



# Supply Side Politics

*How Citizens' Initiatives could revitalise British politics*

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WITH A FOREWORD BY SAIRA KHAN

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## FOREWORD

THERE IS A SERIOUS AND DEEP-SEATED MALAISE affecting democracy in Britain.

Turnout at national and local elections is falling, membership of political parties is at an all-time low and disillusionment and mistrust of our political institutions is considerable. There is widespread consensus among politicians in every party that action is required to tackle these problems.

Last year, the cross-party Power Inquiry published a wide-ranging report examining the underlying causes of the discontent with our democracy.<sup>1</sup> Its conclusions were stark: that the problems were deeply ingrained and required sustained action to begin to reverse the disengagement that besets politics at every level. At the heart of the report's critique was the idea that citizens were turning their backs on traditional political participation because they believed they had no real influence over decisions. It recommended a range of measures to combat this problem but one idea stood out as having the potential to revolutionise how politics works in Britain: namely that "citizens should be given the right to initiate legislative processes".<sup>3</sup>

Known primarily from the US and Switzerland, the Citizens' Initiative is a mechanism that allows the citizens themselves to

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<sup>1</sup> The Power Inquiry, *Power to the People*, Joseph Rowntree Charitable Trust, 2006.

<sup>3</sup> Ibid.

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trigger a referendum on any issue, subject only to achieving a set number of signatures on a petition. This pamphlet presents an overview of the history of the Citizens' Initiative elsewhere in the world, followed by an empirical assessment of the advantages and disadvantages of its use, including the policy implications.

Supply-side economics argues that a supply creates its own demand. Can we also talk of supply-side politics? This paper demonstrates that a supply of democratic institutions could create a demand for democracy by showing that the use of Initiatives leads to greater participation and interest in politics.

This could therefore be an important step in restoring faith in British democracy.

**Saira Khan**

**Chair**

**OUR SAY campaign**

**[www.our-say.org](http://www.our-say.org)**

**February 2007**

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## SUMMARY

- A “Citizens’ Initiative” differs from a referendum in that it allows voters to propose and to vote on legislation. It can therefore be used to by-pass the legislature.
- The Citizens’ Initiative has been in widespread use in 24 of the 50 states of the US and in Switzerland. In addition, Austria, Italy and New Zealand have a version of the Citizens’ Initiative; and since the fall of the Berlin Wall, it has been introduced in Hungary, Latvia, Lithuania, Slovakia, Slovenia and the Ukraine.
- While Initiatives have been used sparingly in other parts of the world, they have become an integral part of US political life. Major issues such as tax reduction, education policy, healthcare reform and, more recently, environmental issues have been put on the ballot.
- In the US and elsewhere, the evidence suggests that laws enacted as a result of Citizens’ Initiatives are, at the very least, as carefully considered, debated and drafted as those passed through the standard legislative process.
- Similarly, there is little evidence of “populist capture”. Minority rights are no more threatened by the Citizens’ Initiative than they are by representative organisations.

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- Citizens' Initiatives tend to encourage greater overall voter participation. The empirical evidence is that voter turnout is 5% higher in those US states which use the Initiative than in those states which do not.
- In Britain, at a time of widespread disenchantment with the political process, the introduction of the Citizens' Initiative could help to re-engage a greater number of the electorate, particularly on issues about which the public feel particularly strongly.
- However, the Citizens' Initiative is emphatically not intended to be an alternative to representative democracy. Government through elected representatives would remain the norm. Nor should it be considered as a panacea for all the problems afflicting British democracy.
- In the early 1980s, policy-makers spoke of supply-side economics. According to this law of political economics, 'a supply creates its own demand'. What was true for economics may also be true for democracy: a greater supply of democracy could create a demand for political participation.
- Keith Joseph – one of the early advocates of supply-side economics on the British political scene – stated: "if you take responsibility away from the people, you make them irresponsible". The opposite may be true: if you give people more responsibility, they may act more responsibly.
- In other countries, the centre-right has inspired the demand for the Citizens' Initiative: the Citizens' Initiative for property tax reduction in California in the 1970s and the National Party's campaign in New Zealand in the 1990s both lead the way.
- A quarter of a century after the heyday of supply-side economics, it may be time for supply-side politics.



## CHAPTER ONE

### INTRODUCTION

THERE IS A TENDENCY to use the term “referendum” indiscriminately. Yet the term covers many different types of mechanisms.

A referendum in its purest form is a people’s veto. In the UK, it allows people to vote on legislation before it receives Royal Assent, or becomes law. The referendum is – as a matter of logic – a conservative device. It allows the voters to say no.

It is important to distinguish between a referendum and the concept of a “Citizens’ Initiative” – which can be viewed as the exact opposite. The Citizens’ Initiative is a progressive instrument which allows citizens to propose and vote on legislation or the constitution – and thereby to by-pass the legislature.

It is also possible to distinguish between different forms of Citizens’ Initiative, namely:

- the constitutional Initiative which enables citizens to propose constitutional amendments;
- the direct legislative Initiative which enables the citizens to propose and vote on laws; and
- the indirect legislative Initiative which enables citizens to propose laws that will be voted on once they have been debated in the legislature.

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### Citizens' Initiatives in Europe

While referendums are widespread in Western democracies, the Citizens' Initiative is relatively rare. All but two of the countries in Europe (Belgium and Bosnia) have provisions for referendums in their constitutions, while the Initiative is in use in just six European countries.<sup>4</sup>

After the Second World War, no countries in Europe – with the exception of Switzerland – had the Initiative.<sup>5</sup> This changed after the fall of the Berlin Wall. Provisions for the Initiative have now been introduced in the Ukraine, Hungary, Latvia, Slovakia and Lithuania. Voters in Hungary, Lithuania and Slovakia, as well as in Italy and Slovenia, also have the right to demand a referendum on a decision made by the government. But the Initiative is still rare in long-established democracies. New Zealand, Switzerland and several US states are the only countries outside the former communist bloc which allow their citizens to initiate legislation at the national level.

In addition, in several countries, such as Austria and Italy, voters have a right to propose legislation, which will then be debated in Parliament. However, these – respectively *Volksbegehren* and *iniziativa di legge popolare* – are used sparingly. In Italy, this is because “Parliament is not obliged to put these either on the agenda or to a popular vote”<sup>6</sup> while in Austria, where 100,000 eligible voters may demand that a measure is debated in parliament, the *Nationalrat* “is in no way obliged to pass the

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<sup>4</sup> Britain is the odd one out here as it does not have a written constitution, and therefore no constitutional provisions for referendums. However, it is now recognised that ‘referendums [have become] the established vehicles for constitutional change.’ T Wright, *British Politics. A Very Short Introduction*, , Oxford University Press, 2003.

<sup>5</sup> In Switzerland, voters are only allowed to initiate constitutional changes. This requires the signatures of at least 100,000 citizens. See A Treschel and H Kriesi, ‘The Referendum as the Centre-Piece of Democracy’ in M Gallagher and P V Uleri (ed.s), *The Referendum Experience in Europe*, Macmillan, 1996.

<sup>6</sup> P V Uleri, ‘Italy: referendums and initiatives from the origins to the crisis of the republic’, in M Gallagher and P V Uleri (ed.s), op. cit.

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proposed legislation”.<sup>7</sup> Indeed, by the mid-1990s, only three out of a total of 16 petitions had “any effect on legislation”.<sup>8</sup> Citizens in Poland can also put forward legislation to be debated by Parliament and a similar provision was to have been part of the now defunct European Constitution.

