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Dear members

Here is Groundswell's submission to CODESA:

- 1) The case for numerous regions in the new South Africa
- 2) Direct democracy: Key to accountability

We are very keen to lead evidence to CODESA and hope that you will allow us to do so in the near future.

Yours sincerely

GAIL DAY
GROUNDSWELL CO-ORDINATOR

Direct Democracy: Key to accountability

Submission to the Constitutional Committee of CODESA
from GROUNDSWELL

25 February 1992

*Empowerment of the masses -- true popular control of government -
- is what makes the initiative so appealing. It is the best
political mechanism ever devised to implement true democracy
while safeguarding individual rights.*

David Schmidt

The success of constitutional democracies depends on the existence of effective "checks and balances" to prevent elected representatives from abusing their power or overstepping their mandates. One of the most effective constitutional checks yet devised is the practice of direct democracy, by which the people retain the right to vote directly on constitutional amendments and proposed legislation.

The popular vote enjoys numerous advantages which would prove invaluable in a democratic South Africa. It reflects public opinion accurately, ensures that elected representatives remain accountable, and reduces the importance of party politics, thereby avoiding polarisation and conflict. People accept electoral defeat with equanimity when they know that although their party has not gained a majority in parliament, they can still make themselves heard through the popular ballot.

Direct democracy focuses attention on specific issues. When people are asked, for example, whether a certain tariff should be introduced, they consider the proposal on its merits instead of

voting according to their political affiliations. Popular ballots also help to break deadlocks in parliamentary decision-making and enable wrong decisions to be reversed relatively easily.

In both Switzerland and the USA, where direct democracy is commonplace, popular initiatives and calls for referendums act as a barometer of controversy, and in times of crisis they begin to pile up. When people exercise their sovereignty frequently public apathy decreases, as do frustration and dissatisfaction with government.

Deprived of the power to impose their views on an impotent and unresisting populace, politicians in time become fellow participants in the law-making process instead of legislative tyrants and adversaries.

Switzerland

The Swiss principle that the people should have the final say in decision-making dates back seven centuries to the ancient Landesgemeinden of the forest and mountain cantons. These are open-air meetings in which all voters participate in electing representatives and making laws. Landesgemeinden are held annually in five of the cantons to this day.

When the present Swiss constitution was adopted in 1848 the right of the citizens to vote directly on any law was extended to the country as a whole. The regional governments followed the example of the federal parliament and by the end of the nineteenth century all 26 cantons and half-cantons had included the right to referendums and popular initiatives in their constitutions.

The referendum

Two types of referendum are in common use in Switzerland today. One is the obligatory referendum which must be called to allow citizens to vote "yes" or "no" on all proposed constitutional amendments. This

applies at national, regional and local levels. In some regions referendums must also be called to ratify intercantonal agreements or financial decisions such as proposed increases in spending or taxes. In many communities referendums are held to approve all expenditures above a certain amount.

Small communities make political decisions through direct voting in town meetings, but at the federal level, and in cantons and communities that are too populous for public assemblies the optional referendum is often employed. The optional referendum permits new laws, and sometimes even administrative regulations, to be put to the popular vote within a certain period of time provided a number of citizens (50 000 at the federal level, and between 1 000 and 5 000 in cantons and communities) sign a petition requesting the vote.

These two types of referendum together constitute the people's veto. They have the purely negative effect of preventing laws from coming into force which do not enjoy the support of the majority.

The initiative

Also built into the national constitution, and cantonal and community constitutions, is the right to launch popular initiatives, through which citizens can propose measures which will become law if they receive the support of the majority. The legislative initiative proposes new laws and the constitutional initiative proposes amendments to the constitution. The recall is an initiative that allows the recall of unpopular leaders, though this does not often happen in practice.

Any group that wishes to launch an initiative has a specified period of time in which to do so. Nationwide 100 000 signatures are required to launch an initiative, but in most cantons and communities only 1 000 and 5 000 signatures are required. The time allowed for collecting signatures can be many months, depending on the size of

the area involved. The signatures must be checked and authenticated by the commune in which the signatory is resident.

In a formulated initiative a legal text is drawn up and put to the vote. If the people vote "yes" a new bill appears in the statute books as formulated. In an unformulated initiative (which is very rare) the people make a recommendation to government. When this kind of initiative is adopted, parliament must draw up a law to put it into action, and there will be a second vote to approve the law.

