Representation and Institutional Change:
50 Years of Proportional Representation in the Senate

Why We Chose Proportional Representation

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Synopsis

This background paper answers the historical question: why did Australia adopt proportional representation for the Senate? The bare facts are well known: in 1948 the Chifley government initiated amendments to the Electoral Act to alter the existing method of counting the Senate vote which had traditionally rewarded the majority party with a disproportionately large share of Senate seats. Labor itself had a Senate majority of 33 to 3 after the 1946 election. But why did the Chifley government introduce proportional representation? The standard answer, given by Opposition leader Menzies at the time, was that Labor knew that it would lose the 1949 election (and probably most of its contested Senate seats) and so devised this change to consolidate its parliamentary power base in the Senate to frustrate the expected Menzies government. This answer is true as far as it goes. But a fresh review of the historical record shows that the 1948 decision was really the final stage in a frequently-deferred plan of parliamentary reform that goes back to Federation. Even before Federation, many prominent constitutional framers had expected the first Parliament to legislate for proportional representation for the Senate. Sure enough, the Barton government included Senate proportional representation in the original Electoral Act, but this was rejected in the Senate on the plausible ground that it would undermine the established conventions of strong party government. But over time even the partisans of strong party government came round to see the merits of the original plan. At many stages between the first Parliament and 1948, advocates of proportional representation moved for its adoption for Senate elections, with many party leaders joining the ranks of parliamentary reform: conservative leaders such as Cook, Page, Bruce, McEwen; and Menzies; and even Labor leaders such as Scullin, Curtin and Chifley. This paper summarises the history of early hopes and delayed fulfilment.

Introduction

The purpose of this background paper is to help answer the question as to why proportional representation (PR) was chosen by Parliament in 1948 for Senate elections, beginning with the 1949 general election. As a balance to the conventional wisdom which holds that the 1948 decision reflects more party pragmatism than democratic principle, this paper reports the widespread appreciation within Australian politics of the theoretical merits of PR. Other Conference papers examine the track-record after the 1949 elections to determine to what extent Senate performance has matched the high expectations held out by advocates of PR.

There are many good reasons to celebrate the 50th anniversary of PR in the Senate. But there is also a danger that one might exaggerate the benefits of PR and fail to acknowledge any shortfall between the theory of a proportionally representative Senate and the practical realities of Senate elections. This introductory note simply forewarns readers that the practical operations of any system of PR can fall below the highest hopes of advocates of PR. Although this shortfall is no reason to walk away from PR, readers should be prepared for the discovery that, like all electoral systems, those based on PR admit of endless variety in their practical operations. Depending on the precise rules for parliamentary representation, the established major parties can exert formidable influence in stage-managing the system.

When it comes to evaluating the performance of a Parliament, it pays to keep things in proper perspective. The more one exaggerates the promise of PR, the easier it is for its critics to document the many gaps between promise and reality. Hence it is prudent at the very outset to acknowledge that, despite the adoption of PR, the Australian Senate retains something of the character of those nominee upper houses so roundly criticised by a long tradition of Australian democrats at state as well as national level. The version of PR that was consolidated as recently as the 1980s allows party officials at state level to nominate their party list of candidates and invites electors formally to approve their preferred party list. Almost all Australian electors take this easy option of voting `above the line' which confirms the nominating power of party officials in each state.

All of this is simply to suggest that PR refers to a family of electoral possibilities. Australian electors should watch as closely as possible the ways in which the participating political parties manage the system. The decision in 1948 was not the end of the matter. Parliament can just as easily today unmake what it made in 1948; and so too Parliament can change the rules to amend or refine details of the electoral system, as it has done repeatedly since 1948, often of course for good reason. This paper clarifies the basic framework but makes no attempt to trace through the many refinements that Parliament has made since 1948.

Labor's legacy?

Preparing a background paper on the 1948 decision by the Commonwealth Parliament to adopt PR for Senate elections is no easy task. Although the record of the parliamentary passage of the legislation giving effect to PR is open and accessible, a certain mystery surrounds the prior decision by the Chifley Labor government to introduce legislation to replace the traditional `block vote' electoral system with the new proportional system. It is curious that such a momentous decision has not attracted a wealth of historical scholarship and somewhat frustrating that there is no definitive article laying out the various reasons behind the Chifley government's decision in favour of PR.

This background paper attempts to summarise what is known about the political and parliamentary decision to adopt PR. It is only fair to report at the outset that we really know too little to be very confident about what was in the mind of those members of the Parliament when they replaced the traditional electoral system dating from 1902. To the outside observer, this change has many of the qualities of an institutional revolution but there are few if any members of that parliamentary generation claiming the title as Reformer of the Senate or Founder of the New Senate. One problem is that Labor, which is otherwise a party with a keen interest in all facets of its own political history and tradition, has appeared reluctant to celebrate this decision to adopt PR. As initiator of the change to PR, Labor might have been uncomfortable championing the renewed effectiveness of the federal upper house. Only as recently as 1979 did the Labor party withdraw its policy calling for the abolition of the Senate. And while it is true that Mr Beazley has this year responded to recent non-Labor calls for a change of rules to make it harder for minor parties to secure Senate representation with a refreshing defence of PR, it is still the case that the original Labor decision of 1948 cuts across the grain of Labor's traditional understanding of responsible government, as I will illustrate towards the end of this paper through Arthur Calwell's commentary on the role of the Senate.

To my mind, it would be a great pity if Labor were not to come forward with a contemporary justification of the merits of the Chifley reforms. I say this because, as though to prove that the original decision was somehow flawed, forces on the conservative side of national politics are now mobilising to wind back the degree of commitment in Australian electoral law to minor party representation. Both sides of politics have something of an interest in maintaining the conventional wisdom that the 1948 decision was either a mistake giving rise to unintended consequences, or an understandable but still uncommendable partisan act from which we should now distance ourselves.

The conventional account holds that the Chifley government opted for PR primarily for reasons of party-political expediency—as a stratagem to boost their own electoral chances at the 1949 general election they rightly feared they would lose. In this view, Labor hoped that it could take advantage of the transitional arrangements to the new and enlarged Senate and build a new if temporary power base in the Senate for their opposition to the likely Menzies government.

The stratagem worked, at least until Menzies beat Labor at its own game and brought on the 1951 double dissolution to wash out Labor's power-base in the Senate and usher in that Indian summer of Australian parliamentary politics from 1951-1955 when governments had a majority in both houses. Executive governments can now only dream about the ease of parliamentary management enjoyed then by Menzies. But the institutional changes associated with PR had already begun to develop their own chain of consequences, as other papers and speakers at this conference will document.

The Chifley government's decision

The starting point for understanding the decision of the Chifley government to adopt PR is to appreciate their interest in increasing the *size* as distinct from altering the *composition* of Parliament. The talk of the time was the need to enlarge the size of the 75 member House of Representatives which had not been changed since the election for the first Commonwealth Parliament in 1901. Nor of course had the size of the Senate which remained at 36 with six senators per state. The House of Representatives originally had seats with an average number of 12 000 electors but by the time of the first general election after the conclusion of the Second World War that average had risen to over 63 000 electors. [1] After winning the 1946 election, the Labor government began to intensify internal discussions over how best to enlarge the House of Representatives from 75 to 121 which can be traced back to cabinet interest from at least the 1942 Labor party conference. One new stimulus was the anticipation of a redistribution of House of Representatives electorates following the 1947 census. [2]

For constitutional reasons, any enlargement of the House requires an enlargement of the Senate: section 24 of the Constitution requires that the number of House members `shall be, as nearly as practicable, twice the number of senators'. The Chifley government had no option but to include an enlargement of the Senate. The timing of this revision of the size of the Senate thus had little to do with any deep-seated interest in enlarging or otherwise altering the composition of the Senate. The driving force was the interest in smaller, more stable and hence more secure seats for the Labor backbench in the House of Representatives. As party discussions took place after 1946, two factors emerged to turn the attention of the parliamentary Labor party towards the introduction of PR in the Senate.

First, there was a lingering sense of dissatisfaction with the traditional Senate electoral system that produced huge majorities in turn to whichever political party built up House of Representatives majorities. This `block vote' system was included in the original Electoral Act of 1902 and was revised to include preferential voting from 1919. The practical result of this system was the so-called `windscreen-wiper effect' which delivered almost all contested Senate seats in each state to whatever political party achieved a majority. Senate majorities oscillated wildly between the two major political parties (Labor and successive Non-Labor coalitions), both of which could expect to take their turn as the majority party in the Senate.

The first two Senate elections after the establishment of the 1902 Electoral Act saw a relatively even `two third: one third' distribution of Senate seats. But once the political parties became consolidated the system began to deliver disproportionate victories to whichever political party was riding high with the passing electoral majority: Labor won all of the 18 seats on offer at the 1910 election; non-Labor won all on offer at the 1918 and 1925 and 1934 elections; and Labor won all Senate seats at the 1943 election and 15 of the 18 on offer at the 1946 election. [3]

According to Crisp, the adoption of PR was in large part `a desperate effort to avoid the grotesque results of two previous systems of election to the Senate…', meaning the block vote as modified through the adoption of preferential voting from 1919. [4] The choice of PR was far from surprising because it was not a new idea, having been frequently advocated as a way of repairing the defects of the traditional `winner-takes-all' electoral system. The web site of the Proportional Representation Society of Australia contains copies of documents recording that Society's history of vigorous advocacy of PR. For instance, the Society organised a public meeting in Melbourne in October 1943 which resulted in a letter to prime minister Curtin reporting their resolution about the urgent need to reform the electoral system to include PR, for the House of Representatives no less than the Senate.

Given this widening public interest in electoral reform, it soon became apparent that an enlarged but otherwise unchanged Senate would pose risks to the public credibility of Parliament, particularly at a time when public funds were being spent on old Parliament House to accommodate the many new members. As the Senate Clerk at the time recorded, any increase in the size of the Senate made all parliamentarians realize `that to continue a system which might result in a Senate of 60 members all belonging to one party would make a farce of Parliamentary government'. [5]

But there was an important second factor: the closer the Labor party got to the end of its three year parliamentary term the more fearful it became that with the changing electoral tide against Labor, it would soon be Menzies' turn to dominate both chambers. Even if Chifley was confident of retaining office, many in the caucus feared that their time was up. [6] It was at this point that Labor discussions took an ever-keener interest in the dual merits of PR: as the revival of a long-discussed option to bring party balance to the Senate that would be in the long-term interests of both major party blocs; and as a newly-discussed option to provide Labor with a short-term parliamentary power-base through the one-off transitional arrangements to the larger Senate which would benefit Labor given its existing domination of Senate numbers. Labor had won 15 of the 18 Senate seats at the 1946 election and before the 1949 election had 33 to the opposition's three Senate seats. Thus Labor had a near monopoly of long-term sitting Senators and faced the prospect of winning half of the enlarged group (seven from each state as a one-off transitional arrangement) of 42 newly elected senators under the reformed electoral system, promising to give it a very healthy majority for many years.

