




What's the verdict on local referendums?

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New Local Government Network (NLGN) is an independent think tank that seeks to transform public services, revitalise local political leadership and empower local communities. NLGN is publishing this report as part of its programme of research and innovative policy projects, which we hope will be of use to policy makers and practitioners. The views expressed are however those of the authors and not necessarily those of NLGN.

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Summary

The public outcry over MPs' expenses has highlighted a deeper political malaise within British society. The appetite for democratic renewal has been growing for decades, and has reached a critical mass recently, with calls for greater transparency, accountability and the redistribution of power towards the public. The message is clear: the public are not content with the state of representative democracy in Britain today.

In their recent *Control Shift* paper¹, the Conservative Party proposed to enable the public to call referendums on local issues where 5% of the public sign a petition - a clear intent to increase accountability in local government and redistribute power towards the public.

It is easy to see why such reform might strike a chord. Turn-out in elections is in persistent decline and just one third of people feel they can make a difference if they engage in politics.² Our political institutions have been exposed as out-dated by the socio-economic changes that have reshaped the UK over the past 30 years.

However, we must consider carefully any such radical changes purporting to tackle this disengagement. While the concept of local referendums has many attractions, there are a number of issues raised by such methods of direct democracy not least the challenge to the primacy of elected representation.

There are difficult times ahead for local authorities. A huge increase in demand for services coupled with swingeing public expenditure reductions look inevitable. The role of local government throughout the downturn will be vital. Local government must make informed decisions on complex issues in the face of unprecedented challenges. We must think seriously about how we reconcile this with the need to increase public participation in local decision making.

1 The Conservative Party *Control Shift: Returning Power to Local Communities* (2009)

2 The Hansard Society *Audit of Political Engagement 5: the 2008 Report* (2008)

In this paper we argue that:

The Conservatives' concept of a "citizen initiated" referendum would undoubtedly transform community engagement in local politics:

- There is an implicit decentralisation of power that is essential in increasing engagement and participation
- It encourages more responsive councils
- It could help to promote participation and increase voter turn-out at elections
- It gives the public a greater say in the decisions that affect their lives

However, direct referendums do not resolve many of the problems inherent with "direct democracy":

- The potential suppression of minority rights
- Informational problems and concerns around the quality of decisions that are made
- An inherent tendency for referendums to produce a reactionary rather than progressive result
- The potential for councils to be burdened with unmanageable financial commitments
- A danger that this version of citizen engagement would be quickly tarnished by deferred referendums - 'deferendums' - that postpone decisions by months or even years

We propose an alternative model of a Community Proposal, based upon principles of deliberative democracy, as an alternative to the referendum element of the Conservative proposals. This would enable the petition

creator to take their proposition to a full council meeting, assuming the requisite signatures are obtained, where it could be debated and then voted upon. This would represent a means of increasing public participation and engagement in the decision making processes of local government without jeopardising the quality of local decision making and the rights of minority groups.

In Chapter 1 we assess the origins and extent of the problem of disengagement in the UK and what the main political parties have done to combat this. In Chapter 2, we discuss the implications of this for the British democratic model. In Chapter 3, the focus turns to benefits and disadvantages of referendums in policy making. Chapter 4 is an exploration of some of the more practical issues involved in having local referendums, before Chapter 5 presents our alternative: a Community Proposal, which is based upon principles of deliberative democracy.

1 *Why local referendums?*

The problem: democratic disengagement

Political engagement in the UK is in decline. Societal change has outgrown our political institutions and they are no longer adequately equipped to meet new public demands about the way the services they use and the area they live in are determined. The unresponsiveness of these institutions in turn feeds this disengagement. We face a crisis of apathy unless steps are taken to address this problem. There is a pressing need to involve the public more in political and decision-making processes. This issue has become a key policy objective for both the Labour and the Conservative Parties. The proposal of the Conservative Party to introduce a referendum on local issues is designed to do this and is the main focus of this paper. By way of introduction to this proposal, this paper will examine the problem of disengagement.

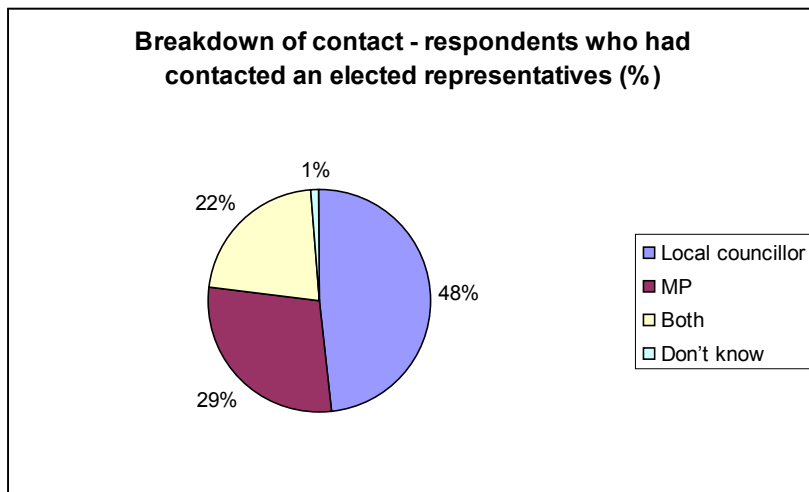
The broken chain

The statistics of voting patterns in the UK bring the problem of disengagement into stark focus. Voter turnout in general elections has been decreasing since the early 1990s, and turnout for local elections is persistently below 40%³; amongst the lowest in Europe.⁴ In an Audit of Political Engagement 2008 by the Hansard Society, it was found that only 15% of people had presented their views to a local elected representative.⁵ Of these, the majority (48%) had contacted their local councillor, and 22% had contacted both councillor and MP. This means that in 2008 a councillor would typically engage directly with just 10% of his or her local population.

3 Lewis Baston and Ken Ritchie *Turning out or turning off?* (2004) p. 6

4 The Hansard Society *Neglecting Democracy* (2006) p.7

5 The Hansard Society *Audit of Political Engagement 5: the 2008 Report* (2008)

Fig. 1 – Breakdown of contact with elected representatives⁶

The white, middle-class, educated demographic are disproportionately more likely to have contacted an elected representative, highlighting that disengagement is particularly acute in sections of society that are marginalised in other ways. This may also help to explain why nearly four out of ten people do not feel that councillors are representative of their communities and six out of ten people do not believe that councillors adequately reflect their views.⁷ When asked if they felt that they could make a difference when they got involved in politics, 31% agreed, but 42% disagreed.⁸ This disengagement comes at a time when there have never been so many ways for the public to contribute to the development of public services, through online consultations, deliberative focus groups or citizens' juries.⁹ There are clear issues here about the legitimacy of our political institutions, as well as the wider impact on communities and social cohesion that can stem from widespread political disengagement.

