

Université de Montréal

Exploring the checklist ballot: an exercise in democracy

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Université de Montréal
Faculté des études supérieures

Ce mémoire intitulé

Exploring the checklist ballot: an exercise in democracy

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Résumé

Le "checklist ballot"¹ est un bulletin de vote que l'on peut utiliser lors de référendums. Il a été utilisé à Jackson, au Mississippi, en 1990 pour un référendum sur des dépenses scolaires, et a également été utilisé quelques dix années plus tard, en mai 2002, en Colombie-Britannique pour un référendum portant sur un projet de négociations avec les Amérindiens.

Le principe de ce bulletin de vote est de présenter un projet de référendum à la population sous la forme de parties séparées. Si dans un référendum classique, la population ne peut se prononcer que par un oui ou un non sur un projet de référendum global, avec le "checklist ballot", le contenu référendaire est segmenté, et l'électeur a la possibilité de donner son avis sur chaque proposition individuellement. De plus, chaque partie est décidée individuellement, ce qui veut dire qu'il n'y a pas qu'un gagnant: plusieurs propositions peuvent être acceptées ou refusées lors du même vote. Nous croyons que ceci permet à l'électrice de ne pas avoir à accepter ou refuser un projet référendaire simplement sur la base de certains éléments qu'elle apprécie ou qu'elle n'aime pas.

Dans ce mémoire, nous répondons à deux questions concernant le "checklist ballot". Premièrement, comment construire le bulletin de vote, et donc, comment en arriver à la question référendaire? Après avoir passé en revue les deux méthodes utilisées dans les référendums de Jackson et de la Colombie-Britannique, nous proposons notre propre méthode, inspirée des principes de démocratie délibérative. Nous démontrons que cette méthode permet de donner plus de participation aux citoyens, et aussi de réduire les possibilités pour le gouvernement de manipuler la question référendaire pour s'assurer un résultat qui lui convient.

Deuxièmement, quel seuil de majorité devrait-on exiger pour que les différents items soit considérés comme ayant été acceptés par la population? De plus, à partir de quel dénominateur devrions-nous calculer ce seuil? Après avoir comparé les avantages et les désavantages de la majorité absolue et de la majorité qualifiée, nous démontrons que la majorité qualifiée est la plus appropriée dans le cas du "checklist ballot"; toutefois, il nous apparaît que cette majorité qualifiée devrait être ajustable, dépendamment de l'enjeu soumis à la population. Concernant le dénominateur, nous cherchons à savoir si la majorité devrait être calculée à partir des électeurs inscrits, des votes valides ou des votes émis. Nous proposons de calculer la majorité à partir des votes émis.

Mots clés: "checklist ballot", référendums, démocratie directe, démocratie délibérative, seuils de majorité, éducation politique, assemblée délibérante

¹ Nous n'avons pas trouvé d'équivalent en français

Abstract

The checklist ballot is a type of ballot that can be used in referenda. It was used in Jackson, Mississippi, in 1990 for a referendum on school bonds spending. It was also used some ten years later, in May 2002, this time in British Columbia (B.C.), for a referendum concerning treaty negotiations with Native people.

The ballot's principle is to take a global referendum project, and divide it into separate items, that are presented to the electorate. The ballot offers the possibility for the electorate to vote on each item separately, and each item is decided upon independently of the others; there is thus the possibility to have many winners or losers on the same ballot. It is our contention that this allows electors the liberty not to have to approve or reject a global referendum project on the basis of certain elements that she likes or dislikes strongly.

In this paper, we address two questions concerning the checklist ballot. First, how should we construct the checklist ballot? After having reviewed the ballot construction methods of the Jackson and the B.C. referenda, we propose our own ballot construction method. This method, inspired by elements taken from deliberative democracy settings, is, we believe, the best method to achieve two goals: first, it provides more opportunity for *actual* citizen participation in political processes that affect their lives; second, it reduces the ability of governments to manipulate the referendum question to best suit their interests.

Second, what majority threshold should be set for the items to be considered accepted by the population? Furthermore, from what denominator should this threshold be calculated? After comparing the advantages and disadvantages of absolute and qualified majority thresholds, we show that a qualified majority is best in the case of the checklist ballot; however, we believe this qualified majority should be adjustable, depending on the decision to be taken by the population. Regarding the denominator, we examine calculations based upon the registered electorate, based on valid votes, or based on votes cast. We conclude that calculating the majority with respect to votes cast is the best option.

Key words: "checklist ballot", referendums, direct democracy, deliberative democracy, majority thresholds, political education, deliberant assembly

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À mon père

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Introduction

In 1990, Jackson, Mississippi, in a referendum on school bonds, experimented with a particular type of ballot: a checklist ballot. A little more than a decade later, in May 2002, the same ballot was used in British Columbia (B.C.) for a referendum concerning treaty negotiations with Native people. In addition to governments, professional organizations have also used this type of ballot. It has been used by the Masonry Society¹, by the Eastern Federation of Mineralogical and Lapidary Societies (EFMLS)², and by some speed dating agencies. Unfortunately, few studies have attempted to evaluate the ballot's effects on voting intentions and political outcomes. Actually, we have found only one, in which James Glaser examines the impact of the ballot in the racially-charged atmosphere of Jackson (Mississippi). He finds that the checklist ballot had a strong impact on the result by diminishing the racial cues of electors³. This thesis explores in an extensive manner the ballot's potential effect on referenda outcomes. The reader is asked to keep in mind that the present thesis is an exploratory work. It puts forward ideas on why and how the checklist ballot should be used, how it should be constructed, and what parameters should be set to determine its outcomes.

¹ In a letter to its members, we can read: "The Architectural Practices Committee considered comments received on a Drawings Checklist ballot". Citation taken from document resuming the annual spring reunion (14-16 may 2002, Calgary, Alberta). See masonrysociety.org

² In the EFMLS's newsletter of February 2001 (vo.39, no.2) we can read: "In the succeeding months, your Executive Board members submitted to me their ideas and suggestions of those items they felt to be the most worthy applications for funding. Many responded with like or similar thoughts in the matter, and there was a wonderful variety of ideas submitted. These were then compiled into a checklist ballot of some thirteen separate items." See <http://www.amfed.org/efmls/index.htm>

³ James M. Glaser "White Voters, Black Schools: Structuring Racial Choices with a Checklist Ballot", *American Journal of Political Science* 46 (2002), 35-46.

What is a checklist ballot⁴? A referendum is usually a global project that the government presents to the population, and demands of this population to accept or refuse the project as a whole. This logic changes when using the checklist ballot. With the checklist ballot, the project is divided into different parts, or items, and the elector has the liberty to vote on each of these items separately. In addition, she has the possibility to cast as many votes as there are options on the ballot. A threshold is set, and all items that attain the threshold are said to have been passed or accepted by the electorate, while the rest of the items are rejected.

To illustrate, let us use the referendum in Jackson as an example. In this case, instead of voting for a global spending project of \$105,9 M, the project was divided into different sectors of spending, and the voters were invited to vote on ten different spending items. This allowed the electorate to vote separately, for example, on spending for 'new computer equipment' or 'improving school security'⁵. Thus, this allows for more flexibility in the choices presented to the electors, and makes it possible for certain parts of a global project to pass, even if the project taken in its entirety would not.

⁴ See Appendix 1 for an example of the ballot used in the B.C. referendum.

⁵ *Ibid.*, 37

The checklist ballot can be compared to approval voting⁶. Both allow for multiple voting, and both are systems of approval/rejection of particular items. However, the main difference is that the checklist does not require there be only one winner. In this sense, we believe that the checklist ballot considerably diminishes the incentives for strategic voting⁷. In addition, approval voting has been presented as a candidate-election type ballot, while the checklist ballot is best used in referenda. The basic argument presented in this thesis is that the checklist ballot is the best ballot for electors to properly express their preferences, and thus, for referendum outcomes to really reflect voters' opinions. It is our contention that democracy needs to be revitalized, and that electors must be given better tools to express their views on social and political objectives of the polity.

This thesis centers around two fundamental assumptions, or conditions, that form the analytical framework that will drive our discussion. First, throughout this thesis we will try to find ways to increase the actual participation of citizens in political processes that affect their lives. Our framework is built around the contention that an increase in political participation brings about an increase in political skills and interest: participation breeds education. The thesis will also revolve around a second assumption: we want political choices to be presented to the electorate in the truest and fairest way, making it possible to express their

⁶ See Steven J. Brams and Peter C. Fishburn, "Approval Voting", *American Political Science Review* 72 (1978), 831-847; *Approval Voting* (Boston: Birkhauser/Springer-Verlag, 1983)

⁷ In contrast, approval voting, with the rigidity of having only one winner, is prone to bullet voting (or plunking). See Samuel Merrill III and Jack Nagel, "The Effect of Approval Balloting on Strategic Voting under Alternative Decision Rules", *American Political Science Review* 81 (1987), 510

preferences in the best possible manner. Thus, another objective of this thesis will be to promote ways in which these choices can be presented in a manner that will allow for less political manipulation on the part of government to secure outcomes that best suit its interests. We believe that the checklist ballot is the best balloting method to achieve these two goals⁸.

The thesis is divided into four parts. In the first section, we discuss the pros and cons of direct democracy. As the checklist ballot is best used in direct democracy, it is imperative that we position ourselves in the debate between proponents and opponents of direct democracy. We defend the idea that direct democracy is not inherently prone to tyranny of the majority, and that voters are competent enough to vote in a manner that is consistent with their interests and values. We also argue that direct democracy makes for governments to be more responsive, and that it has a political education function.

In the second section, after having reviewed the ballot construction methods in the Jackson and British Columbia referenda, we propose our own ballot construction method, which incorporates elements of deliberative polls, citizen juries and consensus conferences, to form something that resembles a low-key version of 'demarchy'⁹. Ballot construction corresponds to deciding which items go on the ballot, where and how. This is essentially deciding on the

⁸ A distinction between *balloting method* and *decision procedure* is introduced in Samuel Merrill III and Jack Nagel, *Ibid.*, 512

⁹ See John Burnheim, *Is Democracy Possible? The Alternative to Electoral Politics* (London: Polity press, 1985)

referendum question. After having shown that the referendum question is a crucial element in determining outcomes, we show that our proposed ballot construction method best achieves the two goals set in our analytical framework: an increase in actual citizen participation, and less possibility for government to manipulate the presentation of the referendum issue.

In the third section, the discussion deals with what thresholds should be set for a given item to 'pass'. We will review the pros and cons of majority principles for the checklist ballot, i.e. if the checklist ballot should require items to be approved by an absolute majority of the electorate, or if a more constraining qualified majority threshold should be used. In parallel, we will also discuss the different modalities (denominators) from which to calculate majorities, i.e. should we calculate majorities based on votes cast, valid votes or with respect to the totality of the registered electorate. We argue that a qualified majority is best, but that this qualified majority should be adjustable, depending on the decision to be taken. Furthermore, we show that this majority should be calculated based on votes cast.

A final section recaps our discussion and presents, in a more specific manner, the advantages and disadvantages of the checklist ballot as proposed in this thesis.

Chapter 1

Direct democracy: the good, the bad, or the ugly?

The debate between proponents of direct democracy and those favouring the representative system has been one of the most sensitive issues in the field of political science. Taking heed from Mill¹⁰, Tocqueville¹¹ and the debates between Madison and Hamilton in the *Federalist Papers*¹², modern day scholars have yet to pull together both conceptions, and arrive at a clear consensus over the question of direct democracy's usefulness and efficiency in modern day democracy. Having positioned ourselves in this debate, we will be in a better position to focus our discussion on elements pertaining to the checklist ballot itself.

We begin by postulating that not all direct democracy is of the same type. Julian Eule, in an article discussing what role the courts should have in reviewing the constitutionality of direct democracy outcomes, distinguishes two instances (types) of direct democracy¹³. The first type is what he calls "substitutive"; it is the purest form of direct democracy, allowing the electorate to bypass completely the representative agents. The electorate does not need the permission of the legislature to place an issue on the ballot (the only limitation is garnering enough support, in the form of signatures), and the issue becomes law if a majority of electors approve. This form is currently called a popular initiative. A second type

¹⁰ See John Stuart Mill [1859; 1861; 1869], *Three Essays: on Liberty, Representative Government and the Subjection of Women* (Oxford: Oxford University Press, 1960)

¹¹ See Alexis de Tocqueville [1835;1840], *De la démocratie en Amérique* (Paris: Union générale d'édition, 1963)

¹² See Alexander Hamilton, James Madison and John Jay, *The Federalist Papers* (New York: The new American library, 1961)

¹³ Julian Eule, "Judicial Review of Direct Democracy", *Yale Law Journal* 99 (1990), 1503-1589

is the "complementary" form. Here, the legislature and the electorate work in concert; the legislature refers laws or projects to the electorate who then signify its approval or disapproval. This form is currently called a referendum. The difference between the two types lies in the possible outcomes. "The substitutive plebiscite enables popular majorities to pass legislation that minorities have managed to prevent in the legislature"¹⁴; "complementary plebiscites enable popular majorities to prevent legislation that minorities have managed to convince legislative majorities to enact"¹⁵.

We should also clarify right away that in this discussion, we are mainly concerned with referenda. Though we will use data and studies that cover both referenda and initiatives, we must concede, as we stated earlier, that we advocate the use of the checklist ballot in referenda. This preference is due to two factors. On the one hand, the legal evidence: rare are the countries that allow for popular initiatives, or even if they allow it, use it very frequently. The use of initiatives is mainly restricted to the U.S., Switzerland, Austria, and in a modified version to Italy, which allows for abrogation referenda (also called rejective initiatives). On the other hand, there is the question of adaptability. The checklist ballot, as we present it here, is an instrument of direct democracy that must be used and implemented in concord with the legislature. As we will discuss later, we propose a method for ballot construction and framing of the questions that leaves ample space for citizen participation and civic innovation. In addition, Austin Ranney

¹⁴ *Ibid.*, 1574

¹⁵ *Ibid.*, 1575

reminds us that "les craintes d'une tyrannie de la majorité qui sont parfois exprimées à propos des décisions référendaires ne sont valables que pour les votes sur des initiatives populaires"¹⁶. Finally, the use of referenda is better adapted to British-type parliamentary institutions, like those of Canada and Quebec¹⁷.

The arguments for and against the use of direct democracy-type devices can be resumed thus: for opponents, the dangers of direct democracy lie in its potential to be used by the majority to tyrannize minorities, and the lack of competence of the electorate in deciding over complex issues. On the other side, for the supporters of direct democracy, the benefits lie in the need for greater participation of the public in deciding issues that are of importance to it, i.e. the need for democracy to be more decentralized, and the educational value that more participation is thought to add to the public's knowledge and implication in the political process. Let us review these arguments in greater detail.

Arguments against

Tyranny of the majority. In a strong attack against the use of direct democracy-type devices, Barbara Gamble asks: "when citizens have the power to legislate issues directly, will the majority tyrannize the minority?"¹⁸. Her answer is clear: "By examining over three decades of civil rights laws that have appeared on

¹⁶ Austin Ranney, "Référendum et démocratie", *Pouvoir* 74 (1996), 17

¹⁷ On this point, see Matthew Mendelsohn, "Introducing Deliberative Direct Democracy in Canada: Learning from the American Experience", *American Review of Canadian Studies* 26 (1996), 449-468. However, a dissenting voice is that of J. Ross Harper. See *Referendums are Dangerous* (London: Conservative political center, 1997), 17-31

¹⁸ Barbara S. Gamble, "Putting Civil Rights to a Popular Vote", *American Journal of Political Science* 41 (1997), 245

state and local ballots across the nation, I find strong evidence that the majority has indeed used its direct legislative powers to deprive political minorities of their civil rights"¹⁹. Her attacks are emblematic of this argument: majorities will use direct democracy to deprive minorities of their rights, rights that are usually defended by the elected representatives. Gamble, however, points out two flaws in her analysis: 1) she did not include all initiatives put to popular vote; 2) she may have included only the most controversial. Extending her study, Bowler and Donovan dispute her findings. Even if minorities may be less protected by direct democracy than in strictly representative systems, "this evidence should not be used to imply that direct democracy *per se* is abusive to minorities"²⁰. What counts the most in evaluating the possible fallacies and dangers of direct democracy is the size of the voting communities²¹. Their analysis "illustrates that minorities are less

¹⁹ *Ibid*, 246

²⁰ Todd Donovan and Shaun Bowler, "Direct Democracy and Minority Rights: an Extension", *American Journal of Political Science* 42 (1998), 1023. They had already made this argument in "Responsive or Responsible Government?" in Shaun bowler, Todd Donovan and Caroline J. Tolbert, *Citizens as Legislators: Direct Democracy in the United States* (Columbus: Ohio State University Press, 1998), 249-273. In another extension of Gamble's study, similar results were also observed by Bruno S. Frey and Genz Goette. See "Does the Popular Vote Destroy Civil Rights", *American Journal of Political Science* 42 (1998), 1343-48.

²¹ The relation between size and democracy is one that is largely discussed in the literature. For example, Dahl and Tufte, examining the link between size of democracy and citizen effectiveness and system capacity find that "no single type or size of unit is optimal for achieving [these] twin goals." See Robert A. Dahl and Edward R. Tufte, *Size and Democracy* (Stanford: Stanford University Press, 1973) 138. Furthermore, as Keating shows, the issue is quite complex, since it may not only be size that matters, but also distance between people, density and distribution of population. See, M. Keating, "Size, Efficiency and Democracy: Consolidation, Fragmentation and Public Choice" in D. Judge, G. Stoker & H. Wolman (eds), *Theories of Urban Politics* (London: Sage, 1995), 117-134. Similarly, Fiskin distinguishes two versions of direct democracy, based on size of the polity. On the one hand, we have what he calls a small-scale version. This would be equivalent to small communities taking decisions in a collective manner. "It might be argued that the small-scale version achieves deliberation, at least on occasion, but at the cost of vulnerability to tyranny". A second type is the large-scale version, where there is a larger grouping and probably a bigger physical territory. This version "carries with it a great lessening of deliberation". See James S. Fiskin, *Democracy and Deliberation: New Directions for Democratic Reform* (New Haven: Yale University Press, 1991), 52

protected by direct democracy in smaller communities – places that [they] assume have a greater homogeneity of interest"²².

Similarly, Zoltan Hajnal et al., in a study on the impact of direct democracy on minorities in California, find that critics have overstated their case against direct democracy. While pointing out that Latinos tend to be on the losing side more often than other types of minorities, "when [they] consider outcomes across all propositions, [they] find that the majority of Latino, Asian Americans, and African American voters were on the winning side of the vote"²³. Finally, Thomas Cronin, in his seminal piece on direct democracy-type device usage in the U.S., finds that "the overall record shows that American voters have in most cases approved measures protecting or promoting minority rights"²⁴. In parallel, Mendelsohn points that "there is no systematic evidence that direct democracy produces intolerant results"²⁵. Thus, it seems safe to conclude that although certain discriminating measures may have been passed by direct democracy, there is no evidence that direct democracy systematically threatens minority rights.

Complexity and voter competence. Almost forty years ago, Converse dismissed the competence of the electorate, showing that most people did not have opinions, even on issues that had been subject to grand controversy, and that

²² Donovan and Bowler, "Direct Democracy and Minority Rights", 1023

²³ Zoltan L. Hajnal, Elisabeth R. Gerber and Hugh Louch., "Minorities and Direct Legislation: Evidence from California Ballot Proposition Elections", *Journal of Politics* 64 (2002), 154

²⁴ Thomas Cronin, *Direct Democracy: The Politics of Initiatives, Referendum, and Recall*, (Cambridge: Harvard university press, 1989), 98.

²⁵ Mendelsohn, "Introducing Deliberative direct Democracy in Canada", 458

consistency among beliefs in the public was restricted to a minority of sophisticated voters²⁶. According to this line of thought, voters do not have the knowledge or the know-how to deal with complex issues of policy making; thus, these issues are best left to elected representatives, whose job it is to resolve them. Furthermore, as is shown by Delli Carpini and Keeter the electorate is no more competent now than before²⁷. In addition, as Luskin points out,

If education had the effect it is supposed to have, the revolutionary spread of education since the 1950s should have brought a similarly dramatic increase in sophistication. [...] these results suggest that a highly sophisticated, participatory public is not even feasible prescription²⁸.

Similarly, referenda tend to divide the population into two camps (unless there are more than two possible alternatives), and renders an unwarranted simplicity (dichotomy) to complex issues²⁹. For Higley and McAllister

By forcing relatively uninformed voters to give simple answers to complex constitutional or policy questions, referendums invite elites to make claims that are often more simplistic and deliberately misleading than those they employ in elections³⁰.

