

The PLEA

Vol. 39 No. 2

Direct Democracy

Referendums

When should voters decide?

Halted History

What sunk a 1913 law
to govern Saskatchewan
by referendums?



Anti-Brexit March
London, 2018

PLEA 

Legal Information for Everyone

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Don't stop learning now!

Direct democracy gives voters the power to decide what the law should be. With a single vote, the direction of a town, a city, a province, or a country can be changed. For Saskatchewan voters in particular, direct democracy is not an abstract concept. Citizens are given direct democratic powers under Saskatchewan law. We can force a binding referendum at the municipal level, and a non-binding plebiscite at the provincial level.

Knowing that we have these powers, how can we help ensure that direct democracy is used responsibly? This issue of *The PLEA* explores this issue. It considers:

- the ancient Greek origins of direct democracy,
- the history of direct democracy in Saskatchewan,
- direct democracy in action, and
- how to make better democratic decisions.

Ideal for most any reader, *Direct Democracy* is designed to fulfill several requirements across Saskatchewan's social science curricula. It will also be of particular interest to people interested in creating change through plebiscites and referendums.



Legal Information for Everyone

† Shutterstock

§ Canadian Research Knowledge Network, Canadiana collections

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ON THE COVER ANTI-BREXIT MARCH, LONDON, 2018. ON THE TWO-YEAR ANNIVERSARY OF THE UNITED KINGDOM VOTING TO LEAVE THE EUROPEAN UNION, THOUSANDS RALLIED TO STOP BREXIT. *Photo by Shutterstock.*

What is Direct Democracy?



Campaign posters for Ireland's 2015 referendum on marriage equality. Ireland became the first country to legalise same-sex marriage through a popular vote. †

Democracy is a radical departure from when leaders ruled by decree. The vote gives citizens the power to keep the elite in check.

In a democracy, the people rule. This is the meaning of the word democracy. In Greek, *demos* means people and *kratos* means rule.

How people use their democratic power differs from place to place. In Canada, we elect people to government. These elected representatives make decisions on our behalf. This is called representative democracy.

Democratic power can also be used in a more direct way than simply voting for a representative. People may be asked to vote on a specific policy. When citizens—not elected representatives—decide specific issues, it is called direct democracy.

Some countries are governed by direct democracy. For example, the tiny European nation of Liechtenstein presents its proposed laws to the people for a vote. Because Liechtenstein's citizens directly decide what becomes the law, the country is a direct democracy.

Canada sometimes uses direct democracy. For example, in 1992 Canada held a national vote on amending the

constitution. In 1991, Saskatchewan held votes on public funding of abortions, balanced budgets, and methods of approving constitutional changes. And countless municipalities in Saskatchewan have allowed their citizens to vote on local issues. For example, in 2013 the City of Regina asked citizens who should build their new waste water plant.

The idea of direct democracy—people directly voting on issues—goes back at least 2,500 years, to ancient Greece.

Athens and the Origins of Direct Democracy

Athens was ancient Greece's largest *polis*, or city-state. At its peak in 5th century BC, Athens was home to about 250,000 people and covered 2,500 square kilometres. Like many ancient Greek city-states, Athens was a direct democracy.

In Athens, assemblies were held to vote on laws and public policies. As well, about 1,200 public officials were chosen every year, either by a vote or by a lottery.

Assemblies in Athens were open to male citizens. In general people were citizens if they completed military service, were born to citizen-parents, or had citizenship conferred upon them by the assembly. Women and children could hold citizenship, but were not allowed to vote.

Assemblies usually took place at the Pnyx, a central hill in Athens. However, if more than 6,000 people were meeting they would assemble in the *agora*, the central marketplace.

SASKATCHEWAN IS ONE OF THE FEW PROVINCES THAT ALSO GIVES ITS VOTERS THE POWER TO CREATE A PROVINCE-WIDE PLEBISCITE.

Attendance was usually optional. Those who attended were compensated for their time.

At an assembly, laws and policies were put forth

for citizens to consider. Proposals for laws could be made by any citizen beforehand. Public officials determined which proposals would be considered by the assembly. Most often, radical proposals for change would not be considered.

