CHAPTER THREE: A BRIEF HISTORY OF SENATE VOTING

The Senate has had six voting systems prescribed by federal legislation since Federation – but the number 6 is not important. The important thing to remember is that the six systems have come under two THEMES or IDEAS of elected representation. The first idea was "winner takes all". It applied at all Senate elections from 1903 to 1946. The second idea is that of proportional representation between political parties, in application from 1949 to the present day.

Each idea has had three iterations, producing the original election in 1903 and 1949, respectively, followed by "democratic reforms" in 1919, 1934, 1984 and 2016 designed to improve the electoral prospects of the party in power. With each new iteration came propaganda from politicians designed to convince voters that the reforms were motivated by a desire to help the voter. In my opinion the real motivation was to help the machine of the party in power, creating a situation whereby the new system was worse than the one it replaced.

The idea of winner takes all (1903-46) came with 36 senators; the idea of PR in its first iteration (1949-83) came with 60 senators – but from the 1975 election 64. The second and third PR iterations (since 1984) have been with 76 senators.

The above statement is a simple summary; there are many complications. The first election in 1901 was conducted under rules determined by the states. Consequently, plurality applied for the five mainland states. Both senators and members of the House of Representatives from Tasmania were elected under the Hare-Clark system. Even within the term "plurality", there were differences. South Australian law required the voter to mark squares next to the names of candidates; the other states required voters to strike through the names of candidates not wanted by the voter.

(Footnotes to the above refer in the first sentence to an article by Ian McAllister and Damon Muller "Electing the Australian Senate: evaluating the 2016 reforms", *Political Science*, 70:2, 151-168, January 2019. Footnote references to the first three paragraphs refer to Judith Brett "From Secret Ballot to Democracy sausage" and to the chapter by Marian Simms in "Elections Matter: Ten Federal Elections. . .". The first full reference is *From Secret Ballot to Democracy Sausage: How Australia Got Compulsory Voting*, 2019, Text Publishing, Melbourne. The lengthy quote below about the 1919 legislation comes from pages 127 and 128. The second full reference is to *Elections Matter: Ten Federal Elections that Shaped Australia*, 2018, edited by Benjamin Jones, Frank Bongiorno and John Uhr, Monash University Publishing, Clayton, Victoria. The chapter by Simms runs from pages 1 to 25. Further reference is to the chapter "Directly Chosen by the People" from *Australia's Commonwealth Parliament 1901-1988*: *Ten Perspectives* by G.S. Reid and Martyn Forrest, Melbourne University Press 1989. The third chapter "Directly Chosen by the People" runs from pages 84 to 133).

In New South Wales, for example, the voter was required to strike through all except *one* candidate on the House of Representatives ballot paper and all except *six* for the Senate. There were fifty Senate candidates, all men, and the informal vote was very high. That is not unusual when the voter was required to read a ballot paper of 50 names and carefully strike through the names of 44 candidates, exactly 44, not 43 or 45. The total formal vote was 1,091,394 with the number of formal ballot papers being 181,899. There were 38,674 informal votes, 17.5 per cent of the total number of ballot papers which was 220, 573. The total on the electoral roll was 329,615.

Winner takes all – multi-seat plurality (1901-17)

Multi-seat plurality systems applied at the Senate elections of 1901 (Tasmania excepted) 1903, 1906, 1910, 1913, 1914 and 1917; except for 1914, all those were periodical elections of senators for terms of six years, commonly known as "half-Senate elections". The elections of 1903, 1906, 1910, 1913,

1914 and 1917 were determined under rules set by Commonwealth legislation passed in 1902. Plurality is sometimes described as a "first past the post" system. (The next statement should get a footnote.) For example, the High Court's May 2016 judgment in the case of *Day and Madden* stated:

> The recent amendments to the Act form the latest episode in an historical evolution of the voting methods and procedures for Senate elections since Federation. The *Commonwealth Electoral Act* 1902 . . . provided for a "first past the post" system for the election of Senators. Each elector had a number of votes equal to the number of vacancies and marked a cross in the square opposite the name of the candidate for whom they voted. The candidates with the greatest number of votes were declared elected to the available vacancies. . .

That is correct in its reference to marking "a cross in the square opposite the name of the candidate" but reference to "first past the post" is sloppy. Joan Rydon, in her second chapter (titled "Electoral Methods") of the book *1901: The Forgotten Election* (edited by Marian Simms, and published in 2001 by the University of Queensland Press) wrote in explanation as follows on page 22:

> I stress the existence of multi-member electorates because there was constant argument as to whether, in such seats, the voters were required to choose candidates equal to the number to be elected or, whether, they might 'plump' by voting for a lesser number. It was sometimes maintained that 'plumping', by enabling an organised group to concentrate their votes on one candidate might result in some measure of representation for minorities. Prohibitions on 'plumping' were very much resented on the grounds that electors were being forced to vote for candidates they did not want, and such requirement was often referred to as the 'compulsory vote' which was believed to lead to the running of 'dummy' candidates.

(Note that the reference to Rydon and Simms should be in a footnote).

Consequently, at the Senate general elections of 1901 and 1914 the number of valid votes in each mainland state was six times the number of valid ballot papers. At the more usual half-Senate elections in 1903, 1906, 1910, 1913 and 1917 the number of votes was three times the number of valid ballot papers. There was also a casual vacancy in Victoria in 1903, so four senators were elected there; the number of valid votes was thus four times the number of valid ballot papers.

The distorting effect of "multi-seat plurality" meant that in 1910 Labor won all 18 Senate places; similarly, in 1917 the Nationalists won all 18. In 1914, in a Senate general election arising from the double dissolution, 36 senators were elected; Labor won 31 seats; the Commonwealth Liberal Party won just five.

