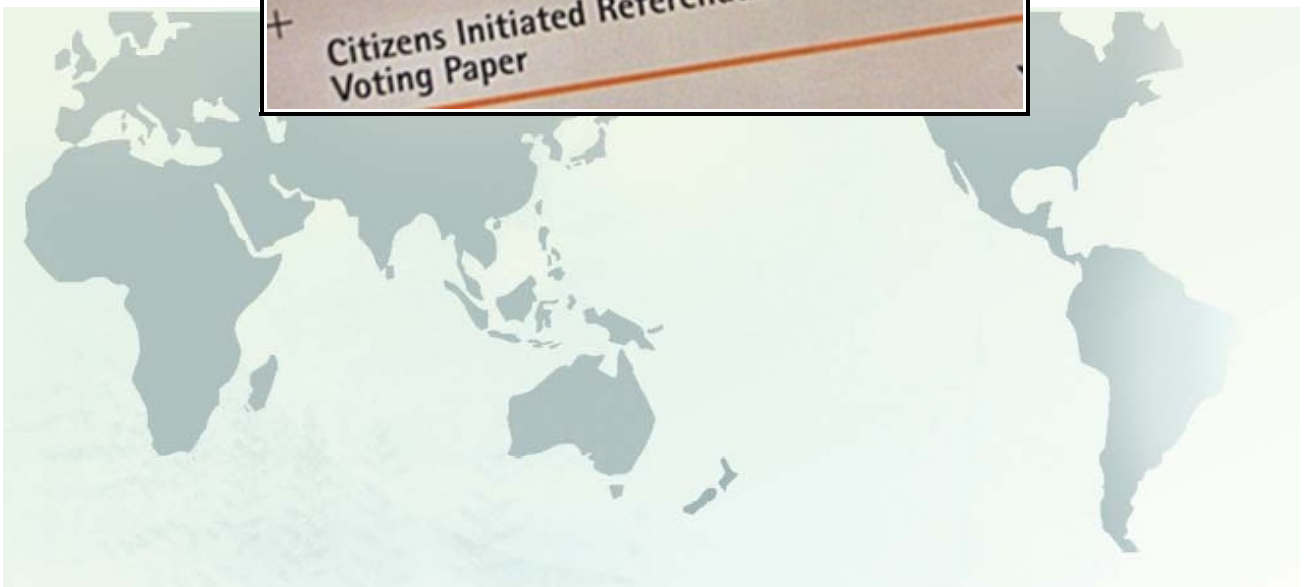


NEW ZEALAND: ANSWERS TO ARGUMENTS AGAINST BINDING REFERENDUMS





INTRODUCTION BY STEVE BARON – FOUNDER OF BETTER DEMOCRACY NZ

How democracy has progressed is often forgotten. It wasn't that long ago that only the elite of society, those who owned land and had a title bestowed upon them, were allowed to vote. Women were not allowed to vote either because they weren't considered intelligent, or interested enough to make sensible decisions. We have come a long way since those days.

If a political party truly believes in democracy and representing the will of the people, a cornerstone of its policies would naturally be binding Initiatives and Referendums. This would give citizens more control over controversial and polarizing issues that directly affect their lives. That is not to say that binding Initiatives and Referendums should replace political parties or representative democracy, only that they should be an adjunct to what we have at present. If binding Initiatives and Referendums are not at the core of a party policy, then all that party seeks is absolute power to impose its own political ideology.

Binding Initiatives and Referendums are a tool that few parties have ever considered, but a tool that a growing number of citizens and states around the world are embracing. 190 Million people in Switzerland, Italy, Liechtenstein and twenty-four States in the USA now embrace the referendum system and 70% of the population now live in a state that gives them the right to vote on Initiatives and Referendums. Even the European Union has incorporated referendums into its constitution.

The Swiss experience has proved how successful binding Initiatives and Referendums can be at empowering a nation and deciding national issues of importance. They have used direct democracy for over one hundred and forty years through the Veto, Recall and Citizens Initiated Referendum. All of which are binding on the government. Under New Zealand's Citizens Initiated Referenda Act 1993, any citizen can trigger a nationwide referendum, by collecting the signatures of at least ten percent of those registered on the electoral role. The trouble is, in New Zealand, unlike Switzerland,

Initiatives and Referendums are not binding on the New Zealand government. They can, and have been ignored by past and present governments. So much for democracy. They therefore need to be made binding.

Wanganui Mayor Michael Laws and his City Council have led the way with direct democracy in New Zealand, by giving voters more say in how their money is spent, and participation has increased. Voter participation for referendums in Wanganui have actually been higher than the local body elections themselves. Professor John Matsusaka from the University of California has also produced empirical evidence to prove that those US States with the power of referendums, actually reduce State government spending by up to 19%. Surely data to wet the appetite of every New Zealander.

