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TWELVE IDEAS FOR REINVIGORATING AUSTRALIAN DEMOCRACY

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March 2025

Twelve Ideas for Reinvigorating Australian Democracy
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Foreword

In *The Rise of the Insiders*, I made the point that many Australians are concerned that they no longer have a say in the major decisions that are being made in their name in Canberra and in the state capitals.

This exposes a deficiency not only in the civic and political culture of the country, in that the parameters of public debate are being patrolled by a relatively small but influential group of institutions in politics, the media, business, and so-called civil society. But also in democratic institutions themselves. Representative democracy means nothing if the institutions that are designed to represent a community of electors are, or are perceived to be, failing to act on their priorities. This was revealed by further Institute of Public Affairs research, in which it was found that 77 per cent of Australians believe that the political agenda "is set by those employed inside the political system" compared to 15 per cent who believe that the political agenda is set by those in the general community.

In *The Rise of the Insiders*, I analysed the occupational and educational backgrounds not only of the current federal parliamentary cohort, but also the backgrounds of parliamentarians at various points in our history back to 1901. In the first parliament, only 15 per cent of parliamentarians were insiders—meaning their employment immediately prior to entering parliament was in the public service, a political party or union, in consulting or lobbying, in the media (such as a journalist) or in publicly funded research or academia. In 2025, however, 60 per cent of federal parliamentarians were 'insiders', meaning the outsiders who are subject to the regulations and rules made in parliament—those in private sector businesses, tradesmen, farmers, doctors, and engineers—are being crowded out of parliament by the insiders.

Those driving the political debate in Canberra are increasingly disconnected from the experiences and priorities of mainstream Australians. Perhaps no issue better illustrates this divide than the Voice referendum in 2023. After several years of deliberation about what form 'constitutional recognition' would take, there was a 'First Nations National Constitutional Convention' in 2017, comprised of delegates who were selected (not elected) at 'regional dialogues' from which the participants themselves were 'selected' according to the Referendum Council's arbitrary criteria. The outcome was the Uluru Statement from the Heart, which called for Voice, Treaty, Truth: the first element was the subject of the referendum and, if supported, would have amended the Australian Constitution to include a new section establishing a body to make representations to the federal government on behalf of indigenous Australians. The push from Canberra to make the Voice a reality occupied a significant amount of time and resources over the following years, particularly during the Albanese government, which made the Voice referendum its first priority.

The Voice was overwhelmingly rejected by the Australian people in all states with 9,452,792 Australians voting No against 6,286,894 voting Yes. IPA research identified that the reason Australians voted No was because they believed establishing a separate and parallel system of political representation would permanently divide Australians (Roskam, 2024). That the political class in Canberra was unaware of this and pushed ahead with the referendum should also serve as a wake-up call for Australians about how Canberra operates and its capacity to understand and represent mainstream Australia.

This disconnect is in part cultural: politics has become fully professionalised, and this in effect deters non-professionals from entering it. There is only so much time and resources that a small business owner or a farmer can devote to challenging a machine that does politics for a living.

And yet a significant cause is structural. The political system itself operates to the benefit of professional politicians, and in effect ensures that politics in Canberra represents the priorities of Canberra rather than the broader Australian community.

Take for instance how voting actually takes place in Australia. Compulsory voting combined with preferential voting plainly produces perverse outcomes. In practice, in order to lodge a valid vote in most Australian jurisdictions, an elector must not only vote, but must list in order their preferences from first to the very last. This means that in almost all cases, even when an elector chooses candidates not from the major parties, they will need to give their vote to one. This diminishes true democratic decision making and operates as a shield for the political class.

Despite this, many Australians accept as normal—or even desirable—the way we do democracy. The survey I mentioned earlier also asked people whether they believe voting should be compulsory for all voters or a voluntary choice, allowing voters to choose if they want to vote or not. The research indicates two thirds of Australians believe voting should be compulsory. This illustrates that improving Australia's democratic character is not just a political issue but a matter of public awareness as well.

The purpose of the IPA's Reinvigorating Democracy Project, of which this paper is the most recent publication, is not just to lament the decline of genuine participatory democracy, but to generate awareness that this decline is neither inevitable nor unavoidable. More pointedly, it's goal is to educate Australians about the flaws in the present system and to generate debate about reform to reinvigorate democracy in Australia.

