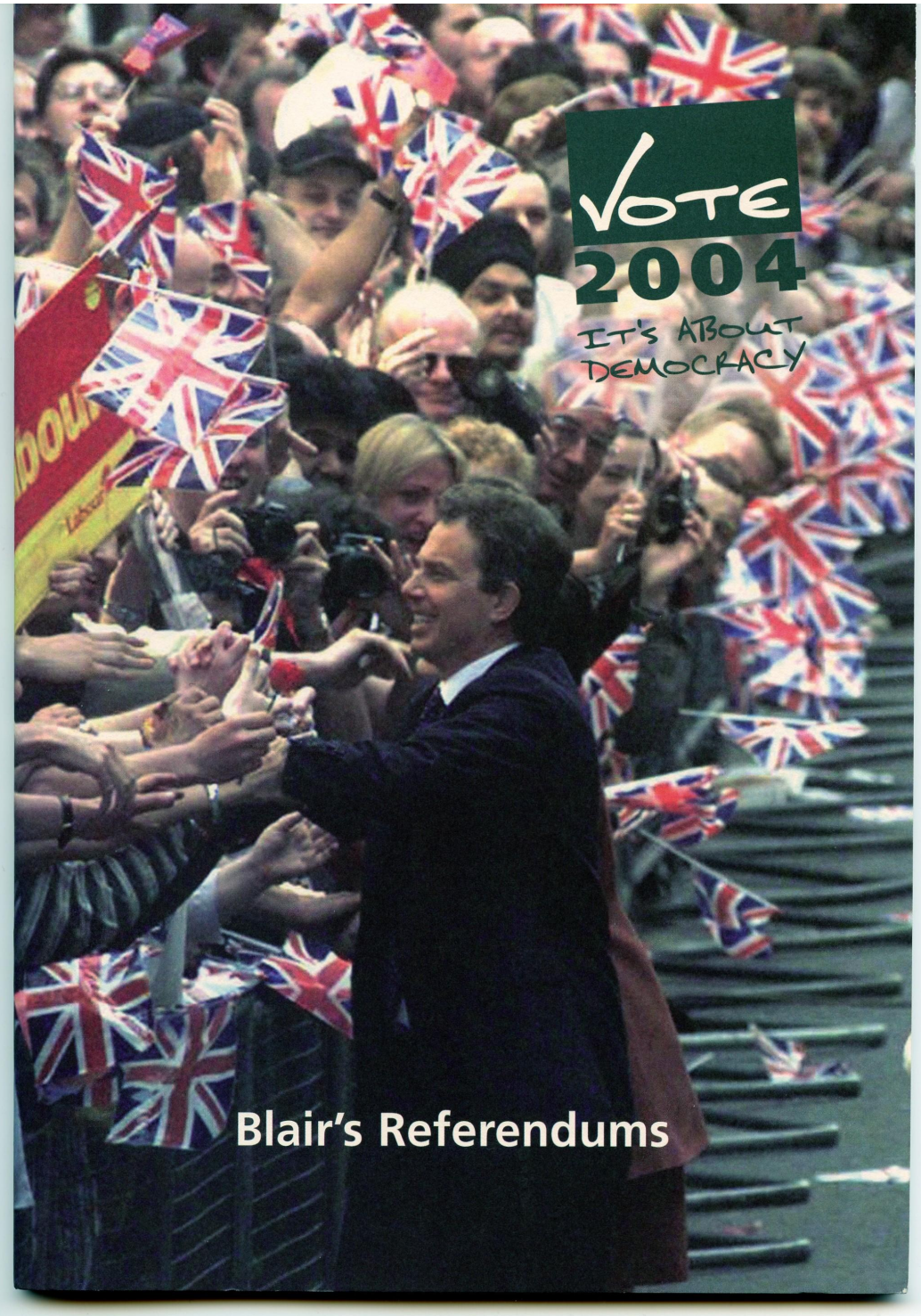
VOTE
2004
IT'S ABOUT DEMOCRACY
Blair's Referendums

Blair's Referendums – by Nigel Smith 2004

The decision by Tony Blair, made public in June 1996, to hold a double referendum on the Scottish Parliament and its tax power took Scotland by surprise and caused a political storm that lasted several months. It was only with hindsight that all the benefits of the referendum could be seen. Democratic legitimacy had been demonstrated beyond doubt, the Parliament entrenched - the powers acquired by referendum could be removed only by another one - and the commitment made by the voters sustained the Parliament through its first difficult years.