6 Ibid

7 Communities and Local Government *Unlocking the Talent of our Communities* (2008) see www.communities.gov.uk/documents/communities/xls/712801.xls

8 The Hansard Society *Audit of Political Engagement 5: the 2008 Report* (2008)

9 Involve *Participation Nation Reconnecting Citizens to the Public Realm* (2007)

How did this happen?

The Hansard Society argues that the problem stems from a process of socio-economic change that has not been matched by our rigid political institutions.¹⁰ The link between government and the people has gradually been eroded. There have been huge changes in the labour market and patterns of work, as well as a weakening of the power and reduced membership size of trade unions. The influence of the public realm has been curtailed and as the remit of the private realm has grown, “decision making [has become] at once more centralised and more diffuse”.¹¹ There has been a convergence on the political spectrum around what Anthony Downs terms “the median voter”. At a local government level, the problem has been compounded by a centralisation of power.

In *Pro-Social Behaviour*, Matthew Taylor writes that the current public perception of government is of distant individuals who wield a weak mandate to make decisions via outdated institutions. This fundamentally contradicts the demands of a “post-deferential society” that has grown to expect autonomy. He argues that we need to move beyond a “government-centric to a citizen-centric democratic discourse”.¹² A citizen-centric approach would enable citizens to reach decisions collectively on what they would like and how they would like to achieve that.

NLGN argues in *People Power*, a report about the personalisation of public services, that a “post-deferential society” makes the personalisation of services a necessity rather than a choice for politicians and public servants. It is now expected that as citizens we can have control over the services we consume and influence in the decisions that affect us. The progress made so far, for example in personal budgets, direct payments and individual budgets in care services, should be acknowledged but as the report argues, central and local government have “failed to over-turn the problems of political apathy and disconnect”.¹³ The desires of the “post-deferential society” extend beyond the personalisation of services and into the realm of democratic processes and decision making.

10 The Hansard Society *Neglecting Democracy* (2006)

11 Ibid p. 10

12 Matthew Taylor *Pro-Social Behaviour* RSA blog (2008) p.9

13 Nigel Keohane *People Power: How can we personalise public* (2009)

These arguments demonstrate the clear need for action to be taken to re-engage the public. Indeed, mending the relationship between citizens and the state has become a key policy objective of the current government and opposition parties.

2. The Conservative Party Solution

The proposal, outlined in *Control Shift*, a Conservative Party green paper, is:

To enable the public to hold a referendum on any local issue if 5% of the local population sign a petition in favour of it within a 6 month period.

The referendum would be held at the time of the next local ballot (e.g. local, general or European elections) to minimise the cost burden, with the option for local authorities to hold it sooner if they wish. While local authorities have been able to hold referendums on local issues since the 2003 Local Government Act, this proposal would, via changes to legislation, hand the public a mechanism to force a referendum through petitioning.

The idea was originally proposed by the Direct Democracy Group in the Localist Papers, which advocate the adoption of Switzerland's citizens' initiative model.¹⁴ The Control Shift green paper has since confirmed localism as a key policy for the Conservative Party, and the concept of citizen initiated referendums fits well within this agenda. Central to this is a vision to "build a stronger, safer society where opportunity and power are spread much more widely and fairly".¹⁵ To revitalise democracy and strengthen communities, the Conservatives propose political decentralisation, arguing that stronger local democracy helps create stronger local communities. Speaking at the LGA conference in July 2009, David Cameron, the Conservative Party leader, underlined his commitment to this by saying, "just as I believe in devolving power from central government to local government, I want [you] to devolve power down from local government to local communities."¹⁶ The argument

14 Centre for Policy Studies / Direct-Democracy.co.uk *The Localist Papers 1: Open Politics* (2007)

15 Conservative Party *Control Shift* (2009) p.3

16 David Cameron, speech to the Local Government Association, (July 2009)

is that in order to give greater control to local authorities, it is necessary to hand greater power to the public and make councillors more accountable to their local electorate. The accountability must be direct and must enable transparency in the actions of elected representatives.

While the Conservatives' commitment to localism is welcome, the current Government have also been pushing this agenda for a number of years.

3. The Government's Community Empowerment Strategy

Since 1997 the Government has made some substantial progress towards devolution, by creating devolved institutions in Wales, Scotland and Northern Ireland and enabling referendums on directly elected mayors. Moreover, the Labour administration has promoted an agenda of choice throughout public services, for instance in the introduction of Choice Based Lettings in social housing allocation. Communities can now have more say in regeneration schemes through the New Deal initiative, and there are elected advisory boards for NHS Foundation Trusts. There has been a focus on sustainable communities in recent years, and under Labour local government has been given more funding and a more prominent role. Yet by the Government's own admission, more needs to be done.

The Government strategy to increase community empowerment was the central principle behind the *Communities in Control: real people, real power* white paper, published in July 2008¹⁷ and the subsequent Local Democracy, Economic Development and Construction Bill, which is currently before Parliament. This Bill incorporates a number of measures that were included in the Community Empowerment Bill.¹⁸

Some of the key features of the Local Democracy Bill are increased funding for community and voluntary sector organisations, greater access to information, mechanisms that hand a greater say to the public in how neighbourhoods and communities are run and new measures to ensure petitions are responded to effectively. It is the petitions element that is perhaps most pertinent for this paper.

17 *Communities and Local Government* *Communities in control: real people, real power* (2008)

18 The Community Empowerment Bill was abandoned on 12th May 2009

The Local Democracy Bill would introduce a new duty for councils to respond to petitions, ensuring that those with significant local support are properly debated. On receiving a petition, local authorities would have to take appropriate steps, in accordance with their individual petition scheme. Petition schemes must include the options of¹⁹:

- Giving effect to the request in the petition
- Considering the petition at a meeting of the authority
- Holding an inquiry
- Holding a public meeting
- Commissioning research
- Giving a written response to the petition organiser setting out the authority's views about the request in the petition
- In the case of a principal local authority operating executive arrangements, referring the petition to an overview and scrutiny committee of the authority
- In the case of a principal local authority not operating executive arrangements, referring the petition to a committee of the authority with power under or by virtue of any enactment to review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions of the authority

Both the Government's and the Conservative Party's proposal place a strong emphasis on petitioning. The crucial difference is in the response of local government to a petition. The Government proposal is of a deliberative response by elected representatives. The Conservative Party proposal is for a citizen initiated local referendum.