Anybody could speak at an assembly. Nevertheless, it was usually ambitious men who spoke. The vast majority merely listened and voted. After all, speaking out was risky: speakers could potentially be held legally responsible for giving bad or false advice. On the flip side, citizens were never held responsible if they irresponsibly cast votes.

Direct Democracy in Saskatchewan Today

Though an ancient Greek tradition, direct democracy is still used in Saskatchewan today. In fact, referendums are very common at the municipal level of government, whose governments may call a plebiscite or referendum on a local issue. A simple majority of votes cast is all that is needed for a local referendum to pass.

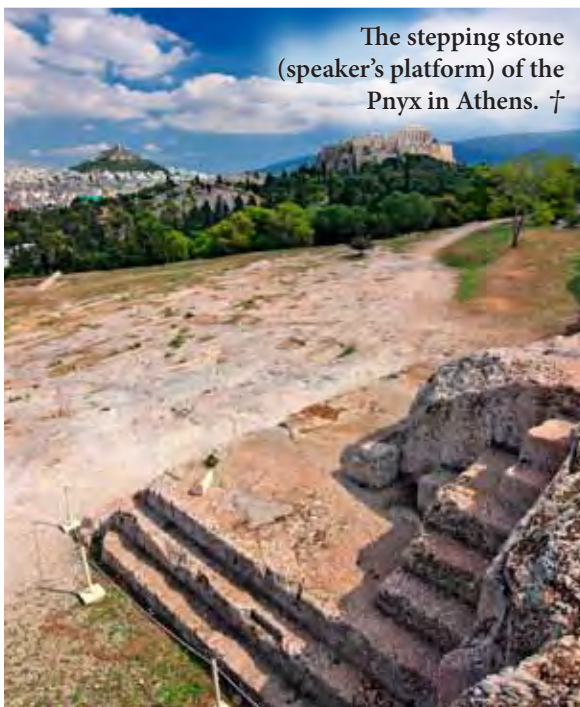
The provincial government may also call a plebiscite or referendum. If the provincial government calls a referendum, two thresholds must be met for the result to be binding:

- more than 60% of the ballots must be cast in support of the question, and
- voter turnout must be at least 50%.

These two requirements help ensure that a referendum only passes if there is a clear majority of people in favour.

Saskatchewan's citizens also have powers to bring issues to the ballot box. At the municipal level, citizens can force their local government to hold a referendum if they circulate a petition and collect enough signatures. In cities, the signatures of voters representing at least 10% of the population are required. In all other municipalities, the signatures of 25 voters or voters representing at least 15% of the population must be collected, whichever is greater.

Citizen-initiated municipal referendums must demand something within the jurisdiction of the municipality, and cannot commit



The stepping stone (speaker's platform) of the Pnyx in Athens. †

the municipality to create new taxes or spend money.

Interestingly, Saskatchewan is one of the few provinces that also gives its voters the power to create a province-wide plebiscite. Citizens first must circulate a petition that spells out the proposed plebiscite question. If the question falls within the

province's jurisdiction, and at least 15% of voters sign the petition, the government must hold a vote.

Even though Saskatchewan citizens have had the right to initiate provincial plebiscites since 1991, to date there has yet to be a provincial, citizen-initiated plebiscite. 🇺🇸



Protests in Spain followed the government's refusal to recognise the legitimacy of Catalonia's 2017 independence referendum. †

THINK

1. Is it a good idea to allow people to directly decide laws? Explain.
2. Many Athenians remained silent during debates. Silence can be both useful and harmful. Think about remaining silent in a debate.
 - a) Can you properly contribute to a debate without also listening to all perspectives?
 - b) Why do some people remain silent during debates?
3. Can direct democracy today be a way for average citizens to check the power of elites?
4. Is the majority always right?

PLEBISCITE OR REFERENDUM?

Plebiscites and referendums both give people the opportunity to directly vote on an issue. However, they are not the same.

A plebiscite is not legally binding. The government is only required to consider the results of the vote.