The Initiatives and Referendum process is very simple. On one day a year New Zealanders would get to vote on issues important to them, so long as the required number of signatures have been collected to trigger a referendum. A referendum may be to veto any new legislation, initiate new legislation or recall a Member of Parliament who in the opinion of voters is no longer wanted. At present the required number of signatures is ten percent of those registered on the Electoral Roll. This is approximately 300,000 signatures, a figure that would seem extremely high given the Swiss only have to collect 50,000 signatures with a population almost twice that of New Zealand. What is surprising is that even with such a low requirement, the Swiss only average three to four Citizens Initiatives per year. Given that it only takes five percent of the vote at election time to put a party into parliament, one would assume this figure would be more than adequate to trigger any Initiatives or Referendum. Although a figure of one hundred thousand signatures would not seem unreasonable.

It is often said that binding Initiatives and Referendums are simply a tyranny of the majority over minorities, even though there is little evidence to prove this. However on the flip side, the track record of elected representatives in tyrannizing minorities is notorious. One only has to look at the treatment of Maori and Chinese by previous New Zealand governments. While binding Initiatives and Referendums would provide a check and balance on government, it has been suggested there could also be a check and balance on binding Initiatives and Referendums, by allowing seventy five percent of Members of Parliament to veto an Initiative or Referendum within sixty days of the result. This option would offer a protection from both factions for powerless minorities.

Provisions would also need to be implemented to provide for the dissemination of a balanced official Initiative and Referendum brochure, which would be required to be supplied to all voters at least ninety days prior to an Initiative or Referendum. It would also

be advantageous to create an official referendum panel to oversee the Initiative and referendum process. This panel would ensure that the question to be put to citizens was not ambiguous or misleading in any way, and that the information provided in the referendum brochure was balanced and appropriate. It would also be desirable for parliament to debate the Initiative or Referendum question and to include its recommendation in the referendum brochure and voting papers.

Even though binding Initiatives and Referendums have been successfully used in Switzerland for over 140 years, there are critics who still argue against them, as if they were a threat to our democracy and something to be avoided at any cost. I make no attempt to hide my support for making Initiatives and Referendums binding and have campaigned for this for many years. However, if opponents are going to argue against binding Initiatives and Referendums, they should become fully informed of the facts, and not use glib arguments which tell half the story. I have made an in-depth study of the Initiative and Referendum process and have read most studies published by proponents and opponents alike. Keeping these in mind I will now attempt to highlight and answer the most common arguments against, and issues that arise, with any debate on binding Initiatives and Referendums.

Before reading any further it is recommended the reader peruse the definitions page at the end of this document.



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VOTERS LACK COMPETENCE AND GOOD INFORMATION TO MAKE SENSIBLE DECISIONS:

One of the most common criticisms of binding Initiatives and Referendums is that voters are not competent enough to make sensible decisions. One of the most prominent critics is Professor Magleby (1984, p.198) who said,

The majority of ballot measures are decided by voters who cannot comprehend the printed description, who have only heard about the measure from a single source, and who are ignorant about the measure except at the highly emotional level of television advertising, the most prevalent source of information for those who have heard of the proposition before voting. The absence of straightforward, understandable, rational argumentation in initiative campaigns, combined with what has been discovered about voting decision making in these situations, raises serious questions about the integrity of the direct legislation process."

Professor Bogdanor makes the counter argument when he said,

In the last resort, the arguments against the referendum are also arguments against democracy, while acceptance of the referendum is but the logical consequence of accepting the democratic form of government.

Yet putting both these quotes aside, history has already proven, given the Swiss experience, that voters can become well informed and have indeed made very sensible decisions for over one hundred and forty years.

A number of academic studies have focused on how voters make their decisions and how they become informed. What has come out of these studies is that voters rely on heuristics cues to make their decision. Studies by Lupia & McCubbins (1998 Ch. 3–5) show that voters don't need to know many details of a referendum to be able to vote as if they were fully informed. Voters rely on trusted groups, political parties, political organisations and trusted colleagues to help guide them. This is no different from Members of Parliament who do exactly the same. It is impossible for every MP to become fully informed on everything they must vote on in parliament. Neither is your average MP any more intelligent or qualified than the average person on the street. They are also forced to vote along party lines as directed by party leaders. Former Queensland Premier Russell Cooper (1994) once said,

The power of the public service and the reality of life in government was no better confirmed than by the nasty jolt I received when I was told, after hearing a solid and rational case against some rule of regulation and agreeing wholeheartedly with that case, that this outrageous, obnoxious and grossly unfair bit of nonsense was introduced when I was the Premier and supposed to be running the whole show. I might add, on the credit side, it has been nice when I have been congratulated for a particularly enlightened, progressive and helpful initiative when I was the Premier or the Minister especially when I have absolutely no recall of it at all. What all of this goes to show is that no Prime Minister, Premier or Minister can ever hope to know everything that is going on despite his or her nominal responsibility and you can't accept the praise without taking the blame.

