

Chapter Eight

Beyond Representative Government

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I would like to formally thank the Society for the opportunity to take part in this Conference. My subject today is "Beyond Representative Government", and I hope to cover some of the principles behind the resurgence of public interest in direct democracy.

I will also outline some of the developments towards that ideal which occurred at local government level in North Sydney in the 1980s.

In 1994 Liberal frontbencher Peter Reith, Democrat Leader Cheryl Kernot and I held a seminar in Canberra to promote the concept of allowing the public to put questions to referendum, as opposed to the executive government's monopoly of the initiation of referendum questions that now exists.

This idea, known as Citizens Initiative Referendum, is hardly new.

It is part of the movement towards direct democracy, as opposed to representative democracy.

It was seriously discussed and almost incorporated into the Australian Constitution in the 1890s.

The Australian Labor Party at that time incorporated it into its platform, where it remained until 1963.

By a nice irony, it was raised in the Federal Parliament by a former member for North Sydney some 76 years ago.

It is one of the main planks of the Swiss system of government.

It is utilised in a number of countries, particularly in about 100 local and 24 State governments in the United States, and commenced around 1900.

Nowhere where it has been used has there been any move by the public to discard the system.

There is an extensive literature on the subject around the world, and the definitive work in Australia is *The People's Law* by Professor Geoffrey de Q Walker, Dean of the Faculty of Law at the University of Queensland.

Professor Walker's book succinctly sets out the philosophical, historical and legal framework for the concept.

It is therefore hardly a radical idea, and is firmly rooted in the democratic concept that a decision made by the people as a whole will be right more often than a decision made by any elite group no matter how wise.

It is fully in line with our legal system and the Constitution, which vests ultimate sovereignty in the people, in spite of the recent efforts of the High Court, or for that matter successive executive governments.

The creation of a mechanism to allow the people, through private interest groups or local and State Governments, to initiate national referendum questions in addition to the present exclusive right of federal executive governments, would be a relatively minor addition to our political system allowing the public to have a role in setting the political agenda.

The historical record of the referendum in Australia shows that extreme measures will never be carried.

Any measure attempting to centralise power is also usually rejected.

However, the record does show that majorities will not trample minority rights, and that publicity and money will not affect decisions that people feel strongly about.

Witness the failure of the 'Yes' cases in the 1916 and 1917 Conscription referendums at the height of jingoism, or the 1951 "Ban the Communists" referendum at the height of the Cold War, or the overwhelming vote of support for the Aboriginal people in 1967.

Following the Canberra seminar on Citizens Initiative Referendum, and a National Press Club launch, the reaction to the idea of asking the public if they wanted the right to initiate referendums, from the holders of power, and those who believe in elitist theories of government, bordered on the hysterical.

It was as if they were touched with a red hot poker.

Alexander Downer, then the Leader of the Opposition, immediately jumped into the centralist bed with Keating.

He applied the gag to Peter Reith – so much for liberalism and free speech!

Tim Fischer, leader of the Nationals, had apoplexy.

Well he might, being the leader of the most successful minority group in the country, having over many years exercised political power far beyond that party's eight to ten per cent national support.

Any thought of the public as a whole being able to participate in the political agenda, majority rule and one-vote-one-value, is obviously a menace to all minority groups exercising disproportionate power.

Elitists in the media and the bureaucracy who claim the right to know what's best for us poured forth a deluge of abuse and character assassination arguments.

Anyone who supported referendums initiated by the public, not by them or the Government, is a "loopy populist", "a political eunuch", or a right-wing fanatic, they howled.

Why, "It would give power to rich, powerful interest groups which could control the media", they claimed, as if that isn't already the case.

"The public doesn't know what's good for it", they roared, in a deluge of political correctness.

It was postulated that such a move would interfere with "consistent national policy formation".

Presumably they were referring to the consistent policies such as those adopted by executive government for pay-TV and the media, privatisation, airports and air safety, uranium, multiculturalism, or the policies that brought one million unemployed.

A senior Canberra journalist, Laurie Oakes, in *The Bulletin*, summoned up all his considerable powers of ridicule at the very idea of people having the right to vote on a specific issue.

The sky will fall.

All those "right-wing extremists" and "well-endowed interest groups" would "hijack the system", was Oakes' opinion of the majority view of the Australian public in a majority of States.

He, like most of the Canberra entourage, intoned, in effect, that democracy properly consists of people being permitted to choose a "representative" offered by the 'Liberal Party' every three years or so.

The Sydney Morning Herald editorial of 20 July, 1994 reinforced this view, and fulminated that the public might even "challenge unpopular government". The swine! The ungrateful wretches!

Geoffrey Barker in the *Financial Review*, after character assassinating proponents of Citizens Initiative Referendum, offered the view that "a high degree of apathy may be essential to the efficient functioning of a modern democracy".

