The Referendum in Australia and New Zealand

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The Referendum in Australia and New Zealand.

A VERY suggestive discussion took place some years ago as to whether the referendum might advantageously be introduced into England, and no less an authority than Professor Dicey appeared as the champion of the people's vote.* From that time referendum questions have attained a certain importance in England, and we now study the system, not as a mere constitutional curiosity, but as a possibility of the future. It is therefore interesting to find that the referendum has become a question of practical politics in Australasia. No less than five of the Colonial Parliaments were occupied in discussing Referendum Bills during the last parliamentary year. In four of them—New South Wales, South Australia, Tasmania and New Zealand—these Bills were government measures, and in Victoria the bill, though introduced by a private member, was supported by the Government, who had appointed a Royal Commission to inquire into the question in 1894. None of the bills, however, became law that session, the farthest advanced being that of New South Wales, which was thrown out in the Upper House. There is nevertheless every likelihood of the referendum becoming law in the near future, especially as it is proposed to submit the Australian Federation Act to the popular vote. In South Australia at least it will be no innovation, for an experimental referendum on the education question was actually taken there at the time of the last general election in April 1896, in consequence of a parliamentary resolution. The constitutional interest of the Australasian referendum lies in the fact that it is an attempt to incorporate into a monarchical government of a parliamentary type a highly democratic expedient peculiar to a republican and federal state, and its organisation may therefore prove an object lesson for the mother country. The very term “referendum” is borrowed from Switzerland, and denotes the popular voting on legislative questions submitted by the Government. It is organised in such a manner that the Swiss people are virtually in the same position as a sovereign in a monarchy. They have the right of vetoing all laws, a right which they frequently exercise. The great fact about the Australian referendum is that it is not an attempt to constitute the people sovereign, but to substitute their assent for that of the Upper House should the Upper House continue to reject a Bill passed by the Lower House. The government bill, which

aimed at establishing the system in New South Wales, was entitled "A Bill to provide means of Legislation in case of Disagreement between the Legislative Council and the Legislative Assembly," while the Victorian Bill went a step farther, and inserted a clause that bills submitted to the referendum, and accepted by the people, should bear the following style: "An Act passed by and with the advice and consent of the Legislative Assembly and with the approval of the People of Victoria." All mention of the Legislative Council is omitted. The New Zealand Bill, which was entitled "An Act to refer to the Electors of the Colony certain Motions or Bills for their Decision," had a wider scope, and provided not only for a referendum when the two Houses should disagree, but also that *both* Houses might by a resolution submit *any* motion or bill to the vote of the electors. All the bills provided that when a measure should have twice passed the Lower House and should have been twice rejected by the Upper House, or should have been amended in such a way as to amount to a virtual rejection, or if the other House should fail to pass or reject the bill within a certain time, then it was open to the Lower House to pass a resolution submitting the measure to the referendum. The Governor, on being notified, would publish the law in the official gazette and fix a date for the popular vote to be taken. Thus, provision was made for three debates in the Legislative Assembly before a bill should be submitted to the people—two debates on the bill and a debate on the resolution. In New South Wales, before the resolution could be carried, it had to be supported by an absolute majority of the members on the roll. The New South Wales Bill further provided that at least 100,000 valid votes must be recorded at the polls before the bill could become law. The number was afterwards reduced in committee to 80,000, but the clause is in itself interesting as an expedient to force people to vote.

Copies of the law were to be posted in all court-houses and post-offices and school-houses for at least a fortnight beforehand, and in New South Wales copies of the proposed bill would be given gratis to any applicant. The machinery brought into play in the case of a general election was applied to the referendum. There were the same writs, returning-officers, polling-places, and penalties. The ballot papers were to contain the name of the bill and the words "For" and "Against." The voter, if he wished to support the bill, struck out the word "Against"; if he wished to veto the bill, he struck out the word "For." Two other curious provisions remain to be noticed. The first is the provision in the New South Wales Bill which provides that, in the event of a referendum and a general election coming together, both should take place on the same day and at the same time. It would seem as if the law must inevitably suffer in this case. At election

time a man is not in the frame of mind best calculated to give an impartial judgment and adequately to consider a measure in all its details. People are then divided into distinct parties and as many camps. To vote for a law at the same time as for a representative would probably intensify the feelings of the voters, add to the difficulties of the election, and effectually negative the possibility of any calm, dispassionate judicial opinion on the measure.* This clause has now been omitted in the last New Zealand bill, and it was expressly provided that the referendum should not take place on the same day as a general election or a licensing election. The other curious proviso, contained in the New Zealand Bill, permitted the vote to be taken through the post-offices as an alternative, in which case the postmasters would act as returning-officers. The reason for this is the great saving of expense.

