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Informed Referendums

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What is the question?

Around the world, the past several decades have witnessed declining public trust in traditional forms of government – forms that tend to focus on electing legislators and appointing expert public servants (Rose et al, 2013). One cause of the decline is the perception, and often the reality, that the preferences and interests of ordinary citizens have been devalued by these elites. Many such elites assume they know better than the rest of the population (Levy, 2018). Do they?

At the same time, for many years people have called for referendums to replace representative and expert government on a limited, but ever increasing, set of matters (Tierney, 2012). But is a referendum vote too lacking in adequate deliberation – too ill-considered, under-informed and easily manipulated – to serve as a sound and trusted alternative?

The challenges

Those who work in government do often have greater technical expertise than the average citizen. Nevertheless, the reasoning processes of governments are sometimes faulty. Legislators can be deeply divided and therefore unable to reach agreements on pressing problems. Additionally, 'clientilism' (being beholden to wealthy donors) can bias some governmental decision-making (*McCloy*, 2015). As well, many governmental officials are not merely elite, but *elitist* – dismissive of ordinary citizens' legitimate values and concerns (Levy, 2018). As a result of these problems, governments often fail to make sensible decisions, including decisions for which there is widespread public support (e.g., for effective energy policy) (See, [Evidence-based Policy Research Project](#)). This failure has only aggravated the decline of public trust in democratic governments.

What can be done to address these issues? There have been rising expectations that ordinary citizens should have a greater say in governmental lawmaking on matters affecting them. Yet, in what ways should ordinary citizens have this power? And what may be the risks of such innovations?

Many commentators are alarmed by the re-emergence of political populism. In its benign forms, populism can simply mean that there is a need for ordinary citizens to see their interests and preferences better reflected in public policymaking. It may also mean that there should be greater direct involvement in government by the people themselves. However, in its more dangerous manifestations, populism can mean a reckless, extreme distrust in governmental expertise. Populism can be aggressively under-informed. It can divide communities between 'us' and 'them' (Moffitt and Tormey, 2014). And – in its impatience to see change take place – it can be eager to tear down useful democratic values and institutions (e.g., inclusivity, equality and a neutral judiciary), which safeguard our rights in a democracy.

The usual answers

A primary response to rising distrust in government, and to the call for more public input, has been the referendum (an example of 'direct', rather than 'representative', democracy). The earliest referendums emerged at the outset of the modern democratic era, as reformers in France (1790s) and Switzerland (1840s), and later Australia (1890s) and many US states (early

1900s), sought to give the people more direct roles in public affairs. The theory behind government by democracy, after all, is that the people should be the ultimate sources of governmental power. The people should especially have a say when it comes to the weightiest decisions facing a society. In the modern era, referendums have only become more common around the world (See, Swiss Model). This has partly been a response to the view that, on important (e.g., constitutional) matters, the people may be more trustworthy decision-makers than their representatives.

A referendum may also provide a neutral, democratically robust input into matters of public interest that politicians cannot resolve themselves. It can, for example, spur governments to act where a clear majority of the population has a considered view, but the government is divided and thus powerless to act on that view. One example concerns urban planning and population density – perennially unresolved matters in localities around Australia, where governments often cannot decide whether to favour homeowners, developers, environmentalists, etc. Even societies experiencing war often turn to referendums to try to jolt them out of their entrenched cycles of violence (Levy, 2017).

Yet, there have always been critics of referendums who assumed that only representative democracy could express popular preferences adequately (Sieyès, 1789). Indeed, the current decline in trust in governments is mirrored by a declining trust in citizens' abilities.

Ordinary citizens are often thought to lack the necessary knowledge of legal and policy matters. Direct popular rule runs the risk that, without the moderating influence of elites, lay citizens will sort into divisive voting blocs based on lines of region, religion, class, etc. Elite leadership might therefore better translate popular sentiments into coherent and concrete forms of law. These very old critiques of direct democracy still hold sway – and we cannot always dismiss such fears of under-informed, impetuous and divisive popular decision-making.

The alternatives

Some forms of deliberative democracy try to enlist ordinary citizens in 'deliberative democracy'. Deliberative democracy aims to promote not only democratic majority rule, but also deliberation – which tends to mean well-informed, inclusive and reflective decision-making (See, Mini-publics). For example, 'citizens' juries' invite randomly-picked groups of citizens to attend a series of organised deliberative sessions, where they become well-informed on a specific policy matter before advising governments on the best way forward (See, Deliberation). To many, such new approaches seem fanciful. Can ordinary members of the public ever really deliberate about public matters thoughtfully? What seems clear from empirical studies in recent years is that creative approaches to democracy such as citizens' juries in fact can, at least to some degree, increase how well ordinary citizens deliberate about the matters put to them (Warren and Pearse, 2008).

