

Referendums

Why Are They Held? When Are They Justified?

Susan C. Stokes
University of Chicago
Chicago Center on Democracy
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A note on usage: I follow Butler and Ranney (1994), who in turn follow the Oxford English Dictionary, in using the term *referendums* rather than *referenda* as the plural of referendum. Referenda are “things referred to.”

On the evening of June 23, 2016, as news arrived from across the Atlantic that the U.K. had voted to leave the European Union, a neighbor had a pithy post on Facebook: “Referendums are stupid.”¹ A few days later, another friend and neighbor said about Brexit, “I can’t believe they put *that* question on the ballot.”

Both of these women were politically well-informed faculty members at Yale, distinguished scholars in humanities fields. They were expressing quite different views about referendums. One saw the very institution as flawed. The other implied that there some matters of public policy on which the public should decide, directly, and others on which they should not. The question I seek to answer in this project is, Which view is closer to the truth?

Contemporary political theorists have tended to view popular consultations – initiatives, plebiscites, and referendums – favorably, seeing them as moments of direct democracy that elevate citizen participation and choice (see, e.g., Barber 1984, Budge 1996). But the Brexit process cast a harsher light on referendums. And not just Brexit. A few months later, in October, 2016, Colombian voters narrowly rejected a peace deal between the government and rebels. The defeat further marred the image of referendums in the eyes of liberals around the globe.

The very idea that popular consultations are instances of direct democracy is open to debate, as Qvotrup (2005) has pointed out. Referendums are moments of direct citizen choice, embedded in representative systems.² The people get the final word because their elected representatives choose to give it to them.³ Referendums are at best distant relatives of Athenian citizens, chosen by lot, deliberating in the Theatre of Dionysus, or groups of villagers gathered around a *thing* in medieval Scandinavia. One difference is that deliberation in pre-modern direct democracies was unmediated: citizens conferred directly with one another. Referendums embedded in contemporary representative systems entail more complex and mediated deliberations, discussions, and persuasive campaigns. Many actors are involved: political parties, governments, interest groups, and the media.

To figure out whether referendums are ever justified and on what grounds, I will come at the problem from two directions. One is normative. In the context of representative institutions, when does direct citizen choice enhance democracy? The second is analytical. Why do elected governments sometimes choose to give citizens the final word on matters of public policy, institutional design, and the like?

In the next section of this essay, I turn to a 19th-century theorist of representative government, John Stuart Mill, for guidance on the normative side of the question. Mill’s

¹ Even pithier was the Facebook comment of a Princeton scholar of comparative politics: “WTFUK.”

² Citizen-initiated consultations, which I do not discuss here, have a greater likeness to direct democracy.

³ In some systems, constitutional reforms are constitutionally required to be approved by referendum. The government’s choice, then, is not whether to hold a referendum but whether to pursue a given constitutional reform. Even so, the government will take into account whether the given reform is likely to meet approval by the people; strategies around referendums are thus not irrelevant, even in these settings.

work, considered from the vantage point of 21st-century democracies, suggests four criteria justifying referendums. To anticipate, one of these criteria is of special interest because it dovetails with a reason why political leaders decide to hold referendums. I call this the *non-processing criterion*, when a matter of public interest cannot be processed through normal representative institutions, especially the party system.

In real-world politics, governments often call referendums when their party is internally divided over an important matter. This intra-party discord is a symptom of a party system that cannot process the matter of public concern. When governing parties decide to hold referendums on the issues about which they are internally divided, their worries are practical, not normative. Festering discord over issues like membership in international organizations or definitions of marriage can erupt into leadership contests and other inconveniences. It is nevertheless interesting that governments sometimes hold referendums in circumstances in which they are normatively justified, even if governments hold them for less-than-exalted reasons.

In the second part of the paper, I discuss two recent popular consultations that were driven by discord within governing parties. The Brexit vote was held because the British Conservative Party was deeply divided over continued British membership in the EU. The electorate was also divided. Britons could not simply cast votes in candidate elections for a party that unambiguously represented their position on Europe, the way, say, Americans could cast ballots for parties that unambiguously expressed their preferences on abortion. Internal divisions in the governing party also lay behind Australia's 2017 popular consultation on same-sex marriage.

The failure of the British and Australian party systems to process voter sentiment is not what persuaded prime ministers to hold popular consultations. Their concerns were more practical. Government leaders were worried not about voters' inability to use the party system to process the issue but about the possibility of internal leadership challenges and strife in within their parties. If the good news is that the non-processing criterion sometimes overlaps with governments' reasons for holding a referendum, the bad news is that this is just one of several criterion in terms of which referendums should be evaluated. In the U.K., the non-processing criterion was met. Yet the Brexit vote violated other criteria, in particular that referendum campaigns reveal to voters the real choices they face.

When internally *divided* governing parties hold referendums, both sides in the conflict are in effect agreeing to end it by letting the people decide. As an Australian Liberal Party senator and same-sex marriage opponent explained, "I will be voting 'no' at the plebiscite, but, whatever the result of the plebiscite is, that is how I will vote in parliament." They are thus using the people as a **referee**.

Referendums are not always a byproduct of governing-party divisions. Internally *united* governing parties also sometimes choose to hold them. In Colombia in 2016, President Juan Manuel Santos had sufficient support from his and allied parties in the national legislature to ratify the peace accords through an act of Congress. And there

was no legal requirement for anything more than regular legislation.⁴ But ratification by referendum would have been more valuable to Santos; the power of the people's vote would have been more effective in staving off later reversals by the opposition. Likewise, in 2015, same-sex marriage could have been adopted in Ireland by an act of the Dáil. But Taoiseach Enda Kenny decided to protect the measure from future encroachments, by the Church and other actors, by holding a referendum. In this case both the people's vote and a constitutional reform protected the future of same-sex marriage.

When internally united governing parties hold optional referendums, they are treating the people not as a referee but as a **force-field**. This essay does not explore the justifications of referendums in which the people are used as a force-field, but they seem to lack justification by the non-processing criterion.⁵

When to Bring the People Back In: J.S. Mill

The rise of representative institutions was accompanied by sharp debates about the relative capabilities of politicians and citizens. At one extreme lies Edmund Burke, the late 18th-century writer and politician. Burke believed that a governing class, one that could discern the national interest, was naturally drawn to political parties and hence to governing (Burke 1949[1774]). Their constituents, lacking in these capacities, owed the representatives full deference. At the other extreme was Jean-Jacques Rousseau, the Genevan political philosopher and near-contemporary of Burke. Rousseau inveighed against the delegation of political power to representatives, seeing it as a kind of citizen self-enslavement. In between are figures like James Madison, who believed that many wise and patriotic men will seek public office, but acknowledged that "Enlightened statesmen would not always be at the helm" (Federalist 10, 1982[1787-1788]). Madison ascribed to the broader voting public the ability to recognize, and reject at reelection, the unwise, unpatriotic, and the factious among their elected representatives.

Twentieth- and 21st-century descendants of these thinkers can be found across this spectrum. From Joseph Schumpeter (1942) in the mid-20th century, to Christopher Achen and Larry Bartels (2016) in the early 21st, scholars have cast doubt on the people's ability to discern good leaders from bad ones and hold them to account. Elections, on this view, solve succession problems. But they do not encourage responsive government. Contemporary political scientists, such as David Mayhew (1974) and Morris Fiorina (1981), follow James Madison in seeing the people's retrospective judgements as encouraging elected officials to be responsive. Some contemporary writers, inheritors of the tradition of Rousseau, look for ways to replace representation with unmediated citizen deliberation (see, e.g., Estlund 2009, Landemore 2012).

⁴ Indeed, after the ratification failed in the referendum vote, the government did ratify it through an act of Congress.

⁵ These are just two of several reasons why governments call referendums. Others include to exploit divisions among the opposition (Argentina 1984, France 2005), to make good on a campaign promise made while in opposition (Spain 1986, New Zealand 1992), to boost the government's popularity before an election (Poland 2015), or as part of a strategy of executive aggrandizement (Russia 1993, Ecuador 1986 and 1997, Burundi 2018).