Magleby notes that voters who do not have sufficient information on the issues tend to vote in irrational and random ways, where their vote does not fit their preferences (if indeed they would have any). Thus, the choice of low-informed voters' (which form the majority in many studies, Magleby's included) is far more subject to be influenced by racial or other factors only indirectly linked to

²⁶ Philip E. Converse, "The Nature of Beliefs Systems in Mass Publics", in David Apter (ed), *Ideology and Discontent* (New York: Free Press, 1964), 206-261

²⁷ Michael X. Delli Carpini and Scott Keeter, *What Americans Know About Politics and Why it Matters* (New Haven : Yale University Press, 1996)

²⁸ Robert C. Luskin, "Explaining Political Sophistication", *Political Behaviour* 12 (1990), 352-53

²⁹ Vincent Lemieux, "le référendum et la démocratie au Canada", in Peter Aucoin (ed), *Le Gouvernement représentatif et la réforme des institutions* (Ottawa : Commission royale sur l'union économique et les perspectives de développement du Canada, 1985), 117-172

³⁰ John Higley and Ian McAllister, "Elite Division and Voter Confusion: Australia's Republic Referendum in 1999", *European Journal of Political Research* 41 (2002), 845

the question submitted to popular consultation³¹. This follows Lawrence LeDuc's point that "voters cannot generally be expected to have well-formed opinions on an issue that has not previously been the subject of any broad public debate"³². Papadopoulos, another nay-sayer of voter competence, starting from the principle 'that governance requires empathy and self-limitation', finds that elites are much better off at managing complexity. "It seems indeed difficult to avoid a certain dose of elitism if the major goal is to guarantee the viability of those compromises indispensable for the management of complexity"³³.

However, not all authors share these concerns about the question of complexity and voter competence, and the debate is far from being settled. While many recognize that some people do not have the interest or information to cast votes on complicated issues, they argue that ordinary citizens, if competent enough to choose the best representative to defend their interest, are equally competent in deciding the best option(s) in a referendum³⁴. In a bold statement, Bowler and Donovan, examining California's experience with direct democracy, state that

Research shows that questions about voter competence are largely settled, and settled in favour of the voters provided that, mechanisms are in place which allow them to see who is behind

³¹ David Magleby, *Direct Legislation: Voting on Ballot Propositions in the United States* (Baltimore: John Hopkins University Press, 1984)

³² Lawrence LeDuc, "Opinion Change and Voting Behaviour in Referendums", *European Journal of Political Research* 41 (2002), 717

³³ Yannis Papadopoulos, "Analysis of Functions and Dysfunctions of Direct Democracy: Top-Down and Bottom-Up Perspectives", *Politics & Society* 23 (1995), 432-433

³⁴ See Thomas Cronin, "Public Opinion and Direct Democracy", *PS: Political Science and Politics* 21 (1988) 612-619. In addition, Susan Scarrow notes that the use of direct democracy at a local level reduces the argument of competence, since communities are smaller and questions are generally more mundane. See "Direct Democracy and Institutional Change: a Comparative Investigation", *Comparative Political Studies* 34 (2001), 651-65

a proposal. The ballot leaflet and financial disclosure laws [...] allow them to vote in the light of their own interests and ideology. Voters may thus cast their ballot as if they were fully informed.³⁵

One pervasive issue that springs up when discussing voter competence in direct democracy is the role that particular cues may play³⁶. Cues are information shortcuts that can be used by lesser informed electors to emulate the vote of better informed electors, thus nullifying the effect of education and information-gathering capacities that we expect better educated citizens possess. Lau and Redlawsk talk of five commonly used heuristics³⁷: 1) party affiliation; 2) candidate's ideology; 3) endorsement by someone trusted; 4) poll results; 5) candidate appearance. The argument generally made by scholars that see cues as a possible remedy to low political information and interest is best presented by Arthur Lupia: "cues allow voters to make more accurate inferences about the electoral alternatives, which increases the likelihood that they cast the same vote as they would have cast if they had acquired more accurate information"³⁸. Thus, cues may allow lower informed electors to make a reasonable choice even if they do not possess all the information or political skills that better informed voters have. However, as he points out, only in certain conditions are cues sufficient to overcome the lack of knowledge of some parts of the electorate. For example, cues can only be effective if the endorser is deemed credible by the electors; in the

³⁵ See Shaun Bowler and Todd Donovan, "California's Experience with Direct Democracy", *Parliamentary Affairs* 53 (2000), 650

³⁶ Some scholars use the term "cognitive heuristic", like Richard Lau and David P. Redlawsk. See "Advantages and Disadvantages of Cognitive Heuristics in Political Decision Making" *American Journal of Political Science* 45 (2002), 951-971. Others, like Larry Bartels, prefer the term information shortcuts. See "Uninformed Voters: Information Effects in Presidential Elections", *American Journal of Political Science* 40 (1996), 194-230

³⁷ Lau and Redlawsk, "Advantages and Disadvantages...", 953-954

³⁸ Arthur Lupia, "Busy Voters, Agenda Control, and the Power of Information", *American Political Science Review* 86 (1992), 391

absence of credibility, cues are only good if the voter's perception of the endorser's preferences is correct³⁹.

Others, like Sniderman et al. see the role of cues as a positive way for low-informed electors to make a reasonable choice, albeit for different reasons⁴⁰. They note that well-informed and low-informed voters do not use the same methods in making their electoral choice; the essential difference between both is on what aspect of the past they focus on. While the well-informed tend to make their electoral choice by comparing candidates, or prospective voting, the lesser informed tend to make their choice by doing a performance evaluation of the incumbent, or retrospective voting. Thus, the better informed tend to look at the bigger picture, while poorly informed voters make their choice with a narrow calculus at hand, basically focussing on a few points of direct interest to them. In this sense, if lower informed voters can use cues to circumscribe, to transform their ballot choice as a referendum for or against the incumbent, they can be expected to make as reasonable a choice as would better informed voters. Thus,

While the poorly informed voter, to be sure, lacks the information to make the kind of choice the well-informed voter can [...] the less well informed voter may have the information he needs provided he treats the choice before him as a choice for or against the incumbent. [...] In these alternatives ways, the choices of voters can be approximately rational because of, not merely despite, their shortfalls in information⁴¹.

³⁹ See Arthur Lupia, "Shortcuts Versus Encyclopaedias: Information and Voting Behaviour in California Insurance Reform Elections", *American Political Science Review* 88 (1994), 63-76

⁴⁰ See Paul M. Sniderman, James M. Glaser and Robert Griffin, "Information and Electoral Choice" in Paul M. Sniderman, Richard A. Brody and Philip E. Tetlock (eds), *Reasoning and Choice: Explorations in Political Psychology* (Cambridge: Cambridge University Press, 1991), 164-178

⁴¹ *Ibid.*, 178

However, there are dissenting voices, as other scholars are not convinced by these arguments about cues. The argument generally made to discredit the positive function of cues is discussed by Lau and Redlaswk. After carrying out an experimental analysis, they find that "political sophistication absent heuristic use contributes little to better decision making"⁴². From this perspective, even if cues can be thought of as a helpful tool for lower informed voters, these voters do not have the skills to properly use them, in ways that can help them reduce their education/informational disadvantages. Thus

[While] the decisions of more sophisticated voters are often helped by employing cognitive heuristics, [the] less sophisticated voters may actually end up making lower quality decisions if they employ the same heuristics. [...] In fact, heavy reliance on political heuristics actually made decision making less accurate among those low in political sophistication⁴³.

As Robert Luskin points out "sophistication [...] is much less a function of the information to which people are exposed than to what they can and are motivated to make of it"⁴⁴. Sophistication is a matter of how much, and in what ways a person thinks of politics, not what he thinks about it. It depends above all on motivation (interest and occupation), but also on abilities (intelligence)⁴⁵. The rationale here puts the onus mainly on abilities to process information: since we expect less informed voters to have lower abilities to process information, this decreases the impact (gains) that exposure to certain types of information may provide these electors in helping them vote as if they had as much information as well-informed voters.

⁴² Lau and Redlaswk, "Advantages and Disadvantages...", 964

⁴³ *Ibid.*, 964;966

⁴⁴ See Robert C. Luskin, "Explaining Political Sophistication", 351-352.

⁴⁵ See Robert C. Luskin, "Measuring political Sophistication", *American Journal of Political Science* 31 (1987), 856-99

Finally, other sceptics, like Kuklinsky and Quirk, find that the logic of human behaviour and cognitive capacities diminishes the potential positive effects of cues⁴⁶. Cognitive abilities are 'hard-wired' in our neural circuitry (mental processes are only partly shaped by personal experiences); cognitive processes generate systematically false beliefs in order to promote certain kinds of behaviour; and on many occasions, people make judgment in unreliable ways without noticing it. Following this, the authors find three implications for the political process: 1) even if some cognitive processes work in some conditions, they do not work in others; 2) there is systematic bias in heuristic judgement; 3) politics is too complicated for heuristics to help in a substantial way. They thus reject the notion that usage of cues may bridge the gap that education, information and interest creates between well-informed and poorly informed electors.

For our part, on the question of cues, we follow Christin et al.'s contention that for some ballot measures, effects of endorsement and party cues help, but for others, they don't⁴⁷. We tend to agree with Lau and Redlawsk that less informed electors do not have the capacities to adequately process information shortcuts in ways that can help them make a choice that would be as competent as the choice that better educated voters would make. However, we acknowledge that if some

⁴⁶ James H. Kuklinsky and Paul J. Quirk, "Reconsidering the Rational Public: Cognition, Heuristics, and Mass Opinion" in Arthur Lupia, Matthew D. McCubbins and Samuel L. Popkin (eds), *Elements of Reason: Cognition, Choice, and the Bounds of Rationality* (Cambridge: Cambridge University Press, 2000), 153-182

⁴⁷ Thomas Christin, Simon Hug and Pascal Sciarini, "Interests and Information in Referendum Voting: an Analysis of Swiss Voters", *European Journal of Political Research* 41 (2002), 773

electors feel that cues help them, so be it. We cannot stop them after all! We simply wish to express our reservations about the possible advantages of using information shortcuts as a way to truly compensate for poor political knowledge and interest.

On the question of voter competence as a whole, we do not feel that the question is settled as easily as Donovan and Butler try to make it, neither is it as gloomy as Converse or Luskin paint it. As Mondak shows, certain methodology used in measuring political knowledge may not adequately paint a true portrait of the citizen⁴⁸. For example, Davis and Silver show that the race of the interviewer has significant effects on political knowledge surveys. They find that African American respondents get fewer answers right when interviewed by a white interviewer than when it is a black interviewer. Furthermore, their analysis shows that these observed differences cannot be explained by differences in educational background or gender of respondent⁴⁹. We see no reason why voters would be more competent to determine which candidate would best defend their interest than to judge whether a given proposal would benefit or hurt them. We thus agree with Ian Budge: "Voters seem reasonably competent to make judgements on policy and certainly as competent as they are to make judgements on

⁴⁸ Jeffery J. Mondak, "Developing Valid Knowledge Scales", *American Journal of Political Science* 45 (2001), 224-238

⁴⁹ Darren W. Davis and Brian D. Silver, "Stereotype Threat and Race of Interviewer Effects in a Survey on Political Knowledge", *American Journal of Political Science* 47 (2003), 33-45

candidates"⁵⁰. This argument is similar, in part, to Key's interpretation of voter competence:

Voters are not fools. [...] many individual voters act in odd ways; yet, in the large the electorate behaves about as rationally and responsibly as we should expect, given the clarity of the alternatives presented to it and the character of the information available to it⁵¹.

Thus we conclude that some fair criticism has been made about voter competence, but we find no strong demonstration that would make us doubt that electors would be less competent to vote on proposals than they would to vote on candidates.

Arguments in favour

Responsiveness of government. One of the most important arguments in favour of using direct democracy is that it increases the responsiveness of governments, and decentralizes decision-making in the hands of the voters; they are the ones who will bear the brunt of legislations. "The claim of the people to rule does not rest on their knowledge of the truth; rather since they are subjects of the law, and the law binds them, they must also be its makers"⁵². In this light, then, direct democracy, while not supplanting the representative system, can be used in complementary and *ad hoc* ways to increase citizen participation, and make governments more accountable. Nevil Johnson expresses clearly the rationale for this line of thought. First, "important constitutional changes should not be made

⁵⁰ Ian Budge, *The New Challenge of Direct Democracy* (Cambridge: Polity Press, 1996), 132

⁵¹ V.O. Key Jr., *The Responsible Electorate: Rationality in Presidential Voting 1936-1960* (Cambridge: Belknap Press of Harvard University Press, 1966), 7. Though he makes this statement in thinking about presidential elections, we extend it to direct democracy electors, since the voters are the same.

⁵² William Nelson, "The Institutions of Deliberative Democracy", *Social Philosophy & Policy* 17 (2000), 184.

over the heads of the people"⁵³. Second, there needs to be more effective popular control of the public authorities, on the ground that 1) people have a right to be consulted, and 2) legislatures sometimes vote on issues that have no popular support "and in respect to which they may be flouting public opinion"⁵⁴. Finally, "governments cannot base their authority on majority in Parliament, since a majority in Parliament does not necessarily mean that they represent a majority in the population"⁵⁵. Butler and Ranney express similar views. For them, referenda allow for the citizen's will to be expressed properly, for public decisions to be arrived at publicly, and to diminish (if not end) apathy and alienation created by the domination of special interest groups on government⁵⁶.

A parallel argument is made that referenda allow voters to focus more precisely on particular points of decision-making, a focus that is not achievable in regular elections. For example, Lemieux finds that a referendum has an advantage over normal elections because it enables citizens to pronounce themselves on precise problems which cannot be dealt with in the course of elections, where a whole range of issues are at stake, leaving only a thin space for debate over individual issues⁵⁷. Similarly, J. Patrick Boyer notes that "in a referendum, only

⁵³ Nevil Johnson, "Types of Referendum" in Austin Ranney (ed), *The Referendum Device* (Washington: American Enterprise Institute for Public Policy Research, 1981), 23

⁵⁴ Id. Bowler, Donovan and Tolbert note: "legislative settings can sometimes produce policies different from those that mass preferences might otherwise demand. [...] there are reasons to expect that public policies will more closely match citizen preferences in direct democracy states". See Bowler, Donovan and Tolbert, *Citizens as Legislators*, 14

⁵⁵ *Ibid.*, 23-24

⁵⁶ See David E. Butler and Austin Ranney (eds), *Referendums : A Comparative Study of Practice and Theory* (Washington : American Enterprise Institute for Public Policy Research, 1978)

⁵⁷ Vincent Lemieux, "Le référendum et la démocratie"

one issue is at stake, and the citizen can express his opinion on that issue alone"⁵⁸.

Alternatively, A.M. Adams finds that

The particular advantage of the referendum is that it permits the severance of specific issues from political parties and enables the electorate to reject them even though they may have been enacted by the political party which enjoys the support of a majority of the electorate⁵⁹.

It can be thus concluded that

[O]n balance, [direct democracy] has provided for slightly more opportunities for accountability; and in those states and localities that provide for them, initiatives, referendum, and recall have provided a safety valve for citizens who are upset by controversial policy decisions or unseemly performance by public officials⁶⁰.

These arguments, however, face critics from some authors. For Roussillon, usage of direct democracy is no sign of a more modern and/or more civilised polity. For him, the lack of deliberation surrounding referenda (legislative referenda) makes the process mostly *undemocratic*.

Le processus décisionnel démocratique s'inscrit donc dans une conception d'un temps politique forcément long, alors que le référendum, comme les sondages d'opinions, relève, d'une certaine manière, de l'instantané, sinon de l'éphémère⁶¹.

Similarly, for Mendelsohn, two points bring fallacy to the argument of greater accountability and decentralizing democracy⁶². First, the cleavage between people who vote and people who don't vote in regular elections is heightened in direct democracy. This means that as in regular elections, the better-off, more educated, older, married... tend to vote; in this sense, the potential increase in

⁵⁸ See J. Patrick Boyer, *Lawmaking by the People: Referendums and Plebiscites in Canada* (Toronto: Butterworths, 1982) 45

⁵⁹ Audrey Marilyn Adams, , *A Study of the Use of Plebiscites and Referendums by the Province of British-Columbia* (unpublished M.A. thesis, department of economics and political science, University of British-Columbia, 1958) 4. Cited in J. Patrick Boyer, *Op. Cit.*, 46-47

⁶⁰ See Thomas Cronin, *Direct Democracy*, 223

⁶¹ Henri Roussillon, "Contre le référendum!", *Pouvoirs* 77 (1996), 184

⁶² See Matthew Mendelsohn, "Introducing Deliberative Direct Democracy in Canada"

participation by decentralizing decision-making seems to be overshadowed by the fact that decentralization will only affect those who already vote. Thus, enlarging participation without analogous changes may reinforce *inequality*. For example, if decentralizing is made without changes in the advantage of special interests or other groups to organize collectively, then equality in inputs is not enhanced. Thus,

Decentralization which may appear to enhance one measure of democratization – the opportunity to share in decision-making – does not necessarily ensure the achievement of equality in terms of either input or output. Indeed, it may create inequality and unfairness⁶³.

The second point made by Mendelsohn is that "the data indicate that no growth in political efficacy accompanies the introduction or expansion of direct democracy"⁶⁴.

A final argument stems from the idea that people do not want more participation: information gathering is hard and time-consuming, and there is the everlasting problem of free riders, who will not make that extra effort to participate in the polity, while reaping the benefits of the vote outcome(s)⁶⁵. This argument has been pushed strongly by Hibbins and Theiss-Morse's 'stealth democracy' thesis.

People do not care at all about most public policies and do not want to be more involved in the political process. [...] The people prefer a process that allows them to keep politics at arm's length. [...] Their ideal system is one in which they themselves are not involved, but where they can be confident that decisions makers will be motivated by a desire to serve the people⁶⁶.

⁶³ See Geraint Parry and George Moyser, "More Participation, More Democracy?", in David Beetham (ed), *Defining and Measuring Democracy* (London: Sage, 1994), 56-57

⁶⁴ See Matthew Mendelsohn, "Introducing Deliberative Direct Democracy in Canada", 455

⁶⁵ See Yannis Papadopoulos, "Analysis of Functions..."

⁶⁶ John R. Hibbins and Elizabeth Theiss-Morse, *Stealth Democracy: Americans' Beliefs About how Government Should Work* (Cambridge: Cambridge University Press, 2002), 227

In their view, people do not want to participate: they see the political arena with a certain disgust and mistrust. What they want is to know that if they do decide to participate, their participation will have an impact on the polity. In effect, the people want 'stealth democracy': where democratic procedures exist, but not visible on a routine basis. The people want to be able to make democracy visible and accountable only on those rare occasions when they feel motivated to be involved⁶⁷.

These claims do not necessarily dampen our enthusiasm in promoting direct democracy. Other data, particularly cross-national data, do show that citizens want greater involvement. While for Hibbins and Theiss-Morse, high levels of citizen approval for more participation is chimerical, Russell J. Dalton et al., studying data from Germany and other European democracies, state that "the available opinion polls suggest that most people in Western democracies favour reforms that would move toward a more participatory style of democratic government"⁶⁸. Bowler et al. show that this support actually reflects a desire to place a check on the influence of special interests⁶⁹: citizens see the voting public, participating via direct democracy, as a check on the power that narrow interest groups generally have in politics. Furthermore, people believe the voting public is far less corrupted by the power of special interest than are the legislatures. In addition, as

⁶⁷ Ibid., 2

⁶⁸ Russell J. Dalton, Wilhelm Burklin and Andrew Drummond, "Public Opinion and Direct Democracy", *Journal of Democracy* 12 (2001), 145

⁶⁹ Shaun Bowler, Todd Donovan and Jeffrey Karp, "Popular Attitudes Towards Direct Democracy", Paper prepared for the 2003 American political Science Association Meeting, Philadelphia, PA. Aug 28-31.

Bowler and Donovan show, it is in states that have and use direct democracy-type devices that citizens feel they have the more say, and are better able to take actions that are effective in the political realm⁷⁰.

Thus, while we should remain careful in our judgement of what opportunities decentralizing decision-making will bring, we should not forget that "the case for direct democracy is strong precisely because citizen participation in decision-making and the active consent of as many people as possible to public policy are key democratic values"⁷¹, and that citizens want more participation in these decision-making procedures. It is precisely for reasons of extending decision making into more hands than only those of a small number of aristocrats that the bourgeoisie embarked on its crusade for more "democratic" institutions and a system of government that would be 'by the people, for the people'. While we do not (yet?) wish to propose a total removal of representative systems for strictly direct decision making, we are confident that direct democracy does indeed make for more responsiveness on the part of governments.