There are interesting details about the 1914 election that need recording. It was the second Senate general election, the first having been held in 1901. It was the first election following a double dissolution pursuant to section 57 of the Constitution. More interesting are the results in a straight-out two-party contest. Labor established a clear majority of the votes in Victoria, Queensland and Western Australia. In those states, therefore, all six Labor candidates were elected, and all six Liberals defeated. The vote was quite close in New South Wales and Tasmania – so four Labor and two Liberals were elected in each.

A very peculiar result occurred in South Australia. Labor dominated in the vote but suffered the misfortune that one of its candidates died before polling day. His name was, therefore, removed from the ballot paper. In that circumstance Labor asked its supporters to vote for its five candidates

and to “plump” for one Liberal, John Wallace Shannon, who thus topped the poll. Had it not been for the death Shannon would have been defeated as soundly as the other five Liberals.

Winner takes all – majoritarian with partial optional preferences (1919-31)

As already observed in my first chapter *Dishonesty the Only Policy* the changes made by the Chifley Labor government in 1948-49 were the only genuine democratic reforms. Those made in 1919, 1934, 1984 and 2016 were merely designed to improve the electoral prospects of the party in power. It was the introduction of preferential voting in 1918 for the House of Representatives that created the “logical” need to replace the plurality systems operating for both houses from 1903 to 1917. Without question the House of Representatives change was done to strengthen the electoral prospects of the party in power, the Nationalists. The 1919 Senate changes were a corollary to that, meaning my statement very much measures up in respect of the new system introduced in 1919. Both 1918 and 1919 changes were quite cynical since they were designed to strengthen the governing party’s electoral prospects – conferring no benefit on the voters, who were quite content with the plurality system.

Brett describes the 1919 legislation as follows:

> The government moved quickly to introduce preferential voting for Senate elections as well, to be in place for the election due towards the end of 1919. Again, the main argument was majority rule. Labor complained that the change was being driven by party considerations, but it mounted no cogent argument against the principle of majority rule. How could it? It was the basis for its own organisation.
>
> A small number of senators were ardent advocates of proportional representation for the Senate. Why wasn’t it being introduced instead of this ‘clumsy, cumbersome, complicated Bill’, asked Senator Herbert Pratten, a Nationalist from New South Wales. The proposed change to a preferential system was not in fact likely to prevent the massive majorities produced by the simple block system currently in place, he pointed out, and minorities would still be unrepresented . . .
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> At the 1919 election the government’s introduction of preferential voting was well and truly vindicated by the results. In the House of Representatives election, the Nationalists won thirty-seven seats, the farmers’ candidates eleven and a demoralised Labor Party only twenty-six. The result in the Senate confirmed Pratten’s claim that little would change with the introduction of preferences and the massive unrepresentative majorities would continue. With 43 per cent of the vote, Labor won only one seat. The Nationalists, with 46 per cent, won eighteen. At the previous election, in 1917, the Nationalists had won a clean sweep and now had thirty-five out of thirty-six Senate seats.

Here I must quibble with Brett on two points. First, the election in December 1919 was due by May 1920 for terms beginning on 1 July 1920. It was not due towards the end of 1919 but cynically brought forward by prime minister Billy Hughes. Second, the term “block system” was often used as was “first past the post” in a way that was sloppy. A more accurate term is “preferential block majority”. (Two footnotes are needed here. The first would be to my May 1984 article “The Early Dissolution of the House of Representatives” where the cynicism of Hughes is explained. The second would explain why I use the term “preferential block majority” - because that was the term used in the Parliament’s *Report from the Joint Committee on Constitutional Review 1959.* See page 23.)

How did the new system work? The High Court judgment describes it thus:

> The Act was amended in 1919 to provide for the first time for preferential voting for Senate elections. Each elector was required to express preferences for twice the number of candidates to be elected plus one. Candidates would be excluded, and their preferences distributed until one candidate achieved an absolute majority of unexhausted ballots. That candidate would win the first seat. The further preferences of the first successful candidate's vote would be distributed among the remaining candidates followed by a count for the second vacancy. Candidates would be excluded, and preferences distributed until a second candidate achieved an absolute majority of the unexhausted ballots. That candidate would win the second seat. The distribution of preferences would continue until sufficient successful candidates were identified to fill all vacancies.

There were noteworthy changes to both of the 1919 "preferential block majority/partial optional preferences" (1919 to 1931) system and "preferential block majority/compulsory preferences" (1934-46) system. In the former case the *Day and Madden* paragraph quoted above was immediately followed by this:

> A procedure under which candidates could be grouped on a Senate ballot paper was introduced into the Act in 1922. Grouped candidates were given priority over ungrouped candidates in the printing of ballot papers. Candidates within groups were arranged in alphabetical order and the ordering of the groups was alphabetical. The groups were identified on the ballot paper not by party names but by letters depending upon their position on the ballot paper, thus A for the first group and B for the second group and so on.

A major development occurred later, in August 1927. The Bruce-Page Government appointed a Royal Commission of Inquiry into the Constitution under the chairmanship of Professor J.B. Peden, KC, Dean of the Faculty of Law, the University of Sydney; and with a Nationalist member (appointed in 1917) of the NSW Legislative Council, T.R. Ashworth. Its Report came to some 300 pages, with another 70 pages of appendixes, and was presented in September 1929.

