Briefing on the use of turnout thresholds in referendums

Introduction

Although often well intentioned turnout thresholds are ill-advised and undemocratic. The question of thresholds was considered in 1996 by the Independent Commission on the Conduct of Referendums chaired by Sir Patrick Nairne. It noted:

“The main difficulty in specifying a threshold lies in determining what figure is sufficient to confer legitimacy e.g. 60%, 65% or 75% and whether the threshold should relate to the total registered electorate or those who choose to vote. Requiring a proportion of the total registered population to vote ‘Yes’ creates further problems because the register can be so inaccurate. Some of the electorate may believe that abstention is equal to a ‘No’ vote. Thus the establishment of a threshold may be confusing for voters and produce results which do not reflect their intentions. A turnout threshold may make extraneous factors, such as the weather on polling day, more important.”

Turnout thresholds artificially inflate the number of votes needed to win the referendum and international experience shows that they just stifle debate as supporters of the status quo don’t have to win the argument; they just have to convince people to stay at home. People should feel confident when casting their vote that their opinion is being listened to and that their ballot counts. Public distrust of politicians is already at an all time high. Nothing could be worse for restoring trust than the perception that parliamentarians had rigged the result of the referendum.

The experience of turnout thresholds in Italy

Article 75 of the Italian Constitution provides certain laws must be put to a referendum if 500,000 electors or five regional councils request it. For a law to be repealed the motion calling for its annulment must receive a majority of votes and the turnout in the referendum must be over 50 per cent of those entitled to vote.

The quorum required to render each referendum valid is by far the most controversial aspect of the law. Turnout in Italy is considerably higher than in the UK, with general elections usually reaching 80-85%\(^2\). However this still means that 15-20% of the voting public will never turn up at the polling station.

For those political parties or institutions opposed to the referendum being voted on, it then becomes a question of pure numbers. They will call on their supporters to abstain from voting as it is far easier to convince 30-35% of electors to stay home, than is to persuade

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2 In the last three general elections the turnout was: 2008: 80.5%. 2006: 83.6%. 2001: 81.3% see [http://www1.interno.it/mininterno/site/it/sezioni/sala_stampa/speciali/Elezioni_2008](http://www1.interno.it/mininterno/site/it/sezioni/sala_stampa/speciali/Elezioni_2008)
50% +1 of electors to go to the polling station and vote "No".\textsuperscript{3} For example in June 1991 former Italian prime minister and socialist party leader, Bettino Craxi, called on voters to "go to the beach" rather than vote on reforming Italy's electoral law\textsuperscript{4}. Turnout on that occasion reached over 60%. However since 1995 no referendum has reached the necessary quorum and most major political parties now actively encourage abstaining in referendums.\textsuperscript{5}

**The experience of turnout thresholds in the UK**

The first referendums in the UK, which contained thresholds, were over the question of devolution. The 1979 Scotland and Wales referendums were provided for in the Scotland Act 1978 and the Wales Act 1978 which both set out the date of the referendum, the electorate and the question.

Following a backbench amendment sponsored by George Cunningham, the Acts specified that if less than 40% of the people entitled to vote in the referendum voted Yes then the Act must be repealed. The '40% rule' was widely credited as a major reason for the failure of the 1970s scheme.

More recent referendums, such as on directly elected Mayors, the establishment of the Greater London Assembly or directly elected regional government for the North East, did not have turnout thresholds.

**The importance of the accuracy of the electoral register in determining the outcome of a referendum**

It is widely recognised that electoral registers in the UK contain hundreds of thousands of examples of inaccurate information, such as cases where the voter is deceased, fictitious or registered in multiple localities. If a turnout threshold is used then the accuracy of the electoral register, rather than voters, can determine whether or not the threshold is met as any inaccurate entries on the register would by default vote "no".

