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Introduction

Voters in most countries choose their public representatives at national elections. The representatives elected go on to sit in parliament and/or take up executive office. They are responsible for governing on behalf of the citizens that have elected them. We call this representative democracy. Direct democracy occurs when citizens are asked to vote on a specific issue in a referendum or initiative vote. Ireland is a representative democracy which uses referendums (an instrument of direct democracy) to make decisions on changes to the constitution. Many states incorporate elements of direct democracy into their overall systems of representative democracy. Citizens' initiatives are another tool of direct democracy.

Citizens' initiatives

Citizens' initiative is an umbrella term often used to cover a series of instruments which allow voters to propose a new policy, law or constitutional amendment or to repeal an existing or new piece of legislation. The specific instruments which fall into this category include:

1. A citizens' initiative which refers to voters proposing and voting in a popular vote on a new legislative or constitutional proposal.
2. An agenda initiative which allows citizens to propose new legislation. If the vote on the agenda initiative is successful, the proposal passes to parliament. Parliament may accept or amend the proposal.
3. An abrogative referendum (sometimes also known as a repeal initiative) which allows citizens to vote to retain or repeal an existing law.
4. A rejective referendums which allows citizens to vote accept or reject a new law.

In all cases, citizens must register their proposal with the appropriate state authority and reach a legal threshold of support for their proposal (usually a set number of signatures of registered voters) within an agreed timeframe. Once the required level of support is achieved, a popular vote is triggered. Magleby (in Butler and Ranney, 1994) describes the citizens' initiative as dealing with 'sins of omission' and the abrogative referendum as being about 'sins of commission'.

Citizens' initiatives are provided for in a small minority of countries. Constitutional referendums are much more widely used. Initiatives are most commonly found in Europe and

Latin America. IDEA (2008) and Altman (2011) provide detailed information on which instruments are available in countries around the world.

The international experience

Initiatives are a powerful agenda setting tool and confer considerable influence on voters. They are most frequently associated with the system of semi-direct democracy in Switzerland which has a long history of citizen involvement in decision making. The Swiss experience with direct decision making dates back to medieval times and later ideas from the French Revolution influenced the evolution of citizen involvement in decision making while a movement in the 1800s copper fastened the legal structures which support the system today. Citizens have the right to veto legislation which has been passed by the federal assembly and also to initiate constitutional legislation. The main issues addressed through initiatives include tax policy, social spending, political rights (especially immigrant rights and asylum rules) and infrastructure projects (Trechsel and Kriesi, 1996). Referendums and initiatives are clustered and votes take place three to four times a year with most of the voting taking place by post. Turnout is often quite low, below fifty percent.

Aside from Switzerland, both Canada and the US also have long histories of citizen initiatives, Canada at the local level and at state level in the US. Twenty-four US states have initiative provisions (Qvortrup, 2013). The provisions were used widely in the early twentieth century but their use declined from the 1920s until the 1970s when there was a resurgence of interest in the procedure. Initiatives are most commonly used in the Western States in the US and California, Oregon and Colorado have frequent votes on all kinds of issues including drug legislation, penal policy, social policy and fiscal affairs.

More generally, the use of initiatives has been increasing around the world in recent decades. Initiative instruments were included in the constitutions of many democratising post-Soviet states in the 1990s. In more recent years, the introduction of citizens' initiatives has been informed by a desire to engage citizens in the democratic process. Turnout at elections has been declining in the democratic world and in tandem, there has been a fall in trust in political institutions and a greater questioning of representative democracy. The initiative has been proposed as a tool that could reinvigorate democracy by giving citizens more meaningful ways of participating in politics. Zittel and Fuchs (2007) have called this type of reform 'participatory engineering'. Voting at national elections every couple of years provides for passive involvement by citizens but proponents of the initiative argue that it can give an enhanced and regular role to citizens and they have also pointed to evidence that initiatives can engage citizens that have been disaffected by mainstream representative politics.

New Zealand introduced non-binding citizens' initiatives in 1993 and the Netherlands introduced agenda initiatives in 2006 with Finland following in 2012. Across Europe, Hungary, Latvia, Slovakia and Lithuania all have provision for citizens' initiatives. Germany has provision for citizens' initiatives at the state (lander) level. Following the passage of the Lisbon Treaty, a pan-EU initiative procedure was introduced.

