

## The People's Law: Initiative and Referendum

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### Constitutional malaise

One of the strongest currents one can observe in Australian life today is the disillusionment with which people everywhere seem to view the domestic political scene. The people are disenchanted with parties that are elected to office on one platform but unveil a hidden agenda the day after the election, leaving the voter, or any individual member of parliament, powerless to do anything about it. Again, it is the parties, not the voters, who select the candidates for election, as we have no equivalent to the American system of primaries. Disciplined parties have cartelized the political marketplace and, like all effective cartels, have reduced the citizen's freedom of choice to the bare minimum. A Swiss visitor recently said that Australians are a free people only on election day, but even that freedom is limited to the choices that the cartel sees fit to offer. Party rhetoric differs widely, but once in office both major parties in practice adopt similar policies.

Local members no longer represent the voters of their particular area, advancing their constituents' views in legislative debate, but are instead the party's representatives whose function is to sell the platform in a particular electorate. Pressure groups are able to use promises of campaign funds or threats of disruption to procure the enactment of legislation that a majority of the people do not want. Individual members of parliament no longer have any freedom to speak or vote in accordance with their own perceptions of long-term community interests, or in accordance with the wishes of their constituents. As Professor C.J. Hughes of the University of Leicester, speaking of the British Parliament, puts it, "the House of Commons no longer behaves like the deliberative body it was in the 19th century. The House today is a collection of two sets of whipped dogs who follow their masters".<sup>1</sup> Party discipline is, if anything, even stronger in Australia. The political scientist Dr Dean Jaensch believes that the degree of enforced cohesion makes Australian parliaments unique and has completely smothered many of the functions of parliament and parliamentarians.<sup>2</sup> The people are presenting record numbers of petitions to parliament, but these are ignored, not only in the sense of not being acted on, but also in as much as members keep talking among themselves while petitions are read to the house. In any case, some federal parliamentarians

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This article reproduces Professor Walker's inaugural lecture.

1. G. Walker, *Initiative and Referendum: The People's Law*, Sydney 1987, at 31. Propositions in this paper that are not specifically footnoted will for the most part be found documented in this work.
2. D. Jaensch, *Getting Our Houses in Order — Australia's Parliament: How it Works and the Need for Reform*, Ringwood, Vic. 1986, at 43.

believe that even the right to petition should be abolished. Parliamentary debate on legislation has become an empty ritual, the outcome being a foregone conclusion. It is well known that members are often forced to speak in support of legislation that they do not understand or that they personally oppose.

People have lost faith in the ability of existing institutions to reform the legal structures that have helped Australia's relative decline over the last twenty years. And when people feel powerless to control the laws under which they must live, the very legitimacy of law suffers. Legitimacy plays a vital part in maintaining the rule of law, because without it people feel no inner impulse to obey the law. They may do so out of fear, but keeping the majority of the people in a sufficient degree of fear to maintain even a fraction of all statute law would require an apparatus of coercion that would be intolerable in a free and democratic society.

### **Constitutional remedy: direct legislation**

Given this gloomy panorama, it is refreshing to be able to report that a practical constitutional solution to these problems does exist and is potentially within our grasp. This is the system of direct legislation by the people through the mechanisms of initiative and referendum. This system was first introduced at the national level in Switzerland in 1874 and was later adopted in 26 of the American states and in the District of Columbia. Since the 1970s it has also been used in Italy, and variants of it exist in Denmark and Austria. In Canada it is widely used at the local government level.

There are two main forms of direct legislation. The first is the *legislative petition referendum*, or "*people's veto*". This allows a specified number of voters (usually between 2 and 5 percent) to petition for a referendum on a bill that has passed through parliament in the normal way but has not yet taken effect. When a petition signed by the prescribed number of voters is presented to the government, the statute does not come into force until the voters have had the opportunity to approve or reject it in a binding referendum. In Switzerland this mechanism also extends to the ratification of treaties.

The other form is the *legislative initiative*, which permits a prescribed number of voters to compel in the same way the holding of a binding poll on whether a proposed law of their own choosing should be adopted, or whether a particular law already in force should be repealed. This terminology is slightly confusing because the initiative obviously involves the holding of a referendum in the ordinary sense of the word, while the legislative petition referendum incorporates an element of citizen initiative, in the sense that the petition is launched by voters of their own motion. The initiative may also be used to propose amendments to the constitution; in this case it is called the "*constitutional initiative*".

