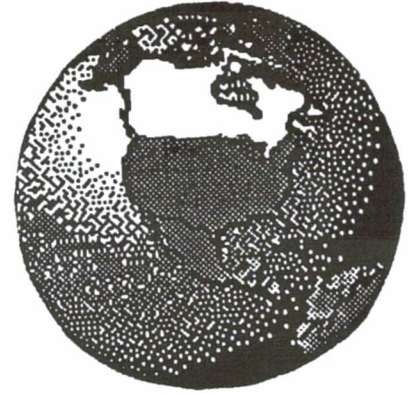




The FAIR Newsletter



Spearheading the Direct Democracy Movement in British Columbia - Volume 1, Issue 4 - Spring 1995

DIRECT DEMOCRACY 101: Bill 36 The Recall and Initiative Act

(from a speech by Norman J. Ruff to the Victoria Chamber of Commerce Provincial Affairs Committee, December 8, 1994). We would like to thank Professor Ruff for kindly allowing us to reprint his speech.

My remarks are divided into three parts:

First, I'll begin with some general background on my own position on direct democracy and its trinity of recall, initiative and referendum.

Secondly, I'll look specifically at provisions of Bill 36 which passed in the spring sitting of the legislature but yet to be proclaimed, pending delineation of recall-initiative campaign financial regulation.

Thirdly, I'll consider some of the kind of opportunities that Bill 36 may bring to BC politics in the short-medium run.

Then, I look forward to hearing your views on these mechanisms. Not often that I get out of the circle of UVic Ring Road and the precincts of Government Street and hope to learn something from our exchange of thoughts.

1 Using the title Direct Democracy 101, not so much as if I am giving a crash introductory

course, but to capture something that haunts the debate over direct democracy, both south of the border and in recent BC debate:- namely the fear of it's consequences. Some of you may recall that Room 101 was the torture room that Big Brother, at the end of George Orwell's novel 1984, put his victims.

What was in that room, depended entirely on what frightened you most in life. If eaten alive by rats, - then that is what you found in it.

It seems to me that much of what is said about direct democracy suffers from Room 101ism, in that those who oppose introduction of recall and citizens' initiatives into our governmental system, are quick to conjure up what frightens them most in their political lives and append it to direct democracy. I find that I scare a lot less easily than most of my political science colleagues and am prepared to open the door of my Room 101, if only to get out of the political space that we currently occupy, which scares me still more.

While I am no crusader for a heavy diet of direct democracy, I have come to believe that the best way to address our current democratic malaise is a dose of more democracy, in the sense of increased opportunities for ordinary voters to help shape the legislative agenda and thus, increase individual political representatives' sense of political accountability to those voters.

To understand this context, it is informative to look at the way direct democracy itself, has penetrated the government political agenda in North America over the last 100 years. Unlike today, where proponents of direct democracy are largely associated with the right of the political spectrum and in BC context, with capital R

Reformers and/or retread Socialists, it originated as an imitation of the Swiss model by the so-called Progressive/Populist movement of the American mid-west plus, the efforts of local government reformers and the early American Socialist Labour Party to undo corrupt local city and state political machines and curtail the power of the political bosses that ran them.

This was later reflected in our own post W.W.I Canadian western and prairie populist agendas in all four western provinces, propelled in part by the farmer progressives, as well as the prohibitionist movement who saw initiatives and referendums as a means to force temperance legislation on reluctant legislatures. But times change and different interests are equally optimistic or pessimistic about the possibilities of direct democracy. California's 1978 Proposition 13 is constantly evoked, by those who fear cutbacks in public services and centralization of power at the state level due to restriction of local tax base, while others may continue to applaud that restriction. Peter Schrag's November 1994 article in Harper's magazine, **"California's Elected Anarchy: A government destroyed by popular referendum"** is a good recent example of Room 101ism which attributes much of what ails California to direct democracy, in general and Proposition 13, in particular. Similarly, those who currently portray direct democracy as tending toward "mob rule" and empowering illiberal views, may point to attempts to restrict gay or illegal immigrant rights in our North-western neighbours, while supporters lament the failure of these initiatives or their successful court challenge.

While I too would be alarmed at an initiative or recall petition with Freddy Krueger's name at the top, I share Professor Thomas Cronin's view that, on balance, there is no evidence to suggest any one side of the political spectrum have a monopoly of initiative outcomes, or that political debate under initiatives and their outcome are any less informed than current legislative process. A recent story by Phil Reeves in the British Independent Newspaper on the recent US November 1994 initiatives started off:

"Is there such entity as a gun-owning, law abiding, non-gambling, gay, terminally ill, government-hating, penny-wise American? If there is, he will derive considerable satisfaction from the results of the United States' mid-term elections: in one state or another, a law was passed with which he is sure to be pleased."