These competing views hold direct relevance for judgements about the proper role of popular consultations in representative systems. If the people are as incapable as the Burkean tradition tells us they are, elected officials have no business calling on them to make important decisions. Looking at referendums like Brexit, not a few contemporary commentators would agree – though many of them would want to have nothing to do with Burke’s complacency about political parties attracting natural leaders who know best. At the other end of the spectrum, if conceding power to elected officials turns us into virtual slaves – and, worse than slaves, subjected souls who are morally responsible for the misdeeds of our masters – then perhaps we can best deploy referendums to shut down representative institutions and replace them with some form of direct democracy. More so if representatives are inevitably susceptible to influence by special interests.

What none of these strains of thought does is offer guidance about when and why to toggle back and forth between citizens as selectors of leaders and citizens as deciders on matters of public policy. But the history of political thought does offer us full-throated defenses of representative government in which representatives should, nevertheless, sometimes defer to the people’s views on particular matters of public concern. If arguments in favor of referendums, as moments of direct voter choice embedded in representative systems, are to be identified, we would do well to explore the ideas of these thinkers.

An important and subtle such advocate was John Stuart Mill. Mill’s thoughts on when constituents should defer to their elected representatives and when elected representatives should defer to their constituents are best understood against the backdrop of his broader political philosophy. This, in turn, is best understood against the backdrop of Mill’s complex relationship with utilitarianism. The son of James Mill and a pupil of Jeremy Bentham, J.S. Mill broke with the utilitarians over their narrow ideas about societies’ goals. In the classic utilitarian formulation, the overriding objective of social and political arrangements is to maximize the sum of individual contentment. Mill the younger embraced a broader and richer set of goals. A meaningful life went beyond contentment to include the cultivation of intelligence and of moral capacities, enterprise over passivity, and social progress. Political institutions should encourage these broader qualities and goals of collective life.

Representative government, Mill believed, was the form of government best suited to encouraging individual and collective progress. His *Considerations on Representative Government* (1861) made the case that representative government was superior to other forms (monarchy, aristocracy, democracy) at promoting the virtue, intelligence, and progress of the people.

Yet Mill believed that a fit was needed between the stage of progress of a population and the form of government that the population could sustain. Representative government could not be foisted on a “barbarous” people. Some of Mill’s views in this regard were standard-issue Victorian conceit. Western civilization was the apex of social development. Barbarous peoples – “North American Indians” (208), “the

barbarians who overran the Roman Empire,” or the “Hindoos,” who will “perjure themselves to screen the man who has robbed them” (209) would find representative government “repugnant” (208).⁶

Even in advanced societies, the people might reject representative government if it worked badly. “The people for whom the form of government is intended must be willing to accept it; or at least not so unwilling, as to oppose an insurmountable obstacle to its establishment.” (207-208) This idea of a proper correspondence between the form of government and the people living under it – and of the latter’s acceptance of the former – tempered Mill’s ideas about voters’ deference to their elected representatives, as we shall see.

A standard view of Mill is that he was fixated on personal freedom and saw concentrations of state power as a threat to it. (See, for instance, Barber 1984, pp. 8-9.) Yet not freedom as the absence of constraint, but freedom from despotism as the road to individual fulfillment, emerges from a close reading of *Considerations*. Mill was a strong advocate of active participation of common citizens. He believed that direct democracy, as extolled by Rousseau, relied on notions of a general interest or will; whereas Mill considered a plurality or diversity of interests to be irreducible. In representative government, Mill detected the possibility of a desirable balance between participation and competence; a docile citizenry was as much a peril as were unresponsive leaders.

The people’s passive acquiescence to their government was not enough. The “political machinery,” he wrote, “has to be worked, by men, and even by ordinary men. It needs not their simple acquiescence, but their active participation; and must be adjusted to the capacities and qualities of such men as are available” (207).⁷

Referendums would not be held in Britain for more than a century after Mill wrote *Considerations on Representative Government*. What did exist in his day were *pledges*. Pledges were written instructions that constituents invited parliamentary candidates from their districts to sign. They were informal contracts which the signatory, were he to win office, was expected to follow in his parliamentary votes. Pledges had no legal force. But they were not infrequently signed, and exerted political and moral weight on members (see O’Gorman 1997).

Pledges in the 19th century posed some of the same dilemmas that referendums do in our day. Should voters decide for themselves matters of public policy? Or should they defer to their elected representatives? If the answer is “it depends,” what does it depend on?

Mill offered trenchant answers to these questions, ones that held elitist strains in his thought in tension with participationist ones. On how much deference voters (or “electors”) owed their representatives, Mill’s answer came in two parts. The first part

⁶ Though Mill was as much social critic as apologist for his own society. An early feminist, Mill was as a young man arrested for distributing [information about] contraception!

⁷ In the discussion that follows, all page citations are to Mill 1991 [1861].

was quite Burkean. Elected Members of Parliament are better educated and more informed than their constituents about public affairs, and benefit from deliberations in ways that their constituents do not. Treat your representative, he admonished electors, as a professional agent, not as an ambassador.

Mill was a great believer in well-educated men running government, whether in parliament or in the civil service. This was the competence side of the competence-participation equation. He wrote at a time when the British electorate was expanding significantly. For the first time it dipped down not just to the lower gentry but to laborers and farmers, men of limited education. Mill was no populist; he advocated for plural votes for those with “individual mental superiority” (336), which would include university graduates and members of the liberal professions.

Mill believed that elections generally bring to office a superior kind of person. He entertained what Manin (1997) would later call an “aristocratic theory of elections.” Electors choose a person of superior intellect and experience. Sometimes their representative’s views diverge from their own. Why elect someone of superior intelligence and insight, Mill reasoned, if you don’t defer to his views? Hence, in Mill’s opinion, “Superior powers of mind and profound study are of no use, if they do not sometimes lead a person to different conclusions from those which are formed by ordinary powers of mind without study.” When the representative differs in opinion from the majority of his constituents, “his opinion will be the oftenest right of the two.” Thus “the electors will not do wisely, if they insist on absolute conformity to their opinions, as the conditions of his retaining his seat.” (376)

This is the Burkean side of Mill. But the representatives’ role went beyond exercising his good judgement on behalf of his constituents. “If it is important that the electors should choose a representative more highly instructed than themselves, it is no less necessary that this wiser man *should be responsible to them*” (376, emphasis added). Why might a wise representative fail to be responsible or responsive to his constituents? Mill’s answer was that the representative would fail to understand, or empathize with, the interests of lower-class voters. And when the class interests of their representative were at odds with their own, working-class voters could not be expected to assume that the representative knew best.

Class differences were not the only ones that could limit the elected official’s ability to represent. Mill also mentions differences of party (“the ablest candidate may be a Tory, and the electors Liberals” (376)) and of religion (“he may be a High Churchman, or a Rationalist, while they may be Dissenters, or Evangelicals . . .” (376)). But it was class divisions that most concerned him. Though representatives’ intentions might be fair, and though they might even pander to working-class constituents, the MPs’ ability to see an issue from the vantage point of the lower strata was limited, especially when asked to sacrifice their own class interest.

Yet does Parliament, or any of the members composing it, ever for an instant look at any question with the eyes of a working man? When a subject arises in which the labourers as such have an interest, is it regarded from any point of view

but that of the employers of labour? (246)

Class divergence between voters and representatives was not a chance event in Mill's Britain. Elections might filter out the unwise but so did they filter out the working classes. In parliament or public service, Mill wrote, "the working classes may be considered as excluded from all direct participation in government." (246) In campaigns, voters do not have "an indefinite choice of honest and unprejudiced candidates" but instead "are almost always obliged, by the expenses of election and the general circumstances of society, to select their representative from persons of a station in life widely different from theirs, and having a different class-interest . ." (377) He continued,

Can we blame an elector of the poorer classes, who has only the choice among two or three rich men, for requiring from the one he votes for, a pledge to those measures which he considers as a test of emancipation from the class-interests of the rich? (377)

When class and religious interests diverged, then, the elected representative should defer. Yet he should not thus defer on every issue. A key idea for Mill was that voters should only demand deference from their representatives on issues that were "*absolutely essential*" (381, emphasis added).