In one of study by Lupia (1994) he examined voting patterns on five complicated California insurance propositions in 1988, that on the surface, were hard to distinguish. Using exit surveys, he classified voters into "informed" and "uninformed" groups based on whether they could correctly answer questions about the substance of the measures. He found that uninformed voters could emulate the voting patterns of informed voters simply by knowing the positions interest groups had taken on the referendums.

Another interesting aspect to this argument was raised in James Surowiecki's book *The Wisdom Of Crowds* (2005). The book discussed British scientist Francis Galton who was trying to prove that full male suffrage should not be extended beyond the propertied classes (something we now take very much for granted). He was extremely surprised when he attended a country fair and studied the results of an ox weighing competition. His belief was that the uninformed and uneducated classes could not be trusted to make sensible decision. He analysed the result from around eight hundred people who entered this ox weighing competition. There were expert butchers who participated, but also many who knew nothing about animal weights, but had paid their sixpence in the hope of winning. The crowd guessed, on average, that the weight of the slaughtered ox would be 1,197 pounds. The official result was 1,198 pounds. Galton later wrote, "The result seems more creditable to the trustworthiness of a democratic judgement than might have been expected."

It can also be argued that with modern technology and a much better educated society, voters are now far more capable than ever before in history, to make informed decisions. The experience in Switzerland should be enough in itself to convince critics. Switzerland has not self destructed and has prospered more than most developed

countries around the world. There is simply no reason to argue that only politicians or the political elite are equipped to decide public policy.

Kaufmann, Büchi and Braun (2008) have pointed out and discussed how greater participation improves with greater rights, in their publication *Guidebook to Direct Democracy*,

Matthias Benz and Alois Stutzer, two political scientists at the University of Zurich, have shown that citizens who have greater rights of participation are also better informed politically. The referendum rights enjoyed by Swiss citizens give them a decision-making power which is independent of government and which allows them not only to object and resist but to participate constructively in the shaping of state and society. Binding referendums empower voters and allow power sharing. This is especially important for those minorities whose interests are represented either inadequately or not at all through the current system.

Information is important. As happens in Switzerland, the New Zealand government must also distribute each and every voter with a referendum pamphlet highlighting the pros and cons given constructively about the question to be decided. In Switzerland this is distributed prior to the referendum with ample time for public debate. The Swiss government also makes a recommendation on the ballot paper. This could also be posted on an official referendum website for convenience and easy access.

**THE PUBLIC ARE IRRESPONSIBLE AND WILL ONLY SUPPORT
REFERENDUMS THAT PROMISE SHORT TERM BENEFITS.
PROPOSITION 13 IN CALIFORNIA &
BUDGET REFERENDUMS HAVE RUINED CALIFORNIA.**

It is often argued that voters are incapable of balancing short-term benefits with long term costs and that voters are basically selfish and will only support Initiatives and Referendums that reduce taxes like Proposition 13 in California.

The Swiss experience contradicts this. In a referendum in 1993, 54.5% of voters approved an increase in the price of petrol and diesel of 21 Swiss cents per litre. The main issue in the referendum campaign was not environmental protection, but the need to bolster the public purse. Five years later, more than 57% voted in favour of introducing a distance-related heavy vehicle duty which would increase the cost of transporting goods by road. Again in 1993, two-thirds of voters had agreed to introduce national VAT and to

use a future rise to benefit old-age pensions. Similar proposals by both government and parliament between 1977 and 1991 had been rejected, because voters had been asked to approve whole packages of measures rather than specific individual proposals. When the politicians finally came clean and explained to people why there was a need to raise extra money, they were able to secure public approval not only for the change in the system, but also for the tax rise. (Kaufmann, Büchi & Braun, 2008)

Proposition 13 is often quoted as a glowing example of voter selfishness and that referendums like this have ruined the Californian economy. However they do not know, or prefer not to tell you, all the facts about this referendum. Critics forget to tell you that property taxes had risen steadily for a period of five years even though the Californian government had amassed a surplus of over five billion dollars! Critics also forget to tell you that Proposition 9, which would have halved state income taxes, was **defeated by a majority of two to one**.

Budget referendums have not ruined the Californian. Professor Matsusaka (2003) has explained this as follows:

At most, 32 percent of the 2003-04 state spending was locked in by initiatives, and almost all of that money would have been spent for its dedicated purpose even without a constitutional requirement. On the revenue side, initiatives have not placed any significant constraints on the three most important revenue sources for state governments: income taxes, sales taxes, and corporate taxes. It is hard to see a factual basis for the claim that the deficit was caused by voter initiatives, or that direct democracy has paralysed the state budget. In short, the evidence suggests that the California budget has not been paralysed by voter initiatives. It seems the initiative process is a scapegoat for the inability of elected officials to manage the competing demands for public funds in a period of declining revenues”

MONEYED INTERESTS & THE MEDIA DECIDE REFERENDUMS:

Very much a myth that seems to be perpetually expounded. Here is what Kaufmann, Büchi & Braun (2008) had to say,

Even in those cases where wealthy interest groups are involved, there is no evidence that money can directly influence referendum results in Switzerland. Quite the opposite: there are plenty of cases where, despite the spending of large amounts of money, voters went against the majority of the political or financial elites. This was so in the case of the price monitoring initiative of 1982, which was

accepted against the wishes of the authorities and the business world. Likewise with the introduction of the heavy goods vehicle duty and the motorway card (an annual fee for using motorways), which had been opposed by such influential and wealthy groups as the Touring Club of Switzerland, the Business Federation and tour operators. EEC accession was rejected in 1993, even though the commercial world had spent millions in promoting it.

