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Australia — a democracy or just another ballotocracy?

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Try to imagine Australia if its 1890s colonial founding fathers had incorporated into the federal constitution the following clause:[1]

> No Bill passed by both Houses of the Federal Parliament shall be assented to by the Governor-General until after a referendum, if a referendum shall be duly demanded before assent declared. A referendum may be demanded in respect of any Bill passed by both Houses of the Federal Parliament at any time within three calendar months after the passing thereof.
>
> A referendum may be demanded by —
>
> I. One-third of the total number of members of either House of the Federal Parliament: or
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> II. Resolution of both Houses of any two local [State] Legislatures: or
>
> III. Twenty thousand persons entitled to vote at the election of members to serve in the National Assembly [Senate and House of Representatives].

Clearly, it would have placed a huge brake upon the growth of central or Canberra power since a third of all federal members of parliament — not simply a prime minister and/or cabinet — could have triggered a nationwide referendum on any bill enacted by a majority party in Parliament. A referendum could also have been triggered if any two state parliaments so resolved. And, last but not least, 20,000 voters could have brought on a referendum.

And if any of these triggers were activated, it would stop a bill from becoming law until the referendum was held and the Australian people made the final decision democratically.

The existence of such a clause would have prevented politicians, or more correctly the handful constituting a Cabinet, from having monopoly control of the legislative process. That control would have been shared with the states and with electors.

Of course, the Australian Constitution

1. John M. Williams, *The Australian Constitution: A Documentary History* (Melbourne University Press, 2004), pp.126-7.

does not include such a clause, and Cabinet does control the legislative process in Canberra, from the drafting of bills and arranging debates on them, to the final vote that turns bills into laws which all Australians must obey. But the Constitution may well have included such a clause because the clause is not a figment of the imagination. It was in an 1891 draft constitution, and a variation was part of Labor's policy platform almost continuously from 1900 up until 1963.

Both the draft and the policy plank have effectively disappeared from history: they rarely if ever get any mention in the history books; and most Australians, including academics, teachers and even politicians, honestly believe that the system of representative democracy that we have here is the only form of democracy that exists.

The Swiss would disagree. Unlike Australians, they are constitutionally empowered to initiate referendums at every level of government — municipal, cantonal and national — and this is in addition to their right to elect representatives every five years. Put otherwise, the Swiss have not bestowed monopoly power upon their elected representatives to make laws. Unlike Australians, they, the people, are the final arbiters of what shall or shall not be the law of their land.

If, in Australia, the 1891 draft clause had made it through the convention process, or if Labor had honoured its policy plank on those occasions when it held power, Australian voters might understand the very real difference between the representative form of democracy, referred to here as a ballotocracy — rule by the few, with the many only permitted one vote over the life of any parliament — and a true democracy.

This article turns the spotlight back onto those two periods in Australia's history when the country came so close to making "the electors themselves … masters of the situation". It discusses what happened and why, and, in so doing, casts new light on how Australia has ended up with the appearance of a democratic system of government, but one that has fallen well short of the reality.

True democracy versus ballotocracy

Both Australia and Switzerland are bicameral federations, so each has a lower and an upper legislative chamber. In both countries, bills may be initiated in either chamber. In Australia, however, once a bill has been passed by both houses, it goes to the Governor-General for royal assent, after which it becomes law. In Switzerland, a bill that has been passed by both houses lies dormant for 100 days during which time 50,000 voters can trigger a referendum by signing a petition.

Voters in both countries periodically elect representatives to parliament, but the Swiss electorate's right to call referendums means they have far more power than Australian voters. They can continuously exercise a power of veto over the legislative process through this *rejective* or *faculta-*

tive referendum process. Put another way, Swiss voters have at least double the power of voters enfranchised in polities that are without citizen-initiated referendums. Swiss voters can determine what will or will not be the law. Australian voters must accept what their politicians decide will be the law.

But Swiss voters can also initiate changes to their national constitution, although this requires a petition with 100,000 signatures gathered over a period of not more than 18 months. In ballotocracies such as Australia the politicians' monopoly power over the lawmaking process, including the power to trigger amendments to the Constitution, operates unfettered by the people, the *demos*.

The Swiss form of democracy has been variously described as direct democracy, true democracy, or simply democracy, since it is the people, the *demos*, who are the ultimate arbiters of what laws they will live under. Moreover, such direct or true democracy applies not only at the national level, but also in Switzerland's 2,740 municipalities and 26 cantons (states).

In practice, 94 per cent of all bills passed by the Swiss national parliament end up as laws without undergoing the referendum process. Of the remaining 6 per cent, about half are rejected by the people. A key reason for those 94 per cent not being challenged — that is, not having to go to referendum — is the fact that Swiss politicians feel compelled to consult voters extensively and over long periods so as to ensure that the bills they work on will not be challenged at referendum. During the long consultation periods, those who are likely to be affected are brought into the process of preparing the relevant bill. Being fully informed means there is less likelihood of a bill being challenged. Even so, 6 per cent must face the ultimate test, that is, the people.

By comparison, the Australian representative, or indirect form of, democracy constitutionally excludes the people from being the final adjudicators of bills, with one limited exception. And, interestingly, Switzerland was the inspiration for that exception, which applies to bills that seek to amend the national constitution. But the Australian version gives politicians the power to initiate all referendums to amend the constitution and limits the people's power to merely voting on the politicians' proposals, that is the power of veto, but not the power to initiate, which the Swiss have. This legislative dominance of elected representatives over voters is what most people here call democracy but it is more correctly described as ballotocracy since voters — the *demos* — are excluded entirely from the legislative process. Under ballotocracy the people's power is limited to only electing representatives.

Voters in 24 American states also have the right to initiate referendums. In some cases, this includes the right to initiate changes to the state constitution. The impetus for initiative and referendum (I&R) in America initially came from the predominantly rural or farmer-based Populist movement of the early 1890s and its successor,

the urban-based Progressive Movement of the late 1890s to late-1910s. Most of the western American states had adopted I&R by 1918. A smaller number did not for a variety of local reasons, including ongoing resistance by politicians.

In stark contrast, no Australian state succeeded in incorporating I&R into its constitution despite several determined efforts in the early 1900s by state Labor governments.

The main reason for the failures was the opposition of virtually all conservative-oriented Australian national and state politicians who preferred a representative or limited form of democracy, something with which the Labor Party now concurs.

By the early 1920s, the impetus went out of this debate as more and more Labor politicians lost interest in transforming their states from ballotocracies into direct or true democracies.

Californian David Schmidt has described the ongoing impact of I&R, which, as will be seen below, was the major achievement of the early 20th century's Progressives, as follows:[2]

> In I&R the Progressives *created a perpetual reform machine* that not only continues to be a vehicle for political change, but is increasing in its usefulness more than three-quarters of a century after it first gained widespread acceptance. (My italics)

Kingston's 1891 draft clause

The draft clause referred to above was the work of South Australian-born Charles Cameron Kingston (1850-1908) who included it as part of a draft constitution for Australia that was printed in February 1891 by South Australia's government printer. Kingston, a lawyer and colonial politician who was once described as "a radical democrat and a man committed to the federation of the colonies"[3], then took it to the first constitutional convention in Sydney, held in March and April 1891, where he represented South Australia.