19 Local Democracy, Economic Development and Construction Bill – accessed on 03/07/2009

Citizens' initiatives in the rest of the world

The citizens' initiative has its roots in US politics where referendums are part of the legislature in 24 states.²⁰ It refers to the model of direct democracy that enables a petition (the initiative) to trigger a referendum. This mechanism is also embedded deeply within the Swiss political system, which holds more referendums than any other country.²¹ In the US it is considered the most important mechanism of direct democracy available because of its capacity to set the agenda of political debate. It has been used to ballot on such controversial issues as gay marriage, fiscal policy, stem cell research and whether immigrants should receive welfare benefits.

- 70% of the US population lives in an area that allows the citizens' initiative
- In 2004, \$400 million was spent nationwide on initiatives and ballots, over half the amount spent on the presidential election of the same year
- Since 1904, 2305 ballots have been held throughout the US as a result of the initiative, with 936, or 41 %, being approved²²

Initiative and referendum use is also on the rise in Europe, with ten countries in Western Europe and six in the former Soviet Bloc now allowing their use.²³

Whilst the use of referendums in the US and Switzerland is clearly popular, the experience of these countries has been mixed. For all the positive features of referendums, there are problems around the informational demands they make on citizens and the impact on minority rights. It is worth noting that when the citizens of California voted for Proposition 8 in November 2008, they made their state the 30th to ban gay marriage. In many instances this has been done via a citizen-initiated referendum. The

20 Caroline J. Tolbert and Daniel A. Smith *Representation And Direct Democracy In The United States* (2006) p. 1

21 Thomas Christin, Simon Hug & Pascal Sciarini *Interests and information in referendum voting: An analysis of Swiss voters* (2002) p. 759

22 Caroline J. Tolbert and Daniel A. Smith *Representation And Direct Democracy In The United States* (2006) p. 1

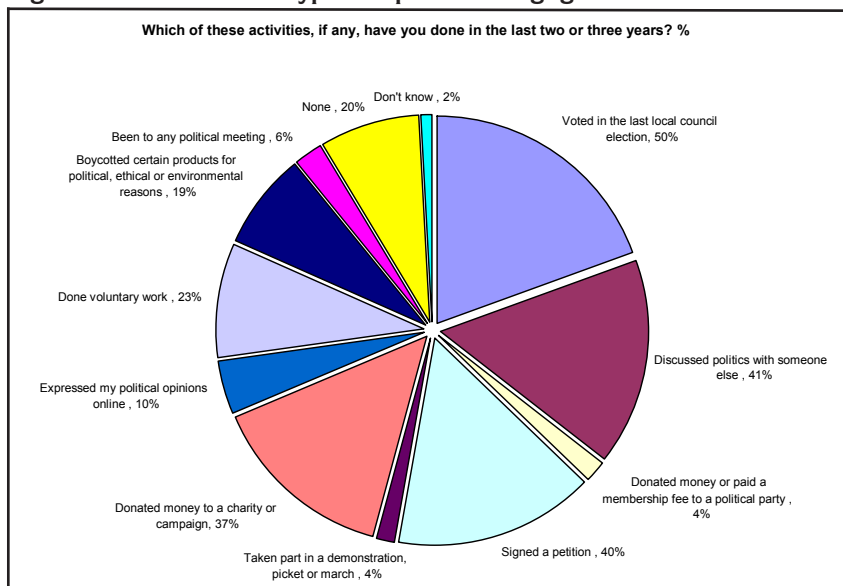
23 Arthur Lupia and John G. Matsusaka *Direct Democracy: New Approaches to Old Questions* (2004)

only state not to ban gay marriage when put to a referendum was Arizona.²⁴ Alongside concerns about civil liberties, there are also important distinctions between the UK and the federalist systems of America or Switzerland to consider. It is important to assess whether transposing this mechanism onto the UK's very different political landscape would be successful.

The implications for local government in England

Petitions are already a strong form of democratic engagement in the UK, used widely at both local and national government level. By 2008, 8 million people had signed petitions on the No. 10 Downing Street petitions website. Signing a petition was also the third most popular form of political engagement, behind voting in elections and discussion of politics with a friend, listed in the Hansard Society's Audit. 40% of people had signed one in the past two to three years²⁵ - higher than the turn-out at local elections.

Fig 2. – Breakdown of types of political engagement²⁶



24 3 states, including California, ban gay marriage Stateline.org (November 7, 2008) <http://www.stateline.org/live/details/story?contentId=353318>

25 The Hansard Society *Audit of Political Engagement 5: the 2008 Report* p. 19

26 Ibid

The recent example from Brighton, where a petition presented to the Council was instrumental in defeating plans for a new retail development in the city, is one of many examples of the efficacy of this method.²⁷ Petitions are a straightforward and effective means of achieving mass participation in the democratic process. A distinctive feature of the devolved Scottish Parliament is its Petitions Committee, which meets to decide what action to take on the petitions it receives. This has led to changes to law in some instances, highlighting the impact petitions can have if they incorporated formally into democratic processes.

We believe that increasing the potential of petitions to influence decision making is a means of promoting participation and can help to strengthen links between our elected representatives and the communities they serve. In this respect, the efforts of both the Conservative Party and the Government to link petitions to existing democratic processes are welcomed.

The main theme of this paper concerns the extent to which local referendums would create a link between the citizen and the state, and by extension address the problem of disengagement described above. It is not stated in the proposals whether the referendum would be advisory or binding. This paper makes the assumption that they would be binding, based on the reference within the proposals to the American model of a citizens' initiative, where referendums are binding. Full consideration of the impact this would have on local government must be given.

The impact of local referendums on the role and working of local government is another key element in this debate. A fundamental principle of local government is its direct election by the communities that they serve. A local authority's elected representatives - its councillors - are the embodiment of its conferred power.²⁸ They fulfil the roles of the representative, the policy maker and the manager. They represent a total 'place', a role that encompasses being strategic, holistic in policy making and representative of the whole community, meaning they also protect minority interests. Crucially, councillors are then accountable to those they represent for the decisions

27 *Brighton People Power Sees Off Tesco* The Argus (5th June 2009)
http://www.theargus.co.uk/search/4423714.Brighton_people_power_sees_off_Tesco/

28 David Wilson and Chris Game *Local Government in the United Kingdom* (1998) p. 219

and actions taken.

So what would local referendums mean for the role of local councillors? What might be the likely policy outcomes if referendums were used in political decision making? Would this help to promote democratic engagement or lead to the further marginalisation of minority groups?

