

Dog Whistles and Democratic Mandates

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THE democratic aspiration of rule by the people implies some minimal idea that the people know—are told—what are their real voting options. The clarity and consistency of messages from candidates to voters therefore matters deeply to the quality of democracy. Indeed, we propose that the winning of different sorts of mandate—what governments are entitled to do in office—depends firmly upon how the campaign messages are conveyed.

'Dog whistle politics' is a way of sending a message to certain potential supporters in such a way as to make it inaudible to others whom it might alienate or deniable for still others who would find any explicit appeal along those lines offensive. The classic case, perhaps, is the 'Are you thinking what we're thinking?' campaign mounted by the Tories in the 2005 British general election by Lynton Crosby, who had perfected the technique in highly successful campaigns to re-elect John Howard in Australia.

Just how powerful dog whistle politics is as a mechanism of manipulatory politics is, perhaps, an open question. The fact that the practice is noticed, that it has acquired a name and a bad press, suggests that the message is not literally inaudible to others beyond its intended target. They have noticed it. And by identifying the trick and giving it its name, they have worked out a way (after a fashion) around it. When politicians engaged in dog whistle politics deny that they ever said anything racist, their opponents' ready rejoinder is 'Of course not; you were practising dog whistle politics.'

The effectiveness of that rejoinder depends upon the willingness of people to

punish politicians for a message that they have not themselves heard. Presumably, a party's own supporters will ordinarily be disposed to think well of it. When told that a message was sent that they could not themselves hear but of which they would disapprove, supporters will most likely be disposed to trust their own ears and deny that any such message was sent. Or where they heard a message that could be interpreted in multiple ways, they opt for some more innocuous version. So dog whistle politics is mostly a way of attracting certain other voters without losing existing support from people who would disapprove of what the party has to say to attract those new groups.

In a way, dog whistle politics merely resurrects a practice common in the days of 'whistle-stop campaigns' and segmented news markets, when candidates could say different things to different audiences in complete confidence that no one would ever notice the discrepancies. Clever marketing techniques do for today's politicians what moving trains and localised newspapers did for those of a previous generation.

Sending divergent messages to different audiences is typically a better way of getting elected than it is of getting re-elected. Or at least that is so insofar as the messages entailed promises to undertake some relatively specific actions once in office. Come re-election, electors can judge candidates not so much on the basis of what they say as on the basis of what they have done (although the interpretation of that is subject to a certain amount of dog-whistling too). If the candidates had engendered incompatible

expectations in different segments of their constituency, they will inevitably have disappointed some of them. Retrospective electoral accountability thus provides a partial check to the persisting abuse of dog whistle politics.

I

The concerns of this article, however, are prospective rather than retrospective. The question that concerns us is to what extent might dog whistle politics undermine the possibility of any genuine democratic mandate?

Mandates come in two forms. One—the first-mentioned in the *Oxford English Dictionary*—is simply ‘the commission to rule . . . conferred by electors on their elected representatives’. This is a purely procedural right, with the substance of rules left to be subsequently specified. A ‘mandate’ in this sense is the right to govern, to occupy offices of state and to discharge the duties and exercise the prerogatives appertaining thereto. Call this a ‘mandate to rule’.

The question to be asked of any given government is whether it has another sort of mandate as well. That second sort of mandate is ‘the commission to . . . pursue stated policies conferred by electors on their elected representatives’. This is a right with substantive referents, a right to implement a specific set of policies explicitly stipulated during the election and explicitly endorsed by the electorate at that election. Call this a ‘policy mandate’.

This second sort of mandate would be something over and above the first. Any government that is duly elected has the first sort of mandate, a mandate to rule. That is just what it means to have been ‘duly elected’: to have the right to rule. And part and parcel of what it is ‘to rule’ is to enact and enforce rules of one’s choosing (within limits of course: set by constitutions, conventions, moral codes, international treaties and so on).

If a government has the second sort of mandate as well as the first—a policy mandate as well as a mere mandate to rule—then it has not only the general right that all duly elected governments have to enact and enforce rules of their choosing but also a special right to enact and enforce the specific policies for which they have that second sort of mandate.