The Sydney convention's official record shows that Switzerland was referred to about a dozen times by various delegates, as was the question of including referendums, but there was no reference to I&R, and the draft constitution that emerged contained neither the Kingston clause nor any reference to referendums. This was despite Kingston being one of the three men largely responsible for writing the convention's draft constitution. The other two were Samuel Griffith from Queensland and Andrew Inglis Clark, a Tasmanian representative who, coincidentally, in 1891 had joined the American Academy of Political and Social Sciences. Moreover, Clark was a member of the American Club in Hobart, and his 1891 draft constitution borrowed heavily from the United

2. David D. Schmidt, *Citizen Lawmakers — The Ballot Initiative Revolution* (Philadelphia: Temple University Press, 1989), pp.14-15.

3. Ibid., p.113.

States constitution, showing again the impact of America's nation-building upon Australian thinkers. They did the job over three days beginning on 23 March and handed it to the other members of the constitutional committee for their consideration before it went to the full convention. Although Clark was a believer in what he called the "principles of the Anglo-American Republic", he seems to have been unaware of the moves beyond Washington DC, specifically by America's Populists and later even the Progressives, especially across the western states, who would eventually transform most of those states into Swiss-style democracies.

Exactly when Kingston's "Part IX, The Referendum" was dropped is unknown but it was never seen again, which means it is fair to say that the prospect of true democracy for Australia was effectively aborted almost immediately after conception. The reason it was dropped is also unknown; but one possible explanation can be gleaned from comments made on 3 April by Victorian delegate, Alfred Deakin:[4]

> ... There are many like myself, who would be perfectly prepared, if we were bound to change our present constitutions altogether, to adopt the Swiss system, with its co-ordinate houses, its elective ministry, *and its referendum, by which the electors themselves were made masters of the situation*; but while we would be prepared to consider a proposal of that kind, the Swiss relation of the two chambers has no analogy whatever to a constitution such as ours, in which it is proposed to retain responsible government, and in which the government must be responsible to the people's chamber. (My italics)

At this time — the 1890s — in the United States, especially in the western states, two important movements were beginning to have political impact there and also upon certain groups and individuals in the Australian colonies. Both these movements contributed to the impetus of the emerging colonial Labor parties which were coming into being at about the time that the first constitutional convention got underway. Finally, a national Labor Party was created in 1900 and its first platform, adopted in January that year, called for a federal constitution that provided for "The Initiative and Referendum for the alteration of the Constitution".[5]

4. Constitutional Convention; Sydney, Debates, 8 April 1891, pp.709-10. [http://parlinfoweb.aph.gov.au/piweb/view_document.aspx?ID=363&TABLE=CONCON]. The author wishes to thank Professor Martyn Webb for drawing attention to the following crucial quote from Jean Jacques Rousseau — "The English believe themselves to be free; they are seriously mistaken, for they are free only during elections of Members of Parliament, and in the time between those elections the people are in slavery.... In the brief moments of their freedom, the English use it in such a way that they deserve to lose it." Jean-Jacques Rousseau, *The Social Contract or Principles of Political Right,* Book III, chapter XV (Trans. Lowell Blair), *The Essential Rousseau* (New York: Mentor Book, 1974), p.79.

5. All Labor Party pre-federation or colonial platforms are found in W.G. Spence, *Australia's Awakening — Thirty Years in the Life of an Australian Agitator* (Sydney: The Workers Trustee, 1909), pp.597-628.

In the early years of federation, the Labor Party operated as a minor political force. But in 1909 it gained majority status in the national parliament. The I&R policy remained in the platform for another five-and-a-half decades, but Australia's Constitution did not change to accommodate this plank.

Nonetheless, Kingston deserves to be acknowledged as a unique federalist since he sought to ensure that future generations of Australian voters would be armed with a constitutional procedure to thwart the tyranny of representative government that limits voters' rights to periodically electing representatives who thereafter have a monopoly over the legislative process.

Kingston's life was the subject of a biography by the late Professor L.F. Crisp, an influential Canberra-based political scientist who had headed the Curtin Government's Department of Post-War-Reconstruction from 1942 to 1945 and was subsequently an academic at the Australian National University.

In his book *Charles Cameron Kingston, Radical Federalist,* Crisp rightly portrays Kingston as a democratically-inclined individual. He quotes Kingston's father, George: "[Charles was] by instinct an aristocrat, but by conviction a democrat." Crisp also credits Kingston with making a "positive and essentially democratic contribution" during his years as attorney-general and chief secretary in two South Australian colonial governments from 1885 to 1893, and his subsequent term as premier which lasted until 1899. Crisp writes:[6]

> Though he became the Liberal Party leader, Kingston personally sustained uninterrupted his life-long intimacy and rapport with the working-class families of inner Adelaide despite the emergence of a Labor Party in the 1890s.... As early as 1891, on his arrival in Sydney to attend the Constitutional Convention, he was immediately invited to address a weekly meeting of the Trades and Labor Council.

However, Crisp, not a backer of I&R, makes no reference to the American Progressive movement, nor does he consider the possibility that Kingston's popularity with Labor rank and file had anything to do with his attachment to I&R, or what role if any Kingston played in the development of the Labor's Party's first national platform. There is also silence on Kingston's 1891 I&R Clause.

Labor Party's early commitment to Swiss-style direct democracy

As mentioned, the Australian Labor movement had a long-standing policy commitment to initiative and referendum (I&R) that pre-dated Federation and survived for many decades at both national and state level. This is, of course, not surprising since it was from the left-of-centre political quarter that

6. L.F. Crisp, *Charles Cameron Kingston, Radical Federalist* (Canberra: self-published, ANU Printing Services, 1984), pp.5, 8 & 9.

much of the effort for the adoption of I&R in the US originated. Furthermore, one of the main driving forces for Swiss adoption of direct democracy came from Karl Bürkli (1823–1901), a follower of French socialist, Charles Fourier. Bürkli was to become a Zurich cantonal representative and was a key figure in that canton's workers' movement after returning from Texas where he was involved in attempting to create a perfect rural community, a longstanding leftist yearning.

In 1891, the year Kingston sought to ensure that a federated Australia adopted I&R, Labor in New South Wales showed the first sign of moving in the direction of ensuring voters had a greater say in governance. Item 10 of its 1891 platform called for the "election of magistrates" and also envisaged the election of local members of land boards. Although both are in fact examples of representative democracy, the former certainly goes markedly beyond the bounds of this practice in Australia.[7]

Six years later, in 1897, a federal Labor convention that compiled a joint platform for NSW and Tasmania included the plank, "Direct initiation of legislation by the people, and the referendum."

Twelve years later, in 1909, NSW Labor incorporated a clause within its "fighting platform" which advocated: "Electoral reform to provide proper machinery for the true representation of the people in Parliament."