Once an organisation has collected the requisite number of signatures, it submits them to the government concerned in a little ceremony. The government then studies the proposal and gives its opinion as to whether the people should vote for or against it. At the federal level, and in most cantons and large communities the government produces a fairly comprehensive booklet listing the referendums and initiatives on the ballot. This includes the texts of the proposals, a description of existing provisions, a paragraph explaining why the government agrees or disagrees with each proposal, and another setting out the arguments of the committees launching each proposition.

Occasionally the legislature concerned recommends a "moderate" counter-proposal which is put to the vote if the initiative is defeated. If legislation on the subject of the initiative is already planned, the government will attempt to persuade the people to withdraw their proposal.

Popular initiatives are usually launched by minority groups. They often concern social legislation, and only about ten percent are accepted. Nonetheless, they are very popular with the Swiss people, and they serve several important purposes. They allow opposition to be expressed in a purposeful way and at times lead to the formation of a new political party -- most Swiss parties began with plebiscites. They often result in spirited public debate which

provides a vehicle for education and helps crystallise public opinion. Moreover, the degree of support an initiative receives influences future government policy. If a bill is stalemated in parliament, those who favour the bill sometimes launch an initiative to put pressure on parliament to adopt it. If the pressure succeeds, the initiative is dropped.

On rare occasions an initiative is so well received that the authorities agree to adopt it without further ado, and the petitioners withdraw. This happened at the central level with an initiative which proposed that equal rights for men and women be written into the national constitution. However, because a constitutional amendment was involved the people still had to vote on it in an obligatory referendum.

The logistics of frequent voting

Voting in Switzerland usually takes place in a local venue such as a school. In most cantons and communities the people vote at least four times a year -- once per season -- on about 24 different issues each year. Voting is usually on Sundays, when the people can easily get to the polls. Issues on the ballot might include such matters as the site for a new community school, a proposed cantonal road, or the introduction of a national law regarding the compulsory wearing of seat belts. Voting papers are distinguished by different colours or some other means to indicate whether the referendum or initiative is a community, canton or federal matter. Voter turnout averages 35% but varies greatly, depending on the degree of interest in the issue at hand. Whatever the poll, the majority vote gets its way, and since participation in important questions is high, low turnouts do not worry the Swiss, who take it for granted that "only a minority of the population is intensely interested in the country's political life" (How Switzerland is Governed, 1983).

In recent years the number of issues on the ballots have been increasing. For example, between 1890 and 1979 the citizens of the canton of St Gallen voted on 335 propositions in the first thirty years, 400 in the second thirty and 620 in the third thirty.

Once the apparatus (ranging from old-fashioned polling booths to electronic voting machines or computers) for plebiscites is in place, they are not at all expensive to conduct. The local governments pay their own costs, which include the cost of printing the ballot papers and, in bigger regions, the cost of printing and distributing their commentaries on the issues. They also provide polling stations and are responsible for the counting of votes.

Direct democracy in the USA

Direct democracy was introduced to the USA by the Progressive movement in the first two decades of this century. The Progressives profoundly distrusted legislatures because they saw business and government colluding to their mutual advantage, to the detriment of the man in the street: "The citizens of every state have seen legislature after legislature enact laws to the special advantage of a few and refuse to enact laws for the welfare of the many."¹

Strongly influenced by Switzerland and participatory town meetings in New England, they argued that the only way to ensure political accountability was through direct democracy.

The efforts of the Progressives resulted in a dramatic expansion of citizen participation in American politics. Not only did various forms of plebiscite become commonplace, but the franchise was extended to women, and senators were directly elected for the first time.

¹ Bourne, Jonathan, Jr. "Functions of the Initiative, Referendum and Recall." Annals of the American Academy of Political and Social Science 43. September 1912: pp3-16.

In 1898 South Dakota became the first American state to introduce the referendum. Others followed during the next 20 years, but for the most part the system remained limited to a few western states until the 1970s, when it began to expand eastward. Now 26 states and thousands of local jurisdictions have direct democracy. Of these, 21 have referendums and initiatives, three have referendums only and two have the initiative only. Direct democracy is consistently and strongly supported by a high percentage of the US electorate including both liberals and conservatives. Over 77% of Americans favour the more widespread use of referendums and initiatives. This doesn't necessarily mean that people will participate in votes or have strong views on most issues, but they believe in the right of the public to participate.

The referendum

All the states except Delaware have obligatory referendums to amend their constitutions and in 21 states bond issues and debt authorisation are subject to obligatory referendums too. Many states also voluntarily submit certain laws to the popular vote to ensure their legitimacy.

