

Referenda, International Negotiations, and Leftist Governments

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I. Referenda and Politicians' Incentives

Why do politicians opt for referenda if referenda entail concession of power to the electorate? There can be several responses:

- In case of constitutional amendments, the requirement of approval by referendum solidifies existing constitutional provisions. Legislators benefit from entrenched provisions because small interest groups demand them to withstand shifting popular tastes.¹
- Referenda may also be a second best option for politicians who have little experience in office (or bad record at that) and can attract the necessary votes in elections only by ensuring to return to the voter on specific matters.
- Referenda on divisive issues like abortion or same-sex marriage enable politicians to attenuate their personal responsibility and not lose voters. Issues that generate such general interest are often not the issues that attract the attention of special interest groups. At times, politicians simply have to bow to public pressure.

Through the lens of the politicians' personal incentives one can see that referenda that include *a dominant international component* have a different logic than referenda that deal with purely domestic issues such as the legalization of abortion. Among the

¹ Landes & Posner

several political incentives, I want to address the link between referenda, international negotiations and left-of-center governments². My argument is that ratification by referendum (RR) of an international agreement – particularly peace agreements which typically entail concessions to the other side – is the left-of-center’s optimal response to the “Nixon in China” syndrome which usually plays into the hand of the more conservative governments. This link explains the logic of the Israeli Labor leaders’ election promise (*before* commencing negotiations)³ to hold referenda (*after signing*) as the mode for ratifying future peace agreements with Syria and the Palestinians.

II. Referenda and the “Two-Level Game”

The complex interactions between domestic and international politics is described as a "two-level game," a simultaneous game played by a national government at the first, international level with the representatives of the foreign state(s), and at the second, domestic level with representatives of domestic interest groups.⁴ Second level negotiations are necessary to secure domestic ratification of the international agreement negotiated at the first level. This game creates a paradox: other things equal, the stronger

² By “left-of-center” I refer to governments that are more “internationalist” than their more “nationalist” adversary (that will be referred to here as “rightist” or “conservative”). In Israel, the party that is more inclined to grant concession is the labor party. Thus, in other circumstances – for example, when negotiating free trade area – the more “leftist” party could be a conservative laissez-faire party who would be more internationalist minded than a socialist adversary.

³ Compare this scenario to the scenario where the government, only *after* securing an international agreement, decides (or rather, is forced) to hold a referendum (e.g., France 1992 on Maastricht).

⁴ Robert D. Putnam, *Diplomacy and Domestic Politics: The Logic of Two-Level Games* 42 INT’L ORG. 427 (1988); Helen V. Milner, *Interests, Institutions, and Information* (1997); GEORGE W. DOWNS & DAVID M. ROCKE, *OPTIMAL IMPERFECTION?* (1995). *See also* DOUBLE EDGED DIPLOMACY (PETER B. EVANS,

the domestic support for government A's policies, the weaker this government is at the international level because its adversary government B then knows it can play tougher and demand more and more concessions that would still be acceptable to government A's supporters. In view of these dynamics, negotiating governments often "compete" on who is more vulnerable domestically. (See, e.g., the Rabin and Arafat negotiations in 1994-95: Rabin's coalition became precarious and only heavy side-payments to swinging MKs could keep the Oslo Process afloat while Arafat appeared to be pressed domestically by vocal if ineffective opposition. Their strength vis-a-vis one another was a function of their domestic weakness.)

This logic suggests that Government B can gain a lot of information from the domestic processes in state A. Assume elections are held in state A. They revolve around the question whether to play tough or not vis-a-vis state B. The leftist party wins. The government it forms is less capable of playing tough vis-a-vis B (compared to a hawkish political victory). B then appreciates that there is domestic support for compromise and demands more concessions. Other things equal, the deal a "leftist" government can strike can thus be significantly worse than a deal struck by a "rightist" one who can credibly play tough. This observation explains the logic of the "Nixon in China" syndrome. Once a left-of-center government concludes a treaty, the domestic electorate (especially the sought-after uncommitted median voter) will assume that more, unnecessary, concessions were made to the other state compared to what a more conservative government would have accepted. Voters will tend to be less alarmed by a treaty negotiated by the tough guys. Given scarcity of information (voters rarely know what really transpired at the

negotiation table) and little ability of the electorate to analyze whatever information exists, such appearances and assumptions can make a difference.

In view of this, the foreign government may prefer to negotiate with its conservative counterpart and offer concessions because it then reduces the uncertainties involved. Any deal a foreign government strikes with a leftist government leaves a question mark: once a conservative government comes to power, it could formally or informally reopen the deal struck by its leftist predecessor.