This aptly captures diversity of origins and general run of these devices pretty well.

In addition to Room 101ism, we also find fears expressed about a union between the Westminster parliamentary model, that's our colonial heritage from Britain, and US style of citizen's participation.

Here too, I part company with many of my colleagues in celebrating the clash of these traditions and the erosion of some of the so-called parliamentary traditions, beginning with the underlying glue of party discipline and top-down cabinet dominance of the legislative policy agenda. It is, in my view, precisely because direct democracy is subversive of these constraints, that we need it. Where parliamentary proceedings are simply political theatre, with the roles and ending written by the governing party, then there is room for far more actors on the stage. If they insist on rewriting the plot and reconstructing the stage, then that is exactly what is required to help cure our system of the rising sense of alienation and cynicism about everything political. To cure some of these symptoms of a democratic deficit, we need more democracy.

2 Turning to the manner in which we have approached the three direct democracy devices in BC or perhaps, stumbled upon these devices might be more accurate, it is tempting to construct an argument about BC being a populist provincial political culture which is receptive to the language of direct democracy, as witnessed by W.A.C. Bennett's 20 year maintenance of the Social Credit, as the governing party, and the 1993 successes of the Reform Party of Canada. Populism is, however, a greatly overworked term in our provincial politics and I see its reality as less, an assertion of power by the grassroots and more, a manipulation of the symbols of power in a top-down control brand of politician's own brand of populism.

Our most immediate experience is founded, partly in Vander Zalm's own personal predisposition's and political manoeuvring against the possibility of a Reform Party of Canada entre into the provincial scene with the 1990 Referendum Act and, partly in Rita Johnston's use of that legislation to gauge electoral support for an extension to recall and initiative which were supported by 73% of votes cast in the general

election or, 81% of valid referendum votes for recall and 83% for initiatives, depending on how you want to count it. Though not required to implement either measure, since they had been proposed by the outgoing government, the New Democrats had blandly agreed to accept that overwhelming verdict.

The subsequent history of the Select Standing Committee to study these devices, chaired by Ujjal Dosanjh and the resultant legislation in Bill 36, which was introduced in mid-June 1994, shows a nervousness at mixing Westminster-style provincial institutions with direct democracy. This nervousness is, in part, due to institutional conservatism on part of the NDP but also to personal fears, not atypical of most legislators at what are, for them, direct personal consequences in weakening their agenda control or, still more direct, in form of recall's potential impact on their job security. The result, shown in Bill 36, is a highly contained compromise.

The 1990 Referendum Act gave the cabinet complete control of any consultation of the electorate through the power to set the question(s) and their wording, the date and area where a referendum would be held. The government, asking a question, is bound "as soon as practical" to take steps "it considers necessary or advisable" to implement the results through "changes in programs or policy or legislation", making it more, what I have described as an experiment in semi-people's democracy, rather than direct democracy.

Bill 36 takes us several steps forward in allowing citizens to initiate legislative proposals or the recall of an MLA, but only after passing through some relatively difficult barriers when compared with the thresholds in place elsewhere. The 42 to 3 votes on its second reading approval in principle on July 6, and 30 to 17 on final third reading the next day, register the mixed feelings of the opposition toward this measure.

A **recall** would begin, no sooner than 18 months after a member's election, with an application for a recall petition stating, in up to 200 words, why it was warranted. The petition would have to be returned within 60 days and signed by more than 40% of the registered voters in the district at the last election. The Select Standing Committee had originally recommended 50% + 1.

The Chief Electoral Officer would have 42 days to determine the petition met all requirements and, if so, the member would cease to hold office and a by-election would ensure. Unlike the Committee's recommendations, Bill 36 permits only one recall by-election between general elections.

A citizens' **initiative** is permitted on any matter within provincial jurisdiction and begins with an application for the issue of a petition, including a draft Bill - "in a clear and unambiguous manner". Repeat petitions are only permitted after 132 days have elapsed. The initiative petition would have to be submitted within 90 days, signed by at least 10% of registered voters in each electoral district. Within 42 days and certification by the Chief Electoral Officer, the petition would be referred to a Select Standing Committee of the Legislature for consideration within 30 days. After 90 days of its first meeting, that committee must either report with a recommendation for the introduction of legislation, or refer it to a general vote. Initiative voting would be staged for the last Saturday in September every three years commencing September 28, 1996. To carry the initiative, i.e. to force the government introduction or a recommendation by the Lieutenant Governor (if an appropriation or tax matter) of a bill, the initiative would have to receive more than 50% of the total vote in at least two thirds of the districts.

There are other requirements concerning canvassing of signatures, such as the prohibition of any paid canvassing, but still more significantly, at the moment, was the open-ended provision for Order-in-council regulations governing spending limits, advertising and disclosure, under Part Four, which were left to further consideration as to how they should be constructed. The Attorney General, Colin Gabelmann, explained that it was the government's intention to take them to cabinet before the end of the year so that "we can have it in place by the end of the year".