Twenty-five states also allow optional referendums whereby voters can accept or reject newly enacted laws within a specified time, provided they submit a petition with a required number of signatures. However, access to the process is generally not as broad-based as in Switzerland, and only in Arkansas, Idaho and Nevada are there no restrictions on the laws that can be challenged.

The initiative

As of 1980, 23 states had authorised initiatives to introduce constitutional amendments or new laws. These can be set in motion by between 2% and 25% of registered voters, and once on the ballot a

proposal that receives a majority in favour becomes law. In some states initiatives are restricted to certain subjects -- for example, some do not allow initiatives concerning the judiciary.

Direct initiatives propose a constitutional amendment or new law by means of a petition. Indirect initiatives propose a measure to be submitted to the legislature. If the legislature doesn't approve the proposal within a specified time, or if it amends it in a way not acceptable to the proposing committee or group, more signatures are collected and the issue is put to the voters. The government sometimes provides an alternative proposal as in Switzerland.

The recall initiative had been authorized in fourteen states by 1986. As in Switzerland this measure is seldom used -- to date fewer than fifteen officials have been recalled from office -- but when it is used it has a powerful effect. For example, in 1982 Circuit Judge William Reinecke of Lancaster, Wisconsin said that a five-year-old victim of sexual assault was "unusually promiscuous". A recall petition was immediately circulated, and the judge retained his position by the skin of his teeth with a majority of 0,85%. In November, 1983, State Senator Phillip O Mastin was removed from office through the recall because he had supported an increase of 38% in state income tax which was passed in 1982. As a result of Mastin's recall, control of the state Senate shifted from Democratic to Republican hands.

Some states also have a variation of the recall whereby certain appointed officials such as Supreme Court Justices require periodic popular reconfirmation.

Getting an initiative on the ballot

An initiative is drafted by a group of people who have an idea that they would like to become law. For example in the state of Oregon in 1990 a committee of concerned parents calling themselves "Oregonians

for Educational Choice" drafted an initiative entitled School Choice System, Tax Credit for Education Outside Public Schools (see Appendix One). To publicise the idea an A3-sized leaflet was posted to all households explaining what the implications of the law would be, how it would work, and who it would effect. It also listed well-known individuals who supported the idea, and gave the official wording of the proposed law.

Some groups use a special campaign consultant to help them draft the proposition. Usually the proponents of an initiative are required to file the wording with the Secretary of State or Attorney-General, who checks that the title of the proposition is not misleading and ensures that it is not changed once it has been filed.

Signatures required for a popular initiative

A certain number of signatures are required on a petition before a proposition can be put to the vote. This is not a fixed number as in Switzerland but is based on a percentage of voters which varies from one state to another. For example, in North Dakota the signatures of only 2% of the population of voting age (including people who are not registered as voters) are required to bring an initiative to the vote. In Wyoming the number of signatures must equal 15% of the number of votes cast in the preceding election. The average requirement is 8% of voters in the most recent election.

Half the states require signatures to be geographically distributed; in Massachusetts, for example, no more than 25% of the signatures may come from any one county, and signatories must be registered voters.

Of all initiatives filed, fewer than 20% gain enough signatures to qualify. Not surprisingly, states with the lowest signature thresholds have the highest number of initiatives. Where signature requirements are the same there are more ballots in the West (where

the history of direct democracy is longer) than in the rest of the country.

In states where the requirement is 8% and under about one in three initiatives are approved (35%), whereas with higher thresholds of 10% around half are approved (47%). In other words, when it is harder to get a proposition on the ballot, more measures are accepted by the voters, presumably because less acceptable issues have already been weeded out.

In most states direct democracy is a grass-roots-oriented low-cost affair. In counties and municipalities few signatures are required on petitions, and it is easy to validate them. However, at the state level, especially in large states like California, the process becomes very expensive. For example, the validation of signatures alone costs about 29c per signature in California. It is now done by means of a random sampling to keep the cost down.

Some Californian propositions are accompanied by campaigns that exceed the cost of major election battles. Firms working in the initiative industry plan and budget campaigns in the same way the election industry promotes candidates for office, with advertising jingles and catchy slogans on TV, radio and in the print media.

