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Same-sex marriage survey suffers from incomplete information



Illustration: Eric Lobbecke

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The continuing crisis in Catalonia highlights once again the dangers plebiscites pose to social coherence and stability. By reducing complex problems to simple questions, they can exacerbate divisions rather than build agreement, while worsening the tyranny of the majority.

That we have resorted to one for determining the issue of same-sex marriage is a sad reflection on the state of Australian politics.

To say that is not to deny that the same-sex marriage survey is merely a consultation exercise, which leaves parliament with responsibility for any change to the law. The reality, however, is that if the Yes case prevails, parliament will feel obliged to allow same-sex marriage, regardless of whether the legislation accords adequate protections for religious freedoms.

The outcome may therefore be a package that is objectionable in itself and that might not have been acceptable to most Australians had they known about it in advance. And, having undertaken this kind of consultation, the pressures to rely on them in future will only grow, eroding parliamentary government.

The tensions between plebiscites and democracy are hardly new. After all, the virtue of democracy is not that it yields results we unanimously agree with; rather, it is that its results are ones we can all agree to, even if we dispute their merits. They are, in other words, decisions we properly consider legitimate, despite continuing differences about their substance.

Underpinning that legitimacy is the assurance that minority interests will be safeguarded, issues will be considered as a whole, decisions will be based on adequate deliberation, and decision-makers will be accountable to voters through competitive elections.

Viewed in that perspective, plebiscites have always been suspect. Indeed, as historian Melvin Richter showed years ago, legitimacy, as a term applied to political processes, emerged partly in reaction to Napoleon Bonaparte's repeated reliance on plebiscites as a way of giving a democratic veneer to what was little better than a dictatorship. Asking questions that were shorn of their broader context so that voters could not gauge their full meaning, those plebiscites replaced deliberation and accountability with rhetoric and emotion.

That obviously doesn't mean that plebiscites have no place in genuine democracies. Rather, the point is that they need to be handled with special care. Particularly after the end of the Cold War, when it became clear that plebiscites would have a substantial role in determining the future of the formerly communist states, a great deal of effort was invested in developing best-practice principles for their use.

Embodied in the Venice guidelines of the Council of Europe, those principles specify that well-designed plebiscites carefully spell out the expected outcomes of a yes-or-no vote; ensure balanced treatment of the issues by the media — and especially by any government-owned media — not solely during the consultation but in the lead-up phase; and provide those being consulted with fair-minded material that explains the competing views.

The guidelines also emphasise the overriding importance of protecting the quality of the voting process, preventing fraud, intimidation and harassment.

There are consultations that fully respect those guidelines. For example, ahead of the 1997 Scottish devolution referendum — which was purely consultative, as referendums do not figure in the British constitution — the model of devolution that was being voted on was clearly described in a white paper; and the legislation passed after the consultation adhered closely to that model. The Scottish people therefore achieved the outcome they had voted on and for.

Equally, Australia's constitutional referendums, which involve prior parliamentary approval of the proposal and (like their Swiss counterparts) can be passed only by a super-majority, are also a model of effective safeguards.

It would, however, be difficult to claim that any of the best-practice principles have been respected in the same-sex marriage consultation. Even their most basic elements — such as ensuring the integrity of the ballot — have been largely ignored. And the lack of any commitment from the government on the precise legislative outcome contradicts the core principle that voters should know, to the greatest extent possible, the exact consequences of their vote. No doubt some will dismiss those concerns as secondary. But scrupulous attention to procedure is the rock on which democracy is built. Inevitably, democracies find it much harder to deal with deep moral divides, which end up requiring either-or decisions, than with “more versus less” conflicts between rival interest groups. However, the damage those either-or decisions can do to political legitimacy only increases the importance of good deliberative process.

The international evidence is telling in that respect. As French political scientist Laurence Morel has shown, the growing prominence of issues that transcend traditional social and economic cleavages has exacerbated divisions within the major political parties, undermining their capacity to govern. Faced with those divisions, governments in the advanced democracies have increasingly turned to “division-resolving” referendums that paper over their internal differences and get them off the hook.

However, in doing so they merely confirm perceptions that inherited institutions are not up to the task, fuelling the populist wave and boosting “anti-system” parties. And when the losers can, with good reason, dismiss the decision-making process as a sham, initial disagreements are likely to harden into enduring fault lines, further undermining social cohesion and the effectiveness of the political system.

Whatever its outcome, this consultation therefore sets a lamentable precedent. Yes, the politics of the issue within the Coalition were awful, and Labor and the crossbench certainly didn't help. But as Edmund Burke wisely said: “Every political decision is a choice between the unpleasant and the intolerable.” In its attempt to avoid the first, the government has landed us with the second.

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