Letting the Voters Decide: Government Referendums and the Management of Risk

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Abstract: Despite their attendant risks, referendums are normally initiated by governments with a view to achieving the results those same governments want. But why risk a referendum that might yield a result the government does not want, particularly when there are potentially safer options for resolving issues of constitutional importance, such as the normal legislative process? This paper will propose a theoretical framework that addresses the questions of why governments initiate referendums they could potentially lose, how elite and mass opinion plays out during the resulting debates, and how the referendums’ sponsors handle defeat. Our case studies are drawn from voter responses to attempts to change the electoral system. In all three government-initiated referendums in New Zealand (1992, 1993 and 2011), the outcomes were unwanted by the governing elites, and while the result of the United Kingdom electoral referendum of 2010 was welcomed by the Conservative Party, its decision on the options to put before the British public reflected a desire to minimise risk. The paper will conclude with an analysis of the relevance of our case studies to the Scottish independence referendum and Prime Minster David Cameron’s proposed United Kingdom referendum on continued membership of the European Union.
Introduction

Much of the literature on referendums has focused on the democratic arguments for and against their use, especially in relation to the principles and practice of representative and responsible government (Butler and Ranney 1994, Cronin 1989, Gallagher and Uleri 1996, Qvortrup 2005). For supporters, referendums curb the powers of the political elite and provide a welcome source of public participation in the decision-making process, especially in times of growing civic disengagement. The response of critics is to question levels of public knowledge and understanding, as well as the reliability of the referendum device for resolving complex issues, especially where public policy or constitutional matters are at stake. Of at least equal concern is the possibility that the will of the majority, however that majority is defined, will prevail at the expense of the rights of minorities. The puzzle posed in this particular paper is somewhat different, however. What are the circumstances that motivate governments to initiate referendums when they are not required to do so, and on issues over which they could potentially fail to secure their desired outcome?

In his study of referendums in Western Europe, Gordon Smith (1976) explains the use of referendums by proposing a matrix consisting of two dimensions or continuums, one of control, the other of hegemony. The extremes of ‘controlled’ to ‘uncontrolled’ represent the extent to which governments initiate and guide the referendum process. But Smith also seeks to understand the outcomes of referendums by constructing a dimension of hegemony: ‘pro-hegemonic’ outcomes are those desired by the government and ‘anti-hegemonic’ those opposed by the government (Smith 1976: 7). In controlled and pro-hegemonic referendums, the government both initiates the referendum and receives public endorsement by way of a majority vote. Uncontrolled referendums, on the other hand, are not initiated by the government, but by the citizens. On many occasions they reflect the anti-establishment and anti-government sentiments of populist leaders and sympathizers. Smith (1976: 13-15)
illustrates this with reference to the United Kingdom’s 1975 European Economic Community (EEC) referendum, a vote that was uncontrolled to the extent that it was strongly opposed by significant parts of the ruling Labour Party, as well as sections of the trade union movement. As it eventuated, the will of the government prevailed and the referendum passed. For an example of an uncontrolled and anti-hegemonic referendum, Smith (1976: 15-16) cites the populist vote in Switzerland in 1970 against foreign labour, an outcome at odds with the wishes of a government that had long valued the contribution of the foreign workforce.

It is to the combination of the controlled and anti-hegemonic referendum that we turn for the dimensions that most aptly represent the particular interests of this paper. Although common sense would suggest that governments are unlikely to propose referendums they cannot control, especially if there is any prospect of an anti-hegemonic response, there are circumstances under which such an outcome does occur. As Smith points out, this may result from over-confidence or complacency on the part of the government, or poor judgement as to what the people actually want. In the case of the failed Norwegian referendum on membership of the EEC, for example, a crescendo of animosity towards the governing elite became apparent during the course of the government-initiated referendum campaign (Smith 1976: 12). A further example of controlled and anti-hegemonic outcomes has occurred in Australia, where poor judgement on the part of successive governments has resulted in the failure of a number of government-initiated constitutional referendums (Galligan 2001).