By itself, this clause appeared to remove the NSW Labor Party from the direct democratic tradition and placed it within the representative one. However, the very next clause, titled "Details of Fighting Platform", under the heading "Constitutional Reform", stated: "Abolition of the Legislative Council and the substitution therefore (*sic*) of the I&R."

The precursor of Victoria's Labor Party in 1891 was known, significantly, as the Progressive Political League of Victoria and its platform that year included a somewhat ambiguous commitment to "Federation of the Colonies on a Democratic Basis", perhaps suggesting that something other than representative governance was envisaged. However, there was no ambiguity in the 1908 Victorian Labor platform which carried an item in its "Constitutional Reform" section that simply read "Initiative and Referendum".

Although the colonial platform adopted in 1890 by the delegates to Queensland's Australian Labor Federation did not include an I&R clause, the 1892 Queensland Labor platform did. In a section headed "Referendum" it proposed "The submission of measures for the approval or rejection by the people." Moreover, Queensland's 1907 Labor platform carried the words "Initiative and Referendum", under the section titled "General Programme — Constitutional Reforms."

Despite Kingston hailing from South

7. All Labor Party platforms after 1900 are in the possession of the author. These were obtained from the Commonwealth Parliamentary Library in 1976.

Australia, Labor in that state was a late convert to direct democracy as it did not embrace it until 1908, the year of his death. The United Labor Party of South Australia's general platform that year carried the words "Initiative and Referendum".

The fourth plank of the Western Australian Labor Party's 1908 platform included the same words, as did Tasmania's platform of 1909 which read: "Abolition of the Upper House; provision of initiative and referendum."

At the national level, I&R featured prominently in the first Federal Labor platform adopted at the Labor Party's interstate conference held on 24 January 1900. In the second section, under the heading "Constitutional Reform", the platform stated:

> The Federal Constitution to be amended to provide for
>
> (a) The Initiative and Referendum for the alteration of the Constitution, and
>
> (b) Substitution of the National Referendum for the double dissolution for the settlement of deadlocks between the two Houses [House of Representatives and Senate].

Subsequent Labor Party platforms in the early years after Federation refer just to "Initiative and Referendum" without any suggestion the policy was limited to the federal Constitution, and the policy remained in the platform until 1963. But the policy was never implemented at either state or federal level. The reason for this failure was due to the fact that non-Labor parties dominated state upper houses.

Professor Crisp put forward a number of reasons for I&R's initial appeal:[8]

> In the first place, [Initiative and Referendum] appeared to be the very last word in democracy — and Labor had proclaimed itself the champion of democracy....
>
> But Labor's interest in the Initiative and Referendum was by no means entirely theoretical. In every colony, Labor was *a third party without immediate prospect of a majority;* if the Initiative and Referendum were in operation, Labor might be able to by-pass the legislature and put its main plans to the people direct.
>
> Moreover, not only Labor, but the Liberals and Radicals were constantly being thwarted by legislative councils (appointed in NSW and Queensland; elected elsewhere on narrow property franchises); these groups might be enlisted as allies for somehow introducing I&R as a means of by-passing the reactionary opposition of upper houses.
>
> When Federation was decided on, Labor still saw itself as a third (minority) party — which in fact it was until 1909. (My italics)

However, the Labor Party wasn't the only practitioner of this form of opportunism — of backing I&R while in opposition and believing executive power was out of reach in the foreseeable future, and then reneging on enacting I&R legislation once gaining government or even on the prospect of

8. L.F. Crisp, *The Australian Federal Labour Party, 1901-51* (Melbourne: Longmans, 1955).

doing so. Such double standards are a recurring feature of non-Labor parties. This duplicity is well-documented in George Williams's and Geraldine Chin's assessment of the 35 failed attempts to have I&R enacted by an Australian Parliament.[9] Undoubtedly, the most blatant case of such political double-dealing as Williams and Chin describe involved the Tasmanian Liberals, and occurred relatively recently:[10]

> Early in the 1990s, Tasmania appeared the state most likely to introduce I&R. In 1989, Neil Robson of the Liberal Opposition introduced the *Referendums (Elector-Initiated Repeals) Bill* 1989, which provided for voters' veto of legislation other than budget bills or the constitution. The same bill in the form of the *Referendums (Elector-Initiated Repeals) Bill* 1990 was reintroduced in 1990. Robson had the support of his colleagues in the Liberal Opposition, meaning that the bill needed only one more vote to pass through the lower house after which upper house approval would have followed as a matter of course (Walker 1993, 25).
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> The Labor Government was opposed to the bill, but the Green Independents indicated that they would support the bill with a number of amendments. Robson agreed to incorporate these changes and introduced a revised bill in the form of the *Citizen-Initiated Referendums (Elector-Initiated Repeals) Bill* 1990, which also enabled repeal of constitutional changes. Further amendments to the bill proposed by the Greens were incorporated into the *Citizen-Initiated Referendums (Elector-Initiated Repeals) Bill* 1991, which restricted the ability of citizens to publish or circulate arguments for or against the proposal once the date of the referendum was advertised. However, the Green Independents failed to support the bill when it was voted on in 1991 and the bill was defeated at the second reading stage (*Tasmania Hansard*, 20 June 1991, 2025–42).
>
> At the next election, shortly after Robson's bill had been defeated by the lower house, the Liberal Party won majority government. Robson had retired from Parliament, but Ron Cornish, who was appointed attorney-general, pursued Robson's I&R proposal. Robson was invited back to help redraft the bill and remove some of the concessions made to the Green Independents. However, when the revised I&R proposal was put to the Liberal Party at a meeting in Port Arthur*, only four members of the Liberal Government supported the bill, compared with the 17 members who had supported it in Opposition*. (My italics)

However, Crisp also refers to the early "active champions" within the party's ranks who sought its immediate adoption. He wrote:[11]

> At their head was Dr W.R.N. Maloney.

9. George Williams and Geraldine Chin, "The Failure of Citizens' Initiated Referenda Proposals in Australia: New Directions for Popular Participation?", *Australian Journal of Political Science*, Vol.35, No.1.
10. Ibid., p.35.
11. Crisp, *The Australian Federal Labour Party, 1901-51*, *op. cit.*, p.209.

> Not a parliament went by, and usually not a session, without the 'Little Doctor' obtaining leave of the federal parliamentary Labor Party to introduce a motion, a bill or an amendment providing for the Initiative, Referendum or Recall (or all three). In his own party, and in the parliament as a whole, his unflagging zeal for the cause of direct democracy was met with increasing indifference. This intensified and extended rapidly after World War I, though outside parliament many Labor adherents to this cause remained.