In the UK, according to the ancient constitutional doctrine, the people are subjects, not citizens. The British constitution knows nothing of the people. Introducing the Citizens’ Initiative would, some argue, therefore be a colossal step. However, the Citizens’ Initiative already exists in the UK, albeit in an extremely restricted form: the Local Government Act 2000 granted voters in English and Welsh cities the right to demand a vote on whether to have an elected mayor. So far, only 35 cities have demanded such a referendum. Of course the right to demand a vote on one particular institutional change is a far cry from the right enjoyed by citizens in other countries. The experience shows that there is a precedent for citizen-initiated votes in the UK and that it has not encouraged a higher turnout in the cities where such polls have been held, possibly because the powers of the prospective mayors have been rather limited.<sup>10</sup>

While Initiatives in some of the Eastern and Central European countries have rarely succeeded due to harsh turnout requirements (see Chapter 4), there are some examples of high-profile legislation enacted as a result of a citizen-initiated process. For example, in 1996 citizens in Lithuania had the opportunity to vote on an Initiative which stipulated that “at least half of the [national] budget [must be allocated] to citizens’ social needs” (76% supported the proposal).

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<sup>7</sup> A Pelinka and S Greiderer ‘Austria: the referendum as an instrument of internationalisation’ in M Gallagher and P V Uleri (ed.s), op. cit.

<sup>8</sup> Ibid.

<sup>10</sup> C Copus, *Directly Elected Mayors*, Political Science Association, Annual Conference, 2006.

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**Table 1: Provisions for Initiatives in Western Democracies**

| Country     | Threshold | Type of Initiative           | No. of Initiatives |
|-------------|-----------|------------------------------|--------------------|
| Hungary     | 200,000   |                              | 1                  |
| Latvia      | 10%       | Constitutional & Legislative | 2                  |
| Lithuania   | 300,000   | Constitutional               | 6                  |
| New Zealand | 10 %      | Constitutional               | 2                  |
| Switzerland | 100,000   | Constitutional               | 145                |
| Slovakia    | 350,000   |                              | 4                  |
| Ukraine     | 3,000,000 | Legislative                  | 0                  |

Source: C2D-Geneva (C2D is a research centre on direct democracy and is part of the Department of Constitutional Law at the University of Geneva).

The situation is somewhat different in the US. Twenty-four out of the 50 states have provisions for Initiatives, though the provisions have been used with varying frequency (ostensibly due to different qualification requirements). While Initiatives have been used sparingly in other parts of the world, they have become an integral part of US political life, especially in the states on the Pacific coast such as Oregon, Washington and California. In these states, major issues like immigration, taxation and more recently environmental issues have been put on the ballot. This has generated considerable discussion about the pros and cons of this form of direct democracy.

Much has been written about the use of various types of referendums in the US and Switzerland.<sup>11</sup> But the system has been such a significant part of the two countries' cultures for so long that to assess the possible impact of the Citizens' Initiative on

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<sup>11</sup> See, for example, S Bowler and T Donovan, *Demanding Choices. Opinion, Voting and Direct Democracy*, University of Michigan Press, 1998; J F. Zimmerman, *The Initiative: Citizen Law-Making*, Praeger, 1999; and T Cronin, *Direct Democracy: The Politics of Initiative, Referendum and Recall*, Harvard University Press, 1989.

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Britain, it would also be useful to look at experiences in countries where the measure has been introduced more recently.

As David Butler and Austin Ranney noted in a pioneering study, there are “two worlds” of direct democracy:<sup>12</sup>

*On the one hand, in Switzerland, California, and a few other states of the American union, Initiatives and referendums are prominent strands in the fabric of political life. Their potential for making and unmaking policies is ever present in the minds of legislators and lobbyists. On the other hand, in other countries referendums [and Initiatives] are held infrequently.*

This is an important distinction. The introduction of the Initiative will not automatically result in a Swiss-style democracy. Indeed, it is possible to introduce the Initiative as a complement – and not as an alternative – to representative democracy. Before embarking upon an analysis of the implications of the Initiative for the UK, it is useful to consider its history elsewhere.

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<sup>12</sup> D Butler and A Ranney, ‘Summing Up’ in D Butler and A Ranney (ed.s), *Referendums: a study of practice and theory*, American Enterprise Institute, 1978.

## CHAPTER TWO

# THE HISTORY OF THE INITIATIVE

THE CRADLE OF DEMOCRACY, it is often said, stood in ancient Athens. While knowledge about the finer points of popular government in Greece 400BC is somewhat patchy, there is no doubt that the Athenians enjoyed considerable democratic freedoms. Among these, according to Aristotle, the citizens had the right to initiate legislation.

### **The origins of the Initiative**

The development of the Initiative probably emerged independently of this ancient philosophical tradition. Whereas the referendum can trace its intellectual pedigree to minds like Rousseau and Machiavelli, the Initiative was not the brainchild of a single great intellectual mastermind. It was – as befits a populist device – the product of practical, yet idealistic, reformers predominately in the US. These thinkers were, in turn, inspired by what they saw as the practice of democracy in Switzerland.

As was the case with the Athenians, the precise details of the early stages of Swiss direct democracy are unclear. Like the Greeks a millennium earlier, the Swiss citizens of the Middle Ages practised a system of direct democracy in which all (male) inhabitants from the age of 14 met to discuss and vote on local policy issues in a so-called *Landsgemeinde*. These discussions still exist today.<sup>13</sup>

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<sup>13</sup> S Möckli, *Direkte Demokratie. Ein internationaler Vergleich*, Haupt, 1994.

## THE HISTORY OF THE INITIATIVE

While the citizens had the right to initiate legislation, it was not until the 19<sup>th</sup> Century that the Swiss adopted the constitutional Initiative in its present form. In the period before the establishment of the Helvetic Confederation in 1848, the Initiative had already been discussed in France. In the 1793 Constitution, the Marquis de Condorcet had included a provision for a constitutional Initiative (Article 115). While this provision was never used, it nevertheless inspired the Swiss, who incorporated a similar mechanism into their constitution. Again the constitutional Initiative was sparingly used. Yet it in turn inspired the American Populists – a rural movement that flourished in the US from 1880 until 1910.

Committed to radical reform and opposed to ‘big business’, the Populists advocated state-ownership of the railways, anti-trust laws and a number of other radical measures. However, it was their commitment to institutional reform in the form of direct election of senators, primaries, and the introduction of the Initiative and the referendum that cemented their legacy in US political history.

While the Populists had initially contested elections as a third party, many of their policies were eventually adopted by the two major parties. Prominent Republicans and Democrats like Theodore Roosevelt and Woodrow Wilson – later US Presidents – both supported the introduction of the Initiative.<sup>14</sup>

But while the Initiative was gradually – and sometimes grudgingly – adopted by the major parties, it is worth stressing that it was ‘ordinary’ men who secured the introduction of the device. One such was North Dakota farmer Lars A Ueland, a lifelong Republican who abandoned party politics to campaign for the introduction of the Initiative. As he is reported to have said:<sup>15</sup>

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<sup>14</sup> T Cronin, *Direct Democracy. The Politics of Initiative, Referendum and Recall*, Harvard University Press, 1989.

