross absent) the referendum proposal. Wilson and Edward Short, soon to be Jenkins's successor as Deputy Leader, changed their 'No' vote of 15 March to a 'Yes' vote on the 29th. With the Parliamentary Labour Party also accepting the referendum, it had become official Party Policy.

There is no doubt however, that the proposal for a referendum on entry to the EEC was popular electorally [*Yea or Nay? Referenda in the United Kingdom* by Stanley Alderson 1975] and may have contributed to electoral success for the Labour Party in the General Elections of 1974. Labour fought the February 1974 election on the basis of renegotiating entry terms accepted by the Conservatives, and then presenting the terms to the electorate for approval either through a general election or a referendum.

---

<sup>4</sup> p.40

The decision to hold a referendum does not appear to have been taken until some months after the October 1974 election, according to Butler and Kavanagh's detailed study *The 1975 Referendum* (1976):<sup>5</sup>

Those who advocated a referendum had done no significant research on the administrative problems it would involve. In October 1974, when Patrick Nairne, Second Permanent Secretary in the Cabinet Office, was asked to consider the practical implications, he had no British precedents and no published writings to work on. However, with colleagues from other departments, he produced in two months a long report which covered almost all the points that later arose and served as a basis for Mr Wilson's initial statement to Parliament on January 23, 1975, for the full White Paper on February 26 (Cmnd 5925), and for the Referendum Bill published on March 26.

Practical questions about the rules for the referendum first came before the cabinet in January. It was only then that it was finally decided that there should in fact be a referendum (some doubts seem to have been voiced to the last). It would of course have been possible to proceed with standby legislation for a referendum even before renegotiations were complete - but since the legislation itself would bring out divisions in the Labour party, no one wanted to act before it was necessary.

In his statement to the Commons in January 1975 announcing the referendum Harold Wilson, as Prime Minister, did not refer to the constitutional implications of a referendum.<sup>6</sup> The White Paper itself addressed the issue only in a brief paragraph:<sup>7</sup>

The referendum is to be held because of the unique nature of the issue, which has fundamental implications for the future of this country, for the political relationship between the United Kingdom and the other Member Governments of the Community, and for the constitutional position of Parliament.

In a full day debate on the White Paper on 11 March 1975 Margaret Thatcher, the new Leader of the Opposition dwelt at length on the constitutional difficulties of a referendum, and the dangers of establishing a precedent without sufficient thought:<sup>8</sup>

Let me deal first with parliamentary sovereignty. There is no power under which the British constitution can come into rivalry with the legislative sovereignty of Parliament. That is the tenth edition of Dicey. To subject laws retrospectively to a popular vote suggests a serious breach of this principle. To subject laws prospectively before the final assent of the popular vote suggests we are using a different rule to validate laws. To have several referenda would create a new rule. We should be saying that some proposals require popular ratification and others do

not. Without a written constitution one might ask: which proposals and what kind of measures?

The Government seek to avoid that question by claiming that the case is unique. That is unconvincing and masks the fact that they see the matter purely in terms of political expediency and party need. To use the referendum device at all is to ask the question: to what category of measure should referenda apply? Presumably the answer would be: in cases of constitutional change. But it is hard to define such a change in the British tradition because so much depends on convention and precedent. A referendum may, however,

---

<sup>5</sup> p.54

<sup>6</sup> HC Deb 23/1/75 c1745

<sup>7</sup> Cmnd 5925

<sup>8</sup> HC Deb 11/3/75 c310

## Research Paper 95/23

become acceptable if given a proper constitutional foundation—that is to say, if the conditions under which it could be used were defined. But that would mean, like many other democratic countries, going as far as a written constitution or at least part of the way. The implications for parliamentary sovereignty are profound. But if our sense of constitutional rules and conventions is weakening, there may come a time when some such course should be considered.

Nevertheless, a Referendum Act was quickly passed in 1975 with an accompanying Order in Council which fleshed out the details, and the referendum was held on 5 June 1975. A total of 64 per cent of the electorate voted, and of those voting 67.2 per cent voted Yes and 32.8 per cent voted No. The detailed results are set out in the Appendix.

David Butler in chapter 10 of *Referendums: A Comparative Study of Practice Theory* (1978) notes three special features of the British referendum arrangements:<sup>9</sup>

Three special features of the British referendum arrangements deserve note. Through historical accident, linked to the original arrangements for the secret ballot, Britain has always counted and recorded, votes in larger units than any other democratic country. In 1975 the practice was carried even further. Originally the government planned to have all votes counted in London, so that the outcome should be seen as a national one, with no evidence on how different parts of the country voted. When for administrative reasons that was abandoned, they still marshaled the votes by county rather than by constituency so that no member of Parliament should be embarrassed by a demonstrated discrepancy between his voters and himself.

Second, since it was apparent that the pro-Europeans had far greater resources than did those in opposition, provision was made for a subsidy of £125,000 to each of the two umbrella organizations coordinating the campaigns for and against. Since they cut across party lines, the umbrella organizations were seen as an important device. No one, in fact, challenged the right of these self-appointed groups to speak for the two sides though trouble could easily have arisen over who was entitled to assume such powers. They included, for example, access to free broadcast time and the writing of a pamphlet to be delivered free to every elector.

The third and most remarkable special aspect of the referendum was the government's agreement to differ: sixteen members of the Cabinet campaigned for EEC membership and seven against. The normal rules of collective responsibility, by which all ministers must support government policy or resign, were relaxed for three months with respect to this one question. It made plain a fact, of which no one could be in doubt, that the prime purpose of the referendum was to save the Labour party from tearing itself asunder while securing for the nation a firm and final verdict on EEC membership.

---

<sup>9</sup> p.214

### III Other Referendums in the United Kingdom

The 1975 referendum was not the first to be held in the UK, although it remains the only one which was conducted on a nationwide basis. Local polls on such issues as liquor licensing and Sunday opening of cinemas have been held in the twentieth century. However the first major referendum was held in Northern Ireland on 8 March 1973 under the Northern Ireland (Border Poll) Act 1972. This was considered the best way of determining the will of the people on the question of whether Northern Ireland should remain part of the UK at the advent of direct rule and in accordance with the terms of the Ireland Act 1949. (This declared that Northern Ireland would not cease to be part of the UK without the consent of the Northern Ireland Parliament. In the absence of that Parliament an alternative method had to be sought). The great bulk of Catholic voters boycotted the poll, but on a 58.7 per cent turnout 98.9 per cent of those who voted favoured the status quo (see Appendix).

Although the unique nature of the 1975 referendum had been stressed by Harold Wilson, within 18 months of that referendum the Labour Government had been forced by backbench pressure to concede referendums on devolution in Scotland and Wales to secure the passage of that legislation through Parliament. On the Second Reading of the Scotland and Wales Bill in December 1976 [HC Deb 13/12/76] the Prime Minister (James Callaghan) announced that the Government had not decided whether to hold a referendum. But following the tabling of a backbench amendment a referendum was conceded and the clause was introduced on 10 February 1977 [HC Deb c1791] "amidst scenes of procedural chaos" [p.49 Bogdanor]. There were objections to the fact that a proposal for a referendum was being introduced as a new clause on an already published Bill in order to overcome opposition to the Bill. There were backbench fears that this represented a precedent which could be used on any Bill when a Government found itself in difficulties, thus increasing the power of the executive. In the event the Scotland and Wales Bill was abandoned after the Government failed to secure a guillotine.

In the 1977/78 session separate Bills for Scotland and Wales were introduced which were subjected to further backbench pressure; in particular George Cunningham MP, a Labour anti-devolutionist, was the prime mover in the successful campaign to secure a 40 per cent threshold in the referendums to be held in Scotland and Wales (i.e. that at least 40 per cent of **electorate** should register a Yes vote for devolution to go ahead). Cunningham and others cited the 40 per cent requirement as modest compared with the special majorities required in many countries for constitutional change. The threshold was secured when a backbench amendment to that effect was carried on 25 January 1978 during debates on the Scotland Bill [HC Deb c1465]. The Wales Bill was subsequently amended [HC Deb 3/5/78 c259]. The Cunningham amendment became section 85(2) of the Scotland Act: "if it appears to the Secretary of State that less than 40 per cent of the persons entitled to vote in the referendum have voted yes he shall lay before Parliament the draft of an Order in Council for the repeal of this Act".

The devolution referendums were held on 1 March 1979. The 40% rule effectively undermined the intentions of the 1978 Scotland Act, and the SNP accordingly withdrew support from the Government, which fell in a vote of confidence on 28 March 1979.

The results of the devolution referendums in Scotland and Wales are set out in detail in the Appendix. Although the vote in Wales was decisively against, the results in Scotland were more controversial:- 51.6 per cent of those voting were in favour of devolution, but this represented only 32.8 per cent of the electorate. There was some controversy about the deficiencies of the electoral register and Government estimates of numbers to be deducted from the electorate due to death, imprisonment etc.

Although the adoption by the Labour Government of referendums to defuse backbench hostility to devolution has commonly been presented as pure expediency, advocates of referendums such as Bogdanor argue that there were genuine constitutional justifications for the provisions in the Wales Act and Scotland Act:<sup>10</sup>

Despite the appearance of expediency, however, there was a case to be made for the Government's approach. If part of the argument for devolution was, in the eyes of many, popular pressure in Scotland and Wales, then it was perfectly reasonable to make support for the Bill conditional upon popular approval. An important part of the case for devolution was that it met a powerful demand in Scotland and Wales. The referendum was a means of testing that case. Furthermore, if devolution was to fall, it was better for it to be reacted by the Scots and Welsh themselves, rather than by the House of Commons, for if the Commons rejected it, the nationalists would score a propaganda victory and claim that the demands of the Scottish and Welsh people were being frustrated by an 'English' parliament. Defeat in a referendum on the other hand would, in the view of those hostile to devolution, kill the issue for good.

So also, a referendum on devolution to Scotland and Wales held in the United Kingdom as a whole would frustrate the very purpose for which it was being proposed. For an intolerable situation would be created if Scotland and/or Wales voted in favour of the Bill, but was overruled by an English majority. No doubt in strict constitutional logic, the English had as much right to vote on devolution as the Scots and Welsh; but the Commons, which after all contained a majority of English MPs, was clearly sensible in waiving that right in the interests of good relations between the different parts of the kingdom, relations which would be 'It if the public and clearly expressed wishes of Scotland and Wales were overridden by England. English voters, then, through their MPs, could be regarded as having voluntarily agreed not to exercise their right to vote in a referendum. One MP quoted Shakespeare:

The adoption of a 40% threshold may well prove to be a persuasive precedent, if any issues are subjected in future to another referendum.