In general, the number of initiatives voted on tends to be much lower than the number registered by citizens and the overall success rate of those that go to popular vote also tends to be low. In the case of Switzerland Setälä and Schiller (2012: 27) report that of 378 initiatives launched from 1891-2010, only 174 made it to a popular vote and only 18 were approved. While the numbers of proposals being approved in Switzerland has increased in recent years, the overall success rate is still quite low internationally. In Finland, 700 initiatives have been launched since 2012 but just 20 of these have reached parliament.

Limitations on the subject matter of initiatives and procedural rules

The right of initiative by citizens is one of the most contentious areas of direct democracy and many states impose specific restrictions on the scope of initiative proposals. The International Institute for Democracy and Electoral Assistance (2008: 61) identifies three broad groups of restrictions which are applied to initiative proposals.

1. Restrictions on constitutional amendments.

It is not unusual that constitutions have clauses which cannot be revised either by proposal of parliament or citizens. These clauses are often referred to as immutable and tend to cover requirements that states must be free and democratic (for example the Basic Law, Germany). The individual rights of citizens are also often included in this category of restrictions. For example, in Slovakia, basic rights and liberties may not be subject to initiatives.

2. Issues concerning the integrity of the state.

A number of countries preclude initiatives in areas relating to war and peace and the negotiation of international treaties. For example, in the case of Italy, state pardons, international treaties and budget matters cannot be subject to an abrogative referendum. Military service is excluded from initiatives in Latvia and the territorial integrity of the state is precluded in many states.

3. Limitations relating to legislation and other decisions.

It is quite common that budgetary matters, taxes and public expenditure are excluded from initiative procedures (Hungary, Italy, Latvia). Other restrictions to be found include changes in election procedures (FYRM).

Some states verify that an initiative proposal is compatible with constitutional and legal requirements upon its registration in the system and confirm that it does not violate any

relevant provision while other states do not conduct this process until after the proposal has reached the signature threshold and a vote has been triggered. In the case of the European Citizens' Initiative, once a proposal achieves 100,000 signatures (one tenth of the full requirement) a decision on its admissibility is made.

Principles and procedural rules

There are both broad principles and procedural rules which govern the operation of initiative instruments (Butler and Ranney, 1994; IDEA, 2008; Setälä and Schiller, 2012). Initiatives are binding in the case of Switzerland but consultative in the case of New Zealand. Some countries apply additional requirements for the result of an initiative vote to be valid. Commonly, there are two particular requirements, a turnout threshold and/or double/super majorities. In Switzerland, for constitutional proposals, there is a minimum participation threshold of 40 percent. In Italy, at abrogative referendums, a majority of registered electors must cast their ballots for the result to be valid. Double majority requirements are common in federal states. In the Swiss case, again for constitutional proposals, a majority of voters and a majority of cantons must favour the proposal for a valid outcome.

There are a number of technical procedures which also apply in the case of initiatives.

Beginning with the signatures required to trigger an initiative, thresholds are usually set out in law and vary from a specific minimum number to a percentage of the total registered electorate. Time limits for a proposal to collect the required number of thresholds are in place in most countries which use these instruments and average at about one year. In the case of Switzerland, the requirements are as follows:

- 50,000 signatures collected within 100 days are required to initiate a veto referendum,
- 100,000 signatures collected within 18 months are required to initiate a constitutional proposal.

Signatures must also be verified and this administrative work is usually carried out by an electoral commission or the elections/franchise section of the government department responsible for managing the electoral process. One of the most controversial procedural aspects relates to the naming of the initiative votes and how the proposal is summarised in the voter information booklet. It is not unusual for naming issues to be adjudicated on by the courts.

Finally, procedures must be put in place to deal with contradictory initiative proposals. In the case of Switzerland, where constitutional proposals contradict each other, a tie break question

is included on the ballot while in the many US states, it is the proposition that gets the most voters that is deemed to be the decision taken.

When citizens take the lead: Key debates and controversies

Initiative instruments can alter the balance and nature of politics within a state and as a result, they have proven controversial in a number of ways.