Professor Matsusaka in his book *For the Many or the Few* (2004) did an in-depth empirical study and found that the evidence generally shows that Initiatives and Referendums serve the many and not the few. He examined fiscal data spanning the entire twentieth century at both the state and local level to determine whether Initiatives and Referendums promote tax and spending policies favoured by the majority or wealthy special interests and concluded they favoured the majority.

Much of the concern over special interests is directed at the role money may play in a Initiative and Referendum campaign. Despite the large amount of money spent, however, the evidence suggests that it is difficult to buy a referendum. Gerber (1999), Stratmann (2004), and de Figueiredo et al., (2005) show that money appears to have the largest effect when spent against a measure which in effect supports the status quo.

Political scientist Elisabeth R. Gerber from the University of San Diego found that citizens' groups appeared to do better overall in Initiatives and Referendums than wealthy interest groups. For example, Californians voted for a ban on smoking in all closed public areas, despite the multi-million dollar campaign waged by the tobacco companies. New Zealand has also had similar experiences. In 2003, three million dollars was spent by a group of supermarket chains to break the monopoly of two liquor trusts in Waitakere, Auckland, but voters were not swayed returning a comprehensive decision with 57.8 per cent support in Waitakere and 58.3 percent in Portage. In 1992, the Coalition for Better Government headed by businessman Peter Shirtcliffe was reported to have spent \$1.3 million to convince voters to keep the First Past the Post voting system, but the public still opted for change to MMP.

It can also be argued that it is far easier, and less costly, to lobby 122 MPs than it is to sway the hearts and minds of three million voters.

REFERENDUMS ARE A TYRANNY OF THE MAJORITY & HARM MINORITIES AND CIVIL RIGHTS:

Before anyone should criticise binding Initiatives and Referendums as a tool to tyrannise minorities and remove civil rights, thought must also be given to the atrocities elected representatives have imposed upon minorities and civil rights around the world. Even here in New Zealand, governments have treated minority groups such as Maori and Chinese with disdain. Maori had most of their land confiscated from them and thousands were killed in the process. Chinese immigrants were especially treated harshly when a huge poll tax was imposed upon any wanting to enter New Zealand, a very racist policy. Both groups have only recently received apologies from the government. We can also look to our neighbours in Australia. The Australian government's treatment of Aborigines has been deplorable when the "stolen generation" is taken into account. Aboriginal and Torres Strait children were removed from their families between 1869 and 1969 under Acts of Parliament. (Read, 1981).

As Professor John Matsusaka (2005) points out, referendums have at times been used against minorities. In 1910 an Oklahoma referendum disenfranchised black citizens and in 1912 a California referendum restricted the property rights of Japanese. However, almost all of the Jim Crow laws throughout the Southern states of America were brought about by elected representatives, not direct democracy. Moreover, the fact that racial minorities overwhelmingly support the initiative process fifty seven percent to nine percent for blacks and seventy three percent to three percent for Latinos in a 1997 poll suggests that the risk of tyranny of the majority is small.

There have also been numerous referendums that have supported the rights of minorities. In 1981 an Australian referendum to reform the constitution in the relation to the position of Aborigines received a Yes vote of 90.8 percent , one of the highest affirmative referendums ever recorded in a democracy. In California a state Senator launched a campaign to prohibit homosexuals from teaching in public schools but it was soundly defeated. Australian voters also rejected a referendum proposal to give the federal parliament power to legislate against the Communist Party. This was in 1951 when Stalin's terror was at it's height in Russia (Walker, 1987 *The People's law*).

Minorities also have the protection of the courts and the constitution, or in New Zealand's case, under various Acts like the Bill of Rights. Overseas experience has shown that courts have intervened from time to time to protect minorities when a rogue referendum has threatened them. It is often argued that the Swiss are not a very

democratic society given they refused to give women the vote until 1971 when it was finally granted through a referendum. A previous referendum had failed to give them the vote. Although it is important to point out that in a number of states in the USA, women only received the vote through a referendum when elected representatives refused to give it to them.

In the final analysis, referendums have not proved to be any worse than elected representatives on this matter.

THE 1986 ROYAL COMMISSION ON THE ELECTORAL SYSTEM

DIDN'T RECOMMEND REFERENDUMS:

The Royal Commission on Electoral Reform (1986, Chapter 7, p 167) has argued that referendums are, "a blunt and crude device which need to be used with care and circumspection". They also argued that New Zealand was based on a representative and responsible government, and that governments are elected to govern. Their argument seems to be of the view that an election every three years is all that is needed in a democracy and that the government's responsibility would be lessened if Initiatives and Referendums were to be more widely used therefore undermining the government.