The alternative was to stick with the traditional system and risk losing this large swag of Senate seats to the incoming Menzies government. At the 1949 general election, Labor emerged in a minority position in the enlarged 121 member House, with 47 to Menzies 74 seats but won a victory in the Senate with 34 seats to the governments 26. Labor lost office but the Senate gamble worked. In the words of Reid and Forrest, PR emerged `not as a result of the pursuit of principles of electoral justice, but from pragmatic consideration of party gain'. [7]

Labor's Party Debate

A useful portrait of the pre-reformed Senate is contained in Denning's *Inside Parliament*. [8] Observers noted that the traditional Senate performed more good legislative work than its was credited for, but few were prepared to enlarge the existing Senate without alteration of its electoral system. It seems that even Curtin as Labor leader a decade before the 1946 election at the 1936 party conference had favoured an enlarged Parliament on the condition that the Senate be altered through PR. [9] Reid and Forrest chronicle the history of caucus discussions over the enlargement of the House and the gradual turn of interest to the reform of the Senate electoral system. [10] In April 1947, the minutes of caucus reveal a notice of a motion by Labor backbencher Lawson of a recommendation to cabinet that Parliament be increased `by at least 25%'. Lawson was allowed to delete his precise reference to a 25% increase and another motion to set up a caucus committee was lost. [11]

In May 1947, the Labor caucus recommended to cabinet that the size of Parliament be increased before the next redistribution of seats. After preliminary cabinet discussion in July relating to the prior need for reliable census information, cabinet finally established a sub-committee in December 1947, comprising the minister for the Interior (Victor Johnson as chair of the sub-committee) the minister for Health and Social Services (Senator McKenna) and the minister for Information and Immigration (Arthur Calwell). `Calwell was the dominant member: he was mainly responsible for the Committee's recommendations, and it was he who sold them to Caucus'. [12]

So tradition has it: Calwell made PR a reality. But the caucus minutes reveal the sustained contribution of Senator McKenna, Labor's Senate leader. At a caucus meeting on 17 February 1948, Prime Minister Chifley called on senator McKenna to report on the cabinet sub-committee proposals which had been agreed on by cabinet in January. The caucus minutes record that McKenna `also suggested a system of PR be recommended for the election of the Senate and added that the method would be decided by the Party'. [13]

After what is described as `a lengthy discussion', McKenna is reported as saying that the party would have to determine `by what number Parliament should be increased and the system of voting'. He relayed the news that cabinet favoured an increase of senators from 6 to 10 per state, to be elected through `a system of PR'. [14] McKenna's motion `That the law be amended to provide for PR for the election of the Senate' was carried on the voices, as then was his second motion for an increase from 6 to 10 senators per state. [15]

So much for the formal record of caucus decision-making. The best insider account is available in the entertaining memoirs of veteran Labor parliamentarian Fred Daly who was a young House of Representatives member at that time. According to Daly, the scheme for Senate reform `was the brainchild of Arthur Calwell who argued that we would retain a majority there after the next elections, due in 1949, and probably into the future'. Daly reports that Chifley was personally opposed to PR and may well have voted against it in the cabinet. But Calwell `won the day by convincing sitting senators that they would be re-elected in 1949 and that the new voting system favoured them in the future'. [16] This is consistent with Calwell's preference for centralism and big government, and his biographer notes that Calwell was convinced that the support of ALP senators provided him with his base of support in caucus, where 33 senators comprised nearly half of the caucus total of 76 members. [17] Another commentator reports that Calwell `had given Labor senators a large present and could reasonably look forward to future `paybacks'. [18]

Daly also records the much-quoted response to Calwell by Labor's House speaker Jack Rosevear who opposed the Calwell plan which he described in classic terms as a `gold brick' proposal—one that was too good to be true, with its promise of electoral success to sitting House members, who would now have safer seats as well as sitting senators. Daly ruefully comments: `Time has proved Rosevear right. Proportional representation in the Senate was disastrous for the Labor Party'. [19] Never again was Labor to obtain a Senate majority and minor parties, noted Daly, have arisen with `the opportunity to play an over-important part in national politics, even to controlling governments'. [20] This rueful reference to the rise of minor parties reflects the widespread assumption of the time that PR would simply restore the balance between the major parties in the Senate. The major parties which managed the transition to a PR system gave little thought to the possible effects in encouraging the formation of minor parties, even though the historical case against PR was that it would jeopardise the conventions of strong party government.

The 1948 Parliamentary Debate

Despite Calwell's involvement in developing the basic policy, it was Attorney-General Evatt who introduced the 1948 legislation in the House. Predictably, Evatt explained the reformed system of Senate representation as `one most likely to enhance the status of the Senate'. According to Evatt, the direct aim was to ensure that `the majority group will get the majority of seats and no more', a policy on representation long advocated by the Country party, and recommended by the 1929 royal commission on the Constitution. [21] Not that the government really knew all the likely effects of these reforms, which were not designed to encourage minor parties but to redress the imbalance between the major parties. Senator McKenna, the government's leader in the Senate, emphasised `the greatest blessing any country can have is a strong government—one that is strong enough in numbers to take hold of the reins of government and really rule'. [22]

Opposition Leader Menzies clearly identified Labor's partisan strategy in which a Labor majority in the Senate was an insurance policy against the probability that they lost office at the next election, as in fact happened. Menzies also foreshadowed the possibility of a government using the barely tested procedures for double dissolutions to attempt to restore majority representation in both houses, which is exactly what he did in 1951. For Menzies, the existence of the constitutional provision for double dissolutions and subsequent joint sittings was proof enough of the subordinate place of the Senate in Australian government. The `will of the people' must trump the representation of minority groups in the Senate; and it is the people's House which `makes and unmakes governments'. [23] Consistent with this, the Opposition moved to delay the adoption of PR until after a referendum seeking to abolish the s24 `nexus' provision. If carried, such a referendum would have meant that the House could then be enlarged without any increase to the size of the Senate. The government defeated this Opposition move, arguing that this proposed change would jeopardise the interests of the smaller states, whose representation would suffer disproportionately, and be a body blow to the future of the Senate. [24]

There were those who clearly identified the costs of re-legitimating the Senate. One sobering voice raised in warning about the long-term consequences was future conservative Prime Minister Holt, who identified the reformed representation as `a profound constitutional change'. Holt foresaw the emergence of `a powerful opposition in the Senate' with `a very much stronger voice' which might compete against the dominant party in the House. [25] A more strident voice was that of aging Jack Lang, a former state premier dedicated to the traditional Labor policy of Senate abolition. Warning of the potential of the new Senate to `frustrate' and `obstruct the decision of the voters', Lang reflected the majoritarian norms of strong party government in ridiculing `the chamber of obstruction', although he also called for restoration of the House's `deliberative status' which had been reduced under the system of `junta control' carried over from the war. [26]

The issue of the States' rights function divided parliament. Enthusiasts for Senate reform noted that the States' rights function had never taken off, and some like Beazley defended the reforms as providing a substitute role for the Senate as a house of review, `in a manner analogous to the constitution of the United States of America'. [27] Among the opponents of the reform were those who argued that the only legitimate role for the Senate was as protector of States' rights, and that PR would do nothing to keep state delegations cohesively together. Better alternative schemes of representation included indirect election by state Parliaments. [28]

For the purposes of this background paper, it is important to return to the historical origins of the Australian Senate and to recover the original rationale for its intended contribution to Australian parliamentary life and to try to discern any evidence of early anticipations of the 1948 choice for PR. The story that emerges is that PR is not a late addition to the institution of Parliament but one of the original ingredients assembled and prepared by the constitutional framers and successor parliamentarians, although not successfully used until 1948. But the legitimacy of that 1948 decision takes on a new dimension when seen against the background of earlier expectations of a Senate based on PR.

Once we appreciate that the history of expectations about the Senate and PR goes back well beyond the fifty years since the 1949 election, we can begin to look anew at the merits of the decision made by the Chifley government. The 1948 reform can then be seen as a late delivery on a very early promise about the importance of a proportional Senate in Australian government.

Pre-Federation views of the Constitutional framers

As we approach the centenary of Federation, it is important that we see the events and institutions of 1901 in light of the original intent of the constitutional framers in the pre-Federation decade. But one challenge for this search for evidence of interest in `PR' is that this term has taken on many different meanings in the past. A search for the term will throw up many false leads, such as discussion of the nexus between the two parliamentary chambers where the relationship in size of House and Senate members was understood by the framers to be one of proportionate representation. [29] And again, many framers spoke of `PR' when referring to the relative proportions of House seats that would accrue to the different States according to their different populations. [30] Thus for example section 24 of the Constitution refers to the `proportion' of House members from each state. The existence of representation proportional to population was frequently cited as a prerequisite of democracy, with Canadian precedents drawn from the composition of the Senate of Canada. [31]

But it is only in reference to debates over the role of the Senate that we find any real evidence of the framers' interest in what we mean by PR. It is well known that the design of the Senate repeatedly gave rise to the most protracted disputes during the 1890s Conventions in which the Constitution was framed. [32] The Convention delegates were divided over the purpose and practices associated with a federal house of review. Progressive liberals tended grudgingly to accept the Senate as the price that had to be paid for federation and the transition to the new nation. Perhaps the most exaggerated liberal view was that of Victorian framer H B Higgins. Higgins fought for as small and as insignificant a Senate as possible, in the belief that the primary institution of responsible parliamentary government would be the appropriately named House of Representatives, from whose majority the governing party would be drawn, and to whose majority that government would be solely accountable. At the other extreme were conservatives like Hackett, famous for his preference for federalism and States' rights over traditional responsible government: a preference which elevated the Senate into a place of co-ordinate importance with the House within the institutions of government.