Mill used several powerful phrases to describe the kind of issues on which the representative should defer to voters. These had to be extremely important ones, from the voters' point of view. They needed to relate "to the *fundamentals of politics*" (380) and to be ones that are "*the foundation of [electors'] political belief,*" (382) or "*fundamental articles of belief,*" on which the representative is "*vitally at issue*" (at odds) with his constituents. (382). They should be ones on which a voter has "convictions on national affairs that are *like his life-blood.*" (381, emphasis added). "social issues," ones in which values rather than expertise are at play.

It was not just that representatives owe deference to their constituents on matters of vital importance. To ask voters to defer on such matters was to imperil their support for the representative system of government and their active participation in it. What we might think of as system-legitimacy considerations could override competence considerations, which were also clearly vital to Mill. He wrote of voters,

Whoever feels the amount of interest in the government of his country which benefits a freeman has some convictions on national affairs that are like his life-blood; which the strength of his conviction in their truth, together with the importance he attaches to them, forbid him to make a subject of compromise, or postpone to the judgement of any person, however greatly his superior. (381)

Responsiveness so overrode competence in such circumstances that the representative should defer *even if the people were wrong*. Mill wrote: "A people cannot be properly governed in opposition to their primary notions of right, *even if these be in some points erroneous*" (381, emphasis added).

In sum, Mill offered two conditions which, jointly, justified representatives' deferring to constituent opinion and signing pledges – even pledges that constrained them to make erroneous choices: (1) when elected representatives could not be trusted to share or even understand the people's interests – as when he was wealthy and they poor – and (2) when the matter of concern was of vital importance to voters, like their “life-blood.”

Referendums: Criteria of Justification

Mill's views on pledges suggest criteria for evaluating referendums. In this section, I offer criteria, informed by his reflections, that allow us to discern referendums that are clearly justified from ones that are not so clearly justified. But first, a discussion is in order about differences between pledges and referendums, and about differences between the realities and sensibilities regarding representative systems of a 19th-century political philosopher, and the realities and sensibilities of our own day. We shall see that there are important differences. But what pledges and referendums have in common is that they are moments in which the people's representatives defer to voters' directly expressed preferences on policy, broadly construed. The people “speak” and they speak consequentially.

One difference has to do with *scope*. Mill's writings about pledges make them sound like local affairs, involving constituents and their representatives, and in this sense very unlike referendums. But even in Mill's day, pledges were not always about constituency-level matters. Pledges were increasingly used by national campaigners and were coordinated across districts. An example were anti-slavery movements (see O'Gorman 1997). Thus pledges were evolving into an institution that more closely resembled the citizens' initiatives currently in use in several countries and in some US states. Pledges were a tool used by civic movements in which people from many parts of Britain coordinated actions across constituencies to press parliament as a whole to pass bills and change policy.

Referendums around the world today are often national in scope. They involve national electorates making their views known on issues facing the country. Referendums can also be sub-national (by state or province), and they can be local. They lack the personalized, constituent-to-representative aspect of some 18th- and 19th-century pledges. The process of the pledge, with constituents enjoining elected officials to vote a certain way in the legislature, is reversed in referendums: now elected officials are asking citizens to cast a certain vote in a public election.

Another difference has to do with the *competence* of voters. When 18th- and 19th-century observers considered allowing the people a direct choice over policy, their main worry – the principle tradeoff that concerned them – was a loss of competence. From Burke to Madison to Mill, the view was that representatives, located in deliberative institutions, were usually better than common citizens at making decisions on public policy. By the 20th and 21st centuries, the citizenries of most democracies are broadly literate and increasingly educated, compared to the new voters of the lower strata in

Mill's day. In our own, citizens have access to vastly more information. We still need to worry that the campaigns leading up to referendum votes may not do a good job informing voters. But of greater concern, now, are the distorting role of special interests, lobbyists, and misperceptions that can quickly spread in the digital age.

A key question Mill asked was, Do pledges infringe on the better judgement of elected representatives? A key question we must ask is, Do referendums allow citizens to make well-informed decisions about the matters before them? The answer, which I will pursue later in the book, is that there is a wide variety of experiences. Sometimes the information available to voters, and the dynamics of pre-referendum campaigns, leave them well informed. But sometimes they leave them badly informed.

A deeper question is about citizens' *beliefs*, and in what sense they are "like their life-blood," in Mill's eloquent phrase. The model of representation that he assumed was something like the following. The average elector knows relatively little about most matters that their elected representative will vote on. He has some beliefs, especially ones that arise out of his class interests and religious identities, that are of profound importance to him. On these, he is justified in instructing his representative.

Contemporary social science teaches us that citizens' beliefs are to some degree shaped by the political process (see, inter alia, Zaller 1993, and Taber and Lodge 2003). People who identify with a political party are prone to adopt the preferences signaled to them by their party. This is especially true when they lack direct information or have weak prior beliefs. Whether this is a rational information shortcut or a sheep-like instinct is a matter of debate. Signals sent by parties and political leaders are not the only source of our policy preferences, but they are important ones. On economic performance, for instance, research suggests a good deal of malleability and partisan influence. But people also draw information from their personal experiences and observations, especially at moments of economic crisis.

The voting public can have their views of politics shaped in ways that lead them to feel passionately, so that their beliefs or preferences do indeed look like "matters of life-blood." But these are still beliefs, preferences, and passions that are shaped by political leaders. Brexit offers examples. People certainly feel passionate about national sovereignty, economic well-being, and immigration. But how people see a policy question, such as whether to remain in an international economic organization, as connected to these matters is vulnerable to manipulation by politicians. More generally, it would be a mistake to equate matters of "life-blood" with ones that arise in a sovereign manner from people's interests and experiences, outside of politics. "Fundamental articles of belief" can arise not just from class interest or religious identities, but from competitive discourse of politics.

This fact makes it more difficult for us to determine that issue A is not important enough to voters that they should decide it, whereas issue B is one that the people, on their own, consider to be like their life-blood and therefore should decide in a referendum. The people may be whipped up into a frenzy such that a matter of public policy appears to involve "fundamental articles of belief" when, absent politicians'

intervention, they might feel less strongly. And how they vote in the referendum may well be shaped by rhetorical stratagems of politicians.

With these more contemporary considerations in mind, we can still draw on Mill to develop criteria by which to judge the appropriateness of referendums. I propose the following four such criteria that must be met if a matter of public concern is appropriately decided by popular consultation:

*(1) **Importance criterion:** many citizens view the matter as extremely important – it is like their “life-blood,” to borrow John Stuart Mill’s phrase – and they so view it independently of whatever efforts politicians might make to convince them of their importance*

*(2) **Non-processing criterion:** the matter cannot be processed through representative institutions and the party system.*

*(3) **Deliberation criterion:** There are reasonable expectations that the public deliberations, discussions, and campaigning leading up to the referendum vote will inform members of the public well about how their values connect to the issue at hand and what the important likely consequences of one or another outcome of the vote will be.*

*(4) **Minority protection criterion:** Neither the process leading up to a referendum nor its results threaten rights of minorities.*

The importance and deliberation criteria are fairly self-explanatory. But what does it mean to say that a matter of public policy “cannot be processed” through representative institutions? The idea draws on Mill’s concern that when voters are offered no candidates to support who stand for their class interest, their obligation to defer to their representative is reduced.

In our day, the problem is that political parties and the party system may offer no channel through which people can express and see realized their strongly felt preferences. Usually, political parties adopt well-publicized and reliable positions on issues of importance to voters, and citizens can vote for the party whose position matches their own. An example, already alluded to, is abortion in the US. Pro-life voters can express their preferences with a vote for the Republican Party, pro-choice ones with a vote for the Democratic Party.