Adopting a similar two-dimensional framework to that of Smith, Kai Oppermann (2013) explores the reasons why governments initiate referendums, but in circumstances where they are not constitutionally obliged to do so. In a study devoted to the use of referendums for the purpose of joining or revoking membership of the European Union (EU), Oppermann asks why governments risk defeat, especially given the likely impact of rejection on their reputation, as well as on that of the country and its economy. His first dimension
assesses the political effects referendums are likely to have on domestic and European politics (something akin to Smith’s (1976) pro-hegemonic and anti-hegemonic effects), whereas the second dimension looks at the government’s operational intentions, which are deemed to fall somewhere between defensive and offensive (not unlike Smith’s continuum of control) (Oppermann 2013: 688). When a government proposes a referendum with a view to minimizing the electoral costs, it is being defensive, and when it anticipates electoral success, its intentions are offensive (Oppermann 2013: 688-689). Oppermann’s empirical findings on the causes of discretionary referendums support the view that intra-party division is a significant catalyst, very often for the defensive reason of restoring party unity, but also occasionally with a more offensive purpose in mind, such as by engendering a sense of national purpose and pride (2013: 694-695). In the British EEC referendum case above, the Labour Party was internally divided over EEC membership (which had been negotiated and implemented by the Conservatives), so what became the UK’s first statewide referendum (and only one until the 2011 referendum on electoral reform for the House of Commons) was a ‘defensive’ example of the need to resort to the referendum as a mediation device (Bjørklund 1982: 248) in the case of party disunity.

What makes the United Kingdom (UK) and New Zealand case studies particularly interesting is that, unlike in many other countries, there is no legal requirement that governments hold a binding referendum on constitutional (or other) matters; under the Westminster model of democracy, ‘most constitutional changes are by parliamentary vote’ (Jackson 1987: 30). Although New Zealand requires that any amendment to the relatively rare instances of entrenched legislation, such as parts of the Electoral Act, be made by a 75 per cent majority of all members of Parliament or a simple majority in a referendum (Wallace 1986: 176), governments cannot be compelled to hold such binding referendums, and citizen-initiated referendums are not binding. In recent times, however, the people, rather than
parliaments, have decided upon constitutional matters in a number of binding referendums over electoral system change and multilevel governance.

In New Zealand’s case, the most significant development has been the three government-initiated referendums on the electoral system, with the first occurring in 1992. In the UK, referendums have been less common, with the very first being held in 1975 referendum on renegotiated membership of the EEC, though there have been more referendums on constitutional issues, including the devolution of power to Northern Ireland, Scotland, Wales and London in recent years (Qvortrup 2006). Under pressure from its junior coalition partner, the Liberal Democrats, the Cameron-led coalition government also held a referendum on electoral reform in 2011. More recently, the UK government has paved the way for Scotland to hold a referendum on independence from the UK, and the UK prime minister has promised a referendum on EU membership if he remains in power after the 2015 election. As two of only three democracies without a codified (‘written’) constitution, this raises the question of why any Westminster government would voluntarily initiate a referendum, the outcome of which may be detrimental to its interests. As Vernon Bogdanor enquired, ‘Why should [any British government] seek to put at risk its own legislation by calling for the verdict of the people upon it?’ (1994: 33).

To address this question, this paper focuses on the work of Laurence Morel, who makes the argument that, while governments may lack any legal obligation to hold referendums on major constitutional issues, they do have de facto obligations (Morel 2001: 60-62). In such instances, their primary motivation can be said to be defensive rather than offensive (Oppermann 2013). Morel goes on to develop her framework of reasons for holding government-initiated referendums, arguing that a politically obligatory referendum exists in cases where a government would ‘be exposed to strong criticism and suffer negative political fallout’ if it did not hold the referendum (Morel 2007: 1056). Among the examples of
politically obligatory referendums cited by Morel are the 1997 devolution referendums in Scotland and Wales, on the grounds that ‘having consulted the population on the same issue in 1979, not to consult it a second time…would have implied defying the will expressed at previous referendums’ (2001: 62). While Morel’s argument may appear persuasive, this paper argues that it overstates the influence of political obligation, especially for democracies lacking codified constitutions such as the UK and New Zealand. For example, although a strong case could be made that there were obligations on the New Zealand government to seek public approval before controversially legislating to create both a bill of rights (1990) and the right of citizens to petition for their own non-binding referendums (1993), in neither case did the government seek public approval by way of a referendum. Furthermore, despite a manifesto commitment to hold a referendum on changing the electoral system for the House of Commons, the UK Labour government elected in 1997 never carried out the promised referendum.

