

## **Dr. Patrick Boyer QC: Canada's Preeminent Academic & Legal Scholar on Referendums**

By Brad Kempo B.A. LL.B.

There is one Canadian who over the last three and a half decades has dedicated himself to advancing the cause of participatory democracy. Having been in politics himself and highly knowledgeable about how chronically dysfunctional this country's federal and provincial political systems have over time become, he views the use of referendums as the solution to these problems.

When Canadian academics were being solicited for critiques of what the CCP offers by way of a significant restructuring of how Canada's parliamentary democracy functions, it was recommended the country's top academic and legal expert on referendums and plebiscites be contacted. Dr. Boyer's...

... life centred around Canadian policy and public affairs. He has worked as a journalist in Ontario, Saskatchewan and Quebec in the 1960s, as a lawyer specializing in communications and electoral law in the 1970s, as a parliamentarian representing a Toronto constituency in the 1980s, and as parliamentary secretary first at External Affairs and subsequently at the Department of National Defence in the early 1990s. Mr. Boyer is past president of the Couchiching Institute on Public Affairs and chairman of the Pugwash Thinkers' Lodge in Nova Scotia. [And he was] an adjunct professor in the Department of Political Science at University of Guelph, where he taught courses in political ethics, leadership and accountability in Canadian government.

Source: <http://www.guelphleadership.com/faculty.html>

He holds honours degrees in political science and economics from Carleton University and a law degree and masters degree in Canadian history from the University of Toronto.

After the CCP founder's first conversation with him on May 10, 2012 where he was so excited to learn of the proposed party's objective he agreed to contribute, this e-mail was sent documenting the exchange:

Patrick:

Re: Canadian Citizens Party

Further to our hour and a half long conversation today, I must on the written record **thank you** for that time commitment as it relates to assessing the referendum voting protocol and stated willingness to join the CCP as a major contributor.

Because of your depth of experience and knowledge when contextualized with your extraordinary political and academic credentials, you possess more than what is required to successfully launch the Party and achieve governance status.

As a sign of commitment, Dr. Boyer sent the CCP founder these publications:

Lawmaking by the People: Referendums and Plebiscites in Canada, Butterworth & Co. (Canada) Ltd., Toronto 1982

Direct Democracy in Canada: The History and Future of Referendums, Dundurn Press Ltd, Toronto 1992

The People's Mandate: Referendums and a More Democratic Canada, Dundurn Press 1992

Hands-On Democracy: How You Can Take Part in Canada's Renewal, Stoddart Publishing Co. Limited, Toronto 1993

"Just Trust Us": The Erosion of Accountability in Canada, Dundurn Press, Toronto 2003

A Passion for Justice: How 'Vinegar Jim' McRuer Became Canada's Greatest Law Reformer, Blue Butterfly Book Publishing Inc., Toronto, 2008

He acceded to the request he pen inscriptions inside the cover as these fascinating works were going to be cherished by the CCP and become what amount to heirlooms for future generations of party members, executives and contributors.

Here are digital photographs of the publications that were sent to the founder and the inscriptions.

# **LAWMAKING BY THE PEOPLE**

*Referendums and  
Plebiscites in Canada*

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**J. Patrick Boyer**


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Butterworths

# LAWMAKING BY THE PEOPLE

Referendums and Plebiscites  
in Canada

For Brad Kempo...  
who 30 years after I wrote  
this book, is resolved to  
bring new life to the  
great possibilities of a  
truly democratic Canada.  
with every good wish!



# The People's Mandate

Referendums  
and a More  
Democratic Canada

Patrick Boyer

# The People's Mandate

Not Brad...  
as a sign post on the  
along our road to a  
more democratic Canada.

Ratna

# Direct Democracy in Canada

The History and Future of Referendums

Patrick Boyer

★  
Including  
a chapter  
on the  
Referendum  
of October 26, 1992



# Direct Democracy in Canada

The History and Future  
of Referendums

Patrick Boyer

*For Brad Kempso...  
I've written here about our history  
with referendums. Now we can  
write the future.*

Dundurn Press  
Toronto & Oxford  
1992







# "Just Trust Us"

The Erosion of Accountability in Canada

J. Patrick Boyer

"Just Trust Us"

Mr Brad Kemp...

who seeks to  
counteract "the erosion"  
of accountability  
in government.

Pat Brown

In the Preface to *Lawmaking by the People: Referendums and Plebiscites in Canada* the author writes:

This book ... is a detailed elaboration of one of the ten fundamental political rights and freedoms enjoyed by Canadian citizens, namely, the right to vote on certain laws. The book begins by briefly examining the nature of this political right. It then examines the theory and methods of direct democracy, and the history of direct democracy in Canada. Next, there is a brief review of Canadian attitudes to referendums and the general advantages and disadvantages of this exciting but unpredictable procedure. Finally, for each of the country's 13 principal electoral jurisdictions - Canada itself, ten provinces and the two territories - a detailed review is made of referendum and plebiscite laws currently in force.

