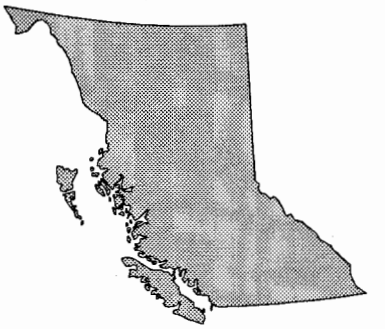
Institutionalizing Populism in British Columbia

by Norman J. Ruff

This paper explores the renewed interest in three components of direct democracy (recall, initiative and referendum). The revival of interest is viewed as originating not only in the immediate national and provincial political context of the 1990s but also from a longer British Columbia tradition. The historic targets of direct democracy movements have remained the same. Fear of political corruption, party machines and unaccountable politicians leave the political system open to appeals for direct democracy. Failings of the British Westminster model continue to excite its detractors. Responsible government through executive dominance and party discipline is seen as inhospitable to direct citizen participation. Elected representatives appear to enjoy unqualified security of tenure between and even during elections.



The introduction of the British Columbia *Referendum Act* in 1990 and the subsequent October 17, 1991 referendum on the introduction of recall and initiative represent the first formal steps in over 70 years toward a welding of other instruments of participatory democracy within the province's existing structure of representative government. As the *Vancouver Sun* aptly expressed to its readers in an election day editorial, "Facing us is not only the choice of government, but the nature of government itself."[1]

Appeals to the electorate from populist platforms are not new to British Columbia.[2] Populist orientations have long run deep in the province's political life and cross party lines.[3] Like their Western provincial cousins, British Columbia's major political parties have historic lineages rooted in the Canadian populist revolts of the 1920s which incorporated demands for direct democracy within their political agendas. Between 1912 and 1936, provincial governments in Saskatchewan, Manitoba and Alberta responded with their own version and parts of the populist trinity.[4] In 1919, British Columbia shared in some of this experience by providing for voter initiation and approval of legislation under a *Direct Legislation Act*. The statute was, however, never proclaimed.

A reform minded British Columbia Liberal Party lead by Harlan Brewster promised direct legislation in its 1916 election platform. This platform had been shaped some three years earlier at the Revelstoke convention where the party not only unanimously approved "Women's Suffrage" but considered a comprehensive series of other electoral reforms that included the initiative, referendum and recall together with proportional representation. Brewster re-asserted this commitment in his March 1916 by-election campaign when, on his nomination for a Victoria seat, he outlined what he termed "New Liberalism". This included direct legislation which Brewster described as perhaps one of the most constructive planks ever presented to the people of British Columbia and one possibly not so well understood as any of the other. He explained that:

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> the theory of representative government is that the men elected to parliament represent and translate into legislation the wishes of the people that elect them. In actual practice in British Columbia we have seen that this is not the case, that many issues were evoked upon which very divergent views may be taken to the electorate, but the strong spirit of partyism prompts them to vote for their party nominee, who often assists in enacting legislation the very opposite of that desired by the electors who gave him his position.[5]

Referring to the demand for a referendum on prohibition, Brewster, argued that, if put at the time of an election, it would be drawn in to the "vortex of party strife" whereas: "With the creation of machinery of direct legislation this question as well as others upon which there is sufficient public sentiment to set the machinery in motion, will be dealt with by the electorate on their merits, and without political bias."[6]

British Columbia's politicians had contested provincial elections under provincial party labels for little over a decade but direct democracy already had an appeal to strong anti-party sentiment, or at least anti-Conservative sentiment directed against that party's virtual one party dominance of the fledgling provincial party system. Brewster emphasized this during the successful by-election campaign. "Direct legislation meant that legislation could be obtained in spite of the machine. It meant real rule by the people. In such a matter as prohibition, which should not be made a matter of party politics, it offered a method of dealing with it which was fair to all interests concerned, since it left it absolutely with the people to say what they desired."[7]

During the subsequent 1916 general election, one of the most influential Liberal Party spokesperson, William Sloan, former MP and Liberal candidate for Nanaimo and later Minister of Mines 1916-27, also attracted attention for his support of referendum, recall and proportional representation.