---

<sup>10</sup> p.50-51 *The People and the Party System*

Proposals for referendums on such issues as Northern Ireland and the poll tax continued to be made during the 1980s but in contrast to predictions in the 1970s, referendums were not taken up as a standard method of resolving political conflict in the UK. In 1978 a Conservative Party Committee proposed a Bill requiring a referendum to protect the existence of the Second Chamber, the unity of the realm, the Crown, the Bill of Rights, the Crown, the Bill of Rights, the electoral system (*The Referendum and the Constitution*, Conservative Research Department 1978) but these ideas were not developed when the Conservatives came to power in 1979.

## IV The Referendum and Maastricht

The referendum began to reappear as a major issue in UK politics with the re-emergence of the debate on Europe. The **European Communities (Amendment) Act 1986** which dealt with the Single European Act of 1986-7 in retrospect generated surprisingly little debate on the subject and a referendum did not become a serious possibility until Margaret Thatcher became associated with the issue during the Conservative leadership contest of late 1990 when Mrs Thatcher was quoted as saying that "I would not rule out a referendum [on economic and monetary union]. I think you should hold them only on constitutional issues because otherwise you cannot separate out a particular issue in an election" [*Sunday Telegraph* 18/11/90 "Referendum hint as Thatcher vows to fight on"]. The possibility of a referendum on the Maastricht agreement has been a continuing issue in UK politics since then. Mrs Thatcher has continued to support a referendum, as evidenced by her speech during the two day debate in November 1991:<sup>11</sup>

My right hon. Friends must address their minds to this matter. My right hon. Friend the Prime Minister said clearly that he believed in choice. He will provide choice. If everyone believes in the precise same arrangements on exemption from the single currency but we sign up to the concept, how could the people let their view be known? If one really wants to know the answer, one can find it in Dicey on the constitution. He came to the conclusion that, under those circumstances, the only thing to do was to hold a referendum, because that states clearly the issue and the merits and demerits. In our system, it would be no more binding than previous referendums which we have, held in my time in Parliament. A referendum is advisory but it is not binding. The answer may be overwhelming. We had referendums in Scotland and Wales. Constitutional issues warrant a referendum.

Anyone who does not consider a referendum necessary must explain how the voice of the people shall be heard. Therefore, I conclude that we should let the people speak. If not, we shall deprive them of their say on rights which we are taking away not only from them but from future generations and which, once gone, cannot be restored. A referendum may not be popular with some members of my party, but I doubt whether they have thought it through.

On 21 February 1992 Richard Shepherd's Private Member's Bill (**Referendum Bill: Bill 21 of 1991/92**) provided an opportunity for a full debate on the issue but it failed to achieve a Second Reading [HC Deb vol 204 cc581-650]. The Bill required a national referendum as a pre-condition of the ratification of certain treaties:

1.-(1) If Her Majesty is pleased to enter into treaties amending or supplementing the Treaties within the meaning of the European Communities Act 1972 and the European Communities (Amendment) Act 1986 where the effect of these treaties would, if ratified, be further to diminish the Authority of the Queen in Parliament to regulate the	Referendum 1972 c.68 1986 c.58
---	--------------------------------------

---

<sup>11</sup> HC Deb vol 199 c298, 20/11/91

affairs to regulate the affairs of the United Kingdom, the Secretary of State shall lay before Parliament the draft of an Order in Council making such provision as Her Majesty thinks expedient for ascertaining, by means of a referendum, the Nation's opinion with respect to ratification of the said treaties.

(2) If a draft laid before Parliament under this section is approved by a Resolution of each House, Her Majesty in Council may make an order in the terms of the draft.

For the official Opposition, George Robertson emphasised the complexity of the issues to be put before the voters in such a referendum, especially if they were to be given an opportunity to decide upon particular and controversial aspects of the Treaty such as monetary union or the social chapter:<sup>12</sup>

The real question is whether there should be one omnibus question in one referendum or whether it should, be the role of Members of Parliament to weigh up all the issues involved, to judge their effect and then to be judged, as all hon. Members are, at a subsequent election. Those who demand a referendum-and those who associate themselves with that demand through their hostility to the European Community as a whole, which is not necessarily the view of the hon. Member for Aldridge-Brownhills-on, the one hand attack Europe because it has taken power, or will seek to take power, away from the Westminster Parliament while, on the other, they happily argue for Westminster to be robbed of its crucial function of weighing up the issues on behalf of the people. That is one of our weightiest roles. Sometimes we are blinded by the visibility of the accountability of the House, believing that it is the only form of accountability that matters. Because we are part of it, and because television now takes our image into households, we may think that this is all that accountability means. We must look deep down to where the decisions are being taken and where accountability properly lies.

Alex Carlile, for the Liberal Democrats, supported the proposal "because it is right that when great constitutional issues are debated, the public should be consulted. The Bill is a consultative measure only":<sup>13</sup>

I turn to the important principle underlying the Bill. The House need never fear the public of Britain, unless it ignores them. The Bill does not insist that Parliament should follow the advice of the public in a referendum. Such advice would of course be given following a lengthy and fair campaign on the issue, but there is no doubt that could be achieved.

There are plenty of countries around the world where referendums take place and we even have a little experience of them in Britain. We can trust the public to give honest advice after the issues have been explained to them.

---

<sup>12</sup> c622

<sup>13</sup> c603

## Research Paper 95/23

In response, the junior Foreign Office minister, Tristan Garel-Jones, concentrated on the 1975 referendum experience:<sup>14</sup>

Careful analysis of the previous referendum shows that despite the renegeing on the responsibilities of this House, and despite the suspending of the Government for three or four weeks, the way that people voted in the end appeared to reflect not just the party splits, but the yes-no split within those parties. The referendum proposal is not only unhelpful, but it flies in the face of our responsibilities as Members of Parliament.

The core of the Government's objection to a referendum was the threat to a parliamentary style of democracy: "... every time we have such a referendum it is, in a sense, an abdication of responsibility by the House and the Government of the day. This Government intend to make no such abdication of their responsibilities, neither do they intend to invite the House to abdicate from its responsibility" [c627]. He concluded:<sup>15</sup>

The Bill, which was introduced in such a distinguished way by my hon. Friend the Member for Aldridge-Brownhills, is mistaken, not only because it invites the House to abdicate its responsibilities, but because the sort of question that would be put-as was evident in the previous referendum-in all likelihood would reflect the differing views within the House. The treaty that we have, and to which the House will return in the next Parliament when a Bill will be laid before it to amend the European Communities Act, will require the approval of the House as a necessary precondition of ratification by the Government. I have no doubt that that Bill will receive careful scrutiny and will be the subject of passionate debate by my hon. Friends.

I am sure, as I have been since I came into the House, that the House will express the will of the British people in the matter. That will be expressed by freely elected members of the House in the way that British democracy' has traditionally settled these matters, whether they be large or small.

Thereafter Ministers maintained that a referendum was neither necessary nor appropriate. See for example the replies by Baroness Chalker to questions on 30 June 1992:<sup>16</sup>

Our Government sought repeatedly during the recent general election to raise the profile of Europe as an election issue. The fact that that issue did not receive prominence is no doubt because most people were at least content with the Government's handling of the vital issue. As regards this country not having a referendum, I must say that we live in a parliamentary democracy

where government is accountable to Parliament and where Parliament is accountable to the electorate. That is our system. We had a general election on 9th April. I know views differ, but they differ on many other issues. I shall not offer other quotes but I say simply that I believe our parliamentary democracy is strong enough to survive without referenda.

and

---

<sup>14</sup> c629

<sup>15</sup> cc629-630

<sup>16</sup> HL Deb vol 538 c659 and c660

There is no single question that could adequately sum up the Maastricht Treaty. We have a system of government in which the people vote for their elected Members. Those elected Members become Members of Parliament and the party with the most seats forms a Government. I believe that it is for the Government to take the decisions.

Paddy Ashdown has set out in a number of press articles the Liberal Democrat view that a referendum would be the best way of involving the public in the European debate, e.g:<sup>17</sup>

Yet the Conservative Government, apparently with the, tacit support of Labour, seems! willing to embark on this journey, however half-heartedly, with the minimum of public consultation. Given the difficulties which Britain will have to accept in the lead-up to monetary union, it is dangerous, both for our democracy and for the cause of Europe, to proceed in the face of the people's opposition, or dependent on their ignorance.

The politicians have so far kept all this to themselves. But ratification by the politicians, coerced by the party Whips, with the public excluded from the debate, offers no guarantees for the future.

The only way to debate these issues and to arrive at a popular conclusion that will stick is through a referendum in which voters are, at last, welcomed into the secret garden of European policy. Only the people can give the definitive answer on Maastricht.

If sovereignty really did rest exclusively with Parliament, then maybe we could excuse the Government's behaviour. But sovereignty belongs to the people. It is not Parliament's to give away. And if sovereignty is to be relocated through significant constitutional change, then the people should be asked for their consent.

It is perhaps not surprising that it was the supporters of a referendum who did the most to keep alive the referendum debate. While it can be seen from this brief survey that support for a referendum is not restricted to parties or individuals who oppose all or much of the Maastricht Treaty, in general most of the concerted publicity and campaigning was led by 'Euro-sceptics' inside and outwith Parliament.

This campaigning took the form of rallies, petitions, private members' bills and so on. See for example Tony Benn's **Treaty of Maastricht (Referendum) Bill**, Bill 63 of 1992-93, presented on 25 September last year<sup>18</sup>, which he followed up with petitions on 3 November 1992 and 15 January 1993. Another manifestation was the Maastricht Referendum Campaign's petition, the substantive text of which is as follows:

MAASTRICHT REFERENDUM PETITION

TO THE HONOURABLE THE COMMONS OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND IN PARLIAMENT ASSEMBLED.

**The Humble Petition of Electors of the United Kingdom  
Sheweth**

**That the Maastricht Treaty would bring about a European Union.**

---

<sup>17</sup> "Let the British people make their choice", *Observer*, 5/7/92

<sup>18</sup> HC Deb vol 212 c117

That the people of the United Kingdom have been given no right to determine, for themselves, in a democratic vote whether or not they wish these constitutional changes to be made;

**Wherefore Your Petitioners pray that your honourable House:**

Will ensure that before the Maastricht Treaty, or any modification or amendment of it, is approved by Parliament, or ratified by Her Majesty's Government, the electors of the United Kingdom shall be given that right to vote for or against that Treaty, in a National Referendum.

