



PERSPECTIVE

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Lessons in Direct Democracy from New Zealand

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INTRODUCTION

One recurring debate in political science is whether representative democracy is at best just a substitute for direct democracy, or is valuable in its own right.¹ Some, however, have gone beyond this first-best versus second-best contest, and argue that in a modern democracy, there is a place for both forms: each may complement the other.²

Political concern over public disengagement in British politics is now widespread across all political parties. Prime Minister Gordon Brown's recent constitutional reform proposals,³ the findings of the cross-party Power Commission⁴ and the Conservative Party's policy reviews have all considered ways of increasing the range of opportunities for citizens to become involved in government.⁵

If it is accepted that trust in British politics is at a particularly low point, then it may be useful to take a look at how a similar popular distrust in politics was reversed in New Zealand. There, low ratings have been transformed, not least by the introduction of citizens' referendums.⁶

New Zealand provides a useful model for the UK. It is a unitary island state with a Westminster-style democracy and a mixed market economy. It therefore has more in common constitutionally with Britain than Switzerland and those US states which are perhaps better known as practitioners of citizens' referendums.

New Zealand introduced citizens' referendums in 1993. The past 14 years provide a valuable insight – for politicians of every political party in the UK – into how referendums helped to improve the levels of political engagement in, and satisfaction with, politics in New Zealand.⁷

¹ G Brennan and A Hamlin "On Political Representation", *British Journal of Political Science*, 1999.

² Chris Fletcher MP, Vol 522 New Zealand Parliamentary Debates 6713, 10 March 1992.

³ Gordon Brown, *The Governance of Britain*, Cm 7170, July 2007.

⁴ Power Commission, *Power to the People*, 2006. Note that this authoritative cross-party Commission concluded that: "the public should be given the right to initiate legislative processes."

⁵ See for example David Cameron's comments made at the Launch of the Conservative Party's Stand Up Speak Up campaign: "I want us to end the age of top-down, 'we know best' politics.

Politics should be bottom-up and open – driven by the passions and priorities of the public." See www.conservatives.com

⁶ For an introduction to citizens' initiatives, see M Qvortrup, *Supply Side Politics*, Centre for Policy Studies, 2007.

⁷ This report draws on the author's works in this area: "Prospects for Direct Democracy in New Zealand" in Jau-Yuan Hwang (ed.) *Direct Democracy in Asia*, Taiwan Foundation for Democracy, 2006; "Improving our democracy or a fraud on the community? A closer look at New Zealand's Citizens Initiated Referenda Act 1993", *Statute Law Review*, 2004; and "Citizens' Referenda: time for review?", *New Zealand Law Journal*, 2002.

THE NEW ZEALAND EXPERIENCE

Low public trust in politics in the 1990s

Extensive economic liberalisation in the 1980s in New Zealand had left large sectors of the population feeling disaffected and powerless. A number of democratic reforms were passed in the early 1990s, all aimed at restoring public trust and confidence in government. These included:

- a change from the First-Past-the-Post electoral system to a Mixed Member Proportional system (MMP) – a similar method to the AMS used in the Scottish and Welsh Assemblies);
- a strengthening of human rights laws;
- a proposal (later abandoned) to reintroduce a second legislative chamber;
- and, the enactment in 1993 of the Citizens Initiative Referenda Act.

At the time of its enactment, a survey carried out by the New Zealand Election Study (NZES) at Waikato University revealed that 63% of respondents agreed with the proposition that: “People like me have no say”; 66% said that “Politicians don’t care what people think”; and only 31% said that you could “trust government to do what is right”.⁸ This came on the heels of a report that New Zealanders’ level of trust and confidence in politicians had declined from 32% in 1975 to 4% in 1992.⁹

⁸ New Zealand Election Study, Political Efficacy Over Time” survey. See www.nzes.org/docs/Efficacy_Questions.pdf

⁹ Heylen Research Centre, *Full Trust and Confidence Poll* reported in A McRobie, “Final

How referendums work in New Zealand

The Citizens’ Initiated Referenda Act (CIR) itself is a relatively simple law. Anyone may propose, by petition, the holding of a referendum on almost any topic.¹⁰ Once the question in its final form is determined by the Clerk of the House of Representatives, and the required number of signatures are gathered (10% of enrolled electors), then the government is obliged to hold the referendum within 12 months

of the petition being presented to Parliament. However, the government is not obliged to act on the results. Spending caps limit the amount that can be spent by either promoters or detractors of the proposition to NZ\$50,000 (about £20,000). There are no provisions for government-sponsored information campaigns. Since 2000, the Referenda (Postal Voting) Act provides that voting take place over a period of several weeks via post.