But sometimes voters cannot use their votes in candidate elections in this way. Failures of party systems to offer options to voters on life-blood matters can happen for several reasons. One is that the major parties are internally divided so that none unequivocally embraces the position that these voters favor. Perhaps the major parties are captured by special interests whose preferences are at odds with the mass of the electorate’s. Or perhaps the parties have self-serving reasons for avoiding an action that

large numbers of citizens believe to be urgent. Or public opinion may have shifted and legislative parties are reluctant to catch up.⁸

Of course the match of beliefs and party stances is unlikely to give all voters a perfect choice. A person who favors same-sex marriage or women's right to abortion may be a fiscally conservative libertarian. Some systems will offer up a party that matches this person's views nicely. But a system that features only parties that are both fiscally and socially conservative will force this voter to choose whether his fiscal conservatism or his support of same-sex marriage and abortion rights is more important in deciding his vote. Even in the latter case, the matter that is like his life-blood is likely to prevail in his choice.

The People as Referee: Australia

In Australia in the period 2004-2017, political parties' stances on same-sex marriage were in flux, and the party system did not offer voters clear choices. Ensnared in internal conflict about this issue, the ruling party eventually, in effect, held a popular consultation so that the people would mediate this conflict.

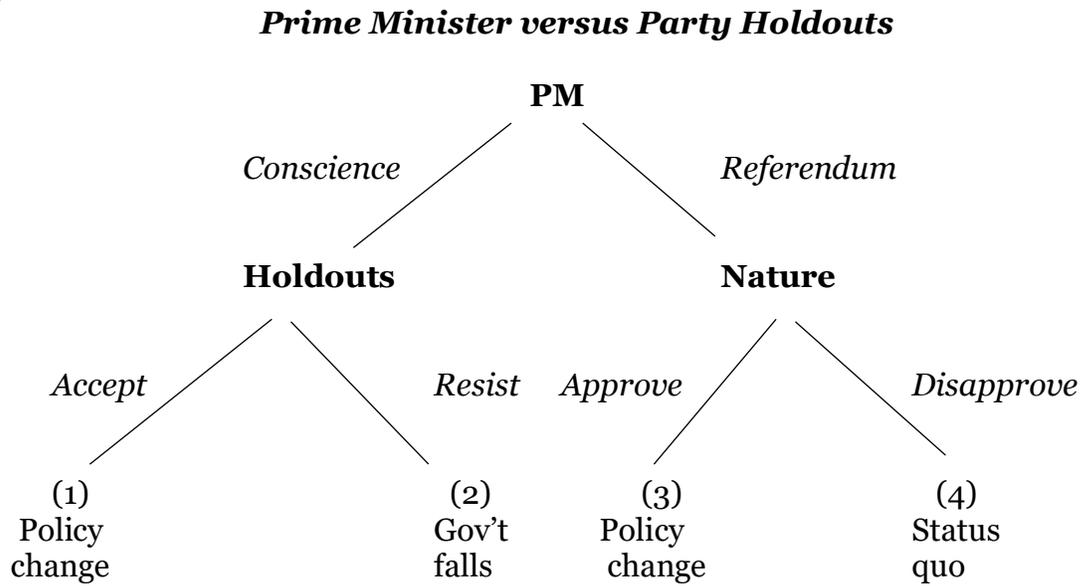
Before turning to the details of the story, it is worth using a simple analytic device to illustrate how it was that a popular consultation solved the problem of internal divisions over same-sex marriage for the governing party.⁹ (See Figure 1.) Consider a prime minister who favors change on a policy. The change is opposed by members of his party, here denoted as Holdouts. A large enough contingent in the prime minister's party agrees with him that, were the party to relax discipline and allow a conscience vote, their support, together with that of the opposition (which also favors change), would allow the change to be passed by parliament. The Holdouts are numerous and powerful enough, however, that they might be able to topple the prime minister, should he announce a conscience vote.

Another possibility is to call a popular consultation on the issue. If the prime minister chooses this route, the people (depicted here as Nature), will either approve or disapprove of the policy change. The common understanding is that the change is more likely than not to be approved by the people in a referendum.

⁸ In the context of a discussion of citizen initiatives in US states, Lupia and Matsusaka (2004) offer a list of proposals that legislators would not pursue on their own: term limits, "certain kinds of campaign finance reform," measures that "the major dislike (e.g., open primaries)," changes that "cut across existing political cleavages . . . and that offend important legislative constituencies . . . or that are considered too hot to handle (e.g., immigration policy and gay marriage)," pp. 475-476.

⁹At the time of the popular consultation, Australia was ruled by a coalition of the Australian Liberal Party and the National Party, both right-of-center. The two operate as a semi-permanent, pre-electoral coalition at the federal level, though they often caucus separately.

Figure 1



The actors' preference order over the outcomes in the figure are:

PM: 1 = 3 > 4 > 2
 Holdouts: 4 > 3 > 2 > 1

The prime minister is indifferent between achieving the policy change via legislative action or a referendum, both of which outcomes he favors over the change going down to a “no” vote in a referendum. His worst outcome would be to announce a conscience vote and be ousted from office. Implicitly, he wants both to remain in power and oversee the policy change, with the first objective ascendant over the second.

The Holdouts prefer to allow the people to take the blame for the outcome, hopefully for the outcome the Holdouts like better (the status quo) but, barring that, for the one they like less. Because they are a minority in their own party they are not assured of the current prime minister's being replaced by another they will be happy with, should they push for a leadership change. Therefore the prospect of ousting the PM, if he calls for a conscience vote, a risky proposition, in their view. If the PM announces a conscience vote and is not toppled, the Holdouts will vote in parliament against the popular measure; the policy will change and they will be reviled by many for their ‘no’ vote. This is their worst outcome.¹⁰

A referendum, even if it turns out to favor the change that the Holdouts oppose, is thus the second-best for both actors and the one that takes place.

¹⁰ My assumption is that they will cast a nationally unpopular ‘no’ vote either because – without the “cover” provided by a majority referendum vote – it would be too costly for them to vote ‘yes’ in parliament. The costs may arise from their own ideological position or from their constituents who are, like them, opposed.

The scenario raises several questions. Why are there Holdouts on a popular policy in the first place – why do they not shift to a popular position or get voted out and replaced by more congenial politicians? There are several possible explanations. One is that public opinion is heterogeneous and the Holdouts represent districts that agree with them. Even if the party as a whole might benefit from shifting its position, the Holdouts might well care more about retaining their own seats than about the share of seats their party controls (see Snyder (1994) and Ansolabehere et al. (2012)).

But in Australia, by the time of the popular consultation, there is evidence that conservative politicians who opposed same-sex marriage (Holdouts) were actually out of step with majorities in their own constituencies (ReachTel-Sydney Morning Herald, 2017; Carson et al. 2018). On an issue like same-sex marriage, office-holders might have personal and religious convictions that kept them from shifting to the majority's position. That said, the number of single-issue voters on the same-sex marriage issue would have been small. Conservative office-holders could hold out without necessarily fearing being ousted by their constituents over this issue. Personal convictions and religious beliefs certainly played a role in the Holdouts' behavior, though eventually most found it preferable to submit to the people's will than to hold the line against social pressure and endless legislative initiatives in favor of marriage equality.

The Path to the Postal Survey

Overview. Legalization of same-sex marriage in Australia proceeded in three stages. Stage one, from 2004 to 2010, began with a defensive change to the law, a modification of an existing legal description of marriage such that it would now be defined as between a man and a woman. The two major political parties at this stage remained officially opposed to same-sex marriage; pressure to legalize it came from civil-society campaigners and small legislative parties. In stage two, 2011-2015, fissures appeared in the major parties, mainly in the Australian Labor Party (ALP). The ALP parliamentary party struggled internally over its position. Over a relatively brief period, the ALP traveled a path from official and disciplined opposition to – eventually – support with a threat of party discipline on the horizon.