There is a third mechanism, the recall, which works in a similar way but relates to the removal of public officials, elected or

unelected. As the subject of this talk is law-making, not the appointment or removal of officials, I will not be saying anything about the recall.

Interestingly, Queensland very nearly pioneered the initiative and referendum system for Australia in the early part of the century. Bills were introduced in State Parliament between 1914 and 1919. They were blocked in the Upper House, though there is some evidence to suggest that if the petition referendum had been put forward by itself, it might have passed. By 1919 the Popular Initiative and Referendum Bill had qualified for submission to a vote of the people under the deadlock-breaking mechanism in the Parliamentary Bills Referendum Act 1908. If this had been done, the voters might well have approved it, but the bill was not proceeded with after Edward Theodore took over from T.J. Ryan as Labor premier. Initiative, referendum and recall were in fact part of the platform of the Labor Party for 70 years, not just as policy but as primary goals of the party. They were removed in 1963 at the urging of Mr Don Dunstan.

Preliminary steps were also taken in Federal parliament in 1914 with a view to establishing the direct legislation system, but these moves likewise came to nothing. The nearest Australia has come to direct legislation is at the local level, where petition referenda have been available in some states for specific purposes such as local option liquor prohibition or council amalgamations. In many cases the results are not binding.

One can think of several reasons why the movement towards direct democracy seemed to run out of steam in the early 1920s, but one significant factor seems to have been the First World War. Australia's participation in that conflict brought a wave of official exaltation of the British connection and British institutions. Now of course Great Britain has made unsurpassed contributions to constitutional democracy; but those contributions have been on the side of liberalism and the rule of law, rather than democracy and popular participation. In the extension of universal suffrage Britain lagged behind France, the United States, Australia and New Zealand. The secret ballot was still being denounced as "un-English" in Britain years after it had become accepted in Australia. Britain had never had a national referendum until the common market ballot in 1975, and although that poll was highly successful, it had been bitterly opposed on both sides of parliament. Obviously, therefore, the cause of direct legislation had to suffer at a time when opinion-makers were falling back onto traditional, hierarchical British ideas.

### **Benefits from initiative and referendum**

Enormous benefits have been found to accompany the introduction of the direct legislation system.<sup>3</sup> It gives back to the people the real

3. *Op Cit.*, Chapter 2, 8.

power to determine the laws under which they live, a power that is rightly theirs but has been usurped by party machines and by pressure groups. Initiative and referendum force politicians to take more notice of the values and opinions of the people, because unpopular legislation rammed through parliament can be promptly overturned by the people's veto. As time goes on, resort to the referendum petition becomes less and less necessary as parliaments gradually learn that lesson. Again, controversial issues can be taken out of the hands of extremists and dealt with in accordance with the usually more moderate views of the majority. There have been striking examples of this in Italy, which until recently had a turbulent political history dating back to the late Middle Ages. Italy in 1974 affirmed its first divorce law through the initiative system, and of course divorce was a very controversial subject in that country. The Italian abortion law was also modified by these means and some anti-terrorist laws that were challenged by initiative were upheld by popular vote, which gave the legislation a greater legitimacy than it would have had otherwise. No doubt many Italians still disagree with some or all these laws, but at least they are not left with the sense of suspicion or grievance that would have poisoned the body politic if these matters had been dealt with by traditional parliamentary manoeuvring. Direct legislation has in fact markedly lowered the overall operating temperature of Italian politics. Partly as a result of this, the country is prospering and economists now speak of the "Italian miracle".