Only three petition questions have made it

through this process in the last 14 years.¹¹ These were a debate about firefighter numbers, a proposal to reduce the number of MPs from 120 to 99, and a wide-ranging question on criminal justice reform. The first was held in 1995 and the latter two in

The enactment of the Citizens’ Initiated Referenda Act of 1993 was part of a series of democratic reforms aimed at restoring public trust and confidence in government. This came after polls had found that trust in politicians had fallen from 32% in 1975 to 4% in 1992.

and Binding: the 1993 Electoral Referendum” in J Vowles and P Aimer (eds), *Double Decision* Victoria University of Wellington 1994.

¹⁰ The only subjects on which referendums *cannot* be held are: inquiries into the way a previous CIR Act referendum was conducted; the challenging of an election result; and those questions which have already been the subject of a referendum ‘of like effect’ under the CIR Act.

¹¹ See Appendix I for details.



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conjunction with the 1999 general election. Each passed overwhelmingly. Nevertheless, the Government refused outright to respond to the firefighters' referendum, passed the issue of the MP numbers to an electoral reform review committee (which recommended no action because it could not agree) and made some minor changes to sentencing and parole provisions in response to the third referendum.

Given the atmosphere of disenfranchisement which prevailed around the time the CIR Act was passed, one would think that these actions would only deepen the democratic malaise.

However, apart from a blip in 1998 caused by some surprising political coalitions after the first MMP election, the NZES survey reveals a closing of the "democratic deficit" from 1993 to 2005. By 2005, the proportion of people agreed with the proposition that "People like me have no say" had fallen to 48%; those who believed that "Politicians don't care what people think" was down to 44%; and 45% now said that you could "trust government to do what is right".¹² Compare this to the situation in the UK, where in a 2005 poll less than half that number – 22% - said that government could be trusted.¹³

It seems that the introduction of citizens' initiated referendums has, as hoped, been paralleled by an increase in confidence in government, and an upswing in citizens' sense of efficacy. However, it would be simplistic to attribute this to the operation

of the CIR Act itself.¹⁴ Only three referendums have been held, none in the last eight years, and the government response has been minimal. However, when asking specific questions about the operation of the CIR Act, the NZES found that by 1999, New Zealanders were roughly split on whether the results should become

law and tended to agree that the final decision should be with Parliament. Thus, the fact that referendum results were not being implemented to the letter, if at all, was not a major source of concern.

What then is the value of these sorts of referendums, and how have they contributed to this improvement in democratic confidence? The NZES survey reproduced in the Appendix

gives some clue: referendums are seen not as a means of making law, but as a way to place items on the policy agenda, a way to let politicians know what was of concern to the public. New Zealanders are not necessarily concerned that their voice is not acted on – what matters is the opportunity to voice those opinions in the first place.

This phenomenon of policy agenda placement can be seen on a few occasions after the double referendums of 1999, after which the presentation of petition questions to the Clerk of the House suffered a marked decline. For example, in 2000 only three petition questions were submitted; two lapsed, and the other was withdrawn. In 2001 two questions were submitted; both have lapsed. In 2002, not one question was submitted. This compares to 18 petition questions

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¹² New Zealand Election Study, above.

¹³ MORI Opinion of Professions Poll, 2005, at <http://www.ipsos-mori.com/trust/truth.shtml>

¹⁴ The passage of time, lessening the impact of economic reforms and the increasing experience of proportional representation are no doubt also factors.



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submitted in the first 18 months of the CIR Act's coming into force.

In its place, people have begun to use the initial stages of the CIR process to alert the government to their feelings on an issue (or indeed, to let the government know that a particular matter is an issue for the public, even though it may not be on the government's policy radar).

For example, in 2005, a petition began circulating on holding a referendum on changing the New Zealand flag. However, it lapsed after major corporate supporters, the Government-owned NZ Telecom and NZ Post, withdrew their logistical assistance. Yet the initial strong surge in support for the petition and the accompanying media attention still contributed significantly to the debate about New Zealand identity and its manifestations.