Experience around the world shows that governments have got the results they wanted in the ‘vast majority of referendums’, casting doubt on the risk entailed (Butler and Ranney 1994: 261), though Morel points out that in light of some spectacular failures, such as the 2005 rejections of French and Dutch government referendums on EU treaties, ‘these referendums have actually become more dangerous for governments’ (Morel 2007: 1063). We argue, however, that, rather than showing compliance in the face of public disapproval, governments often take the offensive with a view to reducing the degree of risk. To this end, they are likely to control actively, and on occasion, actually sabotage (Lundberg 2007) the referendum process with a view to achieving the desired result. While Stephen Tierney points out that governments can lose control of the agenda-setting process when ‘bounced into holding a referendum’ (2012: 109), there are significant tools available to governments wishing to achieve a particular outcome. These might include supermajority requirements, the
inclusion of complicated questions and multiple options, staging multiple referendums, or making strategic use of unpopular options. As a result, governments can load the dice when they hold referendums on major constitutional issues, hoping that this will help them reduce the risk of an undesired outcome. Furthermore, while governments may not get the desired outcomes from constitutional referendums, there can be big differences in the severity of the consequences for governments when they lose, and this factor might affect how governments behave.

Our framework below approaches the Westminster cases of the UK and New Zealand, making propositions about how changes in democratic governance and public expectations have led to challenges for governments. We illustrate these propositions with examples from the UK and New Zealand experience, later noting that governments can find ways to reduce the risk when they let the voters decide – though sometimes they still manage to fail to get their desired outcome from the referendum process. In some cases, failure may not be as bad as expected for the government, while in other cases – such as in the upcoming Scottish independence referendum and a possible UK referendum on continued EU membership – failure could be catastrophic.

**Why do governments risk referendums? A framework for analysis**

By narrowing our inquiry to two long-term exponents of Westminster democracy, the United Kingdom and New Zealand, we are able to construct a theoretical framework that helps explain why governments initiate constitutional referendums when they are not constitutionally required to do so. Our framework consists of the following propositions:

• Proposition One: In the absence of ‘thick’ patterns of democratic governance, public demand for more direct forms of democracy is growing

• Proposition Two: The emergence of more pluralistic institutional structures, such as minority
and coalition government, has made the avoidance of referendums more difficult

Proposition Three: To compensate for their diminished control over the outcome of referendums, governments resort to ‘instrumental and strategic’ tactics (Morel 2001: 63), which can create confusion and distort the public debate.

Proposition One: In the absence of ‘thick’ patterns of democratic governance, public demand for more direct forms of democracy is growing.

Although the incidence of referendums in the UK and New Zealand remains low when compared with many other western democracies, including much of Europe and Australia, there has been a marked increase in their use, especially on questions that bear on the constitution. Our first proposition is in line with Morel’s claim (2001) that governments are motivated by a growing sense of political obligation, the impetus for which is public demand. But what accounts for the overall trend towards more direct forms of democracy, notably government- and citizen-initiated referendums? New Zealand’s quality of democracy and governance have been highly rated in recent years, with the country coming in at number five in the world for its democracy (Economist Intelligence Unit 2012: 3) and tied with Denmark for having the least corruption in the world (Transparency International 2013). The UK also performed reasonably well in the Economist Intelligence Unit’s ranking (2012: 3) – at number 16, it was above the United States (at 21) and managed to avoid the ‘Flawed democracies’ category – and it came in at 14 in Transparency International’s Corruption Perceptions Index (2013). Nevertheless, democratic discontent has been apparent for some time in both countries, particularly the UK (Pattie and Johnston 2007). According to a study on democratic decline in the UK, Australia and New Zealand (Marsh and Miller 2012), as more
institutionally based forms of democratic engagement have begun to disappear, ‘thick’ democracy has been replaced by minimalist or populist forms of democracy.