To this end, when the Reinvigorating Democracy Project was launched, I sought out William Coleman, who is an Adjunct Professor at the University of Notre Dame Australia and was formerly Reader in the School of Economics at the Australian National University. Importantly, William edited *Only in Australia: The History, Politics, and Economics of Australian Exceptionalism*, published in 2016 about the unique direction Australia has taken on various economic and social policy fronts. His chapter, 'Australia's Electoral Idiosyncrasies', relevantly describes Australia's peculiar attachment to policies such as compulsory voting and preferential voting, which many Australians consider normal but are regarded as unusual in most parts of the world. Not only do we practice democracy strangely, but as Coleman noted in 2016, 'none of these idiosyncrasies seem to breathe the spirit of democracy.'

That 'sprit of democracy' is what this paper is seeking to cultivate. Democracy is more than just turning up at a polling place once every three or four years. The test of democracy is whether Australians have the freedom and the opportunity to participate in debate, and to have their views and values adequately represented in the major institutions of society. Reform must focus on how the political system can be improved so that it represents the views and values of ordinary Australians.

This paper then is not intended to produce the IPA's list of silver bullets that will reverse democratic decline, but to give voice to William to kick start debate about ideas for reform that could be adopted. This is a debate that is long overdue.

The Institute of Public Affairs is delighted to publish William's *12 Ideas for Reinvigorating Australian Democracy* as a critical first step in an important public debate about Australia's representative institutions.

Morgan Begg
Director of Research
March 2025

Introduction

Have you already voted, either here or elsewhere, at this election?

In Australia this strange, pointless, and perfectly daft question has been put to every voter, by law, at every election since 1902. This weird mummery testifies to a characterising vice of Australian democracy: the sacrifice of the substance of democracy for its ritualism.

That the substance of democracy is sacrificed to ritualism will not be conceded by the keepers of the mythology of Australian electoral culture. To these Australia has been a bold pioneer in modern democracy. Was not the secret ballot deployed in Australia before anywhere else in the world? To the same conclusion, one might instance the very early introduction, in the 1850s, of universal male suffrage in New South Wales and Victoria, a good 60 years before the UK; the election, rather than appointment, of the delegates to the Australasian Federal Convention of 1897-98—an unprecedented procedure for any constitutional convention at a national level; and the very early introduction of universal female suffrage, in 1902. Regrettably, there is another, less impressive side of Australian democracy. By the time ballot voting was introduced in Australia, it had long been deployed in the United States and France; and if Australia's innovation of 'secrecy' in the ballot discouraged intimidation of the voter, it also effectively disenfranchised the illiterate one. This 'early' advent is additionally marred by the fact that the same years saw the defeat of energetic attempts to democratise the Legislative Councils: in NSW the Council was not directly elected until the 1970s. To the same point, the democratic lustre of the Federal Convention is spoilt by the crudely undemocratic voting system it used to elect delegates, which left the Convention seriously unrepresentative of the state of public opinion (Coleman 2020, pp 135-140). Finally, the introduction of votes for women belies the fact that the legislation which conferred this also purposefully disenfranchised Australian aborigines, hundreds of whom until then had voted in NSW and SA.[1]

There is, then, a great gap between the self-satisfied myth of Australia's democracy and its reality. The reality is that, despite the commonplace self-congratulatory estimates, Australia's electoral processes are fossilised and bureaucratised, leaving a system that is authoritarian; mystificatory; obstructive of political exchange; stifling of political competition; misrepresenting of public opinion; destructive of meaningful political representation; enfeebling of the relationship between voter and parliamentarian; and fostering concentration rather than the dispersion of power. All in all, engendering a democratic deficit.[2]

The paper argues this contention by reviewing the most conspicuous features of the Australian democratic system, with an eye to reshaping that system to better serve a *liberal* democracy: not a democracy that fixates on blanket head counts, but one that commits to political competition, debate, parliamentarism, individual rights, and the dispersion of political power—without privileging any specific minority. In brief, the epitomisation of political freedom.[3]

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1 *Commonwealth Franchise Act 1902*.

2 A similarly mordant appraisal of the state of Anglophone democracies, including Australia, is provided by Allan (2014).

3 Among the more prominent illustrations of this conception of democracy are *The Federalist Papers*, Walter Bagehot's *The English Constitution*, J.S. Mill's *Representative Government* and *The Calculus of Consent* of James Buchanan and Gordon Tullock. It is worth noting that such 'thick' conceptions of democracy have been criticised as amounting to unwitting Trojan horses for every goal the activist cares to label 'democratic' (see Allan 2022).