2 *A different approach to democracy?*

Taken on its own merits, the Conservatives' proposal is for a political shift from representation by local councillors towards direct democracy and public decision making. The problem of disengagement is undeniable, and many advocates of direct democracy argue that this is evidence enough for the existing system of representative democracy to be dismantled and replaced with tools that place decision making powers directly in the hands of the public. There has been growing support in recent times for direct democracy, spurred in part by the public anger over MPs' expenses and the referendum is central to calls for more direct democracy in this country.

However, the inherent risk here is that by making such a marked political jump many of the beneficial and positive aspects of representative democracy are lost along with the elements that require change. The Conservatives' proposal raises a fundamental question about the fairness and efficacy of political systems. It could be argued that in a local government context, referendums on local issues underestimate the capacity of councillors and communities to work together to reach optimal solutions to local problems.

In support of direct democracy

Direct democracy proponents argue that this is the most effective way to counter disengagement and promote participation. Direct democracy can affirm an individual's political responsibility by allowing them a genuine role in making the decisions that affect their life. The complexity of our political institutions often means individuals find it difficult to exercise control over their elected representatives. Direct democracy can therefore be a means to increase participation, engagement and political responsibility. The Conservative Party argues that in a local government context, this makes representatives more accountable and enables further decentralisation of power.

There is evidence in academic research to suggest that there are many benefits to this approach. Lupia and Matsusaka report that surveys in

America and Europe frequently reveal high levels of public support for direct democracy.²⁹ In America, where principles of direct democracy tap directly into founding principles of political and social justice, the initiative and referendum model has grown in popularity over recent years. During the 2004 general election, there were 163 state-wide measures and hundreds more local initiatives and referendums.³⁰ There is support amongst academic literature to suggest that direct democracy makes policy decisions more responsive to local demands - the US states with the initiative and referendum model have policy outcomes more in line with public opinion than those without.³¹

In addition to responsiveness, referendums also promise greater levels of engagement. Research by Tolbert in the US used American National Election Studies to show that referendums increase the chances of citizens voting and can also have educative effects on citizens.³² In previous research, Tolbert had found that states with a citizens' initiative had between 7-9% higher voter turn-out in mid-term elections and 3-4.5% higher turn-out in presidential elections compared with non-initiative states.³³

There are also examples of direct democracy working well in this country. The introduction of individual budgets for social care services that enable individuals to decide which services and support they would like to receive is a case in point. There is consensus within the personalisation movement that reforms of this nature may help to de-marginalise minority groups. There is a view that in a purely representative model, it is often the middle-classes who are more likely to advocate their cause than poorer people and thus have better access to public services and wield a disproportionately greater influence. Systems that promote greater personalisation therefore help to mitigate this effect.

However, there are two basic differences when making a comparison between

29 Arthur Lupia and John G. Matsusaka *Direct Democracy: New Approaches to Old Questions* (2004) p. 464

30 Caroline J. Tolbert and Daniel A. Smith *Representation And Direct Democracy In The United States* (2006)

31 See *Ibid* p. 27

32 Tolbert (2003), as cited in *Ibid* p. 475

33 Caroline J. Tolbert, John A. Grummel, Daniel A. Smith *The Effects Of Ballot Initiatives On Voter Turnout In The American States* (2001)

the personalisation of services with local referendums. Firstly, choices made by individuals in how their care budget is spent does not impact in any way on the welfare of others. It also does not alter in any fundamental way the role of the councillor. These distinctions represent an important dimension of this debate that should not be glossed over.

The councillor – an underestimated resource?

Referendums on local issues would not technically alter the role of councillors. But, there is an implicit subtraction of power via the introduction of binding referendums. It does not logically follow that to effectively counter the disengagement felt in a representative democracy, we must bypass elected representatives in decision making processes. The role performed by local councillors, particularly as advocate for those less able to voice their views, is crucial and will become ever more so as the effects of the recession are felt in the public sector. Should we not consider strengthening the links between them and the community as the solution, rather than seeking to circumvent it?

In many instances, local people have the best solutions for local problems and there is an untapped resource in the knowledge and insight of citizens and communities. Councillors are able to perform a range of functions, including the ability to provide strategic direction based on the complex needs of the communities they serve. The difficulty is in harmonizing these two resources to optimise decision making. Though local referendums would be a bold and symbolic introduction, they may also be too rash in dismissing the capacity of councillors and communities to work together through participation and deliberation to reach the best solutions for local people.

It is beyond the scope of this paper to engage in a thorough debate about the merits of direct and representative democracy. The brief survey of this paper does indicate that direct democracy can make government more responsive to public opinion, promote engagement and has some measure of success in this country. However, there are also strong arguments in favour of attempting to revive the representative model of democracy and utilise councillors more, rather than less. We believe that the role of councillors is crucial. If the 'councillor as representative' model is done properly, with engagement and deliberation with their communities, the argument for the necessity of referendums is less convincing.

3 *The anatomy of a referendum*

Referendums have sat awkwardly within the UK's constitution. They are a relatively recent addition to the political machinery of the UK the 1973 vote on Northern Ireland's inclusion in the United Kingdom was the first major example. There have since been referendums on Europe, devolution, council tax, elected mayors and congestion charge. These have all been mandated by either central or local governments, and there are potentially major implications for the policy and strategic direction of local government if referendums can be triggered by the public on "any local issue". Referendums present four key questions about their fairness and efficacy as a decision-making system.

1. Are citizens informed enough to be competent decision makers?
2. What are the likely policy outcomes and consequences from a single balloted decision?
3. Do referendums benefit the majority or the few?
4. Does money influence results?

There is a pool of academic research on the experience of citizens' initiatives in America which can provide some helpful direction on the answers to these questions. It should be noted that there are marked political, societal and cultural differences between the US and the UK, so these can only ever be seen as a general indicator.

Informational Problems

Good decisions require informed actors to make them. Councillors are elected, in part, for their ability to make informed, complex decisions. It is their role to represent the views of their electorate, and to make a considered decision based on this and the details of the debate. This has the dual benefit of reflecting the wishes of the public whilst also ensuring that the council is making balanced and considered decisions for its locality.

Conversely, in referendums, there is an inevitable informational deficit. It is unrealistic to expect that all those voting are as well informed as elected representatives are, nor as able to examine competing local priorities. Critics of referendums often point to this as evidence that decisions made using referendums are uninformed and therefore sub-optimal. So to what extent is this a problem?