<sup>15</sup> Cited in T Cronin, *op. cit.*

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*When I first became familiar with the principles of the Initiative and the referendum, I was impressed with a sense of their value. The more I study these principles, the more I am convinced that they will furnish us the missing link – the means needed – to make popular self-government do its best. Programmes and reforms will then come as fast as these changes are safe – only when a majority of the people are behind them. I would rather have a complete Initiative and referendum adopted in state and nation than the most ideal political party that could be made.*

Once elected to the North Dakota legislature (as an independent), Ueland was responsible for the introduction of the Initiative.

North Dakota was not, however, the first state to grant the people the right to initiate legislation. Between 1898 and 1918 a total of 20 states adopted the Initiative.

**Table 2: State Adoption of the Initiative in the US**

| <b>Year</b> | <b>State</b>  |
|-------------|---|
| 1898        | South Dakota  |
| 1900        | Utah  |
| 1902        | Oregon  |
| 1906        | Montana   |
| 1907        | Oklahoma  |
| 1908        | Maine, Missouri   |
| 1910        | Arkansas, Colorado  |
| 1911        | Arizona, California   |
| 1912        | Idaho, Nebraska, Nevada, Ohio, Washington                               |
| 1913        | Michigan  |
| 1914        | North Dakota, Mississippi   |
| 1918        | Massachusetts (Indirect Initiative)                                     |
| 1922        | Mississippi process overturned by the state's Supreme Court             |
| 1956        | Alaska  |
| 1968        | Florida (constitutional Initiative only), Wyoming (indirect Initiative) |
| 1970        | Illinois (Constitutional Initiative only)                               |
| 1992        | Mississippi (reinstated)  |

Source: Dates from the Initiative & Referendum Institute at the University of Southern California ([www.iandrinstitute.org](http://www.iandrinstitute.org))



## THE HISTORY OF THE INITIATIVE

Not everybody, however, was enthusiastic about this new institutional device. Some opponents challenged the use of Initiatives in the courts, arguing that these provisions were unconstitutional. The main argument was that the Initiative – being based on direct legislation – violated Article IV, Section 4 of the US Constitution that states provide a “republican form of government”. However, the Supreme Court declared in 1912 that direct democracy did not violate the Federal Constitution.<sup>16</sup> This ruling did not convince die-hard opponents. Following the ruling *The Los Angeles Times* was vocal in its opposition to the Initiative, which – in its view – would substitute “ignorance and caprice and irresponsibility” for the “learning and judgement of the legislature”.<sup>17</sup>

Others, predictably, took a more positive view. Another newspaper, *The Arizona Star*, believed that the introduction of the Initiative would lead to “the elimination of superstition, bigotry, intolerance and ignorance from American politics... an end to boss rule and... to grafting from the public crib; and an end to fraud, pomposities and political fakes”.<sup>18</sup>

While this level of enthusiasm was unusual, the Initiative was viewed favourably among constitutional reformers. Indeed, the Initiative was exported from the US and included in the German Weimar Constitution in the wake of the First World War. According to the new German Constitution, one tenth of the voters could demand that a vote was held. However, only two polls were held: in 1926 on confiscation of Royal property and in 1929 on the repudiation of war guilt (reparations). While both passed with overwhelming majorities, they were declared invalid due to low turnout. This was to be a common fate for many Initiatives in Europe.

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<sup>16</sup> Pacific States Telephone and Telegraph Company v Oregon, 233 U.S. 118 (1912).

<sup>17</sup> Quoted in T Cronin, op. cit.

<sup>18</sup> *Arizona Star*, 10 September 1910.

## CHAPTER THREE

# THE INITIATIVE IN PRACTICE – THE US EXAMPLE

A TOTAL OF 2,231 INITIATIVES have been voted on in the US since 1904. However, its use has varied widely. In the words of David Magleby, one of the foremost observers of Initiatives in the US:<sup>19</sup>

*Between 1910 and 1919, a record-setting 269 measures went to a vote, and 98 were approved. Use of direct legislation declined in the 1920s, rose again in the 1930s, fell precipitously in the 1940s and 1950s, and bottomed out in the 1960s. In the 1950s and 1960s, an average of fewer than eight Initiatives passed per electoral cycle, down from an average of nearly twenty-eight per election cycle in the 1920s. But these patterns reversed themselves in the 1970s.*

The revival of the Initiative was in large measure due to the impact of Proposition 13 in California which sought to limit property taxes; this triggered a huge growth in the number of Initiatives in all areas of government. In the 1990s, a total of 379 Initiatives appeared on the ballots, with 167 being passed. In the current decade, a total of 301 Initiatives have appeared on the ballot so far, with 127 being passed. Most Initiatives have been held in Oregon (341), with California a close second at 315. Other frequent users include Colorado (196), North Dakota (175) and Arizona (165).<sup>21</sup>

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<sup>19</sup> D Magleby, 'The United States', in D Butler and A Ranney (ed.s) *Referendums Around the World: The Growing Use of Direct Democracy*, Macmillan, 1994.

<sup>21</sup> *Initiative Use 1902-2006* and *Ballotwatch*, both at [www.inadrinstitute.org](http://www.inadrinstitute.org).

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But the number of Initiatives says nothing about the way in which this mechanism has been used. Has it led to an improved or decreased quality of decision-making and what are the kinds of policies approved or defeated?

### Quality of legislation

A V Dicey, perhaps the first constitutional theorist to champion the introduction of the referendum in Britain,<sup>22</sup> saw the referendum as a constitutional safeguard, which could be employed to prevent the introduction of Home Rule for Ireland. But Dicey, for all his enthusiasm for the referendum, was adamant in his opposition to the Initiative. The Initiative was, he wrote, “neither in theory nor in fact... a necessary consequence of the maintenance of the referendum”.<sup>23</sup> In this he was supported by J St. Loe Strachey who also rejected the idea of direct legislation by the people on the grounds that it would lead to ill-considered legislation:<sup>24</sup>

*The arguments against it [the Initiative] are very strong. Under the Initiative, you do not get the committee state for legislation. The stage under which trained advocates, critics and lawyers debate the clauses of the Bill and render it workable in practice as well as sound in theory. The Initiative is an encouragement to crude legislative schemes... The fact is the Initiative, though it may very well suit a small community... does not suit a great and complicated modern community with a vast number of laws already on the statute book.*

This was a reasonable criticism, at least in theory. It is one of the advantages of representative democracy that parliamentarians

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<sup>22</sup> See by the author, *A Comparative Study of Referendums. Government by the People*, Manchester University Press, 2005.

<sup>23</sup> A V Dicey, *An Introduction to the Study of the Law of the Constitution*, 1885.

<sup>24</sup> J St. Loe Strachey, *The Referendum: A Handbook in the Poll of the People, the referendum and the democratic right to veto*, Fischer, 1924.

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can carefully scrutinise the bills. As Edmund Burke declared a couple of centuries ago:<sup>25</sup>

*Parliament is not a congress of ambassadors for different hostile interests... but... a deliberative assembly... with one interest, that of the whole; where not local purposes, not local prejudices ought to guide, but the general good, resulting from the general reason of the whole.*

John Stuart Mill agreed that parliaments offered the best way to govern a country. In his famous observation from *Considerations on Representative Government*, he argued that: “since all cannot participate personally in any but some very minor portions of public business, it follows that the ideal type of a perfect government must be representative”.<sup>26</sup>

The key problem with such objections is, however, that they are based on an optimistic perspective of representative democracy. An idealistic assessment of the virtues of representative government should not be the main criterion in considering whether Initiatives would benefit a nation,

Mill, Burke and other illustrious figures who have discussed and defended representative government were writing in different times and were obviously unable to appreciate the modern pressures faced by parliaments today. For example, as James Buchanan and Gordon Tullock found:<sup>27</sup>

*In the face of observable pressure group activity with its demonstrable results on the outcome of specific issues presented and debated in legislative assemblies, that behavioural premise that calls the legislator to follow a selfless pursuit of the ‘public*

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<sup>25</sup> E Burke, ‘Speech to the Electors in Bristol’, 1774.