It is immediately apparent what the political cash value of a mandate of the first sort is: the keys to office. What might be the political cash value of a mandate of the second sort is less immediately apparent. After all, one already has the keys to office, the right to rule. The second sort of mandate, however, provides one with an ‘especially strong right to rule’ on the particular points of substantive policy covered by that mandate.

That is a right against others—other people and parties who lost the election, other chambers of the legislature, other branches of government—not to obstruct a government with a mandate of the second sort in pursuing the policies it has been mandated to pursue. Losers always have an obligation to vacate office and let winners rule. But where winners have a policy mandate as well as a mere mandate to rule, losers have a particular obligation not to obstruct winners’ rulings on the policies covered by the mandate.

In general, ‘the duty of the opposition is to oppose’. ‘Loyally’ perhaps, ‘constructively’ perhaps, but ‘to oppose’ nonetheless. A government’s having a mere mandate to rule obviously does nothing to undermine that. But where a government has a policy mandate, the opposition’s duty to oppose is replaced by a ‘duty to defer’. And whatever general reason that unelected or malapportioned upper chambers might have to defer to the people’s house, or unelected courts to popularly elected legislatures and executives, that duty is redoubled when they have a policy mandate as well as a mere mandate to rule.

What winners of a policy mandate get is a 'right to rule unobstructed', at least on the policy covered by the mandate. A right is not a duty, though. While it would be odd for a party to seek and secure a policy mandate from voters that it then opts not to exercise, one can imagine circumstances in which that might make sense. Circumstances might have changed: indeed, they might have changed simply in consequence of winning the mandate (had Heath secured a mandate on the question of 'Who rules Britain?' and the miners meekly succumbed to the industrial relations legislation already on the books, nothing more would have been required).

Of course, neither sort of mandate—a mandate to rule nor a policy mandate to rule unobstructed in some policy area—is absolute. Nothing the lower house does ought ever to be entirely free from scrutiny by the house of review; nothing the legislature or executive does ought ever to be entirely free from scrutiny by the courts. Still, a policy mandate—where it exists—gives political actors a particularly strong hand.

II

Our concern here is with the ways in which dog whistle politics weaken that hand. Elections are elections, and winners are winners. So long as the election was free and fair, its winner always enjoys a mandate of the first sort, a right to rule. But insofar as the winner's victory was tainted by dog whistle politics, the second sort of mandate proves more elusive.

In order to secure a mandate to implement any policy in particular, candidates must first tell people what specific policy or policies they propose to implement if elected.¹ Only then can they claim to have some special mandate to implement that policy in particular (as opposed to 'rule' more generally), should they win the election in the particularly convincing

way that is ordinarily thought to confer a mandate.

Politicians engaging in dog whistle politics are doing almost the opposite of that. They are not telling everyone what specific policies they propose to implement if elected. Instead, they tell one group of voters one thing, while allowing (and indeed, encouraging) another group to believe another. If they win the election on the basis of such mixed messages, what does their victory add up to in substantive policy terms? Nothing, we suggest.

Consider an analogy. In California voters often have to vote on several different referendums or initiative proposals in any given election. Imagine in this year's elections they are asked to vote *yea* or *nay* on two propositions: Proposition 1 would outlaw gay marriage, and Proposition 2 would outlaw abortion. But suppose the numbering of the propositions somehow gets garbled. Imagine a mischievous hacker, for example, has programmed electronic voting machines so they periodically reverse the numbers of the two propositions. So what some voters see on the voting screen as Proposition 1 is the 'outlaw abortion' text that is officially supposed to constitute Proposition 2, and what some voters see on the screen as Proposition 2 is the 'outlaw gay marriage' text that is officially supposed to constitute Proposition 1. Further suppose that the trick is discovered only after voting is over, and that there is no way to retrieve information about which mode the voting machine was in ('true' or 'trick') when any given voter cast his or her ballot. The machines only tally how many people voted for Propositions 1 and 2 respectively (under whichever descriptions the voters happened to see on the screen).