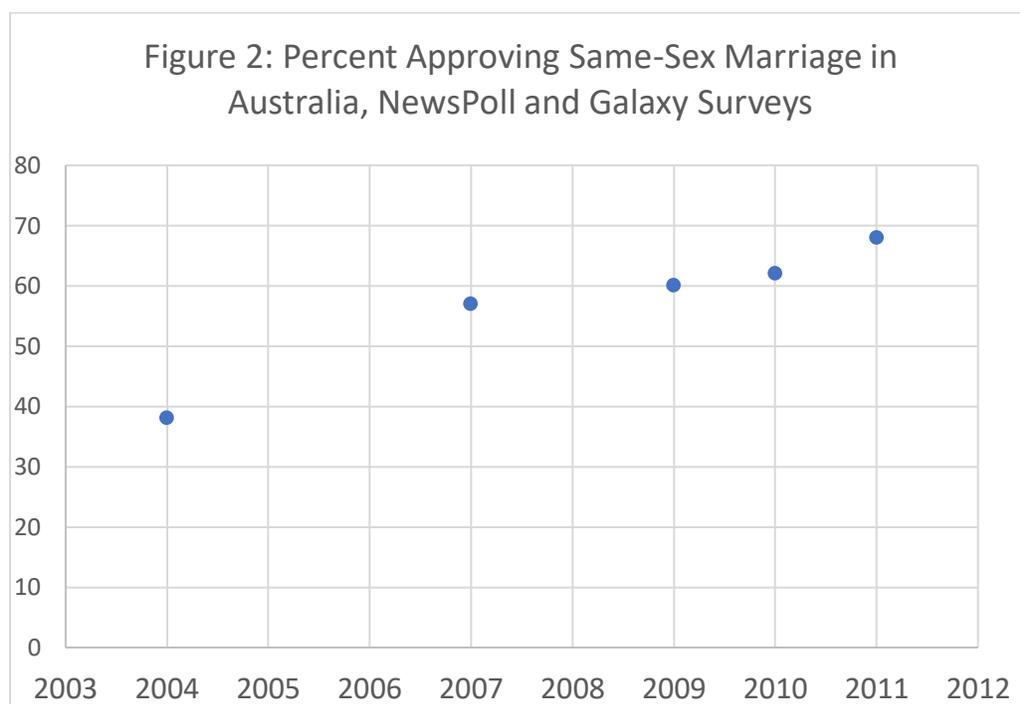
By the third stage, 2016-2017, fissures had also deepened within the Liberal-National coalition (LP-NP). Whereas Labor eventually resolved internal struggles with a shift to outright support of same-sex marriage, the Liberal Party remained divided and never officially embraced same-sex marriage, and the National Party remained officially opposed. This state of discord led the coalition to settle on a plebiscite: let the people decide. This resolution was acceptable to Liberal-National coalition leaders (including, eventually, the Prime Minister) who favored same-sex marriage, and to those who did not.

For the latter group, the fact that Australians almost always reject proposals put to them in referendums gave some hope that the people would reject marriage equality if given the choice in a popular consultation. Even if the people approved same-sex marriage, as public opinion polls at the time suggested they would, at least legalization

would not be the fault of legislators who opposed it, and at least the politicians would put behind them a bothersome issue which had festered for more than a decade.

But the story has a further twist. Debates over a popular consultation went topsy-turvy, with opponents of same-sex marriage in favor of a popular consultation and supporters of it, in opposition parties, opposed. The pro-same-sex marriage, opposition-party resistance to a popular consultation was related to the minority-protection criterion: resisters believed that a vulnerable minority would be too much at risk in a plebiscite. The impasse forced the Prime Minister to improvise, using an unofficial, novel form of popular consultation. Novel and improvised though it was, the move succeeded in resolving the governing party's impasse and in introducing same-sex marriage to Australia.

Stage One. As in other advanced democracies, Australia in the early decades of the 21st century saw rapid shifts in public attitudes toward same-sex marriage (Carson et al., 2018). Opinion polls tracked growth in the percentage of Australians who said they favored it, from 38% in 2004 to more than two-thirds in 2011.¹¹ (See Figure 1.)



When the issue first emerged, politicians in Australia, like their counterparts elsewhere, passed defensive measures, establishing other-sex marriage as the legal norm. In Australia in 2004, the LP-NP government of John Howard sponsored such a bill. It amended the Marriage Act of 1961 by inserting that marriage “means a union between a man and a woman.” The 2004 amendment was supported by the opposition Labor Party; the only opponents were a handful of small parties, mostly Australian Greens. But public support for same-sex marriage continued to rise. The international

¹¹ The polls were conducted by Newspoll and Galaxy firms.

environment was also changing. Same-sex marriage was legalized in some US states and in Ireland. The example of a rapid shift in these two English-speaking countries drove momentum in Australia. And the fact that gay Australian couples could marry abroad and repatriate created challenges, such as their need to divorce.¹²

Between 2004 and 2010, six bills to legalize same-sex marriage were introduced by Green Party members of the Australian House of Representatives and the Senate. Few of these bills even advanced to a vote; none was approved.¹³

Stage Two. As public opinion continued to shift, fissures began to appear within the major parties, first in the Labor Party. The trajectory of the party was from opposition to same-sex marriage with disciplined votes, to opposition but with conscience votes (in 2010), to party support of same-sex marriage but still with conscience votes (i.e., as of 2011, members opposed to same-sex marriage could vote against it). These shifts were the party's way of dealing with diversity of opinion among its members and in the districts it represented, though with opposition in both eroding.

In this period, Australian Labor Party members for the first time sponsored same-sex marriage bills. In 2012, an ALP member of the House of Representatives sponsored a private-member same-sex marriage bill. Thirty-eight Labor representatives voted in favor, 26 against, Prime Minister Julia Gillard among them. The Liberal and National Party coalition (LP-NP) remained opposed and voted in discipline on the measure. It failed.¹⁴

In June 2013, Prime Minister Gillard was replaced as leader of the ALP and (briefly) as Prime Minister, by Kevin Rudd. Rudd evinced the ambivalence of the party on the issue. In his words, "I've been thinking about the meaning of marriage for a long time - and I won't hide the fact that this has been a journey for me. It is a difficult discussion, and I won't force this on anyone. It will be a free vote for members of the Labor Party."

Another step along the way came in 2015, when Bill Shorten, then the leader of the ALP (at this point in opposition), introduced a same-sex marriage bill, which lapsed without a vote.

¹² What's more, jurisdictions in Australia were acting separately from the federal government, as in 2013, when the Australian Capital Territory (ACT) legalized same-sex marriage, only to be reversed later by the courts.

¹³ "Since the 2004 [amendment](#) to the *Marriage Act 1961* (Cth) which inserted the current definition of marriage, 23 bills dealing with marriage equality or the recognition of overseas same-sex marriages have been introduced into the federal Parliament. Four bills have previously come to a vote: three in the Senate (in 2010, 2012 and 2013), and one in the House of Representatives (in 2012). These bills were all defeated at the second reading stage. The 23 bills were introduced or co-sponsored by members of parliament representing the Australian Democrats, Australian Greens, Australian Labor Party, Derryn Hinch's Justice Party, Liberal Democratic Party, Liberal Party of Australia, Nick Xenophon Team and by Independents." Parliamentary Library 2018

¹⁴ A 2012 Senate proposal also showed the ALP to be deeply divided, with 16 Labor Senators voting in favor, 11 against.

Same-sex marriage was also divisive among Australia's allied conservative parties, the Liberal Party and the National Party. In the Liberal party, some individual legislators favored marriage equality. Warren Entsch, an influential member of the House of Representatives from northern Queensland, had spoken out against the 2004 bill defining marriage as between a man and a woman. Dean Smith, a Liberal member of the Senate and first openly gay person in the parliament, advocated in support of same-sex marriage beginning in 2014. Liberal leader and coalition Prime Minister Tony Abbott opposed same-sex marriage; his successor, Malcolm Turnbull, supported it.