This approach is rather common in discussions with MPs and academics. There seems to be a belief that all democracy requires is an election once every three years. However, there is a growing belief among voters that this is no longer satisfactory. We all know from experience that one political party does not get it right all the time and the government of the day is not always responsive to an informed public. So therefore, it would seem reasonable that the public should be able to correct a government when it makes bad policy, rather than having to throw it out at the next election over one polarizing issue.

The Royal Commission did however say that governments should be responsive to an informed public opinion. Whether or not the government has been responsive is debatable considering the government has ignored the overwhelming public demand for reducing the number of MPs and overwhelming response from the anti smacking Initiative. All ignored by government.

Although the Royal Commission was unable to recommend there be referendums on "free vote" (conscience votes) in parliament, they did recognise that the ability to vote on these issues would be attractive to many New Zealanders and that there was some merit in this argument. They did however support all major constitutional issues being

decided by referendum. Although, one could easily argue that removing the right to appeal to the Privy Council was a major constitutional issue, yet the government decided this issue by a simple majority in parliament.

It would seem strange that we must accept the government to be right all the time and that the only recourse the public should have is an election every three years. Surely these arguments must be an argument against democracy itself?

REFERENDUMS DO NOT ALLOW FOR COMPROMISE:

It is argued that Initiatives and Referendums do not allow for compromise, nor negotiation. While this may indeed be true to some extent, there are issues the public sees as black and white and are not willing to compromise on and are quite appropriate for Initiatives. An Initiative and Referendum question must indeed be reduced to a simple yes or no answer, but It is most likely that decisions put to referendum will be about a principle, often controversial and polarizing, but an issue that lends itself better to a decision best decided by the majority of voters, rather than a decision by the executive of government.

WE ELECT MPs TO REPRESENT US, LET THE PROFESSIONALS DO THEIR JOBS:

Most often we are happy to do just this. Citizens do not want to be overwhelmed with making every decision put before parliament. However, there does come a time when politicians become out of step with the wishes of the majority of voters. This is when voters must have the option to correct their politicians, and waiting until the next election to do so is not always an option. As former Queensland Premier Russell Cooper once said,

Therefore, all of us in politics need reminding from time to time of what the majority really wants. If we can be reminded in a way that, however uncomfortable it might be from a policy and philosophy perspective, doesn't mean we will lose our seats and the chance to mend our ways, we should welcome it with open arms."

Most people fail to realise that the government and every government before it, is actually run by the Executive Committee of the party in power, who then tells its MPs what the party line is going to be, and look out any MP who won't tow the party line. Just because someone votes for a political party every three years, does not mean they agree with everything that party wants to do. It is a bundled package and therefore, binding

Initiatives and Referendums allow the package to be unbundled. Initiatives and Referendums give voters a check and balance to make the politicians accountable.

There are times though, when good policy making may require information that is not known or knowable by experts. For example, the efficacy of workplace safety regulation might depend in part on widely dispersed information known by employers and employees (Hayek, 1945). Yet most Initiative and Referendum subjects tend to be about issues that define community values, which politicians are no more experienced at than your average voter. "Some evidence suggests that representatives do focus on questions of a more technical nature, while initiatives and referendums focus on issues where information is more dispersed or related to values." (Matsusaka, 1992).

REFERENDUMS REMOVE THE NEED FOR POLITICAL PARTIES AND WEAKEN DEMOCRACY:

Not at all. Binding Initiatives and Referendums are an adjunct to representative democracy but they will reduce the power of political parties. There are a number of political parties that operate in Switzerland, but there is greater co-operation between them than is the case in New Zealand. In Switzerland most of the legislation enacted originates from parliament. Less than ten percent of citizens Initiatives are successful. However, under the Swiss system, politicians are much more conscious of the power of voters and know they can initiate a referendum at any time, so politicians make laws that are more in line with what the majority wants.

THERE WOULD BE REFERENDUMS EVERY DAY OF THE WEEK, THIS IS GOVERNMENT BY REFERENDUM:

This is far from the truth. Initiatives would only happen when electors felt very strongly about something, because the signatures of ten percent of those on the electoral roll must be collected before an Initiative or Referendum could be held. This is a huge hurdle, and one of the highest thresholds in the world. The Swiss only require 50,000 signatures to trigger an Initiative or Referendum and their population is almost twice that of New Zealand. Even so, they average only three to four Citizens Initiatives per year. Therefore, there is some argument for reducing the signature collection requirements to as low as five percent without worry of too many Initiatives. A figure of 100,000 signatures would not be an unreasonable number to be collected.

REFERENDUMS ARE BADLY DRAFTED & MISLEADING:

This is indeed a major concern. Section 10 of the Citizens Initiated Referenda Act 1993 (2009) states: The wording of the precise question to be put to the voters, as determined under section 11 of this Act by the Clerk of the House of Representatives,—

- (a) Shall be such as to convey clearly the purpose and effect of the indicative referendum; and
- (b) Shall be such as to ensure that only one of two answers may be given to the question.