More recently, in May of this year the New Zealand Parliament voted to remove a section from the Crimes Act which allowed a defence of "reasonable force" when disciplining a child. This blanket removal was portrayed in the House of Representatives by its detractors as the outlawing of light smacking by ordinary parents, and by its promoters as protecting children from adult force. The months preceding the vote were highly fraught, and the issue very divisive. Public opinion polls revealed that 82% of New Zealanders either disagreed or strongly disagreed with the proposed amendment.¹⁵ In some parts of the country, opposition ran as high as

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95%.¹⁶ In April a movement called Family Integrity began threatening to launch a CIR petition against the proposed legislative change. Within six weeks it had already gathered half of the 300,000 signatures required to force a referendum.¹⁷ The Bill was quickly

amended to insert a police discretion not to prosecute a parent smacking a child where "the offence is considered to be so inconsequential that there is no public interest in proceeding with a prosecution". This compromise smoothed over the divisions between parties which were hindering the passage of the Bill and it

passed almost unanimously.¹⁸

The CIR Act seems to have become another conduit for people to express their opinions to government. Not only that, it can be used outside the electoral cycle. There is also almost no restriction on the opinions which can be voiced. It thus acts as a vent for public opinion, in a more formalised way than an opinion poll or a focus group. The fact that referendum results have not been acted on does not appear to trouble New Zealanders; they have seen that beginning the referendum process can trigger a political response.

LESSONS FOR BRITAIN

Referendums have been considered as beneficial to the democratic process for the following reasons:

¹⁵ Research New Zealand poll reported in "Only 18% of Kiwis Support 'Anti-Smacking' Bill", *Scoop*, 26 March 2007.

¹⁶ Research New Zealand poll, above.

¹⁷ "CIR Petition Passes Half-Way Mark In Only 6 Weeks" *Scoop*, 16 April 2007.

¹⁸ A Young "The Smacking Bill: Word here, nod there, deal done" *NZ Herald*, 3 May 2007.



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- government decisions may have greater legitimacy and acceptance when endorsed by popular referendum;
- referendums may act as a restraint on abuses of power;
- referendums provide another opportunity for participation in government, thus increasing political engagement and reducing alienation.

Any country considering implementing citizens' referendum legislation must tread carefully. What the New Zealand experiment has illustrated is that while referendums can be part of a parcel of reforms aimed at addressing democratic discontent, referendum legislation needs careful drafting if it is to be truly effective. As the New Zealand experience shows, it is simplistic to think that referendums will automatically increase widespread involvement in the political process. The New Zealand example indicates that referendums may work in a previously unexpected way and may in fact end up being used for their potential influence more than their real influence.

Proposals to introduce a system of citizens' referendums will need to address the following issues:

Are referendums to be advisory only or binding?

The degree to which a government is obliged to respond to a referendum depends to a considerable degree on a number of factors, outlined below. Whether or not a referendum question is clear-cut, endorsed by a significant number, and refers only to a single subject, may well affect a government's obligation or willingness to respond.

The number of people voting in the referendum, and the proportions in favour or against

On this point, the New Zealand Government's lack of response to the firefighters' numbers referendum can be

traced in part to the 27% turnout. The lack of interest from the NZ public gave the Government the confidence to ignore the result. In contrast, the high levels of support for the 1999 referendums did see the government respond. One matter that was not addressed in New Zealand was whether a threshold vote of more than 50% (such as 65% or 75%) should be required for a government response. This is worth considering as it allows for a more nuanced analysis of the result.

The degree to which any question put in a referendum is easily comprehensible, and refers to only one issue

For example, the earlier reference to the 1999 criminal justice referendum glosses over the actual question which read:

“Should there be a reform of our justice system placing greater emphasis on the needs of victims, providing restitution and compensation for them and imposing minimum sentences and hard labour for all serious violent offences?”

Not only can this be read as five separate questions,¹⁹ it is difficult for any government to know how to interpret the results so as to be able to respond to them. Did a “yes” vote indicate endorsement of each of the elements of the question, or only some of them? Was it more of an expression of frustration with the criminal justice system generally? Had these questions been severable, the government could have seen the exact level of support for each element, and given them priority accordingly.

In the end, the New Zealand Government took the 92% vote as an indication that parole provisions were in need of reform

¹⁹ See J Hoek, P Gendall, and A Willis, “Respondent Understanding of the 1999 Referendum Question on a Reform of the New Zealand Justice System”, *Australian Journal of Political Science*, 2002.