A referendum is legally binding. The government must do what the people decide.

Even though plebiscites are not binding, they can be very useful. Plebiscites measure the public mood, and provide advice on how a government should proceed. Any government that does not follow the will of the people must carefully explain their reasoning, or risk being thrown out of office in the next election.

However, critics point out that because the government does not have to act on the results, plebiscites are technically not a form of direct democracy. Political scientist Don Rowat has instead called plebiscites “merely a kind of expensive public opinion poll.”

Saskatchewan's History of Direct Democracy

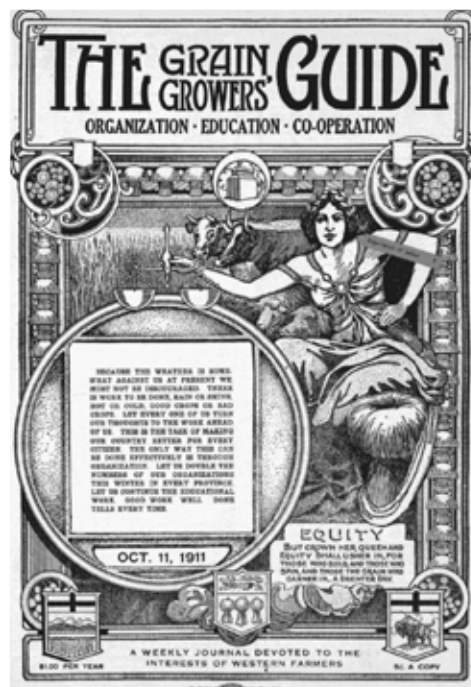
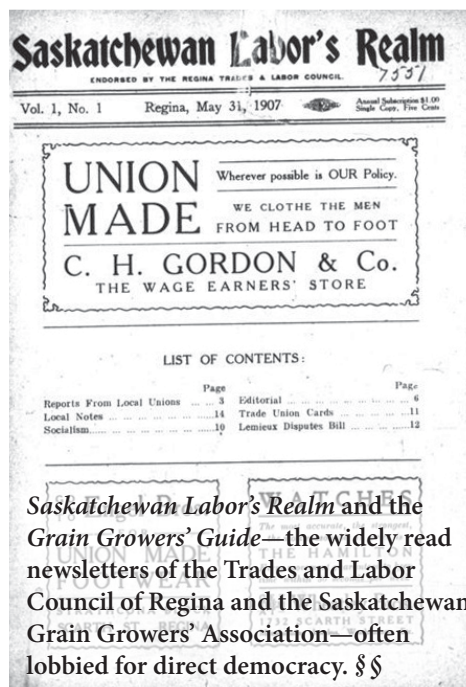
A century ago, direct democracy almost became the way we make laws in Saskatchewan.

In the late 1800s, many midwestern Americans were demanding ways to keep the elite in check. Politicians listened, and by 1911 thirteen states legislated forms of direct democracy. There were three common types:

- Recalls: a vote on whether or not to remove a sitting politician from office.
- Initiatives: a vote to approve or reject a law proposed by a citizen.
- Referendums: a vote to approve or reject a law passed by the government.

To trigger a recall, initiative, or a referendum, people would circulate a petition. If enough signatures were collected (usually around 8-10% of voters), a vote would be held.

American zeal for direct democracy crept into Saskatchewan. The Trades and Labor Council of Regina and the Saskatchewan Grain Growers' Association began to lobby for direct democracy. Politicians heard the demands, and in the 1912 provincial election both Liberals and Conservatives promised some form of direct democracy.



Liberals won the election, but were uneasy about direct democracy. They feared that it gave the masses too much power. Premier Walter Scott privately asked party representatives to pour cold water on the idea at local constituency meetings.

Nevertheless, an election promise cannot be easily thrown away. So Liberals introduced *The Direct Legislation Act*. The bill received unanimous approval by all parties in the 1912-1913 legislative session.

The Direct Legislation Act allowed for referendums and initiatives, with the following requirements:

- Referendums: if the signatures of 5% of the population were collected within 90 days of a law being passed, the government would have to put the

law directly to the people for a vote of approval.