A clause in the New South Wales Bill gave any fifty electors in the same district the right to appeal against the return.

It is generally provided that, if a bill be negatived at the polls, the question shall not be brought up again for three years; the New Zealand Bill, however, adds the qualifying clause, "unless 10,000 citizens should demand it." Should, however, a majority vote for the bill, it is then to be sent to the Governor for his assent, as if it had passed the Upper House in the regular course of events. The referendum in no way affects the Governor's right of *veto* except in New Zealand. There a bill accepted by the people is to become law on a date to be named by the Governor by proclamation. His assent seems to be unnecessary.

The New Zealand Bill further provided that *both* Houses might decide to refer a question to the people, in which case the same procedure was to be followed, but the people were only to be consulted on a general motion or resolution, not on an Act of Parliament. Should the answer be an affirmative one, the duty of at once preparing a bill to give effect to such alteration or proposal devolves upon the Colonial Secretary, and must be brought in within ten days of the opening of the next session of Parliament.

It will be noticed how very different the referendum as proposed in Australia is from the referendum as organised in Switzerland. There the voting is chiefly on a bill that has passed both Houses. Only in one case does the law provide for a referendum in case of dispute between the two Houses—*i.e.,* when they disagree as to the necessity for a total revision of the Constitution. This has never yet occurred. All laws affecting the Constitution go to the people at once for their assent or veto. In the case of ordinary federal laws they vote when 30,000 citizens have demanded that it shall be submitted to the people, or when 50,000 citizens have demanded a new law, or a change in the existing law. Thus the Swiss people usually vote on the initiative of a fraction of their number. The movement comes

from below, not above. Nothing like this has been proposed in the colonies. The initiative of setting the referendum in motion rests entirely with either the Lower House in case of dispute, or, in New Zealand, with both Houses, should they wish to refer anything. The referendum therefore, depends on the option of Parliament. This form is not unknown in Switzerland. It was tried in the canton of Berne, but it did not work at all. The minority were always demanding an appeal to the popular vote, and the majority would never accede to their request. It has been criticised by a great Swiss constitutional writer, who says that it will only take place when either the Legislature has no doubt of the result, or wishes to shift the responsibility of a grave decision on to the shoulders of the people.

Thus far we have been concerned with the dry details of the organisation of the referendum, and they show us that, though the Australians have gone to Switzerland for their idea, yet the system proposed is quite new and original. The case for and against the referendum has been fought out in lengthy debates in all the Parliaments during several sessions. The arguments brought forward by its supporters have been based on the defects of representative government in general and of the Australian Upper Houses in particular. The great fact they all insist on is, that the Upper House obstructs legislation. In Victoria it was said that the Legislative Council had rejected fifteen bills since 1891, and that a bill to prevent plural voting was rejected three times, and the Legal Professions Amalgamation Bill no less than five times. In New South Wales it was said that the Mining Bill had been hanging on for twenty years. The only remedy for this sort of thing was either a general election or the tacking of money bills on to ordinary bills. The tacking process, it seems, had been tried in Victoria without success in 1865. A new tariff was proposed which involved protection. The other House held Free Trade views, so the tariff was tacked on to the Appropriation Bill, which was thrown out in consequence. Thereupon the Government had to levy taxes on the mere resolution of the Legislative Assembly; they had to make arrangements with the various banking houses, and the Government had to furnish the salaries to public servants without the necessary authority. A dissolution returned a majority in favour of protection. The Upper House again refused to consider the Appropriation Bill with the tariff tacked on. The Ministry resigned. There was no one to take their places. They were reinstated, gave in, and finally sent up two separate bills.