But there was also Labor opposition to the policy. Some party members were concerned that I&R was "a conservative weapon" that could be used against a Labor government's legislative program. (Ironically, one of I&R's opponents was Ernest Roberts, a Labor Party man who succeeded Kingston as federal member for Adelaide in 1908.) Interestingly, at the same time, non-Labor politicians saw I&R as a likely "Labor weapon", which is why they so regularly blocked it in upper houses that they dominated numerically. In Crisp's view, the opponents were right, but for the wrong reason. He said:[12]

> The first Commonwealth Labor parliamentarians were generally well disposed toward these devices of direct democracy. They had not yet experienced office and were consequently ill-equipped to appreciate the essential incompatibilities between such procedures and British parliamentary government. Even less were the rank and file outside Parliament, and the state Labor leaders beset by legislative councils, *able or willing to recognise the fundamental nature of these incompatibilities or acknowledge their gravity*. (My italics)

Just what these "incompatibilities" were, however, Crisp fails to say, as did Deakin when he put forward a similar assertion at the 1891 constitutional convention that had buried the Kingston democratic constitutional clause. Crisp also fails to acknowledge that the failure to implement I&R set the scene for more and more power to be ceded to politicians — especially ministers or cabinets — and thus for the loss of power by the people — the *demos*. With both sides — Labor and non-Labor — seeing I&R as a weapon that could be used by the other, clearly Australian voters were assured of forever being, and have been, consequently denied true democracy.

Despite I&R being a regular feature of the Labor Party's policy platforms, it was never implemented at either state or federal level, though it must be stressed that several state Labor governments after Federation attempted to do so but were blocked by conservative majorities in the various upper houses. Finally, in 1963, at Labor's 25th national conference, held in Perth, the opponents won the fight: I&R was dropped from its platform by a vote of 36 to nil.[13]

12. Ibid., p.209.

13. Official Report of the Proceedings of the 25th National Conference of the ALP, July 1963, Perth, p.58.

The case for Australia and/or its states adopting direct democracy

Since Kingston, only a handful of Australian politicians have spoken out publicly about the democratic nature and benefits of I&R, and not a single state or federal Labor politician has done so since at least 1963 when the party removed it from its platform.

Even fewer academics have supported I&R. In this group, the three most important who have publicly backed I&R are emeritus professor of law at the University of Queensland, Geoffrey de Q. Walker, and Emeritus Professor Martyn Webb, and his colleague and co-author, the late Professor Patrick O'Brien, both formerly of the University of Western Australia.

The deafening silence may reflect the more generally held view that direct democracy is somehow a "right-wing idea". Yet, as indicated above, this was not the view of Labor parties at the beginning of the 20th century across Australia, which by no stretch of the imagination could be dubbed "right-wing". It was also not the view of America's Populist and Progressive movements. Furthermore, none of the three major 20th-century "right-wing" movements, German National Socialism, Italian Fascism and Hideki Tojo's Japan, had I&R in any of their platforms.

Martyn Webb made two fact-finding visits to the United States in the 1980s to investigate principles behind American local government and state constitutions. This led to his drafting a new constitution for Western Australia and later a book on republicanism in which he opposed the idea that removing the Queen would transform Australia into a republic. During the 1990s, he intermittently worked at the Institute of Government Studies at Berkeley. His 1990 draft constitution for Western Australia was presented to a state parliamentary select committee. This was done because the state's existing constitution was in fact two acts of the British Parliament. (See Appendix I below). However, it can be applied to all Australian states.

Webb also believed that all local government electors should enjoy the same rights of I&R. In this case, he believed parliament could be trusted to determine the procedures that would apply. His proposal was also included in his draft constitution.

Swiss and American legislators, because they are separated from their executives, are able to retain their sovereignty in more than a theoretical sense. Even so, the Swiss and the Americans in those states that have adopted I&R have ensured that the voters themselves can oversee their legislators. Australia's founding fathers of Federation knew of this but ensured that referendums could only be held on constitutional issues, and even then only politicians could call them.

The late Patrick O'Brien was a political scientist specialising in Soviet and American political traditions and history. In his view, direct democracy provided the institutional means for its practical expression where written

into a jurisdiction's constitution, and ensured that "the man and woman in the street" became sovereign citizens, not merely subjects. He wrote:[14]

> This, of course, is the reason why there is so much resistance to such doctrines and practices from those who cherish the absolute powers mandated to the political executive by virtue of a Westminster-type system, no longer constrained by respect for those traditional conventions which, in the past, did at least provide some checks on gross abuses of the constitutionally undefined and unlimited executive powers of Prime Minister and Cabinet.

O'Brien attributed the elites' strong distrust of the people to Australia's colonial past and also to the political correctness that is both promoted and reinforced in the nation's universities. He said: "These traditions have been homogenised in Australia mainly through higher educational institutions. This explains further why our elites distrust constitutional arrangements that empower the people." He asked:[15]

> What, though, is our present constitutional reality? Does it, on balance, favour the people?
>
> In theory, our present order of constitutional priorities is: Parliament first; Executive second; people third. In reality, it is Executive first; Parliament second; people third. If we are committed to constitutional democracy and, thereby, transforming ourselves from subjects into sovereign citizens, we must make it: people first; Parliament second; Executive third.
>
> That is, we must democratise our overly hierarchical constitutional arrangements, which now make accountability of government to the people and Parliament nigh on impossible.

Significantly, it was only about a decade after the Labor Party effectively mothballed its I&R policy plank that it adopted its socialisation plank. This was in 1921 which was also the last year that a state Labor government sought to have I&R adopted at the state level. This makes it all the more remarkable that the I&R plank survived even on paper in the national platform between 1910 and 1963.

O'Brien put forward 20 recommendations to reverse the embedded power of national and state executives (cabinets), unrepresentative parliaments, and the now compulsorily taxpayer-financed parties in the Australian political system. One of these was adoption of the principle and practice of direct democracy:[16]

> [A]s sovereigns, it is vital that the people have the constitutional right to initiate legislation through referendums. The sovereign citizens may also allow the Parliament to put legislation to the people for popular vote. Where

14. Patrick O'Brien, "Sovereigns not subjects: the need for more direct democracy", *Proceedings of the Samuel Griffith Society* (Melbourne), Vol.6, 1995, Chapter 10, p.198.
15. Ibid., p.204.
16. Ibid., p.207.

this does occur — particularly in Switzerland and a majority of US states — consensus tends to outweigh conflict, and governments become more cautious about legislative impositions and more prone to consult, in the knowledge that the people effectively wield the ultimate legislative weapon through Citizen-Initiated Referendums, whose strength, like that of most reserve powers of sovereigns, lies not so much in the scorecards of success and failure on particular measures, but in its very existence as the ultimate symbol and embodiment of citizens' sovereignty.