There were of course many views caught between these extremes, with two loose clusters associated with the two great colonial Premiers and proven masters of responsible government: on one hand, Parkes' open tolerance of a Senate designed to represent each of the States equally; and on the other hand, Griffith's more adventurous enthusiasm for reshaping traditional conventions of responsible government by conferring equality of power on the two institutions of the new national Parliament. [33] The Constitutional design for a Senate based on equal state representation and armed with legislative powers virtually equal to those of the lower house was agreed to on the principle that `minorities' deserved legislative protection against what Thynne called `the tyrannic exercise of the power of temporary majorities'. [34] This approach to equal state representation is frequently confused with a conservative defence of States' rights, but from the outset of the 1890s constitutional debates it was made clear by advocates of an elected Senate that equality of state representation was the most promising institutional device to protect the rights of minorities against what Tynne termed `hasty, corrupt, or dishonest action on a part of any section, now matter how large it may be'. [35]

The first federal election of 1901 took place, of course, without any federal electoral legislation. Senators, for example, were elected according to prevailing state electoral law, with Tasmania adapting its established Hare-Clark system of PR. Although the exception, the Tasmanian model of PR was by no means inconsistent with the framers' intentions in regard to the Senate.

From time to time, delegates at the 1890s Constitutional Conventions raised the question of the most appropriate electoral basis for a federal house of review, eventually deciding to have the Constitution leave electoral arrangements to be decided by the federal Parliament. It is clear from the scattered commentary and such practices as the Tasmanian 1901 reliance on PR that the framers considered PR to be an acceptable, possibly even the preferred, electoral basis of the upper review house.

The Convention records reveal too little for a conclusive case to be made, but what calls that there were for the use of PR attracted only scattered rebuttal. The argument for PR derived from a distinction made between a democratic principle of `rule of the majority' and a liberal-constitutional principle of `rule of the people'. The argument was in two steps: first, the theoretical case for protecting minority representation, by which was meant not a claim to rule by minorities but the rights to parliamentary representation of those who support the non-governing parties; and second, the practical case for the provision contained in s9 of the Constitution which kept the door open to PR by allowing Parliament to legislate as it saw fit, thereby protecting the option for PR for the Senate if there was sufficient parliamentary support.

The framers' theoretical case for PR is scattered and largely implicit. Emphasis should be placed on the fact that the framers rescinded their early preference for `States Assembly' as the name for the upper house, and substituted the American term `Senate' with its connotations of national as well as federal responsibilities. [36] Furthermore, many of the framers were under few illusions as to the likely place of party-politics in *both* houses of the federal parliament; some, like Deakin and Barton, quite probably tolerated PR as a means of adapting the principle of party to serve a distinctively qualified Australian variant of parliamentary government. [37] The argument for an upper house conceded the case that equal state representation was the inevitable entry price being extracted by the smaller States; but it reached beyond that to issues relating to the structural requirements for effective parliamentary deliberation. [38]

The framers' case was that Parliament must widen its representation from prominent partisan opinion to something more like `a reflex of the opinion of the people' as a whole. [39] The Senate offered hope that `everyone, whether they are in the majority or the minority, will know they are fairly represented'. [40] Tasmanian advocates of Hare-Clark tilted against South Australian advocates of what they preferred to call `Hare-Spence', although both supported PR on the ground that its `essential merit...is to widen the area of the electors' choice'. [41] Glynn went so far as to present a petition in defence of the `The Hare–Spence method' for the election `especially of senators'. His petition declared that `while desirous of leaving undisturbed the rule of the majority', it was vital that `the minority should not be absolutely silenced'. [42]

So much for the framers' political theory. The practical case about the feasibility of PR is perhaps more surprising, in that very prominent framers like Deakin and Barton went on the record predicting that Parliament would probably opt for PR for the Senate. Deakin, for example, expressed his preference to `take care' that States which `think fit to adopt a system of proportional voting for the representation of minorities shall have the power to do so'. [43] Along with Barton and O'Connor, Deakin argued for a liberal interpretation of `the method of choosing' provision in what was to become s9 of the Constitution. O'Connor agreed that the provision `must allow for representation of minorities'or indeed any other manner of recording votes which Parliament might see fit to arrange. [44] This reference to the rights of minorities was understood to refer to rights to parliamentary representation as distinct from any misguided claim to the rights of minorities to rule. Barton was later to come under some criticism for his endorsement of `the Hare system' as one designed to secure `the proper representation of the people', and for holding the constitutional door open with his clarification of the likely practical effect of s9's protection of the competency of the federal parliament: that being the adoption of PR. [45]

Models of Senate representation

The Australian framers had two models of federal upper houses designed to operate as houses of review. The first model was derived from fully-operational Senates: the set of constitutional provisions then in place for the two main examples of federal upper houses, the Senates of the US and Canada. The second model was theoretical: being derived from the influential political argument advanced by, among others, John Stuart Mill, for the institution of PR in a house of Parliament. It would certainly be possible to combine these two sources of influence and construct an upper house appropriate to the purposes of a federal polity, and credit goes to those framers who, as I shall show, attempted to do just that. Yet the two types of models contain many interesting examples of institutional features which were *not* adopted by the Australian framers, but which might be important to an effective review capacity. It all depends on the task of political representation considered appropriate to the Australian Senate. Some attention should first be paid to the institutional design principles inherent in each of the two types of possible models, in order to recover the latitude of scope open to the Australian framers in equipping the Senate with a notional review *function*, regardless of whether the institutional review *capacity* was sufficiently considered.

The framers certainly had a model before them of a Senate designed to perform differently from a lower house: many commentators have recognised the powerful presence of the US Senate as an instructive working model of a house of review, even if the lessons were primarily of a sobering negative kind for constitutional designers operating in a parliamentary environment. Still, many of the constitutional features of the US Senate held the attention of many Australian framers in search of the institutional roots of a house of review. The Australian framers derived only a limited range of provisions from the US model. These include: equality of state representation; six year terms; retirement by rotation (but subservient to the double dissolution mechanism) so as to establish a `permanent' institution; and votes for individual senators, as distinct from state delegations, as had been the 1891 expectation. [46] But consistent with the majority's understanding of the `House-centredness' of responsible government, the framers withheld from the Australian version of the Senate any specific grant of power in relation to the confirmation of top officials in executive and judicial branches, and any hint of specific legislative function associated with treaties. Stripped of exclusive constitutional functions, the Australian Senate had no need for those other structural devices designed to differentiate the Senate from the House and so enhance the review capacity: such as the different age qualification—again attempted in 1891 but later abandoned [47]—and commitment to as small an upper house as feasible.

The Canadian model should have been of great interest, since the whole rhetoric of `responsible government' derived from the Canadian struggle for self-government; but the Canadian federal model in the 1867 British North America Act attracted very little support during the Conventions. [48] Sure enough, Canada was a federation with a parliamentary form of government, but part of the problem was that the Canadian upper house had little of the makings of a house of review, and even less legitimacy when it came to political representation. The creature of understandable 1860s over-reaction against the States'-rights orientation of the US system, the Canadian Senate was an appointive body, with the gift of life-membership in the hands of the federal government (BNA Act, ss21-36). It substituted equality of regional for state (or more correctly `provincial') representation, with Quebec's representatives being chosen for carefully identified `electoral divisions' within that province, presumably to balance English and French interests within that province. Eligibility qualifications for Senators which hint at a conscious review capacity included a lower age limit of 30 years, together with tests for property and against indebtedness.

Political Theory: Hare, Mill, Clark, Spence

The world of political theory also opened up the prospect of PR. Many important constitutional framers were convinced that PR would give substance to the promise of the Senate as a house of review, by establishing a different parliamentary institution capable of representing a range of community views either not wanted or needed in the House. When push came to shove with the inclusion of PR in the original electoral bill, opponents quite rightly saw the guiding influence of such philosophical liberals as J S Mill, who was derided by Senator Symon as `a logician' and a supporter of `a great many things that were theoretical'. [49] O'Connor for instance, the initial mover in the first parliament of PR for the Senate, probably had Mill in mind when he referred to `the vast heap of literature on the subject' of representative government, recent `social and political movements', and `advanced political writers'. [50]

The academic literature on PR identifies two British authorities and two Australian champions as the standard bearers acknowledged by the constitutional framers. The two British authorities are Thomas Hare and John Stuart Mill, the two Australian champions are Andrew Inglis Clark of Tasmania and Catherine Helen Spence of South Australia. Hare is the originator of the Hare system of PR which J S Mill did so much to publicise as the best basis of parliamentary reform. This is not the place to review Hare's distinctive contribution to electoral systems but some attention should be given to the Australian reception of Hare's version of PR, first published in a series of publications in the 1850s, and here it is instructive to note the role played internationally by Spence in promoting electoral reform.

Australian scholarship has tended to give pride of place to Tasmanian constitutional framer Andrew Inglis Clark because of the early acceptance in Tasmania of what became known as `the Hare-Clark system' which is documented so well in the collection edited by Marcus Harward and James Warden. [51] Clark was certainly one of the most creative of the Australian constitutional framers: drafter of the original version of the 1891 Constitution; founder of the Tasmanian system of PR in 1896 after more than twenty years of public advocacy, and later a Tasmanian supreme court judge. But the international scholarship gives due recognition to Catherine Helen Spence, who stood unsuccessfully for election to the 1897-98 Constitutional Convention after a very busy international career promoting the ideas of her British friends Hare and Mill. [52]

Spence's *Autobiography* tells the story of her original discovery of the principles of PR through her observation of her father's work as town clerk of Adelaide, when he used PR-like mechanisms in Adelaide's initial city council elections of 1840. It was later through her avid reading of the works of Hare and Mill that Spence came to see the larger import of PR and the international relevance of her own early writings on `effective voting': in her words `reform of the electoral system became the foremost object of my life'. [53] As the elected member for Westminster, Mill circulated and defended amendments to include in the 1867 Reform bill provision incorporating both women's suffrage and PR. [54] Spence became familiar with Mill's revisions of Hare's approach and closely followed the fate of Mill's public campaign for PR. Arguably, Mill's account of the merits of a second chamber organised on PR provides one of the important missing ingredients in the framers' confident recipe for a federal house of review. [55] Mill provides the substance for the argument only hesitatingly put by a few of the framers that the primary purpose of an upper house, and of PR, is to enhance the deliberative capacities of parliamentary institutions. Deliberation might sound like too elevated a task for Australian parliamentary bodies, but Mill himself identified Australian discussion of PR as evidence that the Hare method was not unduly complicated and that it could be introduced and made to work. [56]

Mill's case is made most conveniently in his *Considerations on Representative Government*. In reluctantly accepting the place of a second or checking chamber, Mill noted that it need not be `of the same composition' as the other house. The aim of the second chamber was to act as `the centre of resistance to the predominant power in the Constitution', which in modern democracies is the force of the majority, or what he termed `democratic ascendancy' with its defective tendency to cultivate what he, following Tocqueville, identified as the tyranny of the majority.