- Academic research has found that voters are more competent decision makers than is often made out by critics of referendums
- By adopting various strategies – informational short-cuts – uninformed voters can base decisions on very basic types of information
- Most people can determine their preference by looking at the underlying issues of the debate and then aligning themselves with the organisations, political or otherwise, with whom they identify
- Alternatively, voters frequently opt for the *status quo* when either information is lacking or the stakes are particularly high.³⁴

To some extent the problem of an informational deficit in local referendums seems marginal. Whilst the debates may be complex, most voters can take informational short-cuts to make a choice that reflects their fundamental values and beliefs. However, there are two areas of concern for local government here. Firstly, the tendency for people to vote for the *status quo* in instances where the debate is complex or the stakes are high. In an article for Prospect magazine, Peter Kellner argues that referendums create a worse form of government for exactly this reason. Recent examples of “no” votes for the North East’s Regional Assembly, Manchester’s congestion charge and the two thirds majority of areas that voted against having an elected mayor help to illustrate this point³⁵. It could be argued that the progressive and dynamic ambitions of local government may be threatened by such reactionary trends. The second concern centres on the *quality* of decisions that are made when informational short-cuts are used. Councils must strive to drive improvements

34 Arthur Lupia and John G. Matsusaka *Direct Democracy: New Approaches to Old Questions* (2004) p. 468

35 Peter Kellner *Down with People Power* Prospect magazine (July 2009)

for their communities by using their role as a place-shaper. This is a complex task and it is unlikely that the questions produced by this process can be reduced to binary choices. Evidence that many voters will look merely to align themselves with the organisations with which they identify does not imply high quality, considered decisions.

The impact of referendums on the policy landscape

Research on referendum use in America provides some indicators of the broad direction policy takes when it is made by referendums. Tolbert and Smith collated a number of studies to reach the following conclusions.^{36 37 38}

- Initiative states have reduced overall spending, in part because of reduced taxes and increased user charges.
- States with a citizens' initiative model typically spend 4% less than states without
- States with the initiative are more responsive to public opinion
- Citizens' initiatives have tended to produce conservative social and fiscal policy responses
- Mechanisms that enable citizen initiated referendums influence policy decisions whether a referendum is being used or not
- Studies into the quality of policy decisions, though methodologically problematic and sometimes spurious, have tended to indicate faster economic growth and higher efficiencies in states that have the initiative

The fiscal conservatism evident in areas that use the citizens' initiative may concern local government, which is already threatened by swingeing cuts imposed by central government. The recent fiscal problems experienced

36 Caroline J. Tolbert and Daniel A. Smith *Representation And Direct Democracy In The United States* (2006) p. 30

37 Arthur Lupia and John G. Matsusaka *Direct Democracy: New Approaches to Old Questions* (2004) p. 473

38 *Ibid.* p. 474-5

in California highlight the difficulties of allowing referendums on tax and government spending levels. California has found itself with a huge budget deficit, caused in part by successive ballot initiatives that have limited the legislature's ability to raise taxes. In July 2009, the government of California was forced to issue IOUs to businesses, taxpayers, clinics and others who were owed money by the state³⁹.

However, it could also be said that the experience of America, where initiative states spend less, may indicate that their introduction into UK politics may assist local government in making the efficiency savings demanded of the Gershon Review and more recently the Total Place agenda.

Who benefits- The majority or the minority?

Perhaps the greatest criticism of referendums is that the result is what John Stewart Mill termed 'majority tyranny'. In short, "direct democracy requires majorities of voters to support a particular policy and, by definition, minority groups are disadvantaged."⁴⁰ Policy that is consistently favourable to the majority at the expense of the minority would clearly be problematic for local government. Councils have a strong tradition of promoting equality and diversity, and see it as their role to protect the interests of minority groups. So what does the experience of the citizens' initiative tell us about the impact on minority groups?

There is not complete consensus as to whether minority rights are compromised by referendum use. In a comprehensive collation of studies in this area, Tolbert and Smith (2006) found evidence that ballot processes rarely harm minority interests, yet also a weight of other studies demonstrate the opposite. Collated empirical research of referendum use in California indicates that when the subject matter of the initiative affects minority groups, the outcome in most instances favours the white majority. In the last decade, the initiative has led to the approval of propositions "ending laws preventing discrimination in housing, ending affirmative action, social services for illegal immigrants and bilingual education and reaffirming English

39 *Penniless California issues IOUs* The Guardian (12th July 2009)
<http://www.guardian.co.uk/world/2009/jul/12/california-issues-iou>

40 Caroline J. Tolbert and Daniel A. Smith *Representation And Direct Democracy In The United States* (2006) p. 30

at the official language”.⁴¹ Whilst there is no universal consensus here, it is reasonable to argue that there is a potential for minority interests to be suppressed via the use of referendums.

This represents one of the biggest areas of concern with the Conservative Party proposal for local government. The 2009 local and European elections saw a marked rise in ‘anti-politics’ and popularity of extremist parties. In the Burnley Borough of Lancashire County Council, for example, the British National Party polled 19.2% of the vote in the 2009 County Council election, representing 6.9% of the total Burnley population.⁴² Whilst it is not possible to prove at this point whether a citizens’ initiative would have a negative impact on minority groups, there is evident potential for this to be the case.

One solution which has been suggested to address this issue is the requirement for referendums to achieve a double (or even triple) majority. This would mean that in order for a referendum to pass, it would require both a majority of votes and of wards.

However demography varies from authority to authority- and from ward to ward, and therefore a double majority would not necessarily (and probably rarely) give protection to minority groups.

Conversely, representative local democracy takes into account the diversity of the electorate, providing a forum for the diverse views to be heard and acted upon. This is not to say that the current model is perfect, but with measures designed to increase the deliberative elements of decision making it would provide a system that is more likely to protect the interests of minority groups. The crux of the issue is summarised succinctly by Larry Flint, who said:

*“you can’t have five wolves and one sheep voting on what to have for supper”*⁴³

Mechanisms must be built into any democratic system to ensure that minorities are not suppressed. In local government, we should utilise the

41 Ibid p. 30

42 Lancashire County Council Election Results 2009- Burnley Borough
<http://www3.lancashire.gov.uk/lccelections/results/2009/resmenu.asp>

43 Larry Flint, as quoted in *Neglecting Democracy* The Hansard Society (2006)

capacity of councillors to do this more rather than bypass them in decision making processes.