One year after Brewster's death, his successor, Premier John Oliver, delivered on the Liberal promise by introducing Bill 34 *An Act to Provide for the Initiation and Approval of Legislation by the Electors* on February 27, 1919. Short titled *The Direct Legislation Act*, it allowed citizens' initiatives where a petition was signed by at least 25 per cent of the total electors (and included ten per cent of the electors in 75 per cent of the electoral districts). If this did not result in subsequent legislative action, the proposed law would be the subject of a referendum. If approved by a majority, that law was to be "enacted by the Legislature at its next session" without amendment– or with minor ones certified by the Speaker- and "come into operation upon receiving Royal assent." Where a different law on the same subject was proposed in a resolution by the Legislature, both laws would compete in a referendum. Twenty-five per cent of the electorate –with signatures of ten per cent in 75 per cent of the districts– could also force acts designated by the Legislature as subject to referendum to face a referendum vote by the electorate. Special votes before a general election could occur where a petition contained the signatures of 30 per cent of the electors but would have required at least 55 per cent of the electorate to be successful.

The Premier did not speak to the bill on its introduction and the defence was left to Attorney General Farris who presented it as a carrying out of the Liberal party pledge. A.I. Fisher, Liberal member for Fernie put the bill in another larger context of post war unrest and abnormal conditions and suggested that "the adoption of the principle of the bill would provide the necessary safety valve, thus eliminating more serious trouble over economic and social questions."[8] The bill was not only opposed by the Conservative party opposition led by William Bowser, but also by MLAs who might have been expected to be carriers of populist direct democracy sentiments. Both Lieutenant-Colonel J. McIntosh, an independent Liberal styled as leader of the "Soldiers' Party" and J. Hawthornthwaite, Socialist member for Newcastle attacked the legislation for its incompatibility with constitutional principles.[9] McIntosh had previously supported direct legislation but he explained this had been in the form of what he termed "pure initiative". He characterized the government's proposal as a "phantom" and argued that the constitutional point raised in Manitoba had led to the unwise provision for bills passed upon by the people coming back to the legislature and that this would undermine responsible government. It would be "much better to have the present system under which a Government would resign if its policy were not approved".[10] Hawthornthwaite labelled it an illusion and a snare and, regretting that "some supposed socialists were in favour of the proposed legislation" urged caution on amending or limiting the powers of the "unwritten constitution" and "copying the United States in such matters." He asserted "We can do all these things the bill proposes. We are delegated to do it, and we are paid to do it." As a socialist he advised adoption of constitutional means since "he knew of no other system under which greater opportunities existed for properly attaining their ends than the present system of constitutional government." He continued: "We have a full democracy, perhaps as far as we can have it under existing conditions of production. I can quite understand why, under conditions as they exist in the United States, it has been deemed necessary to have legislation along the lines suggested by this bill, but I believe there is no need for it here".[11]

In British Columbia at least, some socialists and soldier populists also had a sense of constitutional parameters. Bowser argued that there had been no public demand for such a measure which would be confusing, costly and achieve nothing. He mockingly noted that the government had omitted recall as the most important feature of the "freak legislation of the United States" on which it was modeled. With some prescience he denounced it as "Paper Legislation" and drew attention to the "little joker" which made it subject to proclamation and hence "strongly appealed to the Government for under it the administration could go to sleep on the measure and forget about it". He argued that it catered "to ultra labour and Socialist and any other classes favouring very advanced legislation", or was another way of holding a vote on prohibition without the government taking any responsibility for it. His seat mate Pooley similarly denounced it as "camouflage legislation".

The bill received Royal Assent, March 29, 1919 but failed to be proclaimed by the Lieutenant Governor and languished on the statute books until eventually removed in the consolidation for the 1924 Revised Statutes. It is generally assumed that it was never proclaimed due to the uncertainty about its constitutional validity. The Attorney General of the time, John Wallace deBeque Farris confirmed this interpretation for a researcher 37 years later.[12] That uncertainty came from the court decisions concerning the Province of Manitoba's experiment with direct democracy.

Constitutional Uncertainties

The Manitoba Court of Appeal's decision in the reference case *Re-Initiative and Referendum Act*, which struck down Manitoba's 1916 legislation for initiative and referendum,[13] found that the constitutional implications of direct law making by citizens were incompatible with the constitutional monarchy component of the Westminster model of legislative power.

Justice Perdue argued that: It would make the electorate a law-making body possessing powers which by the *BNA Act* are conferred on the Legislature alone. This would be wholly opposed to the spirit and principle of the Canadian constitution and of the constitution of the United Kingdom.