‘Thick’ democracy has its roots in the former two-party/two-block system associated with the pre-eminence of the socio-economic class cleavage. The mass party era was a product of distinct patterns of class identity, with social democratic parties representing the interests of the industrial working class, including trade unionists, beneficiaries and ethnic minorities, and conservative parties the middle class aspirations of the professional, business and farming communities (Marsh and Miller 2012: 21). As well as being socialised in the ethos and ways of the party, mass party members could become actively involved in proposing new policy, recruiting new members, and representing the interests of their class within the party organisation. In its ideal form, the mass party system not only aggregated the interests of its membership base, but also articulated them to the voting public. For much of the twentieth century, this two-way linkage between the citizens and their elected politicians served as a model of democratic governance.

With the evolution of political parties through their mass, catch-all and cartel stages of organisational development, class identities were diluted and the two-way links that had existed in the mass party phase were largely replaced by an appeal over the heads of party members to the undifferentiated mass public (Blyth and Katz 2005; Marsh and Miller 2012: 23-25). Party membership numbers declined, the political elite became ever more isolated from the influence of their remaining members, and the mass media served as the vehicle for an increasingly top-down, hence minimalist, approach to democracy. In the present cartel phase of development, parties have largely replaced the resources traditionally provided by their members with an increasing dependence on the financial benefits provided by the state (Katz and Mair 1995). Completing this transition from ‘thick’ democracy to ‘thin’ has been the consensus among governing elites with respect to the neoliberal approach to governance
(Marsh and Miller 2012: 25-30). With the growth of small parties, many of which were formed in opposition to neoliberalism, public demand for more direct forms of democracy, notably government- and citizen-initiated referendums, began to take root.

Proposition Two: The emergence of more pluralistic institutional structures, such as minority and coalition government, has made the avoidance of referendums more difficult

As we have seen, with the decline in levels of support for the two mass parties in both countries, the focus of attention began to turn to the fairness of the single-member plurality electoral system that had been responsible for the Westminster system’s long tradition of single party majority government. In the United Kingdom, voters moved in increasing numbers to the Liberal Democrats and other small parties, thereby drawing attention to the disproportional nature of the voting system that favoured the Conservatives and Labour – though a referendum on electoral reform promised by Tony Blair’s ‘New Labour’ government never materialised (Dunleavy et al. 1998). Furthermore, the growth of nationalist sentiment in the ‘Celtic Fringe’ of Scotland, Wales and Northern Ireland raised questions about the legitimacy and authority of Westminster’s centrally controlled system of government (Bogdanor 1999, Mitchell 2009).

While Blair’s government in 1997 held referendums on devolution of power to Scotland and Wales (and similar referendums in 1998 in Northern Ireland and 2000 in London), the government-appointed commission of mainly ex-politicians, led by Roy Jenkins, recommended a barely proportional mixed-member system called ‘alternative vote top-up’ as an alternative to the single-member plurality ‘first-past-the-post’ system for House of Commons elections, but this ‘diluted majoritarian’ system (Lundberg 2007: 479) never faced the voters in a referendum because Labour’s huge 1997 election majority, among other
reasons, precluded the need to honour the promise to offer the voters a chance to change the electoral system.

In the absence of any serious challenge to the authority of the two major parties, New Zealand’s experience of majoritarian democracy had been broadly similar to that of the UK, although it took the neoliberal policies of successive governments to raise public concern over the ‘unbridled’ nature of executive power, which in turn led to a sharp rise in electoral support for several new parties that had been established in protest at the direction of government policy (James 1997, Miller 1997, Miller 2005). Although electoral reform in New Zealand had been discussed at an elite level for the best part of five years, there had been little public interest in the subject before 1987, when the Labour government reneged on a pre-election commitment to hold an electoral system referendum in the event that it was re-elected. While the opposition National Party had no desire to change an electoral system that had kept it in office for twenty-eight of the previous forty years, it was keen to characterise Labour as a government of broken promises. Its promise to voters was clear: in the event that it was elected in 1990, National would hold a referendum on whether to retain or replace the plurality system. Despite a royal commission’s recommendation of a German-style mixed-member proportional (MMP) system a few years earlier, public interest in electoral matters remained relatively subdued until the full effects of the new National government’s radical economic and social policy agenda began to impact on the lives of wage and salary earners, and especially beneficiaries.