Educational and interest formation: Another pervasive argument in favour of direct democracy is that by increasing citizen participation in public life, the citizen will learn more about the system, its working and also its rationale. Furthermore, having the opportunity to have a greater say in decision-making will arouse her interest in politics, which should lead to greater information gathering

⁷⁰ Shaun Bowler and Todd Donovan, "Democracy, Institutions and Attitudes About Citizen Influence on Government", *British Journal of Political Science* 32 (2002), 371-90

⁷¹ Ian Budge, *The New Challenge of Direct Democracy*, 4

on her part and eventually make her a more conscious and enlightened citizen, better able to deal with complex political decision making that affects her life. As Herbert McClosky notes "democratic beliefs and habits are obviously not 'natural' but must be learned"⁷².

Close to two centuries ago, Rousseau and Mill were already making such a claim. Rousseau, in his *Le contrat social*, advocated a system in which all had submitted to a common contract, the social contract, of which an essential component was the educative function that participation offered the citizen⁷³.

Rousseau's ideal system is designed to develop responsible, individual social and political action through the effects of the participatory process. During this process [...] he finds that he has to take into account wider matters than his own immediate private interest if he hopes to gain cooperation from others. Once the participatory system is established, [...] it becomes self-sustaining because the very qualities that are required of individual citizens if the system is to work successfully are those that the process of participation itself develops and fosters⁷⁴.

John Stuart Mill follows pretty much the same logic in his analysis of the educative function of political participation. Following Tocqueville's analysis of 19th century America, Mill notes that participation at the local level, where questions are of direct interest to her, will teach the citizen democratic principles:

We do not learn to read or write, to ride or swim, by being merely told how to do it, but by doing it, so it is only by practising popular government on a limited scale, that the people will ever learn how to exercise it on a larger⁷⁵.

⁷² Hebert McClosky, "Consensus and Ideology in American Politics", *American Political Science Review* 58 (1964), 375

⁷³ As is stated in Duquette and Lamoureux, "la citoyenneté rousseauiste est très intimement associée à un projet pédagogique. Pour lui, on ne naît pas citoyen, on le devient." See Michel Duquette et Diane Lamoureux, *Les idées politiques: de Platon à Marx* (Montréal: Les presses de l'Université de Montréal, 1996), 345

⁷⁴ See Carole Pateman, *Participation and Democratic Theory* (Cambridge: Cambridge University Press, 1970), 25

⁷⁵ John Stuart Mill, "Essays on Politics and Culture", quoted in Carole Patemen, *Ibid.*, 31

More contemporary scholars have gone the same way. For Carole Pateman, "the evidence indicates that experience of a participatory authority structure might [...] be effective in diminishing tendencies toward non-democratic attitudes in the individual"⁷⁶. For her, increasing participation leads to greater understanding of the link between the public and private spheres, where assessments of situations, real or idealized, are better made and sense of involvement fosters better knowledge of the place of an individual in society.

The existence of a participatory society would mean that [man] was better able to assess the performance of representatives at the national level, better equipped to take decisions of national scope when the opportunity arose to do so, and better able to weigh up the impact of decisions taken by national representatives on his own life and immediate surroundings⁷⁷.

Similarly, for Benjamin Barber, "l'activité civique entraîne les individus à penser en termes publics, en citoyens, et leur statut de citoyens les dote d'un sens utile de la collectivité et de la justice"⁷⁸. Thus, for these authors, participation helps in forming citizens that are better aware of the impact of their actions on others in the community. There is potential for a greater appraisal of the collective 'US', and a better understanding of the relation between individual and collective preferences. Furthermore, participation educates the citizen in the working of government and the impact of certain policies.

Some critics, however, do not hold the same view, and question whether political participation really has an educative function. For example, Fishkin finds that

⁷⁶ Pateman, *Ibid.*, 105

⁷⁷ *Ibid.*, 110

⁷⁸ Benjamin R. Barber, *Démocratie forte* (Paris: Desclée de Brouwer, 1997), 172

The American experience with referendums and other variants of direct democracy does not support the view that by giving power to the people we also encourage educational efforts on their behalf to acquire the information to deliberate about the use of that power⁷⁹.

This point is also discussed by Patrice Collas. In his view, referenda do not create novelty outcomes, since the electors tend mainly to legitimize power shifts that take place inside the polity. Giving the example of the transition to the French Fifth Republic, he notes that the 1958 September referendum legitimized changes and party shifts that had occurred in May of that year, where De Gaulle was named head of the executive council by power brokerage and alliance shifts. Thus, he concludes that in referendum voting, "les électeurs se limitent souvent à entériner un nouveau rapport de forces politiques issu ou provoqué par des événements de nature non-électorale"⁸⁰. Furthermore, he notes that in the 1992 referendum on French adhesion to Maastricht, the electoral cleavage is clearly a religious one, where No voters mostly came from historically secular regions, while the Yes voters came from the most religious areas of France. Thus, the failure to go beyond traditional religious cleavages would be an indication that education is not one of the referendum's functions.

In a similar fashion, the rejection of Maastricht by the Danes was also seen, by some, as evidence that direct democracy did not help educate its citizens to go beyond self-interested voting. The failure by Danish voters to go beyond their national interest, and to look forward to a larger Europe, especially in light of the fact that the great majority of elites supported Maastricht, was seen as

⁷⁹ James S. Fiskin, *Democracy and Deliberation*, 52

⁸⁰ Patrice Collas, "Consultations populaires et dernier référendum", *Revue politique et parlementaire* 94 (1992), 34

evidence that education was not part of the process. Niels Christiansen remarked that "the rejection of Maastrich represented a reassertion by ordinary people of their right to formulate, and work to satisfy, their own needs"⁸¹. Others remarked that

The majority of the political parties had believed that the Danes were ready to accept this step forward towards closer integration. [However], the voters still remembered what they did not like - as stated in 1972 and 1986 – and voted accordingly⁸².

One must however keep in mind that the Danes have been historically fearful of integration on the grounds that they did not want to lose political sovereignty, and the original Maastricht treaty did leave many wondering what the consequences of integration would be.

Others have presented a parallel argument, where it is not direct democracy itself, but participation in the polity as such, that is rejected as a means to help educate citizens in prime values of democracy, such as tolerance. For example, Muller et al., conducting a cross-national study of Guatemala, Turkey and the U.S., find that "the relationship between political participation and support for democratic norms seems at best to be weak, and it is clearly system-specific"⁸³. Mark Mattern, conducting an experimental 'democratic education' course, in which he decentralized most professorial duties (correcting, discipline...) to his students, also finds that increased participation does not bring about expected results. Though students learned how to work with people they did not necessarily

⁸¹ See Niels Finn Christiansen, "The Danish No to Maastricht", *New Left Review* 195 (1992), 100

⁸² Karen Siune and Palle Svensson, "The Danes and the Maastricht Treaty: the Danish EC Referendum of June 1992", *Electoral Studies* 12 (1993), 110

⁸³ Edward N. Muller, Mitchell A. Seligson and Ilter Turan, "Education, Participation, and Support for Democratic Norms", *Comparative Politics* 19 (1987), 28

got along with, students were alarmingly ill-informed about basic tenants of democratic theory and practice. For example, nearly half reported that political equality in the United States was a reality, not merely a formality, and that economic power did not buy political power. This leads him to conclude that "basic questions of democratic theory that were amply addressed in this course and the failure of some students to grasp or accept them is troubling"⁸⁴.

Finally, another line of argument stems from the idea that people do not wish for large participation in politics. Thus, increasing participation may in fact lead to frustration, and may hinder all educative function, since it could reveal and amplify division in the polity, thereby possibly creating conflict. This has been strongly put forward by 'stealth theorists' Hibbins and Theiss-Morse, who find that "enhanced involvement in politics does not have the benefits theorists claim"⁸⁵. In their view, people are not generally interested in becoming more informed since time and other pressures inhibit their desire for such activity. "Reading up on issues and extensively debating them is an additional burden [they] do not crave nor need"⁸⁶. Thus, pushing for an increase in participation may actually make people feel bitter towards the government, and in some ways, less adamant in their acceptance of basic principles of democracy.

⁸⁴ Mark Mattern, "Teaching Democratic Theory Democratically", *PS: Political Science & Politics* 91 (1997), 514

⁸⁵ John R. Hibbins and Elizabeth Theiss-Morse, *Stealth Democracy*, 184

⁸⁶ *Ibid.*, 232

However, data has been presented that shows that, citizens living in states that have and practice direct democracy, feel themselves that they are better informed and have a better understanding of politics than others⁸⁷. While Bowler and Donovan note that citizens may feel a false sense of empowerment if ballot measures have no consequence on policy, they point out that that is not the case in practice: ballot measures do have consequences on policy. In addition, they show that direct democracy rivals with education in shaping perceptions of how citizens feel they influence the government. Furthermore, other convincing empirical evidence has shown that participation leads to greater political knowledge, and acceptance of democratic norms and behaviours. Jane Junn finds that

A reciprocal relationship exists between participation and political knowledge. [...] Individuals gain cognitive skill or knowledge from the experience of participating in the political system, and taking part in political activity enhances the level of knowledge individuals have of their government⁸⁸.

This evidence has been corroborated by Mendelsohn and Cutler, who find that referenda tend to increase voters' knowledge of the issues, and that this information supplement is not concentrated amongst the already well-educated⁸⁹.

For our part, we tend to agree with Rousseau and the other 'participationists'. After all, it is by using a device that we get to know more about it and understand its complexities. Politics can be compared to a game: there are rules and regulations that apply and diverse strategies may be used in order to

⁸⁷ See Shaun Bowler and Todd Donovan, "Democracy, Institutions...", 383

⁸⁸ Jane Junn, "Participation and Political Knowledge", in William Crotty (ed), *Political Participation and American Democracy* (New York: Greenwood Press, 1991), 208

⁸⁹ Matthew Mendelsohn and Fred Cutler, "The Effect of Referendums on Democratic Citizens: Information, Politicization, Efficacy and Tolerance", *British Journal of Political Science* 30 (2000), 685-98

"win" the game. By playing more and more, we tend to learn more about the game and its tricks and develop better strategies. While we may end up disliking the game, we certainly know more about its workings after having played it. Thus, as Conway notes, "participation, whether in the political or the non-political areas of life, tends to influence individuals' attitudes and beliefs in the direction of more positive orientations toward both themselves and the political system"⁹⁰. In addition, it seems reasonable to believe that citizens, having a more direct contact with policy-making, and being better aware of the consequences of these policies, will increasingly develop a feeling of responsibility towards their peers, in the sense that they will realize in a clearer manner the impact of their actions on others, as well as on themselves.

Conclusion

It is our contention that direct democracy should not be left completely unsupervised. Direct democracy should be used in combination with representative systems. We agree with those who feel that giving more participation to citizens is a good thing, simply because if policy decisions are to affect their lives, then they should be actively participating in it. We have shown the principal arguments that are made for or against the use of direct democracy-type devices, and have responded to them⁹¹. Both sides offer valid arguments, and

⁹⁰ M. Margaret Conway, *Political Participation in the United States* (Washington: CQ Press, 2000), 204

⁹¹ However, other comments concerning direct democracy have also been made, amongst them the role of money in influencing outcomes. Among others, Cronin shows that if the money is spent in promoting an issue, the success rate is only 25%, while if the money is used to go against an issue, the success rate is 75%. See Thomas Cronin, *Direct Democracy*, chapter 5. Other scholars have focussed more directly on the role of money in direct democracy (and in representative systems as

it is possible for the scholar to take sides in the debate. All in all, however, the arguments in favour of direct democracy seem more convincing, and more consistent with our own ideals about democracy and its workings. We therefore conclude that direct democracy is a valid form of decision making, and should be promoted.

Let us now turn to the next section: how to construct the checklist ballot.

well) and we should direct our readers to those studies. For example, Larry J. Sabato, Howard R. Ernst and Bruce A. Larson (eds), *Dangerous Democracy? The battle Over Ballot Initiatives in America* ((New York: Rowman & Littlefield, 2001); Betty Zisk, *Money, Media, and the Grass Roots: State Ballots Issues and the Electoral Process* (Newsbury Park: Sage, 1987)

Chapter 2

Construction phase... modalities for placing items on ballot

Pierre Favre reminds us that "il faut toujours se demander qui a le pouvoir de formuler la question qui sera soumise à l'organe délibérant"⁹², since, as is noted by Vincent Lemieux, "la formulation de la question est au coeur du processus référendaire, puisque c'est autour des réponses à apporter que se fait le débat"⁹³. In this section, our discussion will center on how to construct the checklist ballot; that is how to decide which items will appear on the ballot, and where and how to place them, which basically amounts to deciding the wording of the referendum question. After reviewing the methods used for ballot construction in the Jackson and the British Columbia (B.C.) referenda, we will propose our own method of ballot construction. It will be argued that, although the other two methods may be efficient in certain cases, they do not permit enough citizen participation in political processes that concern them, and leave too big a place for the government to manipulate the wording of the question to best serve its own interests. In addition, we shall show that our method has longer lasting effects, helping to form more civic minded and interested citizens.

⁹² Pierre Favre, *La décision de majorité* (Paris: Presses de la fondation nationale des science politiques, 1976), 122

⁹³ Vincent Lemieux, "La formulation de la question", in Collectif, *Démocratie et référendum: la procédure référendaire* (Montréal: Québec/Amérique, 1992), 95

At the heart of our concern with ballot construction is the impact that the referendum question has on voting intentions and outcomes⁹⁴. As William Riker notes:

Outcomes are the consequences not only of institutions and tastes, but also of the political skill and artistry of those who manipulate agenda, formulate and reformulate questions, generate "false" issues, etc., in order to exploit the disequilibrium of tastes for their own advantage⁹⁵.

Similarly, Boyer reminds us that "ambiguity in wordings which give rise to more than one interpretation of the question (and subsequently of the result), defeats the purpose of the vote"⁹⁶. William Jacoby, in an article on different framings of public spending, convincingly shows that public opinion does change with different presentations of the issues; thus, varying issue presentations may actually change citizens' responses on the issues⁹⁷. His analysis also confirms the expressly political nature of the issue-framing process. This is further evidenced by the work of Pinard et al. They show that in the case of Quebec sovereignty, using the terms *separation*, *independence*, or *souveraineté* garnered different levels of approval, while all three terms conjure up a similar idea of secession⁹⁸.

⁹⁴ We must recognize Howard Scarrow's contention that ballot format impacts vary with characteristics of individual voters. Thus, some electors, more than others, may be influenced by a particular format. However, it should be noted that his contention stems from research on ballots in partisan elections, not referendums. See "Ballot Format in Plurality Partisan Elections" in Arend Lijphart and Bernard Grofman (eds), *Electoral Laws and their Political Consequences* (New York: Agathon Press, 1986), 242-247

⁹⁵ William H. Riker, "Implications from the Disequilibrium of Majority Rule for the Study of Institutions", *American Political Science Review* 74 (1980), 445

⁹⁶ Boyer, *Lawmaking by the People*, 17

⁹⁷ William G. Jacoby, "Issue Framing and Public Opinion on Government Spending", *American Journal of Political Science* 44 (2000), 750-767. A similar argument is made by Ian Shapiro as he notes that "members of a winning majority may have voted differently had the alternatives been presented in a different order". See "Three Fallacies Concerning Majorities, Minorities, and Democratic Politics" in John W. Chapman and Alan Wertheimer (eds), *Majorities and Minorities* (New York: New York University Press, 1990), 97. For his part, Zaller shows that adding a preamble to the question can modify a respondent's answers. See *The Nature and Origins of Mass Opinion*, (Cambridge: Cambridge university press, 1992), 82-83

⁹⁸ Maurice Pinard, Robert Bernier et Vincent Lemieux, *Un combat inachevé* (Québec: Les presses universitaires du Québec, 1997), 35-37

The government (usually the PQ), being aware of these fluctuations, tends to favour presenting the project in a way that permits it to get as much votes as it can from soft nationalists, those people who, while not favouring total independence, are eager for a renegotiation of Quebec's place in Canada.

The Quebec premier is accurately aware that a 'hard' question on sovereignty, no matter how cleverly phrased, stands little chance of being accepted by even a slim majority of the province's voters. [...] As many recent surveys have discovered, Quebec's voters are more susceptible to the lure of sovereignty when it is coupled with offer of a new relationship with the rest of the country.⁹⁹

Similar results were also found by other authors. In an experimental study conducted during the 1992 Charlottetown referendum to see if wording of the question had any impact on voting intentions, Johnston et al. found that certain wordings indeed produced more acceptance of the accord¹⁰⁰. In the case of the 1975 English referendum on the European Common Market, Butler and Kitlinger show that the government had prepared and tested six alternative questions to find which one would best secure approval of their preferred option¹⁰¹. We can thus see that referendum questions are crucial, as they are easily turned and twisted in ways that could ensure that the government's option gets the most approval from the electorate. However, this conclusion should be tempered by the fact that the studies mentioned here establish a link between the referendum question and voting intentions as measured by opinion polls. Thus, it could be correctly

⁹⁹ Barry Came, "We the people: Jacques Parizeau unveils Quebec's referendum question", *Maclean's* 108, September 18, 1995, 12-16.

¹⁰⁰ See Richard Johnston, André Blais, Elizabeth Giddengil and Neil Nevitte, *The Challenge of Direct Democracy: the 1992 Canadian Referendum* (Montreal: McGill-Queens' University Press, 1996), 300 (fn.30). These results were, however, only found in Quebec.

¹⁰¹ See David Butler and Uwe Kitlinger, *The 1975 Referendum* (London: Macmillan press, 1976), 60. Difference in approval rates varied from +0,2 to +16,2%.

hypothesized that across a referendum campaign, the effect of the question could wane in favour of more pointed debates on the referendum issues themselves, and that these debates would orient actual voting intentions with more gist than the wording of the referendum question itself.

The method that was used in Jackson will be called 'executive', and the one used in B.C. will be called 'executive with consultation'. Our proposed method shall be referred to as the 'deliberative' method. As we have stated in the introductory pages of this thesis, it brings together elements taken from different deliberative settings. While our method proposes somewhat similar methods of participant and expert selection, as well as similar processes of deliberation as the other deliberative settings, we differ from these other methods in regards to the ends that we postulate. Our deliberants are not posed as consultants from whom power structures can claim legitimacy, but rather as full-fledged decision-makers: they have the final say over the construction of the ballot, of what the wording of the referendum question will be. In this sense, our method resembles closely the idea of 'demarchy':

The key decision-making processes occur in the functional groups: These are groups of citizens chosen randomly [...] who make decisions in particular areas. [...] Member's expertise initially is quite limited, but even so, policy juries soon become, on a collective basis, quite knowledgeable¹⁰².

Working on our dual assumption that the construction of the checklist ballot should contribute to both increasing actual citizen participation, and decreasing the manipulative capacities of the governing bodies in presenting the

¹⁰² Lyn Carson and Brian Martin, *Random Selection in Politics* (Westport: Praeger, 1999), 104-5

referendum option(s) (in line with the analytical framework defined in the opening pages of this essay), we feel these dual goals are best achieved through the 'deliberative method' that we propose.

The 'executive' method

In Jackson, Mississippi, there were no public consultations regarding the spending initiatives that were to be put forward on the ballot. The checklist ballot's construction was entirely the work of the executive committee in charge of school affairs. As noted by Glaser,

First, he [Dr. Ben Canada, superintendent of the city's schools] and the School Committee identified the ten most important infrastructure needs in the district. With that in hand, they put together a bond issue that was actually ten "mini" bond issues¹⁰³.

This example illustrates what we call the 'executive' method: where citizens are not consulted in the process of constructing the ballot. The method's principal flaw is that it gives too much power to the governing bodies in constructing the ballot; it allows them the liberty to choose themselves what items will be placed on the ballot, depending on the importance they give to certain issues rather than to others.

It should be stressed that the last time a school bond had managed to pass in Jackson was in 1964, when Mississippi was the only state in the nation that had

¹⁰³ Glaser, "White Voters, Black Schools...", 37. In my correspondence with James Glaser, he offers additional details about how the ballot was designed: "In talking with the designers of the Jackson checklist, I know they made a conscious decision to put things on the checklist that they didn't expect to pass, but they wanted to give people the opportunity to say 'no' to something. They also put the items they cared most about higher on the list. They didn't want to get a 'no no no' pattern going".

not even started to integrate its school. At the time when the checklist was used, while the city was in majority white, the population in public schools was mainly black. Furthermore, in 1950, the Mississippi legislature had passed a 60 percent rule, following which no school bond could pass without obtaining at least a 60% approval from the electorate. The problem, then, was to find a way to garner enough support from white folks for spending that would go in large part to the black population. In this sense, one could be tempted to infer that in such a particular situation, a special device was needed; probably a common and calculated effort on the part of officials to make sure the bonds would pass. As Glaser shows, had it not been for the concerted efforts of officials, the bond (or bonds) would never have passed the 60% mark. Even with this effort, only three bond issues passed, with the highest support garnering only 3,24 percentage points more than what was required¹⁰⁴. In the same vein, one could also argue that representatives, having been elected by the people in a democratic way, have a legitimate claim of talking and acting in the name of the people; giving them the task of constructing the ballot would merely be a form of sovereignty delegation on the part of the public.