Impact on representative democracy

The ability of voters to initiate or reject laws may make legislators more likely to seek consensus in the laws which they introduce and may encourage legislators to be more responsive to their voters, all of which is considered positive from a normative standpoint. However, arguments have also been advanced that initiatives can immobilise politics and inhibit both the capacity and inclination of governments to make difficult decisions if they can be undone by populist initiative proposals. Matsusaka (1995 and 2006) makes this point in relation to the US and he demonstrates that both Republicans and Democrats have faced governing constraints as a consequence of initiatives.

Initiative instruments have also been criticised for supplanting representative politics and undermining the role of parliament and the votes of citizens at parliamentary and presidential elections. At the extreme end of this argument, their introduction is seen a sign of failure in the political system and the tension between parliamentary institutions and instruments of direct democracy is discussed in more in detail in IDEA (2008).

The inclusion of certain types of citizen initiatives on the ballot at the same time as other elections is sensible from an administrative point of view as it can increase participation but it has also been criticised as an abuse and has been termed an attempt to manipulate sectoral turnout. The most prominent case has been the inclusion of citizens' initiatives to limit marriage rights for same sex couples on the ballot paper at US presidential elections in an attempt by Republicans to mobilise conservative voters who might not have otherwise participated in presidential elections.

Finally, Lutz (2006) and Matsusaka (1995) both found that the presence of initiative procedures in a system tended to lead to lower taxes, lower public debt and also greater use of benefit principle taxes (such as water charges, airport taxes and road tolls).

Tyranny of the majority

A common criticism of initiatives is that they may lead to the introduction of measures which restrict the rights of minority groups within a state. Initiatives could be used to restrict language rights, religious freedoms and freedom of association for some groups within a state. While international treaty obligations may limit these proposals in some countries, this

has not been the case in all states and there have been controversial initiatives in Latin America and Switzerland which have raised these issues.

Big Money

The influence of big business and powerful interest groups in both the triggering of initiatives and their subsequent campaigns is a persistent issue and the one which receives the greatest attention (see Broder, 2000 for a comprehensive discussion). Initiative vote campaigns are often governed by the same regulations as referendums but the signature collection period is frequently subject to few restrictions and often very little information provided to voters on who paid for the signature collection and the initiation of the process. Furthermore, there is evidence from both the US and Switzerland that high campaign spending can be successful in defeating a proposal although the same is not true in relation to getting a proposal passed (Bowler, Donovan and Tolbert, 1998).

Quality of legislation

Some critics of initiatives have queried whether voters have the skills and training to write legislation and conduct campaigns. It should be pointed out that the same skills principle is rarely applied to parliamentarians. There is very little research on this topic but one study from 1996 found that there was no evidence that the bills processed through initiatives were any worse than those advanced through the representative process (Polhill, 1996).

Voter interest and attention

There is a lot of evidence to show that voters do not give much attention to their decisions on individual initiatives. Some initiatives relate to complex decisions and survey evidence suggests that voters may not be interested in taking these types of decisions and in part this may explain the low turnouts which are a feature of initiatives in many countries. Although research has shown that voters can use cues such as party support for a measure to arrive at decisions which are consistent with their values and views (Bowler and Donovan, 2000), there are arguments that this type of decision making does not meet the direct democracy goals of deliberation and informed decision making. A growing concern in the study of initiatives relates to the impact that declining trust in elites and experts and 'fake news' may have on the information environment at campaigns.

European citizens' initiative

The European Citizens' Initiative (ECI) was introduced by the Lisbon Treaty in EU member states and it came into force in 2012. The initiative instrument was introduced after a long

debate about how European citizens could be brought closer to the EU and participate more effectively in its governance. Specifically, the ECI provides for one million citizens from 25 percent of the member states of the EU to request the European Commission to initiate a policy proposal in a specific area. Each ECI must be proposed by a citizens' committee of at least seven people who are resident in at least seven member states.

The EU commits that when it receives a proposal that meets the required thresholds, it will publish the proposal in its register, meet with the organisers of the proposal to discuss the details and within three months respond to the proposal with grounds for why it is taking the action chosen.

Initial enthusiasm about the ECI waned when it became apparent that the threshold for success was very high indeed. Since its introduction, just four initiatives have reached the required levels of support. The topics covered were water rights, protection of the human embryo, animal rights and a ban on glyphosate herbicides. In 2017, a review of the process was initiated.