Signatures are collected at shopping centres and supermarkets and in movie theatre lines. Most people approached will sign since signing gives the right to vote but doesn't necessarily mean they are in favour of the issue. In small areas volunteers collect the signatures, sometimes with paid helpers at the rate of 25c per signature. However, in California and Ohio where signature requirements are high, a professional signature-gathering firm is sometimes employed towards the end of a campaign to complete the requisite numbers. These firms charge around \$1,00 per signature, of which 30c goes to the individual petition circulator.

Direct mail signature solicitation is expensive -- about double

the price of in-person collection -- but since it can be combined with fund-raising it is becoming increasingly popular for issues to which the public is likely to respond with financial assistance.

Understanding the issues

Some propositions are long and complicated and written in difficult legal terms. Furthermore, some issues are by nature confusing, and in some cases the wording attempts to disguise what the outcome of the vote will mean. To ensure that the public is reasonably informed, nine states publish a voter's handbook which is mailed to all registered voters three to four weeks before an election. As in Switzerland this contains an official description of each proposition, with arguments for and against. Also, some of the states require petitioners to publish the text of their propositions thirty days before the election and many states inform voters how much is being spent by the proponents and opponents of each issue.

Problems resulting from size

As long as decision-making is largely decentralised, most initiatives and referendums occur at the local level where people are involved in the issue at hand and can easily enter the debate. In these circumstances direct democracy is an inexpensive, participatory grass-roots affair.

However, in a state like California, with a population of around 30 million and great power vested in the state government, many propositions have to be dealt with on the state ballot. To keep costs down propositions are voted on at the same times as elections for officials. This means voting is far less frequent than in Switzerland (where people vote as often as twenty times a year in a large canton like Zurich) and numerous propositions appear on the ballot at the same time. In a general or state election California

residents might vote on as many as ten public officials and fifteen or more popular initiatives on one ballot. Consequently few voters are well-informed or interested in all the issues.

Moreover, it is extremely expensive to get a proposition on the ballot because many hundreds of thousands of signatures are required. This makes access of poorer groups to the process almost impossible. It also means that bad decisions are difficult to reverse. In Switzerland, where most decisions are local and signature requirements are low, if the voters make an error they can quickly and easily reverse their decision. For example, in 1973 Basel-Land voted in favour of a tax increase of up to 140% on high-income earners. The result was a loss of 50 high-income earners from the canton and a reduction of 8% in overall revenue. In 1974 the voters agreed in another referendum to replace the tax with one that was less punitive. In California it is so expensive and time-consuming to get a proposition on the ballot that it is seldom worth the effort to reverse an ill-advised decision.

These drawbacks do not mean that there should be no direct democracy in large states. Even when millions of people are involved initiatives excite great public interest, and the famous California Proposition 13 (discussed later) attracted over 350 000 more voters than the simultaneous vote for governor. Moreover, even on such a vast scale referendums and initiatives increase civic responsibility and encourage political accountability. Nonetheless, a comparison between the process of direct legislation in Switzerland and the USA, and between various states within the USA, leads inescapably to the conclusion that the more power is devolved to the local level, the more the advantages of direct democracy are evident.

Balloting

Until recently balloting has always been done in the same way as for

elections, and, as mentioned earlier, usually at the same time. Nowadays, however, mail ballots are being used increasingly. For example, in San Diego a mail ballot was used to canvass opinion on the building of a \$225 million convention centre. Ballots were posted to 430 211 city residents, and returned by 261 433. Not only was the return rate double the turnout for a normal poll, the mail ballots were 20% cheaper than traditional voting, and also faster.

Information technology can also be used to facilitate direct legislation. Gabe L Campbell has introduced a computer system called a Consensor into his church to obtain the reaction of the congregation to his sermons. Each person in the church is given a mini-terminal small enough to fit in the palm of his hand, and he simply presses a button to indicate whether or not he approves of the sermon. A central computer takes a few seconds to compute the vote. The consensor would lend itself ideally to decision-making at large public meetings. Instead of walking to the front of a hall and dropping his ballot into a box, each individual could press a "yes" or "no" button and cast his secret ballot immediately.

In the USA a simple majority is usually sufficient to pass a proposition. However, there are exceptions. In Idaho, for example, propositions require a majority of the number of votes cast for governor, and in Wyoming "yes" votes must total 50% of the votes cast in the preceding election. Also, in some cases a special majority (eg two-thirds) may be required, for example, to amend a home-rule charter or to borrow money above a certain amount.

Issues of popular concern

Since the inception of direct democracy in 1898 there have been 17 000 state-wide propositions and many more at the city and county level. For example, in the state of Ohio there were 1 846 popular ballots during 1968 alone.