To these two arguments we retort that the goal of this thesis (and this ballot) is to increase actual political participation by the public, while at the same time decreasing the possibilities of government manipulation of the referendum presentation and thus, of the outcomes. As a result, we believe that we should promote ways in which the public digs in and participates directly, on its own, in

¹⁰⁴ Glaser, *Ibid.* (table 1)

the institutional (ballot construction), as well as in the voting process, instead of simply being cast as a rubber stamp to approve or disapprove government options inside parameters set, and decided upon, at the elite level.

To conclude, while we may recognize this method's usefulness in certain rare and special cases, the 'executive' method does not appear to be an optimal approach for constructing a checklist ballot.

The 'executive with consultation' method

For its May 2002 referendum on treaty negotiations involving Native people, the government of British Columbia proceeded with public consultations. As is stated in an official document released by the Select Standing Committee on Aboriginal Affairs:

The Committee is inviting written submissions and conducting regional public hearings to hear evidence from British Columbians on this topic. A series of public hearings will be held in October where interested individuals and organizations may appear before the Committee to present their recommendations. The information provided at the public hearing and in the written submissions will form the basis of the Committee's report. The final report and its recommendations will assist the government in preparing questions that will be put to all British Columbians in a one-time, province-wide referendum.¹⁰⁵

We call this method "executive with consultation": the government takes on some sort of public consultations concerning the referendum to be held.

¹⁰⁵ Legislative Assembly of British-Columbia, news release, *Treaty Referendum Hearings set for Vancouver Island*, released Oct. 23rd 2001, p.4. The Committee held consultations November 1-2 on Vancouver Island. In addition, written submissions could be sent until November 2nd. These consultations were meant to help the committee produce a report which would be released the November 30th 2001. The referendum was a mail-in ballot that had to be sent back by May 15th 2002. See Appendix 1 for an example of the ballot.

Following these consultations, it produces the ballot that is to be put to referendum. What comes out of the public consultations is, however, not binding for the governing bodies, and it is really their choice to follow or not what citizens have told them.

Public consultations can have two benefits, one of legitimization and one of input. On input, public consultations can serve as a means to probe public opinion, and also to get outside expertise on the subject¹⁰⁶. Public consultations can also be held in an effort to legitimize a particular process. In this case, the desired objective is to present the image that the public was an integral part of the referendum process. Both are not mutually inclusive, as you can have one without having the other. In the case of British Columbia, the authorities were clearly looking for legitimacy to come out of their consultations, as evidenced by the way these were handled. The actual public consultations were only held for two days, and in only three locations (Nanaimo, Port Alberni and Campbell River). In addition, people wanting to send written submissions only had a couple of months to prepare their report and send it. Thus, even on the legitimacy front, the process was a disaster. Angus Reid called it "one of the most amateurish, one-sided attempts to gauge the public will that I have seen in my professional career"¹⁰⁷.

¹⁰⁶ Mary Grisez Kweit and Robert W. Kweit show that even in bureaucratic systems, information from outside sources (like citizens) is valuable in increasing information available to decision makers, despite complexity. This input can help provide a more comprehensive picture on all aspects of the policy process. See "The Politics of Policy Analysis: The Role of Citizen Participation in Analytic Decision Making", in Jack DeSario and Stuart Langton (eds), *Citizen Participation in Public Decision Making* (New York: Policy studies organization, 1987), 19-37

¹⁰⁷ David Charbonneau, "Wacky Referendum Takes Province Back Through the Looking Glass", *Kamloops Daily News*, April 16th, 2002. Later in the article, we can read: "Take the first question,

Here again, the method does not satisfy our pre-stated conditions for increased actual citizen political participation, and a decrease of manipulation by the government. In this case, the major obstacle is that even if there are some forms of consultation, these consultations are not binding for the governing bodies. Therefore, we find here a similar problem as with the 'executive' method: too much power is given to the governing bodies in deciding what shape the ballot will take. Could we argue that this was also a special case? We are pretty sure some form of argument could be made¹⁰⁸. However, particularity can only go so far, and in light of our analytical framework, this method must be put aside.

Method 3: the "deliberative" method

In light of the above review, we are now set to *propose* our own method, which is based on elements taken from Fishkin's deliberative opinion polls¹⁰⁹, from consensus conferences¹¹⁰ and from citizen' juries¹¹¹. In its ensemble, it resembles 'demarchy'; where a group of ordinary citizens is selected and brought together to deliberate and decide upon pieces of legislation. The crux of the argument rests on the principle that all people affected by a policy should be

for example. It breaks one of the basic rules for writing referendum questions – it states the question in the negative".

¹⁰⁸ Having not yet signed a "peace of the braves" with the Natives, and constrained by the Delgamuukv decisions requiring that provincial governments negotiate in good faith territorial treaty negotiations with the Natives, the government of B.C. did not have all the latitude it could have enjoyed under other circumstances. Here again, one could say special ends need special means.

¹⁰⁹ See Fishkin, *Democracy and Deliberation; The Voice of the People* (New Haven: Yale university press, 1995)

¹¹⁰ See for example Simon Joss and John Durant, *Public Participation in Science: The Role of Consensus Conferences in Europe* (London: Science museum, 1995)

¹¹¹ See for example J. Stewart, E. Kendall and A. Coote, *Citizen Juries* (London: IPPR, 1994); A. Coote and J. Lenaghan, *Citizens' Juries: Theory Into Practice* (London: IPPR, 1997)

involved in the making of that policy. Our rationale is that citizens, deliberating amongst themselves, will be able to arrive at a decision that is more reflective of their preferences than would deliberation and decision-making restricted at the elite level only.

The argument also rests on the idea that people will, through deliberation and justification of their positions, be able to better understand the rationale for conflicting positions, and be open to change their views in light of 'the better argument'. Recognizing the evidence brought by Converse¹¹² and Zaller¹¹³ that people have ill-conceived opinions, deliberative democrats postulate that by providing information to citizens, and making them deliberate together, they will change their preferences in ways that make them get a better understanding of the global picture, and strive in more positive ways towards the greater good¹¹⁴. Thus, even if, as has been presented by some, citizens' opinions on the aggregate appear quite coherent¹¹⁵, the impetus here is to achieve coherence in the individual; making the individual herself become, through deliberation and information input, more coherent in her beliefs, and in the rationale(s) that guide these beliefs. It is our view that "no intellectually defensible claim can be made that policy elites [...] possess superior knowledge or more specifically superior knowledge of what constitutes the public good"¹¹⁶.

¹¹² See Converse, "The Nature of Belief Systems in Mass Publics"

¹¹³ See Zaller, *The Nature and Origins of Mass Opinion*

¹¹⁴ See James S. Fishkin, Robert C. Luskin and Roger Jowell, "Deliberative Polling and Public Consultation", *Parliamentary Affairs* 53 (2000), 657-666

¹¹⁵ See Benjamin Page and Robert Shapiro, *The Rational Public: Fifty Years of Trends in American Policy Preferences* (Chicago: Chicago University Press, 1992)

¹¹⁶ Robert A. Dahl, *Democracy and its Critics*, (New Haven: Yale university press, 1989), 337

While we accept the theoretical framework of other deliberative methods, we diverge from them in the end effect of this deliberation. For proponents of these methods, the goal is merely descriptive. As Fishkin states, a deliberative opinion poll "has a recommending force: these are the conclusions people would come to, were they better informed on the issues and had the opportunity and motivation to examine those issues seriously"¹¹⁷. This is pretty much what is expected of consensus conferences, where the recommendations in the report of the deliberants may be used discretionarily by the government¹¹⁸. Citizen juries tend to go a bit further. Even if the recommendations they make are not binding, if the sponsoring body (usually the government) does not act upon these recommendations, it must explain why¹¹⁹.

We wish to take all of this a step further. Our deliberants will be fully in charge of constructing the checklist ballot. They will not just make recommendations on its appearance, but rather make binding recommendations of what the referendum question should be. This does not mean that all technical aspects of the deliberative setting will be left in their hands, but rather that they

¹¹⁷ Fishkin, *The Voice of the People*, 162. For him these deliberative polls simply "models what he public *would* think, if it had a more adequate chance to think about the questions at issue". See *Democracy and Deliberation*, 1

¹¹⁸ See Daniel Boy, Dominique Donnet Kamel et Philippe Roqueplo, "Un exemple de démocratie participative: la 'conférence de citoyens' sur les organismes génétiquement modifiés", *Revue française de science politique* 50 (2000), 806. In this particular case, the government did go along with many recommendations made in the consensus conference. However, this does not appear to be a standard practice.

¹¹⁹ See Graham Smith and Corinne Wales, "Citizens' Juries and Deliberative Democracy", *Political Studies* 48 (2000), 51-65; For Ward and *al.*, the reason that citizens' juries' recommendations are not binding is so there is no tension between the juries and elected officials. See Hugh Ward, Aletta Norval, Todd Landman and Jules Pretty, "Open Citizens' Juries and the Politics of Sustainability", *Political Studies* 51 (2003), 282-99

will have the final say on the ballot's content and appearance. Hence, we expect that by bringing together a group of non-expert citizens, giving them balanced and adequate information on a certain policy issue, and by having them deliberate in a proper setting, we will be able to make this group sufficiently knowledgeable so they can have a greater and more balanced appreciation of the problem at hand, and thus make appropriate, binding recommendations to public officials. This will allow for a greater feeling of involvement in political processes on the part of citizens. In addition, it would greatly improve the legitimacy of the referendum process and of the outcomes as well.

How does it work?

We first present a brief outline of our method, and we get into more details of particular aspects further on. The process briefly resumed goes as follows.

The government comes up with a set of propositions and ideas it wants to put forward by way of referendum. For example, in the case of spending initiatives, the government would come up with ideas and targets of spending they wish to promote. These ideas would be presented by the government in the form of a list of pre-written items, which would serve as a basis for the deliberant assembly to work upon, and modify as they wish. This would allow the assembly to have some sort of foundation to start from, and would also be an indicator of who initiates the project, in what capacity and towards what goals, giving a clearer indication of the direction the sponsoring body would like the assembly to take.

Following this, the government randomly selects a certain number of citizens. Once selected, these citizens would be handed an informative manual, containing balanced and nuanced information explaining the pros and cons about each option (item) the government would like to push through. Neutrality of this manual's content could be ensured by either the two following ways. One way would be to ask for an independent body to write up the manual, while another would be to ask the government to write the Pro arguments, and have the opposition parties write up the Cons.

Then, before the deliberative proceedings start as such, some preparatory meetings would be set in place to ensure that: 1) all the deliberants have adequate basic information on the subject they will deliberate upon; 2) some bonds of trust and amicability are formed, which are crucial to a proper deliberation setting; 3) there is flexibility in expert/elite selection as the deliberative public moves through the process. Since the deliberants do not necessarily know who the experts are and how to reach them, the government would initially select them. They could however demand that certain types of experts be brought forward instead of or in addition to others, as the process goes along.

These citizens are then brought together in a single location so there is face-to-face discussion amongst them¹²⁰. To assist them in their deliberation and

¹²⁰ This exact format of the bridging is not rigid. While we recommend physical presence as ways to promote deliberation and debate (similar to jury duties), Dahl argues that physical presence is not required, since telecommunication can bring people together in just the same manner. See *Democracy and its Critics*, 340. F. Christopher Artterton points to similar uses of

proceedings, a professional moderator, neutral and trained in group cohabitation, would be present. He would supervise the proceedings. There would also be a group of scholars and other elites (business, interest groups, citizen groups...) that would be present to help answer questions the citizens would have, to explain why they stand for certain policies rather than others, and to ensure the legality of the outcomes.

Following this, a period of deliberation exclusively amongst the deliberating citizens would take place, after which the group would come up with the ballot to be put to a referendum. Of course, the actual period of deliberation could not be very long since financial constraints should be taken into consideration. In addition, one should not underestimate the fact that citizens would not all be too happy or willing to be taken away from their usual business for this exercise. A good way to make this participation less burdensome would be to compensate the participants. As is noted by Carson and Martin,

Payment is one way of both rewarding and valuing participants' contribution, as well as a means of compensating them for time and/or wages forgone. [...] It does allow for participation by those otherwise unable to attend and shows that participants' input is valued¹²¹.

We now move to a more detailed presentation of our 'deliberative method'.

How are participants to be selected?

telecommunications as tools for bringing together citizens and promoting participation, albeit as a tool for improving representative democracy. See "Political Participation and 'Teledemocracy'", *PS: Political Science and Politics* 21 (1988), 620-27. This joins Slaton's idea of televoting. See Christa Daryl Slaton, *Televote: Expanding Citizen Participation in the Quantum Age* (New York: Praeger, 1992)

¹²¹ Carson and Martin, *Random Selection in Decision Making*, 93

While calling for all those affected by policy making to be consulted, it would be foolish to hope such would happen, albeit perhaps in very small communities. In addition, if all affected could be brought together, there would probably be a shift from deliberation to speech-making, since citizens would form too numerous a group to entail proper deliberation. This is what Parkinson calls the scale problem¹²². Thus, some form of selection of the participants is needed. We believe that random selection is the best method to select participants: "the use of random selection in decision making is a way of being fair and being seen to be fair. It is especially valuable when other methods leave open a suspicion of bias or conflict of interest"¹²³. It ensures that there is no initial bias in the selection of participants favouring one group or another. It ensures, additionally, that governing bodies cannot manipulate the selection procedure to ensure participants fit certain characteristics preferred by these bodies. In this sense, "random selection [...] eliminates self-selection and prevents any interest group from influencing who is chosen"¹²⁴. Also, inherent to its logic, it ensures that the deliberative assembly will be a proportional reflection of group presence in the wider polity, which entails that a wider and truer range of ideas will be exchanged. It thus gives a strong legitimacy to the process of selection and of deliberation.

However, we are reminded that proportionality as such is not always an optimal choice, as some authors have pointed to certain defects of proportional

¹²² John Parkinson, "Legitimacy Problems in Deliberative Democracy", *Political Studies* 51 (2003), 180-96

¹²³ Carson and Martin, *Random Selection in Decision Making*, 15

¹²⁴ Lyn Carson and Brian Martin, "Random Selection of Citizens for Technological Decision Making", *Science & Public Policy* 29 (2002), 112

representation. For example, Smith and Wales denote four problems: first, no selected jury mirrors all standpoints and opinions of the wider community. Second, there is a danger of creating false essentialism: for example, should the women selected be obliged to represent views of all women in the wider community, and can they¹²⁵? Third, does proportionality imply that one cannot represent interests of others that do not share his characteristics? Lastly, should participants selected represent fixed views, formed before the proceeding, or should the participants be encouraged to change their minds¹²⁶? Parkinson points to another flaw: proportionality would entail reproducing outside inequalities into the deliberative bodies, thus maintaining the usual majority/minority status¹²⁷. For him, the solution to this would be an equalitarian representation. This means that groups representing minor strata of populations could have as many delegates as majoritarian groups. For example, groups like the Natives, who comprise tiny fractions of the population, could see their representation in the deliberative setting be equal to that of whites.

These criticisms, however, pertain to a mode of proportionality that would call for deliberants to be delegates of the wider polity, while in reality we want them to be trustees. The delegate version requires the representative to mirror the views of those he is said to represent. In this case, men would represent men's

¹²⁵ As noted by Carson and Martin, "feminists have wrestled with the shortcomings of seeing women as a homogeneous group, knowing that the life of a single black working mother in New York is very different from that of a married white childless female in Kansas". See *Random Selection in Decision Making*, 91

¹²⁶ See Smith and Wales, "Citizens' Juries and Deliberative Democracy", 56-57

¹²⁷ See Parkinson, "Legitimacy Problems in Deliberative Democracy", 189

views; women would do the same for women; and blacks for blacks, and so on¹²⁸. In this sense, if deliberants were delegates, reproducing majority/minority statuses of the wider community in the deliberant assembly could indeed be a cause of concern. However, another view is that of the trustee; the representative must be free to exercise his own judgement on issues. The deliberant who takes part in this deliberative process does not come as representing blacks or women, professors or unions or whatever; he comes as a citizen concerned with solving a policy problem. In light of deliberative democracy, it is imperative that the citizens chosen have the maximum liberty to change their opinions and compromise, since this is the basis of the deliberative argument. In this sense, the logical conclusion would be to have deliberants play the role of trustees. We expect random selection to make it even more evident that the deliberants are not representatives of any core of the population, but that they should act as trustees. In addition, "citizen participation may have more beneficial effects in structures that do not tend to force a strong connection between participants as persons and their political opinions"¹²⁹.

Having opted to select the deliberants randomly, we run up against another question: Should participant selection be from all of the population or only from volunteers? This is an important question, since some deliberative methods have

¹²⁸ Jane Mansbridge, for example, is one proponent of this form of representation. However, she prefers what she calls descriptive representation. This type does not only encompass visible characteristic (gender or race for example), but also shared experiences. However, she believes this form of representation is best used in certain historical circumstances that do not fit our context, neither our deliberant group. See "Should Blacks Represent Blacks and Women Represent Women? A Contingent 'Yes'", *The Journal of Politics* 61 (1999), 628-657

¹²⁹ Michael E. Morrell, "Citizens' Evaluations of Participatory Democratic Procedures: Normative Theory Meets Empirical Science", *Political Research Quarterly* 52 (1999), 315

used volunteer recruitment in the initial stage of recruitment, and this could be cause for concern. For example, in the case of Australia's consensus conference on gene technology, selection was done through advertisement during a period of a week, and out of those who responded, random selection was used to choose who would finally get to deliberate¹³⁰. Alternatively, in the Australian 'citizen jury' on container deposit legislation, recruitment was initially done through random mailing¹³¹.

These practices could engender criticism on the grounds of unrepresentativeness. For example, Brady et al. show that recruited participation and self-selected (volunteer) participation give a biased view of what really exists in the polity, since they usually call on more knowledgeable and participatory publics than what is actually found in the polity. Thus, both these processes do not bring into political processes people who are usually kept at the margin, or who do not usually participate politically. "The result is that policymakers [...] hear even more disproportionately from those who command the resources that make participation possible"¹³². In addition, evidence shows that participation is explained by resources, and that different resources lead to different modes of participation. In the case of activities that take time, the main explicative resources

¹³⁰ See Alison Mohr, "Of Being Seen to do the Right Thing: Provisional Findings From the First Australian Consensus Conference on Gene Technology in the Food Chain", *Science & Public Policy* 29 (2002), 2-12

¹³¹ Carson and Martin, "Random Selection of Citizens for Technological Decision Making"

¹³² Henry E. Brady, Kay Lehman Schlozman and Sidney Verba, "Prospecting for Participants: Rational Expectations and the Recruitment of Political Activists", *American Political Science Review* 93 (1999), 164

are civic skills and interest¹³³. The fact that these resources are unequally distributed in the polity explains why recruitment from volunteers would make for a group of deliberants that does not represent the wider polity, in its group distribution and in its political knowledge and interest levels. Thus, it is our contention that participants should be selected from all concerned, i.e. from all the polity. This ensures that "there is no group of selectors who can be accused of bias, because nobody can know in advance who will be chosen"¹³⁴.

Finally, to give an approximate figure, probably not more than a hundred participants should be selected for this exercise.

How are experts and other elites selected?

Experts and elites would be selected based on to their knowledge and expertise of the subject at hand. This would entail scholars and policy experts, business groups and the likes, which have some form of link to the question at hand, to be present. Parliamentary officials, not only members of government, should also be brought in to present and justify their position, and also to help the deliberants on technical matters. Legal experts would ensure the legality and the coherence of the outcomes. Of importance then is that these elites not only be well-rounded on the topic, but also that their views range across the whole spectrum of the debate; for example, on a project involving government spending, it would be important to have, at the same time, liberal-type, market oriented

¹³³ Henry E. Brady, Sidney Verba and Kay Lehman Schlozman, "Beyond SES: A Resource Model of Political Participation", *American Political Science Review* 89 (1995), 271-294

¹³⁴ Carson and Martin, "Random Selection of Citizens for Technological Decision Making", 107

people as well as more socially-conscious scholars and experts, so that the citizen group can have access to a balanced advice.