In her evidence to the House of Commons Constitutional Affairs Select Committee inquiry into the integrity of the electoral register Dame Marion Roe DBE commented

\begin{quote}
"There is no doubt in my mind that the Electoral Register is being abused. The argument that there are rarely cases of fraudulent registration appearing in the courts cannot support the view that there is no problem to solve. The reason no prosecutions are taking place is because no checks are made and no evidence exposed."
\end{quote}

Instances such as the *Daily Mail* successfully registering the fictional Gus Troobev (an anagram of ‘bogus voter’) on 31 separate electoral registers during a single day in 2004\textsuperscript{7},

\textsuperscript{3} Antonello Caporale, “La battaglia sarà per il quorum (the battle will be for the quorum), LaRepubblica, 21st May 1991
\textsuperscript{4} http://ricerca.repubblica.it/repubblica/archivio/repubblica/1991/05/21/la-battaglia-sara-per-il-quorum.html
\textsuperscript{5} http://ricerca.repubblica.it/repubblica/archivio/repubblica/1991/06/12/craxi-bossi-quanti-errori.html
\textsuperscript{6} http://ricerca.repubblica.it/repubblica/archivio/repubblica/1991/04/28/il-referendum-ubriachezza.html
\textsuperscript{7} Supplementary memorandum by Dame Marion Roe DBE MP to the House of Commons Constitutional Affairs Select Committee Inquiry into the Integrity of the Electoral Register
\textsuperscript{http://www.publications.parliament.uk/pa/cm200405/cmselect/cmodpm/243/243we11.htm

Reported in the Daily Mail 7 February 2004 cited in evidence to the Constitutional Affairs Select Committee
and the more recent case where two girls, aged 12 and 16 respectively, were allowed to vote in 2008's local elections in Cambridge, after being registered by their mother highlight the point.

However the fundamental problem with the accuracy of the electoral register is the simple fact that people move house and fail to tell the relevant Electoral registration Officer. The Electoral Commission’s report *The Completeness and Accuracy of Electoral Registers in Great Britain* (March 2010), found that even in the event of the registers being 100% accurate after the annual canvass by May the following year about 5-10% of the entries on the registers nationally would relate to people who are no longer at that address (the number is considerably higher in inner London boroughs). In practice, inaccuracy due to population movement is even higher than that because some people who don’t respond to the canvass are left on the register and some of these will actually have moved. Unless these people subsequently use rolling registration provisions to re-register (and the evidence is that far less than one quarter do) then they won’t be able to vote but will still be listed on the register and would count towards the threshold. For example in Knowsley, one of the case studies examined by the Electoral Commission, where electors were surveyed in early Spring, the register was down to 91% accuracy because of people moving. This is in an area that has a low level of population movement. In the other 7 areas, which were surveyed late summer/early Autumn, accuracy varied between 77% and 91%.

Based on the Electoral Commission data it is likely that at least 10% of the registered electors in May 2011 will be people registered at the wrong address. This means that a turnout threshold simply isn’t viable. It would give the ‘No’ campaign a 10% lead before polls even opened. Indeed Bernard Jenkin MP is on record as supporting a 40% turnout threshold precisely because the Yes Vote would require an 80% turnout to succeed.

The accuracy or otherwise of the electoral register has been shown to play a direct role in the outcome of referendums when thresholds are used in both the UK and Italy.

In the devolution referendums in 1979, for example, the Secretary of State for Scotland was responsible for determining the number of inaccurate entries on the register on the who needed to be removed before the referendum took place. The official figure of deductions from the register of c.90,000 was far less than the maximum possible deduction made by some academics of nearly 630,000. Such a difference clearly affects the achievement of the 40% electorate threshold necessary for the yes campaign to succeed.

In 1999 a referendum was held to change Italy’s electoral law but the necessary quorum was missed by a margin of less than 0.5%. Subsequent enquiries and investigations after the vote revealed that numerous electoral registers across Italy had people's names listed

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10 He said “The Conservative party has been consistently in favour of thresholds. It could be that 40% of the electorate would have to vote yes. That would require an 80% turnout to get a yes vote.” [http://www.guardian.co.uk/politics/wintour-and-watt/2010/jul/02/nickclegg-davidcameron](http://www.guardian.co.uk/politics/wintour-and-watt/2010/jul/02/nickclegg-davidcameron)

on them who had either moved away long ago or were deceased. Some of these deceased had actually even voted at the polling station leading a further investigation into identity theft. The Italian government instigated a programme of checking the data on electoral registers across the country. After this was done it emerged that the 1999 referendum would have met the quorum had the registers been accurate in the first place.

Conclusion

Introducing a threshold for the referendum on whether or not to move to the Alternative Vote system would call into question the integrity of the electoral register and encourage the promotion of non-participation as a political tactic. This would set a very dangerous precedent for our democracy when turnout in elections is already at a low level. If trust in our political system is to be rebuilt it is essential that the electorate should feel confident when casting their vote that their opinion is being listened to and that their ballot counts. We urge you to oppose any amendments to introduce a turnout threshold.