On page 267 of *Report of the Royal Commission on the Constitution* (Canberra, 1929) there is this recommendation from five of the seven commissioners under the heading "Election of Senators":

> At present, as already mentioned in section v. of this report, although parties may be almost equally divided in the constituencies, one party may so far predominate in the Senate that there may be no opportunity for the presentation of different points of view. We think that such a condition of affairs is undesirable, and that the Senate would be better qualified to act as a chamber of revision if senators were elected under a system of proportional representation. We recommend that the Constitution should be amended so as to provide for the adoption of such a system for a period of at least ten years.
>
> Effect could, we think, be given to this recommendation by inserting at the end of section 7 of the Constitution the following paragraph: "During a period of ten years after the. . .day of. . .and thereafter until the Parliament otherwise provides, the election of Senators shall be according to the principle of proportional representation.

Sir Hal Colebatch, a former premier of Western Australia, dissented:

> The Constitution as it stands authorizes Parliament to prescribe the method of choosing senators. If the Parliament sees fit it can adopt a system of proportional representation, and it would be much more likely to embark upon such an experiment with its right of

> retreat unfettered, than to invite electors to put into the Constitution a provision tying the hands of Parliament.

The other dissenter (Ashworth) wrote in similar terms.

Winner takes all – majoritarian with full preferences (1934-46)

In 1934 the Senate system was changed again to "preferential block majority/compulsory preferences". Henceforth voters would be required to rank all candidates in order of preference. Otherwise the vote would be informal and would not be counted as a valid vote. Here is another example of Labor being outwitted by conservatives. Labor did not oppose the *Commonwealth Electoral Bill 1934* when it should have done so. Having passed the House of Representatives one week earlier it passed the Senate on Wednesday 25 July in time for a House of Representatives plus half-Senate election on Saturday 15 September 1934.

In the Senate debate the minister in charge of the bill, Senator Sir George Pearce, is reported by Hansard thus on page 664:

> Two important provisions are included in the bill regarding the election of senators. The first provides that the elector must vote for all of the candidates, indicating the order of his preference for them, and the other is designed effectively to provide for any case in which a Senate candidate dies between the date of nomination and polling day. With regard to the first matter, at present the elector must, at a Senate election, vote for all the candidates where the number thereof does not exceed twice the number to be elected plus one; but where there are more candidates than twice the number to be elected plus one, he may please himself whether or not he continues to indicate his preferences beyond the prescribed number.
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> In the case of an election for the House of Representatives the act requires that, where there are more than two candidates, the elector must indicate preferences for the whole of the candidates, and it is considered that the law should be consistent and apply the same requirement to elections for the Senate. That is also necessary to prevent informal voting. If there is one law for elections for the House of Representatives and another for elections for the Senate, the likelihood of informal votes being cast is increased.

Senator John Barnes (Labor, Victoria) indicated that Labor objected to the bill because one clause gave autocratic powers to the chairman of an election meeting. However, the party would not oppose the bill. Senator Arthur Rae (Labor, NSW) indicated a better understanding of the bill when he began with this:

> One could be excused for finding some difficulty of understanding all the provisions in this bill, because we are nearing the end of the session, and the government is rushing legislation through without giving proper time for consideration.

And later (page 668) Senator Rae said this:

> My complaint is that where there is a large number of candidates, many of whom might be unknown to most of the electors, it would be impossible for a man to cast an intelligent vote if he had to indicate his order of preference in respect of all of them. That has been my experience on more than one occasion. . .
>
> Ever since federation, there have been many alterations of the electoral law, and while I am not one to object if alterations are necessary it is, I think, wholly unjustified to alter the electoral law merely at the whim of some person in authority, particularly if the alterations

> are made just as electors have become accustomed to the existing system. That has been done time after time, and it is being done now. This amending bill has been brought in on the eve of a general election, and the amendment contained in it will, I feel sure, result in an increase instead of a decrease in the number of informal votes cast. For some considerable time, electors have been accustomed to voting for seven candidates instead of for the whole list.

A look at the table being the appendix to this chapter indicates that Senator Rae was proved right. The Senate informal percentages were 8.6 in 1919, 9.4 in 1922, an even 7 in 1925, 9.9 in 1928 and 9.6 in 1931, an average of 8.9 per cent. Under the new system the informal percentages were 11.3 in 1934, 10.6 in 1937, 9.6 in 1940, 9.7 in 1943 and an even 8 in 1946, an average of 9.8 per cent. Senator Rae saw right through the pretence of "democratic reform" proposed by Senator Sir George Pearce and his government.

A non-contentious change was made in 1940 when the Act was again amended so that groups of candidates could choose the order in which the names of candidates within the group were listed on the ballot paper. The ordering of the groups in future was to be done by ballot rather than alphabetically. Ungrouped candidates were likewise ordered by ballot. Candidates were grouped in columns for the first time.

Senator Pratten's 1919 predictions were entirely borne out by the results of subsequent Senate elections, last occurring in 1946. In 1943 Labor won all 19 seats contested; in 1946 it won 16 of the 19. From 1 July 1947 there were 33 Labor senators, two Liberals (Neil O'Sullivan and Annabelle Rankin) and one from the Country Party, Walter Cooper, all three from Queensland elected in 1946.

(Here a footnote might be considered. The number 19 is correct in both cases due to the then casual vacancy provisions of section 15 of the Constitution. That created a fourth vacancy in WA in 1943 and in Victoria in 1946.)