As the deliberants are not expected to know who the experts are, and how to reach them, an initial process of selection will be done by the sponsoring body (the government), where a list of experts and elites will be drawn up. Neutrality in this list could be achieved in the same two ways as for the information manual mentioned earlier. Thus, one way would be for an independent body to draw up a list, while another would be for the government to draw up a list of experts and have the opposition parties do the same, eventually combining the two selections into one single list. From this list the deliberants could choose what kind of expert they want to hear and question. The deliberants would also have the flexibility of choosing more or different ones as they go along¹³⁵.

How to guarantee that the deliberative settings will be effective?

As noted by Elton Reeves, "group effectiveness is directly proportionate to the willingness of members to work hard"¹³⁶. Here comes into play the question of context. "Deliberation requires conditions that will effectively motivate citizens to

¹³⁵ The importance of this point is made by Smith and Wales, "Citizen Duries and Deliberative Democracy", 58; also by Daniel Boy, Dominique Donnet Kamel et Philippe Roqueplo, "Un exemple de démocratie participative", 793. Alison Mohr, noting criticisms from a lay panellist she interviewed following the Australian consensus conference on gene technology, makes a similar point. The participant was adamant that to improve quality of the conferences, the panel should choose the experts, for he felt there was too much bias when the sponsoring body chose the elites. See Mohr, "On Being Seen to do the Right Thing", 9

¹³⁶ Elton T. Reeves, *The Dynamic of Group Behaviour* (New York: American management associations inc., 1970), 332

invest time and effort in information-gathering and face-to-face discussion"¹³⁷.

James Bohman resumes best the theoretical, ideal setting for deliberation:

The inclusion of everyone affected by a decision, substantial political equality including equal opportunities to participate in the deliberation, equality in methods for decision making and in determining the agenda, the free and open exchange of information and reasons sufficient to acquire an understanding of both the issue in question and the opinions of others¹³⁸.

In practice, creating an appropriate context for deliberation is a crucial aspect of the operation, and it is sometimes harder to achieve than expected, as evidenced by Robert Futrell's study of a city commission¹³⁹. In his study, Futrell finds that many aspects of a deliberative setting can discourage or hinder effective participation. For example, he reports that certain spatial factors, such as the distance between people and the moderator, or certain elements of clothing and language can affect the interactions amongst participants. Thus, the physical setting of the deliberation must make participants feel at ease in exchanging point of views and confronting each other on their diverse viewpoints. It must be cozy and neutral, where elements of superiority or authority are not seen or felt by the participants, or at least minimized.

The process also rests on the recognition of certain formal and informal rules. This is where the role of a moderator comes into play. The moderator is a fundamental element of the deliberative setting. He must have no link to any

¹³⁷ Fishkin, *The Voice of the People*, 142

¹³⁸ James Bohman, *Public Deliberation: Pluralism, Complexity, and Democracy* (Cambridge: MIT Press, 1996), 16

¹³⁹ See Robert Futrell, "La gouvernance performative: maîtrise des impressions, travail d'équipe et contrôle du conflit dans les débats d'une city commission", *Politix* 15 (2002), 147-165

political party, but simply be a professional expert in handling and directing group dynamics. He must be neutral, and it is imperative that he be able to pass on and reflect this neutrality. Though he will be chosen by the sponsoring body, he must make sure he does not influence the debates by giving personal opinions. Actually, some critics of deliberative democracy have charged that apparent change in preferences may not be due to the deliberative act itself, but rather to external sources of influence, like the tendency to go in the direction wanted by the sponsoring body, here represented by the moderator¹⁴⁰. Others, like Mohr, note that the relationship between the moderator and the deliberants can be difficult. She points to the fact that in the UK national consensus conference, the panel suspended its collaboration with the moderator because it felt he was too intrusive in his relation with the group¹⁴¹.

However, others have reported no problems with the moderator¹⁴². In light of the above, we cannot but repeat, even if it may sound like wishful thinking, our contention that the moderator must imperatively ensure he does not in anyway influence deliberants to go in one direction or another. His principal role is to facilitate discussion between deliberants, encourage mutual respect, and make sure that all processes flow smoothly. This could create what Reeves calls synergy in the group, where individuals recognize the benefits of collective concerted activity in reaching goals and attaining objectives, which is a crucial component for group

¹⁴⁰ This remark is made in Loic Blondiaux, "Sondage et délibération: une épistémologie alternative de l'opinion publique?", *Politix* 15 (2002), 164-80

¹⁴¹ Mohr, "On Being Seen to do the Right Thing", 7

¹⁴² For example, Carson and Martin, "Random Selection of Citizens for Technological Decision Making",

effectiveness¹⁴³. If it does indeed sound like wishful thinking, this does not seem to us an impossible task, albeit a very demanding one, and one that must be carried out diligently. Certainly, very few people can boast to being completely neutral. This highlights, we believe, the importance of choosing an appropriate moderator, able to conduct this task in the most professional and discrete fashion, while being realist in not expecting complete unbiasedness on his part.

Another fact that should be taken into consideration is that not all people have the same ability to express their ideas in clear ways, and do not rejoice from others' attention in the same manner. Thus it could be that even in the deliberative setting, inequalities will arise, where some people will be better able to put across their ideas and influence, since some people have more facility to speak in public, and express and justify their opinions to others. This is another aspect of the moderator's role that is crucial: he must make sure that people have equal opportunity to express themselves. As Fishkin notes about his deliberative poll in Texas, "the groups were lead by trained chairmen who made sure that all sides of the question got answered. 'There is no wrong answers' everybody was told; this helped to keep the discussion surprisingly civil"¹⁴⁴. This does not automatically presume that everyone should have equal time to speak; rather, each participant should feel that he has had the chance and opportunity to express himself as much as he wanted. The moderator must also ensure and promote respect amongst the deliberants.

¹⁴³ Reeves, *The Dynamic of Group Behaviour*, 335-6

¹⁴⁴ Cited in "Democracy in Texas: The Frontier Spirit", *The Economist* 347, no. 8068 (1998), 31

Finally, he should ensure that the deliberations stay on course. This does not mean the deliberants must strictly follow a predetermined path, but rather that they stick with the subject of deliberation. Gilbert Larochelle, analyzing the government of Quebec's "commission sur l'avenir du Québec" notes that the quality of the debate, rests on it being indeterminate in its *outcomes*. This is why we point to the fact that the moderator should ensure that the debate stays on track (the subject), while keeping the outcome in the hands of the participants (direction)¹⁴⁵. This concern is of particular importance due to the fact that temporal constraints will be present.

Should the deliberants reach a consensual decision, or should they reach a majority decision?

Some have argued that the act of deliberation will produce a form of consensual accord between participants, related in part to the recognition of certain common values amongst deliberants. Joshua Cohen, for example, writes: "deliberation aims to arrive at a rationally motivated consensus – to find reasons that are persuasive to all"¹⁴⁶. However, while the formation of a consensus by the deliberants would be an ideal situation, *requiring* a consensus is another thing, and strong arguments against consensus make us doubtful of its usefulness in this particular setting. As noted by Ward et al.

¹⁴⁵ See Gilbert Larochelle, "Espaces publics et démocratie: l'expérience des commissions sur l'avenir du Québec", *Revue française de science politique* 50 (2000), 811-839.

¹⁴⁶ See Joshua Cohen, "The Economic Basis of Deliberative Democracy", *Social Philosophy & Policy* 6 (1989), 33

Deliberation may transcend solutions that are a function of pre-given positions, through learning, arriving at common interpretations, or deeper mutual sympathy. Pushing too quickly for consensus may preclude this and lead to the eventual disintegration of agreement¹⁴⁷.

One point that should be taken into consideration is the weight of extremists in consensual decisions. As Miller shows, members that have more extreme positions can exert more influence when requirement is consensus than when it is majority¹⁴⁸. Another aspect that should be taken into consideration is that consensus can sometimes only be in appearance. As noted by Claude Ryan, "Il faut se méfier de ces unanimités de surface derrière lesquelles se cachent souvent des maux plus graves que les divergences tant redoutées"¹⁴⁹. Thus, consensus can actually hide substantial disagreements between participants, and may actually hinder the process's smooth movement, particularly in the case when what some participants perceive to have sacrificed for reaching consensus is more important than what they feel others have sacrificed to reach the same goal. This may cause resentment and bad publicity for the process, and may hinder the willingness to conduct further deliberative settings. It may also be used by authorities or members of the wider public to discredit the process. To leave maximum flexibility to the deliberant body, then, we would require them to reach a majority decision.

¹⁴⁷ See Ward, Norval, Landman and Pretty, "Open Citizens' Juries and the Politics of Sustainability", 287. Further, they note, "lack of consensus may signal [...] the need for longer debate".

¹⁴⁸ Charles E. Miller, "Group Decision Making Under Majority and Unanimity Decision Rules", *Social Psychology Quarterly* 48 (1985), 58

¹⁴⁹ See Claude Ryan, *Les comités: esprit et méthodes* (Montréal: Institut canadien d'éducation des adultes, 1962), 231

One could charge that not requiring consensus would not put enough pressure on the deliberants to strive to change their minds in light of a better argument. One could also argue that lack of disagreement about the conclusions may be used by outsiders to discredit the process, and the decisions may be not taken very seriously by the public and the government¹⁵⁰. While recognizing these objections, it should also be recognized that forcing a consensus would put too much pressure on the whole process, since consensus formation tends to push aside the fact that some preferences are very strong. In this sense, the search for consensus would be unnecessarily burdensome for the process, and could lead to the failure of the whole process.

This being said, even if it is not demanded as such, we can postulate that the group has all incentives, by way of negotiations and deliberation, to reach a consensual decision as they would want to take pride in their participation, and in the success of this deliberative setting. As is noted by a participant in Norway's first medical consensus conference:

Precisely that coercion to reach an agreement [...] it does something to you: sharpens your concentration, makes you bring out your willingness to compromise and not stand stubbornly on idiosyncratic positions, makes you build something out of that¹⁵¹.

In addition, there is no clear relationship between the deliberants acceptance and evaluation of the process, and the fact that they voted or not with

¹⁵⁰ See Ida-Elisabeth Andersen and Birgit Jaeger, "Scenario Workshops and Consensus Conferences: Towards More Democratic Decision-Making", *Science & Public Policy* 26 (1999), 331-40

¹⁵¹ Ann Rudinow Saetnan, "Scientific? Democratic? Effective? Towards an Evaluation of Norway's First Medical Consensus Conference", *Science & Public Policy* 29 (2002), 218

the majority¹⁵². Thus, majority-minority status does not affect in a significant manner appreciation of the deliberative process. Hence, asking for a majority decision could indeed make the group reach a consensual decision while not making it an obligatory stance. We can thus conclude that "la règle de majorité est donc une règle pratique permettant de disposer pacifiquement de conflits d'opinion qui risqueraient de retarder indéfiniment des décisions nécessaires"¹⁵³.

We should also clarify that the deliberant assembly will decide what majority thresholds the items on the ballot must obtain for them to be considered as passed by the electorate. As we will show in the next section, we advocate for adjustable qualified majorities for each items to be passed. This could seem contradictory, since we only require absolute majority in the case of the deliberative process; we would then be asking for one rule to apply in one setting, while we would ask another rule for another setting.

But it may not be that contradictory. We find it more acceptable to give increased liberty to the few citizens who will decide on the referendum question (the ballot), and constrain the actual decision making (the vote), since outcomes from the vote have consequences for the entire polity, not just for the deliberant assembly. In addition, the absolute majority we require in the deliberative process is mainly based on practical considerations (consensus too hard to reach, time-borne considerations...), while the adjustable qualified majority we propose for

¹⁵² Morrell, "Citizens' Evaluations of Participatory Democratic Procedures ", 313

¹⁵³ Ryan, *Les comités*, 228

items to pass is based mainly on normative reasoning (relationship between majority and minorities in the polity...).

Discussing the 'deliberative method'

The key to the superiority of our method for ballot construction is that the final decision on the ballot is in the hands of a citizen body, not in the hands of the governing bodies. This goes along with Dryzek's opening lines: "the deliberative turn represents a renewed concern with the authenticity of democracy: the degree to which democratic control is substantive rather than symbolic, and engaged by competent citizens"¹⁵⁴. This would seem a positive thing since it is reasonable to think that elected representatives will be influenced by external considerations (such as re-election, or pleasing certain lobby groups) that may sometimes conflict with political efficiency, while citizens do not have to worry about such things. This line of reasoning has been put forward by a range of scholars. Amongst them, Carson and Martin note that

Politicians are well known to make compromises in order to be endorsed and elected, and to spend a large fraction of their time cultivating favors, fund-raising, campaigning, and public relations, so they can be elected and reelected¹⁵⁵.

Similarly, Joseph Bessette, in a study on Congressional behaviour, notes that many informal rules of conduct have deteriorated during the years, and left certain individualistic compartments unconstrained. He concludes that "less and less do the members of the House and Senate seem willing to sacrifice their

¹⁵⁴ See John S. Dryzek, *Deliberative democracy and Beyond: Liberals, Critics, Contestations* (New York: Oxford University Press, 2000), 1

¹⁵⁵ Carson and Martin, *Random Selection in Decision Making*, 101

private advantage for the sake of responsible lawmaking"¹⁵⁶. Finally, as Bowler et al. show, citizens themselves believe that they are less corrupted by special interest than elected officials in making political choices¹⁵⁷.

The advantages of our 'deliberative method' are numerous. First, it reduces substantially the governmental capacity to manipulate and distort the process of ballot construction. As we have shown in the beginning of this section, the referendum question is a crucial aspect of a referendum, and too often has it been manipulated to serve the interests of the sponsoring body (usually the government). Our 'deliberative method' also encourages more *actual* and meaningful citizen participation.

Related is the fact that the recommendations that arise from this public deliberation are binding for the government, forcing it to present the project that has been etched out of the citizens' deliberation. Of course, this could be seen as problematic, most especially when what citizens arrive at after deliberation does not match what the government wants to push. An example of this can be seen in Quebec's recent "États Généraux", where a group of citizens had been gathered to decide which propositions they would like the then governing Parti Québécois to submit for public approval. The then minister responsible for electoral reform, Jean-Pierre Charbonneau, had been pushing hard for adoption of a presidential system in Quebec. But it was not to be, as 53% percent of the 1000 citizens that

¹⁵⁶ See Joseph M. Bessette, *The Mild Voice of Reason: Deliberative Democracy and American National Government* (Chicago: Chicago University Press, 1994), 149

¹⁵⁷ See Bowler, Donovan and Karp, "Popular Attitudes Towards Direct Democracy", 19-20

were present at the approval convention voted against the proposition¹⁵⁸. It was thus with an amputated version of his project that the minister would have had to work with had the PQ been re-elected, and had the momentum for electoral change persisted amongst the population.

One could therefore ask: if citizens were to have the capacity to amputate governmental projects, what incentives would the governing bodies have to uphold and defend any such projects to the electorate in a referendum campaign? The answer would be that the government have many incentives to push it through, since it would be in its best electoral interests to do so. If the process is publicized and gets sufficient media coverage (as we would expect it would), and the citizens feel that the governing bodies are giving them more say in public policy making, it could be correctly hypothesized that in return, citizens will offer the governing party some electoral advantages, which may not amount to a guaranteed re-election, but surely higher levels of approval. On the flip-side, if the government did not respect the will of the deliberant, this could be seen as not following the will of the people, which is a fundamental prerequisite of liberal democracy, and this would certainly not be in its best electoral interests.

A second advantage of the method is that it integrates in a very efficient manner our central contention that participation breeds education. From Mill to Tocqueville to others, many philosophers believe that integrating citizens in public

¹⁵⁸ See *résultats du scrutin*, <http://www.pouvoircitoyen.com/fr/etatsgenraux/questions.html> (page consultée le 7 août 2003)

decision making allows for them to acquire greater political skills, making it easier to cope with complex issues that affect their lives. Robert Gargarella offers several ways in which deliberation helps the formation of better, civic-minded citizens:

[D]eliberation may help impartiality by forcing people to filter out mere self-interested arguments...

[T]he process of deliberation, by which people exchange opinions, listen to other's arguments, and so on, helps people to improve their capacity to live with others...

[D]eliberation may contribute to impartiality by helping each participant to clarify and purify his or her own position. [...] deliberation may be useful by providing information and expanding the panorama of available alternatives¹⁵⁹.

Ward et al. also present evidence that citizen juries tend to promote social learning, "where the complexity of the world is revealed through inquiry and interaction, and the sharing of information"¹⁶⁰. Boy et al. note that a small group of profanes can, through exchanges of information, and fore knowledge that their participation will be meaningful, be brought to a state of "mini-savants"¹⁶¹. Empirical evidence has been presented by some authors. In the deliberative opinion poll held in England in 1994, Fishkin notes some *net* changes that could be interpreted as education growths. For example, he finds that respondents showed an increased awareness of prisons as limited tools in fighting crime, and that they displayed an increased sensitivity to the procedural rights of defendants¹⁶².

¹⁵⁹ Robert Gargarella, "Full Representation, Deliberation, and Impartiality", in Jon Elster (ed), *Deliberative Democracy* (Cambridge: Cambridge University Press, 1998), 261

¹⁶⁰ Ward, Norval, Landman and Pretty, "Open Citizens' Juries and the Politics of Sustainability", 285

¹⁶¹ Boy, Donnet Kamel and Roqueplo, "Un exemple de démocratie participative", 789

¹⁶² Fishkin, *Voice of the People*, 178-79.

But some authors have discounted Fishkin's observations. In a study analysing participants in the Granada 500 experiment (another deliberative opinion poll), Denver et al. find that 1) the sample is often unrepresentative of the general population (mostly in terms of political interest), and 2) that the deliberative process is unlikely to produce the change that is expected by Fishkin. They find very little evidence that 1) participants became more knowledgeable; 2) that participants developed real opinions as opposed to non-attitudes; and 3) that participants became more sophisticated, where their opinion was more rational and more consistent with other elements of their belief system¹⁶³. In parallel, Daniel Merkle, analysing the National Issues Convention, finds that education levels have not grown, and that the resulting opinions did not differ much from what one would usually get from normal polls.

Even after a massive effort to educate ordinary citizens and motivate them to engage in deliberation on the issues, the conclusion about aggregate-level opinion from the deliberative poll were strikingly similar to those one could have gleaned, at a much lower cost, using conventional polling methods¹⁶⁴.

However, there is more recent evidence that deliberation does indeed breed education. For example, Fishkin et al. find evidence of educational growth following the 1996 Texas utility deliberative poll. While before the deliberative process only 55% of participants were willing to pay at least a \$1 more a month to encourage environment friendly renewable energy resources, after the process,

¹⁶³ See David Denver, Gordon Hands and Bill Jones, "Fishkin and the Deliberative Opinion Poll: Lessons from a Study of the *Granada 500* Television Program", *Political Communications* 12 (1995), 147-156.

¹⁶⁴ See Daniel M. Merkle, "The National Issues Convention Deliberative Poll", *Public Opinion Quarterly* 60 (1996), 616

88% of the deliberants said they would¹⁶⁵. In another piece, this time analysing the first British deliberative opinion poll, they report that while participants did not learn much about the political world in general, they came out much more aware of many aspects of the British legal system. In addition, they found that educational growth was not restricted to already well-informed deliberants. Thus, they conclude that "on average, our participants emerge looking *more* like ideal citizens than they did beforehand"¹⁶⁶. Andersen and Jaeger also find educational growth, this time following the Danish consensus conference on the future of motoring. In this conference - in which out of the 14 participants, 11 were car owners - the recommendations that came out of the conference was to gradually double the price of gasoline to reduce car traffic. This "showed the ability of the method and the process to lift [the deliberants] out of the selfish way of thinking as car owners, and put broader perspectives on the problems of transport and the environment"¹⁶⁷.

Others have made the case for educational growth through alternative channels of deliberation. For example, Robert Huckfeldt finds that

Political communication within networks of social relations serves to enhance the individual and collective capacities of citizens to play meaningful roles in democratic politics... [Thus] not only do people exchange biased viewpoints through a process of social interaction, but they also acquire information and expertise¹⁶⁸.

¹⁶⁵ See Luskin, Fishkin and Jowell, "Deliberative Polling and Public Consultation", 663

¹⁶⁶ See Robert C. Luskin, James S. Fishkin and Roger Jowell, "Considered Opinion: Deliberative Polling in Britain", *British Journal of Political Science* 32 (2002), 484

¹⁶⁷ Andersen and Jaeger, "Scenario Workshops and Consensus Conferences", 335

¹⁶⁸ Robert Huckfeldt, "The Social Communication of Political Expertise", *American Journal of Political Science* 45 (2001), 436-38

Druckman and Nelson find that deliberation can limit elite influence, where cross-cutting conversation eliminates elite framing effects.