There was one other, rather more party-political, benefit to the referendum proposal. Tony Blair had at a stroke removed the controversial debate about the Parliament's tax powers from the run-up to the 1997 General Election. To those of us campaigning for the Parliament, it felt as if someone had turned off a switch. The voters knew this was a decision for another time, another campaign and another ballot.

By using a referendum in this way Tony Blair was following a well-worn path of governments using referendums not for their positive democratic benefits, but in order to resolve a politically inconvenient issue, to sidestep an intra-party controversy, or to break a parliamentary impasse. Representative democracy thus turns the decision over directly to the people. Some argue that the referendum violates the purity of representative democracy, but most think it usefully extends democracy.

A year after being swept to power Tony Blair had held four referendums: on Home Rule for Scotland, devolution for Wales, an assembly and mayor for London and on the Good Friday Agreement in Northern Ireland. The latter of course led to another referendum in the Republic of Ireland, to permit its constitution to be amended in line with the Agreement.

Having, as it were, won all five, Tony Blair's enthusiasm for referendums was understandably high. With further referendums promised or mooted on issues such as the Euro, House of Lords reform, electoral reform and English regional assemblies, he felt committed enough to allow parliamentary time in his important first term to legislate in 2000 for the free and fair conduct of British referendums, creating the Electoral Commission to monitor the new law.

At this point not only the Prime Minister, but his deputy too, could still be counted as an enthusiast for referendums. In May 2002, John Prescott issued advice to Local Authorities on how to use referendums to consult on council tax, drawing upon the experience of three local authority tax referendums held since 1997. Then he promoted the mayoral referendums in England, where the Government were genuinely neutral about the outcome. By the end of this burst of activity, Tony Blair's Government had directly inspired 34 referendums on issues of constitutional significance, either national or local. But it doesn't stop here. In September 2003 a junior minister, Nick Raynsford, threatened to use local referendums as a means of capping council tax increases all over England. His threat betrays another characteristic of referendums initiated by governments: they tend to use them as instruments to further policy and not as a key to genuine choice and decision by the voters. In other words, if referendums can't be relied upon to give the right answer, governments do their best to avoid holding them. Despite all this activity, Tony Blair's attitude to referendums has become steadily less enthusiastic.

All the referendums that have taken place had one important factor in common. With the possible exception of the referendum in Northern Ireland, the Blair Government could regard all the results with relative equanimity. None could remotely threaten to sink the ship of state, which could sail on comfortably regardless of the results. There was never the slightest doubt that the people of Scotland would vote for home rule but, had they rejected tax-raising powers for their new Parliament, it would hardly have derailed Tony Blair or New Labour. That's the joy of a referendum. The same was true of the devolution referendum in

Wales and the mayoral polls. After all, 19 out of 30 areas polled, including Tony Blair's own Sedgefield constituency, rejected a directly-elected mayor. It made not a jot of difference to the prospects of new Labour.

The European Constitution seems to be an entirely different matter for the Blair Government. Tony Blair and most of his ministers seem to be "true believers" in the so-called "European Project", and they are loath to jeopardise it in any way. It seems that their all-consuming passion is to see the European Constitution ratified, with the "small" matter of ensuring its democratic legitimacy coming a poor second. Could their risk-aversion have caused them to lose sight of what a prize it would be for them to follow in the footsteps of the pro-Europeans of 1975, winning a popular vote for the cause they hold so dear? Yet the polls suggest that the pro-EU campaigners would have everything to play for in a referendum: a majority of people in the UK want to stay in the EU and most of them profess to believe that it needs a Constitution. Refusing a referendum purely for fear of losing it is a weak argument by any standards, but it's hard to see why else Tony Blair is against holding one on the Constitution..

Although he easily shrugged off the "No" vote in the Danish euro referendum in September 2000, both the Irish "No" to the Nice treaty in 2001 and the Swedish "No" to the Euro in September 2003 seem to have made him far more cautious. It may also be that Blair's close political co-operation with Bertie Ahern has taught him to be more cautious about referendums. With 30 national referendums since 1937, many of them close, the Republic of Ireland is the leading referendum-democracy in the EU (this of course excludes Switzerland, which is in a different league, having held half of the world's 7,000 referendums). There is, however, one lesson from Ireland that Tony Blair seems to have ignored.

When President De Valera put the Republic's new constitution to a referendum in 1937, he not only founded the general referendum practice in Ireland: he also ensured that future amendments to the constitution would have to be approved by

referendum – however small the change might have been. In fact many countries use referendums in this way, not only to approve new constitutions, but for constitutional amendments too. Indeed issues of a constitutional nature including international treaties are the most frequent reason for the use of national referendums around the world. So now we have the Blair Government up to its neck in referendum activity elsewhere but adamant that a referendum on the proposed EU Constitution is a thoroughly bad idea.