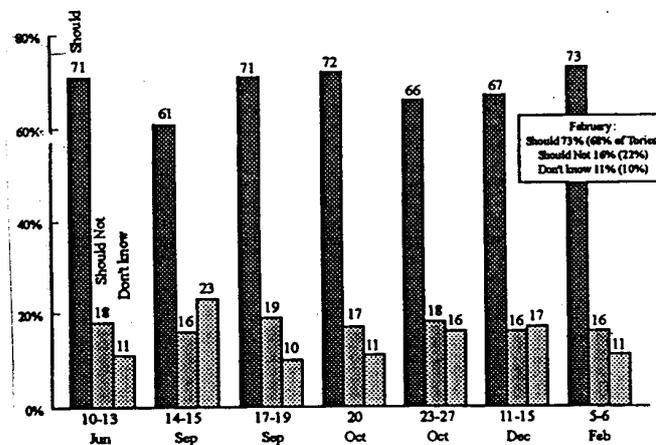
And your Petitioners, as in duty bound, will ever pray, etc.

Evidence from public opinion polls suggested that the public would have welcomed a referendum on Maastricht. A MORI poll in February 1993 indicated that public opinion was increasingly in favour of a referendum:<sup>19</sup>

**MAASTRICHT**

A representative quota sample of 579 adults aged 18+ were interviewed for MORI on 5-6 February 1993. Interviewing was conducted by telephone by On-Line Telephone Surveys. Data were weighted to match the profile of the population.

**Q. Do you think the Government should or should not hold a public referendum on whether to agree the Maastricht Treaty?**



The House debated the various new clauses on 21 April. The debate was opened by Richard Shepherd, whose Private Member's Bill on 21 February 1992 has provided the last substantial opportunity for the House to discuss the principle of the referendum and its application to EC treaties.<sup>20</sup>

<sup>19</sup> *British Public Opinion* March 1993

<sup>20</sup> see pp.11-13 of this paper

Dr John Cunningham, the Shadow Foreign Secretary, then set out the reasons why the Labour Opposition would oppose a referendum. He rejected Mr Shepherd's contention that the developments in the Maastricht process were irrevocable:<sup>21</sup>

I have always believed that nothing is irrevocable in a democracy. The nature and purpose of democracy is to facilitate and allow change if the Government of the day win a mandate for change. I do not accept that decisions taken in any democratic country can be categorised as irrevocable.

If the hon. Member for Aldridge-Brownhills thinks about it for a moment, he might realise that what might be irrevocable are circumstances in which we increasingly abdicate the responsibilities of this House by taking more and more decisions by plebiscite. In the long term, that would be the biggest single threat to the authority of Parliament and it would undermine parliamentary democracy

in the way that we have always had it. I believe that the argument is the reverse of the way in which the hon. Member for Aldridge-Brownhills presented it to the Committee this evening.

My point is that, in my experience, whenever referendums are held, for example, in Northern Ireland, in respect of devolution in Scotland and on membership of the Community, they have never finally decided the issue. Shortly after the outcome of those referendums, the campaigns have continued as before. There is no way of preventing that in a democracy.

Sir Teddy Taylor pressed him on this point:<sup>22</sup>

**Sir Teddy Taylor:** The only hopeful thing that has happened in a miserable day is the statement by the right hon. Gentleman that nothing is irrevocable. Will he take some time to explain how the House of Commons could legally turn anything back once the Maastricht treaty was ratified? If he could explain that, it would be one of the most hopeful things to have happened today. Our interpretation is that there is no lawful way in which the Houses of Parliament could go backwards once Maastricht was through.

**Dr. Cunningham:** The hon. Gentleman has to convince the British people to elect a Government who would repeal or withdraw-*[Interruption.]* It is not inconceivable at least in theory, that a Government could be elected who had come to the conclusion that Britain's membership of the Community was no longer in the best interests of the country. That is why I say that in a democracy, by definition, things can be changed as a result of a change in Government. *[Interruption.]* No Parliament can irrevocably bind its successor. [HON. MEMBERS: "Yes, it can."]

Sir Roger Moate, a Conservative 'Euro-sceptic' sought to demonstrate that there had been support for the idea of a referendum from Conservative Prime Ministers from Balfour to Thatcher.<sup>23</sup> Bryan Gould, a Labour opponent of Maastricht, derived support for a referendum in the UK from fundamental constitutional theory.<sup>24</sup>

---

<sup>21</sup> HC Deb vol 223 cc395-6 21/4/93 (extracts)

<sup>22</sup> c401

<sup>23</sup> c406

<sup>24</sup> c414

At the heart of the argument of those who oppose a referendum-I mean the serious argument; the rest has been marginal-is the proposition that it would be contrary, damaging and inimical to our constitution. The hon. Member for Faversham (Sir R. Moate) said enough about the precedents to demonstrate that that is nonsense. Those precedents have been coming thick and fast over recent years: we need only look at the writings of A. V. Dicey, the great apostle or high priest of parliamentary sovereignty. Even he argued in favour of referendums as the appropriate response to particular circumstances.

What are those circumstances? Is it not an irony that those who pray in aid the constitution are the very people who are most intent on subverting and damaging that logically have priority; for that reason, they cannot depend on Parliament itself, because Parliament preaches them.

What, then, is the authority that lies behind those rules? Let me use a term invented by the German jurist Hans Kelsen: in each society, state and political entity there is what he described as a Grundnorm-a basic norm. In any democracy worthy of the name, that basic norm must be the will of the people. It is the will of the people which defines and gives authority to Parliament. Parliament may purport to change the rules that define it-to change its mode of operation, and the processes of government and self government-but it simply has not the authority. to go, back and change rules which, as I have said, are logically prior to Parliament. Only the will of the people

can make constitution? In my view, not only is our constitution entirely compatible with a referendum on this issue; it demands such a referendum. Even the greatest supporter of parliamentary sovereignty-Dicey, perhaps-must concede, as a matter of logic, that however powerful parliament is, certain rules have priority over those of Parliament.

**Sir Terence Higgins:** Will the hon. Gentleman give way?

**Mr. Gould:** I am sorry; I am in the middle of an argument.

If Parliament did not have such rules, we could not know what Parliament is. Rules about Parliament's composition, identity, functions and procedures must such a fundamental change in the way in which we govern ourselves.

So far, what I have said is a matter of incontrovertible legal and constitutional theory. The real question that now arises is whether the Maastricht treaty poses an issue of such fundamental importance that to accept the change involved would be to redefine fundamentally both Parliament and the way in which we govern ourselves. The treaty of Maastricht is not, in my view, just an incremental change. It is a fully-fledged statement of a written constitution for a new state. It is not I who say so; it is the drafters of the treaty who proclaim that they hereby establish a European union, of which we are all to be citizens,

On the other hand Sir Terence Higgins believed that the referendum would "inevitably undermine our system of representative parliamentary democracy .... The referendum is the exact antithesis of that concept".<sup>25</sup> Alex Salmond set out the reasons for the SNP's amendments seeking a referendum on the adoption by the UK of the Social Chapter protocol.

For the Liberal Democrats, Charles Kennedy admitted that there were differences within his parliamentary party. He thought that the precedents showed that the idea of a referendum on constitutional matters has become established in the UK, and rejected the notion that the issues over Maastricht are too complex for the people to understand. He also regarded

---

<sup>25</sup> c416

Dr Cunningham's argument that a referendum would not solve the issue as not only correct but proper.<sup>26</sup>

I hope that a referendum would not resolve the issue. The whole point of a referendum is that - like a general election-it provides a snapshot of public opinion, on a particular day. It does not show the whole film; it shows one frame out of the reel. In any democracy, the campaigns and debates of both sides will go on. They will not end when the ballot boxes have closed on a particular day of a particular month in a particular year.', When the treaty has been ratified-as I hope that it will be - there will be another intergovernmental conference in 1996, and decisions will flow from that. There will be more i heated arguments in the House.

**Mr. Donald Anderson:** There will be another referendum.

**Mr. Kennedy:** Whatever the Government of the day, if it comes to a proposal for a single currency, for instance,the House of Commons might well decide on a referendum. Why not? We, as democratically elected Members of Parliament, are obliged to renew our mandate, every four or five years; equally, when the very basis of our parliamentary democracy is involved, I see no logical reason for us not to try to renew our mandate for Britain's continued involvement in Europe-and for the deepening of that involvement in a more federal direction, which I should like to see.

For the Government the Foreign Secretary, Douglas Hurd, claimed that what was being criticised by the proponents of a referendum "centres not on the proposals of 1992 but on the decision of 1972".<sup>27</sup> He set out the sequence of parliamentary debates in late 1991 before and after the Maastricht conference, and the stages of the present Bill. He described this as "parliamentary democracy at work, complete with imperfections .... untidiness and arguments about procedure and when we should discuss this or that point".<sup>28</sup>

He thought that "it is odd that those who would put most emphasis on the sovereignty of the House believe that it needs to be buttressed, to put it mildly - I would say it would be weakened - by recourse to a referendum on the matter before us".<sup>29</sup>

He believed that if there were to be a referendum it "would endorse the treaty .... We certainly are not taking our present line because of fear of a negative result".<sup>30</sup> He continued:<sup>31</sup>

As Parliament is sovereign it is clear that it could decide to hold a referendum which it could either accept or reject. It could certainly choose, as it has before, to ask for advice from those who sent us here. But I return to the fact that we owe our constituents our judgment, and if

---

<sup>26</sup> cc449-50

<sup>27</sup> c451

<sup>28</sup> c452

<sup>29</sup> c453

<sup>30</sup> c453

<sup>31</sup> c453

## Research Paper 95/23

we decline to exercise that judgment we are to some extent damaging the authority of Parliament.

He reviewed the existing precedents but thought that it was not fair to argue "that the referendum has become a normal part of our constitutional practice".<sup>32</sup> The Northern Ireland border poll was the only referendum initiated by a Conservative government: "In that, as in many respects, Northern Ireland is unique in the politics of the kingdom. An act of self-determination solely for the people of the Province was, and remains as it is still on the statute book, a reasonable technique".<sup>33</sup>

He concluded as follows:<sup>34</sup>

It would be wrong and foolish to abandon or transfer the work. It would be a shirking of the responsibilities that we were given only a year ago, and it would be a blow to the standing of the House in years to come. We would be saying to our constituents, "We have examined the matter, but we do not intend to take a decision. We have spent hours, days and weeks examining the issues and now it is over to you. We are going to throw the treaty, with all its diverse controversies and complications into your laps to make of it what you will." I agree with the principles set out by Lady Thatcher in 1975. It cannot be right to refuse to do our job, so it cannot be right to accept the new clauses.