Having promised a return to the ‘decent society’ after six years of reform under Labour, National faced the same accusation of broken promises that had dogged its predecessor. Within months of the National government’s landslide election victory (67 out of 97 seats), its popularity had declined to a mere 22 per cent, while combined support for the small parties reached 25 per cent, despite their holding only one parliamentary seat (Miller
and Catt 1993: 30). Clearly shaken by the polls, which showed it to be the most unpopular government on record (Miller and Catt 1993), the government decided that an electoral system referendum was a promise that simply had to be kept.

*Proposition Three: To compensate for their diminished control over the outcome of referendums, governments resort to ‘instrumental and strategic’ tactics (Morel 2001: 63), which can create confusion and distort the public debate*

As the circumstances described above have shown, governments may get ‘bounced into’ an unwanted referendum on a constitutional matter (Tierney 2012: 109). While strict adherence to the constitutional prerogatives of a Westminster system would mean that UK and New Zealand governments do not need to respond with a referendum, contemporary situations of popular discontent may lead to governments initiating referendums. However, governments can ‘load the dice’ by assuming control over the question(s), timing, campaign finance rules, and other factors involved in the referendum (Tierney 2012: 109). Furthermore, supermajority requirements – thresholds higher than a simple majority can also make things easier for governments trying to prevent change. Critics like Tierney point out that ‘there seems no obviously principled alternative to simple majority, since any threshold requirement will be arbitrary to some extent’ (2012: 294), with a minority of the population being privileged in being able to block the will of the majority. Nevertheless, a particularly egregious supermajority example can be seen in the British Columbia, Canada electoral system referendum of 2005, in which nearly 58 per cent of the voters chose the proportional single transferable vote alternative to the provincial legislature’s plurality system, but this clear majority of the electorate did not surpass the politicians’ 60 per cent threshold requirement for change (Lundberg 2007: 486).
This government-imposed supermajority is not the only form of sabotage seen in such cases of protecting the status quo while appearing to allow for change – though sometimes governments fail to get outcomes they prefer, even when they control (or think they control) constitutional referendums (Tierney 2012: 124). Despite the politically obligatory nature of the New Zealand government’s electoral referendum decision, the government remained optimistic that it could persuade the public to support the status quo. It shrewdly devised a number of strategies with a view to ensuring the referendum’s defeat. The Prime Minister’s suggestion of an upper house having failed to win public support, the government decided to initiate a two-stage electoral system referendum, with the first stage (held in 1992) providing voters with a total of five alternative electoral systems, which cynics saw as evidence that the government was trying to bamboozle the public into opting for the status quo.

Not only were four of the proposed systems completely unfamiliar to the New Zealand voting public, but they also represented a mixture of proportional and non-proportional options.¹ The second referendum a year later provided a further opportunity to turn public opinion around, although scheduling it with a general election reduced the influence on the final outcome of the most electorally informed voters. With the help of a generously funded anti-reform lobby group, the Coalition for Better Government, the leaders of both major parties warned of the dangers of proportional representation (PR), including revolving-door government and government by small and unstable parties.

The government’s offensive strategy came close to paying off. While the vote in the first (1992) referendum reflected a strong desire for change, with some 85 per cent of voters supporting a move away from plurality, the vote for a change in the second (1993) referendum to MMP, the most popular reform option in 1992, was much more modest at nearly 54 per cent (Vowles et al. 1995: 175-192). All in all, the strategies adopted in both

¹ In addition to the existing single-member plurality system, options offered in the 1992 referendum were: Single Transferable Vote, Supplementary Member (Mixed Member Majoritarian), Preferential Voting (Alternative Vote), and Mixed Member Proportional. For discussions on these systems, see Farrell (2011).
referendum debates showed that, rather than simply kowtowing to a de facto political obligation to hold a referendum, the government attempted, unsuccessfully as it turned out, largely to hijack the process with a view to achieving its desired outcome.