<sup>26</sup> J S Mill, ‘Considerations on Representative Government’, in J Gray (ed.) *John Stuart Mill on Liberty and Other Essays*, Oxford University Press, 1991.

<sup>27</sup> J Buchanan and G Tullock, *The Calculus of Consent*, University of Michigan Press, 1962.

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*interest' or 'general welfare' as something independent of and apart from private economic interest is severely threatened."*

Writing about the American experience, Shaun Bowler and Todd Donovan have noted:<sup>28</sup>

*Notwithstanding the early claims made on behalf of the wisdom of legislators, recent studies of legislative behaviour suggest that legislators cannot be fully informed when they cast their ballots. They are expected to vote on bills they may not have read.*

Matters are, if anything, worse under the British system of government, under which MPs are tightly controlled by the executive. Walter Bagehot noted in *The English Constitution* that the UK parliament had a rather modest role: "The main function of the House of Commons is one which we know quite well, though common constitutional speech does not recognise it. The House of Commons is an electoral chamber; it is the assembly which chooses our president."<sup>29</sup>

This is still the case. The eminent constitutionalist, Nevil Johnson, was clear that the influence of Parliament has declined:<sup>30</sup>

*Parliament's influence over the terms of legislation is marginal and over public expenditure negligible... the functions of scrutiny are performed patchily and members of the executive can often evade accountability for their actions. Thus Parliament appears to be constantly falling behind in a race it cannot win.*

The more considerate MPs in Parliament today have also reached much the same conclusion. The Conservative MP Andrew Tyrie is one:<sup>31</sup>

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<sup>28</sup> S Bowler and T Donovan, op. cit.

<sup>29</sup> W Bagehot, *The English Constitution*, Oxford University Press, 1867.

<sup>30</sup> N Johnson, 'Parliament Pensioned Off?' in K Sutherland (ed.), *The Rape of the Constitution*, Imprint Academic, 2000.

<sup>31</sup> A Tyrie MP, *Mr Blair's Poodle: an agenda for reviving the House of Commons*, Centre for Policy Studies, 2000.

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*The executive is already almost supreme in Parliament, both Commons and Lords. The executive can control the Commons when its party has a clear overall majority; in a democratic age the lack of legitimacy of an appointed Lords leaves it almost always incapable of mounting a challenge. That leaves only two major constraints on the executive at present: intra-Party democracy and public opinion.*

While from the Labour benches, Tony Wright MP has explained that “in Britain the executive is particularly strong and parliament commensurably weak”.<sup>32</sup>

In addition, while there are examples of seemingly ill-considered behaviour by voters in Initiatives, the wisdom of legislators even under the American system can be questioned. There, law-makers are allowed to deliberate without the ever-watchful eye of the Government whips. It is conveniently forgotten that “the record of representative government is an imperfect one.”<sup>33</sup> To quote American historian Henry Steele Commager’s assessment of US representative government: “New York purged itself of socialists... the Oregon legislature outlawed private schools and the Nebraska legislature forbade teaching in German... the list could be extended indefinitely”.<sup>34</sup> In Britain too, there are numerous examples of legislation – from the Dangerous Dogs Act to the Poll Tax – that have been forced through by Government whips after insufficient thought, often with disastrous consequences.

There is also evidence to suggest that when citizens are given the responsibility of making decisions they become better informed about the subject of those decisions. After the 1992 referendum on the Maastricht Treaty in Denmark, the Danish

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<sup>32</sup> T Wright, ‘Prospects for Parliamentary Reform’, in *Parliamentary Affairs*, Vol 57, No 4, 2004.

<sup>33</sup> T Cronin, op. cit.

<sup>34</sup> H S Commager, *Majority Rule and Minority Right*, Peter Smith, 1958.

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news magazine *Maanedstidningen* conducted a survey in which it asked a representative sample of voters and a random sample of members of the Danish Parliament about the Treaty. Voters' knowledge on average surpassed that of the non-specialist MPs.<sup>35</sup>

Critics of direct democracy also often fail to consider how direct democracy might work in practice. J St. Loe Strachey's objection to the Initiative, that it allows the voters to pass legislation without the scrutiny of expert committees, is an important one.<sup>36</sup>

It would indeed be a problem that laws are not properly scrutinised by experts. The response to this criticism is provided by the indirect Initiative. In nine US states (Maine, Massachusetts, Michigan, Nevada, Utah, Ohio, South Dakota, Washington and Wyoming), legislatures scrutinise the proposed measure prior to a vote. While Initiatives in these states are relatively rare, there is some evidence to suggest that this procedure meets Strachey's challenge. It is worth noting that there are many different versions of the indirect Initiative. Some of the states allow moderation or amendment; "others require the measure to be approved or rejected exactly as it came to the legislature. If rejected or sharply amended, the sponsors may force the measure to a vote by the people."<sup>37</sup> As Neal Peirce has observed:<sup>38</sup>

*While the indirect initiative is no panacea there are powerful arguments in its favour. Above all, that it involves the legislators in the legislative process. The indirect initiative strengthens rather than weakens representative democracy for forcing the*

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<sup>35</sup> Cited in M Qvortrup, *op. cit.*

<sup>36</sup> It must equally be accepted that the scrutiny by legislatures can be less than perfect. 'Log rolling' (or vote trading) and 'rent seeking' (the provision for a private good for a special group at the expense of the common good) are not unknown in both local and national assemblies across the world.

<sup>37</sup> T Cronin, *op. cit.*

<sup>38</sup> N Peirce, 'The Indirect Way for the Americans to Take the Initiative', *Sacramento Bee*, 12 February, 1979.

## SUPPLY-SIDE POLITICS

*legislators to come to grips with an idea they may have sought to avoid before. It brings into play forces of moderation, compromise and common sense often lacking in direct initiatives.*

By allowing the legislature to debate – and if necessary amend – the proposition, an element of public deliberation is injected into the process. It is for this reason that some writers who are otherwise sceptical of the Initiative, have come out in favour of this application of the device. Thomas Cronin, in his much cited study *Direct Democracy: The Politics of Initiative, Referendum and Recall*, concluded:<sup>39</sup>

*The indirect initiative does indeed delay legislative change. But it also provides an opportunity for measures to get a formal hearing and to benefit from the experience of veteran legislators and their staffs. It is a sensible option for states not permitting the direct initiative.*

Yet the indirect Initiative may not always be necessary. There is increasing evidence that direct Initiatives are not crudely drafted. Most Initiatives are now sponsored or backed by powerful and professional campaign groups (who have access to professional and legal advice), which means that the technical quality of the proposed measures is relatively high. Dennis Polhill, in a study of the Initiative process in Colorado, found that:<sup>40</sup>

*Compared to bills that move through the Legislature, initiatives are no worse, and sometimes better. In Colorado, the Legislature drafts, considers, and disposes of about 600 bills per year in its 120-day session. Each legislator is allowed to sponsor five bills (although there are procedures that allow more). Initiatives are usually drafted by small groups of activists who are passionate and well-informed about their issues. It is not uncommon for development of a draft to*

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<sup>39</sup> T Cronin, *op. cit.*

<sup>40</sup> D Polhill, *Are Coloradans Fit to Make Their Own Laws? A Common-Sense Primer on the Initiative Process*, The Independence Institute, 1996.