George Robertson, winding up for the Opposition, criticised the idea of a referendum simply on the Maastricht stage of Community development:<sup>35</sup>

We have been told that the nature of the treaty is so fundamental that Parliament must put it to a plebiscite, But the treaty does not concern only one issue. Some hon. Members have been honest enough to admit that not just one referendum is being asked for; there will have to be another on stage 3 of economic and monetary union. That, too, is fundamental. If so, why not have another on progress towards a common foreign and security policy? ,What about the transition to a common asylum policy? Where do we stop? When should Parliament stop taking decisions and start holding referendums?.

He denied that the treaty was irrevocable: "The decision is not irrevocable. The country can decide whether we are in or out of the European Community. That decision can be made and, if necessary, would be made by Parliament. Nothing is irrevocable" [c462]. He also thought that the major issues in the treaty could not be resolved into a simply yes/no question:<sup>36</sup>

---

<sup>32</sup> c454

<sup>33</sup> c455

<sup>34</sup> c458

<sup>35</sup> c461

<sup>36</sup> c462

Hon. Members have said that we must let the people have a direct say. On what? It is not a simple, straightforward treaty on one issue. On which issues would the people have a say? Would it be on economic and monetary union and a single currency? Would it be on more powers for the European Parliament, or on more new competences in the Community? A yes or no answer is not relevant in circumstances where there is a series of issues.

On a division, New Clause 49 (a referendum provision moved by Bryan Gould) was defeated by 363-124.<sup>37</sup>

The argument then moved on to the House of Lords. The Bill's two-day second reading debate on 7-8 June provided an opportunity for peers to set out their views on a referendum on the Maastricht Treaty.<sup>38</sup> However the question of a referendum was debated comprehensively on an amendment introduced by Lord Blake. This debate, which took the whole of the third day of report stage,<sup>39</sup> highlighted all the major arguments not only for and against the principle of a referendum on this country but also on the question of a referendum on the Treaty on European Union at this stage in the Maastricht process.

Lord Blake, chairman of the Campaign for a British Referendum, emphasised that his Campaign was not only cross-party but also included supporters of the Treaty (including, somewhat hesitantly, himself): "What unites us is the belief that the British people have [the] right to be consulted so that they can endorse or otherwise a measure which irrevocably and irreversibly in some respects affects their governance".<sup>40</sup> He sought to refute his opponents' arguments that (i) the Upper House had no right to accept a referendum amendment already rejected by the Commons, (ii) the issue was too complicated for a referendum, (iii) the Commons would reject the Lords' amendment if passed and (iv) the Government would be obliged to resign if the Maastricht Treaty was rejected in a referendum.<sup>41</sup> He concluded by claiming that his amendment was "a golden chance to show that the peers are in favour of the people".<sup>42</sup>

The Leader of the Lords, Lord Wakeham, responded for the Government that its "primary objection to a referendum on the Maastricht Treaty can be put equally simply: the United Kingdom is a parliamentary democracy".<sup>43 44</sup>

The Members of another place are elected to represent the people and to take decisions on their behalf. We in this House also have our role to play. Noble Lords calling for a referendum have made much of their desire to defend Parliament's sovereignty. But by calling

---

<sup>37</sup> c483

<sup>38</sup> HL Deb vol 546 cc544-702, 710-920, 7-8/6/93

<sup>39</sup> HL Deb vol 548 cc239-332, 14/7/93

<sup>40</sup> c240

<sup>41</sup> cc241-3

<sup>42</sup> c243

<sup>43</sup> c243

<sup>44</sup> p.243

## Research Paper 95/23

for a referendum they are in fact undermining this sovereignty. They are advocating that Parliament abdicates its responsibility to take a decision in this case. I believe it would be wrong to place our experience and judgment in baulk and to stand aside while the people decide. They have decided.

A referendum could not be justified on the grounds of a pro-Maastricht consensus at the 1992 general election, or that the Treaty represented a major constitutional change in the UK. The 1975 referendum on EC membership was intended to be final, not a precedent for future referenda. He set out what he saw as the practical arguments against a referendum but emphasised (using the language of Baroness Thatcher against her) that "the real objection to a referendum is that the people have spoken through their Parliament".<sup>45</sup>

While accepting that it was "perfectly within the rules and conventions of this House for your Lordships to seek to ask the other place to think again on the issue", he suggested that it was not "within the realms of reality" for the Commons to be expected to reverse its previous decision.<sup>46</sup>

The Leader of the Labour peers, Lord Richard, set out the extent of the parliamentary scrutiny on the Maastricht process and the present Bill. He contrasted the normal, parliamentary route to ratification with the proposed referendum route, and suggested that, at such a late stage in the parliamentary process, "the only issue ... is whether we are satisfied that the parliamentary process has in some way been unsatisfactory or lacking", and continued,<sup>47</sup>

Against that background there are three strong arguments against holding a referendum. First, it is far too late; secondly, it is constitutionally unwise; thirdly, it would be an extraordinarily divisive and confused process. It would keep the issue alive for perhaps another nine months, and in the end it might reach no conclusion.

He then considered these arguments in detail,<sup>48</sup> and concluded that, although he was not totally satisfied with the outcome, "I am satisfied that the Bill has been given full and proper consideration by both Houses of Parliament in accordance with their respective rules of procedure. If that is so, it is time that the talking stopped".<sup>49</sup>

Lord Jenkins of Hillhead, the Leader of the Liberal Democrat peers, said that his views on a referendum expressed during the second reading debate had if anything strengthened. "I am

---

<sup>45</sup> c245

<sup>46</sup> c245

<sup>47</sup> cc247-8

<sup>48</sup> cc248-9

<sup>49</sup> c249

not against referenda in all circumstances. I can envisage circumstances in which a further European one might be desirable. It is of course a device which is fairly alien to our constitutional habits".<sup>50</sup> His objections to a Maastricht referendum were that it should have been at the beginning of the ratification process, if at all; "the question to be put is far from obvious or precise", and "if we are to have referenda, we should have them as part of a clearly thought out constitutional scheme and not just as a by-product of a tactical ploy by those who have tried and failed to defeat this Bill in every possible way".<sup>51</sup>

A number of former Conservative Ministers spoke in the debate. Lord Lawson of Blaby, in his maiden speech, said that "without monetary union the Maastricht Treaty is not, in my judgment, of any greater constitutional importance than the Single European Act", but that "should there come a time when this or any future British Government are so unwise as to conclude that this country should participate in a European monetary union, with all its political consequences, that would be a decision of such momentous constitutional significance as to warrant not merely the separate approval of Parliament .... but also a prior referendum of the British people".<sup>52</sup> Another former Chancellor under the premiership of Margaret Thatcher, Lord Howe of Aberavon, also compared the Maastricht Treaty to the Single European Act in constitutional significance. Noting that, although the latter had not ever been in any party general election manifesto, "no one ... - least of all my noble friend [Baroness Thatcher] or myself - thought it necessary to have a referendum about that .... Does that not expose the hollow quality of the argument of those who now argue for a referendum because the people had no choice?".<sup>53</sup>

Viscount Whitelaw opposed the referendum amendment not only on principle but also because, as a former Leader of both the Commons and the Lords, he thought that it concerned the relationship between the two Houses. It would be unwise for the unelected House to seek to overturn the clear view of the Commons. Lord Crickhowell recalled that he had chaired a committee set up by Margaret Thatcher in 1978 to examine the constitutional position of a referendum, and which had recommended the use of the device before any fundamental change in the constitution could be made, as part of a general package of constitutional reform. He quoted that words of Mrs Thatcher as Leader of the Opposition in 1975 against the use of referenda in situations of political expediency as being directly applicable to the present debate.<sup>54</sup> Lord Rawlinson was clear about the motive of the supporters of the amendment, it was "to make a sustained attack upon the present Administration and the present Prime Minister .... It is an attack on the successor's performance .... What is the reality behind the facade of this amendment debate? It is about power. It is not so much power that corrupts but the withdrawal of power that pains".<sup>55</sup>

---

<sup>50</sup> c253

<sup>51</sup> c254

<sup>52</sup> c257

<sup>53</sup> c259

<sup>54</sup> cc270-1

<sup>55</sup> cc289-90

There were strong and passionate speeches from all sides of the House in favour of the amendment. Inevitably the most prominent contribution was that of Baroness Thatcher. She sought to defend herself against the claims made by her opponents that she, during her premiership, had contributed to the process of EC development, not least with the Single European Act legislation in 1986, of which Maastricht was the latest stage. Up until Maastricht European union was simply a phrase in Community treaties and communiques which she had believed to be without particular meaning but the Maastricht Treaty "creates the Union. It gives it all the structures of a sovereign state .... It is something quite different".<sup>56</sup> In addition, the extension in the Treaty of qualified majority voting would override UK parliamentary sovereignty, and "the situation will get worse if we do not stop it or ask the people about it. It is their sovereign powers that are being diminished".<sup>57</sup>

She said that the argument that the people could not understand the Maastricht Treaty sufficiently to decide its fate in a referendum was a "bit of arrogance and conceit".<sup>58</sup> She warned of "the degree to which things are running away from parliamentary sovereignty and our form of justice so that this House, this High Court of Parliament, is no longer the deciding factor on many matters of law".<sup>59</sup> She set out her view of the principle of referenda on constitutional issues:<sup>60</sup>

I confess that I still do not like having a referendum regularly. When you come to a constitutional matter, you can recognise one; you can recognise when the erosion of parliamentary powers and justice powers is so great. It is very difficult to describe but you can recognise it. You can take each one and say, "This is suitable for a referendum and more than suitable because it is the powers of the people that are being eroded. We should have one and we can have a special Bill". It is much better to accept that the referendum is an appropriate instrument and the more powers go away, the more we have in fact to ask the people.