The influence of money and interest groups

A concern with direct democracy is that wealthy interest groups can unfairly influence policy by using the weight of their financial resources to collect the signatures needed to get issues to referendum stage and then campaign for their approval. However, a number of academic studies suggest that money does not play any more significant a role than it does in political systems without a citizens' initiative.⁴⁴ Lupia and Matsusaka⁴⁵ have found evidence that

- Wealthy groups are not able to “buy” policy, but can work to defeat propositions by spending a sufficient amount on campaigning so as to confuse voters into opting for the *status quo*
- An analysis of spending levels in ballot processes demonstrates that without pre-existing public support for a policy, the financial resources of business and other interest groups are ineffectual in influencing voter decisions
- There are more benefits to public interest groups and unions than to economic interest groups, i.e., groups comprised of firms and organisations
- Expenditure by interest groups is not influential in winning ballots, but is influential in defeating propositions

Whilst it is relatively reassuring that evidence shows wealthy groups are unable to buy policy, the status quo problem highlighted earlier is reiterated here. The research also does not address the extent to which financial influence can shift undecided sections of society towards a particular option. The impact of non-financial interest groups is also not to be under-stated.

⁴⁴ Arthur Lupia and John G. Matsusaka *Direct Democracy: New Approaches to Old Questions* (2004)

⁴⁵ *Ibid*

Camden's Housing Ballot

In 2003 LB Camden ran a consultation and ballot over whether the council should form an Arm's Length Management Organisation (ALMO) to manage its housing stock. As part of the Government's Decent Homes programmes, local authorities that opted to set up an ALMO were eligible for additional investment from the government on the condition that the Housing Inspectorate rated the ALMO as good or excellent. In Camden £283 million worth of investment was on offer if an ALMO was set up.

The interest group Defend Council Housing, based in Camden, ran a campaign against the adoption of an ALMO on the grounds that it was the first stage of a process of privatisation of council housing. The campaign run was highly polemical and alarmist. It argued that Camden had two-thirds of the money that it needed for decent homes and that meeting the standard was not essential for Camden.⁴⁶

In the ballot, 77% of tenants who voted rejected the adoption of an ALMO. Whilst the adoption of the ALMO promised £283 million extra investment, Camden's tenants voted against it. Camden is the only local authority to have voted against the adoption of an ALMO. Camden has since struggled to find the investment needed to fund Decent Homes work and in May 2007 initiated proceedings to sell off council housing in order to fund the investment needed to meet the decent homes standard.⁴⁷

The example of Camden above illustrates the impact that well-connected pressure groups can have on ballot results. It is particularly telling that the group Defend Council Housing was most influential in the borough in which it is based. It is yet to be seen whether ALMOs do represent the first stage of a privatisation process. What is clear though is that a local interest group was able to exploit an informational deficit through alarmist campaigning, the result being that the tenants of Camden voted against having millions spent to improve the quality of their homes.

To refer or not to refer?

⁴⁶ Defend Council Housing *The case against Camden housing going ALMO* (2003)

⁴⁷ *Camden Launches Bid to Sell Homes Inside Housing* (2008)
<http://www.insidehousing.co.uk/story.aspx?storycode=1448969>

On balance, many problems presented by the use of referendums are often over-stated by critics, or are at least not intractable. There are also positive features identified with referendums, for instance that they make policy more responsive to public opinion. However, there are four areas of true concern for local government:

- The tendency for voters to opt for the status quo because the debate is complex, rather than as a reflection of their preference
- The reduced quality of decisions due to the inevitable informational deficit of voters compared with elected representatives
- The potential suppression of minority interests
- The influence of interest groups on referendum results

In short, the introduction of local referendums would create more problems than are solved. We believe that in the current political set-up, councillors are an in-built mechanism to prevent against these four concerns. The key, therefore, is to use their capabilities as representative decision makers more, rather than less.

4 Local referendums in practice: the devil in the detail

As with many areas of policy, unforeseen difficulties may emerge with the citizens' initiative in the implementation stage. There are a number of practical considerations identified in this report that may reduce the strength of the Conservative Party's proposal.

Deferendums

The Conservatives' proposal for citizen initiated referendums includes an option to delay referendums until the next round of elections to minimise the cost burden. This presents the potential that councils may use this mechanism, designed to reduce the strain on public expenditure, tactically as a means of delaying decisions. Councils would have the power to defer referendums, essentially making them deferendums. In councils that elect their representatives by thirds, councils could decide to store issues that are up for referendum for a full year after the petition has gained the requisite number of signatures. In councils that elect by halves this could stretch to two years.

It is arguably a weakness of the UK's democratic model that control of the political agenda is so firmly controlled by the ruling party, at both a national and local level. It is difficult for other parties, let alone citizens, to place issues on the decision making agenda. The ability to defer referendums would give ruling parties a means of further dictating the agenda. Rather than helping to engage citizens in democracy, efforts to promote engagement could be harmed by tactically deferring the referendum. The perception might be that councils are resistant to change, or that local referendums are a tokenistic gesture, which may reinforce negative public perceptions of councils and put people off active citizenship in the future.

The alternative, which would be to hold referendums as soon as the requisite signatures are obtained, may be too costly to be viable in an environment of public expenditure reductions however. Referendums are an expensive business. The North East Regional Assembly referendum, which was postal,

cost 99p per elector in single tier authorities, and £1.40 per elector in two tier authorities, at a total cost of £2.3 million.⁴⁸

The choice therefore appears to be between incurring the costs of a referendum outside of standard election time-frames or of harming efforts to increase engagement by enabling councils to use 'deferendums' as a tactical means of postponing difficult decisions. There appears to be no optimal solution to this. It is arguable that an alternative decision making process to the referendum is required to make the Conservative proposal a practicable option for councils.

Financial Burdening

A further risk that must be considered is that by enabling the public to make decisions that the council must honour, financial commitments may be imposed that the council cannot afford, or that prevent the council from directing expenditure where it is most needed. No commitment is made by the Conservatives that central government will provide funding for any expenditure that results from a publicly initiated referendum. With councils constrained in their ability to increase local taxes, coupled with the near certainty of a severely reduced grant settlement in the Comprehensive Spending Review 2010, the risk is that financial planning becomes highly complex and that spending commitments must inevitably change in response to each referendum. The recent experience of California illustrates the difficulty government faces when referendums can determine public expenditure. Successive referendums have limited tax-raising measures, ring-fenced money for popular programmes and left California with a persistent fiscal crisis. The result is a legislature that is unable to make the vital investments in public services and infrastructure the state requires. It would not be fair to councils to leave them facing the same financial difficulties.

The binary nature of a referendum does not reflect the complex system of trade-offs and interconnectedness that is inextricable in the financing of public services. A referendum, for instance, to increase the number of classroom assistants in every school across a local authority may in isolation

48 The Electoral Commission *The 2004 North East regional assembly and local government referendums* (2005) p. 52

look like a choice with only one answer. The difference between making this decision in a referendum situation and making the decision in a full council meeting situation is that the voter unlike the council does not need to consider what trade-offs might be required. For example, additional classroom assistants may mean fewer educational resources such as text-books, IT equipment or sports facilities.