Ratification by referendum (RR) is the leftist government's response to such a predicament. RR provides crucial benefits to leftist politicians. Domestically, RR enables more undecided and even conservative voters to vote left. But the left's victory does not signal to state B the necessary sign that the constituency of government A is ready for concessions. Internationally, the leftist government can argue credibly that domestic support for the agreement is not granted and hence elicit more concessions from the other side. The other side may be inclined to go the extra mile because the RR reduces the likelihood that subsequent conservative governments would try to renegotiate or simply renege.

III. Ratification by Referendum: Winners and Losers

The big winner is of course the leftist party. RR increases its potential for electoral success and for assumption of governance. RR also enables them to reach a

better international agreement (if they reach one at all), and hence increase the likelihood of reelection.

It is possible that RR, although increasing the likelihood of reaching beneficial deals, would reduce the likelihood of reaching any agreement at all. This may occur when the other side is not ready to go the extra mile to increase the prospects of winning the RR, while in the absence of RR the leftist government would have yielded. Here, however, it is important to observe that when seeking ratification, the government has ample opportunity to provide partial information regarding the negotiation process, the missed and unexplored opportunities and the future ramifications.⁵ The RR presents a “take it or leave it” option about which the general public has little opportunity to make an informed decision. In theory, then, a leftist party could cheat its electorate and win RR. Note, however, that openness pays out in the long run both domestically and internationally: the less open the government is with its people, the less it can credibly claim to being constrained by its people vis-a-vis the other government.⁶

By definition, when the left side wins, the right side loses. It loses votes, and it loses the opportunity to argue credibly that the agreement is/was flawed before and especially after ratification. Moreover, the rightists are trapped by the RR option because on its face, the option serves their interests, and so they cannot oppose it. One path they may use is to try to undermine the RR process by introducing requirements for qualified

⁵ Downs and Rocke

⁶ Anecdotal evidence suggests that governments tend *not* to misinform their counterparts to the international negotiation about their domestic constraints, probably because such attempts are often impractical and because the game repeats itself indefinitely and therefore credibility becomes an important asset: DOUBLE EDGED DIPLOMACY (PETER B. EVANS, HAROLD K. JACOBSON & ROBERT D. PUTNAM EDS., 1993) (an analysis of eleven cases of two-level bargaining).

majority, quorum, and other noises that would either predetermine the RR outcome their way or render this option infeasible. This is exactly the current Likud party's policy.

On a different level, RR serves the immediate interests of all incumbent office holders, right and left: RR reduces their personal responsibility for either supporting or protesting the agreement. Moreover, and perhaps even more importantly, RR enables representatives of right and left to coalesce on other policy matters, unrelated to the agreement in question. Until such an agreement is reached, if not also after it is ratified (*because* it was ratified directly by the electorate and not by them), rightists can share power with the left, provide benefits to particular interest groups supporting them and gather supporters for future challenges. So in a sense not all conservatives lose from RR. The main losers are the large group of conservative *voters* who oppose the agreement.

As to RR and the foreign party to the international agreement, it cannot be said *a-priori* whether it stands to lose or gain from the other party's RR. RR may require from it more concessions, but these may be offset by the very ratification that increases the credibility of other side's commitment. The same pros and cons suggest in general that it is difficult to predict whether RR will produce more or less treaties, reduce or increase international commitments among states (compared to other means of ratification).

IV. Ratification by Referendum and the Empowerment of the Electorate

If the above analysis is correct, then RR is a unique type of referendum. It is not designed to empower the electorate, increase accountability of elected representative and reduce their slack. It is not an outcome of a deal among legislators from both right and left to serve a common purpose. Rather, it is a one-sided, ad-hoc, tool to overcome the inherent deficiency of the leftist government in playing the two-level game of international bargaining. RR does not empower the electorate a tiny bit, and does not improve the political system. The electorate has no meaningful way to assess what is at stake and what were and are the alternatives. RR only creates the illusion of empowerment.

RR is not an inappropriate tool in a democracy. It serves as a legitimate response to the conservative's advantage that is ingrained in the dynamics of the interaction between the domestic and the international bargaining tables. At the same time however, the adverse consequences of RR should not be taken lightly. Ratification of the leftist government's international agreement would impose a heavy burden on the defeated rightist constituency, especially in a political culture where defeat is not easily conceded. While a regular process of ratification would have enabled the right to continue and challenge the agreement if only verbally and thereby vent their frustration and fear, this is not the case when RR seals the deal. Violence of the defeated rightist electorate, felt betrayed not only by the incumbent government but marginalized by the majority of the people, cannot be ruled out completely.

This analysis suggests that the current Israeli government's reliance on referenda is a passing episode that may be relevant only twice (Syria, the Palestinians). The choice of referendum is not part of a larger effort to empower the electorate. Current political forces in Israel have no interest in such a shift.