Her final argument was that of "the democratic deficit":<sup>61</sup>

There is the third point: the democratic deficit. Everyone accepts that there is one. We are used to having full democracy. We fought two wars in order that democracy might survive and extend. We are diminishing democracy, diminishing our parliamentary sovereignty, diminishing our parliamentary institutions, diminishing the significance of the vote, if, Members of Parliament are not accountable, diminishing the significance of the Member. of Parliament, diminishing the significance of the parliamentary institutions- diminishing democracy and substituting bureaucracy for it.

---

<sup>56</sup> c283

<sup>57</sup> c284

<sup>58</sup> c285

<sup>59</sup> c285

<sup>60</sup> c285

<sup>61</sup> c285

She concluded as follows:<sup>62</sup>

Over the centuries the people and the character of our people have shaped our parliamentary institutions, and not the, other way round. People have been the great bulwark against over-mighty rulers and the surest defence of the rights of individuals. Their powers are the heart of our nationhood. The majority of our people want Britain to be in Europe, and so do I. They want to keep intact our Parliament too and they do not want to diminish its powers or its authority or its prestige. In my view, we have surrendered too many powers already. We should surrender no more unless the people wish it. It is the people's turn to speak. It is their powers of which we are the custodians.

Replying to the debate on behalf of the Government, Baroness Chalker of Wallasey sought to respond to some of the points made in the debate. She said that "the concerns of my noble friend Lady Thatcher that through the Maastricht Treaty we shall be creating a European superstate, are really without foundation",<sup>63</sup> and that Maastricht had indeed been a clear and substantial issue before the voters in the 1992 general election. The supporters of the referendum amendment were purporting to defend parliamentary sovereignty but "the essence of parliamentary democracy in this country is that Parliament is elected to represent the people and to take decisions on their behalf".<sup>64</sup>

Lord Blake pressed his amendment to a vote but it was defeated 445-176, a majority against a referendum of 269.<sup>65</sup>

---

<sup>62</sup> c286

<sup>63</sup> c325

<sup>64</sup> c326

<sup>65</sup> c328

## V The Debate since Maastricht

After the debates over the ratification of Maastricht the issue of a referendum over Europe died down for some months. However, the European Parliament of June 1994 brought the issue into focus once more. On 10 May 1994 John Major said that 'as to a single European currency, as I have said before, decisions on that are a long way off. That will not be determined in 1996. No-one expects that this Parliament is going to be asked to decide on a single European currency' (HC Deb Vol 242 10/5/94 c150). Norman Lamont, however, called for a referendum on a single currency in an article in the *Times* 10/5/94 "A referendum on EMU is needed to heal the Tory rift, argues Norman Lamont". The Labour party was reportedly moving away from an anti-referendum stance *Times* 12/5/94 "Labour refuses to rule out monetary union vote" while Paddy Ashdown, for the Liberal Democrats ensured that the manifesto for the 1994 European elections contained a pledge to obtain the 'people's assent' in the event of 1996 inter-governmental conference ending with proposals for 'fundamental changes in the constitutional arrangements between Britain and Europe' *Guardian* 23/5/94 "Ashdown orders pledge on referendum in manifesto").

Calls for a referendum intensified after the whip was drawn from eight Conservative MPs and another MP Sir Richard Body, resigned the whip following the Second Reading of the European Communities (Finance Bill) on 28 November 1994. During a statement on the Europe Council on 12 December 1994 Mr Major noted:<sup>66</sup>

I made it clear that I did not rule out a referendum. One will have to wait and see precisely what the circumstances are. I think that it is wise to wait and see precisely what the circumstances are. The right hon. Member for Yeovil (Mr. Ashdown) does not know what will happen in the future, and his past projections of what might have happened today have proved that he does not know what will happen in future. So I have indicated that the circumstances might be appropriate to have a referendum, and if they are, we will.

He added in answer to a further question on 14 December:<sup>67</sup>

**Mr. Yeo:** Does my right hon. Friend agree that the results of the past four general elections show that the good sense of the British people can normally be relied on? Against that background, does he further agree that if the 1996 intergovernmental conference produced substantial changes in the European Union the use of a referendum might be justified, but that in the intervening period speculation about the type of question to be asked is entirely bogus?

**The Prime Minister:** In advance of the IGC, it is extremely difficult to know precisely what the question in a referendum might be. I have said that I am not prepared to close the door on the possibility of one but, equally, that there are important constitutional matters to be considered and it would be very unwise to make snap judgments as to how to deal with that matter. As I understand it, two days after I stated that last week it suddenly became the Opposition's position as well.

---

<sup>66</sup> HC Deb Vol 251 c620

<sup>67</sup> HC Deb Vol 251 c771-2

According to the *Observer* 18/12/94 "Labour faces referendum backlash" there have been concerns within the party that Labour might find itself committed to a referendum which was not really desired. Mr Blair has been quoted as saying on BBC's Breakfast With Frost "we need to take the people of Europe with us, indeed the people of Britain, if there is going to be any move towards further integration of the fundamental sort. Whether that's done through a referendum or there is a general election ... is an open question, but we've got to keep that option open" (quoted in *Guardian* 19/12/94 "Labour backs EU poll as Tories run").

Jonathan Aitken, Chief Secretary to the Treasury, has said on the BBC World at One Programme that 'the last time we had Scottish devolution and Welsh devolution we Conservatives supported a referendum - a very successful referendum because it stopped that Labour nonsense of trying to break up the UK. There is a good precedent for it, so I certainly am willing to be favourable to referendums in the event of major constitutional change'. But he also noted that "we are nowhere near having a single currency" (quoted in *Guardian* 23/12/94 "Aitken wages Tory manifesto pledge on referendums").

### **The Debate of 13 February 1995**

The debate, on a Liberal Democrat motion, related to the use of a referendum for substantial European Union developments. Although the Government and the Opposition abstained in the division at the end of the debate (the motion was agreed to by 47-3) and did not deploy their senior front-bench speakers, the debate nevertheless was a useful opportunity for a general consideration of the referendum device, especially in advance of Teresa Gorman's bill's second reading debate on 24 February. This section of the Paper concentrates on general referendum issues, and is not intended to provide a comprehensive summary of the details of European Union policy.

The Liberal Democrat leader, Paddy Ashdown, opening the debate, said that a referendum on Europe was an issue of principle as it related to the potential changes to the sovereignty of the people. It was also an issue of practical politics: "Another attempt to take the people of Europe into a process of further integration, either depending on their ignorance or against their will, could be fatal to the whole European project."<sup>68</sup>

He then dealt with a number of arguments against referendums generally and in the European context. He dismissed the notion that pro-European supporters of a referendum should not combine with 'Euro-sceptic' supporters of a referendum: "ideas should not be judged by the company they keep."<sup>69</sup> He also rejected arguments that European issues are too complicated for the electorate to understand and vote upon; that referendums are alien to parliamentary

---

<sup>68</sup> HC Deb vol 254 c669, 13.2.95

<sup>69</sup> *ibid* c669.

democracy; that it would be impossible to frame a suitable question, and that a referendum on Europe would risk defeat of the pro-European stance.

Responding for the Government, the Minister of State at the Foreign Office, David Davis, quoted the Prime Minister's recent statements on a referendum on Europe, such as those in the House on 12 December 1994<sup>70</sup>, and was questioned closely by Members on both sides of the House on these statements, especially in relation to their application to European issues such as a single currency.

Joyce Quin, for the Opposition, said that the Labour Party's position was clear: "We believe that people should be consulted. Whether that would be through a referendum or an election would depend on the timing."<sup>71</sup> More generally, she said that the role of referendums in the British political system would have to be considered.

The ensuing general debate demonstrated the many permutations of view on referendums generally, referendums on European issues, and on EU policy itself. Some, such as Tim Renton on devolution, discussed the appropriateness of referendums in policy issues other than Europe. Sir Terence Higgins pursued Mr Ashdown's point about both sides of the European argument uniting in support of a referendum, and argued that an abandonment of a political stance because of an unfavourable referendum outcome would undermine the basis representative democracy through Parliament. On the other hand, Peter Shore argued that a referendum was required because the unwritten nature of the UK constitution meant that there were no special safeguards regarding proposals for major constitutional change, and because there was a suspicion by the British people that their political leaders had not been fully open with them over European constitutional developments. Giles Radice supported his front bench's point that consultation of the people could be by way of a general election or referendum, but said that if there were no strong differences between the parties, there would be a case for a referendum.

Winding up for the Government the junior Foreign Office minister, Tony Baldry emphasised the Prime Minister's point that the question of a referendum on Europe, especially the outcome of next year's IGC, would not arise in practice: "As we all know, the only possible reason for anyone offering a referendum on the 1996 IGC would be if the party in question were prepared to accept constitutional change in these negotiations ... The Government's position could not be clearer. We do not think that significant constitutional matters will be discussed at the 1996 IGC. If they were discussed, we would not accept them, so the question of a referendum would not arise."<sup>72</sup>

---

<sup>70</sup> HC Deb vol 251 c620, 12.12.95.

<sup>71</sup> HC Deb vol 254 c684.

<sup>72</sup> cc762-3.

## VI A Referendum on the Voting System?

Other than Maastricht, the most recent issue for which there have been calls for a referendum has been that of the voting system ('electoral reform')<sup>73</sup>.

During consideration of the Plant Commission report on electoral reform by the NEC of the Labour Party, John Smith, then Leader, promised that a Labour government would hold a referendum on the issue, although he was personally unconvinced of the need for change to the voting system for the Commons:<sup>74</sup>

However, I firmly believe that the contents and conclusions of the Plant Report mer the widest possible debate both within and beyond the Labour Party. That national debate must be extensive and wide ranging. Ultimately it is a matter of such constitutional significance that it should be for the people to decide. Any decision on the retention or change of the electoral system for the House of Commons must carry the demonstrable consent of the public. That is why I firmly believe that the final decision on this Issue must be taken by means of a referendum and why, I propose that such a referendum be held during the first Parliament of the next Labour government. It would be held at a time when the Labour Government had begun the most radical programme of constitutional reform this century. There could be no more appropriate time for the public to be given the opportunity to settle the long standing debate on the future of our electoral systems.

There was immediate reaction to this proposal in the Commons. The Prime Minister made a pointed reference to it during question time on 20 May:<sup>75</sup>

**The Prime Minister:** I can certainly confirm that I remain in favour of the first-past-the-post system. I am against proportional representation, and I do not need a referendum to tell me what my view on the matter should be.