The review chamber is there to check `the class interests of the majority' and to represent above all the interests of vulnerable minorities, although Mill is particularly conscious of the need to reinforce rather than undercut the political principles of majority rule and so to promote `nothing offensive to democratic feeling'. [57]

PR makes good the promise of a friendly critic of democracy, and defender of the elusive principle of democratic equality which might otherwise suffer at the hands of the utilitarian practice of majority rule. Institutions based on this supplementary form of political representation will never have overwhelming moral authority, or even the crude voting power, to compete with popular elective bodies for the right to rule or determine broad public policy. Their custodial task is directed toward procedural justice rather than preferred public policy—through management of institutional filters which are designed to protect the community against ill-considered and unjustifiable uses of executive power, and to force the majority party to mobilise minorities so as to `speak and vote in their presence, and subject to their criticism'. [58]

The review function is one which Mill termed `the function of Antagonism', by which he refers to the check or control to be placed on the unexamined power of `the ruling authority'. Control in this legislative sense means open, public examination of the reasons for ruling; and PR can provide the requisite `rallying point' around which `dissentient opinions' can form and thereby review and revise the policy and administrative priorities of the ruling majority. Mill even anticipated some of the standard criticisms of PR: that on the one hand, it tends to confer undue power on `knots or cliques; sectarian combinations' of small groups capable of blocking measures of wider community benefit; and on the other hand, it can favour `the great organised parties' when operating through a `ticket system' of `party lists'. Mill conceded `that there is a difficulty', but preferred to go down the reform road in which `the two great parties' would for the first time be `confined within bounds', and forced to use—or at least respond to demands from—the forum of parliament for their negotiations over private place and public policy. [59]

Australian advocates of proportional representation

Australian political science gives pride of place to Melbourne professor of mathematics E J Nanson as `the expert's expert' on PR. Nanson was an adviser to the first Commonwealth government and is regarded as the source of the legislative provisions relating to PR for the Senate. Nanson's important role has been covered elsewhere and for this occasion it is preferable to share the spotlight around and to treat others, like Spence and the Ashworth brothers, who were more politically active than professor Nanson. [60]

As early as 1861 when in Adelaide, Spence had published her own version of PR at a time when the legislatures of New South Wales and Victoria both debated the merits of PR. [61] Spence later formed the Effective Voting League. After women had won the vote in South Australia in 1894, Spence put herself forward as a candidate for the 1897-98 Constitutional Convention on a platform of `a just system of representation' claiming to be `the first woman in Australia to seek election in a political contest'. [62] In the hope of establishing `a truly democratic ideal' through Federation, Spence promoted `effective voting' as one vital means of ensuring that `equality is to be as real in operation as in theory'. She held that `it is incumbent on all States to look well to it that their representative systems really secure the political equality they all profess to give, for until that is done democracy has had no fair trial'. [63]

Spence's *Autobiography* reports that her Effective Voting League came forward to warn South Australian premier Kingston of the risks of `the monopoly of representation by one party in the Senate, and the consequent disenfranchisement of hundreds of voters throughout the Commonwealth'. She and her supporters lent their considerable support to Glynn during the 1897-98 Constitutional Convention and Glynn in turn publicly advocated her cause. For Spence, the `fundamental principle of PR is that majorities must rule, but that minorities shall be adequately represented'. The minority `can watch the majority and keep it straight'. [64]

By way of illustrating the breadth of interest in PR at the time of Federation, I can take one of the many examples identified by Reid and Forrest to suggest the colour and cogency of the electoral reform movement. The example is the work *Proportional Representation Applied to Party Government* by the two Ashworth brothers. [65] T R Ashworth was to remain active in the promotion of PR at the Commonwealth level for many years, culminating in his involvement as one of the 1927-29 royal commissioners into the Constitution, which recommended in favour of PR for the Senate, as I will report below.

The Ashworth book deserves brief comment for several reasons. First, the book was published during the year 1900 on the eve of the elections for the first Commonwealth Parliament. It was designed to broaden Australian interest in PR at the outset of the Commonwealth. Second, the authors take pains to demonstrate the many varieties of PR and in particular to promote their own version of a list system which is designed to consolidate rather than fragment the two party system of parliamentary government, much like some contemporary critics from the major political parties. Their target was to balance out the imbalance of seats between the governing majority and the Opposition party by protecting the parliamentary presence of the official Opposition as an integral component of the system of government. To the Ashworth brothers, the Senate is important as a site for PR but not as important as the House of Representatives where Government and Opposition should face each other on the basis of their proportional electoral strength. [66] Third, the Ashworth view, even before elections for the first Commonwealth Parliament, is that the Senate would operate not as a States' house but as a party house like the House of Representatives. Their interest in securing PR in both chambers rests on their belief that both would be driven by the pressures of party politics and ideally should fairly display the community's balance of governing and opposing parties.

The Ashworths' commitment was distinctive among the promoters of PR in that they singled out the importance of `organization and leadership' of both the governing party and the party of the official opposition as the predominant institutional requirements of an effective parliamentary system. They saw `the fundamental error' in Australian democracy to be the belief that `responsible leadership in Parliament is incompatible with popular government'. [67] Whereas most proponents of PR reach out to `minorities' that are excluded from the parliamentary system, the Ashworths' approach the opposition as the most deserving of minorities and seek institutional arrangements to bolster opposition numbers in Parliament. Unlike Hare, who sought `to allow representation to as many minorities as possible', the Ashworths sought barriers against the parliamentary representation of the sort of `cranks and faddists' commonly feared by opponents of PR. [68] Critical also of Mill and Spence, the Ashworth brothers distanced themselves from the Tasmanian experiment in PR, especially in their argument that the `true function' of minor parties `is to influence the policies of the main parties'. [69] Thus they are very critical of the emerging Labor Party as a sectional interest capable of gaining disproportionate influence over national governments. [70] The Ashworth argument used the new Senate as an illustration of how PR could be made to redress the imbalance in parliamentary representation between government and opposition. The authors state that their intention in writing their book was to prevent the adoption of the block vote for the Senate. [71]

The Barton Government's Electoral Act of 1902

The practical result of the framers' consideration of these sources is the remarkably permissive s9 of the Constitution, which provides that Parliament may legislate as it sees fit for any nation-wide `manner of voting' for the new Senate. The original 1901 Senate elections were held of necessity on state-wide systems, with Tasmania and South Australia using state-wide systems for their initial election of House members as well. But only Tasmania adopted a form of PR for the 1901 elections: indeed, for both of its federal houses. [72]

The parliamentary records for the first year of the Commonwealth Parliament include two reports which would appear to have helped prepare the ground for the government bill proposing PR. Home Affairs minister Sir William Lyne convened a committee of parliamentary experts on electoral law and practice. Among the terms of reference was one relating to the `practicability of the Hare-Spence system of voting'. This group reported to him in July 1901 in favour of PR for the Senate. [73]

The committee of experts provided no reasons for their recommendation which was included among a long list of very practical reports about emerging best practice across Australian electoral systems. Claiming to have given the Hare-Spence system `our fullest consideration', the committee simply implied that it was `practicable' and moved on to recommend the `contingent vote' for all single member electorates (para 29).

The second report was on the Hare-Clark system of voting and `the true voice of the electors' prepared for the Senate by the Returning Officer and the Statistcan from Tasmania. [74] The two Tasmanian authors quote extensively from Justice Andrew Inglis Clark's exposition of the merits of what he preferred to call `the Clark-Hare system' then in use in the two state electorates of Hobart and Launceston: `which enables every section of political opinion which can command the requisite quota of votes to secure a number of representatives proportionate to its numerical strength'. The two Tasmanian authors emphasise that too many opponents of PR show a misplaced interest in topics related to `the ease and convenience of the candidate' in preference to `fairer representation of the elector and his greater freedom of choice'. Their paper reviews the counting that was used for the first election of Tasmanian members and senators to the Commonwealth Parliament, striving to demonstrate that systems of PR greatly benefit `the represented' who they identify as `the Hamlet of all matters regarding representation'. This report in particular was cited as authority during the 1902 parliamentary debate over the electoral bill. [75]

The electoral bill introduced by the first post-election federal ministry was, after a false start in the House, introduced in the Senate and provided for PR as the basis for counting of the Senate vote. [76] Of interest here is the lively debate in the Senate which, although in O'Connor's words was `full of the most admirable matter', eventually led to the rejection of PR, against the warnings of the government that such a move, coupled with the adoption of a first-past-the-post system of representation might make the Senate little more than a echo of the House of Representatives, open to the charge of redundancy. [77]

When introducing the 1902 bill in the Senate, minister O'Connor quite correctly stated that this legislation was designed for `bringing the Constitution of Australia into operation'. The Labor party respected the occasion by granting its federal members a free vote on the issue. [78] Together with the accompanying franchise legislation, the electoral legislation bill aimed to provide for `the most representative Parliament, according to the truest principles of democracy, which exist in the world'. [79] O'Connor defended PR in terms of establishing the true voice of the majority, and not simply in terms of minority rights. With some force, he argued that the conventional `block-vote system' too easily protected `the choice of a minority' in the way in which it rewarded a group which, compared with any other single group, attracted the highest number of votes—despite the possible existence of a majority of votes cast against that group. And even when the majority of opinion wins the available seats, `that majority has the absolute power of securing the representation of its own opinion only, and a large number of the electors go unrepresented altogether'. The `moral aspects of the question' are considerable in that a `compact minority' from among `the two dominant parties in politics' might alone secure representation, with `all sorts of wire-pulling and log-rolling and combinations' practised in the pursuit of voter preference. [80]

The proponents of PR stopped well short of advocating minority rights to rule, but they did defend minority rights to representation. They explicitly accepted that democracy means that `the majority in decision must rule', and that the minority has `a right to be heard and not to rule'. [81] But for all practical purposes, `government by the people' means that the people elect their representatives who rule on behalf of the community, and the only fair system of representation is one arranged `proportionate to the opinion of the community'. Traditional forms of representation associated with `the British Constitution', and even those traditional organising principles of executive government which have been `invested with a certain amount of sacredness' are, in O'Connor's articulation of Australian constitutionalism, `altogether unsuited to modern times'. [82]