The trouble in New Zealand has been that the wording around several Initiative questions has been extremely ambiguous and also leading. It appears the Clerk of the House has not, in the past, held firm to the requirements of the Act. However, this in itself is not a reason to exclude the use of Initiatives and Referendums, but shows that the rules around them needs to be strengthened. Better Democracy NZ has called for a professional Referendum Panel to be created to ensure this does not happen.

REFERENDUMS LEAD TO DEMAGOGUERY AND MOB RULE:

It is very important here to distinguish here between Citizens Initiatives, Referendums and Plebiscites. Plebiscites are a popular vote procedure whose use lies exclusively within the control of the authorities, it is not a referendum but a Plebiscite. A Plebiscite is a public consultation controlled “from above”. It’s the powers that be (the President, Prime Minister, Parliament) which decide when and on what subject the people will be asked to vote or give their opinion. Plebiscites give ruling politicians additional power over citizens. They’re used to provide legitimacy for decisions those in power have already taken, they are used to mobilize people behind rulers and parties, and they are used by an authority to bypass another representative authority. The aim of the Plebiscite is not to implement democracy, but to reinforce or salvage those in power with the help of “the people”. Demagogues like Hitler and Mussolini have used the Plebiscite to do just this. However, it must also be pointed out that these dictators first achieved power through the ballot box. Binding Initiatives and Referendums are in fact a definite safeguard against a demagogue gaining power. There have been a number of demagogues in countries dominated by party politics, but none in Switzerland. The Swiss constitution does not allow for Plebiscites.

REFERENDUMS ARE TOO EXPENSIVE:

This has proved no problem in Switzerland where provision is made for any Initiative or Referendum to be held, if required, three to four times a year. Financial costs are higher in Switzerland because brochures and ballot papers must be published in three major languages - German, French & Italian. It is argued that a referendum costs around ten million dollars. While this may sound like a lot of money to the average person in the street, it is a small amount in the grand scheme of things. MP perks which have caused a recent uproar in New Zealand far exceed the cost of holding referendums. It has also been shown that Initiatives and Referendums in fact lead to less government spending. US states with referendums have been shown to spend up to nineteen percent less than those states without the referendum (Feld & Matsusaka, 2003). As electronic voting develops, as no doubt it will, the cost of elections and referendums will reduce. It is only a matter of time before citizens can vote in a general election online and several countries have tested the process. If we can bank online there is no reason why we can't vote online, saving money and time.

REFERENDUMS STIFLE INNOVATION AND DAMAGE THE ECONOMY:

Some critics also argue that referendums stifle innovation and damage the economy. Kaufmann et. al. (2008) argue against this will when they say,

The Swiss were amazed when, in 2002, *economiesuisse*, the umbrella organisation for Swiss business, produced a position paper on public finance in which this most influential body stated clearly and simply: "Direct democracy should be promoted at all levels of the state." The amazement came from the fact that leading industry spokespersons and financial experts had until then consistently claimed that the wide-ranging rights of participation enjoyed by Swiss citizens stifled innovation and damaged the economy. At the close of the 20th century, Walter Wittman, Professor of Economics at Fribourg University, had written that "Switzerland must abandon its direct democracy and turn to parliamentary democracy, just like other countries". If it failed to do so, "direct democracy in general, and the referendum in particular, will ruin the Swiss economy". There were repeated calls during the 1990s for Switzerland to "get real" about its direct democracy: i.e. to restrict participatory rights by, for example, raising the signature quorum for initiatives and optional referendums and excluding certain issues – such as public finances – from being

put to referendum. A significant number of leading figures in the economy had allied themselves to this position after what they had seen as referendum “defeats” in the 1992 decision not to join the EEC and the rejection of liberalised employment law. The then head of the major bank Credit Suisse, Lukas Mühlemann, had demanded as late as 2001 “a restriction of direct democratic rights”. Less than a year later, it appeared that business leaders – under the mantle of *economiesuisse* – had changed their minds and now believed that the tools of direct democracy were worthy of support because they actually benefited the economy. Professor Kirchgässner and his colleagues conclude: “In economic terms, everything is in favour of direct democracy – nothing against.” They therefore argue that direct democracy should be extended, rather than restricted. In their view, direct democracy is “up-to-date, successful, exportable and has the potential for further development”.

Professor John Matsusaka (2003) also highlighted that no more than thirty-two percent of State spending in California was locked in by referendums and most of this was already earmarked for education by the State government, so therefore, the referendum process had little effect. He suggests that “voter initiatives are not a significant obstacle to balancing the budget in California.”

RADICAL MINORITIES WILL DISRUPT SOCIETY BY FORCING REFERENDUMS:

Anyone with any experience of obtaining signatures for Initiatives or Referendums knows that collecting hundreds of thousands of signatures to trigger a referendum is no easy task. If it can be achieved then there is obviously a groundswell for debate and possibly change. The real test comes when an issue must be voted on by the whole electorate once a referendum has been triggered by meeting signature collection requirement.