The third academic advocate of direct democracy is Geoffrey de Q. Walker. As well as regularly speaking on I&R, Walker is author of Australia's most popular book on the subject; *Initiative and Referendum: The People's Law* (1987).[17] The following summary of his views on the policy is taken from his 1994 Brisbane address to the Samuel Griffith Society:[18]

- I&R checks tendencies of political parties to make laws that are contrary to the wishes or beliefs of the voters.
- I&R does not, however, eliminate political parties or lobby groups since these have a part to play.
- I&R allows people to distinguish between politics and personalities — so they no longer need to turn out of office a government they basically approve, simply because they object to one of its legislative policies, thereby increasing politicians' security of tenure.
- Conversely, politicians can say "no" to minority pressure groups agitating for extreme legislation, while advising that if they really believe they have popular backing, they can launch a petition.
- Direct legislation gives the people an incentive to take an interest in public issues and so make the best use of their talents and experience. It is sometimes said that Australians are politically apathetic and ignorant.
- On particular issues people may well be ill-informed and many are certainly apathetic. But that is itself a result of the present anti-democratic system which has deliberately excluded direct voter participation. 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'll be confronted with the same political cartel offering a choice between two, or at the most three, personalities and policies packages.
- The system of direct legislation, on the other hand, calls on voters to express considered opinions that will automatically count in the law-

17. Geoffrey de Q. Walker, *Initiative and Referendum: The People's Law* (Sydney: Centre for Independent Studies, 1987).

18. Geoffrey de Q. Walker, "Direct democracy and citizen law-making", *Proceedings of the Samuel Griffith Society* (Brisbane), vol.4, 1994, ch.9, pp. 281-304.

making process. This gives voters 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.
- Under Australia's present anti-democratic constitutional arrangements and doctrines, governments that win elections are virtually handed dictatorial power for the next three or four years. In that time, there is little or nothing to stop them from using their parliamentary majority to destroy society's most precious institutions or trample on its most cherished values.
- Politicians in countries where I&R exists have become more respectful towards public opinion. They have learned to give more thought and care to legislative proposals, and to avoid passing bills vehemently opposed by a substantial portion of the population.

Walker concluded by outlining how the direct involvement by Swiss voters as citizen law-makers had transformed their nation into a unique real democracy.

In just three paragraphs he puts paid to all those who argue for voters to be subservient to politician hierarchs, party machines and their power-brokers:[19]

> In Switzerland, the [citizen-initiated] 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 that, 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.

Impact of America's Populist-Progressive movements on western USA, 1898-1918

America's rural-based Populists and their successor, the predominantly urban-based Progressive movement, both of which inspired campaigning, the drawing up of platforms, and support for candidates contesting municipal and state legislature seats as well as the presidency, emerged largely because increasing numbers of voters recognised that what they may desire didn't necessarily coincide with what elected politicians — forever under the

19. Ibid., pp.281-304.

influence of powerful and moneyed interests — may enact. This over-arching sentiment was most sharply felt across the western USA — the states west of the Mississippi River — during the three decades from 1890 to the conclusion of the Great War.

Not generally emphasised in Australia is that the various groups that were active in late 19th-century Australian colonies, and which coalesced during the 1890s to form the Australian Labor Party, were influenced by many of the ideas that emanated from both these American movements and that such ideas inspired agitation, reformist proposals, platforms, pamphleteering and electoral campaigning across the colonies. And this was a two-way affair since both American movements promoted adoption of secret balloting — known then as the Australian Ballot — which had been taken up across eastern Australia prior to the 1861-65 American Civil War.

Many Australian unionists and Labor activists, especially, were constantly in search of ways and means of ensuring that their burning commitment to programs designed to build what they saw as a "better nation" would become acceptable to society at large. However, the stand-out democratic idea common to American Populists and Progressives and many Australian unionist and Labor activists was I&R.

The early antipodean disciples of I&R even shared the same terminology when describing this method of ensuring "the man in the street" had the final say on whether or not legislation impacting upon him became law, that is, direct democracy. It is because of this rarely commented upon close association with a democratic ideal between Australian colonial branches of the Labor Party, and later the Federated Labor Party, that I&R, for a time, came close to being adopted across Australia. Unfortunately, the exact path that the I&R ideal took has never been researched in Australia's academies.

Notwithstanding this regrettable negligence on the part of Australian historians, we can know that path because Australian colonial newspapers reported American affairs. The existence of the telegraph and submarine cable links between the two continents were also crucial factors.

Also not to be ignored was the fact that ideological and political activists, promoters, pamphleteers, and other secular missionaries, including those associated with fraternities like the Knights of Labor and later even the anti-democratic International Workers of the World, to name two, had quite well-established links across the Pacific Ocean.

It is therefore not surprising that by 1897 three Australian colonial branches of the Labor Party — Queensland (1892), NSW and Tasmania (1897) — had included I&R in their platforms. And by 1908 (at the height of America's Progressive era) Victoria, South Australia and Western Australia had followed. Federal Labor had adopted this plank in 1900.

Leading Australian Laborite identities like William and Ernie Lane, W.G.

Spence, Arthur Rae and George Black, to name five, were associated with the Knights of Labor via the Freedom Assembly where ideas and programs were discussed and debated.

What this meant was that many ideas that appealed to millions of American voters, especially across America's western states, were likely to be if not embraced by all within Labor ranks then at least known of and likely to have some enthusiastic backers, especially in Sydney and Melbourne.

The Labor Party's website history page recognises the influence of American political ideas and thinking during the party's formative years. According to that site, the spelling "Labor" (rather than "Labour") "was adopted from 1912 onwards, *due to the influence of the American labor movement*".[20] (My italics)

Although America's halcyon days of adoption of *direct democracy* came as a result of the Populist and Progressive movements, especially the latter, one must not forget that the pioneering Atlantic coast English communities — those established during the 17th century across New England — utilised town meetings and so-called home rule, to ratify laws and enshrine amendments proposed by their legislators.

This meant that those Americans promoting Swiss-style direct democracy across states beyond New England were able to stress that what they were doing was indigenous to America, not a purely foreign notion.

Both these turn-of-the-century American movements are rightly described as amongst "the greatest democracy movements in history". They therefore stand alongside the United Kingdom's democratic Chartist movement that emerged earlier in the 19th century which so dramatically affected colonial Australia through the work, especially, of Henry Chapman, with his successful introduction of the secret ballot in Victoria, something northern hemisphere *ballotocracies,* most especially in the United States, were to adopt due to the efforts of their Populists and Progressives.

The secret ballot, or what continues to be known across America as the Australian Ballot, was most strongly and successfully promoted by the Progressives since it was crucial to this movement's major democratic ideal, namely Initiative and Referendum.[21]

That said, it must be stressed that Populists and Progressive reformers never set out to displace representation but only to augment it by adoption of people's direct legislation — the I&R — as well as the recall of elected officials deemed to have failed (i.e., neglected or ignored) the voters who had elevated them to a representative status.

20. "History of the Australian Labor Party: Origins of Labor in Parliament", from official website of the Australian Labor Party. URL: www.alp.org.au/about/history.php

21. "Henry Chapman", *Australian Dictionary of Biography*, edited by Douglas Pike (Melbourne University Press), Vol.3, p.381.

The Populists

Within a decade of the end of the Civil War, American farmers began to experience ongoing depressed conditions. One outcome was creation of the Farmers' Alliance which blossomed in both the southern and western states and was to be transformed into what historians refer to as the Populist movement. A significant aspect of this transformation was that this movement became allied with the Knights of Labor by the 1890s. And, two years later at its party convention in Omaha, Nebraska, delegates moved to field a presidential candidate, James B. Weaver, under the so-called Omaha Platform.