- Initiatives: if a citizen proposed a law and collected the signatures of 8% of the population, the government could either instate the proposed law at the next legislative session, or put the proposed law to a public vote for approval.

Under the legislation, citizens could not use direct democracy powers to force the government to spend money, nor could they force the government to change tax laws.

The powers in *The Direct Legislation Act* were not immediately put into effect. Instead, a referendum was held. If at least half the ballots were cast in favour, and at least 30% of Saskatchewan's 161,561 eligible voters showed up to cast a ballot

WHY DIRECT DEMOCRACY?

There are many reasons why citizens should directly decide an issue.

Sometimes an issue is so foundational, it can be difficult for the government to move forward without a clear mandate from the people. A good example is the 1992 proposal to amend Canada's constitution. Every major political party was in favour. However, the general feeling was that Canadians themselves should decide through a referendum. A referendum ensured that our highest law would change only if a majority of Canadian citizens approved.

Other times, an issue does not fit into party politics. For example, in the early 20th century opinion was divided on prohibiting alcohol. Political parties were reluctant to take a firm stand, because no consensus existed amongst party members or party supporters. To break the gridlock, the people were asked to decide. This helped keep political parties united, and ensured the majority would get its way.

Regardless of the reason for holding a plebiscite or referendum, they can be a useful decision-making tool.

in favour, there would be direct democracy in Saskatchewan.

The government suppressed voter turnout by scheduling the referendum at the tail-end of the busy harvest season, in November 1913. This gave supporters little time to drum up interest. As well, the government did the bare minimum to promote the referendum.

On referendum day, 32,133 ballots were cast. 26,696 votes in favour (83%), 4,897 votes against (15%), and 540 spoiled ballots. Despite

the landslide of votes in favour, the voter turnout threshold was not met: only 16.5% of *all* voters in the province said yes to direct democracy. *The Direct Legislation Act* never came into force.

After the referendum, Premier Scott said "The notable lack of interest taken in the matter as disclosed by the poll goes to show that the people of this Province are not sufficiently advanced to have the laws of the Province made under the plan of Direct Legislation." His message was clear: citizens were

not interested enough in direct democracy to make it workable.

Despite Scott's dislike of direct democracy, his government called a referendum on prohibition in 1916. In fact, since the rejection of *The Direct Legislation Act*, the province has initiated eight plebiscites and referendums. However, it would not be until 1991 that Saskatchewan voters were given the power to force a provincial vote with the passage of *The Referendum and Plebiscite Act*. 🇩🇪

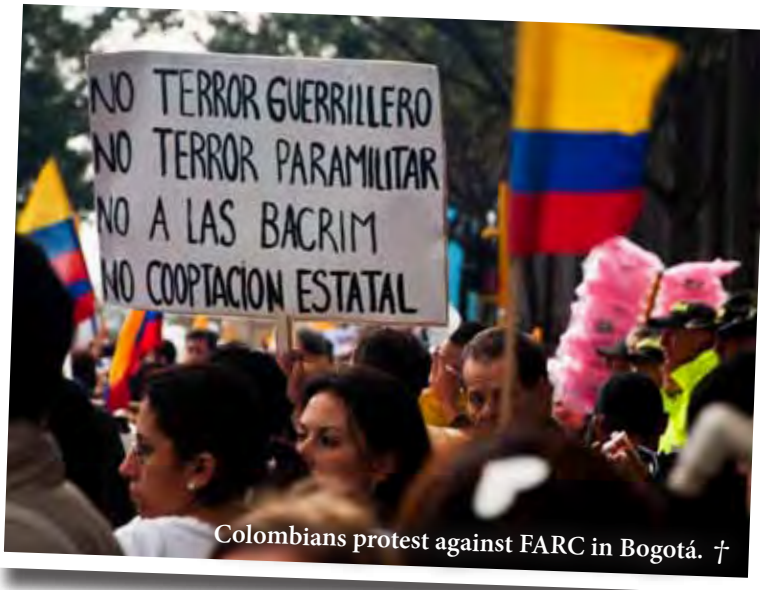
THINK

1. Was it reasonable to require a minimum voter turnout to make *The Direct Legislation Act* the law? Is a law legitimate if it does not have the expressed support of most people?
2. Did the 1913 referendum's low voter turnout suggest that direct democracy gives too much power to a motivated minority?
3. It has been said that if somebody sits out an election, they are willing to accept the decision of those who go out and vote. Discuss this statement.