## THE INITIATIVE IN PRACTICE: THE US EXAMPLE

*take many months, even years. The procedure requires the same help that legislators get from the State Office of Legislative Legal Services (the bill drafting staff). The arduous task of getting on the ballot, the normal prospect of being substantially outspent in the campaign, the risk that any flaw is ammunition for the opposition, and the inevitability of court challenges upon passage provide important incentives for proponents to be both careful and reasonable in drafting their measure.*

It is, therefore, difficult to conclude that Initiatives are less likely to be the product of deliberation than laws passed by representatives without direct citizen involvement.

### **Policy implications**

It is often claimed that direct legislation by the people is likely to result in populist policies which may not necessarily be desirable, at least to the political classes: an example of this would be the re-introduction of the death penalty.

There are, however, no examples of this happening outside the US. In fact, referendums on the death penalty have resulted in its abolition, such as in Ireland in 2001. There are, however, examples of states in the US where voters have opted for the restoration of capital punishment. Yet, there are also states where this decision has been taken by representative assemblies. Indeed, of the 38 states that have the death penalty, only three introduced it after a referendum. Based on a statistical analysis, Frederick J Boehmke has found evidence to suggest that Initiative states are *less* likely to adopt the death penalty than states that do not allow voters to enact legislation through Initiatives. As he puts it, if a state were to “suddenly acquire the initiative, the model predicts that it would be almost 5% less likely to adopt capital punishment”.<sup>41</sup> However, as Boehmke himself pointed out, this is not necessarily the direct – or

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<sup>41</sup> F J Boehmke, *The Indirect Effect of Direct Legislation: How Institutions Shape Interest Group Systems*, Ohio State University Press, 2005.

## SUPPLY-SIDE POLITICS

even indirect – consequence of the Initiative. Cultural factors probably play a more dominant role; states with a large number of religious fundamentalists are significantly more likely to adopt capital punishment than are states with secular majorities.<sup>42</sup>

It is also often claimed that minorities suffer where direct democracy is in operation. While the Initiative has occasionally been used to limit the rights of minority groups, such as in the case of Proposition 189 (which sought to ban illegal immigrants from all but emergency treatment in hospitals), it is important to note that *all* such measures have been struck down by the courts. Democracy, no matter how perfect, always requires the rule of law and minority protection.

It is certainly the case that a limited number of Initiatives have targeted minority groups, such as the constitutional measures aimed at preventing gay-marriages in the 2004 and 2006 Initiatives. But this is not a tendency that can be ascribed to direct democracy alone; indeed legislatures in states without provisions for Initiatives have passed similar measures.

In fact, it might be argued that a sound dose of direct democracy can also remedy an over-eager legislature's sins of commission. A recent example of this is provided by the poll on abortion in South Dakota in November 2006, when voters overturned an abortion law enacted by the legislature, which barred almost all abortions, including for rape and incest victims, and allowed them only if a mother's life was in jeopardy. The contention that voters are always reactionary and opposed to change was also refuted by a successful initiative in Missouri, where a majority of the voters supported an initiative that allowed stem-cell research, something which the legislature had opposed.

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<sup>42</sup> Boehmke, *ibid.*

## THE INITIATIVE IN PRACTICE: THE US EXAMPLE

Similarly in Arizona, voters rejected an initiative to ban homosexual marriage.<sup>43</sup>

In general, minority rights are no more threatened by Initiatives than they are by representative institutions. This is not to say, however, that it is impossible to detect other tendencies and trends from the use of the Initiative. According to a recent study:<sup>44</sup>

*States with the initiative process are more likely to adopt policies that constrain how legislators govern; they have higher adoption rates of term-limits, supermajority requirements for tax-increases and tax expenditure limits... Initiative states are more likely to adopt election reforms, such as campaign finance restriction.*

In other words, states with provisions for Initiatives have adopted measures that are favoured by Republicans (such as tax expenditure limits) as well as measures which are usually favoured by the Democrats (such as campaign finance restrictions). This view is supported in a study by John Matsusaka in which he concluded:<sup>45</sup>

*To summarize, the evidence to date shows that initiative states are more responsive to opinion than non-initiative states when it comes to fiscal policy, parental consent... it is also clear that initiative states are more responsive to public opinion about term limits. There is no valid evidence along any policy dimension that initiative states are less (or equally) responsive to opinion than non-initiative states. The only view that is currently supported by scientific evidence is that the initiative makes policy more responsive to public opinion.*

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<sup>43</sup> See E Luce and A Remtulla, 'Iraq War decimates Republican vote', *The Financial Times*, 8 October 2006.

<sup>44</sup> C J Tolbert and D A Smith, 'Representation and Direct Democracy in the United States', in *Representation*, Vol 42, No 1, 2006.

<sup>45</sup> J Matsusaka, *For the Many or the Few: The Initiative, Public Policy and American Democracy*, University of Chicago Press, 2004.

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While this is the case in the US, it does not, of course, imply that the same would be true in other countries if citizens were allowed to trigger votes on policy issues. The enactment of particular public policies depends to a large extent upon political culture. Yet there is some evidence that the Initiative has some of the same effects elsewhere. According to a Swiss study, the evidence suggests that:<sup>46</sup>

*Direct democracy is positively related to some macro-economic indicators such as low state budgets, low budget deficits and low tax levels... for some policies, direct democracy seems to lead to policies closer to the median voter than in purely representative democracies.*

Another Swiss study came to a related conclusion: namely that output per capita was higher in Swiss cantons with the Initiative than in those that do not allow the citizens to initiate legislation.<sup>47</sup> One interpretation of these findings is, according to John Matsusaka, “that the Initiative causes the government to choose policies that are conducive to economic growth. For example, the Initiative might be used to direct public funds into infrastructure instead of pork barrel projects.”<sup>48</sup>

### **Time Consuming and Costly?**

Another argument against the Initiative is that – while desirable on other grounds – it suffers from the shortcoming that it is time-consuming and expensive.

Democracy does indeed take time. But that is not in itself an argument against the Initiative. Would we argue for the abolition of representative democracy on the basis of the fact that general elections are time consuming or expensive?

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<sup>46</sup> G Lutz, ‘Direct Democracy in Switzerland’, in *Representation*, Vol 42, No 1, 2006.

<sup>47</sup> L P Feld and M R Savioz, ‘Direct Democracy Matters for Economic Performance: An Empirical Investigation’, in *Kyklos*, Vol 50, No 4, 1997.

<sup>48</sup> J Matsusaka, op. cit.

## THE INITIATIVE IN PRACTICE: THE US EXAMPLE

Moreover, it is debatable whether Initiatives are, in fact, overly time-consuming. There are no studies of Initiatives in Switzerland or California which have shown that citizens are critical of the process because of the time it takes.

Conversely, there are several studies that suggest that voters are able to make up their minds about issues even though they have not spent hours deliberating upon the finer points of the proposed legislation. Voters in California and Switzerland do not spend huge amounts of time on Initiatives, but they are nevertheless extremely well-informed about the process and its implications.