Compulsory voting

The most distinctive feature of Australia's electoral practice is that voting is compulsory: a thing without true parallel anywhere else in the world.[4] What could justify this peculiar institution?

The bluntest justification of compulsory voting (CV) is that it is democratising by making the recorded vote count more representative of the state of public opinion. There is, admittedly, something of an unpleasant paradox here: compelling people to do what some wish not to do in the name of better voicing the people's wishes. Certainly, compulsory voting was born in Australia in a spirit of authoritarianism, not in any mood of letting the people have their way. Bereft of any impulse of popular support, the legislation of 1924 was contrived jointly by the large parties to deal with sagging voter turnout in the 'disillusion' succeeding the First World War, and almost surreptitiously passed through Parliament,[5] during a decade where law-makers were content to resort to compulsion to achieve their sundry goals: compulsory marketing, compulsory unionism, compulsory arbitration, compulsory military training ... and compulsory voting.

And yet, in rebuttal, there may be something in the paradox of 'compelling people to be free' when it comes to voting. Since no individual's vote makes any difference to the outcome, each voter under voluntary voting is tempted to 'free-ride' on the voting of those who share their opinions, and skip voting themselves. The sting in this observation is that some opinion groups free-ride more on their fellow members than other opinion groups, and so turnout less, and so are underrepresented. A defender of voluntary voting may hopefully counter that a remedy to free-riding lies in organised 'getting out the vote' drives. But this is a weak cure for the malady. Different groups will experience different costs in 'getting out the vote', and so different turnouts persist. It is impossible to predict in which direction these different turnouts will bias the recorded vote. But that the vote is biased seems undeniable. Thus a Pew Research report has estimated that '[US] adults with a high school education or less were [only] 29% of all voters but half of non-voters' in the presidential election of 2020 (Igielnik et al 2021). Both Labor, National and Liberal parties might well pause to ponder the impact on themselves of voluntary voting. And yet to these strictures the voluntary voting advocate has a final rejoinder: the substitution of compulsion for getting-out-the-vote activities of parties is draining of the very *raison d'etre* of political parties. Compulsion reduces, in the eyes of vote-hungry politicians, the utility of these interfaces between voter and parliament; and encourages their hollowing out, to the cost of the genuine articulation of public opinion.

An alternative justification of CV is that it makes for 'better decisions'. This suggestion may puzzle. Surely CV musters at the polling booth low motivation voters: those who are largely unaffected by, or unconcerned with, political contention and uninformed by the issues. Indeed, it musters some who are completely thoughtless, careless, and cavalier. How can summoning these to the polling booth make for better decisions? Yet it can be argued CV improves decisions by bringing to vote the impassive and 'unengaged'. 'Low motivation' voters include what might be better described as low emotion voters. As no single vote will decide

4 "'Compulsory voting' in this context means that all those eligible to enrol are required by law to enrol, and all enrolees are required by law to vote. In measuring the extent of compulsory voting it needs to be recognized that laws to compel voting are no longer enforced in Belgium or Greece. With the abandonment of compulsory voting by Chile in 2012, no Organisation for Economic Co-operation and Development (OECD) country apart from Australia can ...be said [as of 2016] to have compulsory voting'" (Coleman 2016, pp 143-4).

5 Although compulsory voting was a longtime plank of the ALP, the legislation to effect it was introduced as a private members bill, "only the second private senator's bill since 1901 to carry Parliament". "[M]eeting little opposition ..., the move has been seen as a victory for machine-managers across the party system, happy to avoid any possible odium in the matter ..." (Millar 2004).

any outcome, it can be argued that our choice of candidate on the ballot is no more than an exercise in best venting our emotions. Those less gratified by venting will be less gratified by voting—and will vote less under voluntary voting. And yet the judgements of these dry, phlegmatic voters may better appraise the actual import, to the common voter, of this or that proposal.

To summarise, in judging if compulsory voting makes for better decisions we are left with a question: how is the non-voter best described? As the clueless dolt? Or the sardonic sceptic? It is hard to say.