Parliament must strive to become `a true reflex of the opinion of the people' by arranging political representation so that `every shade of opinion, as far as possible, may be represented'. That phrase `as far as possible' reflects the Barton government's commitment to a modified form of the Hare-Clark system in which representation is organised according to quotas of popular votes obtained, with an institutional design priority of cultivating manageable quota-sized pockets of opinion and representation. [83]

After extensive debate, the Senate threw out the provision for PR, chiefly on the understandable fear that it would introduce a war of representation into the new federal Parliament, probably challenge the conventions of cabinet government (or `honest party government' as it was called [84]), and increase the potential of the Senate to compete for popular legitimacy with the House. Symon derided it as making the parliament `a kaleidoscope, not a representation of the majority'. [85] The problematical issue of representation was clear: `To which Chamber is the Government directly responsible?'. [86] Downer complained that `under Hare's principle...majorities will have to go to the wall'. Strong party government would be wrecked in that it would `prevent the parties working out what they desired' and so incapacitate the operation of majority rule. [87] In Symon's pithy words, PR would force governments to stoop to conquer and to work `both sides of the gutter, so to speak'. [88] The preconditions of responsible cabinet government would be eroded, in that under what the opponents cleverly called `fractional representation' political leadership would be challenged by the activity `of sections and fads', enfeebling cabinet's claim to representative leadership as `the dominant power'. How, asked Symon, could a `many men many minds' Parliament feasibly create a government, when it has all the potential to `altogether paralyze responsible government modelled upon the British system'? [89]

The great divide was that over the merits of strong party government. The proponents of PR argued that the British conventions of party government did not suit the circumstances of the new federal polity, and that to the extent that British conventions held sway then due account should be taken of electoral reform sentiment in Britain which pointed the way to the future. The continued existence of `two great parties' was at best doubtful and at worst undesirable. [90] The proponents argued that hidden minorities already held much power, in that the major parties contained `factions' dependent on the hidden influence of powerful minority groups interested in financing sympathetic parties or representatives within parties. [91] The opponents defended party government in the belief that so-called `faddists' would alter the system of government to such an extent that `the principle of log-rolling' would replace the conventions of majority government. They feared the growth of `cliques and minorities' which would fragment `the symmetry of the system' of party government, in which each of the major parties ruled in turn according to the swings of popular confidence. [92]

The push for proportionality

It is instructive to note the early assessments of contemporary authorities like Harrison Moore to the effect that Parliament had not yet (in this case, as at 1910) given favourable consideration to any scheme for PR for the Senate: as though such consideration was only natural and would one day come to pass. [93] Moore's analysis lays out the groundwork for later Senate reform and his book highlights the mood of anticipation found among many critics of the early Parliament. Moore illustrates the early sense of dissatisfaction with the Senate's electoral system: as he so clearly puts it `the existing system is, of course, open to the objection that it enables an organized plurality of voters to secure the whole representation, though it has only a small majority of votes, or, even in the case of a large number of candidates, is an actual minority of the electors voting'. [94] In a remarkably strong defence of the constitutional rights of the Senate, Moore evaluates the emerging character of the Senate by reference to its `popular basis than by its position as a House of States' or by its constitutional permanence. Further, he defended the Senate as displaying more progressive tendencies than those evident in the House of Representatives. Rejecting such traditional categories as `second chamber' and `house of review', Moore emphasises that the `actual part of the Senate in Australian politics appears to reveal a new role for a Second Chamber' especially in the areas of `informing' and `educating' which traditionalists like Bagehot thought essential to the functions of lower houses. [95]

Moore points out the potential for Senate reform. What follows is a selective listing of the major instances when PR came to the fore in national politics as a desirable alternative to the `block vote' system in the Senate. The aim of this listing is to illustrate the evolving depth and eventual breadth of attraction for PR. Seen against this background, the 1948 decision is part of an evolution of Australian parliamentary institutions that gives due recognition to a form of political representation long anticipated as an essential component of the Australian constitutional system.

The Labor party was ambivalent about the merits of Senate reform. By 1919 the party had committed itself to abolition of the Senate but this represents something of an ambit claim. As we shall see, prominent Labor figures broke through the mould of formal party policy to pose PR as an alternative to abolition. The traditional Labor view is nicely captured by its original prime minister, Watson, who told the 1912 party conference that PR would entrench minority representation, and with it minority legislation. At the same party conference one of the party's backbench members spoke out against PR as producing `a sort of shandy-gaff politician' and raised the awful prospect of a proportionally represented House of Representatives that `could only work by compromise'. Labor again defeated an interest in PR at the 1918 party conference. [96]

During debate on the 1922 electoral bill, the future Labor Prime Minister James Scullin recorded his support for the introduction of PR for Senate elections. [97] The passage is short but significant. Scullin states that the existing system `is obsolete': a system that allows Labor in 1910 to win all 18 seats and then allows Labor to win only one in 1919 `does not secure the representation of the electors proportionately, and we should try to give representation on the basis of the strength of the great sections of the electors'. Apart from the reported preference for PR by Curtin at the 1936 party conference, Labor had little to say for Senate reform until the time of the Chifley government. [98]

But there were many interesting noises made on the other side of national politics. The leader of the Liberal party, Joseph Cook, included a policy in support of PR for Senate elections during the 1913 (which he won) and the 1914 general elections (which he lost). [99] We also find fascinating instances like Glynn's October 1914 motion that: `with a view to securing as far as possible representation of parties in proportion to their strength at the polls, the method of election by quota and transferable vote be adopted as the method of choosing senators'. [100]

Another distinctive instance is the 1915 report of the Royal Commission on Commonwealth Electoral Law and Administration. [101] This inquiry was generated by disputes over the conduct of the 1913 general election, including allegations over official interference involving the Minister for Home Affairs King O'Malley. The report provided a major stimulus to the development of a professional body of electoral administrators under the direction of a Chief Electoral Commissioner with powers stipulated in law. In a report containing many detailed observations about the practical management of national elections, including recommendations for compulsory voting generally and preferential voting in House of Representatives elections, the commissioners boldly state: `In view of the large area represented by Senators, a system of PR should be adopted; applying, of course, to each separate State' (para 12; cf paras 11, 31).

The 1919 introduction of preferential voting owes much to the rise of the Country party as a demanding and capable third force in Australian politics and it is important to acknowledge that the Country party was also inclined to support a change to PR for the Senate. [102] According to Geoffrey Sawer: `The budding Country Party group tried unsuccessfully to obtain PR on Hare-Clark principles for the Senate, claiming with justification that the application of the simple alternative vote would tend to give all the Senate seats in a State to one party'. [103] The following report of events in 1919 and 1922 confirms this impression but also indicates that the interest in PR was far from confined to Country party circles.

Proponents and opponents of proportional representation

Government changes to the Electoral Act in 1919 and 1922 sparked extensive parliamentary debate over the merits of PR, with several proposals for the adoption of PR brought forward to test the mood of both the House of Representatives and the Senate. All the proposals for PR were unsuccessful. The government proposals were more successful. The 1919 changes included the establishment of preferential voting and the 1922 changes included the party grouping of candidates to make party preferential voting easier. Neither change would have come about if it had not coincided with the electoral interests of the major parties. The illustrations that I will use here come from one episode of a failed attempt at a second-reading amendment in 1919 [104] and from several episodes from 1922 of failed second reading amendments [105], committee stage amendments [106], and also votes over third reading of bills. [107] The second set of episodes took place when New South Wales was operating on a system of PR (1920-1926) that was attracting considerable national interest. [108]

Those proposing PR for the Senate were never government ministers and they included many representatives of the smaller States. Proponents tended to argue that the Senate was not acting as a States' house because its party composition was driven by the changing tides of electoral popularity sweeping the lower house: the Senate either duplicated the party in power in the House of Representatives or reflected the lost popularity of the majority that had preceded the current government. Rarely if ever did the Senate provide a balance of representation between the two major party blocs: Labor and non-Labor. Proponents of change noted that periods of opposition domination of the Senate can and did occur but they were not convinced that this antagonism to the political party dominating the House of Representatives provided adequate safeguards for state interests, particularly the interests of the smaller states.

Federalism was clearly an issue of considerable importance to the proponents of PR but they were not alone in their reliance on the rhetoric of federalism. The opponents of PR challenged the advocates of change to demonstrate how PR would enhance the capacity of the Senate to perform its original role as protector of States' interests. The interesting response highlighted another model of federalism that went beyond the simplistic rhetoric of states' rights to the more sophisticated rhetoric of minority rights, including those of national minorities. In this more ambitious view, the equal representation of each of the states gave the Senate its legislative leverage and it was now up to Parliament to ensure that those using this leverage properly reflected the range of deserving if unrepresented interests across the nation. Proponents of change argued that the prevailing electoral system failed to protect the interests of many minority interests and that PR would enable the Senate to claim to represent the vulnerable minorities that the government-sponsored changes in 1919 and 1922 failed to protect. For example, Senator O'Keefe supported the 1919 push for PR on the basis that `the party spirit' dominant initially in the House of Representatives had long ago upset the original hopes that the Senate would act as a States' house; now that the Senate too was a party house it was time to widen the span of party representation to protect those interests that remain unrepresented by `the party spirit' of the lower house. [109] Proponents also argued that the thesis about the Senate being primarily a States' house was falsified by the constitutional protection that each state must be represented by six senators rather than one senator, thereby inviting diversity of representation which Parliament had a duty to protect. [110]

Proponents of PR argued that preferential voting without PR in effect provided for `the block-vote under a new name'. [111] Proponents held fears that `the very strong shackles, ties, and limitations of the party system' were suppressing the representation of minority opinion. [112] The presence of minorities was an essential ingredient of parliamentary deliberation: proponents argued that `in order to ensure the Senate being a deliberative assembly, the principal sections of public opinion in the nation should have satisfactory representation'. [113]

A common distinction that helps clarify the nature of minorities was that between `the great sectional interests of this country' and the interests of the great political parties which have failed to take up the interests of those vulnerable minorities not capable of extracting concessions from the major parties. For instance, the Country Party was put forward as an example of a `section' excluded from the Senate and a political party supportive of PR. [114] Although proponents often justified PR by reference to `the principle of minority representation', most proponents conceded that not all minorities could hope for representation. [115] A Parliament with regular election for only three senators for each state would not be capable of sharing representation among very many groups and `could not possibly represent, directly and in detail, small bodies of public opinion outside supported by only a very inconsiderable section of the people'. [116] Senator Elliott drew a distinction between minorities as such and `the great minorities' deserving of parliamentary representation. [117]