Direct democracy is about important issues. Citizens are not – and should not be – engaged in democracy all the time. The Initiative is not an alternative to representative democracy. Government through elected representatives is the norm. But sometimes representative democracy does not work. The Initiative should be available for citizens to correct the sins of omission of MPs, not to make representative government redundant. It is on these occasions that the Initiative is used that citizens are willing to spend more time on democracy.

The question of campaign spending is more controversial. In the US, there are examples of campaigns in which one-sided campaign spending has seemingly created a bias in favour of the better funded side. Yet, surprisingly perhaps, most studies suggest that there are few examples of one-sided campaign spending which has led to the passage of controversial legislation, although in some cases high campaign spending appears to have led to defeat of propositions.<sup>49</sup>

Campaign spending is a perennial concern in Switzerland too – with considerable amounts of money spent on certain campaigns. However, there is some evidence that money spent does not have a huge impact on the outcome. As Kris Kobach noted:<sup>50</sup>

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<sup>49</sup> See M Qvortrup, *op cit*.

<sup>50</sup> K Kobach, *The Referendum: Direct Democracy in Switzerland*, Dartmouth Publishing Company, 1992.

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*There is empirical support for the view that money has little impact on voting outcomes. For example, in the case of the initiative that broke the 33-year dry spell of successful attempts, the 1982 price control initiative, the sponsors spent extraordinarily little on the campaign... they didn't even purchase posters to advertise their position.*

Such results do not prove that money is completely ineffectual. As there is still a possibility that money can have some effect on the outcome, campaign groups still spend money on campaigning activity.

As Kobach concludes:<sup>51</sup>

*Some proposals are compelling enough to succeed with minimal financial backing... most interests are unwilling to risk being mistaken in this respect, so they hedge their bets by spending massive amounts.*

In the British context the issue of campaign spending is not, however, likely to be of great concern as the Political Parties, Elections and Referendums Act 2000 sets strict limits for campaign spending and provides for the establishment of umbrella organisations for the Yes and No campaigns.

Some might argue that it is expensive to organise Initiatives. It is of course true that democracy costs money. Most valuable things do. But if referendums could only be held on the same day as other elections, either local or national, that would reduce the cost considerably. More importantly, Citizens' Initiatives would certainly not be more expensive than the huge amount of mandatory consultations and opinion polling carried out by governments and local authorities. It might also be worth noting that General Election campaigns cost tens of millions of pounds but nobody raises this as an objection to representative democracy.

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<sup>51</sup> Ibid.

## THE INITIATIVE IN PRACTICE: THE US EXAMPLE

### Democratic involvement

While some see democracy as desirable on purely utilitarian grounds, others favour it for idealistic reasons. To them, institutions that encourage greater public engagement have an intrinsic democratic value. How does the Initiative fare in this regard?

An often noted consequence of this form of direct democracy is that turnout seems to be higher in states which employ the Initiative rather than in those which do not allow the citizens to initiate legislation. Political theorist Benjamin Barber famously noted that: “The politically edifying influence of participation has been noted a thousand times since first Rousseau and then Mill and de Tocqueville suggested that democracy is best being taught by practicing it.”<sup>52</sup>

While the evidence is hotly debated, there are findings that corroborate this thesis. In a much-cited study, David Schmidt found that turnout in the American states which used Initiatives was – on average – 5% higher than in the states that did not.<sup>53</sup>

**Table 3: Relationship between Voter Turnout and Initiatives on the Ballot**

| Turnout of Eligible Voters | 1978  | 1980  | 1982  | 1984  |
|----------------------------|-------|-------|-------|-------|
| States with Initiatives    | 44.7% | 59.9% | 46.8% | 54.5% |
| States without Initiatives | 39.0% | 55.0% | 39.8% | 51.5% |

A study by the Public Affairs Research Institute in 1992 also found that voter turnout was higher in states with Initiatives on the ballot than elsewhere – 50% compared to 42%. The research showed that ballot Initiatives tend to have a bigger impact in non-presidential election years, where the difference in turnout is 45% to 34%, than in presidential elections, where the differential is only

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<sup>52</sup> B Barber, *Strong Democracy. Participatory Politics for a New Age*, University of California Press, 1984.

<sup>53</sup> D Schmidt, *Citizen Lawmakers: The Ballot Initiative Revolution*, Temple University Press, 1989.

## SUPPLY-SIDE POLITICS

57% to 55%.<sup>54</sup> More recently, Daniel Smith and Caroline Tolbert found that each additional Initiative on the ballot during a mid-term election in America increases turnout by an average of 1.2%. They also found that citizens were more knowledgeable, interested and engaged in politics when there are propositions on the ballot.<sup>55</sup>

An initial analysis of the 2006 midterm elections also shows higher turnout in states with Initiatives on the ballot. Average turnout for the 18 states with Initiatives was 45.1% while the 32 states without Initiatives averaged 39.6%. Turnout across the US was 40.4%.<sup>56</sup> Initiatives are clearly not the only factor in determining turnout, with some non-Initiative states registering high turnout and some Initiative states with low numbers voting but, as Table 4 shows, Initiative states tend to experience higher turnout; 13 of the 18 are in the top 50% of states ranked by turnout, and only one is in the bottom 25%.

Election officials in several states – but particularly in South Dakota – attributed high turnouts to the presence of controversial Initiatives on the ballot. In South Dakota, where turnout was almost 58%, there were eight Initiatives, including proposals to increase tobacco tax to fund health and education services; stop state aircraft being used for non-official business; limit property tax increases; legalise marijuana for medical use and abolish the video lottery (the state-run network of gambling machines). There was also a Popular Referendum (where citizens collected enough signatures to challenge a law passed by the legislature) on abortion. Sue Roust, auditor in South Dakota's Minnehaha

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<sup>54</sup> Public Affairs Research Institute, *Initiative and Referendum Analysis*, Princeton, cited in Polhill, op. cit.

<sup>55</sup> D Smith and C Tolbert, *Educated by Initiative: The Effect of Direct Democracy on Citizens and Political Organizations in the American States*, University of Michigan Press, 2004.

<sup>56</sup> It should be noted that turnout in midterm elections tends to be 10 to 20 percentage points lower than that in presidential elections.



## THE INITIATIVE IN PRACTICE: THE US EXAMPLE

County said on election day: “The ballot issues are driving the vote. Very clearly, they bring great interest from all voters.”<sup>57</sup>