For a further example of government tactics designed to influence a referendum debate, we need go no further than New Zealand’s third electoral referendum, that of 2011. Unlike the 1992 and 1993 referendums, pressure to review the MMP decision came, not from the public, but rather from within the National Party, with strong support from members of the business community (Milne and Fisher 2011). Opponents of PR had long argued that multiparty government was inferior to majoritarian government, mainly on the grounds that it was unstable and ineffective, with small parties exercising disproportionate power and preventing further economic reforms desired by big business (Hager 2008). They had argued that the decision to adopt MMP should be reviewed in a follow-up referendum, a view National endorsed in the run-up to the 2008 general election. On becoming the government, National announced that a review referendum would be held at the time of the 2011 election. Like the 1992 referendum, the ballot would be in two parts, with the first part asking voters if they wanted to retain MMP and the second providing three of the four alternative options presented in 1992, with the fourth being the former first-past-the-post (FPP) or plurality system.

At the outset, Prime Minister John Key stated a preference for the supplementary member (SM) system (Romanos 2011a), known in electoral systems literature as mixed-member majoritarian (Shugart and Wattenberg 2000) or parallel (Reynolds et al. 2005), a non-compensatory mixed system likely to have given small parties some representation, but probably in insufficient numbers to prevent the formation of a single-party majoritarian government. It was clear that several government ministers and backbench MPs wished to replace MMP, with most appearing to prefer a return to FPP or a move to SM. However, with
public opinion moving strongly in favour of the retention of MMP (Romanos 2011b), the government decided against formally endorsing an alternative voting system, although it did promise a review of MMP in the event that a majority of voters supported its retention, which ended up being the case – nearly 58% voted to retain MMP. The subsequent review made several recommendations, including abolition of the one-electorate seat threshold loophole responsible for the large number of very small parties managing to win seats in Parliament in spite of MMP’s five per cent threshold\(^2\). No doubt reflecting its disappointment at the outcome of the referendum and conscious of the value of several of the small parties to its return at the next election, the National government announced that it would not be implementing any of the recommendations of the review (Lundberg and Miller 2014).

While not as complex as the multiple-option, multiple-referendum form of sabotage used in New Zealand, the UK Conservative-Liberal Democrat coalition government taking power in 2010 agreed to hold a referendum on electoral reform, but the alternative to plurality voting for the House of Commons was not proportional – it was the alternative vote (AV, known as preferential voting in Australia, one of only three countries using the system for its national legislature at the time). AV uses single-member constituencies and allows voters to rank candidates in order of preference, with victory for a candidate achieved when he or she wins over half of the first preferences; when this does not happen, the least popular candidates are eliminated and their ballots transferred to the candidates with second or subsequent preferences in later counts until a candidate has over half of the votes in a count.

While the Liberal Democrats had long advocated the proportional single transferable vote (STV, which also allows the expression of preferences, but in multimember constituencies, making it a proportional system), the party conceded in its coalition negotiations with the Conservatives that the majoritarian AV would be the alternative to

\(^2\) New Zealand’s form of MMP allows parties to circumvent the requirement that they win at least five per cent of the party vote for parliamentary representation if at least one party electorate (constituency) candidate wins a via the electorate vote (voters have two votes, one for a party and one for a local electorate candidate).
‘first-past-the-post’ elections. The party might have thought that some seat gains, possible under some scenarios the Liberal Democrats may have considered, would have made the referendum on AV worthwhile, but John Curtice argues that ‘the offer of a switch to AV was not particularly generous to the Liberal Democrats at all’ (2013: 218). Advocates of PR might not have found this referendum offering anything of any real value, seeing it as essentially a sabotage of the prospect of any meaningful electoral reform, though the Electoral Reform Society (longstanding supporters of STV) and other ‘democracy sector’ groups pushed for a ‘yes’ vote, perhaps ‘caught up in a framing exercise, focusing on the social movement in which they were participating, rather than the substance of the product they were trying to sell’, AV, which was not associated with the ‘new politics’ their groups were trying to promote (Lundberg and Steven 2013: 16). The British public was not buying, with AV rejected by nearly 68 per cent of voters.