Imagine, now, the State Electoral Commissioner declaring the results of the poll: 'Proposition 1 secured 52% of votes and is carried; Proposition 2 secured only 41% of votes and has failed'. What on earth are

we supposed to make of that? Is gay marriage outlawed? Well, the returning officer has told us that Proposition 1 was carried; and outlawing gay marriage is what the proposition that was supposed to be Proposition 1 would have done. But thanks to the hacker's mischief, some (indeterminate number) of people instead saw Proposition 1 as the proposal to outlaw abortion. Did the ban on abortion fail? Well, Proposition 2 failed, and that was supposed to be the one banning abortion. But again, some indeterminate number of people instead saw Proposition 2 as the gay marriage ban.

When voters are voting on literally different propositions, adding up their votes amounts to a nonsense. In the Californian fantasy just described, the only reasonable course of action would be to declare the election null and void, and re-run the poll.

III

The key difference between that Californian fantasy and actual dog whistle politics is a difference between 'why' people vote and 'on what' people vote. In the Californian fantasy, people were voting on different propositions; and adding up the numbers of votes for Proposition 1, when Proposition 1 contained a different text for some voters than others, is a nonsense. In the case of dog whistle politics, and other forms of 'mixed-message politics' more generally, people are voting 'on' the same propositions (understood as 'Should candidate X be elected?'); people merely vote the way they do for different reasons.

Dog whistle politics (like whistle-stop politics in an earlier era) is the limiting case of mixed-message politics. In that limiting case, one subset of the audience is not even cognisant of the message that is crucial in leading others to vote as they do. A more moderate case of 'mixed-message politics' might involve differing emphases among differing audiences,

either in the way the message was sent or in the way the message was received.

The latter point is of signal importance. Political candidates typically take stands across a wide range of issues. Party manifestos typically are omnibus affairs, making promises on many fronts. Different constituencies attach differential importance to different parts of the overall package. So even if the politicians and parties are putting out an utterly univocal message, the uptake of the message will inevitably differ among electors with different interests. The upshot is that different voters always end up voting for the same candidate or party for at least partly different reasons.

Clearly, that is not quite as bad as voting on literally different referendum propositions, as in the Californian fantasy case. Still, when different people perform the 'same' action with different intentions, it is inevitably tricky trying to adduce any 'collective intention' behind their joint action. Philosophies of law that enjoin courts to interpret legislation according to the 'original intent' of the legislators have come to grief over this conundrum: if different legislators voted for the same legislation intending it to have different effects and for it to be applied and interpreted differently, there simply is no collective intent across the legislature as a whole upon which judges can base their interpretations.²

The same problems arise in interpreting the outcomes of elections involving mixed-message politics, more generally. Whichever candidate or party collects the requisite number of votes wins the election, thus thereby acquires a mandate to rule. But insofar as their victory is built out of a classic 'coalition of minorities', with different people voting for them for different reasons, there is no single, coherent policy mandate that the winner can credibly claim. Or to put the point in scalar rather than absolute terms: the winner can credibly claim a mandate only to the extent that all voters are voting

predominantly on the basis of the specific issue or set of connected issues for which the mandate is being sought.

This difficulty of inferring a mandate from mixed-message politics is redoubled in cases of dog whistle politics. Imagine a particularly extreme example. A conservative party dog-whistles an encouraging message to racists that its own traditional supporters would instantly repudiate. It wins the ensuing election. Half its voters voted for it purely because of its (coded) support for racist policies; half voted for it purely because of its traditionally decent policies on race. Clearly, the party won a majority; clearly, it has a mandate to rule. But under those circumstances, it equally clearly could not claim a policy mandate to pursue either of the two contradictory policies that won it its votes.

IV

What then is a party to do, if it wants to claim any particularly strong policy mandate, over and above a mere mandate to rule?

A minimum condition would be not to engage in dog whistle politics. Parties might win office that way. But no matter how large an electoral majority they might amass in that way, it never gives rise to a policy mandate. The cost of parties sending mixed messages in that way is to deprive themselves of the special sort of claim that can come from decisive electoral support for any particular piece of legislation. There are no good democratic grounds for other parties, chambers or branches of government necessarily deferring to the legislative programme of a party whose electoral majority has been amassed via dog whistle politics.