Proportional representation – the genuinely democratic STV system (1949-83)

To Ben Chifley owes the title of prime minister when the only real, genuinely democratic, reform was made to the Senate electoral system. The new system was passed through parliament in 1948. From the start it was correctly known as "proportional representation by means of the single transferable vote" (PR-STV). This radical change occurred in the context of expansion of the parliament's size. In 1946 there were 36 senators and 74 full-voting members of the House of Representatives and one member for the Northern Territory who did not enjoy full voting rights. The Chifley legislation increased the number of senators from 36 to 60. As a consequence of the nexus provision of section 24 of the Constitution, the size of the House of Representatives increased to 121 full voting members plus one each for the two territories, both denied full voting rights.

The Senate election in 1949 was for seven senators, with five having long terms and two having short terms, those latter joining the three elected in 1946. Since Labor had 15 of those 18 it meant Labor could not lose its Senate majority. That fact was the reason why a double dissolution of the 1949-51 parliament (the 19th Parliament) was widely seen at the time to be highly likely if the Coalition parties were to win government, as they did with Robert Menzies as prime minister.

In his policy speech for the 1946 election, delivered at Camberwell, Victoria, on 20 August, the Leader of the Opposition, Robert Menzies, of the Liberal Party, said there were two matters he would have "promptly investigated if you return us to office". They were:

> The first is the size of the Federal Parliament, which has the overwhelming share of the responsibility for government in Australia, but which is nevertheless much smaller in

> numbers that the Parliament of New South Wales. I point out to you that an effective democracy requires that Parliament should be fully representative; that members should not be so immersed in matters of detail as to be unable to devote full consideration to major matters of policy, and that there should be the widest area of choice of the Ministers who have to accept the ultimate responsibilities of administration. We are nor wedded to any particular proposal, but we believe that early in the new Parliament the problem should be specially investigated on its merits.
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> The second matter is the method of electing the Senate. In view of the fact that only half of the Senators are voted for at each general election, there are serious difficulties about introducing new methods of voting. But it is, we believe, true that the present system, under which all candidates elected in any one State are inevitably of one side of politics, is basically unsatisfactory. Thus, at the present election it happens that every Liberal Party and Country Party Senator retires. To secure a majority in the Senate as a result of this election we will need a complete victory in EVERY state! It is because of the difficulties of the problem that we believe that an early attempt must be made to devise some new method of Senate election and some way of making the introduction of the new method fair to both sides of politics, and to electors of all shades of political opinion.

Consequently, when the Chifley legislation was presented to parliament the Liberal Party broadly supported the new system. However, it disagreed with Labor's then view that the full marking of preferences should be carried over from the old system to the new. In debate on the *Commonwealth Electoral Bill* 1948 the Liberal Party moved a significant amendment. The mover was South Australian Archie Cameron, but the belief in the party was that Dame Enid Lyons was the intellectual driving force. As the widow of the only prime minister ever from Tasmania, Joe Lyons, who had earlier been the premier of Tasmania, she was very well acquainted with its Hare-Clark electoral system.

Cameron moved on 30 April 1948:

> That, after clause 2, the following new clause be inserted: "2a. Section one hundred and twenty-three of the *Commonwealth Electoral Act 1918*, is amended by omitting from the paragraph, (a) of sub-section (1.) the words 'all the remaining candidates' and inserting in their stead the words 'as many candidates as there are Senate vacancies to be filled.'"
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> No attempt is made in the bill to amend section 23 of the Commonwealth Electoral Act, which provides that every candidate must be voted for if a formal vote is to be made. With the system of proportional representation, under which, in the majority of states, there will be candidates from three political parties and a number of independents as well, it seems utterly futile to propose seriously that an elector should be obliged to vote for every candidate on the list in order to record a formal vote. It is hard for electors to express their preference beyond three or four candidates and to compel a man to vote for 30 or 40 candidates – for the Lord knows how many aspirants for office there will be - is to go too far. My proposal would limit the number of candidates that would be voted for to the seven candidates to be elected. I am sure that if the Government consults the Electoral Office or any authority on proportional representation, it will be quickly convinced that that is a sufficient number of votes to ensure a proper poll. It will lessen the number of informal votes.

Thomas White, a Victorian Liberal, supported the amendment "because it is common sense". Dr Herbert Vere (Bert) Evatt, the Attorney-General, who was in charge of the bill, gave a brief but

wholly unconvincing argument as to why full numbering of preferences should be kept. He was followed by Dame Enid Lyons who said:

> I do not agree that the existing method is necessary to make a system of proportional representation effective. In Tasmania, for many years, the number of compulsory votes totalled only half that of the number of candidates to be elected, and although what are known as exhausted votes were not avoided absolutely, in general electors marked the whole of the ballot paper. At least they indicated their choice in respect of all candidates of the particular party which they supported. The argument that the present system is essential for the satisfactory working of proportional representation is unsound. It is not in accordance with the opinion which other electoral experts have expressed from time to time. In a system under which the Government has already departed from mathematical accuracy, the argument advanced by the Attorney-General (Dr Evatt) will not bear examination . . . As one who has had a wide experience of the two methods of voting during the period, I have exercised the franchise, I am convinced that the existing method will tend to increase the number of informal votes.

Labor with its big majority ensured that the amendment failed. My own belief is that the Chifley government did not understand what it was doing. Its leaders, Chifley and Evatt, came from New South Wales and were not familiar with Tasmanian ideas. In the event Labor was to pay a heavy price for its stupidity in 1948.

Experience of Senate elections under the Menzies, Holt, Gorton and Whitlam governments demonstrated conclusively that Labor's failure of understanding in 1948 led to the very increase in informal voting predicted by Cameron, Lyons and White. Labor suffered as a result. Its supporters were more likely to cast informal votes than the supporters of the Liberal Party. Among Liberals the attitude grew that the 1949 system should be preserved since it favoured the Liberal Party over Labor. Ingenious arguments, allegedly based on "democratic principles", were concocted – and propounded with apparent sincerity. Meanwhile, Labor did another U-turn. It started to desire the very thing the Liberal Party had sought in 1948.