Perhaps the most popular argument for CV is that compulsion usefully underscores a citizen's democratic duty to vote. But the claim that voting is actually a *duty* is hard to clinch. A duty is not simply something meritorious, or desirable – it is more than that. It even goes further than 'the proper thing to do'. To illustrate: it is probably the proper thing to confess to a crime you have committed if asked 'Did you do it?' But it cannot be said it is your duty to do so.[6] To vote is, doubtless, often meritorious, desirable and perhaps even the proper thing to do—but is it actually a duty? The contention seems impossible to square with the fact that it is never argued that a member of a representative body—be it a legislature or everyday committee—has a duty to vote, either yes or no, in every motion, and never to purposefully abstain. It seems unquestionable that there is a democratic right to abstain, and to express the message conveyed by that abstention. This proposition cues the most decisive objection to compulsory voting: that it breaches voter's *democratic right* to 'protesting abstention'.

In defence of the present law of compulsion it may be replied that it merely penalises not voting, and imposes no penalty on failing to vote *validly*; thus submitting a blank ballot—as the present writer sometimes does—may seem within the law. But the law plainly intends to compel voters to vote validly—indeed some states explicitly outlaw the publication of material that may result in an elector casting an invalid ballot[7]—and that intention is offence enough against the right to 'protesting abstention'.

REFORM OPTION 1:

Normalise the submission of a blank vote by (i) removing the unconditional injunction of Section 233 of the *Commonwealth Electoral Act 1918* to 'mark' the ballot; (ii) authorising the Australian Electoral Commission to 'educate' the electorate in the legality of submitting a blank vote; and (iii) renaming 'invalid' or 'informal' votes as 'unspecified' or 'unsummatable'.

There is a final indictment of the present law of compulsion. Even though one may, in effect, abstain from *all* candidates by submitting an invalid ballot, the current law still offends another form of abstention: the case where one wishes to express support for just one candidate, and abstain from expressing any evaluation of others. For in Australia we have 'preferential voting'.

6 This is underlined by the 'right to silence', 'the right to not self-incriminate', and the fact that pleas of not-guilty are not given under oath.

7 See *Electoral Act 2017* (NSW) ss 180, 183; *Electoral Act 2004* (Tas) s 197; *Electoral Act 1992* (Qld) 185; *Electoral Act 1907* (WA) s 191A(2); *Electoral Act 2002* (Vic) s 84(2).

Preferential voting

Australia's preferential voting (PV) system is something of a rarity. At the national level it is used to elect Papua New Guinea's National Parliament, the largely ceremonial post of the President of Ireland, and the congress of Alaska and Maine. The Anglosphere beyond Australia—New Zealand, the UK, the US, and Canada—overwhelmingly uses first past the post (FPP).

The significance of Australia's 'peculiar institution' of PV is sometimes downplayed on the grounds that even when 'preferences are distributed', the winner has generally been the candidate with the largest number of first preferences: the equivalent to FPP. But this claim cannot be extended to the Teals who entered federal parliament in the 2022 election. All had a smaller number of first preferences than their rival Liberal candidate: all won thanks to the distribution of preferences. So PV does sometimes make a difference. The question is, does it make elections more democratic?

The critics of PV must concede that certain perverse outcomes which are possible under FPP are impossible under PV. It is possible that A would be beaten by both B and C in head-to-head contests, and yet nevertheless win a three-cornered contest decided by FPP, owing to A being ranked first by more voters than are B or C. That perverse win cannot occur if the contest is decided by PV.[8]

Nevertheless, this 'theoretical' recommendation of PV is much oversold. The perverse outcomes of FPP are restrained by (i) electoral pacts between parties (B and C in the case above, or, to illustrate concretely, the New Popular Front in France); (ii) the merger of small, sectional parties (B and C in the case above) into large 'congress'-like, 'broad church' parties; and (iii) 'strategic voting' by voters.[9]

This last exoneration of FPP may be criticised on the grounds that some voters plainly do not vote 'strategically'. However, the evident resolve of some electors to vote for a small party under FPP, despite it having 'no chance' of victory, does not so much secure the superiority of PV to FPP as add to the case against PV. A small-party supporter who appears to be voting 'unstrategically' under FPP may actually be repudiating the act of choosing between the two largest parties—they may be abstaining from such a choice on the grounds of an equal disdain of those large parties. This possibility has a sting for PV since everywhere in Australia, except in NSW, a *complete* ranking of all competing candidates is compulsory ('full preferential voting'), and the right to a 'protesting abstention' regarding the choice between some parties is violated.[10] This paper affirms a voter should be able to express support for one party without being compelled to rank the remaining parties which they (perhaps) judge equally unworthy.