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and enacted the Sentencing and Parole Reform Act 2001 (the petition promoter's mother had been beaten with an iron bar by a former prisoner out on parole). Section 3(d) of the Act refers to one of its purposes as being "to recognise the interests of victims of crime and provide for reparation to those victims."

Whether the topic might be suitable for a referendum

Most jurisdictions with referendums have some restrictions on the type of questions that can be put to the public vote. Typical of off-limits issues are taxation or appropriation matters, creating new courts or altering the jurisdiction of current ones, the questioning of court decisions, or attacking current constitutional provisions – in short, anything which might undermine the independent workings of the government or democratic system. In contrast, New Zealand only restricts the questioning of election contests, and repeats of previous CIR Act referendums.

One of the referendum questions put in 1999 asked whether the number of MPs should be reduced from 120 to 99 (the number under the previous First-Past-the-Post system). Although it also passed overwhelmingly (82%), the Government was left with a dilemma over responding to the result. If it went ahead and cut MP numbers, this would have severely undermined the practical operation of the electoral system, and created a number of flow-on problems for boundary maps and the allocation of party funding. Most significantly, if it were enacted it would suggest that Parliament in its present form was not legitimate (despite the introduction of proportional representation having been endorsed in a binding government-initiated referendum only six years earlier). If it were not passed, it risked perpetuating public discontent with the political system and its

actors. Furthermore, any political meddling with the electoral system risked charges of self-interest and bias.

Eventually, the Government referred the issue to the MMP Review Committee, a select committee set up in 2000 to review various matters relating to the electoral system. The original petition proposer gave evidence before the Committee, where it transpired that her real concern was not the number of MPs, but their behaviour. The Committee made no recommendation on the appropriate number of MPs, but the issue was lodged in the parliamentary consciousness. In June 2007, the four smaller parties in the New Zealand Parliament collaborated on a Code of Conduct for MPs. This was endorsed by the Speaker. This again demonstrates the use of a CIR as a policy agenda positioning device.

CONCLUSION

Improving opportunities for direct democracy usually comes as part of a desire to close the democratic deficit and improve people's engagement, trust and interest in the political system. However, any direct democracy measure must obviously be carefully planned if it is to become a functioning part of a nation's constitutional design.

While those searching for a model might turn to New Zealand, its Citizens' Initiated Referenda Act has flaws which have played a part in its underuse in recent years. Despite this, its introduction has coincided with an increase in trust and confidence in the political process. As New Zealand's experience has shown, sometimes citizens' referendums achieve their intended purpose in unexpected ways.



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APPENDIX

A. ATTITUDES TO CITIZENS' INITIATIVES

1. Should Results of Citizen Initiated Referenda be Legislated by Parliament?

Question:	Agree	Neutral	Disagree	Don't Know
Referendums are too complicated for the average voter:	19%	13%	60%	8%
Citizen Initiated Referenda enable citizens to get the politicians' attention:	77%	7%	38%	13%
Results of Citizen Initiated Referenda should automatically become law:	30%	19%	38%	13%
Parliament, not voters, should make final decision about law and politics:	47%	12%	32%	9%

Source: www.nzes.org

2. Survey Results for trust in the political process, 1993 and 2005.

	Agree 1993	Agree 2005
"People like me have no say"	63%	48%
"Politicians don't care what people think"	66%	44%
"I can trust government to do what is right"	31%	45%

Source: www.nzes.org

B. THE THREE QUESTIONS TO HAVE BEEN ASKED IN CITIZENS' REFERENDUMS

"Should the number of professional firefighters employed full-time in the New Zealand Fire Service be reduced below the number employed in 1 January 1995?"

Held on: 2 December 1995

Turnout: 27%

Result: Yes 12.2% No 87.8%

"Should there be a reform of our justice system placing greater emphasis on the needs of victims, providing restitution and compensation for them and imposing minimum sentences and hard labour for all serious violent offences?"

Held on: 27 November 1999

Turnout: 84.8%

Result: Yes 91.78% No 8.22%

"Should the size of the House of Representatives be reduced from 120 members to 99 members?"

Held on: 27 November 1999

Turnout: 84.8%

Result: Yes 81.47% No 18.53%

Source: S Church "Crime and Punishment: The Referenda to Reform the Criminal Justice System and Reduce the Size of Parliament" in J Boston et al (eds) *LeftTurn: The New Zealand General Election of 1999* (Victoria University of Wellington Press, Wellington, 2000) and www.elections.govt.nz



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