In May 1953 there was a separate periodical election for half the Senate, the first case of that occurring separate from the general election for the House of Representatives in the history of the Commonwealth. The number of electors who voted in New South Wales was 1,873,521 and the informal vote was 74,231, a mere four per cent. Labor won three seats and Liberals the other two. Labor was not complaining then.

Fast forward twenty-one years and there was a double dissolution election in May 1974. In New South Wales there were 73 Senate candidates, the number voting was 2,702,903 and the informal vote was 332,818 or 12.3 per cent, triple the 1953 percentage. Labor was now complaining loudly, especially when it noticed the result and compared it with what it would have been had Dr Evatt not prevailed in 1948. The result was 5-5 between Labor and the Coalition. It would have been 6-4 if the 1948 wish of the Liberal Party had then been put in place!

The Whitlam Government thereupon tried to salvage Labor's situation. It introduced the *Electoral Laws Amendment Bill* 1974 and the *Electoral Bill* 1975. The Coalition parties were so outraged at Labor's attempt to rig the system in its own favour that these were twice blocked in the Senate. They were two of the 21 Bills that were on the double dissolution list when the Parliament was double dissolved on 11 November 1975.

When the Hawke Labor Government won office in 1983 it intended to repeat the same exercise, the reform wanted by the Liberal Party in 1948 and sought by Whitlam in 1975. But in 1983 the Liberal

Party was bloody minded. The Labor Government, therefore, devised an alternative way to reduce the informal vote.

This whole episode was a tragedy for Labor and also for Australian democracy. It meant that Labor has been consistently out-witted by the Liberals. The only time when that was not true was the period during which Bob Hawke was prime minister. (footnote here) His government replaced the essentially democratic system introduced by the Chifley Government in 1948 (1949-1983) by his own stasiocratic system (1984-2014). The key feature of that was the introduction of above-the-line voting. It was, in turn, replaced by the present system of voter manipulation, owned by Malcolm Turnbull and the Liberal Party.

(Footnote: It can be argued that Hawke was not the only Labor prime minister to benefit from Hawke's Senate electoral reform, because Julia Gillard also benefitted, her benefit coming from the fact that the period from 1 July 2011 to the end of her term on 27 June 2013 saw Labor-Greens with a Senate majority. There were 31 Labor senators and nine for the Greens. That came from the fact that in August 2010 Labor won 15 of the 40 Senate vacancies and the Greens six. However, Gillard was not in the same situation as Hawke. In addition to his favourable Senate position Hawke always enjoyed a reliable majority in the House of Representatives. By contrast Gillard's position during those two years was one of weakness in the House of Representatives.)

Proportional representation in stasiocratic form (1984-2014)

My essential argument in this book is that above-the-line voting is both undemocratic and unconstitutional. It is stasiocratic, a system over which the party machines have a firm grip. However, before I go on to describe the Labor Party's (Hawke) system I should reveal that I have had difficulty deciding on a name for this method. I have decided on this: "Stasiocratic STV in First Unconstitutional Camel". A camel is an animal designed by a committee so that word is appropriate. This system, like its successor, was designed by a committee of politicians pursuing the short-term electoral interests of the party machines that gave them their seats. Therefore, it was a camel.

Dame Enid Lyons retired in 1951 at a time when the Senate system was commonly known as "Hare-Clark". Since that time the Tasmanian Parliament has made several changes to its Hare-Clark system, every one of which has made Tasmania's system better, and more democratic. In contrast, the Commonwealth Parliament, dominated by party politicians who have pursued the short-term electoral interests of the party machines that gave them their seats, has adopted two new systems, both of which have diminished the democratic character of the Senate electoral system. Hare-Clark and the Senate system are now chalk and cheese, the former very democratic with a voter-friendly ballot paper, the latter stasiocratic and manipulative with a voter-unfriendly ballot paper that is party machine friendly on steroids. The democratic STV of Ben Chifley has morphed itself into the "corrupted STV" under Bob Hawke and the "perverted STV" designed by Malcolm Turnbull.

I defended Hawke's stasiocratic system from start to finish. I defended it on grounds that it provided a voter-friendly ballot paper, would substantially reduce the informal vote, would distribute seats fairly between parties, and produce good government. It did all those things during its thirty years of operation.

But, what about the Constitution's requirement of direct election? What about fairness between candidates? On the former I argued that if the High Court were willing to accept the proposition that the system complied with the Constitution then so should I. Further, I argued it did not matter that it was unfair between candidates. All that mattered was that it be fair between parties.

In 1990 I decided that above-the-line voting is a bad idea, in light of the shambles that was the ACT election of March 1989. The scales fell off my eyes and ever since I have been working out for myself whether above-the-line voting can be defended. (Footnote here, reference being "For more detail see *Inquiry into the ACT Election and Electoral System*, Parliament of the Commonwealth of Australia, Report Number 5 of the Joint Standing Committee on Electoral Matters, November 1989, pp 132.)

Electoral system questions are all about acceptance. If a system is accepted it lasts. Otherwise it is scrapped. So, what about Hawke's stasiocratic system? It *appeared* to be accepted over a thirty-year period – but it never was accepted. The PRSA never accepted it – and it did not take me very long to understand that the PRSA leaders thoroughly disapproved of my defence of the Hawke system. I quickly realised why they always had (and still have) this view: ALL FORMS OF ABOVE-THE-LINE VOTING SHOULD BE ABOLISHED. I have taken those words from a letter I received from them many years ago. The words are there underlined in bold lettering that are as black as the Ace of Spades.