DO REFERENDUMS FAVOUR CONSERVATIVES OF LIBERALS? THE LEFT OR THE RIGHT?

Matsusaka (2004) shows that in US states where referendums are used, the results were no more conservative or liberal than non referendum states. He used six different

measures of public opinion, ranging from voting records of senators and representatives to survey data from opinion polls.

REFERENDUMS SHOULD HAVE MINIMUM THRESHOLDS & TURNOUT REQUIREMENTS:

It is often argued that for Initiatives and Referendums to have authenticity they must meet a minimum thresholds and minimum turnouts. Some critics argue there should be super-majorities of sixty and seventy percent before a Initiative or Referendum should be allowed to pass. Yet when we look at the recent results of our general elections we often find that governments are always elected with less than a fifty percent majority. In 2008 the national government was elected with only thirty six percent of the vote when those who didn't vote were taken into consideration. We also find that turnout in general elections is reducing all the time. Perhaps the way to look at those who don't vote in a referendum is to assume that those who do not vote are not concerned as to which way the referendum will go. For everyone who might have been a “yes”, there is someone who might have been a “no” vote, therefore canceling each other out. There are also problems with requiring a minimum turnout. Take for example an Italian referendum in June 2005.

Last June, the church played a role in a referendum that sought to overturn parts of a restrictive law on in vitro fertilization [...]. To be valid, referendums in Italy need to attract the votes of more than half the electorate. Apparently fearing defeat, Cardinal Camillo Ruini called on Catholics to stay away so that the initiative would be thwarted with the help of the merely apathetic. His move was so blatantly tactical (and questionably democratic) that it prompted criticism from believers [...]. But it worked. Only 26% of the electorate turned out to vote, so the legislation remained in force. (The Economist, Dec. 10th 2005)

The Swiss find no need to have thresholds or quorums and neither do we see the need for them.

REFERENDUMS SHOULD BE LIMITED TO CERTAIN USES:

Some opponents of Initiatives and Referendums argue that voters should not be allowed to have a say on issues like national defence, tax and budget matters. Only those

with experience in such matters and financially educated should decide. In most cases it would be argued that it is likely to be quite rare that Initiatives and Referendums would be held on such issues anyway. One would expect that most would be on social issues like immigration, voluntary euthanasia, the death penalty, prostitution law reform or constitutional type issues like removing the right to appeal to the Privy Council etc. However, it should not be forgotten that the Swiss have excelled even in matters of finance. The Swiss stubbornly refused to approve government spending at the height of Keynesian economic theory and economic experts argued they were selfish and irresponsible. Swiss voters were proved to be very wise indeed when unemployment and inflation hovered around one and two percent while the rest of the developed world run by “experts” suffered with uncontrolled stagflation. (Walker, 1987) “In 1985 Italian voters rejected a communist-sponsored indexation initiative that would have given many people higher wages in the short term, but with long-term inflationary consequences.” (Walker, 1987).

WOULD THE GOVERNMENT BE BOUND BY THE RESULT OF A REFERENDUM?

In Switzerland Initiatives and Referendums are binding on the government. This came about over a long period of time incrementally. There are those who argue that Initiatives and Referendums should not be binding on the government and those that say all Initiatives and Referendums should be binding on the government. As a transitional phase, Better Democracy NZ has suggested there could also be a check and balance on binding Initiatives and Referendums, by allowing seventy five percent of Members of Parliament to veto a referendum within sixty days of the result. This option would offer a protection from both factions for powerless minorities. It would have to be a very extreme referendum for this to happen and as New Zealanders are not an extreme people it is highly unlikely this situation would ever arise. If this option makes it more palatable for opponents and elected representatives to relinquish some of their power, then surely this would be an option worthy of inspection.

SUMMARY:

As former Prime Minister David Lange said, "Many of the arguments against binding referenda are demeaning. They assume people always vote for things which are popular, which carry benefits without acknowledging the costs. These arguments have been largely discredited by the experience overseas." Professor Vernon Bogdanor also said, "In the last resort, the arguments against the referendum are also arguments against democracy, while acceptance of the referendum is but the logical consequence of accepting the democratic form of government."

To me, the biggest hurdle to gaining full scale support to binding Initiatives and Referendums would appear to be political and academic elitist thought biggest. There appears to be a real lack of faith from such people in the capabilities and intelligence of their fellow New Zealanders. A lack of faith unwarranted in my opinion when put against the arguments of James Surowiecki's book, *Wisdom of the Crowds*.