It is true that under full preferential voting some small-party supporters will vote validly—and rank parties they actually deem equally unworthy of a vote—simply as the price of expressing their first preference. But this situation is particularly offensive as, in certain cases, their preferences will be 'distributed': in those cases, those voters have in effect been compelled to vote for what they think does not deserve their vote.

8 In the language of social choice, the 'Condorcet Loser' can win under FPP but cannot under Preferential Voting. It is true the 'Condorcet Winner' need not win under Preferential Voting; but in the circumstances where it will not, the Condorcet Winner will also not win under FPP. Thus PV 'dominates' FPP. As a final observation, we need to note the Condorcet Winner—the candidate who would beat all of the other candidates in a series of head-to-head contests—may not actually exist. But what constitutes the democratic outcome in such a scenario is problematic.

9 See Forder (2011) for an extended defence of FPP against PV.

10 In the Senate, full preferential voting is diluted: only 12 candidates must be ranked.

It also needs to be borne in mind that some small-party supporters *will* have a genuine ranking over all parties and yet, given the option, would choose *not to* preference any party. This wish, too, is a form of 'protest abstention', but one which is not countenanced by full preferential voting. Further, to the extent that such voters judge voting validly is a price worth paying for expressing their first preference, full preferential voting exacerbates the 'tyranny of the median voter', whereby it is the state of centre opinion which alone determines the winning outcome, with other, smaller opinion blocs having zero impact. For, to put the matter simply, full preferential voting allows major parties to take advantage of the fact that small-party voters 'have nowhere else to go'. Under 'optional preferential voting' small-party voters do, of course, have somewhere else 'to go': recording their first preference and leaving the rest of the ballot blank.

Yet—in the face of these inequities of full preferential voting—it must be allowed that some small-party supporters *do* have a genuine ranking over larger parties, and *do* wish to express that. On account of those voters, this paper recommends replacing full preferential voting by optional preferential voting.

REFORM OPTION 2:

Replace full preferential voting by optional preferential voting with inserting the words 'if the elector so chooses' to section 240(1)(b) of the *Commonwealth Electoral Act 1918* and equivalent state legislation.

Senate voting

Until 1949 a form of PV was used for electing Senators, but in that year was replaced by a scheme of proportional representation: Hare-Clark (HC). Like PV, HC is rare elsewhere in the world; for years Malta and Ireland were the stock examples of its' sole use outside Australia. In the face of its rarity, a democratic case for HC schema is commonly attempted on the grounds it mirrors more accurately the diversity of the electorate's opinion, through its recognition of minorities, especially geographically dispersed ones. But the truth is that HC, as it is applied in Australia's Senate, seriously distorts the representation of minorities. It additionally affronts democracy in its treatment of 'casual vacancies', and annihilates the bond between elector and elected.

The upshot is that Australia's Senate is unnecessarily dense with political ciphers favoured by the political machine they serve. And worse.

The great justification of HC in the face of these strictures—minor party representation—is perhaps its greatest failure, as the representation it affords minor parties is highly inequitable. HC has worked in Australia to richly reward certain minority parties and severely penalise others. Column 4 of Table 1 reports, for each party, the number of votes per successful Senate candidate, over the last three general elections. Column 4, in other words, reports the 'cost', in terms of votes, of a seat in the Senate, and how that cost varies across parties.

TABLE 1: VOTES PER SENATE SEAT WON, BY PARTY; 2016, 2019 AND 2022 ELECTIONS

PARTY	TOTAL FIRST PREFERENCE VOTES, THOUSAND	TOTAL SEATS WON	VOTES PER SEAT WON, THOUSAND
JLN	131	3	44
David Pocock	60	1	60
NXT/CA	291	3	97
Family First	191	1	191
Greens	4,589	21	219
PHON	1,326	6	221
Labor	12,583	54	238
Coalition	15,501	64	242
DHJP	426	1	426
Liberal Democrats	808	1	808

Source: AEC 'Tally Room Archive', https://results.aec.gov.au. Note: JLN is Jacquie Lambie Network; NXT/CA is Nick Xenophon Team/Centre Alliance; PHON is Pauline Hanson One Nation Party; and DHJP is Derryn Hinch's Justice Party.