Generally speaking, the west utilises direct democracy more than the east, with California and Oregon leading in the numbers of initiatives, and Arizona and North Dakota holding the most referendums. In the midwest and west, initiatives have increased dramatically since the early sixties. In 1982 Americans voted on more initiatives than at any time since the Great Depression, reflecting growing public frustration with the unresponsiveness of the legislatures.

On average, 60% of referendums proposed by legislatures are approved, whereas only 38% of ordinary propositions and 34% of constitutional amendments proposed by popular petition are adopted. Petitioners generally prefer constitutional initiatives to legislative ones because once won they are harder to overturn.

Issues of concern change over time. During the depression social issues, welfare and alcohol control were voted on most often, and in the 1970s many propositions related to drug control. In the eighties the emphasis fell increasingly on environmental questions.

Surveys show that voters find questions regarding tax and the organisation of government the most interesting, followed by education. Not surprisingly, then, taxation and spending are the most frequent subjects of propositions at the state level and at the local level school funding is the most common issue put to the vote. However almost every issue imaginable has been the subject of a popular initiative in the USA, including civil rights, racial integration, environmental and consumer protection, nuclear energy, women's rights, school busing, housing, transport regulations, gambling, state lotteries, the drinking age, abortion, the right to work, obscenity, beverage container deposits, land-use planning, the death penalty, milk prices, and the hunting of mourning doves.

An analysis of initiatives prior to 1976 showed that 26% concerned government and the political process, 21% revenue and

taxation, 14% public morality (for example, prohibition and gambling) and 14% dealt with business and labour.

Citizens generally vote to keep taxes lower, so tax and spending limits are often approved. However, drastic tax slashes like the one contained in California's Proposition 13 are very seldom passed, and it is not unusual for tax increases to be approved. For example, in 1990 Californians approved the expenditure of \$30 million on habitat for wildlife, as well as an increase in gasoline taxes to finance road construction.

The process of direct democracy is ideologically neutral. Liberals tend to focus on environmentalism and welfare, and conservatives on tax cuts and cleaning up government. Of the state-wide initiatives conducted between 1974 and 1984, 79 were sponsored by the left and 74 by the right. Of these, 44% of the left-wing issues were approved and 45% of the right-leaning measures. Out of 46 non-classifiable propositions a half were adopted.

The most famous of all initiatives in the USA was Proposition 13, which proposed a constitutional amendment in the State of California in 1978 to slash property taxes by 57% and to limit them in future to 5% of market value with no more than a 2% increase annually. The amendment was approved by a 65% majority of voters, with strong majorities in every class of the population. It reduced California's annual state revenues from property taxes from \$12 billion to \$5 billion. The day after the Proposition was adopted, Governor Brown imposed an immediate freeze on the hiring of state employees, telling a joint session of the state legislature, "Over four million of our fellow citizens have sent a message to city hall, Sacramento and to all of us. The message is that property tax must be sharply curtailed and that government spending, wherever it is, must be held in check." Voter turn out is not usually affected by the propositions on the ballot, but in the case of Proposition 13 the poll was unusually high

and the effects of the vote resounded around the nation, precipitating tax- or spending-limit movements in 22 states.

The role of the courts

In Switzerland the people are sovereign in the true meaning of the phrase: their decisions in popular ballots may not be overruled in the courts. In the USA, however, it is possible to declare any legislation, direct or indirect, illegal in terms of the constitution of the state concerned, or in terms of the US constitution.

Formerly, initiatives were challenged by the courts only once they had been adopted, in the same way as laws made by representative bodies. However, since 1983 there has been a substantial increase in the judicial overruling of propositions before they are put to the vote, even though they have achieved the requisite number of signatures. In the case of fraudulent signatures or other serious abuses these interventions appear fully justified. However, on a number of occasions properly qualified initiatives have been stripped from the ballot before the voters have had a chance to have their say.

In other words, the courts are now deciding what issues may be put to the vote, and offering extremely weak reasons to support their decisions. It is clear that they are being used to support political lobbies.

For example, in 1983 the Massachusetts Supreme Court struck down an initiative to reduce the arbitrary power of the legislature. In Florida two propositions were struck down in 1984, one concerning tax reductions and limitation, and the other limiting malpractice liability. All of these were overruled on the grounds that they violated the "single subject" restriction by dealing with more than one topic in one proposition. But in previous cases the courts had interpreted this same restriction broadly, allowing several issues on

one proposition provided all were relevant to the main purpose.