The different Labour positions on referenda on Maastricht and on electoral reform was noted during the third reading of the European Communities (Amendment) Bill that evening. See the following exchange between Peter Shore and John Cunningham:

**Mr. Peter Shore** (Bethnal Green and Stepney): My right hon. Friend referred to matters of principle and consistency when speaking about the case, as he sees it, against a referendum. In the light of what happened yesterday, we are entitled to an explanation. After all, did not my right hon. Friend vote for a referendum in 1975 following which there was a referendum on accession to the Rome treaty? Did he not and did not my right hon. and learned Friend the leader of the party move a motion for a referendum on Welsh and Scottish

devolution in February 1977, outlining the issue as being a matter of great constitutional importance on which the people had not had a chance to express their views? How can he reconcile the position that he took in the debate in April, in which he not only advocated opposition to a referendum but voted against one, with his obvious acceptance yesterday of the case for a referendum on a matter of far less importance, proportional representation? Where is the consistency, where is the principle and, where is the democratic accountability in all that?

<sup>73</sup> For briefing on 'electoral reform' see Background Paper 299, "Voting systems", 7/9/92

<sup>74</sup> Press Notice, 19/5/93

<sup>75</sup> HC Deb vol 225 c366, 20/5/93

## Research Paper 95/23

**Dr. Cunningham:** I answered that question when we debate the referendum and I am happy to answer it again. We had a referendum about membership of the Community. My right hon. Friend knows that, and he was a member of the Cabinet at the time. He was on the losing side in that argument. He has never accepted the decision of the British people in that referendum, and there is no evidence to suggest that if there were another one he would accept the decision this time. The decision has been taken.

My right hon. and learned Friend the Leader of the Opposition said that if during the period of a Labour Government there was a desire to test the will of the British people about a change in the system of electing Members of Parliament, the matter should be put to the people to see whether they wanted to change from first past the post to any other system. That would be a new and fundamental proposition, and that is why my right hon. and learned Friend proposed it.

[c401]

The Labour party conference of October 1993 backed Mr Smith's proposal for a referendum on electoral reform by a narrow margin. However, the composite motion no. 31 did not recommend a change in the voting system for the Commons.

### **Composite 31**

Conference welcomes the report of the Plant Commission and congratulates it on its thorough review of electoral systems.

Conference endorses the Plant Commission's recommendations for new electoral systems for proportional representation for the European Parliament, the elected second chamber and the Scottish Parliament.

Conference favours constituency representation for the House of Commons and supports the commitments of John Smith, Leader of the Labour Party, for a referendum on the issue of electoral reform for the Commons.

### **Card vote 16**

For 45,491 percent

Against 42,021 per cent

*Carried*

The new leader of the Labour party, Tony Blair, has not proposed electoral reform for the Commons, but has not retreated from a commitment to a referendum. There continues to be criticism that if there is to be a referendum on electoral reform then it is illogical to refuse a referendum on other aspect of constitutional change, such as devolution. The Liberal Democrats in particular have criticised Mr Blair for supporting a referendum on PR but not for Scottish devolution (*Scotsman* 1/10/94 "Blair's Scottish policy manifests itself as a problem"). In response Labour has emphasised the electoral support given in Scotland to parties proposing devolution at the last general election (*Times* 5/1/95 "Labour party's proposal on Scottish devolution"). In the immediate aftermath of the 1992 General election

a referendum campaign was promoted by Scotland United, a cross-party pressure group, but political support for the multi option referendum favoured has dwindled significantly.

## VII Northern Ireland and the Referendum

The referendum device is likely to play a key role in the development of Northern Ireland politics and constitution. But politicians of both major parties have emphasised the unique nature of Northern Ireland within the UK, in an attempt to restrict the use of the device elsewhere.

The border poll referendum of 1973 has already been described on p7. Nationalist parties boycotted the poll, arguing that the outcome had already been pre-determined by the partition of 1921.

The constitutional status of Northern Ireland is protected by S.1 of the Northern Ireland Constitution Act 1973 which sets out a particular role for a referendum:

### *Status of Northern Ireland*

Status of Northern Ireland as part of United Kingdom	1. It is hereby declared that Northern Ireland remains part of Her Majesty's dominions and of the United Kingdom, and it is hereby affirmed that in no event will Northern Ireland or any part of it cease to be part of Her Majesty's dominions and of the United Kingdom without the consent of the majority of the people of Northern Ireland voting in a poll held for the purposes of this section in accordance to with Schedule 1 to this Act.
--	---

Schedule 1 made provision for polls to be held at intervals of not less than 10 years. None have been held since 1973. It is worth noting that while S1 states that Northern Ireland will not cease to be part of the United Kingdom without the consent of the majority of the people of Northern Ireland it does not follow that the status **would** change if the majority expressed that wish in the appropriate statutory form. During the passage of the Northern Ireland (Border Poll) Bill in 1972 Ministers appeared to suggest that if a majority voted for unity with the Irish Republic that wish would be accepted by the UK Government.<sup>76</sup>

On 16 September 1994, following the IRA ceasefire of 1 August, John Major committed the Government to submitting the final outcome of the three stranded talks to the electorate of Northern Ireland for approval in a referendum.<sup>77</sup>

---

<sup>76</sup> see William Whitelaw HC Deb 21/11/72 c1091

<sup>77</sup> 16/9/95 - Press Notice 10 Downing St. "Statement by the Prime Minister

## Research Paper 95/23

So for the avoidance of any doubt, I want to make clear today that the Government will submit the final outcome of the three stranded process of talks to the electorate in Northern Ireland for approval in a referendum. That is to say, we shall consult the people of the Province on the full package of proposals as a whole. The details of such a referendum will rightly be for discussion with the parties.

Let me say to all the people of Northern Ireland: the referendum means that it will be your choice whether to accept the outcome. My commitment means that no one can go behind your backs. Not today. Not tomorrow. Not at any time. You can forget this talk of secret deals. It will be for you to decide.

My second point concerns the outcome of the three-stranded political talks.

The aim of these talks is to reach agreement on new political arrangements within Northern Ireland, and on the future relationships between the, two parts of tile island and between the United Kingdom and the Republic of Ireland,

It is vital that we should move forward with the widespread consent and confidence of the people of Northern Ireland. They, and the parties engaged iii the talks, want to be sure that the outcome will not be imposed upon them without their democratic consent. There will be siren voices telling them they will be tricked. I want to tell them that they will not be tricked.

I intend to fulfil the commitment - made with the agreement of the parties by Peter Brooke when he launched the talks in 1991 - to ensure that the outcome of the talks was acceptable to the people.

Note that the referendum will only take place once agreement on all strands had been reached by the political parties. The three strands are: 1:relationships within Northern Ireland, including link with Westminster. 2:relationships between people of Ireland, north and south. 3:relationships between the British and Irish Governments.

A revision of Articles 2 and 3 of the Irish constitution would also require a referendum in the Irish Republic. See Library Paper no 94/122 *Northern Ireland - The Downing Street Declaration One Year On*. This revision is expected to form part of the long-awaited framework document. The referendum is therefore set to play an important role in determining the outcome of the peace initiative in Northern Ireland.

The commitment to a referendum in Northern Ireland has not gone unnoticed by supporters of Scottish devolution or independence (*Scotland on Sunday* 18/9/94 "Ireland gets to choose - why not Scotland?").

## VIII Referendums : the international experience

The referendum device is most commonly associated with Switzerland and Australia where it is an essential feature of the process of constitutional amendment. Dicey used the example of Switzerland in arguing for a referendum in the 1890s (see above).

Nevertheless the use of the device is widespread; *Referendums around the World* (2nd ed 1994) ed David Butler and Austin Ranney found that only 5 major democracies had never held a nationwide referendum : India, Israel, Japan, Netherlands and the United States (p.258). This book has a useful Appendix recording all nationwide referendums in the period 1793-1993 except for Australia and Switzerland which had had more referendums than all other countries put together.

Butler and Ranney note that only a few political states have used referendums frequently as a device for working authoritative political decisions, citing Switzerland and some individual states in the US. In these states, as well as Italy, individual citizens may launch or approve new measure by signing petitions in sufficient numbers and thus affect considerably the political outcome. However, most political systems have employed referendums infrequently, often as a last resort and its use has been controlled by the governing party. Moreover, as Butler and Ranney note the vast majority of referendums have produced voting outcomes desired by the sponsoring government<sup>78</sup>. There are, of course, some significant exceptions, the defeat of de Gaulle's referendum in 1969, the Danish vote on the first referendum on Maastricht in 1992 and the results of the New Zealand referendums on the introduction of Proportional Representation in 1992 and 1993. The major democratic states (except Italy) have not significantly increased the use of referendums in recent years, but the right to hold a referendum has not been narrowed (except in Ireland 1928-1937). Other states do not appear to have had such prolonged debates over constitutional propriety of the referendum device as the United Kingdom, where anxieties about its use remain widespread.

Outside the established western democracies, the referendum has sometimes been used to express nationalist claims to establish the legitimacy of new constitutions or nations, or to transfer the nature of regimes, for example in South Africa and the newly emergent democracies in areas once under the sway of the Soviet Union.

---

<sup>78</sup> p.261

Vernon Bogdanor has drawn attention to changing popular attitudes to political participation<sup>79</sup>:-

Popular attitudes to political participation reflect generational changes. The generation of the 1950s grew to maturity during the era of universal suffrage, and it was deeply scarred by the traumas of fascism and communism. It is hardly surprising if it displayed a cautious attitude toward proposals for increasing participation. The current political generation, however, takes universal suffrage and political stability for granted. It is perhaps more sceptical of the pretensions of political parties to represent opinion effectively.

The referendum, as we have seen, undermines and disrupts party systems, as it did in France between 1958 and 1962, Denmark and Norway in 1972, and, arguably, Britain after 1975. Some would suggest that this disruption damages representative government by breaking up established parties, but others would claim that the referendum has played an important role in enabling otherwise fossilized political systems to adapt to new conditions by stimulating realignment.

The future of the referendum in the democracies of Western Europe is bound up with the future of the mass party that developed in the early years of the twentieth century. For as A. V Dicey, advocate of the referendum in Britain, wrote in 1915, "It is certain that no man who is really satisfied with the working of our party system will ever look with favour on an institution which aims at correcting the vices of party government."

It is of course far too early to tell whether the increasing incidence of the referendum since the 1970s signals a genuine turning point in democratic politics or whether the referendum will remain a subordinate instrument in West European political systems. But as we reach the end of the twentieth century, signs indicate that the mass party as we have known it since the beginning of the century, far from being inherent to any democratic system of government, may represent merely a phase of democratic development that is passing away. If that is so, we may confidently expect a more widespread use of the referendum in the twenty-first century than we have seen in the twentieth.