Key features of this platform included opposition to the gold standard and hostility to eastern banks, in other words, sentiments that were often voiced in Australian union and Labor circles. But this farmer-labor alliance also included, in its expression of sentiments statement, firstly:[22]

> Item 1. RESOLVED, That we demand a free ballot and a fair count in all elections and pledge ourselves to secure it to every legal voter without federal intervention, through the *adoption by the states of the unperverted Australian or secret ballot system*. (My italics)

Secondly, and crucially, two additional items were designed to greatly enhance voter control of elected representatives. These were:[23]

> Item 7. RESOLVED, That we commend to the favorable consideration of the people and the reform press *the legislative system known as the initiative and referendum*.
>
> Item 8. RESOLVED, That we favor a constitutional provision limiting the office of President and Vice-President to one term, and providing for the election of senators of the United States by a direct vote of the people. (My italics)

The existence of Item 1 certainly shows that the flow of ideas and attraction to political practices across the Pacific — east-to-west — was a reality. Despite this, Weaver carried only four states, attracting 5 per cent of the vote, against Republican and Democratic candidates. The states were Idaho, Nevada, Kansas and Colorado, and a representative each from North Dakota and Oregon.

Although the Populists contested the 1896 presidential election, they had already begun declining as a national force. But this did not mean that those in America's western states who were attracted to an Australian democratic procedure — the secret ballot — and Swiss-style direct democracy, I&R, were to become a spent force. On the contrary, a new movement was already in the making, one that borrowed much from the seemingly failed Populists. And its impact would be felt in late colonial and early federated Australia, but more so across the western

22. See: http://historymatters.gmu.edu/d/5361/, for The Omaha Platform: Launching the Populist Party.

23. Ibid.

states of the US. It came to be known as the Progressive movement.

The Progressives

America's Progressive movement was a diverse intellectual, political and managerialist phenomenon, one that impacted upon labour relations; urban and municipal planning and administration; the role of women, especially women's suffrage, which it ardently backed; and corporate, urban, national and state governance. Underpinning all this was a body of ideas that inspired empirical and statistical research within the growing number of universities across the United States, including especially those of the Western states.

Here, however, it is only the question of state governance that is pertinent since the movement embraced the overriding commitment that Americans should be governed by elected representatives who are responsive to voters rather than exclusively to special financial and party-machine interests.

It was, in many ways, a left-of-centre movement; but it did not share with subsequent 20th-century leftist movements a desire for violent revolution. However, some Progressives believed that privately-owned companies were incapable of serving the public or national interest and consequently wished to see the federal government of the US acquiring ownership of big business. Banks, railroad and logging companies were particularly prone to being targeted in this regard. Significantly, similar views were shared across the ranks of the Australian Labor Party. Over and above this, the major catch-cry of Progressivism was "take the misrepresentation out of representative government".

Progressives consequently pushed for secret ballots — the Australian Ballot — and direct election of senators; direct primaries; recall of elected officials by a vote of electors between elections; and Initiative and Referendum; that is, the blocking of legislation and its initiation by voters. The direct election of US senators was instituted through the 17th amendment of 1913, and women's suffrage was attained with the 19th amendment in 1920.

Unlike the Populists, the Progressives were to be largely victorious with the adoption of I&R across most of America's western states. One reason for this was that the Populists, who, amongst other things, had also fielded presidential candidates, laid the basis, during the 1890s, for the Progressives by popularising I&R across those states.

Another reason for the Progressives' success was that several outstanding campaigners emerged who doggedly pressed for the limiting of power of politicians and party machines and power-brokers within those machines through the adoption of the secret ballot and I&R. These included Californians Hiram Johnson (1866-1945) and John Randolph Haynes (1853-1937).

Johnson was California's governor from 1911 to 1917, after which he was a senator until his death. He removed the power of California's state legis-

lature to elect federal senators and backed women's suffrage. In 1911 he and his Progressive backers adopted I&R and Recall which became an integral part of California's system of governance. Haynes, via the Union Reform League in Los Angeles, fought for women's suffrage, direct legislation, public ownership of utilities, and graduated taxation, policies that Australian Labor shared at that time.

In Australia, direct popular legislation was backed by many prominent men besides Kingston and Maloney. Four stand-out notables were South Australians Egerton Batchelor (1865-1911) and Reginald Blundell (1871-1945), and Western Australians John Scaddan (1876-1934) and Thomas Walker (1858-1932).

Batchelor has been described as "a central figure in the South Australian Labour movement as early as his twenties. ... First elected to the Trades and Labour Council in 1889, he was its treasurer in 1892 and secretary next year ... he was one of the leading foundation members and a driving force in the formation of the United Labor Party in 1891".[24] Blundell, on the other hand, "was involved with the Labour movement as a young and active member of the Tobacco Twisters' Union of which he was secretary for eight years. ... He was always well prepared with facts, figures *and the views of overseas authorities*." (My italics)[25]

In 1895, just four years after Kingston had written his draft Australian constitution that incorporated I&R, Batchelor introduced the *Referendum Bill* that allowed for indirect initiative and voters' veto and also the ability of electors to approve or disapprove at a referendum any bill which was twice rejected by the upper house.

The Batchelor Bill lapsed at the end of the session due to lack of support from the Government. In 1916, the then industry minister, Blundell, introduced the Initiative & Referendum Bill which provided for direct initiative and voter veto. However, it also lapsed. Although re-introduced in 1917, it was never debated.[26]

Scaddan became Western Australia's premier in 1911 and, two years later, his government introduced an I&R Bill that the WA upper house rejected despite the enthusiasm shown by Scaddan's attorney-general, Thomas Walker, who stressed that what he was seeking for Western Australia was a tried and tested approach to governance.

Walker said: "It is not introduced for the first time in the world and, in fact, I may say there is a long series of experiments and experience. It has been found to work well wherever it has been tried. It has been introduced not only in Switzerland but in America and has worked well." Walker was asked while delivering his second reading

24. "Egerton Lee Batchelor", *Australian Dictionary of Biography*, *op. cit.*, Vol.7, pp.206-208.

25. "Reginald Blundell", *Australian Dictionary of Biography*, *op. cit.*, Vol.7, p.326.

26. Williams and Chin, *op. cit.*, pp.34-5.

speech: "What parts of America?" He immediately named the 16 American states that had I&R by 15 December 1913, the day he was introducing the bill, and added: "It is also in vogue in Saskatchewan, one of the provinces of Canada..."[27]

Finally, it is noteworthy that, between 1898 and 1918, 19 American states adopted I&R following state-wide referendums. This began in 1897 with cities in Nebraska opting for the initiative. A year later, South Dakota copied the 1848 Swiss I&R provision by a three-to-two margin. Utah followed in 1900, in the year Australia federated and the year the Federal Labor Party included I&R in its national platform. Utah's vote was five-to-two. Two years later, Oregon followed with an 11-1 (62,024 to 5,699 votes) majority. And so the movement proceeded across the western United States with most of these states opting for adoption.

However, the years 1918 to 1956 — a 38-year gap — saw no further state opting for I&R. The Progressive movement had simply petered out during the Prohibition Era, the Great Depression, World War II, and the beginning of the Cold War. But, with the conclusion of the Korean War, demands re-emerged with five more states adopting I&R. Today, the number stands at 34 states having some component of I&R, Recall, or Referral by legislatures on their own volition, so that voters could confirm or reject an adopted law. Consequently, only 16 of America's 50 states do not have at least one direct democratic procedure or component. However, seven — California, Colorado, Arizona, Montana, Michigan, Nevada and Oregon — have all four direct democratic components: referral, initiative, referendum and recall.