**Table 4: Turnout in November 2006 midterm elections.**

**States with Initiatives on the ballot are shown in bold**

| HIGH TURNOUT STATES |              | MEDIUM TURNOUT STATES |              | LOW TURNOUT STATES |              |
|---------------------|--------------|-----------------------|--------------|--------------------|--------------|
| State               | Turn-out (%) | State                 | Turn-out (%) | State              | Turn-out (%) |
| Minnesota           | 59.19        | <b>Ohio</b>           | <b>44.64</b> | <b>California</b>  | <b>36.05</b> |
| <b>South Dakota</b> | <b>57.95</b> | Virginia              | 43.82        | <b>Nevada</b>      | <b>35.8</b>  |
| <b>Montana</b>      | <b>55.58</b> | Pennsylvania          | 43.25        | Arkansas           | 35.73        |
| Vermont             | 54.89        | <b>Idaho</b>          | <b>42.82</b> | Alabama            | 35.5         |
| <b>Maine</b>        | <b>54.19</b> | New Hamp.             | 42.04        | Oklahoma           | 35.31        |
| Wisconsin           | 52.20        | Kansas                | 42.03        | Indiana            | 35.23        |
| <b>Michigan</b>     | <b>51.51</b> | <b>Washington</b>     | <b>41.57</b> | New York           | 33.82        |
| Rhode Is.           | 51.21        | Delaware              | 40.86        | South Carol.       | 33.67        |
| <b>Oregon</b>       | <b>50.69</b> | <b>Colorado</b>       | <b>40.73</b> | Utah               | 33.17        |
| Wyoming             | 49.71        | Maryland              | 40.54        | Georgia            | 32.11        |
| <b>Mass.</b>        | <b>49.03</b> | Tennessee             | 39.96        | West Virginia      | 31.51        |
| <b>Missouri</b>     | <b>48.30</b> | New Mexico            | 39.87        | Texas              | 30.11        |
| Connecticut         | 47.39        | Kentucky              | 39.00        | <b>Arizona</b>     | <b>29.39</b> |
| Iowa                | 47.32        | Hawaii                | 38.60        | North Carol.       | 28.89        |
| <b>Nebraska</b>     | <b>46.09</b> | Illinois              | 38.46        | Louisiana          | 26.81        |
| <b>Alaska</b>       | <b>44.77</b> | New Jersey            | 38.18        | Mississippi        | 26.8         |
| <b>North Dakota</b> | <b>44.65</b> | <b>Florida</b>        | <b>37.50</b> |                    |              |

Source: C Gans, *Curtis Gans of American University's Center for the Study of the American Electorate Analyzes Election Day Voter Turnout*, American University, 2006. California, Oregon and Washington turnouts updated by the author with latest voting figures from state government websites (these were not complete at the time of Gans' study on 9 November 2006).

<sup>57</sup> Cited by S. Burrish, 'Ballot Measures Spur High Turnout' *Sioux Falls Argus*, 8 November 2006.

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It should be noted, however, that the positive relationship between Initiatives and turnout has not been found in other countries, where large numbers of frequent referendums can lead to a lower turnout.<sup>58</sup>

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<sup>58</sup> Matt Qvortrup (2005) *A Comparative Study of Referendums*, p.27.

## CHAPTER FOUR

### THE INITIATIVE IN PRACTICE – THE REST OF THE WORLD

OUTSIDE THE US AND SWITZERLAND, the Initiative is used sparingly and as an exception. For those wary of direct democracy, it is important to point out that there is an alternative to the frequent use of the Initiative in California and the Swiss Cantons.

#### **Eastern and Central Europe**

There are a range of other countries that have experimented with the Initiative, seemingly inspired by its use in the US. Lithuania is the only European country that has made extensive use of the device, with six proposals being balloted from 1990 to 1996, but the Ukraine, Latvia, Hungary and Slovakia also have provisions for Initiatives.

In Lithuania, two of the Initiatives have been successful. An Initiative on reducing the number of parliamentary deputies from 141 to 111 passed in 1996, as did a proposal (in the same year) that mandated the government to spend a specified amount of the national budget on social security. However, the other Initiatives, which dealt with matters regarding privatisation, were declared invalid as a result of low turnout. The 50% turnout requirement seems to have been the main reason for the declining popularity of the Initiative in the country.

High turnout requirements have also been a barrier to successful use of the Initiative elsewhere. Perhaps the most controversial Initiative in the former communist countries took place in Hungary in 1989, when the Communist Party initiated a

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vote on whether the President should be directly elected. The party expected that the direct election of the executive would boost the Communists' chances of securing the election of one of the candidates. However, the plan failed to meet the 50% turnout quorum as only 9% of the voters cast a ballot.<sup>59</sup> Initiatives in Slovakia, on issues such as bringing forward the date of the next election, have also fallen due to low turnout.

The Ukraine has held one constitutional Initiative, a controversial poll in 2000. The Initiative was sponsored by then President Kutschma, who wanted the powers to suspend parliament. The Initiative was challenged by deputies who argued that the signatures did not meet the geographical requirements in the Constitution. In the Ukraine a constitutional Initiative must be supported by three million voters with at least 100,000 in more than two-thirds of the constituencies. However this challenge was rejected by the Supreme Court, and the voters overwhelmingly approved the proposal (85%) in the vote on 15 January 2000. The lack of success of other proposals for Initiatives in the Ukraine is perhaps explained by these rather strict signature requirements, which are intended to secure that the Russian-speaking minority does not fall prey to proposals from the Ukrainian-speaking majorities.

Citizens in Latvia have a full range of Initiative and referendum rights but "the restrictions and framework are rather complicated and not very citizen-friendly".<sup>60</sup> The support of 10% of the population is needed to trigger an Initiative and turnout must be 50% of the number who voted in the last parliamentary election. Constitutional amendments must be supported by half of the electorate. In 1999, an Initiative proposing one of three

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<sup>59</sup> J Elster et al., *Institutional Design in Post-Communist Societies: Rebuilding a Ship at Sea*, Cambridge University Press, 1998.

<sup>60</sup> B Kaufman and M D Waters, *Direct Democracy in Europe. A comprehensive reference guide to the initiative and referendum process in Europe*, Carolina Academic Press, 2004.

## THE INITIATIVE IN PRACTICE: THE REST OF THE WORLD

different pension systems for Latvia was defeated as none of the proposals won more than 50% of the votes. However, in June 2000 the Initiative process led to success for a popular measure without a vote taking place. Nearly 23% of the population signed a petition for a draft law to prohibit the privatisation of the state-owned energy enterprise Latvenergo. The law was adopted by the government and so no referendum was needed.<sup>61</sup>

It is clear that strict turnout and signature requirements have limited the use and success of the Initiative across Eastern Europe. It could be argued that if, as stated above, Initiatives encouraged political participation, then high turnout requirements should not be problematic. But this would fail to take into account the specific conditions in the region. The legacy of close to 50 years of communist rule and a limited democratic tradition cannot be ignored.

### **New Zealand**

New Zealand shares two constitutional traits with the UK: it operates a Parliamentary system and it lacks a written constitution. As it has recently adopted the Initiative, are there lessons to be learnt from its experience?

The 1980s was a period of constitutional and political reform in New Zealand. As part of a widespread reform of the country's democracy, the introduction of the Initiative was discussed. Interestingly, the implementation of the Initiative (known as the Citizen Initiated Referendum or CIR) went against the advice of the Royal Commission on the Electoral System 1986. The RCES stated that:<sup>62</sup> "In general, initiatives and referenda are blunt and crude devices... [that] would blur the lines of accountability and responsibility of Governments". Despite this, the Government

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<sup>61</sup> Kaufman and Waters, *op. cit.*

<sup>62</sup> See further C Morris, 'Improving our Democracy or a Fraud on the Community? A Closer Look at New Zealand's Citizen Initiated Referenda Act 1993', *Statute Law Review*, Oxford Journals, Vol 25, No 2, 2004.