In sum, in the political world where people receive and then discuss elite information, conversation can limit elite influence – but only if those conversations involve cross-cutting groups or individuals exposed to alternative arguments¹⁶⁹.

Similarly, Diana Mutz finds that cross-cutting exposure increases acceptance of rationale for dissonant ideas, while, at the same time, increasing political tolerance¹⁷⁰. Thus, this evidence gives us good hope that deliberation indeed has an educative function, and fosters an increased acceptance of certain democratic norms and behaviour.

A third potential advantage of our ballot construction method is that participation in this process may lead to an alternative comprehension of democracy's workings and rationale. This is noted by Nino: "a democratic government is a public good. As such, it is unfair to enjoy its benefits as a free-rider"¹⁷¹. In effect, it would be reasonable to expect that having experienced real-life, meaningful decision making, the citizen (and those close to him) would then transcend this single experience to other aspects of political life. Smith and Wales note that "there is empirical evidence that some jurors [they do not say how many] are more civically active long after the jury process has ended"¹⁷². This may be

¹⁶⁹ James N. Druckman and Kjersten R. Nelson, "Framing and Deliberation: How Citizens' Conversations Limit Elite Influence", *American Journal of Political Science* 47 (2003), 737

¹⁷⁰ See Diana C. Mutz, "Cross-Cutting Social Networks: Testing Democratic Theory in Practice", *American Political Science Review* 96 (2002), 111-126

¹⁷¹ Carlos Santiago Nino, *The Constitution of Deliberative Democracy* (New Haven: Yale university press, 1996), 154

¹⁷² Graham Smith and Corinne Wales, "Citizens' Juries and Deliberative Democracy", 60. See also S. McIver, *An Evaluation of the King's Fund Citizens' Juries Programme*, (Birmingham: Health

due to the increase in civic knowledge they have attained. As Galston notes: "All other things being equal, the more knowledge citizens have, the more likely they are to participate in public matters"¹⁷³.

It can also be hypothesized that this procedure of deliberation will also promote participation in the broader public, particularly if there is enough publicity and media coverage. Fishkin notes that the 1999 deliberative poll in Australia had a positive effect on the mass public who watched the broadcast¹⁷⁴. This has also been corroborated by Simon Joss. Analyzing Danish consensus conferences, he finds that

The conferences are reported to have contributed to well-informed and extensive public debate on scientific and technological issues. Significant proportion of the public seems to know about the conferences and the topics discussed¹⁷⁵.

A final advantage of our method is the legitimizing factor: referring to the population a ballot that has been constructed by their peers gives more legitimacy to the whole referendum and its outcome. Knowing that their peers have constructed the ballot, it is highly plausible that the population in general will better accept the referendum process and the results. In this sense, "it makes political processes more efficient by reducing the costs of enforcing

service management centre, 1997), 58-9; A. Coote and J. Lenaghan, *Citizens' Juries: Theory and Practice* (London: IPPR, 1997), pp.65; 89-90

¹⁷³ See William A. Galston, "Political Knowledge, Political Engagement, and Civic Education", *Annual Review of Political Science* 4 (2001), 224. In a way, we are inching toward the creation of an attentive public as was described by Gabriel A. Almond. See *The American People and Foreign Policy* (New York: Harcourt Brace, 1950)

¹⁷⁴ James S. Fishkin, "Consulting the Public Through Deliberative Polling", *Journal of Policy Analysis and Management* 22 (2003), 131. However, he does not mention the nature of this effect.

¹⁷⁵ Simon Joss, "Danish Consensus Conferences as a Model of Participatory Technology Assessment: an Impact Study of Consensus Conferences on Danish Parliament and Danish Public Debate", *Science & Public Policy* 25 (1998), 17

compliance"¹⁷⁶. This follows the rationale for Renn et al.'s planning cells. Social acceptance of a policy is closely linked with the perception that: 1) the procedure for making the decision was fair and 2) the public has something valuable to contribute to policy making¹⁷⁷. Similarly, Andersen and Jaeger, discussing consensus conferences, note that "conferences represent an opportunity for those with little power to obtain information and to be heard, and thus an opportunity for more democratic decision-making"¹⁷⁸.

We should, however, point to a disadvantage with our deliberative method, namely that of vote trading, or logrolling. Logrolling is defined by the Merriam-Webster as "trading of votes by legislators to secure favourable action on projects of individual interest"; it is thus a mechanism of "you scratch my back, and I will scratch yours". Let us clarify that voting in the deliberative setting would be public. This goes along with the requirement that all aspects of the deliberative setting be as open and transparent as possible. However, as noted by Gordon Tullock, logrolling "occurs when a rather small body of voters vote openly on each measure; [...] under these circumstances trades of votes are easy to arrange and observe and significantly affect the outcome"¹⁷⁹. In the environment of the deliberative assembly, especially since we require only for a majority decision and not for consensus, it would be reasonable to hypothesize that certain individuals may have incentives to place certain items on the ballot, and would be ready to

¹⁷⁶ See John Parkinson, "Legitimacy Problems in Deliberative Democracy", 182

¹⁷⁷ See Ortwin Renn, Thomas Weblar, Horst Rakel, Peter Dienel and Branden Johnson, "Public Participation in Decision Making: a Three-Step Procedure", *Policy Sciences* 26 (1993), 189-214

¹⁷⁸ Andersen and Jaeger, "Scenario Workshops and Consensus Conferences", 336

¹⁷⁹ Gordon Tullock, "Problems of Majority Voting", *Journal of Political Economy* 67 (1959), 571

secure these items in return for accepting the placement of items that they do not feel so strongly about, but about which someone else feels strongly about. This phenomenon would occur in cases where preference on items is unequally distributed amongst the deliberative assembly¹⁸⁰.

For our part, we recognize and accept the possibility of logrolling, noting however, that it is common to many methods of preference aggregations. The phenomenon occurs also in government. We could perhaps reduce some form of logrolling by making the vote secret, but this would go against our desire for openness and transparency in all steps of the deliberative process. Thus, there does not seem much one can do to prevent it. We, however, point to a light of hope that is offered by Dryzek and List: logrolling may be too costly in the case of deliberation.

In deliberation, [...] individuals have to justify their preferences in terms acceptable to others. [...] While this individual may still misrepresent this intensity, [...], lying about one's preferences is potentially costly in deliberation¹⁸¹.

Conclusion

We reviewed the two methods that were used in Jackson and in British Columbia. Having demonstrated that the referendum question has a noted impact on voting intentions and outcomes, we showed that the above two methods made

¹⁸⁰ See Joe Oppenheimer, "Some Political Implication of "Vote Trading and the Voting Paradox: a Proof of Logical Evidence:" a Comment", *American Political Science Review* 69 (1975), 963-966; Swartz, for his part, does consider one advantage of vote trading, namely, even if vote trading does lead, sometimes, to non-Pareto type outcomes, *failure* to trade votes can also. See "Collective Choice, Separation of Issues and Vote Trading", *American Political Science Review* 71 (1977), 999-1010

¹⁸¹ See John Dryzek and Christian List, "Social Choice Theory and Deliberative Democracy: a Reconciliation", *British Journal of Political Science* 33 (2003), 20

it too easy for the governing bodies to manipulate the referendum question to influence results in a manner that best fits their interest.

We then proceeded to propose our own method of ballot construction, which we named the 'deliberative method'. It takes a group of randomly selected citizens, brings them in a common *lieu*, and has them deliberate amongst themselves on a project the government wishes to pass into law. The deliberants decision is final and binding for the government. The decision is taken by majority voting. It was shown to be our preferred method, enabling less possibility of manipulation on the part of elected officials, and giving more place for *actual* citizen participation. In addition, it had an educative function, and injected more legitimacy into the whole process. However, we noted that this method was susceptible to logrolling, a defect common to other alternate methods.

Chapter 3

How about a threshold...

In democratic systems, majority requirements in referenda vary greatly, with particular political traditions requiring more or less constraint on group decisions. Some countries like Canada use the rule of absolute majority¹⁸²: the option that gets more than 50% of the votes is the victor. Other countries prefer to use the rule of a qualified majority. In this case, the threshold requires for the majority to be higher than simply 'more than 50%'. For example, the constitution of the tiny islands of St-Kitts-and-Nevis allows for the island of Nevis to separate from St-Kitts if "[T]he bill has been approved on a referendum held in the island of Nevis by not less than two-thirds of all voters validly cast in that referendum"¹⁸³. The pope's election is also subject to a qualified majority vote, where a two-third majority of the College of Cardinals must agree on the new pope¹⁸⁴.

The argument usually made in favour of absolute majority is that it is just and equitable: all have equal voice, and the rule by majority is respected. However, it can be criticized on the grounds that it gives too much weight to majority groups, and this can be detrimental to minorities in the polity. On the

¹⁸² We accept Rae's distinction between '50% + 1' and 'more than 50%'. The former applies where there is an even number of electorate; the latter when the electorate is an uneven number. See Douglas W. Rae, *The Political Consequences of Electoral Laws* (New Haven: Yale University Press, 1967), 23. However, as is noted by Pierre Favre, 'more than 50%' applies to both cases. We therefore will use 'more than 50%' in the context of this paper. See Pierre Favre, *La décision de majorité*, 159

¹⁸³ See article 113, no.2 (*alinea* b) of St-Kitts-and-Nevis's constitution

¹⁸⁴ See <http://www.catholic-pages.com/pope/election.asp>. (page consultée le 27 septembre 2003) New rules introduced by Pope John-Paul II calls for an absolute majority vote if, after multiple rounds of balloting, the choice on the new pope has not been finalized.

other hand, the argument generally made for qualified majorities is that they are more legitimate, since the voice of minorities is better protected. However, it is often accused of being biased against change. Thus, the debate between both types of majority can be seen as one between equity and legitimacy.

The debate also revolves around deciding how to calculate these majorities. From what denominator should these thresholds be calculated? One approach involves calculating the threshold in relation to the whole eligible electorate. Another approach involves calculating majorities in regard to all votes cast, whereas a final method involves calculating the threshold based on valid votes only. These last two methods calculate majorities taking to account actual participation and political expression only.

This section analyses and discusses these different methods. We confront advantages and disadvantages of each method in respect to the checklist ballot, and we show how the ballot's outcomes are affected by different majority calculations. It will be argued that the threshold requirement should be that of a qualified majority; however, this qualified majority threshold should be adjustable, depending on the decision to be taken. Because some decisions have more impact than others, the majority requirements should be able to take into account the possible impact of these decisions. In regard to the calculation of the qualified majority, it will be argued that the calculus should be made based on votes cast, whether valid or not. This method ensures four things: that the will of the people is

properly expressed; that the outcomes reflect the political expression of those who voted; that these outcomes are not burdened by tactics of abstention that can plague other methods of majority calculation; and finally, that the requirements for an item to pass are not unjustly low. In addition, it ensures that minorities have a proper say in the collective decision-making. In the previous section we advocated the 'deliberative method' in constructing the ballot because of its participatory and thus educative function. Our proposition for the qualified majority is based on another important aspect of the checklist ballot: the legitimizing factor.

What majority for the checklist ballot?

In Jackson, Mississippi and in British Columbia, the majority requirements were different. While in B.C. the requirement for each item to pass was 'more than 50%', in Jackson, because of the legislative constraints set by the legislature in the 1950s, the requirement for a spending to pass was 60%. In the B.C. referendum, all eight items were 'accepted', though only 39% of the eligible electorate submitted their mail-in ballot on time. In Jackson, only three spending items out of ten made the 60% threshold. This illustrates how placing different majority thresholds can affect outcomes.

Let us first turn our attention to the absolute majority threshold, where items are passed if they obtain 'more than 50%'. At first glance, this method seems to be well adapted to the checklist ballot. As we have stated earlier, one clear advantage of absolute majority is that it is equitable: it gives everyone equal voice,

since "réclamer davantage que la majorité absolue, c'est faire prévaloir la volonté minoritaire du peuple sur sa volonté majoritaire"¹⁸⁵. In addition, it is a comprehensive method for the electorate: most electors have been accustomed to political decisions being decided at absolute majority. "Le principe de majorité est un dogme. [...] C'est le système le plus simple, le plus primitif, si l'on ose dire, où la force du nombre sert le pouvoir"¹⁸⁶. For Robert MacIver, absolute majority is a social necessity. Requiring unanimity is far too complicated and renders many decisions far too tenuous in respect to the proper working of decision making. Hence, he suggests that "decision by majority is in matters of policy a practical necessity"¹⁸⁷. Thus, as Norman J. Schofield notes,

Majority rule is left residually as the only permissible procedure for choosing collective policies, since it alone gives no *a priori* advantage to either specific set of individuals or to sets of individuals who happen to seek retention of the status quo¹⁸⁸.

However, in some cases, absolute majority can actually be detrimental. For example, in the case of the Jackson checklist ballot, only 3 items passed the required 60% rule, totalling 35,2 M\$. However, had the bar been set at 'more than 50%', it would have been 8 items that would have passed, which would have

¹⁸⁵ Richard Gervais, "Référendum et majorité qualifiée", *La Presse* (Montréal), 18 septembre 1998. This text places itself in a long series of debates surrounding what good majority should be used in a potential third referendum on sovereignty in Quebec following the adoption, by the federal government, of Bill C-20, following a Supreme Court's decision requiring that sovereignty be approved by a 'clear majority'.

¹⁸⁶ Claude Leclercq, *Le principe de majorité* (Paris: Armand Colin, 1971), 51. A similar argument is made by Georg Simmel. For Simmel, the might of the majority is a metaphysical, theoretical might that replaces the physical might that would otherwise be in effect. "Procedure (voting) replaces force and ballots replace bullets". Quoted in Elaine Spitz, *Majority Rule* (Chatam: Chatam House Publisher, 1984), 156

¹⁸⁷ See Robert M. MacIver, *Community* (London: Macmillan, 1928), 140 quoted in Elaine Spitz, *Majority Rule*, 163

¹⁸⁸ Norman J. Schofield, "Is Majority Rule Special?", in Richard G. Niemi and Herbert F. Weisberg (eds), *Probability Models of Collective Decision Making* (Columbus: Charles E. Merrill publishing company, 1972), 62

totalled an additional 36,1M\$ in spending¹⁸⁹. In such a case, the white population might have clinched their fists a lot more than with the original outcome, considering the racial tension that was prevalent in the city, and the historical difficulties with which the referendum organizers had to go through.

Thus, the absolute majority requirement does not seem best for the checklist ballot. Even if it does give equal chance to elements of change as to elements of the status quo, it does not seem to be the most legitimate threshold, since it does not give enough protections to minorities and their political preferences. Legitimacy does not simply entail giving equal chance to all; it also means ensuring that all in the society are protected from haphazard decisions. It is not always legitimate to make the will of the majority prevail, since, as Dahl puts it:

By making "most preferred" equivalent to "preferred by most" we deliberately bypass a crucial problem: What if the minority prefers its alternative more passionately than the majority prefers a contrary alternative? Does the majority principle still make sense?¹⁹⁰

Absolute majority has become, through the years, the only talk of government, where decisions that are reached by this threshold are automatically considered to be the true expression of the people; in the words of Adh mar Eismen: "la majorit  est une de ces id es simples qui se font accepter d'embl e"¹⁹¹. In reality, however, absolute majority makes only a small place for different

¹⁸⁹ See Glaser, "White Voters, Black Schools", 37

¹⁹⁰ Robert A. Dahl, *A Preface to Democratic Theory* (Chicago: University of Chicago Press, 1956), 90

¹⁹¹ Quoted in Louis Massicotte, "La notion de majorit ", *Bulletin de la biblioth que de l'Assembl e Nationale* 14 (1984), 21

intensities of preferences. It does allow for different intensities to be expressed when we permit logrolling; however, logrolling is a practice constrained mainly within the walls of legislatures, and it would seem difficult, therefore, to assume that there will be much logrolling in large electorates.

It should be clearly stated, however, that protecting minorities is a double-edged sword. In our above example, the requirement of a 60% threshold could lead one to conclude that this rule allowed the white population to oppress the black minority by sheer strength of number; but it could also be seen as a tool of compromise between the demands of the minority and those of the majority. In this case, with the threshold set at 60%, the truly needed and urgent needs would be voted in, while the more frivolous would be excluded, leaving the minority satisfied with its gains, and the majority satisfied not to have lost too much, avoiding the backlash of an increase in racial tensions in the city. In this sense, a tool that could be viewed as denigrating may, if viewed in a different angle, actually be seen as enabling a certain form of social equilibrium. It would then, while losing some form of legitimacy on the representational side, actually gain legitimacy on another front, that of social equilibrium and social order. Follows then, in the case of the checklist ballot, that we find it necessary to go beyond usual standards of majority, because the use of the checklist ballot is meant as a tool for improving democracy, and as a means of giving greater legitimacy to the process and to the outcomes.

Having rejected an absolute majority threshold, we are left with the qualified majority principle. The usual justification for it is well put by Favre: "La justification qu'il est communément donné à une telle exigence de majorité est qu'elle oblige à un consentement proche de l'unanimité"¹⁹². However, it must be acknowledged that such a majority is biased against change: "[Q]ualified majorities, by blocking change, protect the status quo and prevent society from adjusting to new conditions"¹⁹³. In effect, it is a restrictive decision procedure which "gives special authority to individuals who happen to be nay-sayers"¹⁹⁴. Thus, criticism around this method usually stems from people who feel that no special set of preference should be allowed to have an advantage over others: instead of tyranny of the *majority*, the criticism is that there could be tyranny of a *minority*.

This being said most agree that certain decisions must be constrained by a wider sign of approval. The case of constitutional changes is a good example: in the U.S., for example, 38 states out of 50 must ratify proposed constitutional amendments for them to become national laws. This ensures that when an amendment passes this level of approval, the states that voted against the amendment are not in any position of majority. Thus, if the argument in choosing a type of majority for a decision would be to have the maximum consensus, the logical choice would be the qualified majority, since, as is noted by McClosky, consensus (in regard with shared ideals for an optimal community) can only be

¹⁹² Pierre Favre, *La décision de majorité*, 132

¹⁹³ Elaine Spitz, *Majority Rule*, 173

¹⁹⁴ Norman J Schofield, "Is Majority Rule Special?", 61

attainable at the 75% level, midway between bare (absolute) majority and unanimity¹⁹⁵.

Pertaining to the checklist ballot, it has been postulated throughout this thesis that the division of a global project into separate parts would make the choices clearer and more comprehensible for the electorate. In addition, it would also enable more electoral choices for the voters. Thus, while on a global referendum package, finding a qualified majority to accept the package can be arduous, in the case of separate issues, requiring a qualified majority does not seem that unreasonable (nor unrealistic), since the package is broken down into parts, and thus, each part has a better chance of obtaining larger rates of approval than if they were integrated to a single package. In addition, as noted by Kadane:

The submission of revision in a single package allows the vehement opponents of each article to unite, frequently defeating the package. Submission in separate questions, however, divides the opposition and leads to passage¹⁹⁶.

He shows that in state constitutional amendments, projects that were submitted to the population as a whole were rejected, while projects presented in parts were passed nearly entirely. Dryzek gives a good example of this possibility in relation to the peace process in Northern Ireland.

If confined to the single dimension of sovereignty, the issue is intractable, with effective majorities of key actors against every conceivable alternative. But once dimensions are introduced – such as amnesty for politically motivated crimes, civil rights, cross-border bodies, electoral systems or guaranteed representation for particular groups – an effective super-majority for a settlement could be constituted¹⁹⁷.

¹⁹⁵ Hebert McClosky, "Consensus and Ideology in American Politics", 363

¹⁹⁶ Joseph B. Kadane, "On Division of the Question", *Public Choice* 13 (1972), 47

¹⁹⁷ Dryzek and List, "Social Choice Theory and Deliberative Democracy", 19

In our case, since the votes can be multiple, providing electors the choice of agreeing to some powers while refusing others, we *should* seek the assent of more than half the electorate. As is properly stated by Johnston *et al.*

Rule by simple majority presupposes underlying socio-political unity. [...] Non-majoritarian decision rules reflect the moral diversity of the polity, the fact that it comprises more than one proto-nation or more than one moral community¹⁹⁸.