It is possible that PR, while a long-cherished goal for the Liberal Democrats, was less important to the party leadership negotiating a coalition agreement with the Conservatives than to party activists, who would be presented with a consolation prize instead (Lundberg and Steven 2013: 18). The tone of the Liberal Democrats’ AV referendum campaign was not, therefore, something that most activists would get excited about and instead could be seen in the party’s ‘yes’ booklet that began: ‘It’s ridiculous that most MPs are elected with more of their constituents voting against them than supporting them. It’s no wonder that so many people are sick of politics and feel like giving up on the whole thing!’ (Liberal Democrats 2011). The party was trying to make the best of a disappointing outcome of negotiations with the Conservatives, with its leader, who had described AV as a ‘miserable little compromise’ before the election (Grice 2010), later saying the AV would be part of a wider reform agenda that would constitute ‘the biggest shake up of our democracy since 1832’ (BBC News 2011).
The larger coalition partner, the Conservatives, opposed AV and most in the party campaigned against it (Lundberg and Steven 2013: 22), though two simulations of the 2010 House of Commons election showed very little change in overall results with the use of AV (Sanders et al. 2011, Hugh-Jones 2011), with the Sanders et al. (2011) simulations somewhat kinder to the Liberal Democrats, to the extent that the authors claim the party would have been able to choose between Labour and the Conservatives as potential coalition partners, but this is disputed by David Hugh-Jones (2011). As a majoritarian system, AV is not likely to be much different in overall outcome than the existing plurality system, so the risk to the Conservatives of an AV electoral reform was not very high, and much of the opposition probably came from the party’s ideological opposition to change in general.

Reducing the risk while letting the voters decide
While Westminster-style governments may feel some public pressure to hold referendums on constitutional matters, there are ways to sabotage the process and reduce the risk when honouring any political obligation governments may feel by letting the voters decide. The New Zealand example of three electoral system referendums illustrates that governments can do quite a lot in the way of ‘loading the dice’, complicating matters for voters by holding two initial referendums in the 1990s and by offering multiple electoral system options in one of those referendums. Rather than simply a straightforward single referendum on whether to keep the plurality system or to change to the MMP option that was unanimously recommended by a royal commission composed mainly of independent experts, New Zealand voters were subjected to two referendums, with the first one asking about the principle of change as well as which of five options should be used (Lundberg 2007: 477). This approach of offering multiple-choice ballots appeared again in 2011 when the National government held the third referendum, which would have led to a fourth referendum – MMP versus the
most popular of four electoral system options in the ballot’s second question – had the voters rejected MMP in the ballot paper’s first question.

Critics could argue that multiple referendums and multiple options on the ballot, with the potential to complicate matters through voter confusion and fatigue (arising from the delay between referendums), favour the status quo. Anti-MMP campaigner Peter Shirtcliffe argued that the two-stage referendum process proposed by National, with a two-part ballot paper to be used in 2011 and a run-off to be held in 2014 if MMP lost on the first part was a ‘referendum you have when Parliament does not want you to have a referendum’ (NZPA 2009). This critique of the government’s process suggests that National, despite the hostility shown by a number of party members, was less worried about MMP this time. Perhaps feeling an obligation to its members and to the general public, perhaps simply to get the matter out of the way, National went ahead with a referendum process that was less politically obligatory than the 1992 and 1993 referendums, achieving a result in 2011 that was not consistent with what some of its members (including the leader) said they wanted. The impact, however, was far less problematic than in the 1990s when a significant change – the end of single-party governments – occurred and National’s opponent, Labour, was better able to work with the smaller parties than gained from MMP, resulting in Labour-led governments from 1999 to 2008. National learned from Labour prime minister Helen Clark’s experiences and has managed to work with smaller parties while maintaining essentially a majoritarian system, though with some dilution (Lundberg 2013: 621).