Sounds like *Brave New World* revisited, where the Government hands out pacifiers to keep the citizenry in a state of euphoria.

Barker goes on to suggest that anyone with any participatory urges can join political parties.

Presumably applauding leaders at functions, and handing out how-to-vote cards at elections, will satisfy them, but if they do have political views they can be relegated to a minority party faction and shut out of pre-selection ballots.

Underlying the opposition to direct democracy and the Citizens Initiative Referendum are the recurrent themes – a basic distrust and fear of the public, a refusal to relinquish any political power or agenda setting, and a strong elitist approach.

The paucity of the arguments is shown by the need to use epithets like "single issue loonies", "populists" and "eunuchs", rather than deal with the issues.

In any case, the arguments put forward by proponents of direct democracy from an incredibly wide political spectrum, such as writers Bryce Courtenay, Morris West, Tom Keneally; academics such as Professor of Law at Queensland University Geoffrey Walker, Professor Cheryl Saunders, deputy chair of the Constitutional Centenary Foundation and Professor of Law at the University of Melbourne, Dr Elaine Thompson of the School of Political Science at the University of New South Wales; political figures such as Peter Reith, Senator Cheryl Kernot, Russell Cooper and Frank Walker; and the well reasoned analyses recently published by journalists PP McGuinness and Humphrey McQueen, cannot be dismissed by abuse.

Neither can arguments carry any weight based on guilt by association.

It is true that extreme right wing groups support Citizens Initiative Referendum, but Hitler's support for the Volkswagen was irrelevant to the fact that it was the most successful vehicle in automotive history.

If the arguments put forward by the critics of direct democracy are accepted you would logically remove any right to vote.

If the public cannot be trusted to vote on a single issue following a focused public debate, how can it vote in a general election, with a multiplicity of issues obscured by media concentration on personalities and massive negative advertising campaigns which have become the dominant feature of modern elections?

Democracy is relatively new in its modern forms.

It has developed over the last century to a faintly acceptable level in about 40 of the world's 200-odd nation states.

It must evolve.

It cannot remain fixed in the face of accelerating change in all other aspects of society.

The arguments opposing Citizens Initiative Referendum and any form of direct democracy, defending the status quo, are extremely hollow, given the huge and increasing levels of public antipathy to politicians and governments at all levels.

In all western democracies there are high levels of dissatisfaction, and the current revival of interest in Citizens Initiative Referendum is only a small symptom of a much deeper malaise.

People everywhere seem to want to push the bounds of democracy further than their governments will allow.

Both Prime Minister Major in the UK and President Clinton in the USA lead incredibly unpopular governments.

In Canada, recent elections saw 150 Government seats reduced to two.

In New Zealand a disgusted public, by a referendum, changed the whole voting system in spite of the opposition of both major parties. Much the same happened in Italy.

In Australia, a huge number of people cast their votes negatively at the 1993 federal election, as they did in the recent New South Wales State election.

It is no accident that the non-major party vote in the New South Wales Legislative Council has gone from 7.8 per cent in 1978, to 24.7 per cent last week.

In 1990 we saw a Federal Government take office with 39.2 per cent of the primary vote – the most minority government since Federation.

In 1992 only four Houses of Parliament out of fifteen Houses in Australia were controlled by majority governments – an unprecedented situation in modern political history.

The dissatisfaction with governments in Australia stems from such things as the steady slide in social, economic and environmental conditions in the past 20 years; the increasingly overt nepotism, careerism, cronyism and corruption in our political system, highlighted by the revelations of the Fitzgerald Inquiry in Queensland, the Independent Commission Against Corruption in New South Wales, and the Royal Commissions in South Australia, Tasmania and Western Australia.

It is fuelled by public revulsion at the cynical multi-million dollar advertising campaigns; the blatant centralisation of public decision-making; the dominance of big business, big unions, big

government; the flaunting of wealth by entrepreneurs in the 1980s; the officially sanctioned tax rorts; unemployment; bigger salaries for politicians, free cars all round, more overseas trips with increasing retinues at five-star hotels, while the general public is told they are living beyond their means, and that they have to work harder and tighten their belts to compete with Asia.

The public is also recognising the structural defects of the political system.

The centralisation of power within the major parties, the overwhelming of parliamentary government by the rigid party system, the negativism and personal abuse inherent in adversary partisan politics, the domination of public decision-making by small elites, major party collusion depriving the public of choice, the now institutionalised "broken promise syndrome", the failure of governments to be able to handle organised minority groups, and undemocratic electoral systems where only by chance, or usually in spite of devious manipulation, does the resulting government reflect the will of the people.

If it were not for the fact that the grossly unfair single member electorate system is generally used in Australia, there would be few if any majority governments, which most assume are necessary for satisfactory governance.

