

LET'S REVISIT: WHAT'S AT STAKE...

We have argued in this chapter that public opinion is important in policymaking and that politicians respond to it in a variety of ways. But what would happen if we more or less bypassed elected officials altogether and allowed people to participate directly in national lawmaking through the use of a national referendum or initiative? What is at stake in rule by public opinion?

On the one hand, voters would seem to have something real to gain in such lawmaking reform. It would give new meaning to government “by the people,” and decisions would have more legitimacy with the public. Certainly it would be harder to point the finger at those in Washington as being responsible for bad laws. In addition, as has been the experience in states with initiatives, citizens might succeed in getting legislation passed that legislators themselves refuse to vote for. Prime examples are term limits and balanced budget amendments. Term limits would cut short many congressional careers and balanced budget amendments would force politicians into hard choices about taxation and spending cuts that they prefer to avoid.

On the other side of the calculation, however, voters might be worse off. While policies like the two mentioned above clearly threaten the jobs of politicians, they also carry unintended consequences that might not be very good for the nation as a whole. Who should decide—politicians who make a career out of understanding government, or people who pay little attention to politics and current events and who vote from instinct and outrage? Politicians who have a vested interest in keeping their jobs, or the public who can provide a check on political greed and self-interest? The answer changes with the way you phrase the question, but the public might well suffer if left to its own mercy on questions of policy it does not thoroughly understand.

Not only policymaking but the protection of individual freedoms might suffer under increased direct democracy; the majority is not always the best safeguard of civil liberties and civil rights. When New Jersey governor Chris Christie defended his veto of the New Jersey gay marriage legislation, and declared that the matter should be decided by a direct vote of the people, he added, “The fact of the matter is, I think people would have been happy to have a referendum on civil rights rather than fighting and dying in the streets in the South.” As Newark mayor Cory Booker quickly pointed out, if civil rights for African Americans had been left to a popular vote, they might never have happened: “I shudder to think what would have happened if the civil rights gains, heroically established by courageous lawmakers in the 1960s, were instead conveniently left up

to popular votes in our 50 states.”⁸² Ironically, the marriage equality issue in New Jersey was not settled by the people after all, but by the courts. Following a state superior court ruling, New Jersey became the fourteenth state to allow gays to marry in October 2013. Governor Christie originally tried to appeal the ruling but, in the middle of a heated battle for reelection, withdrew his appeal and allowed gay marriages to proceed.

There is no doubt that the founders of the Constitution, with their limited faith in the people, would have rejected such a national referendum wholeheartedly. Not only does it bring government closer to the people, but it wreaks havoc with their system of separation of powers and checks and balances. Popular opinion was supposed to be checked by the House and the Senate, which were in turn to be checked by the other two branches of government. Bringing public opinion to the fore upsets this delicate balance.

In addition, many scholars warn that the hallmark of democracy is not just hearing what the people want, but allowing the people to discuss and deliberate over their political choices. Home computer voting or trips to the ballot box do not necessarily permit such key interaction.⁸³ Majority rule without the tempering influence of debate and discussion can deteriorate quickly into majority tyranny, with a sacrifice of minority rights.

The flip side may also be true, however. Since voters tend to be those who care more intensely about political issues, supporters of a national referendum also leave themselves open to the opposite consequence of majority tyranny: the tyranny of an intense minority who care enough to campaign and vote against an issue that a majority prefer, but only tepidly.

Finally, there are political stakes for politicians in such a reform. As we have already seen, the passage of laws they would not have themselves supported would make it harder for politicians to get things done. But on the positive side, a national referendum would allow politicians to avoid taking the heat for decisions that are bound to be intensely unpopular with some segment of the population. One of the reasons why national referenda are often used in other countries is to diffuse the political consequences for leaders of unpopular or controversial decisions.

Direct democracy at the national level would certainly have a major impact on American politics, but it is not entirely clear who the winners and losers would be, or even if there would be any consistent winners. The new rules would benefit different groups at different times. The American people believe they would enjoy the power,