Initiative and referendum are immune to the arts of electoral geometry and the other techniques used by parties to reduce the influence of the people over the legislative process. They do not eliminate political parties or lobby groups; nor should they, for these bodies have a part to play. But they do force pressure groups to persuade rather than dictate. They do check the tendency of parties to make laws that are contrary to the wishes or beliefs of the people. They also allow the people to distinguish between policies and personalities, so that they no longer need to turn out of office a government of which they basically approve simply because they object to one of its legislative policies. This, incidentally, is also a great advantage from the point of view of elected politicians, because it increases their security of tenure. Conversely, politicians can say "no" to minority pressure groups agitating for extreme legislative solutions, while pointing out that if they really believe they have popular support, they can launch an initiative drive. Direct legislation gives the people an incentive to take an interest in public issues and so makes the best use of their talents and experience. It is sometimes said that the Australian people are politically apathetic and ignorant. On particular issues, people may well be ill-informed, and many are certainly apathetic. But this is itself a result of the present system. As modern economics has shown, information is not costless. To become well-informed or active on a particular issue takes time and effort. At present citizens have no incentive to seek full information on any particular issue, because they know that when the next election comes, they will be confronted with the same political cartel offering a choice only bet-

ween two, or at the most three, inseverable packages of personalities and policies. The voter's opinion on any current issue, no matter how well informed and thoroughly reasoned it may be, will have no effect on legislation, which is the product of party policy and the activities of pressure groups.

The system of direct legislation, on the other hand, calls on the voter to express a considered opinion that will automatically count in the law-making process. This gives the voter an incentive for independent and considered thought. Most people behave responsibly when responsibility is placed upon them. As Thomas Jefferson said, men in whom others believe come at length to believe in themselves; men on whom others depend are in the main dependable. In these times of upheaval and radical change, society and government need the benefit of all the new ideas, new methods, new store-houses of personal initiative and energy that are available. The simplest way, and indeed the only way, to tap these reserves is to task for them, by allowing direct individual participation in law-making.

Above all, initiative and referendum tackle the root cause of much of our constitutional and political malaise, which is fear. I do not believe that most politicians behave the way they do because of megalomania. Their subterfuges, prevarications, deal-making, tampering with the rules and so on stem, not from a lust for power, but from a fear of what the other side will do if it comes to power. Under present constitutional arrangements and doctrines, a government that wins an election is virtually given dictatorial power for the next three or four years. In that time there is little or nothing to stop it from using its parliamentary majority to destroy society's most precious institutions or trample on its most cherished values. Those who adhere to A.V. Dicey's theory of parliamentary sovereignty would assert that an act of parliament requiring that all blue-eyed babies be killed would be a valid statute with the force of law.

Direct legislation changes all this. A government that used its temporary majority to enact outrageous statutes would find itself facing referendum ballots on them. It is interesting in this context to notice the incidence and success rate of referendum petitions (the "people's veto" type) over time. In Switzerland (and the American experience is similar), when the petition referendum was first introduced, about 12 percent of all statutes were challenged. Of these, a high proportion were rejected by the people — over 60 percent in Switzerland and around 90 percent in some American states.<sup>4</sup> These results are the best possible proof of the need for the petition referendum, for they make it quite clear that representative assemblies do not always represent the voters. But between 1950 and 1974, the proportion of acts challenged fell to 4 percent.<sup>5</sup> In California no people's veto referendum (as opposed to the initiative type of referendum) qualified for the ballot between 1942 and 1982. The main reason for this decline seems to be greater voter satisfaction with the output of legislative assemblies.

4. *Idem.*, at 8.

5. *Ibid.*

Parliamentarians in states where the referendum is available have become more respectful towards public opinion. They have learned to give more thought and care to legislative proposals and to avoid passing any bill that is vehemently opposed by a substantial portion of the population. In Switzerland the referendum in fact accomplished a political revolution. This single institution led to the development of what has come to be called 'consensus democracy', in which the ranks of the government are opened to members of the opposition parties by a proportional allocation of cabinet positions. This is the basis for the extraordinary stability of Swiss governments and the long tenure of elected representatives in that country. But even apart from this, direct legislation takes some of the life-or-death character out of parliamentary elections, because the winning party no longer gains near-absolute power. It dispels the climate of fear that surrounds party rivalry and reduces the incentive or pressure to engage in unscrupulous or arbitrary behaviour.

### **The case against — does it square with the facts?**

When one considers the arguments against the initiative and referendum, one is first of all struck by the way in which the same arguments have been put forward again and again each time another state or country moves to adopt the system. No regard whatever is taken by critics of experience since 1874. The points raised today by opponents are identical to those put forward by the Swiss opposition in the 1860s, with the exception that in those days it was possible to raise the objection, no longer available today, that if direct legislation was such a great democratic advance, how was it that had never been introduced in the United States, which was the birthplace of modern democratic practice?