This phenomenon has been most marked in Italy where traditional parties have lost authority, and the electorate have lost deference. The use of the referendum increased as the public demanded greater participation in policies. The referendums of 1991 and 1993 paved the way for a new political system, although time will tell whether this system will be any more stable than the last.

### **Referendums and Maastricht**

France, Denmark, and Ireland held referendums on the ratification of the Maastricht treaty. In France the referendum was not obligatory since President Mitterrand had achieved the three fifth majority of both Houses (convened as a Congress) required under Article 89 of the Constitution to obviate the need for a referendum. However, he chose to call a referendum under Article 111 which provides for one to be held at the discretion of the President and is

---

<sup>79</sup> pp96-97 *Referendums around the World* (2nd ed 1994) ed David Butler and Austin Ranney

the normal route for constitutional revisions. At the time of the announcement of the referendum it appeared that Maastricht would be comfortably endorsed but when the vote was held on 20 September 1992 on a turnout of 69.7%, only 51.4% of those voting favoured ratification. For further details see Library Research Note No. 92/89 *The Fate of the Maastricht Treaty*, 30 October 1992.

In Denmark and Ireland referendums were obligatory under their respective constitutions. Article 20.1 of the Danish constitution of 1953 requires referendums to be held for a bill transferring powers to international authorities unless there is a five sixths majority of the Folketing, when the referendum need not be held. The result of the first referendum held on 2 June 1992 was a narrow majority against Maastricht, with 49.3% of the votes favouring acceptance on a turnout of 68.7%. Denmark was given further assurances at the Edinburgh European Council Summit of December 1992 enabling the Government to hold a further referendum provided for by specific legislation passed by the Folketing in March 1993. At the referendum held on 18 May 1993 the percentage yes vote climbed to 56.8% on a turnout of 86%. For further details on the Edinburgh summit agreement on Denmark see Library Research Paper 93/3 *The Maastricht Debate : Clarifications, 'Opt-Outs' and Amendments*, 12 January 1993.

Article 46 of the Irish Constitution requires a referendum for constitutional change. The referendum on Maastricht was held on 19 June 1992, with 68.7% of the votes agreeing to Maastricht on a 57.3% turnout. The referendum result was never in serious doubt and was rather overshadowed by the referendum on abortion, held in November 1992.

Vernon Bogdanor in *Referendums around the World*, ed David Butler and Austin Ranney (2nd ed 1994) noted<sup>80</sup>:-

Maastricht was defeated in Denmark in 1992, despite the fact that six of the eight parties represented in the Folketing were in favor of it, comprising 80 percent of the members. Along with the narrowness of the majority in France, a country that sees itself at the heart of Europe, this was a clear sign that the European Community was losing support among electors in the member states. In Britain, the government refused to allow a referendum, and survey evidence indicated that Maastricht would be defeated if put to the people. In Germany, where there was no provision for a referendum, survey evidence indicated uncertainty about Maastricht's ratification. The unwillingness of electors to endorse Maastricht when contrasted with the large majorities for it in the legislatures of the member states showed that the European Community was beginning to give rise to that deepest and most intractable of all political conflicts-that between the electorate and the political class. The referendum is an instrument peculiarly well equipped to expose such a conflict.

---

<sup>80</sup> p.96

## IX The Referendum - Arguments For and Against

This short section does not provide a comprehensive survey of the literature on referendums in the UK and in other countries or a comprehensive treatment of a complex constitutional subject. Instead it attempts to summarise succinctly the main arguments made for and against the use of referendums in the UK.

### *For*

1. A referendum can be a check on hasty legislation, particularly useful in the UK which lacks a constitution imposing limits on the power of government. In this view, the referendum is a method of securing entrenchment of certain policies.
2. The electorate is given the opportunity to have a say on major issues, which may not have received sufficient debate during a General Election.
3. The referendum might strengthen the powers of Parliament by enabling backbench MPs to propose a popular veto on legislation without endangering the survival of a government which in general they support.
4. The previous four referendums held in the UK have arguably all been concerned with the transfer of power of Parliament and have already created a precedent for referendums on major constitutional issues.
5. Conflicts with the principle of parliamentary sovereignty can be avoided by the use of advisory referendums only as occurred in the 1970s.
6. The referendum can be a valuable device for defusing political conflict, particularly where the issues involved cut across party lines.

### *Against*

1. It is impossible to prevent the Government from deciding which issues should be put to the electorate and what the question should be. In practice the choice of these issues is bound to stem from political pressures rather than from rational constitutional principles particularly in the UK context of an unwritten constitution.
2. The UK constitution is built on the responsibility of Ministers to Parliament. The use of the referendum cuts across these lines of responsibility and undermines parliamentary government, particularly in cases where collective ministerial responsibility is suspended.
3. It is possible for the electorate to accept or reject the proposal but not to amend it. In practice few issues are so simple as to be determined by a simple yes or no.

4. In practice referendums do derogate from parliamentary sovereignty. Parliament is a body of elected representatives chosen by the people to discuss and deliberate on Government proposals. Abdicating these decisions 'to the people' will harm Parliament's position, and possibly lead to a plebiscitary approach to political decision-making.
5. Referendums do not necessarily determine questions once and for all. Measures may be entrenched against the views of one party in Government but not entrenched against the subsequent whims of an electorate. Referendums can be no more than authoritative opinion polls.
6. Proponents of referendums are commonly enthusiasts for a particular cause only, or are acting from motives of political expedience, rather than genuine concern to 'consult the people'.

## X Practical aspects of the Referendum

This section considers, in broad terms, some of the practical aspects of a referendum in action; it does not deal with the question of principle of whether the referendum device should be a part of the UK's constitutional system. Decisions on whether or not to have a referendum on a particular issue will be matters for the Government and Parliament, as will the format of the referendum, the question or questions to be posed, the timing of the campaign and referendum, the financing and conduct of the campaign and so on. Most if not all of these aspects have been part of the ongoing debate on referendums for the UK, including the most recent debate, that of 13 February (considered above). They are also usefully analysed in a 1981 Hansard Society publication, *Referendums: guidelines for the future* as well as the more general texts cited in the bibliography.

Any particular referendum should, like an election, be 'acceptable', in the sense of being 'democratic' and 'constitutional'. By 'democratic' is meant that the result of a referendum must fairly and accurately represent and express the will of the people. By 'constitutional' is meant that the process must be accepted as a legally valid and legitimate means of constitutional decision-making. A referendum can be said to be acceptable if it is generally recognised by the winners and the losers alike as being decisive of the particular issue at stake, at least in the medium term.

These definitions have a superficial simplicity, but contain within them most, if not all, the difficulties and inconsistencies of the referendum issue. The starting point is the fundamental fact that the UK, almost uniquely in the world, does not have a written constitution. Unlike, say, the USA, where the courts can test legislation against the terms of a constitution, the UK's constitutional system means that the test of 'constitutionality', being virtually self-answering, is to a large extent irrelevant to the question of acceptability of a referendum created by Act of Parliament. This suggests that the 'democratic' test is the main, if not sole test of acceptability. This is a practical test: do the people and the relevant political actors, or a sufficient proportion of them, accept the process as conforming to recognised standards of fairness and democratic participation?

This test of democratic acceptability is crucial in the context of the areas of constitutional policy - Northern Ireland, Scotland/Wales, Europe - where its use is currently under consideration. The fairness and accuracy of a referendum depends on a number of factors, such as the scope of the eligible electorate; the organisation, administration and conduct of the referendum campaign; the nature of the question or questions asked; the method of calculating and publishing the result, and the outcome of the process. The UK's practice has tended to establish the framework for a particular referendum by a particular piece of legislation. There is no standing Referendum Act which can be used for any future occasions. The legislation tends in general to follow, as far as is possible, a general election format, even to the extent of recognising umbrella organisations for each of the (usually two) sides of the

argument, as some form of surrogate for the political parties in a normal election campaign, perhaps for campaign finance or broadcasting purposes.

However this approach can create some problems, especially if there are variations from some aspects of an election format, such as the arrangements for the counting of the ballots. For example, the legislation establishing the Northern Ireland border poll required the ballots to be counted "by reference to Northern Ireland as a whole",<sup>81</sup> presumably to avoid the formal identification of, for example, areas with a United Ireland majority, leading to demands for repartition. The 1975 EEC referendum was not counted nationally or by constituency, but by county or equivalent so that, in the words of one writer, "no member of Parliament should be embarrassed by a demonstrated discrepancy between his voters and himself".<sup>82</sup> This is but one aspect of the relationship between a constituency-based representative system in elections and the more 'direct democracy' element of a referendum.

To be acceptable to a sufficient proportion of both (or all) sides of a particular issue, it has been suggested that a referendum should have at least the possibility of more than one outcome. The result of the 1973 Northern Ireland border poll, for example, could safely be predicted in advance, especially with a Nationalist boycott of the poll, and, in that sense, may be regarded as confirming an anticipated outcome. Special majorities can have a role to play in this context, but they will be controversial if they are seen not as a way of ensuring genuine depth or breadth of support across the electorate for a proposition, but as a device designed to make a particular result more difficult to achieve. The domestic example is the 40% rule in the two 1979 devolution referendums, which meant that the simple majority in favour of Scottish devolution was insufficient to bring that desire into effect. Special majorities are considered further on p39.

British practice on referendums, limited as it is, has tended to favour the narrow rather than the broad perception of the electorate appropriate to a particular referendum. So the Northern Ireland border poll was restricted to the 6 counties and the Scottish and Welsh devolution referendums in 1979 took place in these countries only. Should the voters of the rest of the UK also have a say in the future of the forms of territorial government of the UK, especially if what is at stake, as the Government maintain, is the future of the Union itself? The case of Northern Ireland is particularly difficult, with the theoretical potential for a joint referendum, or even parallel referendums, north and south of the border over proposals resulting from the current peace process. Are the people of Great Britain, as well as the electorate in Northern Ireland, entitled to participate in referendums dealing with issues such as which countries remain in or may leave the UK? Similar arguments could be applied to European Union developments also. Should not existing members, as well as applicant countries, have a say through the ballot box, rather than indirectly through the actions of their Governments, on whether to allow any particular country to join the EU?