The worst feature of Hawke's system was something that was not properly understood at the time it began. It gave the machines of big political parties a sense of entitlement. Henceforth they could defeat a "rogue" big-party senator by dumping that senator to an unwinnable position on the ticket. It is pure greed for the machines of big political parties to think they have the right to do that. But the fact that High Court judges would allow a party machine appointment system like that to pretend senators are directly chosen by the people gave those machines their sense of entitlement. High Court judges, therefore, pandered to the greed of big-party machines fed by that sense of entitlement. The big-party machines acquired the illegitimate power to do that through Hawke's above-the-line Senate voting system.

There is an important difference between these two dishonest systems. The Hawke system *did not seem to be dishonest*. By contrast it is very easy to explain to ordinary people that the Turnbull system is dishonest. That is why it may well collapse. Its life will be shorter than that enjoyed by the Hawke system.

Voter-manipulative proportional representation begins in 2016

Having decided to describe the Labor Party's (Hawke) system as "Stasiocratic STV in First Unconstitutional Camel" it follows logically that I should call the Liberal Party's (Turnbull) system "Manipulative STV in Second Unconstitutional Camel".

Technically the Turnbull system began with the 8th Senate general election held in July 2016 following a double dissolution. However, that is not the way in which I think of it. Rather I think it began in the 46th Parliament, Scott Morrison's Parliament, elected in May 2019. I say that because the Senate state of parties in the 46th Parliament has been determined by half-Senate elections from July 2016 and May 2019. From this state of parties can be seen the cunning design of the system. It was not designed to help voters. It was designed to contain, preferably eliminate, minor parties. It was also designed to deal with "rogue" Liberal senators.

For these reasons it is the worst of the six systems. The Hawke system, occasioned by a desire to enlarge the House of Representatives, had no such restrictions. Its purpose was voter convenience. It was very unfortunate that such an operation had to be done in that way, my only objection to it at the time it began. There is also another aspect to Hawke's system. By increasing district magnitude from five to six at half-Senate elections and from ten to twelve at Senate general elections, it helped minor parties - even though that was not the purpose of the new system.

The main owner of the present system is the Liberal Party, its major beneficiary – as was designed to be the case. However, Melbourne psephologist Chris Curtis (a member of the Labor Party) argues that the Greens political party is the main owner because it was the first to adopt the idea of above-the-line Senate voting without the Group Voting Ticket. He then points to this statement made in July 2019 to the Victorian Parliament's Electoral Matters Committee by the State Director of Australian Greens Victoria, Rohan Leppert. After making a very favourable reference to Malcolm Turnbull, Leppert wrote:

> The Greens supported the reforms in the Senate enthusiastically; these are reforms that we have championed in the Commonwealth Parliament since 2004. As modelling predicted, Senate elections since the reform have resulted in a more proportionally elected chamber that far better represents the will of the voters than was achieved in the latter elections under the Group Voting Tickets system.

I agree with the first sentence while comprehensively rejecting the second.

(A footnote will be needed to reference Leppert. My suggestion is that it read "Australian Greens Victoria, *Submission 87*, submission to the Parliament of Victoria, Electoral Matters Committee Inquiry into the conduct of the 2018 Victorian state election, 2019, p.3)

It is important for readers to know why the Greens advocated since 2005 that which eventually was (more-or-less) implemented by the *Commonwealth Electoral Amendment Act 2016*. That explanation is essential if the history is to be understood correctly.

At the October 2004 half-Senate election, the Greens failed to win a Senate seat in Victoria to which they felt entitled on the first preference votes. The seat was won by Steve Fielding of the Family First party who served a full six-year term beginning on 1 July 2005 and ending on 30 June 2011. The presence of Fielding in the Senate during those six years understandably rankled with the Greens senators when they thought their candidate, David Risstrom, should be in the Senate in Fielding's place. They thought, quite understandably: "Fielding stole that seat from Risstrom."

It is very important to understand that the Fielding case is the only case of a Senate seat arguably having been "stolen" from the Greens. There is not a single other case. The Greens pretend that there have been subsequent cases, but their pretence cannot be substantiated. Their real reasoning is three-fold. First, they intensely disliked having to do deals on Group Voting Tickets. Second, they intensely disliked being told (truthfully) that in 2001 they took a New South Wales seat from the Australian Democrats on the preferences of Pauline Hanson's One Nation Party. Third, they intensely disliked being told (truthfully) that in 2013 they were able to get South Australian Senator Sarah Hanson-Young re-elected on the preferences of the Palmer United Party.

Following that October 2004 half-Senate election, the Greens adopted a set of "principles" designed to reverse that result. In other words, had that election been conducted under a system designed according to those new-found principles, Risstrom would have won the seat. The problem with those principles was that they were designed to maximise chances of parliamentary acceptance. They were not designed according to common sense. The adoption occurred in 2005.

One of those principles was optional preferential voting taken to the ultimate of asserting that a single first-preference vote (whether for a party or a candidate) must always count as a formal vote. Crazy: that principle would mean the ACT Hare-Clark system would meet their standards, but the Tasmanian Hare-Clark system would not. So, the system that is well-known as the original and the best proportional representation system in the world fails according to Greens principles, but Malcolm Turnbull's Senate voting system passes.

The Greens always tell me that the *Commonwealth Electoral Amendment Act 2016* was drawn up according to the principles of the Greens as adopted in 2005. That is true but says little more than that the principles in question should be scrapped because they are stupid and because of the circumstances in which they were adopted. No party should ever adopt a general set of principles designed to reverse one particular result.