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chose to introduce the device. This was in large measure a result of a proposal by the National Party which wanted to challenge the ruling socialist administration. In a policy manifesto in 1992 the party proposed a procedure “whereby non-binding referenda can be held on any issue that attains the signatures of 10% of eligible voters on a petition seeking such a referendum”.<sup>63</sup>

Initiatives are often – and wrongly – seen as alternatives to representative democracy. This was not the view taken by the majority who voted for the introduction of the Initiative in New Zealand. As Chris Fletcher MP noted:<sup>64</sup>

*I see this Bill as being complementary to our current electoral system. I think that it is progressive legislation.... New Zealand will be the first Commonwealth country to introduce legislation of this kind to allow for citizens-initiated referenda.*

There are a number of restrictions on the use of the Initiative in New Zealand. The number of signatures required to trigger a ballot is high – 10% of the population – severely limiting the number of issues ever likely to be decided by referendum. More importantly, however, the result is not binding. David Lange, the then Prime Minister, expressed reservations about this when the Initiative was being considered:<sup>65</sup>

*[I]t is actually a fraud on the community for the Government to ask it for its opinion when the Government has said that it will not necessarily follow that opinion.*

Many supporters of the Initiative (such as the New Zealand First party) have, consequently, complained that the mechanism is

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<sup>63</sup> Quoted in S Levine and N S Roberts, ‘Electoral Reform and Referendums: The Views of Voters in New Zealand in 1987 and 1990’, in A Simpson (ed.), *Referendums: Constitutional and Political Perspectives*, Victoria University of Wellington, 1992.

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*

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of limited use as the legislature has failed to fully implement the 'will of the people'.<sup>66</sup>

In addition, the promoters of any Initiative must first get their proposed referendum question and petition form approved, and then collect the required signatures within 12 months. There is a \$50,000 (£17,400) spending limit on promoting a petition, as well as a \$50,000 spending limit on campaigning for any particular result if a referendum is called. Again, such a cap on expenditure acts as a deterrent to campaigners interested in using the Initiative as a route to bring about political change.

Citizens can vote in the referendums either in person as for a parliamentary election, or by postal ballot. The wording of the question is decided by the Clerk of the House of Representatives, the principal permanent officer of New Zealand's Parliament. The poll must be held within 12 months unless 75% of MPs vote to delay the poll for one year.

The first Citizens' Initiative under the new legislation was held in 1995. The question "Should the number of professional fire-fighters employed full-time in the New Zealand Fire Service be reduced below the number employed in 1 January 1995?" was unique in that it aimed to elicit a "no" response. Turnout was low and the measure passed easily.

Four years later, in the 1999 election, two Initiatives were put on the ballot. One was to reduce the number of Members of Parliament from 120 to 99. Electors overwhelmingly voted in favour of the proposal, with 81.47% voting for this proposal. However, there were no moves to amend the Electoral Act 1993 in line with this result until 2006 when a bill was introduced by New Zealand First MP Barbara Stewart to reduce the size of Parliament to 100. The bill passed its first reading by 61 votes to 60 but it seems unlikely to pass into law as many parties stated they were only supporting it to Select Committee stage.

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<sup>66</sup> [www.betterdemocracy.co.nz](http://www.betterdemocracy.co.nz)

## SUPPLY-SIDE POLITICS

The other referendum held in 1999 asked: “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?” This measure passed by 91.7%. Although the referendum’s provisions were not binding on Parliament, some of the measures supported by the public have been subsequently introduced.

Since 1999, there have been no new Initiatives and none are currently being proposed. There is a danger that the Initiative may now fall into disuse as people use alternative ways of persuading politicians to support particular causes.

The experience in New Zealand shows that, if introduced in a restrictive way, the Initiative will not re-engage the interest of voters nor reduce mistrust of politicians. In New Zealand, the key limiting factor has been that the vote is not binding and so votes have not resulted in legislation. As Caroline Morris has noted: “upon close inspection, the drafting of the CIR” was poor and did not result in the “intended aim of involving citizens more in government decision-making”. However, there is pressure to alter the legislation, according to Morris, to “make the Act more workable”.<sup>67</sup>

It is worth noting that the New Zealand system has *not* led to populist measures, such as the reintroduction of the death penalty, being proposed. It is interesting for what has not been introduced. While citizens have a right to introduce controversial matters, they have, by and large, refrained from doing so. This is a fact that should be borne in mind when considering the merits of introducing the Initiative into the UK.

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<sup>67</sup> Morris (2004), p.116



## CHAPTER FIVE

# CONCLUSION

IN THE EARLY 1980S, politicians – especially those on the centre-right – spoke of supply-side economics. According to this law of political economics: ‘A supply creates its own demand’. What was true for economics seems also to be true for democracy: a greater supply of democracy creates a demand for political participation.

Citizens’ Initiatives, where the requirements imposed are reasonable and the results are binding, tend to result in greater participation and interest in democracy. Keith Joseph – one of the early advocates of supply-side economics on the British political scene – once said: “if you take responsibility away from the people you make them irresponsible”.

It follows that the opposite is true: if you give people more responsibility, they may act more responsibly. The empirical evidence suggests that – contrary to what opponents claim – the Initiative does not result in populist legislation and ill-considered laws. Rather, governments tend to be more responsive in states and countries that employ the Initiative.

The Citizens’ Initiative is not a panacea. No political institution is. But all too often opponents of direct democracy fail to acknowledge the real deficiencies in a pure system of representative democracy and the real advantages of giving people the chance to make political decisions themselves. A quarter of a century after the heyday of supply-side economics it may be time for supply-side politics.

## RECENT CPS PUBLICATIONS

### **A WORLD FIRST FOR WEST DUNBARTONSHIRE**

*Tom Burkard*

West Dunbartonshire is one of the most deprived regions in Scotland. Yet it is set to become the first local authority in the English-speaking world to eliminate reading failure. Reading failure has already fallen to 6% (compared to 21% in England). It has achieved this for two reasons: first it has used the synthetic phonics method of teaching reading; and second it has adopted a “bottom-up” approach (in stark contrast to the “top-down” approach advocated by the DfES in England).

*“West Dunbartonshire’s success in virtually eliminating illiteracy proves beyond doubt that synthetic phonics is the most effective method of teaching children to read” – Nick Gibb MP, Shadow Schools Minister*

### **THREE CHEERS FOR SELECTION: how grammar schools help the poor**

*Lord Blackwell, with a Foreword by Sir Eric Anderson*

Comprehensive schools have not delivered the improvements in education standards or social equality that it was originally suggested would result. Lord Blackwell argues that all children – and particularly those from poorer backgrounds – deserve a school system which recognises the value and opportunities that selective education can bring. For recent research has shown that those few able poor children who do attend grammar schools today do exceptionally well. A new generation of selective, academic state-funded schools is now needed to open up access. And he shows that such a move would be popular. For polling evidence shows that almost three quarters of the public believe that some form of selection in secondary schooling can help both academic and less academic children achieve their potential. Blackwell concludes that politicians have, for too long, tolerated a system which is both academically sub-optimal *and* socially divisive.

*“BRIGHT KIDS DESERVE A BETTER OPPORTUNITY” –  
headline in the Western Daily Press*

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*Harriet Sergeant*

This report describes, in the children's own language, the true extent of a problem which has for too long been hidden: the catastrophic failure of our care system. This failure is not just a tragedy for the individuals concerned. A successful system of care would transform this country, and eliminate a major cause of social exclusion. The failure is not a lack of effort: the Government is passing Acts, proposing initiatives and spending money (it costs an average of £40,000 for each child in care). Yet its best efforts are failing to address the deep-rooted problems in the system. While many strong-willed and talented individuals survive the care system, the figures speak for themselves. Why, asks Harriet Sergeant despite generous funding and good intentions, does the care system fail so badly?

*"THE BETRAYAL OF 60,000 CHILDREN" – headline in the Daily Mail.*

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