The crux of this issue is that in a citizens' initiative model the proposer of the petition and those voting in the referendum are not required to consider what trade-off may be required to finance the implementation of the proposal. These considerations comprise such an integral part of any choice that is made in the provision of public services that it seems myopic to superficially remove them from considerations rather than increase public awareness of their necessity. In times of financial austerity, it is even more important that there is wide-spread understanding of the 'ripple-effect' of every decision.

Are all local decisions suitable?

The suitability of holding referendums on "any local issue" should also be questioned.⁴⁹ Councils make many decisions that derive from highly emotive origins. Often multiple considerations must be taken into account and objective, evidence-based decisions taken. Many of these decisions would therefore be inappropriate for the stark, binary choice forced by a referendum. Crucial local planning decisions face the risk of being decided by NIMBYist⁵⁰ interests. Socially unpopular groups such as substance misusers and ex-offenders may face cuts to the essential support services on which they rely because of public prejudice. It is for exactly these reasons that we have elected councillors who are able to balance the views of the electorate with the complexity of the policy debates and make the decisions that are best for their community at large.

To put a different perspective on this issue, it is notable that no equivalent measure for referendums at a national level is proposed in any definitive way by the Conservatives. The Direct Democracy Group, comprised of 38

49 For clarity, it should be stated that any local issue that relate to legislation or that are governed by statute are unlikely to be eligible for local referendums.

50 "Not in my back yard"

Conservative MPs, proposed citizens' initiatives as a national policy. David Cameron also stated in a speech in May 2009 that the Conservatives will "create a right of initiative nationally, where if you collect enough signatures you can get your proposals debated in the House of Commons and become law."⁵¹ A similar statement was made to the Welsh Assembly. However, this has yet to appear formally within Conservative Party policy documents, and no other reference to this ambition could be found. Without a formal commitment to this policy at a national as well as local level, question marks are raised over the extent to which power is truly being devolved from the centre and also on the viability of allowing any local issue to be subject to referendums.

It is right that if locally elected representatives feel an issue is appropriate for local referendum they can choose to do this, as legislated for in the 2003 Local Government Act. But by enabling a petition to force a referendum on these issues the risk is a reactive and self-interested approach to policy. The interests of minority groups, who are often socially unpopular, are endangered by the prospect of referendums on any local issue. Councillors are elected on the basis of their ability to make these decisions on behalf of their electorate. What is needed is a mechanism to enable a more deliberative approach to these decisions through an increase in public debate and other means of representative-public interaction.

51 David Cameron *Fixing Broken Politics* Speech, (May 26th 2009)

5 *NLGN's Alternative: a Community Proposal*

At the heart of this debate is a need to reconnect citizens with democratic processes by finding new means of engagement. One of the main barriers that exists between society and state is the ability of citizens to determine directly the agenda of government, at both a local and national level. It is difficult to address the issue of engagement without also addressing the issue of who sets the agenda for decision making in politics.

At present there are too few ways for citizens to influence political debate. At a national level it is difficult for members of the ruling party who are outside the core executive to influence the decision making agenda, let alone those from other parties. For those outside of this relatively small political sphere, it is a near impossibility.

A mechanism that enables citizen initiated referendums is therefore attractive because it carves a means of public decision making into existing processes. This paper has found that there are benefits with referendum use. But, these benefits come at a price. There are risks that minority groups may be side-lined; that informational problems may hamper progress; that financial burdens may be placed on councils that they cannot meet; that unsuitable issues are subject to the binary choice a referendum must inevitably reduce the debate to.

A Community Proposal

We believe that in creating new links between citizens and the state, the concept of a community proposal represents an alternative to referendums. A community proposal would route petitions through to a full council meeting if 5% of the population have signed it. The increasing political disengagement within society demands a mechanism that enables deliberative engagement between elected representatives and citizens. To be a truly effective means of engagement, it must cede some of the agenda-setting power held by political parties to the public. It must entail conferring a power that enables the public to put a question to their elected representatives so that it can be debated

seriously and voted on.

We therefore propose that once a petition has received the requisite number of signatures, the petition creator should be able to table it as a formal proposal at a full council meeting. In some respects this is similar to the 'People's Bill' concept proposed by the Direct Democracy Group's Localist Papers. Our suggestion differs in that it would obligate elected representatives to genuinely engage with the proposal being put to them and make voting mandatory rather than optional. This would give the community proposal a far higher status in the public's perception and would avoid the risk of being considered a gimmick. Peter Facey has recently argued that "every council should establish a petition committee".⁵² A **community proposal** would go further than this because it would give citizens the power to set the agenda at an official cabinet meeting. It would link directly with existing democratic processes rather than hived off into a specially created forum for petitions. This idea also differs from the concept of participatory budgeting in that it transfers agenda-setting power to the public and is non-prescriptive in the type of proposal that can be debated. It could work alongside Councillor Calls for Action as a means for tackling local issues, though would be distinct in that it would tackle council-wide issues and would be citizen initiated.

When put to a full council meeting, the decision made on the community proposal would be binding, even if this is an issue that would normally be decided upon by other means such as the council executive. Full council meetings are typically used to decide upon the councils' budget and policy framework, and, with attendance by all councillors, represent the most suitable forum for decisions on publicly backed proposals. Councillors are therefore given greater power, as under this scenario decisions made by the council would be binding, rather than advisory to the executive as they might sometimes be. Implicit within this is the need for there to be concordance between councillors and the community in order for petitions and then Community Proposals to be implemented as council policy. The intent is for stronger links to be formed between elected representatives and communities through this process.

52 Peter Facey *Revitalising Local Democracy* Localis Policy Platform (24th July 2009)

The process

The process that carries a petition to full council meeting must involve a period of deliberative engagement between councillors and their constituents, whilst also ensuring that the proposal can be debated and voted on promptly. Councillors would play a pivotal role in the community proposal, both as decision maker and as the vessel through which citizens could channel their views. Councillors are in regular contact with their constituents via surgeries and area panels. These provide opportunity for deliberative engagement between communities and their councillors on the specific issues to be advanced as community proposals.

The council would be required to debate the proposal fully before taking a vote. In responding to the proposition, councillors would be required to give justification for their decisions, and must be seen to take a stance based on both an objective evidence base as well as the wishes of their constituents. The response of the councillors would be recorded in full and made widely available afterwards via the council website and various council publications that are distributed to all residents throughout the year.