Advocates of PR put their case in terms of `equitable justice' or `plain electoral ethics': `the Senate at all times should be a reflex of the opinions of the community'. [118] In response to government fears that PR would unleash heatwaves of heterogeneity, proponents responded with defences of `the composite opinion of the community'. In this distinction, `composite' highlights the positive qualities whereas `heterogeneity' highlights less consensus-building qualities. The alternative to PR was to condemn the Senate to the representatives of `the momentarily dominant majority on the momentary questions of the day'. [119]

Many proponents publicly stated their knowledge that PR would not be easily conceded by the major parties and that the struggle would be a long one. As stated by Tasmanian senator Bakhap: `We know, with the present *personnel* of this Parliament, that there is very little hope of it being embodied in our statute-book, but it is our duty to hold up to the people something worthy of achievement'. [120] They knew that the Barton government had attempted to legislate for PR and senators in particular appreciated the irony that their parliamentary chamber had put paid to the plans of the Barton government. The feasibility of PR was driven home by reference to the operation of similar systems in Tasmania since 1909 and in New South Wales from 1920-1926. The Government of Ireland bill was another frequently cited inspiration. [121] To do nothing to advance PR would be to risk public disfavour. To proponents of Senate reform, the practical danger was that public opinion would not tolerate a parliamentary chamber `in which perhaps one half of the electors are unrepresented'. This would be `a splendid argument for the abolition of this Chamber'. PR would make the Senate `less a target for ridicule and disrespect'. [122]

But it was the opponents of Senate reform who won these rounds of parliamentary struggle. Many arguments were clever distractions rather than admirable feats of parliamentary deliberation. For instance, opponents successfully defended the powers and composition of the Senate on the basis that compared with the lower house it was `the more democratic house because it speaks for a larger constituency'. And again, at times opponents would contend that if PR was really desirable then it was more appropriate to the House of Representatives which claimed to represent population rather than geography. [123]

More seriously, opponents argued that PR would fragment the solid voice of each state with the prospect of each state sending to the Senate `six different sets of opinions, and all more or less representing minorities'. [124] How could the Senate ever act as States' house, thundered senator Pearce, if through PR `we would divide up the Senate into a series of sections representing varying political views'. Imagine, he continued, the existence of a political party with one representative from each state but none capable of really representing their state `because their primary function would be to represent the political views' of their section. [125]

Opponents contended that the purpose of the Senate as a States' house precluded PR because that would ensure that State representatives were `divided, not by interests of the States, but by factions as represented by quotas'. [126] Critics feared that there were `wrangles enough' with the clash of state interests `without superimposing upon them the wrangling of the representatives of rival sections in the different States'.

Opponents of Senate reform won the day with their picture of a reformed Senate behaving as a `House of proportions...a House of brawling political factions' and as `a place of brawling votaries'. [127] Behind all these incidental defects loomed that one basic defect: responsible government might become impossible because of Senate stalemates between equal representation of government and opposition forces. Responsible government required the `party system' as its basic operating rule, and opponents won the day with their rally to the support of `the system of majority rule'. [128]

All of the above material comes from the record of the Senate. There is one important episode from the record of the House of Representatives in 1922, in addition to the supportive comment from Scullin quoted a few pages earlier. [129] Country party leader Earle Page feared that the government bill to permit the grouping of party candidates on Senate ballot papers would consolidate the party characteristics of the upper house and ensure that it followed the party swings of the lower house. Arguing that the existing system was `recognised by everybody throughout Australia to be ludicrous', Page warned that `the one-party character of the Senate' would eventually cause great public offence when the community understood that there were alternatives capable of reforming Senate representation to include `all classes of the people'. The `very essence of representative government is that all sections of the community should have their spokesmen in Parliament'. Page proposed a series of committee stage amendments to introduce PR for the Senate, also providing for the record a chart of comparable countries where PR was in place or being introduced, particularly in relation to upper houses. Page's amendments were defeated by 9 votes, Scullin voting with Page.

Further evidence

The interest in PR did not end there. Country party leader Page included policies for PR during election campaigns in the early 1920s and also advocated that a constitutional convention be organised on PR of interested political parties. [130] Further, Stanley Bruce was also reported to be favourable to Senate reform based on PR. [131] As late as the 1943 general election, Page was still advocating PR for the Senate. [132]

The Peden Royal Commission on the Constitution of the Commonwealth (1927-1929) included as one of its commissioners T R Ashworth, co-author of *Proportional Representation* examined earlier. The royal commission noted that the introduction of preferential voting for House and Senate elections, which was designed to secure parliamentary representation for candidates with the highest number of votes, `gives no room for the representation of minorities'. The Report noted the historic imbalance among Senate parties and regretted `that there may be no opportunity for the presentation of different points of view'. The commissioners argued that `the Senate would be better qualified to act as a chamber of revision if senators were elected under a system of PR' which they recommended for adoption on an experimental basis for ten years. [133]

The `Supplement and Recommendations by Mr Ashworth' is the Royal Commission's most extensive treatment of PR. [134] Ashworth distanced himself from the majority's attempt to `excise minor disabilities or cure minor ailments' and called for `a complete change in the character and constitution of the Senate'. Repeating the earlier thesis about the merits of two party systems elected under list systems, Ashworth emphasised that `it becomes the duty of minorities to work through the constitutional parties'. Preferential voting `is a direct encouragement to party multiplicity'. The Senate is `slowly atrophying' and given that it has failed to represent the States it should be reformed to represent something new: in this `age of association' it should be reformed to represent `the various interests and vocations' with the German Federal Economic Council as one possible model.

Although the 1929 royal commission had no immediate effect, it did provide a resource for many generations of later advocates of Senate reform. One source from the Australian Archives is the October 1935 cabinet memorandum prepared for the Lyons government by Thomas Paterson, Minister for the Interior. This memorandum canvasses the general issue of PR and although it does not advocate a change, it reflects a growing confidence within government that a change to PR can be made to work effectively.

The Page initiative of 1922 is used as an illustration of the periodic eruption of interest in PR within even the ranks of the House of Representatives. It would seem that nothing came of this 1935 cabinet interest.

I can conclude this section with one such episode of advocacy involving rising Country party leader John McEwen. [135] In a general debate in 1937 on a supply bill, McEwen directed his comments at the Labor opposition, which at the time had only three Senators, as though to test their interest in Senate reform. Claiming to be interested in greater parliamentary representation for minorities, McEwen wondered aloud what it would take for `a great political party to be always assured of some representation in that chamber, without it being necessary for it to be beholden to any other political party in the arrangement of joint tickets for candidates'.

Was this a plea for help to Labor from the Country party which suffered at the hands of its conservative allies? McEwen surveyed the record of the 1890s constitutional conventions and detected strong support for the principle of PR, driving home his message with his call that `Parliament should declare that the time is ripe for a real reform of the method of electing senators'. Drawing on recent electoral statistics, McEwen contended that `there has been a very substantial minority body of political opinion which has been denied representation' in the Senate, and he called on the government to bring in legislation to reform the Senate `as a democratic body in which it is possible for minorities to secure representation'. The parliamentary record has no obvious response from the serving government but there is a fascinating reply from Labor's Lazzarini which taunts McEwen almost exactly as Menzies was later to taunt the Chifley government in 1948. [136] Menzies argued that Chifley's Senate reform package was really designed to secure a Senate power base in the event that Labor lost control of the House of Representatives at the 1949 election. So too Lazzarini claimed that McEwen's only real interest was in securing a consolation prize of upper house seats for his Country party in the event that Labor's stocks continued to rise and sweep it into office and the Country party out of its House of Representatives seats at the next general election.

Reviewing Labor's legacy

The 1948-49 changes have transformed the Senate. But it has taken many years of close study for Australian political analysts to shake off their traditional views about the subsidiary role of the Senate in Australian government. One of the best formulations of the perverse pathology attributed to the Senate comes from Australian political psychologist A F Davies. [137] Writing during the late 1950s and early 1960s when the reformed Senate was itself still learning about the potential reach of its new institutional capacity, Davies damned the new Senate with the faint praise appropriate to the pre-reformed Senate. With his characteristic cleverness, Davies described the Senate as the maniac/depressive institution in Australian government: he saw the Senate as operating through `manic and depressive phases, so to speak': manic in pursuit of its own interests when dominated by an opposition majority and depressive and unproductive when dominated by a government majority. [138]

This is exactly the view of the Senate that one finds in Calwell's later contributions. Despite his role in fashioning the 1948 changes, Calwell reflects the traditionalism of an earlier version of Australian democracy where majoritarianism rules supreme. Calwell's chief manifesto *Labor's Role in Modern Society* is virtually silent on the place of the Senate. His later memoirs *Be Just and Fear Not* report little about the introduction of PR, other than a reference to `our wretched, undemocratic, preferential voting system' on which it was based. [139]

What little Calwell does have to say about the place of the Senate reflects a very traditional Labor stance on the abolition of the Senate. On the eve of the 1972 electoral victory of the Whitlam Labor government, Calwell repeats the traditionalism about the importance of the `abolition of the Senate' which he sees as `a useless institution', a `shocking waste of public money', and a `time wasting, expense-consuming political liability'. This from the founder of the modern Senate!