Time does not permit me to canvass all the counter-arguments in detail (in any case I have done this elsewhere<sup>6</sup>), but some of the main ones should be mentioned.

It is sometimes objected that direct voter participation in the law-making process is inconsistent with the supremacy of the Westminster-style parliament, and especially with the theory of parliamentary sovereignty elaborated by A.V. Dicey in his 1885 classic *Introduction to the Study of the Law of the Constitution*. Today, Dicey's extreme and absolutist formulation of the supremacy theory, which was and is unsupported by any binding authority, is being increasingly criticized by academic writers and by some judges. But in any case, the argument overlooks the fact that Dicey himself was a life-long advocate of the Swiss referendum system. Along with other British constitutional luminaries such as Lord Balfour, Sir William Anson and Viscount Bryce, he strongly advocated adoption of certain forms of direct legislation in Great Britain.<sup>7</sup> It has been suggested that the 1919 case *Re Initiative and*

6. *Idem.*, Ch. 3.

7. *Idem.*, at 18–19, 62–67.

*Referendum Act*,<sup>8</sup> is a barrier to its introduction in the Australian states. In that case the Judicial Committee of the Privy Council struck down Manitoba's venture into this field. While this decision is not binding on Australian courts, it cannot be ignored. But the main ground for the decision that might still be relevant in Australia today, the exclusion of the governor from the direct legislation process, could easily be overcome by suitable drafting and indeed Queensland's 1919 bill was so drafted.

In any event, three years after this decision, the Privy Council reversed its stance on the validity of initiative and referendum legislation in *R. v. Nat Bell Liquors Ltd.*<sup>9</sup> A variant of this argument is the general proposition that initiative and referendum are "inconsistent with the Westminster system". But if Australia had been content passively to follow the Westminster system, we would not have adopted universal manhood suffrage or the vote for women when we did, because in both these important matters we were well ahead of Westminster; we would not have pioneered the secret ballot, and we would have unelected upper houses consisting of dukes, earls and life peers; we would not have made the extensive use of referendums that has long been a distinguishing feature of our political life; nor would we have introduced proportional representation, universally acknowledged as the fairest method of parliamentary representation, into the Senate; nor, for that matter, would we have written constitutions at all. Indeed, experience suggests that if we adopt the initiative and referendum, Westminster might well follow us.

It is sometimes said that direct legislation could never work in this country because Australians always vote 'no' in referendums. This is a misconception. If we look at the record of state referendums held since Federation, we find that two-thirds have been carried. At the Federal level, it is true that of the 38 proposals for amendments of the Commonwealth Constitution that have been put to referendum, only 8 have been approved. But all of the rejected measures were calculated to increase the power of the Commonwealth executive or legislative government. Now one can agree or disagree with the voters' position on this, but to say that people do not want to give more power to Canberra is not the same thing as saying that they always vote 'no' in referendums. Further, the 1967 referendum reforming the Constitution in relation to the position of aborigines attracted a 'yes' vote of 90.8 percent, one of the highest affirmative referendum votes ever recorded in a democracy. In 1977, of the four amendments simultaneously put to the voters, three were carried by majorities averaging 3 to 1. Further, the electors displayed no tendency to vote 'yes' or 'no' on the four measures en bloc, but showed a clear propensity to differentiate between them. This is striking in itself, as all political parties had campaigned for a 'yes' vote on all four questions.<sup>10</sup>

Fears that direct democracy would instal a tyranny of the

8. [1919] A.C. 935.

9. [1922] 2 A.C. 128.

10. Walker, at 68-70.

majority have been shown by experience to be unfounded. Quite apart from direct legislation, it is difficult to think of a single historical example of a democracy operating under the majority rule principle that could generally be characterized as a tyranny. But there have been innumerable tyrannies by absolute rulers and oligarchies. One can think of cases where democratic governments have performed a particular act or acts that we might describe as tyrannical, but a striking feature of these is that they are almost invariably done immediately after an election, and sometimes after an election campaign in which the winning party has specifically denied any intention of doing the act in question. So the winning party is acknowledging that democracy is not favourable to tyranny: the government can act tyrannically only when it knows there is a long space until the next election. By this time the voters' anger may have cooled.