In Chapter 2, entitled 'Direct Democracy - Theory and Methods', he states

Referendums, plebiscites and initiatives are voting procedures whereby citizens - rather than, or in concert with, their elected representatives in Parliament, legislatures and municipal councils - play a role in making public decisions and enacting laws. [...] They are an important variant of the political and legislative processes, and the extent to which people resort to them is, in part, something of a verdict on the effectiveness of the traditional law-making procedures.

[...]

To the proponents of direct democracy, the use of referendums was the technique for bringing about direct rule by face-to-face assemblies of all citizens. In a 1911 Fabian Society tract, C.D. Sharp explained why this line of reasoning has been especially persuasive in Switzerland and the United States:

Historically, the Referendum is the offspring by unbroken descent of the primitive mass meeting of self-governing citizens. Both in Switzerland and the United States, the only countries where it flourishes today, the whole body of citizens were from the earliest times ... accustomed to exercise all the functions of government for themselves in open assembly. This direct control over the affairs of State were never entirely surrendered, and when the assemblies of all the citizens became too impracticable and more and more powers had to be delegated to representative councils, the Referendum came into being gradually and naturally, not as an accession of popular power, but as a mere retention by the sovereign people of certain important powers in their own hands.

He goes on to refer to "The Progressives" who "not only believed in the importance to society of the unorganized, free individual, but they were hostile to intermediary organizations which distorted the expression of the individual's will, and imposed on society governmental policies and practices which represented established, special or private interests".

They believed that truly democratic government consisted of all the John and Jane Q. Publics observing, discussing, pondering, deciding, and finally, voting. The public interest is discovered by their discussions and ponderings, and it is served by the measures which majorities of them adopt when the deliberations have run their course. That being the case, any organization that seeks to interpose itself between the people and their government - that is, any intermediary organization - is bound to subvert democracy and the public interest to some degree. ... Only when the power of all intermediary organizations is broken and all obstructions between John Q and his government are removed can true democracy flourish and the public interest triumphs.

Further to the argument that referendums are advantageous Dr. Boyer writes:

Another important feature of referendums is the fact that they can serve to legitimize political decisions which a government has taken or proposes to take. A basic argument in favor of referendums therefore rests on the dual proposition that all political decisions should be as legitimate as possible, and that the highest degree of legitimacy is achieved by decisions made by the direct, unmediated vote of the people.

Of the several points made by the Progressives, one is relevant to the Canadian experience: "Apathy and alienation come to an end (meaning that when governments are dominated by special interest groups, boss-controlled parties and corrupt legislatures, then widespread apathy and alienation will grow among citizens; whereas if people through referendums and initiatives can control the law-making process and know that they control it, this will foster their belief in it)".

*In Direct Democracy in Canada: The History and Future of Referendums*

Michael Bliss, Professor of History at the University of Toronto, writes of this publication:

When historians come to write about the recent evolution of Canadian parliamentary democracy, Patrick Boyer and his works will be singled out for special attention. In the last few years, most members of Parliament have fallen increasingly out of touch with the country and the people they have been elected to govern. The credibility gap between people and politicians, present to a certain degree in all democracies, has become a widening chasm. Huddled on their well-perked side of it, our members of Parliament and Senators have tended to fault the voters for being irrationally critical and cantankerous, as well as ignorant of the complexities of current issues.

[...]

Patrick Boyer is virtually unique among our national politicians in understanding that the ongoing health of our political system depends on reforming it to build solid institutional bridges across the gulf between the people and their legislators. This Progressive Conservative MP, well educated in history, understand that the best cure for the ills of democracy is more democracy. For years he has championed the notion that a more frequent reliance on some of the tools of direct democracy, particularly the plebiscite or referendum, can ease Canadians' sense of alienation and powerlessness and thus ameliorate the anger they feel towards politicians. This book is a learned, powerful, extended application of Mr. Boyer's insights.

The author makes two compelling arguments. First, the devices of direct democracy have been used much more frequently in Canadian political history than most of us realize. He presents exhaustive evidence of our reliance on plebiscites and referendums - direct tests of the people's will - to guide us on questions ranging from conscription and the future of Quebec through the marketing of asparagus and the establishment of public libraries. Thousands of plebiscites and referendums have been held in Canadian history. National politicians should note that it is precisely the levels of government thought to be "closest" to the people - municipal and provincial - that have formally consulted the people most often. The devices of direct democracy are not foreign to the Canadian political tradition; they are only foreign to a reactionary, elitist doctrine of parliamentary politics, most clearly enunciated in Great Britain some two hundred years ago by Edmund Burke.

[...]