Furthermore, since no opportunity was given to change or amend a measure submitted to the electors, "it would not only be contrary to the spirit of the constitution, but would be subversive of it." His fellow justice A.E. Richards put the key issue bluntly: "In Canada there is no sovereignty in the people".[14] On appeal to the Judicial Committee, Lord Haldane agreed that the alteration of the position of the Lieutenant Governor (in which "the Lieutenant Governor appears to be wholly excluded from the new legislative authority") made the act *ultra vires* and that this purpose made those section of the act that had been to referred to the courts, also *ultra vires*.[15] Stephen Scott's discussion of constituent authority and the provincial lawmaking process summarized the constitutional finding as follows: "a provincial legislature cannot vest (primary) powers of legislation in any authority, including the electors, without providing for presentation to the Lieutenant-Governor for Royal Assent".[16]

> ***A Manitoba court found the* *Initiative and Referendum Act* *invalid since it was beyond the powers of the provinces to amend their own constitutions and an abrogation of the power possessed by the Crown through the Lieutenant Governor.***

Just three months after the passage of the BC bill, it had been established that the constitutional framework could be a major hurdle for any attempt to insert direct citizens' lawmaking into the Canadian legislative process. Initiative and referendums would not withstand constitutional scrutiny if they entailed the creation of a new legislative power other than that of the provincial legislature. Since it required legislative enactment and Royal Assent, the wording of the British Columbia statute may well have withstood any court challenge but was allowed to remain unproclaimed. Political expediency, in the absence of popular agitation or populist enthusiasm and constitutional caution on the part of the Oliver government are perhaps the most plausible explanations for its demise.

Preludes to the 1990s

This episode did not end populist institutionalism within the province and there is evidence that it continued into the mid-1920s as shown by James R. Colley's agitation for recall provisions. MLA and Mayor of Kamloops, Colley was unfortunately himself accused of a conflict of interest for goods sold to the provincial government and had to fight two court challenges under existing conflict provisions to retain his Kamloops seat.

Direct democracy first crossed the stage of the modern provincial political agenda as a relatively inconspicuous component of the proposals put forward by the Social Credit party early in 1975 as it sought to re-position itself in the wake of its 1972 electoral defeat. Opposition leader Bill Bennett first broached the possibility of an initiative

process early in 1975 and on March 6 introduced a private member's Citizens' Initiative bill to amend the Legislative Assembly's Standing Orders regarding the submission of petitions.

The Standing Orders of British Columbia's Legislative Assembly have always contained provisions for the presentation of petitions but without debate.[17] Bennett's private member's bill would have required that, where any petition received support from ten per cent of the registered voters, the specific issue (or legislative proposal) would have to be debated by the Legislative Assembly within ten days of it being recorded in the Orders of the Day. Such debate would not exceed three hours and would end with the question being put with a free vote. The outcome would not have constituted a matter of non confidence nor would it be binding on the government.[18] Described as a "modified initiative system", Bill Bennett took pains to distance it from a "full initiative" or "the US system of plebiscites or propositions".[19] Rather than a populist revival, it was more a protest against the New Democratic party government's own lengthening legislative agenda and poor record in allowing member's resolutions or private members' bills to come to debate.

The existing provisions for the presentation of petitions only permitted a statement by the members making the presentation as to the source, number of signatures, "material allegations" and the reading of its "prayer". Members were also "answerable that they do not contain impertinent or improper matter". On the day after a presentation, the Clerk of the House was to report on any irregularity or matter it contained in breach of the privileges of the House before the petition was deemed read and received- again without debate unless it was a personal grievance which required immediate reply in which case an immediate discussion could ensure. The Bennett bill retained these general parameters for a "Citizens' Petition" and would have been subject to the standing order's third prohibition against receiving petitions that proposed any public, expenditures, grants or charges from the Consolidated Revenue Fund or funding by the House itself.[20] It met the fate of most private member's bills on second reading but not before the Speaker observed that it would be undesirable to amend the Standing Orders in this fashion rather than through a resolution since it gave the Crown the right to interfere with the business of the House.[21] The proposal was carried over into the Social Credit 1975 campaign literature as a measure to "grant real power to people in their relations with government". In 1976, the newly elected Bennett government fulfilled many of its electoral promises of increased governmental accountability and openness. It introduced the Offices of Ombudsman and Auditor General, however, the new Social Credit government had lost its interest in citizens' initiatives.

The issue was again revived in the Legislature by the Liberal Party leader Gordon Gibson in his 1978 proposals for legislative reform. He first argued the case for initiative and referendum in the context of proclaiming the 1919 Bill 34 *Initiation and Approval of Legislation by Electors Act*. He then added a reminder to his questions that the Social Credit government had promised citizens' initiatives during the 1975 electoral campaign.

Referendum Act 1990

The British Columbia *Referendum Act* was first announced in the 1990 Speech from the Throne but only introduced by the provincial secretary, Howard Dirks, as Bill 55 on July 5, 1990 in the closing days of the session which many thought the last before a provincial general election. The act was painted as an "evolutionary step" which "respects our parliamentary tradition in retaining discretion over its use in the hands of elected representatives,..."[22]

> ***In the 1990s, British Columbia re-entered the world of direct democracy, first in the passage of its own Referendum Act and, secondly, by the provincial government using that instrument to gauge support for the introduction of citizens' initiatives and the recall of elected representatives during the October 17, 1991 general election.***

Dirks explained that the government was prompted to be cautious and not yet embrace the direct initiative because of the kind of concerns that came from the California experience. Confined to only a few basic provisions with little reference to the full framework required for the implementation and conduct of a province-wide referendum beyond the provisions of the existing *Election Act*, the original bill was a carefully controlled experiment in citizens' participation.