The same thing happened to the bill for the payment of members. The only other alternative, therefore, was a dissolution and a general election. This penalised the Lower House, but did not affect the Upper House. One member thus expressed it: “They say they do it for the people, but they do

not have to go to the people." Once a general election comes on, the supporters of the referendum said, besides the expense and turmoil it entails, the issue is apt to be obscured. Other questions crop up besides the one upon which the Lower House went to the country. People do not distinguish between men and measures. The law is not judged on its intrinsic merit, but is affected by the fact that the candidate is a good sportsman or by the immediate popularity of the Government. The referendum is in every way more direct. It is the common-sense way of obtaining the will of the people when there is a doubt as to what the will of the people really is. Thus the Royal Commission in Victoria report: "The Commission are strongly impressed with the advantages of the referendum. It provides a simple method of obtaining an accurate expression of the popular will on any question."

It was also urged that a general election does not always have the desired effect. The other House has refused bills even when the people have pronounced for them, but the referendum leaves the other House out altogether. It is therefore immediately efficacious and settles the dispute once for all, and deadlocks are averted. It was also urged that the referendum would improve the position of the Upper House, the people would no longer feel that the Second Chamber was needlessly obstructing or was actuated by jealousy or selfish motives. It would, therefore, obtain the confidence of the people. The referendum would also prove a check on the Lower Chamber and a safeguard against over-hasty legislation. It was pointed out that so many disturbing influences affected a bill in the making—the threat of a Ministry to resign, the weariness of the members, the fact that a grant was made to certain localities all influenced its progress, but once introduce the referendum and laws could not be enacted "by an accidental majority, by party logrolling or the mercenary vote of professional politicians."

Thus the arguments were that the referendum is a better method of deciding than a general election, it is more direct, less hard upon the Lower House, finality is attained and a law is judged on its merits.

Another line of argument was directed to a general panegyric of the system of the referendum itself, not as an alternative to a general election. It would have, so it was said, a most educative effect. The people would take a far keener interest in politics if they knew that questions might come before them; it would engender a feeling of responsibility, promote national unity, prove a safety-valve for political agitation and conduce to the tranquillity of trade and of the colonies generally. It is, moreover, the proper way of recognising the sovereignty of the people.

A great deal was said in the debates about the fitness or unfitness of the

people to judge laws of this kind. Those who advocated the referendum declared that if the people were able to choose representatives they could pronounce on laws. There is no danger of over-hasty legislation, they said, for there is always a greater temptation to say No than to say Yes, inasmuch as there are more points to which a voter can raise objections than points to which he will feel inclined to assent. It is so easy to find flaws. The referendum, they pointed out, is not an appeal from knowledge to ignorance. What is the special knowledge of members? The virtue of parliamentary discussion lies in threshing the matter out. Electors are only required to record their approval or disapproval after a matter has been threshed out. A very different talent is required to make an Act of Parliament than to say whether it be good or bad. The people are already practised in such questions. They are accustomed to vote on Local Option, on the imposition of new rates, and on new loans raised by their municipalities. The votings on these subjects are only referendums in miniature. The referendum in Switzerland is quoted, and a deal is made of the fact that in that country it has proved to be a most conservative measure.

The opponents of the referendum maintained that the remedy was worse than the evil. There was a great deal to be said for the system, but its disadvantages outweighed the advantages.

> "Every three years,"* one speaker said, "you get the public voice on highly important and leading questions. You therefore do not want a referendum. If you would take a referendum on second-rate questions on the ground that you do not get a vote on them at elections, the expense, the annoyance and the weariness will be so great that the people will beg and implore you to do the business here and not worry them with it. The referendum is only a general election in miniature, and if you increase the frequency of these elections you will weary the people out and render them apathetic and unintelligent. At present only a very small percentage of those entitled, vote at licensing elections, a subject in which they are really interested."

The same tendency, it may be remembered, is very strong in Switzerland, where the abstentions have been so great that the governments of some cantons have been forced to adopt the system of compulsory voting to counteract it.

Another speaker put the case tersely by saying that to engraft the referendum on the parliamentary system was like buying a dog and barking yourself.

It was also urged that Parliament must, from the nature of things, do its work better than any substitute:

> "It is not advisable," one speaker argued, "to take the ultimate power away from a tribunal like Parliament and give it to a tribunal that is not forced to study questions,

or to obtain a knowledge of them, or to discuss them. It means legislation without discussion. Expert education and expert advice are very desirable things. The very coming here and being elected is in itself a liberal education. A man cannot gain the confidence of the people without showing that he has studied public questions, and that he possesses a decent and fair amount of elementary knowledge of them. He gains a great deal more knowledge and studies a great deal further by coming here. A tribunal of practical well-informed politicians is a much safer body than the mass outside. They already fix general principles; the representatives should have a free hand as regards details. Many of us, after free and honest discussion, see our way to modify our opinions on certain details, even on important details. That is the use of arguments on both sides. In the referendum you hand the question over to a body that is not compelled by the conditions of its existence to go through all the process of listening and weighing and studying and judging."