The first person to ride to its rescue was the EU Commissioner, Chris Patten, who admitted recently that he hated referendums because he thought them easily manipulated populist devices. Unfortunately by parading Hitler and Mussolini in support of his argument he revealed how out of date he is. He could have picked more recent examples of misuse from the hundreds held since the time of the great dictators. He might even have looked at the European Commission's role in some of the EU accession referendums in 2003.

Patten couldn't bring himself to admit the constructive use of referendums. We have already seen how, in Scotland, a referendum has entrenched the new Parliament and sustained public support for it as it found its feet. He might also have considered President De Klerk's use of a referendum in South Africa, which prevented a white backlash during the transfer to majority rule; or the referendums in East Timor and Northern Ireland that were also essential to political transition.

There have now been 40 national referendums as countries integrate politically within Europe. The tradition is spreading, as more and more countries with no legal need to have referendums feel impelled to hold them at crucial junctures. Perhaps it is indicative of this tide that the Convention document itself includes the right to a Citizens' referendum.

Patten's argument is correct so far as it goes: referendums can indeed be hijacked by elites, majorities and Governments – if they are unfairly conducted. But this

argument is of no use to a Labour Government that has brought in the most advanced law in the EU to ensure that future referendums in Britain will be conducted fairly and independently.

Instead the Government's objections focus on the argument that the EU Constitution is an inappropriate referendum issue. The trouble is, they argue it from both ends. According to Jack Straw, there is so little material constitutional change proposed that there is no need for a referendum. In contrast, Chris Bryant claims that so much has changed that it is far too complicated to put to a referendum. The variant - that we have established a precedent by not having referendums on previous treaties or treaty amendments - conveniently ignores the 1975 referendum.

We have already seen that, in many countries, even a single constitutional amendment, however minor, must be put to a referendum. The Bryant argument is just as ridiculous – constitutions, never simple anywhere, remain the most popular issue for national referendums around the world. Indeed the complexity of the issue has never stood in the way of a referendum.

Tony Blair felt able to put the Good Friday agreement - with all its checks and balances, a matter of life and death - to the people. Ireland routinely debates complex ethical issues. Switzerland agonised over diluting its neutrality before voting to join the UN. The fact is, referendums are used to decide issues of all shapes and sizes through public debate and the personal intuition of the voters. There is precious little evidence that they get it wrong, so long as the referendums are free and fair.

The Government's remaining objection seems to be that, when they vote in a referendum, people don't really vote on the supposed issue at all – but use it to register disapproval of the government. This is old hat and increasingly rare. This argument sees the referendum as no more than a giant opinion poll and conveniently forgets that every free and fair referendum is preceded by a single-

issue debate. As voters become better educated and less deferential in modern democracies, they are demonstrably able to separate the single issue in a referendum from the performance of the Government and its leader.

That is why Bertie Ahern's unpopularity at the time of the second Nice referendum didn't prevent the win he sought - and why the Swedish Prime Minister, although he had "lost" his Euro referendum badly, felt no need to resign. It also explains why, during Tony Blair's honeymoon after the 1997 election, the majority of Labour voters stayed at home in the Welsh referendum rather than back his preferred outcome. There are many other examples, while only President Mitterrand's near disaster in the 1992 Maastricht referendum in France can be cited in support. The truth is this argument underestimates the voters.

We all keep hearing that, since it came into office in May 1997, the Blair Government has supposedly been far less radical than its supporters hoped or expected. Through its use of referendums, however, it has set an important constitutional precedent. Before 1997 we had seen only 4 major referendums *ever* in the United Kingdom. Now we have had 4 more major referendums in the space of only 6 years – in London, Scotland, Wales and Northern Ireland - with at least 3 more already in the pipeline, on regional government in England. Furthermore, the Government has pledged to hold a referendum before we join the Euro and there have now been 30 mayoral referendums across England.

Consciously or unconsciously, through the use of referendums Tony Blair has completely changed the constitutional landscape in this country. Up until this point, whenever it has contemplated a constitutional change – nationally, regionally or even locally – this Government has rightly sought the specific endorsement of the people affected in a referendum. It is therefore deeply worrying to observe the inconsistency with which ministers have approached the question of the proposed EU Constitution. This has naturally changed the expectations of the voters. For those of us who believe in referendums, the draft Constitution – whenever it comes

– presents a classic case for initiating a national debate, followed by a binding vote for the people, all the people.

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