The 1990 Referendum Bill originally made the outcome binding only a) where the order in council for the referendum specified it would be binding and b) on the government that initiated the referendum. By the time of second reading of Bill 55, the government had already prepared a package of amendments which also met the recommendations of the official opposition party. The first requirement was amended in the final version to remove the possibility of a purely "advisory referen-

dum" and section 3 of the Act would make the result binding on the initiating government if supported by more than 50 per cent of valid votes. Such a "binding referendum" still leaves wide room for discretion and manoeuvre since "binding" is defined so that:

> the government shall, as soon as practicable, take steps, within the competence of the Province, that it considers necessary or advisable to implement the results of the referendum through changes in programs or policy or by legislation.[23]

In this and other respects, the act appears more an experiment in semi-people's democracy rather than direct democracy and a manipulation of populist instruments for politically symbolic purposes.

British Columbia's 1990 *Referendum Act* gave the political executive absolute control over all aspects of the referendum process. There is no requirement for public participation or for any role by elected representatives in the formulation and timing of the referendum questions. The provincial cabinet orders the referendum, determines the question(s), sets the date, and the area where it will be held. The order does not have to be published in the official *Gazette* as is the case for the Writ of Election. Nor is there any referral of the referendum order to the Legislative Assembly, prior consultation with the leaders of the recognized opposition parties, or requirement for a debate to approve the text of the questions. The questions become binding but only on the government which framed them. The statutory framework also makes only minimal provisions for the conduct and administration of a referendum along with regulations which apply relevant sections of the *Election Act* and set out the form of the referendum ballot *B.C. Reg. 384/90 & 263/91*. There is no fairness/equity protective net over the activities and expenditures of individuals or groups in relation to a referendum nor requirements for full disclosure of contributors and organizers during the campaign. The statute worked well enough on its first outing for the inoffensive questions of October 1991 discussed below but any application in a more divisive and inflamed debate between well organized warring interests might pose serious strains.

The leader of the official opposition, Mike Harcourt, had initially attacked the bill and argued that "Referendums are supposed to be citizen-driven, not introduced by the cabinet. And they are not supposed to be a floating crap game where the cabinet can change the rules or percentages however they see fit".[24] With amendments pending, the legislation was, however, unopposed in the legislature and on second reading of Bill 55, the opposition party house leader chided the government for not going far enough.

> I don't think we have any real problem supporting this, if you're going to the American system of referenda, we would like to include initiatives. And recall- if we don't like a particular member through initiative we can recall him. Why go part way? Why stick just the tip of our toe in the water? Why don't you go the rest of the way? The point is that we don't object to this bill; we just don't think it goes far enough.[25]

One opposition member, Tom Perry warned about the province's history of the "darker side to populism" and the intolerance of ethnic groups and non-majority races and urged the premier and cabinet to exercise restraint to ensure referendums were dignified and reflected democratic traditions.[26]

In addition to this legislation, a bill which mirrored Alberta's legislation to conduct provincial elections to fill vacancies in the Senate of Canada (*Senatorial Selection Act*) was also introduced and passed in tandem with the *Referendum Act*. While targeted at the federal government to accept the so-called triple E (Elected, Equal, Effective) Senate reform proposals emanating from the Western provinces, it clearly came from the same direct democracy stable as the *Referendum Act*. A second formal direct extension of citizens' participation in the law making process also came as an adjunct to the *Referendum Act*. The *Constitutional Amendment Approval Act* required the provincial government to submit any proposal amendments to the constitution of Canada to a referendum before any resolution could be introduced in the BC legislature.

Just three weeks before he was forced to resign, Premier Vander Zalm explained with a populist flourish that:

> All the people, regardless of where they live in this province, will be given ample opportunity to voice their views and to decide how we proceed when amending the constitution. Obviously too, it will send a clear message to Ottawa, which we understand to be necessary now, that BC will insist on being involved in the process and that they can't make unilateral deals with Quebec; we the province, we the people will be involved.[27]

This constitutional requirement together with similar ones in Alberta and Quebec helped frame the federal government's decision to conduct a referendum on the August 28, 1992 Charlottetown Consensus Report on constitutional reform. The better grounded and comprehensive national machinery under the federal 1992 *Referendum Act* was sensibly allowed to supersede the BC provisions.