Ireland

Article 48 of the 1922 constitution of the Irish Free State

The idea that citizens should have an active role in decision making is not new in Ireland. The 1922 Constitution of the Irish Free State included provisions for direct democracy in Articles 47, 48 and 50. As is the case today, amending the constitution required a referendum (but the constitution could be amended without referendum for the first eight years, a term which was subsequently extended for another eight years). And there were also provisions for citizen initiated processes; veto of legislation and right of proposal. The veto of legislation (rejective referendum) required either five percent of voters or 60 percent of the members of the Seanad to demand a referendum on a piece of legislation which had just been passed. If the bill was rejected at the referendum, it could not become law. Citizens were given the right of initiative on both legislation and constitutional changes. A petition had to receive the support of 50,000 voters to proceed. Once this threshold was achieved the proposal moved to the Oireachtas which had up to two years to pass the law. If it was not passed during this time frame, the proposal proceeded to a binding referendum. The article in the constitution on the initiative process required that the Oireachtas bring forward legislation to underpin the practice and included a clause where this decision itself could be forced by a petition of citizens. However, no legislation was brought forward and the clauses on veto of legislation and right of initiative were eventually removed from the constitution by the Oireachtas.

The 1922 constitution was replaced by Bunreacht na hEireann and it retained the provision that amendments to the constitution required a referendum. It also included provision for what is called an ordinary referendum which means that ordinary bills (proposed laws) may also be put to a referendum but this provision has never been used.

The Whitaker Report of the Constitution Review Group

A constitution review group was established in 1995 to consider any changes which might be necessary. The group was chaired by TK Whitaker and as part of its deliberations considered whether a popular initiative mechanism to amend the constitution should be introduced. Having considered the arguments, the group decided that an initiative instrument had the potential to pose ‘the dual risks of effecting inadequate or undesirable amendments to the Constitution and of leading to many fruitless and expensive referendums’ (Report of the Constitution Review Group, 1996).

Conclusion

Citizens’ initiatives drifted from the political agenda for a time after the report of the Constitution Review Group. Internationally, they have received renewed interest especially as they may have potential to engage citizens who have become dis-connected from the democratic process. In Ireland, the economic crisis from 2008 brought about renewed evaluation of the political institutions of the state and of the nature and conduct of politics. All political parties at the 2011 general election produced extensive political reform proposals, some which included types of citizens’ initiatives. There has also been some limited civil society campaigning on the issue.

References

- Beramendi, V., Ellis, A., Kaufman, B., Kornblith, M., LeDuc, L., McGuire, P., Schiller, T. and Svensson, P., 2008. *Direct democracy: The international IDEA handbook*. IDEA, International Institute for Democracy and Electoral Assistance.
- Bowler, S., Donovan, T. and Tolbert, C.J., 1998. *Citizens as legislators: Direct democracy in the United States*. The Ohio State University Press.
- Bowler, S. and Donovan, T., 2000. *Demanding choices: Opinion, voting, and direct democracy*. University of Michigan Press.
- Broder, D.S., 2000. *Democracy derailed: Initiative campaigns and the power of money*. Houghton Mifflin.
- Butler, D. and Ranney, A. eds., 1994. *Referendums around the world: The growing use of direct democracy*. American Enterprise Institute.
- Matsusaka, J.G., 1995. Fiscal effects of the voter initiative: Evidence from the last 30 years. *Journal of Political Economy*, 103(3), pp.587-623.
- Matsusaka, J.G., 2006. Institutions and popular control of public policy.

Polhill, D., 1996. Are Coloradans Fit to Make Their Own Laws?. *Independence Institute Issue Paper*, (8-96), pp.8-96.

Qvortrup, M., 2013. *Direct Democracy: A comparative study of the theory and practice of government by the people*. Oxford University Press.

Setälä, M. and Schiller, T. eds., 2012. *Citizens' initiatives in Europe: Procedures and consequences of agenda-setting by citizens*. Palgrave Macmillan.

Trechsel, A.H. and Kriesi, H., 1996. Switzerland: the referendum and initiative as a centrepiece of the political system. In *The referendum experience in Europe* (pp. 185-208). Palgrave Macmillan UK.

Fuchs, D. and Zittel, T. eds., 2007. *Participatory Democracy and Political Participation: Can Participatory Engineering Bring Citizens Back in?*. Routledge.