In other words, that leaves the unsatisfactory and indeed untenable position that for our current political system to work, that is to achieve a majority government, an unfair voting system which distorts the will of the people is required.

The single-member electorate system, besides being open to boundary manipulation is, at best, a winner-take-all system, where it is theoretically possible to win 100 per cent of parliamentary seats with substantially less than 50 per cent of the vote.

Every vote for a losing candidate, or a winning candidate in excess of 50 per cent, has no effect, and is wasted.

It is an extremely weak foundation for a democratic system.

The Carr government in New South Wales is just the latest example.

With just over 40 per cent of the primary vote, and only 48 per cent after preference distribution, it will have 100 per cent of the say in the Lower House.

It is an axiom of democracy that "the majority can only govern with the consent of the minority".

It is also true that the minority cannot govern effectively or legitimately in a democracy.

It is to the eternal discredit of this country that we have persisted with single member electorate systems for so long, particularly when we have had the example of the world's best democratic electoral system – the Hare-Clark system of Tasmania – for some 90 years.

This is underlined by the fact that on the only occasion the public have been asked to choose a voting system, they chose Hare-Clark.

That was by referendum in the Australian Capital Territory.

The ACT voters even more wisely entrenched the system by a further referendum, thus stamping on the sticky fingers of party "spin doctors" who were already attempting to corrupt the system.

The fact is that political parties can never consider electoral matters except in terms of partisan advantage.

The reason the major parties have quarantined Hare-Clark in Tasmania for so long is that its general adoption would weaken the twin-airline political duopoly that the major parties enjoy.

The fact that they have let it exist for so long even in that State is because of the electoral revulsion which would ensue if any move were made against it.

Underlying the alienation and powerlessness people feel with the political system is the accelerating rate of change since the 1960s – the information revolution, the forces of globalisation and the growth of the ethic of participation.

The ethic of participation is now a well established principle in Australia, and is rapidly spreading throughout the world.

That ethic is that people whose lives are affected by a decision must be part of the process of arriving at that decision.

The rise of the consumer movement, shareholder activism, worker participation and interest groups of a wide variety is evidence of this trend.

The basis on which representative government has long operated, the view so well enunciated in 1774 by Edmund Burke, is no longer acceptable to a vast number of people.

That view, to the effect that representatives are elected to govern, and should exercise their superior wisdom and judgment irrespective of the wishes of the electorate, aided by an elitist private and not public service, with the implication that the public will always reject the "necessary hard decisions", is still propounded by elitist editorialists, bureaucrats and many in the political parties.

In its crude form, it means handing over all rights and power to an individual or group, then rewarding or punishing them at an election every three or four years.

The attempt to maintain this Edmund Burke view of democracy leads to increasing frustration, aggression and ultimately violence.

Nowhere does this phenomenon show up more than at local government level, which is closer to the people and more accessible.

For example, it is futile to take revenge against a councillor some years later if a high rise building was approved removing your sun and privacy, or if the Council has allowed a private organisation to construct a facility in your local park.

Many local government bodies around the country have been under siege in the last decade. Some have attempted to maintain the traditional position of representative democracy and suffered endless controversy.

Others have responded by moving to much more open and participatory methods.

The North Sydney area was the "future shock" capital of Australia in the 1960s and '70s.

By that I mean the rate of change was extreme, and it exposed the failure of traditional representative government.

Over a fifteen-year period in a small ten square kilometre area, Australia's third largest Central Business District developed.

At the same time about 10,000 new dwellings were constructed in what was already a dense residential area.

Through much of this massive upheaval some 60,000 people worked there and 50,000 lived there, with over a quarter of a million cars driving through the chaos each day.

As might be expected this had major social, economic and political ramifications.

It surprisingly led to the most advanced model of open and participatory government in Australia, with an unheard of record of environmental and economic success and public approval.

The Council itself became the leading entrepreneur of the area, initiating new standards of urban design, a deluge of capital works, and at the same time reducing debt and taxes.

An independent review of all local government bodies in the Sydney region in 1987 named North Sydney as the most financially successful Council.

All this was not achieved without much acrimony, and many mistakes were made, yet in the final analysis the public endorsed the seven year long process at the 1987 election by an unprecedented 90 per cent of the vote – something which has probably never previously occurred in a democratic election.

Politically the major parties were rejected at local, State and federal levels of government.

I joined North Sydney Council in 1974, and was Mayor from 1980 to 1988, becoming the first Independent member of State Parliament from the Sydney region in 1981, and the then first Independent for over half a century in federal Parliament in 1990.

The foundation of all this was a rejection of partisan politics, and the development of an open government system where everyone in the community could involve themselves in the decision-making process.

From 1980 to about 1985, a transformation from traditional representative government towards direct democracy occurred.

It went through three phases.

First, the development of an open government system.