Whatever his motivations in 1948, Calwell's considered view was that the Senate is fundamentally anti-democratic because of its `non-representative character', by which he means its lack of proportionality of representation with population: he sees equal state representation as the Senate's enfeebling birth defect. Calwell maintains to the end his antagonism to the Senate which to him has `no moral rather than to try to frustrate the will of the people, as expressed at the previous House of Representatives election'. [140]

A more challenging version of the same thesis is presented in Whitlam's *The Truth of the Matter*. Where can one turn to try to find a contemporary Labor account of the Senate that is consistent with the best hopes of 1948? Consider this contrast between two Labor leaders of the opposition: Calwell and Hayden who had been a minister at the time of the 1975 dismissal, yet somehow has found room for praise of the Senate. [141] Hayden's perspective is the mirror opposite of that of Calwell: where Calwell cools on the Senate after PR, Hayden warms to it. Hayden brings a new sense of realism to the Labor debate over the Senate. He acknowledges that even before Federation there was an expectation, even among Labor, that the Senate would act as a party house. Hayden also acknowledges the history of Labor's use of its occasional control of the Senate to check governments of the day, as in 1913-1914 and 1914-1951. Other contributors to this conference will judge where to place the mark between the two assessments of Calwell and Hayden. Hayden does not hide his estimate of the value of the contemporary Senate as a foundation for Australian democratic governance. [142]

Conclusion

Let me draw-out from this lengthy history three of the most significant illustrations of the case for proportional representation. Each case illustrates a distinctive voice of parliamentary reform: the `minorities voice' as mobilised by Catherine Helen Spence from South Australia, one of the most significant non-aligned or independent political actors around the time of Federation; the `multicultural voice' as raised by Senator Thomas Bakhap from Tasmania, perhaps the first Chinese- speaking Commonwealth legislator: a progressive Liberal who stands out as a wonderful early model of Australian multiculturalism; and finally the `reform voice' as articulated by Senator Albert Gardiner from New South Wales, Labor leader of the Opposition in the Senate during the Hughes governments, who tried to hold up the 1918 consolidation of Australian electoral laws into a comprehensive code until the government saw the merit of PR.

Each of these voices represents something deeply honourable in the tradition of Australian public life. All were advocates of proportional representation but they were not the voices that are, or at least not yet, recorded in our history books on this issue. To me, these three voices represent core components of the enduring case for PR in the Senate. They were the voices who sustained the case until enough party leaders were persuaded of the merits of PR. To the extent that we credit the wisdom of the party leaders and forget the tenacity of these forgotten voices, we distort the history of PR in Australia and weaken its real achievement.

Think first of the contribution of Spence, who is to my mind a neglected founder of the Federation framework. She dominates the scene before Federation as one of the most articulate and politically astute advocates of PR, linking British political theory with Australian, and especially Tasmanian parliamentary practice. Spence narrowly lost out on being elected to the 1897-98 Constitutional Convention on the platform of electoral reform. Her advocacy of the electoral rights of minorities (ie, rights to representation as distinct from rights to rule) provides much of the moral energy that was to motivate proponents of PR from Federation through to the 1940s. I think that her feminist case for minority representation is still relevant as a threshold test of a representative assembly.

Think next of Senator Bakhap, a largely forgotten Senator (there are many in that large club) who appears to have been the son of Australian parents, later raised in a Chinese-Australian family involved in mining and commerce in Victoria and Tasminia. Before election to the Senate, Thomas Bakhap was a Liberal member of the Tasmanian parliament where he would have experienced the practical operations of one influential version of PR.

In the Commonwealth Parliament his career was not rewarded by any ministerial office (indeed this is the case for most senators, and not necessarily a bad thing). But executive governments did recognise Bakhap's cultural and business competencies in the early bridge-building exercises between Australia and the modernising China: he led one of Australia's first trade missions to China after World War One. A frequent contributor to Senate debates, Bakhap is one of those now-forgotten voices who spoke up in defence of PR, just as he spoke up during the First World War in defence of racial tolerance. Indeed, the two issues can be closely related, especially when we think of their common focus on the protection of diversity within a democracy. Bakhap shares with Spence a commitment to addressing representation in terms of political morality, or what he called `electoral ethics'.

Finally, think of Albert Gardiner, Labor's lonely leader of the Opposition in the Senate at the end of World War One when the Hughes government introduced preferential voting, initially for the House of Representatives only. Senator Gardiner led a rump of an Opposition which in numerical terms was no match for the majority of Nationalist Senators. But when the time came, he spoke up in defence of PR: first during the 1918 debates on the consolidated Electoral Act and subsequently during debate on the many machinery amendments which filled out the Electoral Act during the early 1920s. Unlike Bakhap, Gardiner was leader of a parliamentary party. In 1918 he welcomed the introduction of preferential voting into the lower house but called for its extension to the Senate, which was done in 1919. Gardiner did not stop there but called for the further electoral reform of basing the Senate on PR. He lost the vote, but we should not lose the recollection of his voice.

Let me conclude with a minor word about a major theme: federalism. The main point is not whether the Senate has acted as a states' house (I happen to think that it has and still does). The main point is that the federal Constitution provides for equal representation of each of the states in the Senate. Why is this important? There are many answers, but among them should be the answer that it is important to protect minorities: particularly groups and individuals in the smaller states who would find it difficult to have their voices heard and to secure representation in the national Parliament. The Constitution's regime of representation includes equality of state representation on the basis that the populations of the smaller states include vulnerable minorities. I again emphasise that the framers who devised this regime of representation with its protection of equality of state representation were open to the practical option of proportional representation in the states' house. Seen in historical perspective, the 1948 turn to PR was not really a regrettable detour, as some would have it, but more of a homecoming. By that I mean that the Senate which from its beginnings has represented the minor states now also represents minorities within the states: within the big states as well as smaller ones.

That is no small achievement as we prepare to celebrate the centenary of Federation. This achievement is yet another demonstration of the originality and remarkable vitality of the Australian political system in devising new and effective forms of representative government.

Footnotes

[1] L. Barlin (ed), *House of Representatives Practice,* 3rd edn, Canberra: AGPS, 1997, p. 108.

[2] P. Weller (ed), *Caucus Minutes. Volume 3:* 1932-1949, Melbourne, Melbourne University Press, 1975, p. 417; L. F.Crisp, *The Australian Federal Labor Party 1901-1951*, Melbourne, Longmans, 1955, pp. 228-9.

[3] A. Fusaro, 'The Effect of Proportional Representation on Voting in the Australian Senate', *Parliamentary Affairs*, vol 20, number 4, Autumn, 1967, p. 330.

[4] L. F. Crisp, op. cit., p.219.

[5] J. Edwards, 'The Senate of the Commonwealth of Australia', *The Table*, vol 17, 1948, p. 243; cf G. Souter*, Acts of Parliament,* Melbourne: Melbourne University Press, 1988, p. 397.

[6] L.F. Crisp, *Ben Chifley,* Sydney, Angus and Robertson, 1961, p. 369.

[7] G.S. Reid and M. Forrest, *Australia's Commonwealth Parliament,* Melbourne: Melbourne University Press, 1989, p. 99; A. Fusaro, 'The Australian Senate as a House of Review' in C.A. Hughes (ed), *Readings in Australian Government,* St Lucia: University of Queensland Press, 1968, pp. 129-130; J. Rydon, 'Electoral Methods and the Australian party System 1910-1951' in C.A. Hughes, op. cit., pp. 183-6; Iain McLean, 'E.J. Nanson, Social Choice and Electoral Reform', *Australian Journal of Political Science,* vol 31, number 3, November, 1996, p. 380.

[8] W. Denning, *Inside Parliament,* Sydney: Australian Publishing Company, 1947, pp. 61-70; A. Fusaro, 1968, 'The Australian Senate as a House of Review' in C.A. Hughes. op. cit., pp. 123-139.

[9] L.F. Crisp, *The Australian Federal Labor Party*, op.cit., p. 222.

[10] Reid and Forrest, op. cit., pp. 118-122.

[11] Weller, op. cit., p. 421.

[12] Souter, op. cit., p. 395.

[13] Weller, op. cit., pp. 438-9.

[14] Weller, ibid., p. 439.

[15] L.F. Crisp, *Ben Chifley*, op. cit., pp. 368-9.

[16] F. Daly, *From Curtin to Hawke,* revised edition, Melbourne, Sun Books, 1984, p. 51.

[17] C. Kiernan, *Calwell*, Melbourne, Nelson, 1978, pp. 149-150; cf J.R. Odgers, 'The Senate: case for the defence', *Australian Quarterly*, vol 20, number 4, December, 1948, p. 91.

[18] R. Lucy, *The Australian Form of Government,* Melbourne: Macmillan, 1988, p. 210.

[19] F. Daly, op. cit., p. 52; cf Souter, op. cit., p. 396.

[20] F. Daly, ibid., p. 52.

[21] *CPD*, (*Commonwealth Parliamentary Debates*), 16 April, 1948, pp. 965-68, 1295-96; cf McEwen, p. 1014; Beazley, 28 April, p. 1171. See also Souter, pp. 395-6.

[22] *CPD*, 21 April 1948, McKenna, p. 1474.

[23] *CPD*, 21 April 1948, Menzies, pp. 1001-3.

[24] See for examples exchanges between Evatt and Beazley, *CPD*, 29 April 1948, pp. 1254-6, and McKenna, p. 1475.

[25] *CPD*, 23 April 1948, Holt, pp. 1102-3.

[26] *CPD*, 28 April 1948, Lang, pp. 1137-41.

[27] *CPD*, 28 April 1948, Beazley, p. 1174.

[28] See for example Abbott, *CPD*, 28 April 1948, pp. 1180-83.

[29] See for example Barton, *Convention Debates*, Australasian Federal Convention, 1891, 1897-98, 5 volumes, (republished Sydney: Legal Books 1986), Adelaide, April 1897, pp. 435ff.

[30] See for example, *Convention Debates*, op. cit., Isaacs, 26 March 1897, p. 170; Solomon, 30 March 1897, p. 265.

[31] See for example Lyne, *Convention Debates*, 26 March 1897, p. 163.

[32] Consider B. Galligan, *A Federal Republic*, Melbourne: Cambridge University Press, 1995, pp. 63-86; J. Uhr, *Deliberative Democracy in Australia: The Changing Place of Parliament*, Melbourne, Cambridge University Press, 1998, pp. 77-81.

[33] J. Quick and R. Garran, *The Annotated Constitution of the Australian Commonwealth*, Sydney: Legal Books, 1976 (originally 1901), p. 126.

[34] See for example Thynne, *Convention Debates*, 6 March 1891, pp. 104-8. My thanks to Wayne Hooper for drawing this to my attention.

[35] *Convention Debates*, ibid.

[36] Reid and Forrest, op. cit., p. 88.

[37] Quick and Garran, op. cit., p. 444.

[38] Quick and Garran, ibid., pp. 386-7 and 422.

[39] See for example Clarke, *Convention Debates*, 30 March 1897, p. 304.

[40] Howe, *Convention Debates*, 31 March 1897, p. 358.

[41] Glynn, *Convention Debates*, 15 April 1897, pp. 677-8.

[42] *Convention Debates*, 20 January 1898, p.2.

[43] Deakin, *Convention Debates*, 15 April 1897, p. 673; J. Quick and R. Garran, op. cit., p. 426.

[44] See for example O'Connor, *Convention Debates*, 15 April 1897, p. 673; Clarke , op. cit., pp. 367-8.