Curtis sees this Senate voting system as being owned by the Greens. Where we agree is that a Faustian bargain was entered into by the Liberal Party and the Greens to implement an objectionable system. The Liberal Party is the spider and the Greens the fly, in my opinion. He sees the Greens as the first spider and the Liberal Party as the second spider.

What about the Nationals? They are the second fly. They were happy with Hawke's system and never wanted Turnbull's. They voted for it under Liberal Party pressure after being offered changes to the first design that would enable them to win a Senate seat in Western Australia. That they did not win the WA seat "guaranteed" for them by Turnbull's double dissolution does not alter this history.

At the meeting of the Federal Council of The Nationals in Canberra in September 2019 this resolution was carried:

> That this Federal Council calls for a change in the allocation of Senators from 12 per state to two per six regions within a state. No region can be larger than thirty per cent of the size of a state nor will any urban basin be allocated more than one region.

So, I assert that the Nationals do not own this present system in the way the Liberal Party does – and the Greens do.

Having experimented with a bad system (Hawke's), then with the worst system of all (Turnbull's), the politicians may finally give the Australian people a genuinely democratic system. In the meantime, the Liberal Party will defend this system as will the stasiocratic commentators who own it. But it has major failings. Two purported "democratic reforms" have given the Senate voting system four contrivances none of which can be defended according to any democratic principle. None of the four are there to help voters, all being there to help party machines to manipulate voters. Those four contrivances simply show that big-party machines will organise systems in their favour when the opportunity arises.

Damage done to Australia's democracy

By their incessant pursuit of the short-term interests of the party machines that gave them their seats Australia's federal politicians have done significant damage to the democratic foundations of the system. At the time of federation the electoral systems of Senate and House of Representatives were the same in principle. The franchise was identical for the federal lower and upper houses. In the Australian states, by contrast, the lower houses were all democratic, but the upper houses were not. Every Legislative Council was either fully appointed (New South Wales and Queensland) or elected on a restricted franchise, Victoria, South Australia, Western Australia and Tasmania.

Furthermore, across the world upper houses were always deliberately less democratic than lower houses. In the United Kingdom the House of Lords was based on the hereditary principle though it continued to have full powers of veto until 1911. In New Zealand the Legislative Council was an appointed body. In Canada senators were (and still are) appointed by the Governor-General.

Australia's Senate was more-or-less copied from the US Senate. As explained by Odgers in his Australian Senate Practice, 7th edition page 117 (footnote for this)

> The constitutional foundations for composition of the Senate reflect the federal character of the Commonwealth. Arrangements for the Australian Senate correspond with those for the United States Senate in that each state is represented equally irrespective of geographical size or population; and senators are elected for terms of six years. Both Senates are essentially continuing Houses: in Australia half of the Senate retires every three years; in the United States, a third of the Senate is elected at each biennial election. A major distinction is, however, that the United States Senate can never be dissolved whereas the Australian Senate may be dissolved in the course of seeking to settle disputes over legislation between the two Houses.
>
> An important innovation in Australia was the requirement that senators should be "directly chosen by the people of the State". Direct election of United States senators was provided in the constitution by an amendment which took effect in 1913, prior to which they were elected by state legislatures.

So, in 1901 Australia was a unique democracy. Can it ever return to that favourable status?

Lasting democratic proportional representation?

In Australia there are four political parties of significance. In order of importance they are Liberal, Labor, Greens and Nationals. Voters do not matter. In the eyes of the functionaries of those four parties, the voters are not there to be served, nor are they there to be helped. They are there to be manipulated. The function of voter-manipulation in favour of the Liberal Party's machine is performed brilliantly by Turnbull's Senate voting system – but Labor's machine will also benefit. The big party machines are unlikely to be attracted by my reforms, certainly not because they would enhance democracy.

In matters of proportional representation none of the four parties has any principles. They pursue their short-term electoral interests and concoct for themselves "democratic principles" to provide cover.

The Nationals may support my reforms – but not because they care about the Senate voting system. Having failed to win the Western Australian seat they expected they will now content themselves with securing the election of senators in eastern Australia, effectively on Liberal Party votes, through joint tickets and other joint arrangements in New South Wales, Victoria, Queensland and the Northern Territory. The Nationals would, however, be attracted by the idea of creating some two dozen more seats in the House of Representatives. They were attracted before. Indeed, in 1983-84 it was the support of the Nationals which gave votes to Labor to bring about the increase.

What about the Greens, that other fly to the Liberal Party's spider? Here I am quite hopeful. They will probably keep their ridiculous principles on the books – the ones they adopted in 2005. But they mean little in practice. The Greens wanted to get rid of the institution of the Group Voting Ticket; the Liberal Party offered a way to do it – and they grabbed the chance.

I am confident that the year 2023 will see the end of the Group Voting Ticket – because Victoria and Western Australia will have adopted the reforms I propose for their Legislative Councils. Once that happens the Greens will probably consider their position anew. Why would they not want the reforms I propose? Unlike the Liberal and Labor parties they do not need to worry about the order of their Senate candidates. They can only ever hope to get one candidate elected. All the party's publicity can be directed to their top candidate.

I sought discussions with Stephen Luntz, unofficial psephologist of the Victorian Greens. When I sought a meeting, he wrote (on 3 December 2019):

> I have of course heard of you and am well aware of your great contribution to Australian psephology. I should be available to meet on Friday the 14th 2020, but I should note you are unlikely to convince me that this is a priority. Although I see theoretical flaws in the current Senate system, I consider them to have little practical effect for any state larger than Tasmania and represent a reasonable compromise given the competing interests at stake. The smaller electorates in the Victorian and Western Australian Upper Houses may make the abolition of the ballot dividing line a more significant reform, but the abolition of the Group Voting Tickets is so much the priority in both cases that I am not particularly concerned about the difference in the merits of the options to replace them.