Democracy of Free Choice 1991

As the legislature moved to the end of its five year, there was much speculation as to what issues would be made

referendum topics in the approaching general election. Premier Vander Zalm had initially suggested that it could be especially used for constitutional issues or "almost any other issue where there's a great deal of controversy and where there are strong feelings one way or the other in a community or a region or the province."[28] The "philosophical direction" for Aboriginal land claims or self government, budgetary restraint, and environmental disputes were high among the possibilities that the provincial government might choose to dictate as the main policy agenda items for the election campaign.

In preparation for the first use of the referendum provisions at the next general election, the October 1990 convention of the governing Social Credit Party invited two Californian specialists in initiative and referenda to conduct a political seminar on direct democracy. The 1990 California initiative process, with 13 propositions then on the general election ballot including the controversial "Big Green" environmental initiative, provided ample illustrations of the political and financial realities of the world of referendums for the delegates. In his speech to the convention, Premier Vander Zalm argued the case for his direct democracy experiment.[29]

By the spring of 1991, Rita Johnston, had replaced Mr. Vander Zalm as premier following his resignation in the wake of the conflict of interest findings concerning the sale of his Fantasy Gardens theme park. A special committee made up of cabinet members and political advisors had been formed to consider possible referendum questions. Special regionally targeted questions appear to have been a real possibility but were ultimately abandoned to avoid confusion in this first test of the referendum legislation. The policy issues aired by the former premier were also let go for their highly divisive potential for the election campaign. Two weeks before calling the general election, Premier Johnston chose to place an extension of citizens' participation in the form of initiatives and recall before the electorate rather than any immediate regional or province-wide public policy issues. This was in contrast to Saskatchewan where a day earlier Premier Grant Devine had announced that his voters would have non-binding plebiscites on public funding for abortions, budget deficits and the constitution.

Political elite opinion surrounding the two questions was much like that described by David Magleby regarding direct legislation in the United States – in favour in general terms but with mixed feelings.[30] Widespread public support was anticipated for a yes vote on both questions and may candidates for all three major parties publicly expressed their agreement in principle with the idea behind the questions while hinting at concerns for the complexity of instituting them.[31] The New Democratic Party leader, Mike Harcourt immediately dubbed the questions, "half-baked, halfway measures" but, in a commitment which was to take on more significance than he perhaps imagined, agreed to abide by the results of the referendum questions and said that he would personally vote yes to both. Liberal leader Gordon Wilson, was far more cautious. On recall, Mr. Wilson indicated that he had "grave and serious concerns" and that it "provided unrealistic expectations to people" with no clue how it was going to work or how much it would cost.[32] Like other observers, Wilson suspected that the questions only confirmed that this flirtation with direct democracy was undertaken to defuse any possible interference by the Reform Party in the provincial campaign.[33] The provincially based British Columbia Reform Party leadership had already announced its intentions to run a half to a full dozen candidates behind its direct democracy platform and its president, Ron Gamble, denounced the recall referendum as a devious bribe.[34] From the perspective of the regrouped Social Credit Government, the questions had some potential to defuse the public concern with integrity and accountability in the wake of the Vander Zalm years. The prospect of implementing recall, for example, might offer some insurance to a disaffected electorate and persuade voters to again take a chance on their Social Credit representatives. British Columbia's Social Credit party has always owed much of its appeal on the power of positive thinking but in this case it proved a forlorn hope.

A returned government would have enjoyed considerable freedom of action not only because of the *Referendum Act* provisions but through the very general wording of the questions:

> **Question A**: Should voters be given the right, by legislation, to vote between elections for the removal of their members of the Legislative Assembly?
>
> **Question B**: Should voters be given the right, by legislation, to propose questions that the government of British Columbia must submit to voters by referendum?

This wording also left their implementation dependent on further public consultation before framing the required legislation.[35] The referendum order in council 1203-91, September 4, 1991, did not specify that the results would be binding. A 50 per cent vote would have automatically made it so under the *Referendum Act*, but the premier took pains to publicly commit herself and her government to be bound by the outcome. Contrary to what had been originally expected when policy issue topics were contemplated, scant attention was paid to the initiative-recall referendum questions during the September-October 1991 campaign. They were totally eclipsed by the attention given to the leadership styles of

the three main party leaders and the formation of the next government.