Specifically in relation to direct legislation, there does not appear to be a single recorded instance in which the initiative and referendum have been used in any state or country to enact legislation oppressing minority groups, to effect massive and uncompensated expropriations of property, to dissolve or persecute trade unions or to do any of the other extreme acts predicted by opponents. Nor is there any observable tendency for voters to support measures that give selfish short-term benefits. In fact, they have proved far more responsible than politicians, whose main preoccupation, after all, is re-election. California's famous Proposition 13 in 1978 put an end to the rapid escalation of property taxes in that state, which had trebled in 5 years, but more extreme tax reduction measures were later rejected by the voters as impractical. The same pattern appears in other American states and other countries. For example, in 1985 Italian voters rejected an indexation measure that would have given many people higher wages in the short term, but at the expense of longer-term dislocations such as we have experienced in Australia.

Studies of voting behaviour in direct legislation ballots show that people's values and convictions remain politically middle-of-the-road and do not consistently favour either the left or the right. A 1984 study of initiative and referendum ballots in the United States over the previous eight years found a nearly identical number of initiatives sponsored by the left (79) and the right (74). There was an almost identical voter approval rate for both sides: 44 percent for the left and 45 percent for the right. Of a third category of 46 initiatives that could not be classified as left or right, exactly half were approved by the voters. Overall, it was found that the more moderate and reasonable the approach of the initiative measure, the more likely it was to succeed at the polls, whether the subject matter were nuclear waste disposal, tax reductions, business regulation or anything else.<sup>11</sup>

Contrarily to the fears of opponents, people cannot be manipulated by costly advertising or biased media coverage used in the period before the ballot. No researcher has ever been able to

11. *Idem.*, at 114.



find any correlation between advertising outlays and the chances of an initiative succeeding at the polls. At one time there did seem to be a correlation between spending *against* a measure and its chances of being defeated, but in recent years even this connection has weakened as heavy campaign spending has tended to become an issue in itself. This brings us to the fundamental insight, or re-discovery, of direct legislation practice, namely, that the people are not stupid. They are perfectly capable of noticing a one-sided and obviously costly advertising campaign, and immediately tend to ask where the money came from. So heavy advertising expenditure tends to rebound on those who use it. Conversely, some successful initiatives that have relied on voluntary canvassing have been able to succeed at the polls with very little expense. One successful California environmental initiative involved a total expenditure by proponents of only \$9,000, while the opponents of a marijuana legalization initiative were able to defeat it with the expenditure of only \$5,000, a mere fraction of the expenditure in favour of the measure.<sup>12</sup> One group that does stand to gain in influence from direct legislation is women, because experience shows that one of the most effective locations for gathering petition signatures is outside supermarkets.

Similarly, the influence of media comment has been greatly exaggerated. One study of over 1,000 actual ballot papers in Los Angeles found no-one marked a ballot paper in accordance with the recommendations of the Los Angeles Times.<sup>13</sup> Again, the almost unanimous media condemnation of Proposition 13 was to no avail.

Naturally there are costs involved in all this, but there are structural and procedural ways of minimizing them. One of the most expensive parts of the process is the checking of thousands of petition signatures for genuineness, absence of duplication and voter qualifications. This item can be made more manageable if recognized sampling techniques are permitted, as in California, where some 8 percent of signatures are actually checked. The costs of the ballot itself can be reduced by synchronizing referendum ballots with general elections, as is commonly the case in the American states. At each biennial election in California there is an average of 2.7 citizen measures on the ballot paper. Alternatively, they could be held in conjunction with local government elections or, as Senator Mason has suggested, one day of the year, such as the first Saturday in December, could be designated as the date for all initiative and referendum polls nation-wide. Any form of democracy always seems at first glance to be more costly than a less democratic option, but this is true only in the short run. The more democratic a state or country is, the less likely it is to be plagued by build-ups of resentment, sullen defiance or passive resistance. These undercurrents bring heavy costs of their own, either by exploding violently, by requiring heavy enforcement expenditure or simply by undermining the will to engage in productive activity. It

12. *Idem.*, at 87.

