also discussed by the authors,[6] although he did not put the emphasis on the size of the jury awards in the United States as a ground for refusing to stay the English action that the authors suggest. The conflicts choice of law rule for tort also suffers in that it is stated in broad, universal terms but, as stated, could represent only the American position.[7]

The book itself is well bound and the text is clear and miraculously free from error. The style, however, has a tendency to choppiness with the occasional awkward sentence. Additionally, it sometimes appears that the authors had a quota of commas and dashes which were required to be used. There are no footnotes, although there is a modest bibliography to which references are made in the text by way of parentheses.

*Elizabeth Edinger**

LAWMAKING BY THE PEOPLE: REFERENDUMS AND PLEBESCITES IN CANADA. By J. Patrick Boyer. Butterworths, 1982. Pp. xxix, 304. ($67.50)

As one of the initiators of the municipal referenda on balanced nuclear disarmament held in more than 100 Canadian cities in the fall of 1982, I welcome the opportunity to review *Lawmaking by the People: Referendums and Plebescites in Canada.*

At the time of the referendum initiative in Ottawa, City Council was advised by the City Solicitor that this referendum was based on questionable legal grounds. Ottawa City Council chose to hold the referendum anyway. This legal uncertainty was an obstacle faced by every municipal council considering such action and many chose not to act because of it.

After reading Mr. Boyer's work on the subject of referenda, I have a better understanding of these legal obstacles. In a detailed, thorough and, I assume, complete accounting of all legislation in Canada permitting municipalities to hold plebescites or referenda, Boyer makes clear that a court of law would likely rule that the actions of the City of Ottawa were not within the constraints of enabling legislation.

Lawmaking by the People does not address itself exclusively to the question of municipal referenda. After clearly defining the differences between referenda, which bind the government holding the polling, and plebescites, which are consultative in nature, Boyer gives the reader a concise history of the philosophy of "direct democracy" which gave rise to many of our existing laws on the subject. The Progressive Movement, which swept Canada in the mid- and late nineteenth century, held that the people are perfectly capable of making their own decisions on issues not clearly mandated to their legislators. This Movement had

[6] P. 86.
[7] *Id.*
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sufficient influence to result in provisions permitting and, in some situations, requiring direct democratic consultation at every level of government in every jurisdiction in Canada.

In analyzing the advantages and disadvantages of direct democracy, Boyer outlines the different philosophies supporting or opposing "going to the people".[1] Those who hold the parliamentary, and therefore representative, system of government near and dear cannot accept plebescites and referenda as part of the governing process. They expect our legislators to be well-informed, not only of the opinions of the constituents, but also on the issues themselves. This is not always possible for individuals. On the other hand, as Boyer explains, those who have more faith in the integrity and judgment of the individual than of an elected government favour consultation with, or even direction by, those being governed. Regardless of the point of view of the individual, however, referenda and plebescites are enshrined in law, and seem to be growing increasingly popular.

With this as background, Boyer gets into the substance of the text: a jurisdiction-by-jurisdiction description of relevant legislation, including detail on the background procedures, initiation, involvement of political parties, expenses and contributions, information, recounts, role of the media, and voter notice and registration. While this section is somewhat dry, its organization, detail and clarity would appear to be invaluable to the legal practitioner faced with any question in any jurisdiction concerning referenda or plebescites.

As a layperson, and Mayor of Ottawa, I was interested to find that two instances noted by the author in the evolution of direct democracy involved the City of Ottawa.

The first, in 1921, was the case of *Parent v. The City of Ottawa*.[2] This case served to define the terms under which a municipality could explain or advertise its point of view in a referendum. Parent challenged the expenditure of tax dollars for this purpose, and was successful. Thus, municipalities are not permitted to use public funds to support a position which has been put to a referendum.

The second situation raised the question of clear thinking and, therefore, clear wording on a question put to the people.[3] In 1933, Council held a referendum on its future structure. Perhaps in a reaction to an earlier court ruling,[4] the Council chose not to recommend a particular structure, but rather to allow all possible options to be made available for public decision. The ballot contained three choices: the first provided for a Council consisting of a Mayor and six Councillors, all elected at large; the second proposed a Council comprised of a Mayor and four Controllers to be elected at large, and eleven aldermen, one from each ward; the third proposed the *status quo*, a Council composed of a

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[1] Pp. 5-12.
[2] 21 O.W.N. 264 (H.C. 1921).
[3] P. 17.
[4] Taprell v. Calgary, 5 Alta. L.R. 377, 3 W.W.R. 987, 10 D.L.R. 656 (S.C. 1913).