Referendum Outcome and Patterns

The official statement of results as first published in the November 21, 1991 BC Government *Gazette* indicated 80.9% of valid votes registered a Yes for the ability to remove their member and 83.02% in favour of voter initiatives. These percentages overstate the level of support for each question among the total electorate who took part in the October election and obscure some of the dynamics of the referendum vote. In particular, they overlook the significance of spoiled ballots and non-participation. On October 17, 135,363 voters had their referendum ballots rejected (9.13 per cent of the total) on recall and 163,906 (11.05 per cent) had their initiatives ballot rejected. By comparison, in the simultaneous voting for candidates in the 1991 general election, only 30,733 (2.06% of total votes for the Legislative Assembly) were rejected. These numbers indicate that many voters may have deliberately spoiled their referendum ballots. Furthermore, in the general election, 1,493,200 (75.07 of registered voters) voted for a MLA but 10,292 (0.52 per cent) of these chose not to participate in the referendum ballot.[36] Some may have been simply neglectful but others may have been conscientious boycotters.

Recognition of both spoilers and voter boycotters reduces the overall majority of the Yes votes by 7-10 percentage points but the proportion remains overwhelming. The A question on recall and B on initiatives were together supported by at least two thirds of those voting on the two questions in all but one of the 75 electoral districts. There were, however, significant regional variations in vote with a low approval of 66.84 and 65.79 per cent of all referendum ballots respectively in the capital region district of Oak Bay-Gordon Head and highs of 80.95 and 80.56 per cent in Prince George North.[37]

The forced resignation of former Premier Vander Zalm and the media coverage of provincial political scandals over the previous 5 years probably fed much of the support for a recall process. For some voters, a no to recall might have seemed to signal forgiveness of all that had occurred under the previous government. This sentiment seems to have cut across party lines and there is, for example, no discernible pattern to each district's support for recall and its vote for the Social Credit party. More significantly, the 1991 general election provided the opportunity for a general recall as is evident in an electoral de-alignment which produced a drop in the support for the governing Social Credit party from 49.32 to 24.05 per cent of the vote and a rise from 6.74 to 33.25 per cent for the Liberals – paving the way for a New Democratic Party victory with 40.71 per cent of the votes and 51 of the 75 seats.

> ***It is one thing to be in favour of direct democracy in general and quite another to implement it as an adjunct to a political system where responsible government means responsibility to a Parliament rather than to the "People".***

The Aftermath

The overwhelming support that both options received was not legally binding on the newly elected New Democratic government but, because of the party's incautious campaign commitment, they remain on the public agenda and were referred to the Select Standing Committee of the Legislative Assembly on Parliamentary Reform. Its mandate was to "examine and inquire into all matters and issues concerning the two referenda questions placed before the voters in the 1991 provincial election" or as the Attorney General, Colin Gabelmann put it, to "ensure that parliamentarians have an opportunity to examine the implications of the two referenda questions".[38] Whether this was with a view to secure their implementation remained ambiguous. The interim leader of the Social Credit party, Jack Weisgerber maintained political pressures in pursuing the referendum results through his own motions within the legislature and the repeated introduction of his private member's Recall and Initiative Acts.[39] The 68 per cent No vote (72 per cent in rural ridings) in the October 1992 Charlottetown Accord referendum provided further evidence of a provincial electorate unprepared to defer to the exhortations of its political and economic elites. Increasing opposition to the New Democratic party government and in particular to the 1993 provincial budget has also made "recall" a popular rallying cry not only for Reformers but for members of such organizations as the Canadian Taxpayers Federation[40] and some segments of the provincial Liberal Party.

It is easy to make campaign promises on what are seen as peripheral issues or to criticize referendums for not going far enough and quite another situation to be a cabinet minister who might be policy pressured by initiatives and individually threatened by a recall. The provincial Select Standing Committee on Parliamentary Reform was presented with a difficult predicament in its task of balancing the immediate weight of the referendum results with a sensitivity to a Westminster model of parlia-

mentary government. Although its terms of reference did not specifically require it to help secure the implementation of recall and initiatives or to draft the institutional framework they would require, the voters had already answered the prior question of mandate. As Ujjal Dosanjh, the chair of the committee, put it at its first business meeting,

> The questions before us for consideration were put to a vote at the last election, and there was an overwhelming answer. Therefore I believe all of us may be agreed that we can't presume to be answering the question with a yes or no. We have to consider, in my humble opinion, what mechanisms we ought to put in place to give effect to the will of British Columbians;...No merits or demerits were discussed during the campaign, and as we go through British Columbia we will discuss the pros and cons of this particular concept, which debate will inform the kind of mechanism, we will have in place to deal with these issues[41]

As the twelve member committee's hearings progressed, there were times where this sense of purpose became blurred and as they drew to a close, the Social Credit member, Cliff Serwa and independent Liberal David Mitchell announced their intention to withdraw from the hearings. In their letters to the committee chair, Serwa held that the "Public hearings are being deliberately dragged out to convince British Columbians that these democratic reforms should not be implemented" and Mitchell tagged the committee as the "committee of delay".[42] This protest had its desired result in prompting a verbal commitment from the premier to proceed with the implementation of both recall and initiatives at the spring 1994 session of the legislature.[43]