13. *Idem.*, at 91.

is no coincidence that democratic societies have higher living standards than undemocratic ones. The Swiss, who make freer use of direct legislation than anyone else, and whose referendum costs are inflated by the need to print everything in three languages, have seen their nation change from being the most poverty-stricken and strife-torn country in Western Europe in 1874 to being the world's most prosperous and stable nation today. I have already mentioned the Italian economic miracle that has taken place almost unnoticed since the 1970s. There is of course more than one factor at work there, but the role of initiative and referendum in creating a more stable political climate cannot be denied.

In Australia, direct legislation could be used to tackle the controversial issues that are poisoning the body politic and which governments have either failed to deal with at all, or have surrendered to the extremists, to pressure groups or to vested interests. For example, no government has made any serious attempt to deal with the problem of inflation. It is well known that a principal cause of inflation is excessive and ever-growing government spending, but governments are so much at the mercy of pressure groups that need to be bought off that they lack the will to attack the problem. Direct legislation could make a significant difference here, as it has in Switzerland, by enabling the voters to block unnecessary government ventures that create new drains on the taxpayer's funds. The question of secret ballots in trade unions, and other aspects of trade union reform, could finally be decided by majority of the people. Other controversial issues such as participation in treaties, environmental protection, the uranium industry, Aboriginal land rights and the feminist movement all embody some claims that would be supported by most people and some other claims that find favour only with extremists. Initiative and referendum would enable those two categories to be sorted out with much less rancour and stridency than is currently the case.

### **A century of experience**

A century of experience has shown direct legislation to be a valuable supplement to the representative institutions of liberal democratic societies. It has neither replaced the elected assemblies nor degraded their functions. It has improved the quality of their work by giving them an incentive to take more notice of public opinion, to be more careful to put legislation into the best possible form, and to formulate more clearly the arguments in support of it. Direct legislation takes all the point out of secret deals with pressure groups or party factions. It has proved to be a source of a new legitimacy for enacted law and a bulwark against extremism. It paves the way for a less fear-based approach to the problem of government.

The misgivings that attended its introduction in other countries have proved to be unfounded. Dire predictions of demagoguery and mob rule have proved utterly without foundation; and indeed

direct legislation has made such phenomena less likely. After all, who has ever heard of a Swiss demagogue? The people turn to demagogues and their quack remedies only when they are frightened, confused and desperate, when they feel there is no other way they can reassert control over the direction of the state and over their lives.

In no country where the initiative and referendum exist have the people ever voted to abolish it. On the contrary, these institutions are greatly prized by the people and there is strong support for extending them into new areas. In the United States, the idea of a nationwide initiative system is supported by a majority of 2 to 1, while fully 77 percent favour direct legislation at the state level. Support for direct legislation is particularly strong in states or countries where it already exists and the mere suggestion of its abolition would be greeted with popular outrage. Californians, for example, support it by an overwhelming majority of 85 percent.<sup>14</sup> These figures are especially telling because they come from places where direct legislation is already in common use, where voters know how it works in practice and would be aware of any negative aspects.

In sum, it is no longer possible to make a case against the initiative and referendum at state or national levels unless one is prepared to ignore all the evidence accumulated over 110 years of practical experience. Of course, there are people who are quite prepared to disregard such evidence.<sup>15</sup> For the debate over citizen law-making highlights the age-old division between those who trust the people and believe them capable of self-government, and those who believe the people are stupid and must be kept in order by an elite. Thomas Jefferson observed that in every country and in every age there are two natural parties: the aristocrats and the democrats, the party of the elite and the party of the people. Under whatever names they may go at a particular time and place they always reveal themselves: "Call them therefore Liberals and serviles, Jacobins and Ultras, Whigs and Tories, Republicans and Federalists, they are the same parties still and pursue the same object. The appellation of aristocrats and democrats is the true one expressing the essence of all."<sup>16</sup>

## Prospects

The prospects for the introduction of direct legislation in Australia are perhaps better than one might think. Australia has one of the world's strongest democratic traditions. In colonial times universal manhood suffrage took root here earlier than in most other countries, as did the vote for women. The secret ballot was first

14. *Idem.*, at 60.