The last sentence is particularly revealing. In effect he is saying: "Get rid of the Group Voting Tickets. I don't care how it is done nor whether there is a good system resulting from that. Just get rid of them." When we met, I criticised his submission to the Victorian Parliament's Electoral Matters Committee on the basis that he had failed to commend the Tasmanian Hare-Clark system.

(Here another footnote should be inserted giving the reference to the submission of Stephen Luntz. My suggestion is: "Stephen Luntz, *Submission 62*, submission to the Parliament of Victoria, Electoral Matters Committee Inquiry into the conduct of the 2018 Victorian state election, 2019.)

What was his objection to the Tasmanian Hare-Clark system, I asked? Was his real objection that Hare-Clark is too democratic? I suggested that he wants a system that is party machine friendly to the Greens. He vehemently denied such a notion. More importantly he concluded our discussion by promising that "*if you can get the Hare-Clark bandwagon rolling I would be only too happy to climb on board and I would advise the Greens also to climb on board."*

There are signs that Greens politicians and their staffers would actively support a Labor government that would introduce the reforms I propose. That brings me to the two big parties. Labor is the smaller problem. The great majority of Labor politicians support reforms (in principle, at least) and acknowledge that there is a good case for increasing the size of the Parliament. They also say: "I agree with you that the present system is a Liberal Party rig."

There is, nevertheless, a significant minority who think Labor made a mistake in opposing the *Commonwealth Electoral Amendment Act 2016*. Apart from me, among those blamed are former senators Sam Dastyari and Stephen Conroy. Labor could have decided to let this Liberal Party rig go through without quibble. Had that been the case the deceitful instructions to voters would not need to have been inserted. Since it is those instructions that make it so easy to explain the dishonesty of the system to ordinary people, I would personally have been devastated had they not been inserted.

What Australian democracy does not need is another dishonest system that appears to be honest. Such could easily have come about but fortunately Labor's decision prevented that occurrence. Labor is now in the fortunate position that it does not own this system which is both dishonest and seen to be dishonest by all those except the blind. The question is whether the Labor Party will take advantage of its non-ownership and claim the moral high ground – or whether it will do the bidding of the Liberal Party by helping to give legitimacy to an illegitimate system.

Thus, it is that the Liberal Party is truly the big problem. It owns the system from which it has greatly benefitted. Yet even there lies some hope. No Liberal politician with whom this matter is raised will object to the reform proposals in principle. The real objection is that they value the party unity that might be put at risk if machines cannot guarantee the defeat of a "rogue" Liberal senator. The Constitution does not matter, they think, because High Court judges refuse to enforce it. Party unity matters – as does the need to preserve harmony between Liberals and Nationals. This much is certain, however. If a future Labor government decided to pursue reforms it would have no trouble

getting them through the Parliament. Nor would it have any trouble winning public support for the new system. That system would be generally accepted – unlike the Hawke and Turnbull systems. That is why third-party validation can be important in establishing public acceptance.

Statistical Appendix to Chapter 1: Informal voting at Senate elections

Election	Total votes	Informal Votes	Per cent
Multi-seat plurality/36 senators			
1901	531,428	58,504	11.0
1903	887,312	32,061	3.6
1906	1,059,168	67,318	6.4
1910	1,403,976	64,603	4.6
1913	2,033,251	114,947	5.7
1914	2,042,336	86,649	4.2
1917	2,202,801	86,011	3.9
Preferential block majority/partial optional preferences/36 senators			
1919	2,032,937	175,114	8.6
1922	1,728,224	163,137	9.4
1925	3,014,953	209,951	7.0
1928	3,224,500	318,667	9.9
1931	3,468,303	332,980	9.6
Preferential block majority/compulsory preferences/36 senators			
1934	3,708,578	420,747	11.3
1937	3,921,337	416,707	10.6
1940	4,016,803	383,986	9.6
1943	4,301,655	418,485	9.7
1946	4,453,941	356,615	8.0
Democratic single transferable vote/compulsory preferences/60 senators			
1949	4,697,800	505,275	10.8
1951	4,763,915	339,678	7.1
1953[a]	4,810,964	219,375	4.6
1955	4,914,094	473,069	9.6
1958	5,141,109	529,050	10.3
1961	5,384,350	572,087	10.6
1964[a]	5,556,980	387,930	7.0
1967[a]	5,889,129	359,241	6.1
1970[a]	6,213,763	584,930	9.4
1974	7,410,511	798,126	10.8
1975	7,881,873	717,160	9.1
1977	8,127,762	731,555	9.0
1980	8,513,992	821,628	9.7
1983	8,872,675	875,130	9.9
Stasiocratic STV in first unconstitutional camel/76 senators			
1984	9,331,165	437,065	4.7
1987	9,766,572	394,891	4.0
1990	10,278,830	349,065	3.4
1993	10,954,258	279,453	2.6
1996	11,294,479	395,442	3.5
1998	11,587,365	375,462	3.2
2001	12,098,490	470,961	3.9
2004	12,420,019	466,370	3.8
2007	12,987,814	331,009	2.5
2010	13,217,393	495,160	3.7
2013/14	13,783,925	403,380	2.9
Manipulative STV in second unconstitutional camel/76 senators			
2016	14,406,706	567,806	3.9
2019	15,184,085	579,160	3.8

a Separate Senate election.