Australia and its six states and two territories, although often on the brink of seeing I&R adopted, fall in with the latter 16 states which means that America's Progressive era did not leave a lasting mark on Australian political life. On the contrary, I&R's most vocal opponents were eventually to be found at the senior levels of the Australian Labor Party, the party that once promoted it. Today, only the Australian Democrats, a minority party since its foundation in 1976, have incorporated I&R into their national platform.

ALP discards I&R

Sixty-three years after Labor's 1900 adoption of I&R, it held its 25th national conference in Perth. On the agenda was a motion to drop the policy from its platform with little explanation. According to the party's *Official Report of the Proceedings of the 25th National Conference of the ALP, July 1963,* the motion was moved by Don Dunstan, a future South Australian premier. then an Adelaide lawyer. He won unanimous support. The motion was carried 36 votes to none.[28]

27. Western Australian *Hansard*, Legislative Assembly, 5 December 1913, p.3415.

28. Official Report of the Proceedings of the 25th National Conference of the ALP, Perth, July 1963, p.58.

Dunstan was also one of the draftsmen of the conference's official report. Thankfully, for history's sake, the report included a three-and-a-half page statement in support of the motion. The statement focused on the federal parliament's 1959 bi-partisan Constitutional Review Committee [CRC]. The CRC made several recommendations that would, if implemented, have further centralised power in Canberra. Not surprisingly, I&R was not part of the package. Labor's conference report quite rightly stated that the Robert Menzies-led Liberal Party would not implement the package. The statement said:[29]

> Labor would therefore have to put the proposals to a referendum which would be complicated and not easy to explain to the man in the street.
>
> The history of referenda in Australia shows clearly that, where the people do not understand either the proposals or the implications, they seek safety by voting 'no'.

At this point, a comment is made that consideration of I&R was really tangential to the ALP national conference's main interest which was the centralisation of Australia via the eventual abolition of state governments, a Labor commitment since 1918. In that year, the following plank was inserted into the party's fighting platform: "Unlimited legislative powers in Australian affairs to be vested in the Commonwealth Parliament, with the devolution of adequate powers upon subordinate legislatures and municipalities elected by adult suffrage."

The 1963 statement continued:[30]

> The chances of carrying a referendum to give effect to the CRC's proposals do not seem bright, except perhaps in times of grave economic stress. Many people in Australia, however, are thoroughly sick of the waste of having seven different parliaments to govern a nation of this size. Therefore, if we fail to get the CRC's proposals carried at a referendum, it might be more likely that we could carry a referendum which posited the single question, easily understood, of replacing the present system by one sovereign national parliament with the power and duty of creating county governments which would be subordinate local governing bodies. If carried, it could give effect to the whole of Labor's constitutional proposals in one fell swoop.

In short, the 1963 or Dunstan explanation for dropping I&R boils down to saying the party's over-riding intent was to centralise legislative power in the national parliament in Canberra, and I&R would have hindered that objective.

The next four paragraphs of the 1963 statement make Labor's aversion to sharing power with the people all too clear:[31]

29. Ibid., p.90.

30. Ibid., p.90.

31. Ibid., p.92.

> In the original fight over the federal Constitution, Labor feared that the new Constitution [of 1901] would be so written as to entrench the forces of conservatism and set at nought the gains Labor was already making for the workers through state parliaments.
>
> Labor men urged the incorporation in the Constitution of provisions for direct legislation by the people, as a safeguard against what they feared would happen.
>
> In fact, Labor has made great gains through the federal parliament and, in the [Dunstan] committee's view, if Labor had been successful and written the initiative, referendum and recall into the federal Constitution, those devices would have hindered Labor governments far more than conservative ones.

The statement provides the following definition of what the Labor Party's commitment to I&R meant. It said:

> The initiative is a device by which legislation can be introduced to the house by a petition and subsequent vote of the people.
>
> The referendum is a device by which the parliament can be compelled to submit bills in the house to a vote of the whole people, and
>
> The recall is a device for ousting members of parliament before their term has expired.

Recall was another device championed by American Progressives. They saw it as a way of ensuring that corrupt and/or electorally unresponsive politicians could be prompted and constitutionally removed from office ahead of scheduled elections. Not surprisingly, the device is not popular with politicians anywhere, and Labor Party politicians were no exception judging from their comments at various party conferences when the matter came up for discussion.

To strengthen its argument against I&R, the 1963 statement quoted from Dr Herman Finer's *The Theory and Practice of Modern Government*,[32] but did so somewhat selectively. Finer's two-volume work, first published in 1932, was probably his most influential and became a standard textbook in Australian undergraduate courses.

The statement said that Finer carried out "an exhaustive survey" of direct legislation:[33]

> He makes it clear that through these devices it is easy for conservatism to put brakes upon reform parties — that it is generally impossible to expect people to appreciate or understand the details of issues which are complicated, and that to be safe they will always vote against what they do not fully understand. Rarely have these devices worked to introduce reforms, but they have very often worked to prevent desirable social reforms. *They have been the effective weapons of the reactionaries and the*

32. Herman Finer, *The Theory and Practice of Modern Government*, [1932] (London: Methuen, 1946).

33. Official Report of the Proceedings of the 25th National Conference of the ALP, Perth, July, 1963, p.92.

> *irresponsibles, and in the committee's view we would be giving a dangerous weapon to our enemies were we to provide for direct legislation in the Commonwealth Constitution*. There has been no significant interest in or agitation for this part of the [Labor Party's] platform for the past 50 years, *and the proposal runs counter to the development of the party system* and the established traditions of Australian politics. (My italics)

Finer himself wrote: "The Swiss idealise their system more than the Americans, but when one examines their opinions they are seen to be *of small substance*."[34] (My italics) He then commented on three extracts from the writings of the eminent Swiss historian Felix Bonjour's post-World War I book, *Real Democracy in Operation*.[35]

The first endorsed direct democracy as "the surest method of discovering the wishes of the people — an excellent barometer of the political atmosphere". To this, Finer retorted: "But we have seen that people's wishes can be destructive, when they have not met together to discuss the consequences of their activity and are not enlightened by those who are wise and informed." Finer's decision to describe the outcome of a referendum — a majority vote by the people — as an exercise in destruction, as well as being an extreme anti-democratic statement, also further evidences his belief that a minority should rule irrespective of the wishes of the majority.

The second endorsed direct democracy because it "compels the legislator to conform with the aspirations of the people, if he does not wish the fruit of his labours to perish". Finer's remark, "But the legislator's fruits may be so good that they ought not to perish, and the aspirations of the people may be uninformed, unintelligent and vindictive", amounts to turning democracy on its head by arguing for rule by a meritocracy.