But as we have said, even politics-as-usual involves mixed messages. Ordinary campaign manifestos are a grab-bag combining a variety of diverse and disjoint programmes. Different aspects of the

manifesto appeal to different parts of a party's constituency. Any electoral majority it amasses might well represent a coalition of minorities, with each subgroup voting for the party overall because they approve of its policies on issues dearest to it, but with no single proposition in the manifesto commanding the support of a majority of voters overall.

The traditional solution was for a party that was seeking a strong policy mandate to enact one particular piece of controversial legislation to explicitly fight the election on one issue and one issue alone. Ted Heath turned the February 1974 general election into a referendum on the question 'Who rules Britain?'—himself or the miners. Had he won the election, and done so convincingly, he could credibly have claimed a policy mandate for his industrial relations policies.

It is rare for a party to be quite so monomaniacal. But perhaps that is simply to say, it is rare for a party to want, or need, the special powers that come from possessing a policy mandate: a mere mandate to rule, subject to the ordinary obstructions that come from other legitimate actors in the political process, is good enough for most purposes and for most parties.

V

If there is some particular proposal that needs a special warrant, then it might be far better to seek the mandate for the policy directly, in referendum, rather than to seek a policy mandate for some party to carry it out.³

Note that the same mixed message phenomena can be found with referendums as well. Different people can vote in favour of a referendum proposition for different reasons. Indeed, organisers of referendum campaigns can engage in dog whistle politics just as surely as can parties standing for office. In such cases, purely advisory referendums would

confer no more of a policy mandate upon elected politicians charged with implementing them than would an overwhelming parliamentary majority won through the same techniques.

Binding rather than purely advisory referendums would not solve all those problems. Where messages about voters' collective intentions are mixed in such ways, for example, judges would have as much trouble trying to adduce the 'original intent' of a group of voters who enacted the proposal in referendum as they would in trying to adduce the original intent of a group of legislators who had very different intentions in voting for the same enactment.

But making referendums binding rather than purely advisory would solve the key problem in view here. Notice that where direct democratic devices make law directly, it does not matter whether or not the referendum vote constitutes a policy mandate: it constitutes law. The function of a policy mandate, recall, is to make others back off in their opposition to proposed legislation. When we are talking about a referendum that directly enacts a proposition into law, rather than about candidates and parties elected to make laws, there is simply no space between a mandate to rule and a policy mandate. Winning at referendum mandates the policy to rule as law.

Now, undermining the policy mandate that parties can claim is perhaps not the worst thing that dog whistle politics does, democratically. Deception and self-deception, through rhetorical trickery and various other means, is perhaps a far deeper sin against the ideals of self-

rule.⁴ And dog whistle politics in the course of binding referendum campaigns can commit that deeper sin, even if it avoids the lesser one.

VI

Still, it is worth firmly reminding political parties that when they engage in dog whistle politics in ordinary general elections, the same phenomenon that they are counting on to increase their share of votes also undercuts the authority that they might secure by winning the vote. Parties practising dog whistle politics might thereby win a mandate to rule, but doing so in that way deprives them of the possibility of winning a policy mandate. In terms of democratic self-rule, dog whistle politics is thus not merely morally tainted but also fundamentally counterproductive.

Notes

- 1 Parties in search of a policy mandate must, however, avoid bundling together too many disparate policies, lest they undermine any mandate they hope to claim for any one of them in particular. Seeking a mandate for a bundle of policies at the same time works best when the bundle constitutes a logically or ideologically linked set which voters all perceive as such.
- 2 Gerald C. MacCallum, Jr, 'Legislative intent', *Yale Law Journal*, vol. 75, 1966, pp. 754–87.
- 3 Ian Budge, *The New Challenge of Direct Democracy*, Oxford, Polity, 1996, pp. 181–8.
- 4 Robert E. Goodin, *Manipulatory Politics*, New Haven, CT, Yale University Press, 1980.