During the same year the California Supreme Court struck down an initiative requiring the state legislators to join the call of other states for a constitutional convention on a proposed balanced budget amendment to the US constitution. The court maintained that only "legislatures" can issue the call for constitutional conventions, and that the initiative provision to withhold legislative pay and benefits to force compliance would prevent the representatives from voting "in their best judgement". In essence the Court decreed that the people do not have the right to instruct their representatives to call for a constitutional convention; they can only try to persuade them to do so.

The Montana High Court bumped a pro-balanced-budget amendment from the ballot on the same grounds as the California Court, and the Nebraska Supreme Court ruled against an initiative on the nuclear weapons freeze.

Also in 1984 the Arkansas Supreme Court overruled the Unborn Child Amendment, an initiative which would have forbidden taxpayer funding of abortions and made it state policy to promote the "health, safety and welfare of every unborn child from conception to birth." The court ruled that use of the term "unborn child" in the title of the measure "constitutes a partisan coloring of the ballot...which gives the voters only the impression the proponents of the amendment want them to have." This was done even though the state's initiative provisions specifically allow initiative proponents to title their own propositions, and many courts and legal writers, including the Supreme Court of the USA, frequently use the term "unborn child".

Most of the initiatives that have been overruled by the courts enjoyed high popularity and were expected to win majority support. To avoid experiencing defeat at the polls, their opponents used the courts to bump them off the ballot. Because of these successes,

almost every initiative is now challenged in court by its opponents, leading to lengthy, expensive court battles.

As mentioned earlier, the Swiss courts do not have the right to overrule popular decisions. Arguably because of this, the Swiss people enjoy more rights and freedoms than any other developed nation in the world.

In South Africa all the signs are that we will follow the example of the USA and allow an independent judiciary to rule on the constitutionality of legislation introduced by any level of government. However, there is no reason why we should imitate those states that are allowing the courts to decide on what issues the people may vote. Let any issue with the requisite number of signatures be put to the popular vote, and let the courts decide once the measure becomes law whether or not it violates the country's or region's constitution.

National referendums

Several countries require national referendums to change their constitutions, but Switzerland is the only nation that allows the optional referendum and initiatives at the federal level. From the time of the French Revolution to the year 1980 there have been 550 votes world-wide at the national level (including elections and referendums). Of these, around 300 occurred in Switzerland.

In the USA towards the end of 1982, partly as the result of a national campaign and partly through the efforts of spontaneous citizens' groups, 11 states and 32 local governments ran propositions in favour of a nuclear weapons freeze. Most passed comfortably, and the effect was a powerful country-wide message to President Reagan and Congress that people were deeply concerned about nuclear armaments. The President and Congress ignored the message, but they would have been forced to respond to it if the American people had

the right to propose initiatives at the national level as do the Swiss.

In the USA in 1977 a proposal was made for a constitutional amendment allowing for national initiatives and referendums. Not surprisingly it was blocked in Congress. However, in 1978 and 1981 Gallup polls showed that support for national initiatives is consistently twice as strong as opposition. Furthermore support is growing as the feeling increases that Congress is run for the benefit of powerful interests.

Certainly far less power is wielded by the Swiss federal government than by Congress. This was not always so. In 1848 when the present Swiss constitution was devised the Swiss federal state was granted more power than the US constitution allowed Congress. However, in the course of the past 150 years, far less centralisation has occurred under the Swiss system, where the people have the final say on the constitutionality of federal legislation, than in the US where the courts decide.

In theory, Congress cannot restrict the power of the states; in practice, however, if Congress enacts a statute, the President signs it, and the Supreme Court finds it constitutional, the states are powerless to oppose it. The Supreme court could rule a law unconstitutional on the grounds that it infringes on states' rights, but it doesn't often do so. It is itself a national institution, and during the past half-century its decisions have resulted in an ever-expanding conception of national power.

In Switzerland, where the cantons and the people have the final say, they often block laws that aim to centralise power at the expense of local interests. Moreover, the cabinet has to lobby the cantons and other interest groups to gain support for legislation, since without their approval it runs the risk that a referendum will be called to reject the proposed measure. In the United States the

opposite is true. Interest groups set up foundations and organisations in Washington whose full-time task is to lobby Congress.