The third extract said: "It [direct democracy] puts an end to acute conflict between people and governments, and provides one of the safest barriers there can be against revolutionary agitation." What Bonjour was saying was that a system that puts the interests and opinions of a minority ahead of those of a majority is inherently unstable and could well lead the majority to take extra-parliamentary measures to reassert their sovereign rights. Finer, however, took the view that the "evil" was not supplanting the majority's will with a minority, however more intelligent it might be. The evil, in his opinion, was the "brute force" of a referendum which might produce "a majority decision which has in some cases been an exceedingly small majority, and sometimes a minority of the whole electorate".

Labor's 1963 national conference decision to repudiate I&R was therefore fundamentally flawed since it amounted to:

34. Finer, *op. cit.*, pp.931-32.

35. Felix Bonjour, *Real Democracy in Operation: The Example of Switzerland,* English trans. (London: Allen & Unwin, 1920).

- Rejecting the best possible option for "discovering the wishes of the people";
- Dismissing voters as uninformed, unintelligent and vindictive while lauding legislators as the "wise and informed" ones.

Seen in this light, it is a wonder the ALP conference did not go on to reject the idea of universal suffrage. Why not simply have what Finer calls the "wise and informed" governing the many at all times and without elections?

Conclusion

I&R in Australia has had few champions, but the list once upon a time included the Labor Pa rty, or rather the Labor Party in its formative or pre- and immediate post-federation years and a tiny handful of non-Labor politicians, including especially former NSW independent federal MP, Ted Mack, and onetime Howard Government minister, Peter Reith. In the Western Australian parliament in 2008, only one MP, Dan Sullivan, a Liberal, actively backed adoption of direct democracy. Labor's early awareness of and attraction to I&R was due primarily to the influence of American Populist/Progressive thinking as disseminated within the Labor movement via the American Federation of Labor as well as ongoing informal contacts by certain early Labor activists.

But this influence was short-lived, effectively lasting less than 20 years, even though the Labor Party retained the I&R plank in its official platforms for another half century, until 1963. In that year, the party's 25th national conference unanimously dropped the plank on the grounds I&R could be used by its "enemies" to thwart Labor's 1918 centralist plank, that part of Labor's platform most cherished by senior ranks.

That the Labor Party's upper echelons should so fear the people — the *demos* — is a truly amazing feature of that organisation. This appears never to have been brought to light before but it certainly provides support for O'Brien's contention that "in every social democratic party there is a Leninist Party *in potentia*". In the 1960s, Labor once again set its sights on refashioning Australia into a unitary state rather than allowing it to remain a federated nation. Labor wished to see Australia more closely resemble the United Kingdom, New Zealand and South Africa, rather than permit it to evolve along the lines of the United States of America and Switzerland.

In so doing, it sought to further enshrine Westminster-style representative or limited democracy — all power to the elected few, not to the electing many. Labor's fear was that if voters ever received a clear-cut ability to launch non-parliamentary choices via I&R, then most Australians would be able to reject centralisation at referendums. Creeping transformation towards a rigidly controlled unitary state through a process that would be slowly and methodically implemented from the top was consequently seen as the way to go. And that meant, first and foremost, denying Australians a way of electorally blocking such a move.

The fact that Labor went cool on I&R well before the outbreak of the Great War, when it was no longer "a third (minority) party", means it is difficult not to suspect that most within its senior ranks had backed this plank for reasons other than a sincere commitment to democratic principles and practices. Such individuals saw I&R as a way of overcoming the blocking of Labor government-initiated legislation by non-Labor dominated state upper houses and even the Senate, an outlook and practice that was subsequently emulated by non-Labor parties which came to view I&R as something that would strip them of power.

Opposition to broader voter involvement in the legislative process is the antithesis of democracy because it ensures that power permanently rests with the few, rather than the many. Democracy envisages the very opposite, and to this day I&R is the most successful and best tested procedure for democracy to be fully realised. Despite this, both sides of Australia's political divide have come deeply to despise I&R because they do not wish to share legislative power with all Australians.

Appendix I

Initiative and referendum[36]

SECTION 6. The People, at any time, are entitled to exercise their powers of Initiative by proposing statutes and amendments to the Constitution and to adopt or reject them, or by exercising their powers of Referendum, to approve or reject statutes or parts of statutes except urgency statutes, statutes calling for elections, and statutes providing for taxation or appropriations for usual and concurrent expenses of state.

a. An initiative measure may be proposed by presenting to the Attorney-General a petition which sets forth the text of the proposed statute or amendment to the Constitution and is certified to have been signed by electors in the case of a statute equal to three percent of those eligible to vote where voting is compulsory, or five percent of those voting at the previous election where voting was not compulsory; and in the case of an amendment to the Constitution, five percent of the electorate where voting is compulsory, and eight percent of those who voted at the previous election where voting was not compulsory.
b. The Attorney-General shall then submit the measure at the next general election held, or at any state-wide election held prior to that, or at a special election called solely for the purpose of approving or disapproving of that or any other measures submitted by the People at that time and in each case at least 90 days after the initiative qualifies.

36. Martyn Webb, *Sovereigns not Subjects — A New Constitution for The People of Western Australia* (Perth, self-published, 1990), pp.5-9. Webb states at the end of his proposed Constitution — "Freely adapted and appropriately amended from the State Constitutions of California, Massachusetts, Nebraska, Alaska and Hawaii."

c. No initiative measure embracing more than one subject or more than one question may be submitted to the electors or have any effect. In case of doubt the matter shall be adjudicated upon by the Chief Justice of the Supreme Court of Western Australia.

d. The powers of the People to propose the rejection by referendum of a statute other than a statute concerning supply, or the levying of taxes or the making of appropriations, may be exercised within 120 days after the enactment of the statute by the parliament by the presentation of a petition to the Secretary of State certified to have been signed by electors equal in number to three percent of the electorate where voting is compulsory or five percent of those who voted at the previous election where voting was not compulsory.

e. No amendment to the Constitution and rejection of a statute proposed to the electors by the Parliament or by Initiative or by Referendum that names any individual to hold office or identifies any private corporation to perform any function or to have any power or duty may be submitted to the electors or have any effect.

f. The People have the right to propose the rejection or amendment of any statute passed prior to the passing of this Constitution.

g. The Governor shall then submit the measure at the next general election at least 90 days after it qualifies or at a special state-wide election held prior to that general election. The Governor may call a special state-wide election for the measure.

Vote and effective date, ammendment, titling

SECTION 7. An initiative statute or referendum approved by the majority of votes thereon takes effect the day after the election results are announced unless the measure provides otherwise and where the referendum is against only part of a statute. The effect of the remainder shall not be delayed from going into effect.

a. Where provisions of two or more measures adopted at the same time conflict, those of the measure receiving the highest number of YES votes shall prevail.

b. Prior to circulation of an initiative or referendum petition for signature, a copy shall be submitted to the Attorney-General who shall prepare a title and a summary of the measure as provided by law within fourteen days.

c. An initiated law is not subject to veto, nor may it be repealed by Parliament within two years of its enactment. It may be amended at any time.

d. Parliament shall provide the manner in which petitions shall be circulated, presented and certified, and measures submitted to the electors.

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