Evidently, the average 'vote cost' of a seat in the Senate varies wildly across parties; from a low of 44,000 for the Jackie Lambie Network (JLN), to up to 808,000 for the Liberal Democratic Party (LDP). To underline this wild variation, one may note, from Column 2, that the total combined vote of the Nick Xenophon Team (NXT), JLN and David Pocock is about 60 per cent of that of the LDP; yet these three parties have won seven times the number of senators as the LDP (see Column 3). The truth is HC is no fair respecter of minority voices, but a thing that massively privileges some voices while severely encumbering others. And this reality is even worse than Table 1 suggests. For the table only includes parties which won seats over the period. Both Shooters Fishers and Farmers, and Legalise Cannabis, won over this period half a million votes each—more than twice the total of NXT, JLN, and David Pocock, but won no seats at all.

HC further affronts democracy by making havoc of occasional vacancies. Suppose a senator resigns or dies; it seems impracticable—and is certainly unjust—to repeat the election for all six senators, but no other method is known to HC for dealing with these contingencies. So section 15 of the Australian Constitution throws HC in the bin, and simply authorises the parliament of the senator's state to select his or her replacement. So is created a senator, who can legislate and be made a minister, without ever having faced electors. Thus early in 2012 Bob Carr was made a senator to fill a vacancy; and 11 days later was appointed the Minister for Foreign Affairs. In that role he stood-in for the Prime Minister, Kevin Rudd, at the 2013 G20 meeting of 'heads of government' in St Petersburg. Scanning those twenty heads of government, I can see only one other who could not claim to have been elected: King Abdullah of Saudi Arabia. Carr was eventually elected to the Senate in the subsequent 2013 election, but even before the new parliament had met, he had resigned his seat, allowing a former ALP member of the House, freshly defeated at the 2013 election, to be appointed in his place for a six-year term. Such gaming of section 15 cannot be dismissed as solitary and freak; by the time 2013 parliament was dissolved, 13 of the 76 sitting senators had been shuffled into the chamber as Section 15 appointees (Coleman 2016 p.161). Neither does the Section's requirement that appointees be of the same party as the vacating senator ensure any respect is paid to the voters' wish. In 2017 Noel Annan quit PHON almost immediately after he was sworn into the Senate to fill a PHON vacancy, to sit as an independent.[11] Section 15 is plainly unable to remedy the de-democratising effect of the incapacity of HC to deal with vacancies.

The third charge against HC is that it weakens, to the point of annihilation the relationship between the elector and the elected. In Senate elections, there is no sense of debt, or any transaction at all, between these two. Certainly, compared to the House, there is less sense of an act of selection by the voter of the winning Senate candidate. And, correspondingly, compared to the House there is less sense of accomplishment for the winning Senate candidate—whose win is either seemingly fixed in stone, or else in the lap of the gods—as is underlined by the absence of 'swingometers' for the Senate, and the complete absence of betting markets on Senate elections, in contrast to the extensive markets for individual seats in the House. This lack of a sense of both selection and accomplishment is a manifestation of the high cost of, and low reward for, campaigning in the Senate. That is in turn a consequence of its PR voting scheme: the large number of Senators for each electorate (12) and the large number of voters (reaching up to five million) for each electorate. In this Breugelesque crush of voters and candidates, how can there be any real transaction between the two? The upshot is Hare-Clark leaves senators wholly oriented towards their party, and not to voters, or their state. It is the party machine they assiduously seek the favour of, not the people; it is with respect to that machine there is a sense of selection and accomplishment.

How to democratise the election of senators? Three proposals would eliminate HC outright.

11 Obviously, a member of the House may also betray their voters, and party, by defecting as soon as they have been elected. But has that ever occurred?

REFORM OPTION 3A:

Replace Hare Clark with 'slate voting' where the voter's object of selection is a list (or 'slate') of six candidates (one list for each party), the winning list being determined by optional preferential vote.

The upshot of Option 3a is that, in a given State, one party wins all six vacancies. By massively increasing the electoral stakes, the competition between the two main parties massively increases. Obviously, any representation of small parties will also be eliminated. This makes for a very mixed democratic account of this proposal: instead of some small parties being advantaged with respect to small rivals, as at present, all small parties are radically disadvantaged relative to large ones. For all that, small-party voters will still have an impact on the outcome of the election, since their preferences will certainly be distributed. And, as a further benefit, the slate system may dispose of the dilemma of occasional vacancies, as a state-wide by-election may be held in case of a vacancy: a by-election that would constitute a desirably democratic 'referendum' on the main political parties.[12]

REFORM OPTION 3B:

Replace Hare Clark with the creation in each state of six geographically defined seats, filled by the same election method as used by the House of Representatives.

