

Barak's French Lessons: the Israeli referendum in a Comparative Perspective¹

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Abstract: The introduction of the referendum in Israel (through *Basic Law: Referendum 2000*) is not a step towards plebiscitary democracy. The provision for referendum is a rare example of a constitutional provision for 'controlled' referendums. Such referendums – it is argued - typically occur in executive dominated polities, especially at times of constitutional change. It is further argued that the executive control of the referendum has implications for the outcome of the plebiscites. It is shown that the voters' decisions in 'controlled' referendums (statistically) tend to be based, not on the merits of the issue, but on popularity of the Prime Minister (or president) who calls the referendum.

Israel – we are told – "is an example of a representative democracy with authoritative decisions being made only by a duly elected parliament"(Arian 1998, 190). Perhaps in earlier times. The recent constitutional changes, however, make this assessment difficult to sustain. Indeed, Israel appears to be in a process towards a growing use of direct democracy. Arend Lijphart defines four institutions of direct democracy; the recall, the primary, the direct election of the chief-executive, and the referendum (Lijphart 1984, 198).

Israel has introduced all but one of these devices. Primaries are held in the major parties², the direct election of the Prime Minister was introduced in 1992 (the first election was held in 1996)³, and the Basic Law: Referendum to be enacted by the Knesset in the Spring of 2000 (the law was still being debated at the time of writing). The recall – which is only used in a handful of American states – is only eligible in polities with majoritarian electoral systems.

The proposed Basis Law: Referendum appears to be the most radical of these constitutional developments. Israel is – along with Japan, India, the USA and the Netherlands – one of the five democratic countries, which never have held a nation-wide referendum. The referendum was proposed at different times – but no referendums were held: Ben-Gurion proposed a referendum on the introduction of a majoritarian electoral system in the 1950s, Begin proposed the introduction of a legislative initiative (which would have allowed 100.000 citizens to demand that a proposed law be submitted to a referendum), and the Rabin proposed that a peace deal with Syria should be submitted to popular approval in a referendum. These different proposals materialised with One Israel's commitment to a referendum in the 1999 electoral manifesto. This followed a Knesset vote in January 1999, when a majority voted in favour of a law demanding a referendum before the implementation of a Peace-agreement with Syria.

These developments do not, however, imply that Israel is being transformed into a populist democracy. The institutions of direct democracy often work to the disadvantage of political parties, yet it is not automatically a device, which weakens the power of the elite.

It is customary to make a distinction between, respectively, 'controlled' and 'uncontrolled' referendums. The latter consist of referendums⁴ (and initiatives) which are initiated by the people,

the opposition parties or which are held because of constitutional requirements. The latter consist of referendums which are held entirely at the governments' discretion (see table 1).

Table 1: Provisions for Types of Referendums in Constitutions in Western Politics

Country	Ref.Provsn.	Const.Am.	Faculative	Min.Ab
Australia	Yes	Sec.128(23)☐	-	-
Belgium	No#	-	-	-
Denmark	Yes	§.88, 29(6)	§.20(1)	§.42(4)
Finland	Yes	-	Art.22A(1)	-
France	Yes	Art.89(0)	Art.11(8)	-
Ireland	Yes	Art.46(17)	-	Art.27(0)
Italy	Yes	-	Art.123,132	Art.71*,75(38)
Israel	-	-	Basic Law: Ref.	-
Norway	No	-	-	-
Sweden	Yes	-	Ch.8.§4,15(1)	-
U.K	-	-	-	-
New Zealand	-	Sec.189(6)	-	C.I.R.A(1)
Austria	Yes	Art.44(1)	-	Art. 48*
Total		Const.(53)	Facul.(11)	Min.ab(43)

Ref.Provsn = Provisions for referendums mentioned in the constitution.

Const.Am. = Optional Referendum for constitutional amendments

Faculative = provisions for facultative referendums on non-constitutional measures

Min.Abr.Ref = minority-veto, abrogative referendum, or other constitutional provisions for semi-direct democracy

* Popular petition (resp.Volksbegehrr (Austria), *Iniziativa di legge popolare* (Italy)).

C.I.R.A = "Citizen Initiated Referendum Act 1993".

It is noteworthy that the Israeli provisions for referendums are entirely 'controlled'. Most provisions for referendums allow the citizens to demand a referendum (e.g. in Switzerland and Italy), or force the government to submit constitutional amendments or changes to referendums (e.g. Denmark, Ireland, Italy, and France). The Israeli provision allows no such room for

uncontrolled referendums. The government decides if a referendum should be held. The provision is in this respect similar to Art. 11 in the French Constitution, which states:

"The president of the Republic may, on the proposal of the Government during the sessions of Parliament or on the joint motion of the two Houses ...submit to a referendum any bill dealing with the organisation of the public authorities, entailing the approval of a community agreement, or providing for authorisation to ratify a treaty which, without being contrary to the Constitution, would affect the function of the institutions".

That Israel and France are the only two (developed and democratic⁵) countries, which have constitutional provisions for controlled referendums does not, however, imply that these are the only countries where such referendums can be - or have been – held. Controlled referendums (defined as referendums, which are held entirely at the government's discretion) have also been held in the United Kingdom and Spain. Some political scientists have, consequently reached the – not unreasonable conclusion – that "the question why referendums occur much more frequently in some countries than in others cannot be answered satisfactorily".⁶

That the occurrence of referendums– in Butler and Ranney's words- "fail to fit any clear universal pattern"⁷, might well be a valid conclusion we look indiscriminately at referendums. Yet it is questionable if the referendum is a generic term. Indeed, it seems difficult to maintain that the referendum proper– which merely allow the people to pass verdict on a law submitted to them by the government – has much in common with the initiative which allow the people to enact laws with the involvement of parliament. Therefore, the question as to the occurrence of referendums should not be 'when do referendums occur?' but rather 'when do controlled referendums occur?'

Controlled referendums have a rather plebiscitary twist. Indeed, controlled referendums have historically be called to support the current regime and to add legitimacy to their policies. Moreover these referendums have been initiated by relatively strong political leaders, e.g. by de Gaulle in France – often when they face difficulties in securing support for their policies. The referendum thus seems to be a mechanism by which a president –or a strong Prime Minister –can circumvent parliament.⁸

We might, following this tendency, expect that controlled referendums mainly are held in executive dominated polities. This proposition – or hypothesis – can be tested by correlating the Index of Executive Dominance (developed by Lijphart⁹) with the number of controlled referendums.