It was also pointed out that the referendum would not obviate the evils of the party system as its supporters had urged. The Ministry must resign if the country pronounces against them at the poll on the bill, and if they are in a majority there was nothing for it but a dissolution. Party organisations would be just as active to secure the rejection of a bill as the election of a member.

"Are we to suppose," said an opponent of the referendum, "that if a bill is laid before the country every man will vote upon it entirely without personal considerations and uninfluenced by side issues? If a Liberal Government is beaten on a measure twice, would Conservative electors vote upon it simply upon the merits of the question itself? Would they not be influenced by the fact that it came to them from a Liberal Government, supported by their enemies the Liberals, and opposed by their friends the Conservatives? If men do not vote upon the merits of the question here, why are the people to be so superior?"

In the New South Wales debates it was urged that it would be so ignominious to have to appeal to the country because the Lower House had been twice flouted by the Upper House. To secure the acceptance of the bill it would be necessary to rouse the country from one end to another. Every engine of government, every appeal to passion and democratic feeling would be brought into play to cover with opprobrium the men who had voted against the bill. The consequence would be that you would not get a decent man to sit in the other House.

Several speakers objected to the conservative character of the referendum. They said it was difficult enough under the existing system to get laws passed; fresh checks would only prove an extra burden, and be a great obstacle to progress. A question negatived by the popular vote would be thrown back indefinitely for years, whereas there was always a chance now of hammering out a compromise with the other House.

Want of time and inclination on the part of the people were also adduced

as arguments against the system. It is absurd, one speaker said, to present detailed Bills to the electors, for lawyers are the only people who understand them, and they differ as to the meaning of every clause.

Mr. Shiels, who dissented from the majority in the Commission on the Referendum in Victoria, said in his report:

> "I recognise that there are some manifest advantages in the use of the referendum, and approve it as the best means of ascertaining the true opinion of the people on propositions involving grave constitutional changes, the issues of which can be submitted in clear and simple form to the direct Yes or No of the electors. For settling other differences between the House of Parliament on complicated matters of general legislation I prefer a dissolution of both Houses. This method is in harmony with representative government, and gives no advantage to the voters of cities and towns against the country electors, who cannot so easily and conveniently record their suffrage."

It is a curious fact that the expensiveness of the referendum, which is so marked a feature of the popular vote in Switzerland, has only been dwelt on in the New Zealand Parliament. A far more serious objection, however, urged in both New South Wales and New Zealand, was the nomadic character of the population. No less than between forty and fifty thousand who had voted in New South Wales in 1894 were disfranchised in 1895 because they had changed their residence. It is impossible that mere birds of passage and raw immigrants can have any permanent interest in laws or understand the legislative situation.

There is, therefore, a great deal to be said both for and against the popular veto, and many of the arguments of the colonial statesmen are applicable to and have a direct bearing on the referendum question in England. One cannot, however, conclude an account of the referendum question in the Antipodes without describing the education referendum in South Australia which decided the question of religious instruction in schools and the State grants to denominational schools. Under the system which was then put on its trial all education was compulsory and, in the State schools, free. No grants were made to denominational schools for the results achieved by them in secular matters. In the State schools Bible reading and distinctly religious instruction by the teachers were not allowed during school hours; but "moral lessons" were prescribed, and the reading lessons were "permeated with unsectarian Christian teaching." Before 9.30 A.M. the teacher might read the Bible to any scholars whose parents should choose to send them, but attendance was not compulsory. This system seemed to be most unpopular, judging by the number of petitions against it which Parliament received every session, and many and fruitless were the discussions which took place on the subject within the

House itself. Finally, by a resolution of the Lower House in September 1895, it was decided to refer the matter to the people at the next general election in April 1896. The electors were furnished with ballot papers on which the three following questions were printed, and these papers were handed in at the same time as the elector voted for his representative. The questions were:

1. Do you favour a continuance of the present system of education?
2. Do you favour the introduction of scriptural instruction in State schools during school hours?
3. Do you favour the payment of a capitation grant to denominational schools for secular results?