The true seat of power in the two countries is clearly demonstrated by this difference. In constitutional terms the Swiss parliament is more powerful than the US Congress, but in reality the Swiss government is much more answerable to the people.

Common objections to direct democracy

Direct democracy empowers the ignorant

The chief objection to direct democracy is that it transfers power from the educated to the ignorant. This objection is raised by both the left and the right. While opponents on the left see the referendum as a barrier to progressive reform, those on the right fear it as a dangerous device for majority domination. The history of direct democracies shows the former fear to be more valid than the latter. The results of popular votes are almost invariably restrained. They hardly ever favour dramatic shifts in public policy. It is apparently universally true that people elected to political office are more radical and "progressive" in their views than those who elect them. Ordinary people tend to have traditional attitudes.

Moreover, in Switzerland the referendum is a means of checking rather than extending the power of the majority. The French, Italians and German Catholics together are able to form a majority and prevent the German-speaking Protestants (who are the biggest single group by far) from imposing their will.

Those who believe that direct democracy empowers the ignorant argue that voters have no real knowledge of the issues at hand, will not study the propositions properly, and are simply influenced by whim, advertising, or newspaper advice. However, studies show that although newspapers certainly play a role in influencing public

debate, they can't guarantee the success of a proposition. Moreover, people are careful whose opinions they rely on -- the endorsement of educated elites such as scientists is the most important influence on their thinking, and politicians play a minor role in shaping their perceptions. Controversial issues often lose at the polls, especially if experts appear divided. The general attitude of the public is "when in doubt vote no."

Critics of direct democracy also argue that the process replaces due deliberation, orderly procedure and legislative judgement with ill-informed and intolerant public opinion which cannot absorb technical information. Popular votes focus on the short term and prevent debate, compromise and negotiation, whereas representatives take a longer view, and are able to assess the question at hand with knowledge and expertise.

In truth, however, elected representatives are no better than the general public at understanding technical issues, and rely on experts to investigate and advise them, just as the people do during the run-up to an initiative. Moreover, politicians are notorious for oversimplification, misleading claims, and promises that can't be kept. Prior to an election it is easy for them to offer an array of benefits without revealing their costs, but this cannot be done in the run-up to a referendum. When the people vote for new roads, a convention centre or a social benefit, they demand to know what it will cost them. Furthermore, as we have seen, the man in the street tends to be more restrained and moderate in his judgement than elected officials.

Direct democracy favours elites

The opposite argument is also heard: plebiscites are not really democratic because only well-informed, affluent, educated and politicised members of the public vote. Rich groups, it is said, are

able to use their money and the media to sway the vote in their favour. Furthermore, extremists and special interests adopt the process to achieve their ends, and usually get their way because the voters are often apathetic.

It is true that in all countries, generally speaking, a larger percentage of people with higher education and incomes vote than those with less; this is the case in the USA and Switzerland both for elections and propositions. But it is also true that highly educated, affluent people are a very small percentage of the whole and never constitute sufficient numbers to achieve a majority in a popular vote.

With regard to the influence of big money on voting patterns, various studies conclude that extra spending does not help an initiative to succeed; under-financed underdogs often get their way. An example of this is provided by a handful of activists in San Francisco who called upon the city to take a firm position in favour of the deregulation of hypodermic syringes to help prevent the spread of AIDS. The city of San Francisco does not have the power to do this itself, so the purpose of the initiative was to instruct the city to call upon the state legislature to "deregulate the manufacture, possession, sale and distribution of hypodermic syringes".

The organisers had to collect only 10 000 signatures² in under six months to get the initiative onto the city ballot. They collected 15 000 to make allowance for invalid signatures, and most of the \$1 000 spent during the campaign was paid to professional petitioners who helped to complete the signature requirements. Although the initiative was opposed by all official parties, it attracted public support easily and received a 54% vote in favour.

² The number would have been three times as high if the initiative had involved more than a declaration of policy.

The proponents of a measure are always at a disadvantage because they have to convince the voters to change the status quo, and this is usually resisted. Even if proponents outspend their opponents two-to-one they are more likely to fail than to succeed. However, if opponents outspend proponents, a proposition is almost sure to be defeated. In other words, money does not help to bring new laws onto the statute books, but it does help to keep them off.

As to the argument that special interests use direct legislation to achieve their ends, it is certainly true that as long as governments are in a position to hand out benefits there will be plenty of pigs who will use any available means to feed from the trough. However, it is much easier to bribe a powerful official, or to seduce a committee with promises of financial support and votes, than it is to persuade an entire electorate to introduce a law in your favour. Furthermore, it requires far less time and effort to persuade the electorate once every four years to support the political party most likely to advance your interests than it does to convince them to act in your favour in numerous ballots.