Option 3b disposes of the occasional vacancy problem, and restores the link between voter and politician to something like its present strength in the HOR. But this reform also probably eliminates minority party representation, in that it is unlikely any minority party could win any of the six seats each state has. And there is another, deeper, objection: the state is no longer the basis of representation in the Senate. Rather, thirty-six pieces of Australia are.

REFORM OPTION 3C:

Replace Hare Clark with the creation in each state of six distinct seats *with no geographical definition*; each voter in a State being allocated randomly to one. There would be a single senator for each seat, and the winner decided by an Optional Preferential vote.

Option 3c, like 3a and 3b largely disposes of the occasional vacancy problem, as well as restoring the link between voter and politician to something like its present strength in the HOR. But unlike geographical constituencies, the State remains the basis of representation. Regrettably, small parties are still likely eliminated from the Senate. But there is a variant of this scheme which might allow small party representation: allow voters to enrol in any of their state's six constituencies *as they please*. This would encourage a smaller party—say the Greens or One Nation—to nominate in only one of the six seats, and actively entreat their supporters to enrol and vote in that one seat. Assuming six seats, it is not difficult to see that if a small party were to succeed in corralling all its voters into a single seat it would win that seat with just 8.25 percent of the total vote (= 50 percent of one-sixth of 100 percent).[13] This compares to the quota under HC of 14.3 percent (= 100 per cent of one-seventh of 100 per cent). This calculation suggests the Greens, One Nation, Xenophon, and Lambie would secure some representation under this system.

12 Such a by-election would also discourage resignations, as the party which 'won the slate' at the preceding general election would risk losing.

13 This calculation assumes that the number of electors in each seat remains the same, despite one party mustering all its supporters into just one seat. And that assumption is debatable. But the calculation remains suggestive.

Regrettably, neither Reform Option 3a, 3b, and 3c remedy the highly inequitable treatment of smaller parties under current arrangements, whereby some are starved of seats while others seem showered with them. And this is because this inequity is not due to HC as such, but to the 'federal' feature of Senate elections which the paper has not yet noticed: that each state has 12 senators, regardless of their population. This disregard of population is not necessarily anti-democratic. On the contrary, to the extent that each state amounts to no more than a geographical interest, the equality of senators is a useful guardian of political exchange, and defence from political diktat. If each state were, indeed, no more or less than a geographical interest then the allocation of seats simply according to population could conceivably give a majority of seats to just one state and make a royal road for the virtual annexation of the rest of the country by that state.

But the gaping defect with the 'geographical interest' justification for each state having the same number of senators is that the politics of each state's inhabitants are not simply geographically determined. One proof of this obvious truth is that almost all parties are national in scope, or at least multi-state. And where voters vote purely on account of interests or principles that are 'supra-state', the state-based defence against a 'tyranny of the majority' fails, and democracy surely counsels that the number of senators should accord with a state's population.

So where lies the democratic optimum? One can say no more than the number of Senate seats of a state should vary with its population, but not proportionately with its population.[14] One example of the many formulations that would be consistent with that loose mandate would be the Penrose Rule, where seats vary with the square root of population.[15] Table 3 illustrates.

It is hard to say what the effect of such a schema would be. But, barring a double dissolution, JLN would certainly not win a seat. With their successful 2022 candidate winning not even 1 in 500 Senate votes cast Australia-wide, I can only consider that a victory for democracy.

TABLE 2: SENATE SEATS ALLOCATED ACCORDING TO THE SQUARE ROOT OF POPULATION

STATE OR TERRITORY	DISREGARDING THE TERRITORIES	INCLUDING THE TERRITORIES
New South Wales	18	17
Victoria	16	15
Queensland	14	14
South Australia	8	8
Western Australia	11	10
Tasmania	5	4
Northern Territory		3
Australiam Capital Territory		4
Total	72	76

14 The liberal vision of democracy would counsel that any decision regarding Senate representation be made at 'the constitutional stage' of politics, where citizens deliberate behind a 'veil of uncertainty'. Regrettably, any such veil has long been drawn aside.

15 The square root rule is, obviously, arbitrary. But at least it does not blatantly offend democratic considerations as does both varying representation directly with population and varying it not at all. 'Better to be roughly right than precisely wrong'.