3 What are the prospects and opportunities opened up by Bill 36? The signature and vote thresholds that have to be crossed seem to make it unlikely that we will see a flood of initiatives and recalls. For all the talk of empowerment, this legislation will require a good deal of energizing to make it an effective instrument of direct democracy. In this case, it isn't a question of how

long the rabbit keeps beating the drum, but how quickly it can do it.

Given the three party competition at the last election, most MLA's were elected with the support of less than 40% of the registered voters. To recall the member for Vancouver-Mount Pleasant, for example, nearly 11,000 signatures of electors registered in his riding for the 1991 election would have to be collected within 60 days.

An initiative would require even greater organizational skills as it requires 10% of the eligible signatures within each constituency over 90 days. That will mean 190-200,000 signatures at the rate of 2100 or 2200 per day.

It would be a mistake, however, to underestimate what can happen when an electorate become mobilized. I recall from my constitutional law classes that, internationally, those countries with the most difficult constitutional-amending formula, are not necessarily those with the least constitutional amendments. Similarly, states with low signature thresholds are not necessarily those with the most initiatives. As our political elites learnt, in the fall 1992 Charlottetown Accord constitutional referendum, much depends on the mood of the electorate and the extent to which networks can be formed to mobilize them.

In the short run, at least, it would seem that the most predictable initiatives will come from the agendas of budget balancers, tax restrainers, right to lifers, regional aboriginal land claim constrainers, those concerned with policing and rights of crime victims, gambling, environmental protection and sustainable yielders, right to die supporters, affirmative action program extensions or contractions, election campaign finance controllers, labour union-based law reformers and others from all sides of the political spectrum. As I said at the outset, it is a mistake to assume that any one agenda has a monopoly of direct democracy. ***My own, more modest first initiative, would be one to use the process to reform itself by reducing it's signature thresholds.***

The organizational networking that will be required, however, will exclude anomic spontaneous and locally scattered grassroots initiatives. Those public interest groups and other organizations which already have a province-wide network of their own or overlapping memberships and organizational interlocks, will be the most well-placed to take advantage of this new opportunity to

place items on the governmental agenda. They will be required to operate within the financial and other regulatory parameters that will eventually emerge from Bill 36 to try to maintain a level playing field, but the most immediate consequence of the NDP government's high signature thresholds will be to tilt the field in favour of the existing large battalions of well-tuned, province-wide, organizational networks who can field the volunteer effort required for a blitzkrieg petition signature campaign. The Canadian Taxpayers Federation has clearly already placed itself strategically to take advantage of this new political context. Your own organization has a longer history and broader base that also gives it the potential to become a significant instrument in forcing the political agenda. It certainly is worth marking September 28, 1996 in your daytimers, but then May of that year may be even more politically significant.

BILL 36 PROCLAIMED

Since Professor Ruff's speech, Bill 36 was proclaimed by Cabinet on February 24, 1995. For information about how to launch an initiative or recall petition, call 1-800-661-8683. (Elections BC)

AGM NEWS

The FAIR Foundation held it's first Annual General Meeting in Victoria on February 11, 1995. We have steadily been gathering new members and welcome all the new faces. New directors were elected. They are: Lorenzo Bouchard, Christine Monford, Joel Harvey and Johnny Walker. We filed our first Annual Report and reported a net loss.

WHAT IS FAIR? (For Action In Referenda)

The FAIR Foundation is an organization of concerned citizens with a mandate of promoting fair government by encouraging citizen participation in the decision-making process of government. We believe the time has come for citizens to vote directly on issues important to them and to be able to recall elected representatives that misrepresent the constituency or themselves.

The purpose of the FAIR Foundation is to:

- Promote fair, workable and binding recall, initiative and referendum legislation in BC, Canada and elsewhere.
- Stimulate public awareness of referendum rights, how it can be implemented and the benefits of direct democracy (including participatory and tele-democracy).
- Assist citizens with the petitioning and referendum process.

We are a non-profit and non-partisan organization located in Victoria, B.C.

We hope that you enjoyed this issue and will join us in supporting the cause to help promote direct democracy not only in BC and Canada but around the globe. Please pass this newsletter on to a friend.

The opinions expressed in this newsletter are designed to demonstrate the process of direct democracy and are not issue oriented. Letters to the Editor will be gratefully received and printed. Written articles are also welcome but will be reviewed by the FAIR directors before being printed.

To become a member of the FAIR Foundation (which includes a one year's subscription to the FAIR newsletter), please send the following application along with \$20 for regular membership or \$10 for students, seniors, or those on limited incomes.

Any donations would be gratefully appreciated but currently, we are not a charitable organization and can not issue tax receipts.

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