Caught between public opinion in favor of legalization and strong opposition within their parties, the leadership adopted a solution of promising to turn the matter over to the people. Within the coalition, Liberal members tended to be more friendly to reform, Nationals less so. The Coalition's position in 2013 was in favor of traditional marriage, and party (Liberal) PM Abbott resisted pressure to allow members to vote their conscience. In August 2015, Entsch called on the coalition government to allow a vote on same-sex marriage and for Liberal Party representatives to be allowed to vote their consciences on the issue.

Prime Minister Abbott was "outraged" by the idea, and called a legislative party meeting. The meeting, unusually, included both Liberal and National Party members, the latter brought in by Abbott to shore up the anti-same-sex-marriage contingent.¹⁵ The Liberal leadership reaffirmed that its members would not be allowed a conscience vote on same-sex marriage. Symptomatic of internal frictions, Prime Minister Abbott declared that any Liberal frontbenchers who defied party discipline would lose their cabinet posts.

In the campaign before the 2015 elections, Abbott declared that, if elected, the party would swiftly seek a plebiscite on the matter. The promise was less of a concession than it might appear. As already mentioned, referendums and plebiscites tend to be rejected by Australian voters. Forty-four referendums were held, nation-wide, between 1906 and 2017. A whopping 36 of them went down to defeat.¹⁶

Opponents of same-sex marriage may have initially favored a referendum for just this reason. The very steep climb for referendum approval in Australia explains the enthusiasm for this mechanism among, for instance, Lawyers for the Preservation of Marriage.¹⁷ But it was clear that, given opposition to a popular consultation among small

¹⁵ Author's telephone interview with Warren Entsch, November 5, 2019; Sydney Morning Herald, Oct 22, 2015, Latika Bourke, "Coalition Same-Sex Marriage Plan an Ambush and Thought Bubble: Eric Abetz"

¹⁶ See Gilligan 2001, for reflections on why Australians are so averse to passing referendums. Passage requires a majority both of the popular vote and in the states; four out of six must vote in favor. But most of the defeats have been by popular vote over the country as a whole. Gilligan points to a suspiciousness about potential encroachments by the federal government.

¹⁷ In this group's opinion, "A referendum will be the clearest way in which a question is put to the people, as it will define the exact changes to be made to the Constitution, and so, for a practical purposes fix (in constitutional and legislative terms) the meaning of marriage in Australia." Legal and Constitutional Affairs Reference Committee, Senate of Australia, p. 9

parties and, eventually, from the ALP, the necessary bill authorizing a referendum could not be approved by the parliament.

Attention shifted to a plebiscite. From the perspective of opponents, public opinion polls notwithstanding, it was possible that a plebiscite on same-sex marriage would likewise fail to produce majority support for marriage equality.¹⁸ In fellow Liberal Party member Warren Entsch's view, "[Prime Minister Tony] Abbott was opposed to marriage equality, and in an effort to derail it, he came up with the concept of a plebiscite."¹⁹ Unlike referendums, plebiscites are non-binding in Australia. So even if same-sex marriage were supported in a plebiscite, it might not survive in parliament. Indeed, a consistent fear among same-sex marriage supporters was that parliament would renege and not legalize gay marriage, even in the event of a positive plebiscite vote.

The plebiscite proposal was also an attractive "out" for conservatives. They preferred some action on this thorny issue to none, and saw a popular consultation in its favor as cover. If the people turned down same-sex marriage in a popular vote, the conservatives would feel free to vote no. If the people approved same-sex marriage, conservatives could also vote in favor, in deference to the people's will.

This logic was laid out during a 2016 Senate debate by Senator Ian MacDonald, a Liberal from Queensland: "I will be voting no at the plebiscite, but, whatever the result of the plebiscite is, that is how I will vote in parliament. I have made this known publicly a number of times. If the Australian people decide to vote yes to the question, then that is how I will be voting in the subsequent legislation. If they vote no, then that is how I will be voting when the bill is brought before the parliament."²⁰ Or, as Prime Minister Abbott, a strong opponent of same-sex marriage, put it, a plebiscite "is the best way to decide something that's so important but so personal: it's to let the people decide so that the decision, whichever way it goes, will have their authority" (*The Australian* 2016).²¹

In addition, after a decade of pressure from civic groups, Green Party members, and even, eventually, the business community, Australian politicians were ready to move past the issue. Many conservatives seemed to feel that a resolution, any resolution, would be preferable to endless militating from inside parliament and from without. At a 2015 public hearing, Senators asked "whether a successful vote at a plebiscite would bring the debate about marriage to a conclusion" (Senate, p. 12). One can almost hear a plaintive voice saying, we don't want same-sex marriage but can we please resolve the debate, one way or another?

¹⁸ Unlike referendums, which require majority support in the national electorate and in a majority of the states and territories, plebiscites require a simple majority for passage.

¹⁹ Entsch interview, op cit.

²⁰ Speech in Senate Debate on plebiscite, Hansard, Nov 7, 2016.

²¹ "Plebiscite 'best way on same-sex,'" January 29, 2016.

And yet the plebiscite turned out not to be an easy out. In two attempts, legislators failed to get approval for a national plebiscite on whether to legalize same-sex marriage.

Stage Three. In September, 2016, a new bill authorizing a plebiscite on the issue was introduced. This effort was different: the bill was proposed by Malcolm Trumbull, the Liberal Prime Minister. Trumbull was trying to fulfill a campaign promise “to establish the legislative framework for a compulsory, in-person vote in a national plebiscite that would ask Australians ‘Should the law be changed to allow same-sex couples to marry?’” (Parliamentary Library 2017-8, p. 2). It passed the House of Representatives but was defeated on a second reading in the Senate in November.

If the Labor Party had shifted to a pro-marriage-equality position and Liberals like Trumbull also supported it, why would the plebiscite proposal fail in the Senate? Welcome to the topsy-turvy world of Australian marriage-equality politics circa 2016. In their chamber’s debate, senators who opposed same-sex marriage favored the plebiscite, and marriage-equality’s most fervent supporters opposed it. As we have seen, conservatives had reasons for supporting the plebiscite. In the Senate debate, they also cited their need to be faithful to their campaign promises and missed no opportunity to mention the perfidy of their opponents, who resisted trusting the matter to the Australian people.

The opposition to a plebiscite among same-sex marriage supporters is harder to explain, especially in light of the ultimate outcome – passage in 2017 of a long-sought-after reform in the wake of a popular consultation. In the 2016 parliamentary debates on the plebiscite, politicians who had long favored same-sex marriage cited several not-so-persuasive arguments against the consultation. One was its cost. When the left and center-left voice opposition to popular consultation on the grounds that it will cost too much money, the sound you hear is a grasping at straws. Another reason is that they feared losing, and a loss via public vote would have set the cause back very far, indeed. (In this sense, they shared the perceptions of their conservative adversaries of a non-trivial probability that the outcome of a plebiscite would be the usual one for popular consultations in Australia, a grumpy “no.”)

More plausible, and more principled, was left-of-center politicians’ claim that holding a majoritarian poll on the rights of a vulnerable minority group was unfair; as was the fear, voiced loudly by organizations like Australian Marriage Equality, that the public discussions leading up to a plebiscite would expose LGBTIQ Australians to hostility and even to physical peril.

The position, then, of Greens and many Labor Senators was that the Liberals under Trumbull should amend the marriage law through regular legislative procedures. The Liberal leadership could achieve this simply by allowing Liberal members to cast a conscience vote. As a Green Party senator put it, if the Liberal party granted its member a free vote, it “would allow parliamentarians to vote with their hearts and their minds,

not just on their parties' ideology," thus offering "a way forward and an opportunity to break the deadlock . . ." ²²

Such was the panorama facing Malcolm Turnbull, the Liberal party leader who became Prime Minister in September 2015, having replaced Abbott as leader of the Coalition in an internal vote or "leadership spill." Turnbull, as mentioned, favored same-sex marriage, but faced all of the obstacles that we have been reviewing, including deep division on the issue in his own party.