Democracy

People do not cast votes with the intention of making the *wrong* decision. People vote for what they believe to be right. When every vote is counted, the results are said to be the best way forward. In other words, democracy is a belief that the collective will of the majority is smarter than the judgment of any one individual.

Nevertheless, direct democracy occasionally produces head-scratching results. Consider the following referendums and plebiscites. Each of them involved complex considerations, meaning people had compelling reasons to vote the way they did. However, the results give reason to ask: does direct democracy always produce the *wisest* possible decision?



Colombians protest against FARC in Bogotá. †

Rejected Peace

For five decades, Colombia's government fought a civil war with the Revolutionary Armed Forces of Colombia (FARC). When the two sides brokered a peace deal in 2016, citizens were asked to approve or reject the deal. Opinion polls throughout the plebiscite campaign showed overwhelming support for approval. However, on voting day 50.2% voted against the peace deal.

Voter turnout was only 37%. A few issues may have lowered turnout. The seemingly inevitable victory for peace may have kept unmotivated voters at home. As well, storms and heavy rains on voting day made travel especially cumbersome. In some areas roads were completely impassable.

Would an unexpected event such as a major storm justify postponing a vote?

Approved Dictators

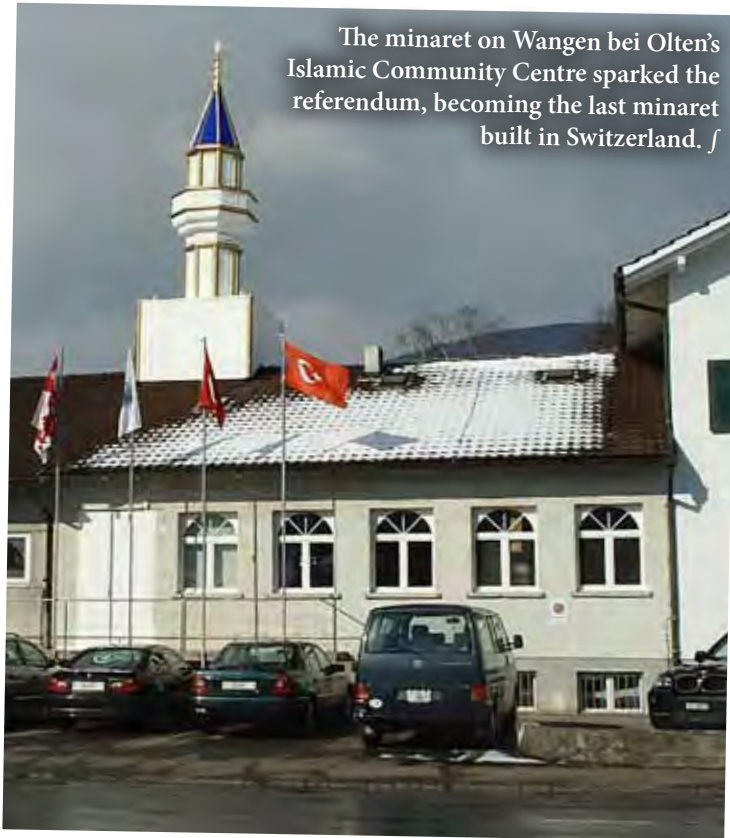
Perhaps the worst referendum result ever was in Nazi Germany. Adolf Hitler's last obstacle to absolute power was Germany's President, who had constitutional authority over Hitler. When German president Paul von Hindenburg passed away in 1934, Hitler simply declared himself President, Chancellor, and Head of the Military.