15. See book review, *Sydney Morning Herald*, 23 May 1987.

16. Walker, at 207; S. Padover, *Thomas Jefferson on Democracy*, New York, 1939, 42 (letter to H. Lee, 1824).

used in this country and is still so closely identified with it that, even today, Americans refer to it as "the Australian ballot". Australia pioneered the use of the referendum or special elections to resolve deadlocks between the two houses of parliament. Its federal constitution was hailed as second only to Switzerland's in the range of democratic advances that it embodied. Before the outbreak of World War I it seemed as if that tradition was about to find further expression in the adoption of the principle of direct legislation. Those early moves were abortive, but there are signs now of a strong renewal of interest in the system. The Constitutional Commission has reportedly received more submissions advocating initiative and referendum than on any other topic. The Democrats have introduced bills into the Senate for this purpose and some Nationals have expressed interest in it. The Liberals have incorporated it in their federal platform for the forthcoming elections. The municipality of North Sydney has adopted both the initiative and the referendum with great success.

Convenient opportunities to raise the question could arise in states where governments are seeking to reduce the powers of the upper house of the legislature. An upper house considering any such abridgment of its powers could quite properly insist on adoption of the referendum or the initiative as an alternative safeguard against any excesses on the part of a temporary lower house majority. It could also be stipulated for as a counterweight to any extension of the duration of parliamentary terms from three to four years.

A parliamentary debate over the introduction of initiative and referendum is in itself a litmus test of the elected representatives. It separates the true democrats, who believe in popular sovereignty, from the opportunists who preach democracy when it suits their purposes and disparage it when it does not. It is an arena in which Jefferson's two natural parties declare themselves.

When I was writing my book on initiative and referendum I believed that the introduction of this system was a vital task. I now believe it is also an urgent one. It must be obvious to most people here that time is running out for "the lucky country". History will judge us harshly if we fail to take effective action to correct the national drift towards Third-World misery. Last year John Leard spent some weeks in Argentina and spoke to many young people there, finding them on the whole to be disillusioned and angry. They had no hope for their country's future and many were migrating to the United States, Canada, Spain or France, thereby creating a brain-drain as the more talented young people leave the country. The striking fact about this syndrome is that the young people of Argentina do not blame Juan Peron or the generals or the civilian politicians for the ruin of their country. They regard them as economic madmen who were not responsible for their own actions. *They blame their own parents.* They ask, "Why did you let this happen to our country and why didn't you take a stand?"<sup>17</sup>

17. J. Leard, "Argentina — A Stark Warning to Australia", *Optimist*, March-June 1987, at 5, 6.

Whether future generations will aim this accusation at us will depend mainly on whether we are sufficiently imbued with true patriotism. That may sound rather strange, even irrelevant, but after all, what is patriotism if not the loyalty, the love, that embraces future generations? Are we prepared to make the efforts that are needed and undergo the attacks and abuse that must be endured if we are to restore power to the people and a responsible direction to the nation?

### **An end in itself**

Constitutional democracy is more than a means to an end. It is an end in itself, an enduring principle of human evolution. There is much evidence to support the truth perceived intuitively by Kant, Rousseau, Mill and others, that the chance to play a significant part in directing one's own life is just as much a creative activity as the work of an artist or a musician. In fact it is probably the only way in which most individuals can hope to live creatively. People who do live creatively in this way will progressively become more adept at meeting the problems with which the human experience will present them. The establishment of direct legislation is an opportunity to revitalize the ideal of democracy in the minds of ordinary people so that they will remain capable of wise self-government. In few countries has the democratic spirit flowed as strongly as it has in Australia. But the events and ideologies of our century of conflict have piled so much debris into the well that not only has the stream ceased to play, but its very location has been lost.

To make it spring forth again is the task of this generation, for if it is done by us it may ever be done at all. The sand and rubble must be dug away to release the living water beneath. Australia can, and should, regain the role that sixty years ago it seemed destined to play in unfolding the democratic ideal in pragmatically and unromantically enhancing the stature, development and creativeness of the common man.<sup>18</sup>

18. I use this phrase in its adrogynous sense, of course. A "common person" sounds an anaemic creature, while "the common people" has quite the wrong overtones.