As a history professor, I would like to think that Patrick Boyer's training in the discipline of history has given him a broader perspective on current

political trends than many of his colleagues. One of the paradoxes of a well-developed sense of history is that it tells us when to stop clinging to an outdated past. Throughout the 20th century, and particularly the last three decades, North American society has been evolving very rapidly in the direction of greater individualism. Of course, there are many exceptions, but citizens tend to be better educated, more self-reliant, and less deferential to traditional authorities. We think for ourselves. We make up our own minds. We want to take responsibility for the decisions that control our lives. The crisis of political legitimacy in our times has arisen because people are less willing than ever to delegate powers through the electoral system.

[...]

Mr. Boyer has been carrying his campaign to modernize our political system at a time when most of his colleagues, their consultants, and large chunks of our academic and media communities were still imprisoned by the orthodoxies of the old politics. ... Old fashioned politicians still struggled to understand the dimensions of the new democracy that had come into being literally in spite of them. In this book one of our new-fashioned politicians works hard to help us develop a broader vision of the future of our political system.

In the book's Introduction, which is titled to ask the rhetorical question "A Timid Democracy?", Dr. Boyer draws attention to the country's political culture among its citizens; describing it as "instinctive deference" and "indifference". He states:

Sociologist Seymour Martin Lipset documented convincingly the great deference to authority in Canada and our "habit of obedience". Years ago James Bryce accurately observed how "the sentiment of deference to legal authority, planted deep in the days when that authority was regarded with awe as having an almost sacred sanction, has lived on into a time when the awe and sacredness has departed".

An early basis for this deference, as Bryce intimates, was the role of the Crown. To many Canadian settlers who took up their new life on Crown lands, the Crown was no mere abstracted symbol of authority; it was a very real element in their daily lives. Crown agents made their rounds, executed their duties, and fostered an immediate relevance for their Crown in the emerging society on both a personal and public level.

Strong Tory values in early Canadian society which stressed prescription, authority, order; and hierarchy, all reinforced this deference to authority by animating and directing life in an integrated community where the collective

good superseded concern for individual rights. As a consequence, individuals instinctively developed a sense of their place in the grand order of things, and it was a place, fundamentally, from which one did not routinely challenge authority.

This outlook stood in sharp relief to the attitude developed by Americans, whose constitutional doctrines, following their successful war of rebellion against the same Crown, instead flowed from the concept that the people themselves are sovereign. Ultimate power and authority in the United States is derived, according to its constitution, from "We, the People", and not from the Crown.

He goes on to identify another factor that molded Canada's political culture, stating "we became pre-eminently a country of big organizations [that] imperceptibly sapped the will of individuals to strike out on their own [and] to express contrary views". But he sees a sea change, stating:

We are on the cusp of an era of great change, a phase of governance where people, not the government, own the issue, where people initiate policy and government serves to support and follow their lead. This is in direct contrast to the past, where government took the lead and the masses followed, or at least were supposed to. Until a community "owns" an idea, it is difficult and perhaps wrong for a government to "impose" one on it.

[...]

The influence of our institutions over the long course of Canadian history has reinforced an elitist approach to the political agenda, a top-down pattern of government, and a timidity or reluctance to involve the Canadian people more directly.

In Chapter 5, entitled 'The Future of Direct Democracy in Canada', he argues:

Our Canadian identity can be strengthened through the use of direct voting, because we are forced, in very specific terms, to speak out and debate with one another about the kind of country we want. The process can actually help to define what it is to be Canadian, to provide some "vigorous goading of the national intelligence".

[...]



Instead of passively letting elected representatives in Parliament make all the decisions, or relying on editorial writers and CBC commentators to do our thinking, it is stimulating and productive to have everyone come to terms with his or her own view on a public issue. ... While the debates can be emotional and the confrontations difficult, that is what democracy - and real life - is all about. A cathartic exercise, while draining, is ultimately positive and creative.

His last words in the book are:

Canada's democratic process, under increasing criticism for not providing sufficient voice to the public at large, can be broadened and strengthened through greater use of referendums and plebiscites, not in a frivolous way, but as an effective means of helping Canadians achieve an energizing degree of self-government.

The illusion has been that the strength of a country lies in its leaders. The reality is that it resides in the people. Too much history has been written from the perspective of kings and emperors and presidents and prime ministers. The ideal that forms the core of our democracy is more than trust in the people by those who are in government; trust by the people in our system of government and in its elected representatives is the nobler vision; mutual trust is the ideal for a democracy.

[...]

At the end of the day, we are either democrats or we are not. We either trust the people, or we do not. In the long course of Canadian history, I believe that most often, when given information about a subject, the chance to deliberate on it, and then to express a collective verdict, the people have made the right decision. Who would disagree with most of the decisions reached by voters in the plebiscites and referendums described in the preceding pages of this book? Who would still content on balance the process was more harmful than helpful to the public interest?

In this age when the public agenda is too often set by a small political elite, a coterie of senior public servants, opinion pollsters, media gurus, special interest groups, and paid lobbyists, extra efforts must be made to rescue the public agenda. When the political classes can operate within a cozy and intellectually incestuous relationship, an occasional "reality check" with the citizens of the country is not a bad idea.