To validate the move, Hitler held a referendum. 88% of Germans approved. To be sure, the referendum was fraught with problems such as voter intimidation and questionable ballot-counting. Nevertheless, historian Ian Kershaw believes that the majority of Germans supported Hitler, meaning had the vote been free and fair the referendum would still have passed.

Do people cast ballots based on issues or personalities?



Berlin, 1933. The Nazi-dominated German Student Union held book burnings in an attempt to purge "un-German" ideas. ‡



Aborted Results

Abortions are funded through the public health care system. In 1991, Saskatchewan's Progressive Conservative government held a plebiscite on whether the procedure should be publicly funded. The plebiscite was held in conjunction with the provincial election. The PCs lost the election, but their plebiscite question won in a landslide: 63% favoured defunding abortions.

The incoming New Democrat government chose to not honour the results. At first, this may seem anti-democratic. Outgoing premier Grant Devine said "to ignore such an overwhelming demonstration of public will would be to disregard a fundamental element of democracy." Saskatchewan's new health minister, Louise Simard, countered that "we owe it to the people to take a detailed look at all the legal and constitutional ramifications." It was ultimately determined that—moral and ethical issues aside—defunding abortions would violate the *Canada Health Act* and may very well be a violation of the *Charter of Rights and Freedoms*, and it could possibly give rise to private health clinics performing the procedure.

Should a plebiscite or referendum be held if its legal and constitutional ramifications have not yet been fully considered?

Banned Freedoms

Minarets are towers on mosques, somewhat similar to church steeples. When Switzerland's highest court affirmed the right to construct minarets in that country, aggrieved citizens forced a nationwide constitutional referendum on whether or not to ban minarets. While the debate was ostensibly about architecture, critics charged that the 2009 referendum was an emotionally-charged attempt to send a message about what religions are acceptable in Switzerland.

Citizens voted 57.5% in favour of the ban. Switzerland's government did not like the result, but was required by law to change the constitution. The Swiss constitution now reads "Freedom of religion and conscience is guaranteed.... The construction of Minarets is prohibited." The contradiction between these two statements is obvious.

If an issue is emotionally charged, is it a good idea to decide the issue by referendum?



Do the People Know Best?

Making democratic decisions is not easy. Even if we have the time, will we have enough good information?

During a referendum, organised campaigns usually form on each side of the issue.

Each campaign seeks your vote. They provide facts, appeal to your emotions, and undermine the arguments of the opposing side.

Each campaign's information is a good starting point to make a decision. When looking at the information, try to give each side a fair hearing. After all, few issues are a simple matter of one side being right and one side being wrong. Even if you disagree with one side's stance, hearing them out in their own words lets you better understand their view.

Giving each campaign a fair hearing is only the beginning. A *truly informed* decision requires that we seek out information beyond the campaign messages.

Consider ways we gather information, from mainstream news to friends on social media. Every source has some bias. Sometimes the bias is strong. For example, some talk radio hosts loudly argue their point of view without giving equal air time to contrary opinions. Sometimes the bias is minimal. For example, many journalists try hard to put aside their personal beliefs and present diverse views.



British newspaper front pages on the day of the 2016 Brexit referendum on European Union membership. Most newspapers took a stand on how people should vote. †

No matter how much time we spend, nobody can sift through all the available information. At some point we need to weigh the arguments, then make our own decision.

Avoiding Pitfalls

Because the amount of information available can be overwhelming, we occasionally use shortcuts to make decisions. Shortcuts include relying on soundbites or simplistic tweets, uncritically accepting the opinions of people we usually agree with, or even things as silly as judging physical appearances.

Shortcuts help us make a quick conclusion. But shortcuts do not challenge us to think. Rather, they provide us with a lazy opinion.

Lazy opinions can also be formed due to something called confirmation bias. Confirmation bias is when people focus on information that reinforces their existing beliefs, and ignore information that challenges these beliefs.