The options available to the New Democratic government range from a direct transplant of an American state recall-referendum-initiative model to incremental amendments in the province's constitutional framework to permit citizens' initiatives to be debated in the legislature and to provide a twentieth century definition of the legal and ethical grounds for a recall of one of its members. In between these possible courses, lay variations on the state models which draw varying lessons from that experience to impose a range of requirements and regulatory constraints on these processes.[44] Fears that special interests will try to use either device for their own agenda abound and both anti-abortionist and taxpayer protection groups immediately speculated on the use of initiative when the referendum question was first announced. Since 1919 there has been a remarkable shift in the suspicions aroused by the political backgrounds of those espousing more voter participation away from the old reformist left and radical farm populist elements to what are labelled right wing populist agendas. But environmentally oriented "green" petitions for parks or ecological reserves or "right to die in dignity" petitions are also likely entries for BC voter initiatives. Neither initiatives nor recall come with a guarantee on their restrained use. In the short run, British Columbia's politicians may have manipulated the promises of such devices for their symbolic value but, in doing so, have already entered an entirely new world of greater political pressure and responsiveness.

Patrick Boyer's description of Canada as remaining "a timid democracy" has been overtaken by the October 1992 experience of the national referendum on constitutional reform. Since the mid-1980s the uneasiness of the Canadian electorate with its elected representatives and political elites captured in the Spicer Commission report helped fuel a renewed interest in changing the Westminster model of representative democracy. The lessons to be derived from the October 26, 1992 national referendum remain to be fully articulated but future constitutional reform without some mechanism for popular participation is virtually unthinkable. David Magleby explained the renewed interest of Americans in the process of direct democracy in the 1970s in terms of four factors: the nature of the policy issues, the media attention given initiatives as a major political event, the perception of their mandate setting nature and that they were a means to achieve political goals, as well as generally, "a remedy for much of what ails democracy." These explanations readily apply in Canadians' preoccupations with the GST tax issue, Western provincial alienation, and the 1992 Charlottetown Accord and general mistrust and suspicion of political elites, all of which have contributed to the interest in the advocacy of direct democracy by the Reform Party and forced referendum, initiative and recall onto the political agenda. The historical experience of British Columbia suggest another partial explanation: the propensity of politicians to exploit the rhetoric of populist renewal and manipulate the symbols of direct democracy for their own interests. In British Columbia at least, this brand of populism long remained what it always was, populist discourse rather than a real commitment to populist institutionalism. Since 1991, however, the politicians have lost control of this corner of their agenda. It seems unlikely that even the most resolute opponents of recall and initiative will be able to recover any of the ground that they lost in the 1991 provincial referendum and at best can only hope to delay, divert or dilute.