[45] See for example Barton, 7 March 1898, p. 1924; cf *CPD*, 26 and 27 February 1902 p. 10343 and p. 10432; Reid and Forrest, op. cit., p. 85; Graham, op. cit., p. 205.

[46] Quick and Garran, op. cit., p. 412.

[47] ibid., p. 439.

[48] ibid., pp. 41, 55 and 119; J. Uhr, 'The Canadian and Australian Senates: Comparing Federal Political Institutions', chapter 5 in B.W. Hodgins et al (eds), *Federalism in Canada and Australia: Historical Perspectives 1920-1988*. Trent University. Peterborough, Canada, 1989, pp. 130-146; J. Uhr, *Deliberative Democracy*, op. cit., p .66-69.

[49] See for example *CPD*, 26 February 1902, Playford, p. 10327; 27 February 1902, Symon, p. 10426.

[50] See for example O'Connor, *CPD*, 31 January 1902, p. 9535 and pp. 9541-42.

[51] M. Harward and J. Warden, (eds), *An Australian Democrat*. Hobart,Centre for Tasmanian Historical Studies, University of Tasmania, 1995.

[52] See generally Jennifer Hart, *Proportional Representation* . Oxford, Eng, Clarendon Press, 1992, pp. 24-55; cf M. Sawer and M. Simms, *A Woman's Place*. (2nd ed) Sydney,Allen and Unwin, 1993, pp. 1-16.

[53] C.H. Spence, 'Autobiography' in Helen Thomson (ed), *Catherine Helen Spence*, St Lucia, Qld, University of Queensland Press, 1987, pp. 429-30, p. 437 and p. 440.; cf Jennifer Hart, op. cit., p. 45.

[54] Hart, op. cit., pp.49-51.

[55] Reid and Forrest, op. cit., pp. 87-94.

[56] J. S. Mill, 'Considerations on Representative Government' in J. Grey (ed) *On Liberty and Other Essays.* Oxford, Eng., Oxford University Press, 1991, p. 325.

[57]ibid., pp. 386, 388 and 391.

[58] ibid., p. 314; cf Uhr, *Deliberative Democracy,* op. cit., pp. 70-74.

[59] Mill, ibid., pp. 315-6 and pp.320-22; cf Hart, op. cit., pp. 44-45.

[60] McLean, op. cit., pp. 369-385; Reid and Forrest, op. cit., pp. 88-89. See also D Headon, `No Weak-Kneed Sister', ch 3 in Helen Irving (ed) *A Woman's Constitution*. Sydney: Hale and Iremonger, 1996, pp. 42-54.

[61] Hart, op. cit., pp. 45-6.

[62] C.H. Spence, op. cit., pp. 465 and 467; Sawer and Simms, op. cit., pp. 4-5; J. Uhr, *Deliberative Democracy,* op. cit., pp. 110-111. See also Ann Millar, `Feminising the Senate', ch 8 in Helen Irving (ed) *A Woman's Constitution*, Sydney, Hale and Iremonger, 1995, esp. pp. 128-136.

[63] Spence, ibid., p. 466.

[64] p. 467 and pp. 470-71; see also Glynn, *Convention Debates,* 15 April 1897, p. 678.

[65] Graham, op. cit., pp. 204-6; Reid and Forrest, op. cit., pp. 92-94.

[66] T.R. Ashworth, and H.P.C. Ashworth, *Proportional Representation Applied to Party Government*. Melbourne: Robertson and Co, 1900, pp. 200-204.

[67]ibid., p. 87.

[68] ibid., pp. 25-6.

[69], ibid., pp. 41-45 and pp. 147-8.

[70] ibid., p. 197.

[71] ibid., pp. 79, 97-103, and pp. 204-5.

[72] S. Bennett, 'These New Fangled Ideas' in Haward and Warden, op. cit., p. 157; M. Mackerras, 'The Operation and Significance of the Hare-Clark System', Haward and Warden, op. cit., p. 170.

[73] See for example *CPP*, 1901-02, vol. 2, pp. 203-7; cf. Graham, op. cit., pp. 205-6.

[74] See for example *CPP*, 1901-02, S/46, pp. 1-8.

[75] See for example, *CPD*, 31 January 1902, O'Connor, pp. 9541 and 6 March 1902, pp. 10709-11; Syme, p. 10430.

[76] Reid and Forrest, op. cit., pp. 94-102; Maclean, op. cit., p. 379, J. Uhr, *Deliberative Democracy*, op. cit., pp. 109-113.

[77] See for example O'Connor, op. cit., p. 10701; Keating, CPD, 1902, pp. 10432-33.

[78] See for example O'Connor, ibid., p. 9529; G. S. Reid and M. Forrest, op. cit., p. 104.

[79] See for example O'Connor, ibid., p. 9530.

[80] See for example O'Connor, ibid., pp. 9535-6 and pp. 9541-42.

[81] See for example O'Connor, ibid., p. 9537; *CPD*, 26 February 1902, Best, p. 10349; cf Graham, op. cit., pp. 206-7 and p. 216.

[82] See for example *CPD*, 31 January 1902, O'Connor, p. 9537; Best, pp. 10343-49.

[83] See for example O'Connor, ibid.,, p. 9541; Keating, 27 February 1902, pp. cit., pp. 10431ff.

[84] See for example Symon, *CPD*, 27 February 1902, p. 10425.

[85] See for example Symon, ibid., pp. 9759 and pp. 10417-19.

[86] See for example Symon, ibid., p. 10415.

[87] See for example Downer, *CPD*, 26 February 1902, p. 10327 and p. 10338.

[88] See for example Symon, op. cit., p. 10415.

[89] See for example Symon, ibid., pp. 10418-19 and pp. 10421-22.

[90] See for example Keating, op. cit., pp, 10441-43; O'Connor, 6 March 1902, pp. 10705-06.

[91] See for example O'Connor, ibid., pp. 10706-07.

[92] See for example, *CPD*, 5 March 1902, Smith, p. 10631; 26 February 1902, Downer, p. 10338; 19 March 1902, Millen, p. 11019; 19 March, 1902, Baker, pp. 11007-10.

[93] W.H. Moore, *The Constitution of the Commonwealth of Australia*, (2nd edn). Melbourne: Maxwell, 1910, pp. 115-117 and pp. 150-153.

[94] ibid., p. 115.

[95]ibid., pp. 116-17 and pp. 152-155.

[96] *The Australian Federal Labor Party*, op. cit., p. 218.

[97] See for example Scullin, *CPD*, 14 September 1922, pp. .2283-4.

[98] *The Australian Federal Labor Party*, p. 222.

[99] G. Sawer, *Australian Federal Politics and Law 1901-1929.* volume 1, Melbourne: Melbourne University Press, 1956, p. 128.

[100] See for example Glynn, *CPD*, 28 October 1914, p. 410; G. Sawer, op. cit., p. 149.

[101] *Commonwealth Parliamentary Papers*, 1914-1917, vol 2, part 1, pp. 435-453.

[102] Sawer, op. cit., pp. 158-9;

[103] ibid., p. 169.

[104] *CPD*, 15 October 1919, pp. 13308-13345.

[105] *CPD*, 2 August 1922, pp. 973-995.

[106] *CPD*, 9 August 1922, pp. 1203-1222.

[107] *CPD*, 23 August 1922, pp. 1569-1580.

[108] R.S. Parker, *The Government of New South Wales.* St Lucia, Qld, University of Queensland Press, 1978, pp. 19-21.

[109] See for example O'Keefe, *CPD*, 15 October 1919, p. 13344.

[110] See for example Keating, *CPD*, 9 August 1922, p. 1209.

[111] See for example Needham, *CPD*, 15 October 1919, p. 13309.

[112] See for example Pratten, *CPD*, p. 13321.

[113] See for example Bakhap, *CPD*, p. 13327.

[114] See for example Elliott, *CPD*, 2 August 1922, pp. 977-78; Gardiner, *CPD*, 9 August 1922, p. 1218.

[115] See for example Bakhap, *CPD*, 23 August 1922, p. 1571.

[116] Keating, *CPD*, 15 October 1922, p. 13336.

[117] Elliott, op. cit., p. 1205.

[118] Bakhap, *CPD*, 2 August 1922, p. .987; and 15 October 1919, p.13325; see also Pratten, p. 13320.

[119] Keating, *CPD*, 15 October 1919, p. 13335-6; and 9 August 1922, p. 1210

[120] See for example Bakhap, *CPD*, 15 October 1919, p. 13326.

[121] See for example Keating, *CPD*, 15 October 1922, p. 13336.

[122] See for example Bakhap, *CPD*, 15 October 1919, p. 13325; O'Keefe, p. 13343; MacDonald, p. 1570.

[123] See for example De Largie, *CPD*, 2 August 1922, p. 974; Pearce, *CPD*, 9 August 1922, p. 1580.

[124] De Largie, *CPD*, 2 August 1922, p. 974.

[125] Pearce, *CPD*, 9 August 1922, p. 1206.

[126] Pearce, ibid, p. 1207.

[127] See for example Lynch, *CPD*, 9 August 1922, p. 1221; 23 August 1922, pp. 1575.

[128] See for example De Largie, op. cit., p. .974 and p. 976; Millen, *CPD*, 9 August 1922, p. 1219.

[129] CPD, C, 15 September 1922, pp. 2331-6 and pp. 2472-74.

[130] G. Sawer, op. cit., pp. 183-4 and p. 223.

[131]Crisp, *The Australian Federal Labor Party*, op. cit, p. 221.

[132] G. Sawer, op. cit., p. 73.

[133] J. Peden (Chair), *Report of the Royal Commission on the Constitution,* Canberra: Government Printer, 1929, pp. 42, 47-48 and 267.

[134] ibid., pp. 277-93.

[135] *CPD*, 24 June 1937, pp. 352-5.

[136] *CPD*,24 June, 1937, pp. 360-61.

[137] A.F. Davies, 1966, *Australian Democracy*, (2nd edn), Longmans. 1966, pp. 38-46.

[138] ibid., p.42.

[139] A.A. Calwell, *Be Just and Fear Not*, Hawthorn, Vic., Lloyd O'Neil, 1972, p. 260.

[140] ibid., pp. 253-54.

[141] B. Hayden, *Hayden : An Autobiography*, Sydney: Angus and Robertson, 1996, pp. 241, 288 and 544.

[142] B. Hayden, ibid., pp. 545-47.

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