In effect, this brings us back to the whole debate concerning the weight of minority positions in the polity if we used qualified majorities. For example, if a threshold was set at 60% for an item to pass, one possible interpretation of this would be that if 41% did not select this item, the item would not pass; hence, the desire of the minority would have prevailed. This is one interpretation. Another possible interpretation, that we prefer, is that the majority was not able to show and justify to the minority that the item in question was as good for them as it was for the majority. 'Consensus', in this case, was not able to be formed on this question. And it seems imperative that decisions should be reached with the maximum consensus possible, where both majorities and minorities feel secure in regard to the outcomes stemming from usage of our checklist ballot. Thus, if the majority can convince the minority of the justness of its proposition, the minority, we believe, will follow. Claude Leclercq puts it best when he says:

Une majorité des deux tiers ou des trois cinquièmes signifie seulement que les décisions adoptées à ce niveau auront d'autant plus de chances de respecter les choix de la minorité. [...] La majorité renforcée veut signifier donc que la présomption de qualité est du côté du nombre et

¹⁹⁸ Johnston, Blais, Giddengil and Nevitte, *The Challenge of Direct Democracy*, 252

qu'une décision prise à la majorité des deux tiers a plus de chances de combler les vœux du couple majorité-minorité, donc de l'ensemble des gouvernés¹⁹⁹.

Let us remind the reader, as we have stated in the beginning of this section, that while we advocate the use of a qualified majority for items to be passed in the case of the checklist ballot, this threshold should be adjustable, depending on the gravity and the weight of the consequences for the polity. Some decisions may require less of a restrictive threshold, some more. For example, a referendum on the renaming of streets in St-Adèle-de-la-belle-rivière does not have the same consequences for the polity as one pertaining to a referendum on issues concerning the creation of a free trade zone in south East Asia. Thus, "la majorité se défend d'être statique, [...] elle se veut en expansion ou en récession selon les décisions à prendre"²⁰⁰. However, the decision of what the exact threshold of majority should be is not for us to decide in the course of this thesis. As we have stated earlier in the section on ballot construction, we propose that the threshold be decided by the deliberative assembly, at the time of deliberation.

What about the denominator?

Having said this, another debate springs up: from what denominator shall we calculate these adjustable qualified majorities? This is a crucial question since it has often times produced dramatic results. Two notable examples can be cited as evidence. In 1979, electors in Scotland were bracing themselves for an important

¹⁹⁹ Claude Leclercq, *Le principe de majorité*, 101-102. Ryan, quoting Lord Acton, abounds in the same direction: "La qualité d'une démocratie [...] ne se mesure pas d'abord au sort qu'elle fait à sa majorité [...], mais au sort qu'elle fait à sa minorité". See *Les comités*, 228

²⁰⁰ Claude Leclercq, *Le principe de majorité*, 101

referendum on devolution. Amongst those who voted, 51,6% favoured the project while 48,5% rejected it; in regard to the total electorate, this meant that 32,85% approved while 30,78% rejected the project²⁰¹. However, the law required that if approval for the project did not reach 40% of the total electorate, Parliament should pass a law cancelling devolution, which it did. Hence, even if a majority of those who had voted expressed approval for the project, it was rejected because it did not garner enough support in regard to the entire electorate. Similarly, in 1939 Denmark, a referendum was held on propositions by the government to abolish the second chamber and introduce the possibility of legislative referenda. Out of those who went to vote, 91,9% agreed with the project. However, the rule was that those in favour must comprise 45% of the electorate: these 91,9% only represented 44,46% of the total electorate. The proposition was hence rejected by the legislature²⁰². The same phenomenon has also plagued candidate elections, as exemplified by the recent Serbian elections of 2002, when it took three attempts for the chosen candidate to garner support representing more than 50% of the total electorate.

Indeed, many different calculation methods are used around the world. In Ireland, for example, for all referenda other than those dealing with constitutional reforms, if an absolute majority of the valid votes, representing 33.3.% of the total

²⁰¹ See Vernon Bogdanor, "The 40 Percent Rule", *Parliamentary Affairs* 33 (1980), 257

²⁰² See Louis Massicotte, "La réforme de la procédure référendaire: réflexions sur quelques enjeux", in Collectif, *Démocratie et référendum*, 135. It should be noted that the proposition was again presented to the electorate in 1953 and this time, the project was passed by the legislature, those favouring the project representing 45,76% of the total electorate.

electorate, votes against the project, it fails; if not, the project is accepted²⁰³. This means that a project submitted to popular referendum can only fail if it is voted down by 'more than half the voters', representing 1/3 of the total electorate. On the contrary, in Uruguay, on all projects concerning constitutional reforms, if an absolute majority of valid votes, representing 35% of the total electorate, votes in favour of a project, it passes; if not, the project is rejected²⁰⁴.

In Quebec, during the numerous debates concerning Bill C-20 (the Clarity Bill), some authors defended the proposition that the absolute majority required for further referenda on Quebec sovereignty be calculated based on the total electorate. The argument was made that "a majority of votes cast, if it does not amount to a majority of electors, is really a plurality and not a majority at all"²⁰⁵. However, this argument is faulted on two points. For one thing, it would be unreasonable (idealistic?) to expect a 100% turnout. Brams et al. note that abstention is frequent in referenda. For example, in a referendum held in California in 1990, 11.8% of Los Angeles electors abstained²⁰⁶. In addition, voter turnout is a function of the type of referendum. Thus, voter turnout is higher in binding rather than advisory referenda, and in tight-race referenda rather than less close referenda²⁰⁷. Hence, calculating a majority as a function of the total electorate places a higher burden on those voters wishing to approve the project

²⁰³ See Ireland's constitution, chapter 15, article 47, no.2.1

²⁰⁴ See Uruguay's constitution, article 331 (*alineá b*)

²⁰⁵ Julius Grey, "A Convincing Majority", *The Gazette* (Montréal), September 5 1998.

²⁰⁶ Steven J Brams, D. Marc Kilgour and William S. Zwicker, "Voting on Referenda: the Separability Problem and Possible Solutions", *Electoral Studies* 16 (1997), 359-377

²⁰⁷ Morten Soberg and Thomas P. Tangeras, "Voter Turnout in Direct Democracy: Theory and Evidence", Working paper no. 596, IUI, The Research Institute of Industrial Economics, 2001

than on those wishing to reject it. Louis Massicotte explains that if such a method had been used in the 1995 referendum, considering the almost 94% turnout, the Yes option would have needed 54,5% of the votes to pass²⁰⁸. A second objection concerns the fact that with such a method, the people wishing to reject the proposition may abstain from voting, thus giving undue support to the NO side, which will result in a loss of legitimacy for the process. In addition, invalid votes (such as blank votes) will be calculated as votes against the proposition, when in fact, we cannot say for sure that the intention of these voters was to go against the project²⁰⁹. This method of calculation should hence be rejected in the case of the checklist ballot. Our goal of accrued legitimacy is not met by such a calculation method.

Another technique of calculating majorities is in regard to valid votes. This method ensures that the calculation method takes into account all votes deemed valid by electoral laws. Unfortunately, it does not take into consideration all participation by people, since some people may have come to vote but, by choice or by error, their vote was not deemed valid in the eyes of electoral laws. Therefore, these electors' participation is taken as invalid by electoral agents, and does not count in the calculation of the final result. In effect, this method could be prone to distortion by electoral laws and manipulation by vested interests,

²⁰⁸ Michel Venne, "Un professeur propose 50%+1... des électeurs inscrits", *Le Devoir* (Québec), September 9 1998.

²⁰⁹ See James Mauldin, "Negative-Option Voting", *The Gazette* (Montréal), September 12 1998; Julius Grey, "A Convincing Majority"; Louis Massicotte, "La notion de majorité", 30

especially in highly controversial situations²¹⁰. Thus, this method of calculation should also be rejected in the case of the checklist ballot.

This leaves us with a final calculation option; that of calculating the threshold based on votes cast. This method seems the most advantageous. On the one hand, it calculates votes in terms of actual participation. If electors do not feel the need or the want to vote, must the result of the referendum really take them into account? If they do not feel the need to express their views, by voting on political questions that affect them, then it is our contention that the voting result should not be affected by them. Additionally, the method allows for all votes cast to have an impact on the result. In this sense, invalid votes are calculated in the final result, albeit as statistics, but they are not taken to be No votes, since their intention cannot be known²¹¹. In this sense, the intention of the elector casting an invalid vote is not misrepresented by electoral agents in favour of one option rather than the other. Thus, this method calculates a wider range of electoral expressions. Accepting these votes (or 'non-votes') is accepting the fact that some people either felt the need to express their frustration at what is offered to them on

²¹⁰ In the aftermath of the 1995 referendum defeat in Quebec, number of people questioned bias in vote counting on the part of election officials, and the question became an item of debate between Quebec scholars. See Andrew Orkin, Janusz Kaczorowski et Maurice Pinard, "Plus de bulletins rejetés là où le vote pour le NON était fort", *La Presse* (Montréal), 11 avril 1996; Édouard Cloutier et Pierre Drouilly, "Les allégations de fraude au référendum de 1995: la fausse science au service de la vraie politique", *La Presse* (Montréal), 2 mai 1996. A study commissioned by the chief electoral officer of Quebec found that there had indeed been some fraudulent acts committed by electoral scrutators, which may have changed the actual number of rejected ballots. The report recommended the adoption of the Belgian type ballot, where a circle was to be filled completely. See Québec. Directeur general des election. 1996. *Bulletins rejetés - Marche pour l'unité : rapport du Directeur général des élections : référendum du 30 octobre 1995*. Québec. Directeur général des élections

²¹¹ The International institute for democratic and electoral assistance (IDEA) shows that for Canada, invalid votes have not represented more than 3% (1972), and generally represent only about 1%. See <http://www.idea.int> (page consultée le 27 septembre 2003)

the ballot – by casting a protest vote- or that they did not express themselves in the proper way, according to parameters set at the institutional level. While we cannot determine with certitude that such invalid votes were protest votes or not, since the people who cast them at least showed the will to participate in the whole operation, their expression should be counted in the final result, unlike the non-participation of those who abstained.

Conclusion

In this section we discussed two things: firstly, what kind of majority should be required for the items to be declared to have achieved sufficient support from the electorate to pass into law. Our second discussion was focussed around different modalities to calculate these majorities.

We started by discussing the absolute majority. Though this method gives an equal say to elements of change as to elements of the status quo, it was rejected on the grounds that it does not allow for a sufficient amount of consensus amongst different groups in the polity. This rejection was based on our contention that the checklist ballot is an instrument that should strive to make results more legitimate and more consensual. We then turned our attention to the qualified majority. It was posited that this method has a bias against the 'winds of change'. However, this was our preferred method since it allows for better possibilities of consensus, and gave a more reasonable importance to minorities. We postulated that by dividing the project into separate parts, and allowing the citizens to vote separately

on all issues, a qualified majority seems very accessible for individual items to pass the threshold. While we accepted this method as the one best suited for usage of the checklist ballot, we noted that this qualified majority should be adjustable, in the sense that different thresholds should be used depending on the gravity and the weight of the decision to be decided by checklist ballot.

A second discussion was centered on different calculation methods of ascertaining the majority. One method we presented was to calculate majorities based on the total electorate. This method was rejected since it placed a larger burden on those approving the project to tally up support for their option, which the qualified majority already did. In effect, this method counted abstentions, blank votes and invalid votes in the rejection category, making electoral participation a key feature in the outcome. A second method we presented was to calculate majorities with respect to valid votes. This method was also rejected since it did not give voice to all electoral participation, as only those votes deemed valid by electoral agents would be counted, denying "invalid votes" to be counted in the final result. This left us with a final method: calculating the majority based on votes cast. This seemed the method best suited for the checklist ballot since it calculates majorities in regard to *actual* political participation. In addition, this method allows for all votes cast (invalid or not) to have a true impact on the final result, in the sense that it did not misrepresent the elector's intention in casting an invalid vote. It also denies the possible influence of free-riding abstentionists on outcomes.

Chapter 4

Advantages and possible disadvantages

Having positioned ourselves on the debate surrounding representative vs. direct democracy; having proposed a deliberative way in which the ballot may be constructed; and having proposed qualified majority threshold for items to pass, we are now in a position to present more specifically the advantages and disadvantages of our checklist ballot, following the way we have proposed to construct and use it. Two clear advantages are presented here: first, this ballot gives more options to the elector and makes it easier for the elector to show more nuanced preferences; second, this ballot offers better possibilities for the elector's choice to be competent, and made with the best available information at hand. We then identify certain possible disadvantages that the ballot could present, and answer these concerns. The disadvantages that will be discussed concern the possibility of positional effects, of conditional preferences, and of coherence in ballot outcomes.

Advantages of the checklist ballot

The first advantage is that the checklist ballot offers more options for the elector than other types of ballot. Since the referendum does not consist of one hard-wired package, but rather a broken down version, where each issue is presented and voted on individually, this offers more options, more ways for the elector to signal his preferences. In addition, as the elector using the checklist ballot does not have to cast only one vote, but can choose to cast as many votes as

there are options on the ballot, this further enhances his voting options. Unlike approval voting, there is not the rigidity of having to decide only one winner²¹². Hence, while the elector has more options presented to him on the ballot, the elector also has many more possible outcomes (winners) out of his choices²¹³. This allows voters to show more nuanced preferences for individual parts of a project, thereby signifying more clearly their views on the variety of issues presented to them. In this sense, the checklist ballot allows for the elector not to have to reject a project in its entirety on the basis of a certain element that she dislikes strongly, and it allows the elector the possibility of not having to accept a project on the whole simply because she strongly supports certain aspects of it. It thus alleviates the dilemma that many voters are often faced with in referendum voting:

L'on soumet au vote du peuple une loi toute entière, un bloc indivisible, que dans ces conditions le vote n'est plus libre, le votant étant souvent pris dans cette alternative ou de repousser une loi qu'il croit bonne dans son principe, à raison de telle disposition qu'il juge inadmissible, ou d'admettre cependant cette disposition pour ne pas repousser la loi toute entière²¹⁴.

It is also our contention that dividing the question into sub-parts will allow for a better success rate of packages submitted to the public. For example, in some cases, certain contingent issues bring down a whole project, whence in reality the project would be approved, had these issues not been tied up together in the

²¹² In my correspondence with Hannu Nurmi and Steven J. Brams, both point to the possibility of using AV to elect multiple winners, though it does not seem to be their preferred choice. See also Richard F. Potthoff and Steven J. Brams, "Proportional Representation: Broadening the Options", *Journal of Theoretical Politics* 10 (1998), 147-78

²¹³ However, as in the case of approval voting, even "if it is perfectly legitimate to [vote for] only one candidate [...] if all electors vote this way the system loses its distinctive properties". See Steven J. Brams and Jack H. Nagel, "Approval Voting in Practice", *Public Choice* 71 (1991), 7

²¹⁴ Quoted in Claude Leclercq, *Le principe de majorité*, 50

project. In such cases, Albert Strum finds that "success is more likely if highly controversial issues are submitted separately"²¹⁵.

The second advantage is that the checklist ballot offers better possibilities for the elector's choice to be more competent, as defined by Lupia and Johnston: "A voter's choice is competent if it is the same choice that she would make given the most accurate available information about its consequence"²¹⁶. One could be tempted to assume that the checklist ballot could make it harder for some people to vote, in the sense that its format could make it more complicated for people of lower political knowledge and capacity to properly express their preferences. By transforming the usual binary acceptance of a project in its entirety to a binary acceptance of individual parts of the project, the cost of voting itself could be higher, especially for lesser informed publics, because of the increase in information gathering that would be needed to comprehend, even in a minimal fashion, all the issues on the ballot, and by the increase in the number of votes the elector must cast. This would mean an increase in information costs, which, in the theory of rational choice, would lower incentives for the elector to go and vote²¹⁷.

However, in reality, the checklist ballot does not make it harder to vote, and it appears reasonable to think that the checklist can improve voter competence. First, by dividing the project submitted to referendum into a series of

²¹⁵ Quoted in Joseph B. Kadane, "On Division of the Question", 47

²¹⁶ Arthur Lupia and Richard Johnston, "Are Voters to Blame? Voter Competence and Elite Manoeuvres in Referendums" in Matthew Mendelsohn and Andrew Parkin (eds), *Referendum Democracy: Citizens, Elites, and Deliberation in Referendum Campaigns* (Hampshire: Palgrave, 2001)

²¹⁷ See Anthony Downs, *An Economic Theory of Democracy* (New York: Harper, 1957)

diverse propositions, the elector is given more information about what he is truly voting for or against, a point that is noted by Vincent Lemieux: "une question à deux ou plus d'options est plus riche en information, et elle permet de formuler en clair chacune des options opposées, au lieu d'en formuler une seule et supposer que l'option des opposants se réduit à la négative"²¹⁸. In addition, it is reasonable to assume that the debates surrounding the referendum will be more focused on the individual parts of the project. This combination would allow the elector to have more precise and detailed information on the implications of each issue for which he must vote on. In this light, the outcomes could be drastically different from those that would arise from submitting a global project, and more representative of the electorate's true preferences. Furthermore, the rise in cognitive mobilization, as postulated by Dalton, means, "that more citizens now have the political resources and skills necessary to deal with the complexities of politics and make their own political decisions"²¹⁹. We thus conclude that the elector can be assumed to be in a better position to make an enlightened choice when using the checklist ballot. Given these facts, the checklist ballot represents, in our eyes, the fairest voting procedure, as defined by Dunnett: "the most important criterion for a voting procedure is that it be *fair* (italic in text); and a voting procedure is fair if it reflects as accurately as possible the preferences of voters"²²⁰.

²¹⁸ See Vincent Lemieux, "La formulation de la question", 97

²¹⁹ Russell J. Dalton, *Citizen Politics in Western Democracies : Public Opinion and Political Parties in the United States, Great Britain, West Germany, and France* (Chatam: Chatam House Publishers, 1988), 21

²²⁰ Michael Dunnett, *Voting Procedures* (Oxford: Oxford University Press, 1984) 29

A complementary method for helping voter competence in the case of the checklist ballot would be to send voter information pamphlets as part of the referendum campaign. As is noted by Thomas Cronin, "a clearly presented official information pamphlet is essential to enable voters to make wise policy choices"²²¹. This pamphlet would contain detailed information on each issue, arguments for and against each presented by the government, and also comments by major groups concerned with particular issues (unions, big business and so forth). This would provide additional information to the electors about who supports what and why.

Possible disadvantages of the checklist ballot

A first disadvantage of this ballot format is that it could fall victim to positional effects. Bain and Hecock, in their study on primary and non-partisan elections in several Michigan cities, find that candidates placed in certain places on the ballots have more chances of getting elected²²². Their research thus indicates that particular placement on the ballot generate positional effects. This point is also made by Delbert Taebel, who, in an experimental research, finds that "candidates who were listed first on the ballot received a higher percentage of votes than when they were listed last"²²³. This corresponds to what Miller and

²²¹ Thomas Cronin, *Direct Democracy*, 238

²²² Henry M. Bain Jr. and Donald S. Hecock, *Ballot Position and Voter's Choice: the Arrangements on the Ballot and it's Effect on the Voter* (Detroit: Wayne State University Press, 1957). This study is the first that examined in details the effect of ballot position on electoral outcomes.

²²³ Delbert A. Taebel, "The Effect of Ballot Position on Electoral Success", *American Journal of Political Science* 19 (1975), 523.

Krosnick call 'primacy effects'; effects that tend to bias choice towards selecting the first object considered on a set²²⁴.

In a related study, Byrne and Pueschel, examining what cues voters turn to in deciding their electoral choice, find that certain positions on a ballot can give some advantage. However, while the other studies mentioned earlier concluded that the first position was universally favoured, Byrne and Pueschel's study reveals that first place is not necessarily the most favourable. "First-place-on-the-ballot candidates receive just the number of votes we would expect them to receive by chance"²²⁵. Rather, they find that the last place on the ballot gives a candidate an increased advantage, while other positions (like third or fourth) are more disadvantageous. They explain their divergence from other studies by postulating that these latter have not differentiated positional effects and incumbency, and that since incumbents are generally placed first on the ballot, the positional advantage found in certain studies may instead be due to incumbency rather than positional placement on the ballot.

As a matter of fact, a growing body of research discounts the notion of positional effects. Darcy and McAllister, in a study on ballot position effects, conclude that:

Much of the literature is methodologically flawed, fails to take into account competing explanations for the effects which are found, or presents evidence from case studies that have little

²²⁴ See Joanne M. Miller and Jon A. Krosnick, "The Impact of Candidate Name Order on Election Outcomes", *Public Opinion Quarterly* 62 (1998), 291-330

²²⁵ Gary C. Byrne and J. Kristian Pueschel, "But Who Should I Vote For For County Coroner?", *Journal of Politics* 36 (1974), 781

in common. [...] Position effects will manifest itself in situations where voters have no other guide to a vote choice and must make use of the limited information contained on the ballot itself²²⁶.