Notes

1. *Vancouver Sun*, October 17, 1991. Some institutional features of the Westminster system share a common stock with demands for citizens' participation and for proper conduct from representatives. For example in British Columbia the Legislative Assembly permits the submission of petitions, a parliamentary right which extends back to 1669 and the presentation of private bills. The *Constitution Act*, the *Standing Orders*, the *Legislative Assembly Privilege Act* and the *Conflict of Interest Act* as well as the *Criminal Code of Canada* all contain enforceable codes of conduct for MLAs.
2. Prior to 1991, there had been ten occasions where the provincial government had directly consulted its electorate on public policy. *Ad hoc* provincial referendums were held in 1916, when questions were put on prohibition for the sale of liquor and the extension of the franchise to women. In addition, since 1871, there have been eight provincially sponsored advisory plebiscites. In 1953, standing provision for plebiscites was included under the *Election Act* such that: Whenever it appears to the Lieutenant Governor in Council that an expression of opinion is desirable on any matters of public concern, the Lieutenant Governor in Council may direct that a plebiscite be held and issue regulations governing the procedure to be followed in connection with taking the plebiscite. Questions of capital borrowing etc. also are routinely put at the local government level. In comparison with citizens' initiatives and recall, none of the above, provide the same sense or opportunity for empowerment of the ordinary voter with respect to the legislative agenda and responsiveness of the elected representative being sought in the 1990-93 debate on direct democracy.
3. See D. Elkins "British Columbia as a State of Mind" in D. Blake, et al *Two Political Worlds*, 1985, chap. 4.
4. See Patrick Boyer, *The People's Mandate: Referendums and a More Democratic Canada*, Toronto: Dundurn, 1992.
5. *Victoria Daily Times*, February 17, 1916.
6. *Ibid.*
7. *Ibid.*
8. *The Daily Colonist*, March 13, 1919.
9. *Ibid.*
10. *Ibid.*
11. *Ibid.*
12. Section 40 provided for the act to come into operation on a date to be fixed by the Lieutenant Governor. See also: Audrey M. Adams, *A Study of the Use of Plebiscites and Referendums by the Province of British Columbia*, Unpublished MA in Political Science, University of British Columbia, 1958, 166, note 14 for reference to Senator Farris' letter to her.
13. The constitutional issues are discussed in Stephen Scott, "Constituent Authority and the Canadian Provinces", *McGill Law Journal*, 12, no. 4, 1966-67, pp. 528-572.
14. 27 Manitoba Report, 1916, pp. 23 & 13.
15. (1919) A.C. 944; 48 D.L.R., pp. 25-26.
16. Scott, *op. cit.*, p. 556.
17. See: E. George MacMinn, *Parliamentary Practice in British Columbia*, 2nd. ed., 1987, pp. 123-127.
18. *Vancouver Sun*, February 26, 1975, and British Columbia, Legislative Assembly, Bill 34-1975.
19. *Vancouver Province*, March 6, 1975.
20. The entire petition section 73 was later edited in the February 1985 revisions to the Standing Orders and now makes reference to a petition as being "for the redress of an alleged public grievance" but retains the original requirements and restrictions on content. If in a proper form, the petition is now deemed to have been received.
21. British Columbia, *Debates of the Legislative Assembly*, 5th Session, 30th Parliament, June 5, 1975, p. 3110.
22. *Debates of the Legislative Assembly*, July 24, 1990, p. 11394.
23. *Referendum Act*, 1990, chap. 68., sec. 4, emphasis added.
24. *Vancouver Sun*, July 6, 1990.
25. *Debates of the Legislative Assembly*, July 24, 1990, p. 11395.
26. *Ibid.*, pp. 11395-6.
27. *Ibid*, March 12, 1991.
28. *Vancouver Sun*, July 6, 1990.
29. Speaking Notes for Premier Vander Zalm, Social Credit Party Convention, Vancouver, October 12, 1990.
30. David B. Magleby, *Direct Legislation*, Baltimore: Johns Hopkins, 1984, p. 12.
31. See for example views of Colin Gabelmann, *Campbell River Mirror*, September 11, 1991 and exchange of Okanagan-Penticton candidates in *Summerland Review*, October 3, 1991.
32. *Victoria Times--Colonist*, September 6, 1991.
33. *Vancouver Sun*, October 9, 1991.
34. *Nanaimo Free Press*, September 11, 1991.
35. Rita Johnston, *Referendum Speech Notes*, September 1990.
36. *Report of the Chief Electoral Officer, 35th General Election, October 17, 1991: Statement of Votes*, 1992.
37. Support for both referendum questions ran at virtually the same level within each district. Socio-economic profiles of the districts suggest that opposition was highest in electoral districts with higher levels of education and income.
38. *Debates of the Legislative Assembly*, June 23, 1992, pp. 2922-2923 & appendix.
39. British Columbia, *Orders of the Day*, motions 4 & 5; Bill M205-1992/M204-1993, *Recall Act*, November 2, 1992 & March 22, 1993 would require a recall vote where 20 per cent of the registered voters in a constituency signed a legal petition setting out the basis for recall - the second version added an expiry provision if not filed after one year and cancellation on a death or resignation or general election; Bill M206-1992/M203-1993 *Initiative Act*, November 9, 1992 & March 22, 1993, which would require a referendum vote where a citizens' petition was presented with the signatures of 10 per cent of the registered voters and certified as qualified by the chief electoral officer. Such petitions would be reviewed in open televised hearings of a legislative committee and recorded votes by the legislature would be taken on each question; These proposals were also accompanied by a bill for free votes within the legislature, Bill M208-1992/M205-1993, *Free Votes Enabling Act*.
40. See their presentations to the provincial select standing committee on parliamentary reform, December 5, 1992 in Vancouver and February 5, 1993 in New Westminster.
41. British Columbia, *Report of Proceedings, Select Standing Committee on Parliamentary Reform*, 2, August 14, 1992, p. 6.
42. Cliff Serwa and David Mitchell, *Letters to Ujjal Dosanjh*, May 11, 1993.
43. *Vancouver Sun*, May 14, 1993.
44. Even the strongest proponents of direct democracy in Canada have argued for some protection against what Boyer has termed "an overdose" and recognize a need for some protection against abuse. Preston Manning, Leader of the Reform Party acknowledges that "the threshold levels on recall petitions must be quite high, so as not to result in recall being used as a partisan device for unseating political opponents.