What were the options open to Trumbull? The status quo was untenable; same-sex marriage had become too popular and salient an issue in Australia simply to ignore pressure for action. A plebiscite was the route that least exacerbated internal strife within the Liberal Party and the coalition government, as we have seen. But it was blocked by same-sex marriage supporters in the Senate. Marriage equality could have been introduced through regular legislative action. The courts had determined that the change required no constitutional modifications and therefore could be implemented through an amendment to the Marriage Act of 1961. But to garner enough votes, Turnbull would need either to engineer a shift to a pro-marriage-equality stance as the official position of the Liberal Party, or to lift Liberal Party discipline and allow Liberals to cast conscience votes. As mentioned, with support from Labor and smaller parties, Liberal conscience votes would delivered a majority in both the House of Representatives and the Senate for marriage equality.

But Turnbull chose a course that was more accommodating of the conservatives in his party and in the Liberal-National Coalition. He opted for a hack: a postal survey, carried out by the Australian Bureau of Statistics, with no need for Senate approval.

Warren Entsch, the long-time Liberal advocate of marriage equality, had originally proposed a postal survey, one that would be administered by the electoral commission (author's interview, November 6, 2019). But then-PM Abbott had rejected the idea. With Trumbull, a marriage-equality supporter, as Prime Minister, Entsch revived the idea of a postal survey. But this time he recommended conducting it not through the electoral commission but through the Australian Bureau of Statistics. The advantage was that no parliamentary action was needed – no chance of it being blocked in the Senate. Trumbull agreed.

In the spring of 2017, the Australian Bureau of Statistics sent a survey to every person on the electoral role. The question posed was, "Should the law be changed to allow same-sex couples to marry?" The postal survey was neither a formal referendum nor a formal plebiscite. It had no precedent or legal weight. Even the popular nickname it was given, the *plebisurvey*, was an invention.

Proponents of same-sex marriage were not happy with this innovation. It did little to allay the same fears they had about a plebiscite on the topic. Proponents were uncertain about how the electorate would respond. Would majority support for same-

²² Sarah Hanson-Young, November 7, 2016, Hansard.

sex marriage in public opinion polls translate into majority support in the plebisurvey? Would participation be anemic or strong? Whereas voting in candidate elections, referendums, and plebiscites in Australia is compulsory, participation in the postal survey was voluntary. Though the government set no participation quorum, lackluster participation would dampen the impact of the consultation. They were also fearful about the personal dynamics that might be unleashed as Australians pondered same-sex marriage. For instance, fears were voiced that gay voters might be “outed” to their families as a result of the survey process.

But in fact, the postal survey did the trick. The survey took place between the 12th of September and the 7th of November, 2017. Sixty-two percent answered Yes, 39% No. And “turnout” (people filled the form out at home) was an impressive 80% of registered voters.

As gay-marriage supporters had feared, opponents in parliament were readying amendments that would have divided parliament and killed the reform. In anticipation of these maneuvers, Dean Smith and Warren Entsch crafted a bill to be introduced into the Senate, where it was expected to pass; and they recruited a group of Liberal legislators, the “100 Percenters,” who would cross over and vote with Labor against any amendments.²³ In this way they got a simple amendment through before the Christmas holiday. It amended the Marriage Act by changing the legal definition of marriage from “a man and a woman” to “two people.”

The People as Referee: The U.K.

January, 2013 found Prime Minister David Cameron leading a fractious coalition government and a party lagging in public opinion polls. He would need to lead the Conservative Party in a general election campaign within two years. The party was deeply divided over Britain’s relationship to Europe. In the shadow of these facts, on January 24, 2013, the determinedly upbeat Cameron announced that a referendum would be held on continued British membership in the European Union. It would be held after the next election, and on the condition that Cameron’s Conservative Party won.

Why did Cameron opt for a Brexit referendum? The crucial factor was conflict within the Conservative Party. Cameron’s memoirs make clear that his own insecurity of tenure as prime minister, given the fractiousness of the Conservative MPs and members of cabinet, was the driving factor (Cameron 2019). Cameron’s communications director, Craig Oliver, describes Britain circa 2013 as “ungovernable.” In reflecting on Cameron’s decision to hold a referendum after the Leave side’s victory, it is natural for Oliver to minimize the degree to which the prime minister had any choice. Yet however exaggerated the term “ungovernable” may be, Cameron certainly anticipated difficulty

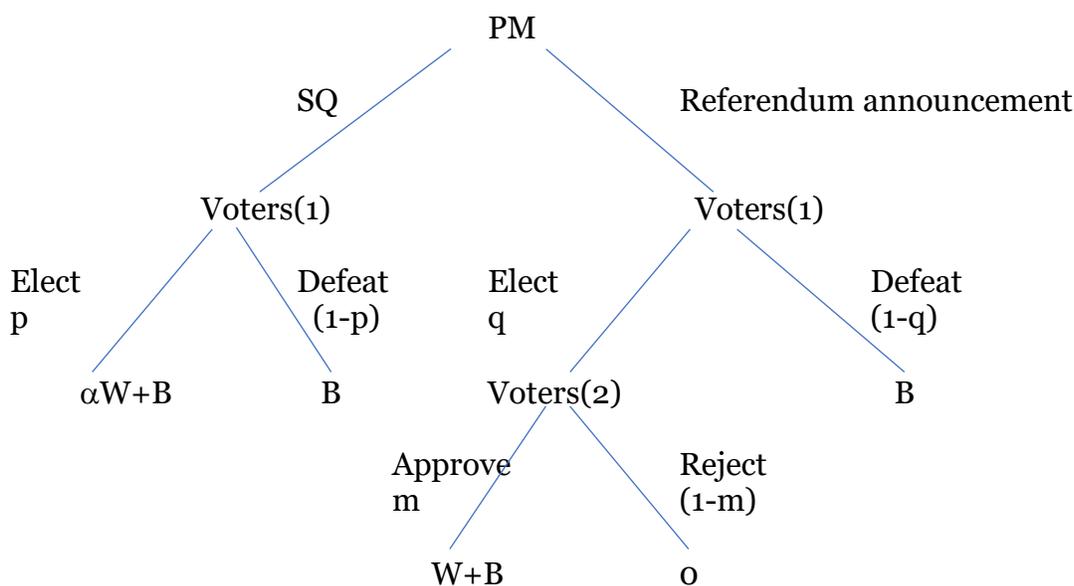
²³ In our interview, Entsch recalled Trumbull being prepared to vote in support of two of these amendments, for reasons having to do with “politics” in Entsch’s word, presumably to appease National Party die-hard opponents.

leading the party in a general election campaign with so much internal discord over Europe.

Before describing in more detail the context for the Brexit vote, I first make use of a formalized decision framework to help explain why the referendum was held. The analysis brings to light two ways in which a referendum quelled intra-party conflict: (1) It introduced a period of peace during which the party might more effectively run for reelection, and (2) if the leader's position prevailed in the referendum, his internal party opponents would be less able to mount a leadership challenge and block his policy initiatives. The prime minister's hope in promising a referendum was to both extend his time in office and use that time to more fully achieve his policy objectives.

Figure 3

Prime Minister's Choice Between Status Quo and Referendum



In the scenario depicted in Figure 3, the PM first decides whether to announce a referendum which will decide, after the next election, a matter of significant discord within his party (in this case, whether Britain would remain in the EU). Alternatively, he can demur from such an announcement and carry on under the status quo (SQ). Next, voters take part in a general election which the PM's party either wins or loses. If the PM has announced a referendum and wins the general election, a referendum is held.²⁴ In it, voters either approve the PM's preferred option (in this case, remaining in the EU) or they reject it (leaving the EU). If they approve the PM's position in the referendum, he remains in office. If they reject it, he resigns.

²⁴By assumption, the costs to his reputation of renegeing would be very high. In New Zealand the parties did renege, but eventually had to comply with their referendum promises.