In the British case, the government held the AV referendum as a result of coalition bargaining between two parties, one of which wanted a proportional option. The Conservatives reduced the risk of potentially losing many seats under PR by refusing the Liberal Democrats a PR alternative, agreeing instead to the majoritarian AV system. While the Liberal Democrats took the risk of alienating activists who would have (strongly)
preferred PR, the referendum acted as a mediator (Bjørklund 1982: 248) between government parties on the issue and got one of the Liberal Democrats’ constitutional reform issues out of the way, living up (in a very minimal way) to a political obligation on the party and removing an obstacle to the coalition with the Conservatives. The failure of AV to gain any mass appeal among the British public – even with the assistance of a recent parliamentary expenses scandal and strong anti-politician sentiment (Lundberg and Steven 2013: 16) – resulted in a big ‘no’ vote and a pro-hegemonic outcome (Smith 1976) for the bigger coalition partner, removing the threat of electoral reform for the Conservatives.

While the prospect of a new House of Commons electoral system may be dead, the Conservatives could be facing two far greater risks from constitutional referendums, one they have already implemented, and one they have promised for the future. The UK government agreed to legislate to allow the Scottish government to hold a referendum on Scottish independence, in which a ‘yes’ vote would lead to the secession of Scotland from the UK. The UK government’s coalition parties, the Conservatives and the Liberal Democrats, as well as the main opposition Labour Party, all support a ‘no’ vote, yet the UK government – which did not need to allow the referendum – agreed to the Scottish government’s request, perhaps out of a sense of political obligation (which, for the Scottish government, arises from the Scottish National Party’s 2011 election manifesto commitment). On the other hand, nearly all opinion polls over the past several years show that many more of those surveyed oppose Scottish independence than support it, so the UK government might see this referendum as a way to get the issue out of the way for a generation, with a low risk of a ‘yes’ vote.

Where the risk is a lot higher – and stakes potentially a lot greater for the UK economy and global influence – is in Prime Minister Cameron’s promise to hold a referendum, if a Conservative government is elected in 2015, on whether the UK should remain in the UK, after a proposed re-negotiation of the UK’s terms of membership. Opinion
poll results vary, so it is difficult to anticipate the result of such a referendum, and the Conservatives would need to win the next UK election. The potential risk to the Conservative Party leadership’s position in support of continued EU membership is very high and it is hard to see how a sabotage strategy would work here – yet the political obligation, after a public promise and a probable manifesto commitment, would be impossible to escape. Failure to win a majority of seats in the next election, and having to abandon the referendum commitment in coalition negotiations with another party, could possibly be the best outcome for the current Conservative leadership.

Conclusion

The 1993 (second) electoral system referendum in New Zealand yielded the worst outcome for a government of the (completed) cases studied here – it brought about the introduction of MMP and some fundamental changes to how New Zealand has been governed since. Nevertheless, both of the major parties there have adapted and even though the National Party would have preferred a majoritarian system and while many in the party were probably disappointed with the outcome of the 2011 (third) electoral system referendum, the government’s refusal to make any changes to aspects of MMP that seem to help National means that all is not lost for the party. However, because some significant changes to MMP were supported by the public, yet were denied by government, there are implications for the democratic quality of MMP, bringing us back to Proposition One. For National’s counterparts in the UK, the Conservatives, an unwanted referendum on electoral system change came out with the desired outcome, though the coalition’s other party, the Liberal Democrats, failed to get AV – though this system was never a priority for the party or for most supporters of electoral reform in Britain.

The examples of constitutional referendums examined here show that governments in Westminster systems will take the risk of holding politically obligatory, if non-required,
referendums on these fundamental matters, though there are dangers, and as Morel (2007: 1063) has argued, these dangers seem to be increasing, despite the efforts of governments to sabotage these votes. The New Zealand case of electoral reform shows that even when governments appear to get an unwanted result, they can learn to live with the consequences, while the UK case of a potential electoral reform would not have carried severe consequences for the Conservatives (who might actually have gained slightly by the potential for AV to reduce the threat from the UK Independence Party) or for Labour. The upcoming Scottish referendum, however, could lead to far more severe consequences for not only the UK government, but the entire UK if Scotland votes for independence, and the possible referendum on EU membership could also have highly significant effects on Britain’s economy and role in the world.
Bibliography