Deliberative democracy potentially represents a way to harness populist trends and turn them in more useful directions. Populism gives a greater role to ordinary citizens and their interests in the affairs of government. While some deliberative democratic models also seek to increase citizen input, these models take care to ensure that the input is robustly inclusive, reflective and well-informed. So far, deliberative democracy is the best answer we have to the challenge of populism.

A new deliberative democratic method: informed referendums

One of the limitations of deliberative democracy is that it has tended to focus on deliberation by just a small handful of citizens at one time. The citizens' jury might include just 20-50 people. No wonder, then, that the studies show it is possible to inform people on these small and specialised bodies. When a policy matter is put to a referendum or plebiscite, in which all eligible citizens could vote, it is a far harder task to bring most of the people up to speed. The slogan 'Don't Know, Vote No' and similar sentiments seem to have helped return a majority 'no' vote in the Australian republic referendum of 1999 – with voters, as so often in the past, opposing complex reform plans they neither understood nor trusted (Irving, 2000, p.112). Similar problems have been reported around the world (Moravcsik, 2008).

Citizens' juries have a particular kind of democratic legitimacy: since they are randomly-selected, and often demographically representative of the larger population, the wider population tends to see jury members as 'just like me' (Cutler, 2008) – and thus to trust the process (Levy, 2010, p.832-837). But many people will still insist that only a vote in which all eligible voters can participate really confers democratic legitimacy. The conundrum is therefore that the citizens' jury is deliberative but (according to some) democratically insufficient, while a referendum or plebiscite is more democratically robust but not always deliberative.

It may not be possible to ensure that a referendum or plebiscite is ever wholly deliberative. But we can take useful steps toward that goal. Around the world a number of academics have proposed the 'deliberative referendum' (Leib, 2006; Tierney, 2013; Levy, 2013; LeDuc, 2015). But since some still doubt that referendums can be wholly deliberative, we can alternatively use the term 'informed referendums'. Either way, these referendums' (or plebiscites') methods can include:

1. Voting online or at computer voting stations, which allows for more interactive voting than a mere yes/no vote. Before they are able to cast their vote, voters can be asked to interact with a 15-minute tutorial informing them of all the relevant issues. For instance, a vote on a local housing development plan would canvass environmental, economic and social arguments for and against greater urban density.

2. Multi-option voting would depart from the traditional yes/no vote, presenting voters instead with many options and avoiding the artificial reduction of complex matters into a simple binary choice (LeDuc, 2015, p.141). Preferential – or 'preferendum' – voting could still allow a single option to emerge with majority support (Orr, 2001).

3. Value-based voting could take place, meaning that one set of ballot options put to voters would concern not just final choices (e.g., urban density levels adopted in a city plan), but also the values underlying these choices. Voters would rank values (e.g., environmental sustainability and economic development). These value questions would encourage voters to think more purposively and holistically about their final choices.

4. Citizens' juries should be held in the lead up to the referendum, as is already common (e.g., in the recent Irish abortion referendum (Field, 2018)). The citizens' jury would help to inform the broader public about the issues at stake, and as a neutral body it could even write the questions on the ballot and the content of the information tutorials. Some US states now have 'Citizens' Initiative Review' bodies – essentially citizens' juries that study and provide public advice about initiatives before the

initiatives go to voters (Gastil et al, 2018). (In the US, 'initiatives' are referendums triggered by a citizen petition) (See, Citizen Initiated Review)

5. A final, optional measure would be a political misinformation law enacted to prevent politicians and others from uttering clearly false statements that are likely to misinform and mislead voters (Levy and Orr, 2016, pp.104-108). This method has been common, most of all, in Australia (e.g., Electoral Act 1985 (South Australia) 1985, s 113; Electoral Act 2004 (Northern Territory), ss 268, 271(2)). Granted, around the world it has been subject to challenges under constitutional free speech and communication guarantees (e.g., *Cameron v Becker*, 243, 247-8, 253-8; *Rickert v Washington Public Disclosure Commission*). But in Australia political misinformation laws were upheld by judges who cited the value, to voters, of relying on accurate information. Outside Australia, robust anti-misinformation laws would have been useful, for example, in the Brexit referendum campaign of 2016, which featured a number of bold misstatements (Renwick et al, 2018, p.546).

Conclusion

With referendums on the republic in Australia, and on Brexit (again) in the UK, potentially on the horizon, it is well worth considering how the standard, shop-worn referendum can be revived and improved. This is the aim of those of us who write about deliberative/informed referendum design.

Referendums and plebiscites can be democratic circuit-breakers in a system of government that is in theory dedicated to serving the public, but that in many cases falls short. Of course, there is still a risk that the circuit-break may end up merely giving greater voice to a coarse populism, which knows what it wishes to tear down (government expertise and elitism) but not what should replace it. However, work on deliberative/informed referendum design suggests that we need not be quite so fearful of populism. At least sometimes, and to some degree, populism can be redirected into a more robustly informed input into government decision-making.

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