Social media users are especially vulnerable to confirmation bias. There can be no doubt that social media has benefitted everyone by giving greater voice to marginalised people. Unfortunately, studies show that social media users tend to congregate in like-minded groups called echo chambers. In an echo chamber, users post and promote opinions they agree with. Meanwhile, alternative views are lacking. When people step out of their echo chamber, it is often not

to engage with the other side but rather to disparage them.

Echo chambers can divide us into small homogenous groups, rather than unite us as a diverse society. This is bad for democracy. Recall that in ancient Greece, all citizens assembled together in a public square to discuss, debate, and ultimately vote on issues.

By hearing each other out we have the opportunity to see things from the point of view of the people we agree with *and* the people we disagree with. This allows everyone the opportunity to gather diverse information, then make informed decisions. Just as importantly, it requires that we face up to the negative consequences of our beliefs. It is an opportunity to build empathy and understanding with those we disagree with, and make fair decisions that benefit all of society.

We Are Smart Enough to Govern Ourselves

Sometimes, we poorly gather and use information. Occasionally, we act out of narrow self-interest. Now and then, we let emotions override rationality. And often, we make honest mistakes. Little wonder that democracy is not perfect.

**CONFIRMATION
BIAS IS WHEN
PEOPLE FOCUS
ON INFORMATION
THAT REINFORCES
THEIR EXISTING
BELIEFS, AND IGNORE
INFORMATION THAT
CHALLENGES THESE
BELIEFS.**

Fortunately, everyone is capable of making good democratic decisions. And more often than not, democracy produces the right decision. However, democracy can only work if we fully consider

issues through a broad range of perspectives and make decisions with the public good in mind. 🧠

THINK

1. Consider these three pitfalls associated with forming opinions:
 - shortcuts
 - confirmation bias
 - echo chambers

What can you do to avoid these pitfalls?

2. Why is a sense of human decency necessary for making good democratic decisions?

THE PERCEPTION GAP

A recent American study, *The Perception Gap*, contends that the more partisan and politically active people are, the more they misunderstand the values of their political opponents.

Perhaps not surprisingly, people who post political content on social media tend to have the most distorted understanding of the other side. Curiously, the study also shows that the less news a person consumes, the better they will understand their opponents. Meanwhile, an “exhausted majority” of Americans simply have become frustrated with politics.

The study’s authors fear that misunderstanding and demonising political opponents is dangerous for society. The authors warn: “They start seeing each other as enemies, and start believing they need to win at all costs. They make excuses for their own side cheating and breaking the rules to beat the other side. And as our public debates become more hateful, many in the Exhausted Majority tune out altogether. This is how countries fall into a cycle of deepening polarization, and how democracies die.”

Further Resources



REVOLUTION

Learn how revolutions overturn laws and institutions.



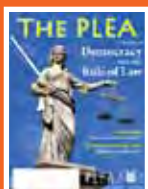
THE NAZI SATIRE PROJECT

Learn how Nazi Germany used satire to cast certain citizens as “others.”



HAMMURABI'S CODE

Learn about the origin of western legal systems and how they compare to Indigenous law.



DEMOCRACY AND THE RULE OF LAW

Learn how the rule of law supports democracy, and democracy supports the rule of law.



70 YEARS OF THE BOMB

Learn about the most powerful weapon ever created.



COMING SOON: OUR GOVERNMENT OUR ELECTION 20/20

Saskatchewan's definitive guide to government, politics, and elections will be fully updated for the coming provincial election. Available fall 2020.

DIRECT DEMOCRACY: PLEBISCITES AND REFERENDUMS

This full-length learning resource expands on the ideas of direct democracy. Perfect for senior Law and Social Studies courses, its lessons include step-by-step instructions, student handouts, and case studies.



Download or order copies on our new website: teachers.plea.org

Most of us prefer to surround ourselves with opinions that validate what we already believe. You notice the people who you think are smart are the people who agree with you. Funny how that works. But democracy demands that we're able also to get inside the reality of people who are different than us so we can understand their point of view. Maybe we can change their minds, but maybe they'll change ours. And you can't do this if you just out of hand disregard what your opponents have to say from the start.

– Barack Obama, from the 2018 Nelson Mandela Annual Lecture

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