Mayor, a Board of Control and two aldermen from each ward. The results proved clearly that too many choices are not helpful. The first option was favoured by 9,058, the second by 8,596 and the third by 11,044. As fewer than 5,000 voted against any of the proposals, there was no clear winner. It is not clear from the Council minutes how Council interpreted these results, but as no action was taken, the third option "won" by default. The wording of questions has been a subject of litigation as well as a source of confusion since then in other jurisdictions, and explains why recent questions put to such a vote are worded so as to require a simple "yes" or "no" answer.

Since 1931, Ottawa City Council has managed to stay out of the courts and law texts on the issue of referenda, although last fall's referendum (plebescite to be precise) did result in a request for an injunction against the vote, which was turned down by the presiding judge. The legality of these referenda in Ontario, though, has not gone unchallenged. At the time of this writing, the City of Toronto was defending such a referendum, and a decision has not yet been rendered.[5]

The current legal question in this regard is, of course, whether the municipality has the jurisdiction to hold a referendum on a question as broad as nuclear disarmament. As a strong believer in disarmament, a municipal administrator who knows that if anything is left after a nuclear holocaust, the City will have to clean it up, and an individual who is sufficiently well-informed to know that cities will be the target of such an attack, I am convinced that this question *is* a "municipal question". This is the criterion established by the Municipal Act[6] in Ontario, yet the courts have defined it to include only those questions whose responses would fall within the realm of municipal responsibility.

Quoting from a court decision handed down by Chief Justice McGruer in 1947,[7] Boyer offers that a municipality may submit questions on matters over which it hopes to have power, by further application to the provincial government. But municipalities may not hold votes on by-laws that ". . . do(es) not support any proposed course of municipal action".[8] It was based on this decision that the City of Ottawa amended the question on disarmament to indicate that we would pass on the results to the federal government and the United Nations, who do have the power to act in the area of disarmament.

In articles in *Municipal World*,[9] a Canadian periodical published "in the interest of good municipal government", Mr. Boyer examines the particular cases of the referenda on disarmament. The author concludes that they were probably not municipal questions, and therefore probably not in keeping with the Municipal Act. Perhaps Mr. Boyer is

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[5] James Stewart Allen *et al.* v. Toronto. At the time of going to print this case had not yet been heard.

[6] R.S.O. 1980, c. 302 *as amended.*

[7] *Re* Jones and Toronto, [1947] O.R. 20, [1947] 2 D.L.R. 125 (H.C. 1946).

[8] *Id.* at 23, [1947] 2 D.L.R. at 128.

[9] Boyer, *Referendums and Plebescites, Part I*, Vol. 93, No. 6 MUNICIPAL WORLD 152 (June 1983); *Part II*, Vol. 93, No. 7 MUNICIPAL WORLD 174 (July 1983).

correct. According to existing legal restrictions placed on municipalities in Ontario, this question may well not be "municipal". The courts will shortly decide that for us in the Toronto case.[10]

Yet, if this is the case, it offers us just one more example of provincial legislation which is too restrictive, and needs to be amended to allow for more municipal autonomy. Whether it be in the realm of land use planning or tax policy, barbed wire fences or selling peanuts on the street, unless a provincial statute specifically delegates responsibility to municipalities, the latitude for municipal action is severely restricted. This is all the more so because the courts have defined narrowly the powers which are delegated by provincial governments to municipalities. Despite reference in the Municipal Act to general powers to make regulations "for the health, safety, morality and welfare"[11] of its citizens, the courts have been most reluctant to uphold by-laws which cite this provision as their legal foundation. Until those who write our laws and those who interpret them alter their attitude to municipalities, we will continue to face severe difficulties in responding to the changing needs of our citizens.

The question of direct democracy takes on a new significance as we enter the world of videotext. The necessary technology already exists. The required network is developing at a phenomenal pace. With the prospects that governments will have instant access to every household to canvass opinion or, further, that citizens could assume direct responsibility for decision making, it is imperative that we consider the consequences of "government by Gallup" carried to its ultimate conclusion.

Lawmaking and the People provides an excellent basis from which to view the history of direct democracy in Canada. I would hope that it might also serve as a foundation from which the legal community can contribute to the fundamental debate on how we might overhaul our system of government to better address our needs in the future.

*Marion Dewar**

[10] *Supra* note 5.
[11] *Supra* note 6.
* Her Worship, The Mayor of Ottawa.