B is the value to the PM of the status quo with him out of office, either because he decides not to hold a referendum and loses the general election or because he announces a referendum but loses the prior general election. W is the value to the PM of winning and thus retaining office. The value he enjoys from holding office is discounted by α if he is reelected under the status quo, with no resolution of internal party conflict over policy. (α takes a value between zero and one.) The value of office to the PM is reduced under the status quo: he will govern as the head of a severely divided party. He may have to fend off leadership challenges and will be constrained in pursuing his policy agenda.

The ruling party's probability of victory is enhanced if the PM announces, before the election, that he will convoke a post-election referendum ($q > p$). The announcement is a temporizing measure and calms discord in his party. Less riven by immediate conflict, it can run a more effective general-election campaign. In addition, to the extent that voters anticipate that their side may prevail in a referendum vote or that such a decision mechanism is fair to voters, they may be more supportive of the PM's party.

If the PM announces a referendum and his party is defeated in the general election, (*ex ante* probability of $1-q$), no referendum is held and his payoff is B. If he announces the referendum and wins the general election, he carries out the referendum. If the referendum is approved (probability m), the PM's payoff is $W+B$. If it fails, he will resign. Then he has lost office and the policy is changed, against his wishes – his payoff is zero.

It follows that, other things being equal, the MP is more likely to announce the referendum²⁵:

- the more his probability of reelection is improved by his promise of a post-election referendum (larger q/p);
- the larger the discount on the value of holding office without a referendum (smaller α);
- the more he values office (W);
- the greater the probability of the referendum going his way (m); and

$$\begin{array}{l}
 {}^{25} \text{EU(SQ)} = \\
 p(\alpha W+B) + (1-p)B \\
 p\alpha W+B
 \end{array}
 \qquad
 \begin{array}{l}
 \text{EU(Referendum)} = \\
 q[(m(W+B))] + (1-q)B \\
 qmW + B(1 - q + qm)
 \end{array}$$

The PM will be indifferent between the status quo and announcing a referendum when:

$$q/p = \alpha W/[m(W+B) - B]$$

That is, he is indifferent when the ratio of the probability of winning under a referendum and the status quo is equal to the ratio of the alpha-discounted value of winning/holding office, and the sum of the value of holding office (no discount) and the policy continuing, discounted by the probability of the referendum being approved; minus the value of the policy.

- the less he values the policy (B).

Intra-Party Conflict and the Referendum Option

Conflict over Europe among Conservative Party politicians was fierce. Pro-Leave commitments were not limited to backbenchers. By early 2016, five cabinet members (out of 22) had declared themselves in favor of leaving the EU,²⁶ along with 12 Ministers (out of 48). The broader set of Tory politicians was even more deeply divided. In the end, of 323 Tory MPs, 138 chose to vote Leave in the referendum – 43% of the parliamentary party! Only 10 Labour MPs voted for Leave, 218 for Remain.

Table 1 Average Leave Vote Across Constituencies, by MP’s Vote

MP Position on EU	Number	Average Percent Constituents Voting Leave
Conservative Pro-Leave MP	138	55.8
Conservative Pro-Remain MP	185	53.5
Labour Pro-Leave MP	10	49.8
Labour Pro-Remain MP	218	52.4

Unease over the EU was not limited to Conservative politicians but extended to the British electorate. With the accession of eight Eastern European countries in 2004, the number of immigrants arriving in Britain accelerated. With the financial crisis of 2008, and the subsequent Eurozone debt crisis, and deep public-spending cuts in the UK carried out by the Coalition government after 2010, many Britons perceived new arrivals from countries like Poland and Romania as competitors for health care and school seats. Exacerbating anti-immigrant sentiments were terrorist attacks and heightened refugee flows from the Middle East and North Africa. The refugee crisis reached a peak in the summer of 2015, with would-be migrants to the UK massing in Calais and attempting to enter Britain through the Chunnel, at great risk to themselves. Indeed, the timing of the referendum, early in the summer of 2016, was meant to precede an anticipated summer refugee crisis in 2016 (Oliver 2016).

Pro-Leave politicians stoked anti-immigrant sentiment. During the Brexit campaign, they held up the prospect of Turkey joining the EU. Pro-Remain leaders dismissed this claim, and did little to challenge the idea of potential immigrants from a majority Muslim country as a threat to the UK. Leaders like Boris Johnson and Nigel Farage, leader of the United Kingdom Independence Party (UKIP), leaned in on the xenophobia.

Indeed, UKIP added to Cameron’s sense of electoral threat. It was a right-wing anti-immigrant and anti-EU party. Cameron had to worry about UKIP winning away Tory voters, as well as about defections to it by Tory politicians. From the vantage point

²⁶ They were Iain Duncan Smith (Work and Pensions), Michael Gove (Lord Chancellor (2015-2016)), Chris Grayling (Leader of the House of Commons, previously Lord Chancellor (2012-2015)), Theresa Villiers (Secretary of State for Northern Ireland), and John Wittingdale (Sport).

of later years, the perception of UKIP as a vital threat to the Conservative Party seems exaggerated. In a first-past-the-post system, third parties that hope to break into the top-two tier must have much support and it must be geographically concentrated. UKIP only ever won one seat in the House of Commons.²⁷ Nevertheless, Farage was and remains a canny politician, highly effective in pressuring the Conservative Party to shift toward the right.

With the Conservatives, and the British right more broadly, divided over Europe, voters' views on this important topic did not map neatly onto the party system. Euroskeptical voters in particular had no major party they could support that would express their views. Brexit, then, finds some justification on the non-processing criterion.

Yet to the question of whether Brexit was justified on deliberation grounds, the answer is an emphatic No. The campaigns were passionate, angry, and loud, and failed to reveal important information or context for voters. The official Stronger In campaign had many troubles, from coordinating efforts by staff from parties that are usually fighting against one another, to simple failures of chain-of-command, again not unrelated to the need to mash together an organization out of several political parties. Feckless and opportunistic leaders, from Theresa May to Jeremy Corbyn, among others, refused to commit to make public appearances. The remain campaign also faced tough strategic problems, such as whether to stick to the message of economic dangers from leaving the EU, at the same time that the Leave camp was making headway with its messages anti-immigrant message.

If the Remain camp suffered from bad tactics, organizational incoherence, and dithering party leaders, the Leave campaign was adept but mendacious. British campaigns are highly regulated, and some Brexiteer claims were later found to be misleading by British courts. A prime example was the Leave campaign's specious claims that the money saved in dues that would otherwise have had to be paid to the EU amounted to GSP 350 million, funds that would be shifted over to the National Health Service. Individuals who had suffered economic deprivation and felt threatened by large numbers of Eastern European migrants as well as by refugees were led to believe that Brexit would stanch the flow of foreigners and improve their health service.

As important as what was said is what wasn't. And here the fault is shared by both sides. The failure of the campaigns to spark an honest public discussion is well illustrated by the near-silence on the question of what would happen with the Irish border. It is remarkable that a problem, namely how to create a customs border there without reopening old wounds in Ulster, went almost unmentioned, not by the Leave campaign and not by the Remain side. The difficulty was later, as much as any other, to become an obstacle to Britain's actually leaving the EU. But it was scarcely mentioned in the lead-up to the June vote.

²⁷ UKIP's success was in EU elections.

To conclude, these are two cases in which governing parties, internally divided, turn to the device of the referendum, treating voters as *referees*. Since the internal divisions mean that the party system does not allow citizens to use their vote in candidate elections to express their position on the issue in question, normative reasons for referendums and real-world reasons why they are held coincide.

Yet in both cases, the referendums fell short, or threatened to fall short, on other criteria, beyond the non-processing one. The connection between the Brexit campaigns, on both sides, and the real choices Britons faced over Europe, was tenuous. Regarding Australia, a presumed advantage of representative systems is their greater ability than citizen majorities to guarantee minority rights and protections. Happily, concerns that a popular consultation would impose risks on LGBTQ minorities were not borne out.

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