As examples of methodological flaws, they point to the failure of Bain and Hecock's study to include incumbency effects as a possible alternative explanation to their conclusions. They also discount Taebel's conclusion of positional advantage, since her experiment does not approximate voting conditions either in North America or in Europe. They thus conclude that "when party information is present on the ballot, there is no positional effect²²⁷". In a related study of an election to the New Hampshire House of Representatives, Darcy shows that voters do not pick first place as first choice, but rather other positions²²⁸. In effect, he finds that particular electoral rules or circumstances create the observed advantage. This conclusion is similar to the one reached by Kelley and McAllister, in an article discussing the effects of different candidate information present on ballots in Australia and Britain, in which they conclude that political party selection procedures (often induced by the popular belief that there are certain advantages from ballot position) create the illusion of positional effects²²⁹.

All in all, then, the empirical evidence is quite reassuring. As Darcy shows, when party information is present there should be no position effects²³⁰. No doubt that in a referendum, electors will link their preferred parties to specific issues on the ballot. Hence, partisan information will be present even if not directly on the

²²⁶ R. Darcy and Ian McAllister, "Ballot Position Effects", *Electoral Studies* 9 (1990), 5;14

²²⁷ *Ibid.*, 13

²²⁸ R. Darcy, "Positions Effects in Multimember Districts: the New Hampshire House of Representatives, 1972-1994", *Polity* 30 (1998), 691-703

²²⁹ Jonathan Kelley and Ian McAllister, "Ballot Paper Cues and the Vote in Australia and Britain: Alphabetic Voting, Sex, and Title", *Public Opinion Quarterly* 48 (1984) 452-466

²³⁰ Darcy and McAllister, "Ballot Position Effects"

ballot²³¹. Second, as Miller and Krosnick point out "voter knowledge regulates the magnitude of name-order effects"²³². As we have shown, the checklist ballot offers increased capacities for voters to improve their political knowledge, at least on the issues at hand, by dividing the project into separate issues, which makes for more precise and elaborate debates. Following this line of reasoning, the name order effect may be less present with our type of ballot. Furthermore, even if we did postulate some positional effects, a possible remedy to this problem would be to rotate ballots, as suggested by Bain and Hecock. They suggest that ballots should be rotated to give equal opportunity to each candidate to be listed first, since "it is the only way to prevent the order of candidates' name from influencing the outcome of the election"²³³. While Darcy warns us of increased costs in using ballot rotation²³⁴, in an article dealing specifically with ballot rotation, the same author suggests a rather economic and less burdensome technique of ballot

²³¹ In the case of elections, Johnston et al., in their study of the 1988 Free trade election in Canada, show that electors identified the conservative party (and its leader, Brian Mulroney) with the acceptance of free trade, and the liberals and NDP with rejection. Hence, even if party information was not on the ballot itself, it was present and known about anyway. However, this does not mean, as we have seen earlier, that voters will automatically follow their preferred party in referendum choices. See Richard Johnston, André Blais, Henry E. Brady and Jean Crête, *Letting the People Decide: the Dynamics of a Canadian Election* (Montreal: McGill-Queen's University Press, 1992). The same results have been shown for referenda. Harold Clarke and Allan Kornberg, analysing the 1995 Quebec referendum, shows that party, and leader, identification were crucial in the vote outcome. For example, they show that the popularity of Jacques Parizeau in voters' perception influenced the outcome, as he was not very popular with the electorate. "For example, if Parizeau had been as popular as Lévesque, the probability of a *oui* vote among women increases by 13% and among men by 11%". See "Choosing Canada? The 1995 Quebec Sovereignty Referendum", *PS: Political Science and Politics* 29 (1996), 676-682. However, some don't agree. Kriesi notes, for example, that only 6% of voters are close to political parties, know its position, and mention that this information was the most important in affecting their political choice. See Hanspeter Kriesi, "Le défi de la démocratie directe posé par les transformations de l'espace public", in Yannis Papadopoulos, *Présent et avenir de la démocratie directe* (Genève: Georg, 1994), 31-72

²³² Miller and Krosnick, "The Impact of Candidate Name Order on Election Outcomes", 316

²³³ Bain and Hecock, *Ballot Position and Voter's Choice*, 90

²³⁴ For example, printing and administrative costs will rise sensibly. See R. Darcy, "Position Effects with Party Column Ballots", *Western Political Quarterly* 39 (1986), 648-662

rotation which he calls the Robson technique²³⁵. We thus conclude that, though positional effects should not be completely discounted, they do not pose that great a risk.

A second disadvantage involves the problem of conditional preferences. It is possible that since the issues are presented and voted on separately, the result may be flawed, in the sense that some electors could have voted differently on certain issues had they known the outcome on other issues. For example, in a list of items involving different spending items, an elector would choose to allocate money to the gym class *only if* money was allocated to the library as well. This problem is one of nonseparability of preferences: when foreknowledge of the voting result on one proposition affects the voter's preferred result on the other proposition. This situation has been described by Brams et al. as the multiple election paradox²³⁶. They differentiate between proposition aggregation, where votes are tallied for each proposition, and combination aggregation, where propositions are grouped together and voted upon as combinations. Their research shows that majority choice by proposition aggregation may in fact receive fewer

²³⁵ See R. Darcy, "Rotation of Ballots: Minimizing the Number of Rotations", *Electoral Studies* 12 (1993), 77-82. It should be mentioned that the state of Alaska rotates its ballots. In dealing with ballot rotation, though we advocate its use in the case of the checklist ballot, we should be aware of certain complications that could arise from using different ballots on the same electorate. For example, Hamilton and Ladd, studying North Carolina elections, demonstrate that changes in the balloting structure can affect political outcomes at the local level. See James T. Hamilton and Helen F. Ladd, "Biased Ballot? The Impact of Ballot Structure on North Carolina Elections in 1992", *Public Choice* 87 (1996), 259-280. However, they find that the changes in ballot did not affect the overall outcome.

²³⁶ See Steven J Brams, D. Marc Kilgour and William S. Zwicker, "The Paradox of Multiple Elections", *Social Choice and Welfare* 15 (1998), 211-36; Brams, Kilgour and Zwicker, "Voting on Referenda"; see also Hannu Nurmi and Tommi Meskanen, "Voting Paradoxes and MCDM", *Group Decision and Negotiation* 9 (2000), 297-313; Hannu Nurmi, *Voting Paradoxes and How to Deal With Them* (Berlin: Springer, 1999), chap. 7

votes when voters are aggregated by combination²³⁷. They conclude that this is due to the fact that some voters have nonseparable preferences. The remedy they propose is that propositions be grouped together and voted on as combinations. This, they say, would give much more flexibility to voters with non-separable preferences.

However, such truncations do not seem necessary in our case. First, Brams et al. do not give estimates of how many voters have nonseparable preferences; thus, these electors may represent only a tiny portion of the total electorate. Second, we advocate the use of the checklist ballot as a way for the elector not to have to vote on a tightly-knitted referendum package, but rather to let her have the opportunity to express herself directly on separate issues. Voting by combination would, it is true, still permit some flexibility in the package that is presented to the public; however, it would not have as much flexibility as our present checklist proposition.

Furthermore, it should be reminded that the question of conditional preferences is presented as an information problem: outcomes could be different if citizens had substantial information about how others would vote before casting their own vote(s). But information may not be as sparse as assumed in some of the literature. Verba notes that sample surveys, which are regularly done and whose results are posted during and after election campaigns, represent one of the most

²³⁷ Brams, Kilgour and Zwicker, "The Paradox of Multiple Elections", 214

utilized information gathering tools in estimating how others' in the polity will vote, and are excellent methods to estimate the state of public opinion.

Polls provide information that did not previously exist. They allow adjustment of campaign strategies to the winds of opinion. [...] Polls give some content to the level of public support by dealing with the reactions of the public to particular policies. [...] Surveys provide us with a relatively unbiased view of the public by combining science and representativeness. [...] Surveys can probe preferences on many issues²³⁸.

In addition, as Sudman and Bradburn note, the field of opinion poll researching has become more and more mature, and has become increasingly accurate²³⁹. Thus, even if polls are not the best guide for legislators in deciding issues of policy-making, they are real indicators of what people are thinking about, and in what manner²⁴⁰. Finally, as Johnston et al. show, analysing the 1992 Canadian referendum, most electors knew which of the YES or NO options was leading in the polls, which gives electors further information on how the campaign is moving along, how diverse groups have managed to mobilize their members and in what direction²⁴¹.

Furthermore, as Brady and Sniderman show, citizens "are remarkably accurate in estimating the issue positions of strategic groups in politics"²⁴². While the educated strata can accomplish this on the basis of knowledge of other groups'

²³⁸ Sidney Verba, "The Citizen as Respondent: Sample Surveys and American Democracy", *American Political Science Review* 90 (1996), 3-4

²³⁹ See Seymour Sudman and Norman M. Bradburn, "The Organizational Growth of Public Opinion Research in the United States", *Public Opinion Quarterly* 51 (1987), S67-S78

²⁴⁰ See David L. Paletz, Jonathan Y. Short, Helen Baker, Barbara Cookman Campbell, Richard J. Cooper, and Rochelle M. Oeslander, "Polls in the Media: Content, Credibility, and Consequences" *Public Opinion Quarterly* 44 (1980), 495-513.

²⁴¹ Johnston, Blais, Giddengil and Neville, *The Challenge of Direct Democracy*

²⁴² See Henry E. Brady and Paul M. Sniderman, "Attitude Attribution: a Group Basis for Political Reasoning", *American Political Science Review* 79 (1985), 1061

positions, the major part of the population relies on a likeability heuristic. This heuristic has two components: 1) a person's own belief on an issue; 2) the person's feelings toward the group whose issue positions he or she is estimating. Thus, the heuristic rests on a two-sided "us vs. them" character of politics, which "helps ensure the accuracy of the attribution to the extent it accentuates the difference between your side and the other"²⁴³. This evidence is also supported by Rouquette: "Il semble qu'un des axiomes les plus fondamentaux de la logique sociale [...] soit à peu près le suivant: 'j'appartiens à un groupe et ce groupe est différent des autres'. [...] l'appartenance est inséparable de la différenciation comme la mesure de la proximité de celle de la distance"²⁴⁴. This allows the elector to know about the positions of the main groups or organizations in society, like unions, big business or other interest groups. However, we contend, this does not allow him to have a precise figure of how many electors these groups represent.

Then, since voters do not always initially possess all information about how others intend to vote, this could lead us to conclude that the problem of conditional preference is one that should be taken seriously. At the same time, conditional preferences may not be as common in reality as it is sometimes presented, and with the data on opinion polls, and Brady and Sniderman's likeability heuristic, in addition to the evidence presented by Johnston et al., we may conclude that the problem of conditional preferences is not that serious in the case of the checklist ballot.

²⁴³ *Ibid.*, 1075

²⁴⁴ Michel-Louis Rouquette, *La psychologie politique* (Paris: PUF, 1988), 55

A final disadvantage that should be discussed relates to possible problems of coherence in the outcome of the checklist ballot. As a vote is taken on different issues, it may happen that some issues pass the threshold, while other issues do not pass the threshold, but these issues are linked. For example, electors would pass one issue on the ballot pertaining to capping the size of classes, while rejecting another issue on the ballot that would increase school budgets. Thus, the outcome on one issue would be plagued or contradicted by that on another. This problem is real, and we cannot present any magical solutions that would alleviate this problem. However, one possible solution is for the deliberant assembly to be diligent about items it presents. Issues on the ballot should be presented clearly, and the items on the ballot should be chosen and presented with the intent of minimizing potential contradictions in the outcomes. As we have stated in our section on ballot construction, bureaucrats and other elites would assist the assembly to help ensure the legality and coherence of items and their presentation.

Conclusion

We have seen that the checklist ballot offers interesting advantages. First, the ballot provides increased electoral alternatives, i.e. more choice and multiple winners. This offers the possibility for the electorate to show more nuanced preferences for individual parts of a project. Second, the ballot offers enhanced possibilities for improving and strengthening voter competence, as defined by

Johnston and Lupia, by allowing for more focused and precise debates, centered on each issue and its consequences.

We also discussed possible disadvantages of the ballot, but showed that these disadvantages were not overwhelming for the checklist ballot. First, the ballot could be susceptible to positional effects. However, we have shown that a growing body of research discounts the findings of positional effects on the grounds of methodological flaws, for example, not controlling for incumbency effects. We also discussed possible problems of conditional preferences and coherence, but showed that information about others' voting intentions was not so sparse, and that coherence could be enhanced and managed through diligent ballot construction on the part of the deliberant assembly.

Conclusion

This thesis has argued that the checklist ballot enables electors to get a better presentation of what they are voting for, and a clearer picture of the possible outcomes. The basic argument of this thesis is that the checklist ballot is the best balloting method to ensure that electors can properly express their preferences, and for referendum outcomes to really reflect voters' opinions. An analytical framework containing two fundamental assumptions was put forth from which we worked. First, we tried to find ways to increase the actual participation of citizens in political processes that affected their lives. Our framework was built around our contention that an increase in political participation brings about an increase in political skills and interest. In this sense, we postulated that participation breeds education. Second, we wanted to promote ways in which choices offered to the electorate were presented in a manner that would discourage government manipulation, and would present the choices as they really are.

Our thesis was divided into four chapters. In the first chapter, we defended direct democracy on the grounds that it was not inherently biased against minorities, and that voters were competent to vote directly for legislations. Furthermore, we showed that it increased government responsiveness, and that it had significant political education functions. In the second chapter, we discussed ballot construction methods. Having reviewed both methods used in the Jackson and B.C. referenda, we proposed our own method, the 'deliberative method', and showed that it best fitted our analytical framework. In the third chapter, we

discussed thresholds. We proposed that a qualified majority be set for items to pass; however, we made the case that this qualified majority should be adjustable to the decision to be taken, as some have more consequences for the polity than others. Finally, our last chapter presented in a more direct manner the advantages and disadvantages of the checklist ballot.

We should, at this point, recognize certain aspects of the ballot we may have passed over too easily, or that we could not consider more studiously. First, further attention should have probably been put into the question of coherence. This we feel is the checklist ballot's main weakness: by dividing a global referendum project into different parts, it cannot ensure fool-proof that outcomes will be coherent. It is our contention that the deliberant assembly should be particularly aware of the items it presents, and make sure that these items are not self-dissipating in any way. If coherence cannot be ensured, this would be a factor that could make officials less enthusiastic about using the checklist ballot as a tool of policy making. Thus, more research on this subject could permit us to answer questions such as: how to ensure this coherence by the deliberative assembly? What to do in cases of incoherent outcomes?

Related is our contention that division of items will more easily lead to passage of these. It should be recognized that the reverse may equally be possible, since global referenda packages sometimes represent a compromise between different sectors of the polity, between conflicting alternatives. Thus, a global

constitutional package may also be viewed as an equilibrium whose goal is to please a majority of people/groups, where tractations take place before the vote, not during the campaign. In this sense, one could hypothesize that division of items may actually weaken the possibility of passage of these separate items. Thus, this point should be taken into consideration for further research.

Second, we would have liked to present a discussion concerning the possibilities of the checklist ballot to help resolve certain voting paradoxes, namely Ostrogorski²⁴⁵ and Anscombe's paradoxes²⁴⁶. Both relate to the fact that a majority of voters may have voted in the minority in a majority of cases. Both have the same mathematical structure that arises from non-associativity and non-bisymmetry of the majority rule. Associativity requires that if a majority winner between two options (x and y) is confronted to a third option (z), the result should be the same as when the winner of y and z is confronted to x . Similarly, bisymmetry requires that when the majority winner of x and y is confronted to the winner of a and b , the results is the same as when the majority winner of x and a is confronted to the winner of y and b ²⁴⁷. There is some evidence that our checklist ballot could alleviate the occurrences of these paradoxes. In the case of the

²⁴⁵ The paradox has been put forward in Douglas W. Rae and Hans Daudt, "The Ostrogorski Paradox: a Peculiarity of Compound Majority Decision", *European Journal of Political Research* 4 (1976); Hans Daudt and Douglas W. Rae, "Social Contracts and the Limits of Majority Rule" in Pierre Birnbaum, Jack Lively and Geraint Parry (eds), *Democracy, Consensus and the Social Contract* (London: Sage publications, 1978), 335-57. They named it in honour of Moisei Ostrogorski, who was a critic of majority principles. See Moisei Ostrogoski, *La démocratie et les partis politiques* (Paris: Éditions du Seuil, 1979 [original publication, 1902])

²⁴⁶ See G.E.M. Anscombe, *Ethics, Religion, and Politics* (Minneapolis: University of Minnesota, 1981).

²⁴⁷ See Hannu Nurmi, "Voting Paradoxes and Referenda", *Social Choice and Welfare* 15 (1998), 333-50 for a more formal demonstration; also *Voting Procedures Under Uncertainty* (Berlin: Springer, 2002)

Ostrogroski paradox, Lagerspetz writes: "the obvious remedy for the problem is a referendum democracy. If issues which are separable are voted on separately, the paradox disappears"²⁴⁸. In the case of Anscombe, Carl Wagner finds a way to solve the problem: instituting a rigid qualified majority. In his words:

[W]e find that when prevailing coalitions comprise, on average at least three-fourths of those voting, the set of voters disagreeing with a majority of outcomes cannot comprise a majority. [...] requiring the assent of a fraction of voters less than three-fourths in order to adopt a proposal allows for an infinite number of cases where a majority of voters disagree with a majority of proposals thus adopted²⁴⁹.

However, the evidence was not totally satisfying as it still left doubts in our minds that the checklist could really alleviate these paradoxes. In our correspondence with Hannu Nurmi and Steven J. Brams, both authors alluded to their doubts as to the capacity of a balloting method such as the checklist ballot to alleviate these paradoxes. Thus, we decided to let go of this discussion. However, we push for more analysis of this possibility.

Finally, another aspect we wish to discuss is the burdensome character of our 'deliberative method'. One could argue that the fact that citizens have so much control over the proceedings, making harder for the government to secure its preferred outcomes, there would not be much incentive for governments to push for usage of such a method. In effect, while we wish to promote more utilisation of direct democracy, what we propose may actually hinder this objective. This is some fair criticism, and should be taken into consideration. Our only answer is that we hope that governments will have the courage to give the people the tools

²⁴⁸ Erik Lagerspetz, "Paradoxes and Representation", *Electoral Studies* 15 (1995), 88

²⁴⁹ Carl Wagner, "Anscombe's Paradox and the Rule of Three-Fourths", *Theory and Decision* 15 (1983), 303; see also "Avoiding Anscombe's Paradox", *Theory and Decision* 16 (1984), 233-238

for properly expressing their political demands. The government of British-Columbia will in the next few months be conducting an electoral exercise that could be described as resembling our 'deliberative method' in a project concerning electoral reform. Hopefully, this will lead other government to gown this alley.

This being said, we wish to encourage our peers to engage in more research on the subject of the checklist ballot. The ballot seems a better tool for improving democratic efficiency, and making processes more transparent and fairer. With voter apathy becoming increasingly apparent, there is a fundamental need for more research on alternative balloting methods. We cannot but push for ingenuity and imagination in finding ways that will make democracy work as it really should: enabling citizens living in community to maximize their welfare, by giving them proper tools to express and attain their political and social goals. Lines of research should be pursued, for example, in analysing the circumstances under which the checklist ballot is best used. As our thesis is an exploratory work, there is presently insufficient evidence for us to push on this subject. Perhaps the checklist is best used in spending projects, or in constitutional referenda. Certain issues, rather than others, are perhaps best presented to the public via a checklist ballot rather than other balloting methods. We cannot say at the present time. We hope this thesis has instilled interest in the ballot, and that others will push to new ends knowledge we have of the checklist ballot. Hopefully, more knowledge will equal more usage. In light of what we have presented in this thesis, more usage definitely seems to us a positive thing for strengthening democracy. That is why

we encourage others to follow in this path, and shed more light on the many possibilities of the checklist ballot.

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APPENDIX 1

Whereas the Government of British Columbia is committed to negotiating workable, affordable treaty settlements that will provide certainty, finality and equality;

Do you agree that the Provincial Government should adopt the following principles to guide its participation in treaty negotiations?

1	Private property should not be expropriated for treaty settlements.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	1
2	The terms and conditions of leases and licences should be respected; fair compensation for unavoidable disruption of commercial interests should be ensured.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	2
3	Hunting, fishing and recreational opportunities on Crown land should be ensured for all British Columbians.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	3
4	Parks and protected areas should be maintained for the use and benefit of all British Columbians.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	4
5	Province-wide standards of resource management and environmental protection should continue to apply.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	5
6	Aboriginal self-government should have the characteristics of local government, with powers delegated from Canada and British Columbia.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	6
7	Treaties should include mechanisms for harmonizing land use planning between Aboriginal governments and neighbouring local governments.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	7
8	The existing tax exemptions for Aboriginal people should be phased out.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	8

Mark your choice for each statement by marking a ✓ or X in the Yes or No box beside questions 1 to 8.