Second, the creation of systems to enable people to participate.

And third, a substantial transition to direct democracy, where people made the decisions for themselves with the Council's role tending to reduce to that of a facilitator and largely administration.

Before people can have access to the decision-making process they must have access to information, and hence a policy of full open government was adopted by the Council in 1980.

All files were made available to the public, excluding legal advice.

All meetings were opened to the press and public.

In fact no closed meetings of any sort were held over an eight year period.

Public tenders, senior staff appointments, legal matters were all discussed and debated in open meetings.

Instead of the usual mistrust of government, justice was seen to be done and even unpopular decisions were accepted.

In particular, future planning changes were widely advertised prior to formulation to prevent the various forms of "insider trading" that have characterised local government since land zoning was created.

All agendas and reports of senior officers were made available to the public before they were considered by Council.

A complete public notification system of applications to the Council, giving a 21 day notice, developed and extensive coverage was established through the local media and a large system of public notice boards.

Automatic recording of all councillors' voting was instituted, as well as an extensive declaration of interests procedure and disclosure register far beyond any statutory requirement at the time.

There are many arguments against open government at all levels, but secrecy is a formula for corruption and all too often provides for avoidance of responsibility and accountability.

Openness is the only real defence.

Corruption scandals are regular occurrences in governments throughout the world, and secrecy is always the essential ingredient.

There is in fact no such thing as a closed meeting or secret decision-making.

The "smart money" always finds out.

Only the public is kept in the dark.

The growth of bureaucracy in Australia over the last 30 years has made this a particular problem. Witness the recent scandal over the awarding of a \$400 million Civil Aviation Authority contract, where senior bureaucrats even tried to prevent the Federal Parliament Public Works Committee from examining tender information.

Secrecy unfortunately creates a market.

Again witness the recent controversies over public servants in many departments selling information.

It is all too easy for elected representatives or bureaucrats to assume that a mantle of wisdom descends on them once they have attained office.

It is easy to serve the private rather than the public interest when donning the shroud of secrecy and avoiding accountability.

History gives abundant proof.

I do not pretend that no problems emerged from the fully open system of North Sydney.

There were difficulties of privacy in legal and financial matters, but they were minuscule compared to previous problems of the traditional closed approach.

Following the establishment of access to information, methods were then pursued to encourage public participation to the maximum extent that people wanted.

Public meetings were held on virtually all matters of dispute, of change and of policy. Admittedly this was onerous.

Over an eight year period some 4,000 meetings, ranging from small groups to major public meetings, were held but the improvement in dispute resolution and the public satisfaction with decision-making was remarkable.

A formal system of resident groups called precincts was set up – some 25 precincts in the relatively small council area.

These meetings could be attended by anyone who lived, worked or owned property in the area and met generally monthly.

They were sent all matters affecting their neighbourhood or the municipality as a whole for their decision before the Council considered the item.

While they were a structural part of the Council they were encouraged to act independently, and often dealt directly with State and sometimes federal authorities.

The precincts ensured that everyone who wished, could be part of the decision-making process. Along with open access to all meetings, members of the public could also address meetings of Council without notice.

It had always been considered unthinkable to allow such a procedure and that meetings would never end.

In fact the very reverse occurred and meetings became consistently shorter.

Over a five year period some forty referenda were held.

They were held together with local elections to minimise costs and up to 16 questions at a time were asked.

Voting was not compulsory, but some 90 per cent of those who voted in the compulsory general election voted for the referendum questions.

The procedure solved many issues, some of which had been fought over for years in the Council chambers.

Virtually all of the referenda resulted in sane and sensible decisions which were then formally adopted by the Council.

It empowered the Council to take decisions which in some cases it had previously been reluctant to take.

Some of the initial questions related to the process itself.

In response to the question, "Do you want this referendum procedure?", the answer was overwhelmingly "Yes".

The response to a question to adopt Citizens Initiative Referendum was also "Yes", admittedly by a lesser percentage.

However, in a sense the Council went past Citizens Initiative Referendum by being prepared to put any question on the ballot paper that anyone required.

What all of this achieved is that the Council obtained the trust and confidence of the community – something which is rare at any level of government.

It therefore accelerated the administrative processes, enabling a rapid rate of decision-making and implementation without all the protest groups, inquiries and frustrations which normally hamstring governments.

Much of this program has penetrated to local government bodies around Australia, and some of the policies have been incorporated into the recent new Local Government Act in New South Wales.

However, nothing is perfect; the enormous level of contentment eventually bred apathy to some extent and the current North Sydney Council has slipped back.

Nevertheless it has not reverted to pre-1980.

State and federal governments are vastly more complex than local government; however they could learn much from studying the North Sydney experience.

Most worthwhile movements come from the bottom up rather than the top down, and the principles of openness and decentralisation of decision-making apply universally.