Generating engagement and deliberation

An advantage that a community proposal may have over a referendum is that it would provide a space in which ideas can be debated and discussed between councillors and their communities. The petition phase may generate some interest and engagement, but it is vital that the opportunity to generate further engagement is capitalised upon after the 5% of signatures are obtained.

9 Principles of Effective Engagement

Involve, an organisation that seeks to promote deliberative public engagement, have established nine principles of effective engagement that are a useful starting point for the deliberative model we propose.⁵³ The nine principles are that the process:

53 *Involve Deliberative Public Engagement: Nine Principles* (2008)

- Makes a difference
- Is transparent
- Has integrity
- Is tailored to its circumstances
- Involves the right number and right type of people
- Treats participants with respect
- Gives priority to participants' discussions
- Is reviewed and evaluated to improve practice
- Keeps participants informed

The idea of a community proposal builds on the principles of public engagement listed above. Community proposals would be required to use the engagement activity as part of the evidence base of the proposal to ensure that it is seen to make a difference, is transparent and places a priority on participants' discussions. The process would accord the proposer respect by giving them the platform to make a fully reasoned proposition to the council executive. Integrity would be assured by the requirement of councillors to fully debate the proposals and provide reasoned responses. The use of the council website and newsletters to record the results of each community proposal would ensure that participants are kept informed. An annual review of community proposals should be conducted to establish ways of improving the process and maximising engagement.

In order to build on the momentum of engagement gained in the petition phase, it may be preferable to dedicate a council meeting at specified intervals to community proposals. This would enable greater public participation and transparency within the process. There is also a huge

potential to utilise information and communication technology within the petitioning and deliberative processes. Within the 18-24 age bracket, where disengagement is felt most acutely, this would help to increase participation. The petitions stage should enable people to sign petitions electronically. There should also be a dedicated website, independent of the council, that can host forums, blogs, news and details of all petitions and community proposals. The experience of Birmingham City Council's use of a similar website to consult on the Big City Plan indicates the success this type of approach can have. Council meetings could also be broadcast over the internet to widen participation.

Ensuring that each proposal is given an equal chance and minority views are protected

When making the proposition, citizens would be asked to demonstrate how the idea would be financed and nominate which services may need to be cut in order to make implementation financially viable. In order to support minority and opposition rights, there would be provision made for a counter argument to also be put before the council.

The council should provide a resource to proposers in making their community proposals in an appropriate format so that they have a fair and equal chance of success. This resource could potentially sit within the democratic services function of councils. This would help to overcome any institutional barriers that may exist between council meetings and the general public, and would also ensure that the community proposal does not become the preserve of highly resourced groups or those best able to articulate their view and advocate for themselves. The council should also assist in providing the information necessary for the proposer to be able to include financial implications within their proposal.

Types of issue suitable

The community proposal would be open to any local issue, in line with the Conservatives' green paper proposals. The only restrictions necessary would be on issues that are determined by law or legislation, or those that are quasi-judicial in nature such as planning and licensing.

A local and national proposal

The use of a community proposal should not be limited to local government. The same principles should apply nationally (assuming the requisite constitutional changes would be feasible) if 5% of the total population sign a petition, that motion should be put to a debate and vote before Parliament.

We believe this model would actively promote participation whilst ensuring informed decision making. The devolved Scottish Parliament has a Public Petitions Committee, whose job it is to decide what action should be taken on admissible public petitions. The committee has received over 1000 petitions since its inception. The results of the debates have included direct outcomes such as laws about the positioning of telecoms masts and the protection of Roman burial grounds.⁵⁴ Whilst these may be relatively small achievements, they send a clear message to the public that petitions can play an active role in the decision making of a political institution. With petitions given a platform where they can become genuine proposals before councils and government the potential for engagement and participation becomes much greater.

A community proposal would be the most practical approach to making the Conservatives' proposal workable and insulating it against the concerns we raised earlier in the paper around the rights of minority groups and informational demands. The community proposal process would enable minority groups, if in opposition to the proposal, to present their side of the argument at both the public debate and the proposition to the council stage. The public debate would bring educative benefits and would enable councillors to gain a full understanding of all sides of the debate.

Whilst the community proposal is by no means a panacea, it would represent a clear means of incorporating the public in democratic processes and would help to harness the collective knowledge of local communities to find solutions that are best for local government

54 The Hansard Society *Neglecting Democracy* (2006)

6 Conclusion

In this paper we have argued that England faces a crisis of political disengagement that threatens the legitimacy of all of its political institutions.

The proposal offered by the Conservative Party of a citizens' initiative contains many positive elements.

- A strong emphasis on petitioning and commitment for local government to have a stated course of action if a requisite number of signatures are gained
- Two methods of direct democracy – petitioning and referendums – that would help to promote engagement and participation
- An implicit emphasis on decentralisation, which we believe is essential to in promoting community engagement

Referendums are the more controversial of these two measures. However, in surveying academic literature on their use this paper has found there to be beneficial features

- Educative effects
- Greater policy responsiveness where referendums are used
- Increased levels of engagement and participation
- Popular support

Referendums do not come without a cost, however:

- An undermining of the powers of democratically elected local councillors
- Potential harm to the interests of minority groups

- An informational deficit inherent within referendums
- A propensity for referendums to produce reactionary decisions
- Financial burdening of councils relating from decisions made in referendums
- The unsuitability of many issues that would be available for referendum

In response, we propose the introduction of a **community proposal** as an alternative to the referendum element of the Conservatives' proposal. This would be a mechanism to enable petitions gaining 5% of electoral support to be tabled at a full council meeting, if a local issue, or before Parliament if a national issue. The council, or Parliament, would be then required to actively consider the proposal and take a vote. If the decision was not to accept it, a response detailing reasons for this decision, would have to be provided.

We believe that this would be one part of the effort to repair the severed link between the citizen and the state. It would promote participation and encourage democratic engagement, as well as enabling local government to make better decisions that will improve the quality of our local communities.



The appetite for democratic renewal has been growing for decades and has reached a critical mass recently, with calls for greater transparency, accountability and the redistribution of power towards the public. The message is clear: the public are not content with the state of representative democracy in Britain today.

In their recent Control Shift paper, the Conservative Party proposed to enable the public to call referendums on local issues where 5% of the public sign a petition - a clear intent to increase accountability in local government and redistribute power towards the public.

In this paper we offer a critique of this proposal by questioning the efficacy and fairness of referendums in local government. An alternative is suggested in the form of a Community Proposal, a mechanism that would enable citizens to set the agenda of their local government. We argue this would be a more effective means of re-connecting the citizen with the state, and would avoid many of the pitfalls inherent within the use of referendums.