One of my first university lecturers suggested the best advice he could offer was to challenge everything he said, and to come to my own conclusions. In other words, don't believe everything you are told, even by an esteemed university professor. These words flooded back to me when I heard Raymond Miller, an Auckland University political scientist and media commentator, calling for the 1993 Citizens Initiated Referenda Act, to be repealed on the Paul Holmes Q&A television show. Former Prime Minister and law professor, Sir Geoffrey Palmer, has often suggested the same. In his 1997 book *Bridled Power* he said, "the Act should be repealed. It appears to offer a chance for citizens to influence policy, but in substance that opportunity is like a mirage in the desert. Referenda should be reserved for those few and important issues of constitution and conscience that should be bound by the people's voice."

Given the huge number of conscience votes in Parliament over the last decade on extremely polarizing issues, I for one would have loved to hear Sir Geoffrey calling for citizens to decide these outcomes in a referendum... where were you when we needed you Sir Geoffrey? If referendums are a mirage, then what of representative democracy? Does it not also give citizens the illusion they can influence policy, because they get to vote once every three years at an election? Yet the day after an election a government can break every promise it has made, and often has. Perhaps we could also repeal representative democracy?

The weakness of representative democracy is that once a government is elected, there are few checks and balances between elections. The public is basically excluded.

While proportional representation and coalition governments may have slowed Cabinet government to some extent, voters generally have to accept whatever the government decides it wants, even if the majority of citizens disagree as they did in the 2009 smacking Initiative and even if the government of the day represent only 36.78% of those illegible to vote, as was the case with the 2008 National/Act Party government. Yet they rule 100% of the people.

It would seem strange that academics like these would be making calls to repeal the CIR Act. Surely what New Zealanders seek is a strong and robust society, where there is a true exchange of information between the elected and the electorate, not the “thin” representative democracy that Benjamin Barber refers to in his book *Strong Democracy*. A democracy controlled by political elitists and influenced by academic elitists who have little respect for the will and collective wisdom of voters is surely undesirable.

I will leave you with the thoughts of US President Thomas Jefferson who said it best when he said,

I know of no safe depository of the ultimate powers of the society but the people themselves; not enlightened enough to exercise their control with wholesome discretion, the remedy is not to take it from them, but to inform their discretion. *Enlighten* the people generally and tyranny and oppressions of body and mind will vanish like evil spirits at the dawn of day.”

DEFINITIONS

Citizens Initiative a direct democracy procedure, and a political right, that allows a given number of citizens to put their own proposal on the political agenda. The proposal may be, for example, to amend a constitution, adopt a new law, or repeal or amend an existing law. The procedure is initiated by a prescribed number of eligible voters. The sponsors of a Citizens Initiative can force a popular vote on their proposal (assuming that their Initiative is formally adopted). The initiative procedure may include a withdrawal clause, which gives the sponsors the possibility to withdraw their Initiative, for example in the event that the legislature has taken action to fulfil the demands of the initiative, or part of them. This procedure can operate as a means of innovation and reform - it allows people to step on the gas pedal or the breaks. In principle, Initiatives enable people to get what they want. In practice, it's a way to synchronize citizens' views with the politicians' views.

Authorities' counter-proposal. Within the framework of a popular Initiative process, a representative authority (normally parliament) has the right to formulate a counter-proposal to the Initiative proposal. Both proposals are then decided on at the same time by a popular vote. If both proposals are accepted, the decision on whether the Initiative proposal or the **Authority's counter-proposal** should be implemented, can be made by means of a special deciding question.

Referendums. Often referred to as Obligatory Referendums and are a direct democracy procedure triggered automatically by law (usually the constitution) which requires that certain issues must be put before the voters for approval or rejection. A conditional Obligatory Referendum means that a specified issue must be put to the ballot only under certain conditions (for example, in Denmark the delegation of powers to international authorities is decided by popular vote if more than half, but less than four fifths of the parliament accept such a proposal). Unconditional referendums are without loopholes, (for example, in Australia & Switzerland, changes of the constitution must always be decided by a referendum).

Plebiscites. This is a popular vote procedure whose use lies exclusively within the control of the authorities, it is not a referendum but a plebiscite. A plebiscite is a public consultation controlled "from above". It's the powers that be (the President, Prime Minister,

Parliament) which decide when and on what subject the people will be asked to vote or give their opinion. Rather than being an active subject in control of the procedure, citizens become means to an end, which is determined by a representative authority. Plebiscites give ruling politicians additional power over citizens. They're used to provide legitimacy for decisions those in power have already taken, they are used to mobilize people behind rulers and parties, and they are used by an authority to bypass another representative authority. The aim of a plebiscite is not to implement democracy, but to reinforce or salvage those in power with the help of "the people".

Recall. These can be launched to remove corrupt officials, and to remove officials whose policies and performance are found wanting. The Recall is very similar to a Citizens Initiative. Citizens collect the required amount of signatures and once this has been achieved a referendum is held to decide if a certain elected official will retain their position. The Recall has two components... a yes or no vote for recall, and the names of replacement candidates. The Recall measure itself is successful if it passes by a simple majority. In that case, the replacement candidate with a simple plurality of votes wins the office. If the recall measure fails, the replacement candidate votes are ignored. In the America the language in the recall provision is strictly procedural. Substantive grounds for Recalls are not specified.

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