Black South Africans lack the knowledge and experience to participate

In South Africa the argument that ordinary people are too ignorant to vote in referendums is used mainly with reference to blacks, who are often seen by non-blacks as a homogeneous block that would vote en masse for any cause advocated by radical demagogues. Ironically, these same people also argue that blacks constantly fight among themselves and are incapable of agreeing on anything. The truth lies somewhere in between.

There are virtually no black South Africans who do not condemn apartheid, and they are united in their desire for fundamental human rights and freedoms. But there is little agreement between, for example, members of the ANC, the Inkatha Freedom party, Azapo, the

Black Management Forum, NAFCOC, the PAC, the SACP and the various trade unions and civic associations on what should replace apartheid. They agree that all people should have the vote in a united country, but other issues are as hotly debated between blacks as they are between whites.

The majority of South Africans of all races are moderate, as are the majority of people in every country of the world, and there is every reason to believe that they would vote together along common-sense lines in referendums and initiatives.

Those who argue that the common man should not be allowed to vote because of his ignorance must consider whether schooling or lack of schooling is indeed an accurate measure of a person's ability to decide what is in his best interest. And even if it is, should his lack of knowledge rob him of the right to decide on his own behalf?

But to consider the first question, where is the evidence that people with education and experience govern well? There is in fact no positive correlation between complex, educated societies and good government. The Chinese have a sophisticated civilisation which dates from thousands of years before Christ. The oldest book known printed book was produced in China in 868 AD. The Chinese cast iron centuries before any European civilisation, and had the highest living standards in the world during the 16th century. But when intellectuals gained power and influence during the Ming Dynasty and increased bureaucratic controls (of businesses), China began to decline. Under Mao Zedong and the Communist Party it became one of the poorest nations, with one of the worst human rights records, in the world. In 1980 China's male literacy rate was only 25%; it was rated 148th out of 171 countries in terms of GNP per capita, and ninth of 134 countries in terms of civil disorder (South Africa was 22nd).

Rulers of nations are more often than not highly educated. They

are generally drawn from the most privileged class of their societies, and they base their judgements on the theories of intellectuals. Yet they frequently make disastrous economic decisions, and have scant respect for human rights.

This is not to suggest that all educated leaders make bad decisions, but that education and sophistication per se are no guarantee of good government.

The rural Swiss of the middle ages who ran their communities by voting with a show of hands in the village square were rough and illiterate. They were less educated and less sophisticated, in almost any sense of those words, than most South African blacks today. But they were better able to resolve religious conflicts than the aristocracies and guilds that governed the city states. The peasants knew that they themselves would pay the costs of any decision to force either Protestantism or Catholicism on all, so they decided each community should make its own choice.

Switzerland today has an extremely sophisticated and wealthy economy. But it is not the creation of brilliant economists or far-seeing central planners. Its real architects are ordinary people, most of whom know very little about economic theory, but a great deal about the way in which the introduction of minimum wage laws, tax hikes, fixed rents or price controls will affect their own lives.

The same is true of South Africans, regardless of the colour of their skin or the level of their education. An illiterate hawker in Johannesburg understands perfectly well that bylaws requiring a) special facilities for him to wash his hands; b) a lavatory within 100 metres of his work place; and, c) a storeroom for his goods not less than 2 metres wide and 2,7 metres high, with a floor space of at least 6,5 square metres, all mean that when he sells mielies by the side of the road he runs the risk of incurring a crippling fine.

There is perhaps no stronger argument than this in defence of

direct democracy. As soon as power moves beyond the reach of the common man, and those who control it cease to answer to him for their actions, they are able to disregard his welfare and institute measures from which they benefit at his cost. Good government is achieved when rulers are made accountable -- and accountability is assured when ordinary citizens can participate in decisions, remove elected representatives who abuse their mandate, and repeal unpopular laws. If those who make decisions have to bear both their negative and positive consequences, they will soon learn to make them so as to best serve the common good.

Once a government is firmly in power it is unlikely to amend its constitution to include direct democracy and give the people an effective check on its control. But now, in South Africa, whilst there is general agreement that all levels of government must be restructured along completely different lines, we have an uncommon opportunity to introduce this highly democratic and extremely effective institution to our political system at the local level.

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