The electors could either answer Yes or No or leave the space blank. This means of getting at the opinion of the country relieved the candidates considerably. There was no need for them to pledge themselves, since the electors had the matter in their own hands. It also gave the people a better chance of choosing able men in spite of their attitude on the schools question, because their attitude was no longer of much importance.

It must be remembered that this voting did not take place in consequence of any Act of Parliament. It was merely a method of getting at the opinion of the country apart from the numerous complications and measures which determine the result of a general election. But the result was by no means necessarily final, only instructive for the legislators. There was, however, no doubt but that they would shape their course accordingly. The occasion was all the more interesting since it was the first time that women had voted under the Adult Suffrage Act, and the religious question was one on which women might be supposed to have very strong opinions, or to reflect very strongly the opinions of their spiritual advisers.

The result of the vote was a conservative one. The existing system was supported by a majority of about 34,000 out of 90,000 voting; 21,000 of these were silent on the subject altogether. The scriptural instruction during school hours obtained 19,299 votes for and 34,951 against. There was, in fact, a majority against it in every district; 36,603 votes were silent on this point. The State grant was negatived by a majority of over 28,000. Thus, by their vote on the three questions, the people showed conclusively that they wished for no change in their educational system, and the general result of the referendum was to clear the air. It is interesting to note that the women must have been comparatively uninfluenced by their spiritual popes. The Wesleyan Conference recommended that “Yes” should be put to the religious instruction question, so did the Presbyterian Association and the Anglican Conference. The Roman Catholic Archbishop wished for

an affirmative answer to the scriptural instruction question if there were also a grant to denominational schools. Thus practically all the great sects were in favour of "Yes" to the second question. 39,312 women voted—*i.e.*, 66 to 68 per cent. of the registered female voters, but the religious instruction question only obtained 19,000 affirmative votes. Thus, if every person that voted for it had been a woman, still more than half the women must either have been silent or voted on the other side.

The example of South Australia has proved infectious. A Bill was brought in last session in the Victorian Parliament "to provide for the taking of a plébiscite of the electors of the colony" on the question of the Scripture lesson-book to be used in State schools, whether it should be "The National Scripture Lesson-Book" or not. The Bill did not advance beyond a second reading. It is, however, comparatively easy to refer such questions in new colonies like South Australia and Victoria. There are no powerful century-old corporations or generations of vested interests to be considered or to complicate matters. The people were not consulted for or against an Act, but merely on a question of principle, which simplifies matters for them. On the other hand, it makes strongly in favour of the *status quo*. The people know what they have got, and they are not quite sure to what they are pledging themselves. They might dislike the next system more than the existing one. They do not know what it will be, only that it will embody certain principles. They, therefore, give the present system the benefit of the doubt. This attitude is characteristic of the mass of electors on referendum questions generally, whether in Switzerland or Australia.

To sum up. The referendum is to be introduced into the Australian parliamentary system to settle questions of dispute between the two-Houses. The people are not to be the supreme legislators, but arbiters. The possibility of a referendum on non-disputed questions is considered in New Zealand, but in that case it is not proposed to refer a law to the people but a resolution couched in general terms, and the reply is in the nature of a mandate to the representatives. The referendum in South Australia is interesting from the fact that it was used to solve questions which are pressing for solution here in England to-day. Competent writers on the Swiss referendum have always been very dubious as to the result of the system when transplanted.* For my own part, I do not think it will be often resorted to, should it become law, and I also think that it would probably contribute to the prestige of the Upper House. The referendum is apt to prove a very conservative agent. Swiss experience has proved that the people are invariably opposed to anything of a far-reaching or radical nature. The result would, therefore, probably be the victory of the Upper

House over the Lower. At all events, the Australian referendum is highly interesting as an attempt by five of the great colonies in the Antipodes to solve the question of the Upper House by substituting the popular vote for the Second Chamber.

Lilian Tomn.

* See Contemporary Review, April, 1890; the *National Review,* February March and April, 1894.

* In Switzerland it is not unusual for an election and a referendum to occur at the same time. Party feeling, however, does not run high, the electors are very quiet—40, per cent, being unopposed and the old member is practically certain of being re-elected.

* The system is that of triennial Parliaments.

* See Lowell, "Governments and Parties in Continental Europe." Vol. II. Longmans. 1896. Also an article by Mr. Numa Droz in the Contemporary Review, March 1895.