

FIN ON THE DRY SIDE 226

REFERENDUMS John Hyde

It is rare that a book changes my mind as completely as The Center for Independent Studies publication, "Initiative and Referendum: The People's Law", by Geoffrey de Q. Walker. Professor Walker's arguments for referring public policy directly to the people are common sense, even commonplace, but, brought up on the Westminster system and A. V. Dicey's theory of absolute Parliamentary sovereignty, I had not considered them. Was not a Referendum an appeal from the informed to the uninformed?

Walker's key arguments are that:

- * In practice our parliament does not work at all like Dicey's theory.
- * Three techniques which give the public a direct say in their government---the initiative, the referendum and the recall---are already functioning smoothly in other countries.
- * Where they are tried referendums have not resulted in persecution of minorities, irresponsible budgeting or any of the abuses which their critics predict. Besides, Parliaments' record is much less than perfect.
- * Public participation legitimises law-making and appointments to public office so that people are more likely to accept them even when they disagree.

At close hand I saw the Whitlam and Fraser Governments treat Parliamentary ratification of their plans as an inconvenience to be overcome by regimentation. Prime Ministers turn to Parliament for power, not advice.

In consequence Parliament is an arena for the performance of party charades. I was in the House when Whitlam, by failing to support the chair's ruling, forced Speaker Cope to resign. Cope would not give the rulings Whitlam wanted. On radio I hear the partisan rulings of the present speaker. I was there when Fraser refused reasonable debate of a Public Works Committee's report on the Australian Defence Force Academy because the findings were adverse to the position he was already determined on. House of Representatives staff tell me that Parliament is treated with even greater contempt by the present government than the last. Walker quotes a Professor Hughes who described the House of Commons as "two sets of whipped dogs who follow their masters." Perhaps Hughes is perhaps nearer the truth than Dicey.

Further, Parliament is sometimes even more in thrall to vested interests than the government. The Senate in particular is often a barrier to ends for which there is the widest community support, such as budget balance. Parliament, representing tightly-held interests, often serves the broad community poorly.

An MP is usually better informed than individual voters but it does not follow that he is more wise, that his judgement is better than their collective judgement, or that he will

necessarily use his judgement on their behalf. My electors knew that with the help of my colleagues I had achieved a large public debt, inflation and unemployment---that was knowledge enough to vote. People who could not describe the causes of debt, inflation and unemployment knew when it was time to sack McMahon, Whitlam, Fraser and me. They learned what they had to know to use their vote wisely. Why wouldn't they do the same if they were offered direct democracy?

The proven techniques are:

- * The initiative: which allows a prescribed number of voters to compel the holding of a binding poll on whether a proposed law of their choosing should be adopted or whether a particular law in force should be repealed.
- * The referendum: which allows a specified number of voters to petition for a referendum on legislation that has passed the Houses but has not yet taken effect. It is the people's veto.
- * The recall: which is a petition for a vote for the removal of a public figure.

Switzerland is a nation in spite of the odds. It has fundamental religious differences, four separate official languages---German, French, Italian and Romansch---marked attitudinal differences, a hundred years ago was a poverty-stricken backwater, and suffered its last civil war as recently as 1847. It holds referendums every three months and is now the wealthiest country on earth bar a couple of Arab states. And "Who ever heard of a Swiss demagogue?"

Italy used the referendum four times in the 1970s to resolve issues which were highly charged---divorce, abortion and anti-terrorist legislation. In 1985 the Italians refused wage indexation which would have given them higher pay in the short term but put the long term at risk.

In Australian referenda voters have consistently opposed giving more power to Canberra but have not been unmindful of human rights. At the height of the cold war the public opposed Menzies' plan to ban the Communist Party and in 1969 recognised Aborigines with a 90.8% majority. I believe that Australians would have voted for balanced budgets, against the use of the Foreign Affairs power in the Tasmanian Dams case, against union and airline monopolies, for ANZUS and so on. If the recall had been available to them I do not believe Justice Murphy would have been appointed. If it had been used after the Whitlam dismissal to decide whether Sir John Kerr should continue in office, whatever the outcome of the ballot, it would have been likely to have been accepted sparing Sir John and the nation much bitterness.

Consider an extreme case. In 1933 a demagogue came to power by due process following an election in Germany. He won by opposing the inflationary policies of the then government and the costly bullying behaviour of some Communist-led trade unions. Within months the process by which he came to power was

destroyed and within years his murders were to rival the record set by the Communists in Russia. In 1933 he had the support of many decent people. How much better would it have been if they could have voted against printing money and against union bullies without voting for Hitler?

In Australia the public might wish to say, "no" to one or several policies (or accidents of government) or appointments without throwing the government out of office---to distinguish between men and measures. Professor Walker writes, "In the light of the experience of the last 100 years, it is no longer possible to construct an argument against the legislative petition, the 'peoples veto', that is not an argument against democracy."

In 1979 Senator Colin Mason tabled a petition calling for the citizens' initiative signed by 10,000 voters. He later introduced legislation which has not received the enthusiastic endorsement of the Parliament. In the United States, where several States use the initiative and referendum regularly, there is two-to-one support for them to be available at Federal level. They and the recall could be popular planks in an Australian party's platform.