---

<sup>81</sup> Northern Ireland (Border Poll) Order, SI 1973/97, Art 8(1)

<sup>82</sup> D Butler, "United Kingdom" in Butler al, *Referendums*, 1978, p214

A crucial practical issue is that of the question or questions in a referendum. Ideally a referendum should be constructed in such a way as to enable voters to exercise a choice that as closely as is possible reflects their personal views of the issue under consideration. The propositions or questions should seek to achieve a balance between brevity, clarity and simplicity on the one hand, and full and accurate descriptions of the issue(s), in order that voters can make an informed choice. Questions can be of a YES-NO format as in the 1975 EEC referendum or the 1979 devolution referendums, or a choice between two or more options as in the 1973 Northern Ireland border poll. From this follows the idea that the final outcome should reflect, as precisely as possible, the aggregated exercises of individual voter choice. Thus a referendum should (a) allow individual choice to be reflected accurately - 'micro-fairness', and (b) produce a final result which translates, with minimal distortion, the aggregation of individual choices - 'macro-fairness'.

An aspect of question-setting is the notion that a referendum question, or set of questions, should perhaps not be so constructed as to force those with diametrically opposed views to vote the same way. For example, in the 1979 devolution referendums, supporters of independence and supporters of some version of devolution different from that on offer under the Government's legislation had to choose whether to vote YES (ie with the supporters of the Government's plans) or NO (ie with the opponents of any form of devolution). A referendum on some aspect of EU policy could pose such problems. For example, if the UK had conducted a referendum on the Maastricht Treaty in 1993, a simple 'Do you support ratification YES-NO' format could have forced anti-marketeters, Eurofederalists, supporters of Maastricht+social chapter or Maastricht+EMU all into the same camp. The Irish referendum on Maastricht demonstrated that subsidiary issues, such as abortion, can intrude on the referendum exercise, as can, obviously, support for the various political parties, whatever side they are on.

The construction of the question also should perhaps also ensure that in a referendum with two or more options, every significant option which voters are likely to choose is available to them. In the Northern Ireland border poll in 1973 voters were given two options, remaining part of the UK or uniting with the Irish Republic. These options did not directly cater for, say, those who may have wished for a fully independent Northern Ireland, or those who may have supported a redrawing of the border. The option of remaining in the UK did not distinguish expressly between full integration within the UK, that is on the same basis as England, Wales or Scotland, or some form of devolved basis.

Much depends on the nature of the issue which is the subject of a referendum. A decision on what might be termed a 'static' question -- to remain within the EU, or to unite the two parts of Ireland -- is more readily suitable for a simple referendum than one on what may be termed a 'dynamic' or 'process' question, such as the stages of the process of European Union development. A referendum may be an appropriate device for both types of issue. There is no reason in theory why a referendum should not be used at each major step of a dynamic constitutional process, such as the progression to European unity. However, in such a

dynamic process the choice of particular developments to be the subject of referendums can be problematic. In the extreme case, if referendums are not granted for any particular stage of such a process on the basis that each stage is not sufficiently constitutionally significant in itself, then it is possible that the overall constitutional change, which may be of fundamental significance, may never have been subject to a referendum. Allowing a series of referendums on a process matter would be a novel approach in the UK, but could have the virtue of enabling voters to decide how far, if at all, they wish a particular process to go.

Another way of solving the problem of subjecting more complex questions to a referendum is to provide more detailed choices in the referendum. Proponents of a 'multi-option' referendum on Scotland's constitutional future, a well-canvassed option following the 1992 general election, claimed that this method would allow supporters of devolution, independence or the status quo to express their view openly and directly. Such multi-choice referendums have to be constructed carefully, so that voters can understand and operate them. This may be by way of a two-part question format, ie 'are you in favour of change, and if so which change?' Or it can be by a preference vote system, grading a range of set options.

Another method of ensuring the acceptance of the outcome of a referendum exercise is the requirement for a special majority, such as the 40% rule in 1979. This incorporates the idea that major constitutional change is something more important than the result of ordinary elections, and therefore should be the result of something more than a simple plurality of the votes. There are various forms of special majority, such as requiring an overall majority of voters (if a multi-option question) or of the electorate, or a specified level of support in terms of votes, or again as a proportion of the electorate. It must be borne in mind that special majorities make the issue of the scope of the eligible electorate of particular importance. The accuracy and currency of the relevant electoral register, and the means whereby the total electorate is calculated is crucial, as was seen in the devolution referendums where, for example, the Secretary of State for Scotland was given the task of making such determinations as the number of voters on the register who had died, or were convicted prisoners and so on. This is not a mere technical issue, as the official figure of deductions from the register (c.90,000) was far less than the maximum possible deduction made by some academics of nearly 630,000. Such a difference clearly affects the achievement of the 40% electorate threshold necessary for the devolutionist cause to succeed<sup>83</sup>. Special majorities can also cause confusion about the effect of abstention, again as the 1979 devolution referendum demonstrated. Questions of turnout could be dealt with, in theory, by compulsory voting.

This brief analysis suggests that it may be difficult for a referendum in the UK, or any part of it, to meet all the ideal criteria of acceptability. The more a referendum is constructed to reflect accurately and transparently the wishes of the electorate, the more complex it may become, thereby leading to the possibility of misvoting and electoral apathy. On the other hand, a 'simple' referendum of the YES-NO or dual-option variety may not always be sophisticated enough to cater for all the varieties of opinion which may determine voters' choice in any referendum we may have in the near future. Neither format necessarily produces a 'decisive' result so as to settle the relevant issue.

---

<sup>83</sup> V. Bogdanor "The 40 per cent rule", (1980) 33 *Parliamentary Affairs* 249, pp.252-5

## XI Selected Bibliography

(Items concentrate on the use of referendums in UK politics)

*Contemporary Review* April 1890 "Ought the referendum be introduced into England?" A V Dicey

*Political Quarterly* Jan/March 1975 "The Case Against a Referendum" by J Mackintosh

*The 1975 Referendum* (1976) by D Butler and V Kitzinger

*Referendums: a comparative study of practice and theory* (1978) ed David Butler and A Ranney

*The Referendum experience: Scotland* (1979) ed John Bochel, David Denver and Allan MacCartney

*The Referendum Device* (1981) ed A Ranney

*The People and the Party System: the referendum and electoral reform in British politics* (1981) V Bogdanor

*The Constitution in flux* (1982) P Norton chapter 11 "Referendums: who decides?"

*New Law Journal* 18/3/88 "Referendum is a foreign word" by S Bailey

*Contemporary Record* Winter 1988 "Referendums in British politics" V Bogdanor

*House Magazine* 13/1/92 "Referendums" by P Norton

*Referendums: guidelines for the future*, Hansard Society, 1981

*Referendums around the world* (1994) ed.D. Butler and A. Ranney

**Appendix**

**Results of referendums in the United Kingdom**

**1. The Northern Ireland Border Poll 8 March 1973**

Do you want Northern Ireland to remain part of the United Kingdom?	591,820	(98.9%)
Do you want Northern Ireland to be joined with the Republic of Ireland outside the United Kingdom?	6,463	(1.1%)
Rejected ballot papers	5,973	
Turnout	58.7%	

*Source: The Northern Ireland Border Poll 1973 Cmnd 5875 paragraph 68*

**2. Referendum on UK membership of the EEC, 5 June 1975**

Do you think that the United Kingdom should stay in the European Community (the Common Market)?

Yes	17,378,581	(67.2%)
No	8,470,073	(32.8%)
Rejected ballot papers	54,540	
Turnout (a)	64.0%	

(a) Civilian turnout only. If service voters, for whom special arrangements were made, are taken into account the overall turnout was approximately 60%.

*Sources: The Certificate of the Chief Counting Officer Cmnd 6105  
FWS Craig British Electoral Facts 1832-1987 Table 13.02*

**3. Referendum on devolution for Scotland, 1 March 1979**

Do you want the provisions of the Scotland Act 1978 to be put into effect?

Yes	1,230,937	(51.6%)
No	1,153,502	(48.4%)
Rejected ballot papers	3,133	
Turnout	63.6%	

A provision of the Scotland Act was that not less than 40 per cent of persons entitled to vote should vote Yes in the referendum. In the event, only 32.8 per cent of the electorate voted Yes.

*Sources: The Certificate of the Chief Counting Officer Cmnd 7530  
FWS Craig British Electoral Facts 1832-1987 Table 13.04*

**4. Referendum on devolution for Wales, 1 March 1979**

Do you want the provisions of the Wales Act 1978 to be put into effect?

Yes	243,048	(20.3%)
No	956,330	(79.7%)
Rejected ballot papers	3,309	
Turnout	58.8%	

A provision of the Wales Act was that not less than 40 per cent of persons entitled to vote should vote Yes in the referendum. In the event, only 11.9 per cent of the electorate voted Yes.

*Source: FWS Craig British Electoral Facts 1832-1987 Table 13.03*

**Related Papers on this subject are:**

**Government & Parliament**

95/19	Confidence Motions	07.02.95
95/6	Implementing Jopling : The 1994-95 Sittings Reforms	17.01.95
95/1	Parliamentary Pay and Allowances: The Current Rates	03.01.95
94/132	Northern Ireland - The Downing Street Declaration One Year On	19.12.94
94/130	By-elections since the 1992 general election	16.12.94
94/116	Parliamentary scrutiny of deregulation orders	22.11.94
94/96	Sittings Reform and the Jopling Report	08.09.94
94/94	The English Parliamentary Boundary Review: Progress Report August 1994	23.08.94
94/86	Members' Financial Interests	11.07.94
94/85	Proposed Changes to Scottish Parliamentary Business	08.07.94
94/42	Public Interest Immunity	10.03.94

**Research Paper 95/23  
Title: Referendum**

**Section Code: HAS**

It would greatly help to ensure that Research Papers fulfil their purpose if Members (or their staff) would fill in and return this brief pre-addressed questionnaire. Negative responses can be as useful as positive.

For your purposes, did you find this paper:

	Very useful	Quite useful	Not much use	Any comments?
1.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
2.	Too long <input type="checkbox"/>	The right length <input type="checkbox"/>	Too short <input type="checkbox"/>	_____
3.	Clear <input type="checkbox"/>	Not always clear <input type="checkbox"/>	Rather unclear <input type="checkbox"/>	_____
				_____
				_____
				_____
				_____

Name ..... MP/Assistant to .....  
*(Please print)*

*Please fold*

---

**INTERNAL**

**Miss Nicola Harland  
House of Commons  
Department of the Library  
1 Derby Gate  
London SW1A 2DG**

---

*Please fold*