The size, number and boundaries of seats in the House of Representatives

While the number of Senate electorates is constitutionally authorised (at 8), the number of electorates in the House is a matter of legislation. The paper suggests that the current number, 151, is too few by creating overly populous and overly large electorates which (i) weaken the link between voter and MP, (ii) constitute an inhibition of political competition by making it more costly to contest a seat, and (iii) are less meaningful as vehicles of representation of public opinion.

The last contention is illustrated by the ludicrous inclusion of Cocos Island in the Northern Territory seat of Lingiari, and Norfolk Island in the ACT seat of Bean. The burial of the Norfolk Islanders' 300 votes in the heart of the ACT is a travesty of political representation. And, gladly, an extreme case. But boundaries of 151 'electoral divisions' provide other less spectacular examples of meaningless agglomerations.

A seat is 'meaningful' to the extent it constitutes a specific 'voice'; a certain note in the musical scale of politics; a particular tile in the political mosaic. Large electorates tend to be more conglomerate and heterogenous; their voters make for a 'cacophony', or 'noise'. Thus an expansion in seats will permit a more meaningful representation of electors.

REFORM OPTION 4:

Increase the size of the House so that the average population of divisions is the same as when the last increase occurred (1984), so that the House will have about 250 members.

Regrettably, there would be a cost in this. The present recurrent cost of MPs, Parliament House and its staff is around $800m each year.[16] The mooted increase of two-thirds in size would result in added cost in the region of $500m p.a.[17]

But a more meaningful set of boundaries may be obtained without more seats and cost. For a given number of seats—and given cost—a more meaningful set of boundaries will be obtained if seats are permitted to vary in population; so that areas that are relatively homogeneous politically are resolved into seats of an above-average population, so as to allow an expansion in the number of seats of below average population to better fit the greater localisation of opinion in the remainder of the country. Regrettably, both the law and the Australian Electoral Commission are one-eyed in seeking an equality in the number of voters in each seat. While the Commonwealth Electoral Act enjoins considering 'community of interest', the overriding consideration in drawing a division's boundaries is population, with its section 66 laying down the remarkable injunction that, at the time of boundaries being drawn, no division is permitted to deviate more than 3.5 percent from the average number of electors per division. It would do well to revise section 66 of the Commonwealth Electoral Act so that the number of electors in divisions may vary up to 20 percent from the average, and to enjoin in drawing boundaries a 'concern to secure' (not merely a 'consideration of') the community of interest.

REFORM OPTION 5:

Amend section 66 of the *Commonwealth Electoral Act 1918* to increase the population deviation from 3.5 per cent to 20 per cent, and a requirement that the AEC shall 'concern to secure' communities of interest when drawing electoral boundaries.

16 In 2004 the Special Minister of State put these costs at about $400m per annum (*The Age* 2004). Since then the annual base pay of an MP has about doubled, from $106,770 p.a. to $217,060 p.a.

17 This calculation assumes a concomitant increase in the number of Senators to about 120 as (regrettably) required by Section 24 of the Constitution.

The Australian Electoral Commission

The Australian Electoral Commission (AEC) looms large over Australian democracy: this well-nourished, many-storied bureaucracy is more powerful than just about any 'electoral regulator' in the democratic world.

Firstly, the AEC decides the boundaries of all seats in Australia's House of Representatives. It does not simply advance advice or proposals regarding those boundaries: it *decides* them, 'as it pleases', without any recourse to parliament or court.[18] In a democracy boundaries should be decided democratically. Perhaps the ultimate democratisation would be to subject any revised set of boundaries to a plebiscite of electors of the electorates affected by the revisions. Failing that, the entire proposed set of revisions for a state could be subject to the plebiscite of electors of that state. Then there is the older usage of parliament directly legislating for boundaries. This, however, is probably objectionable on the grounds that there is something 'constitutional' about boundaries, and not merely legislative. A given legislature will be tempted to abuse the constitutional intention to represent the people, and gerrymander. The deeper remedy for this abuse is constitutional: to dull the temptation to gerrymander by not conferring all power on the basis of a simple majority in the lower house, most obviously by way of an upper house not elected by geographical constituencies. (It is probably not coincidental that the worst 'malapportionment' occurred in Queensland, under both Labor and Coalition governments, in the absence of an upper house). Assuming this is insufficient to remedy gerrymandering, then a degree of democratisation of the current formulation of boundaries by bureaucrats could be effected by taking inspiration from New Zealand and creating a distinct 'Boundaries Commission', independent of the AEC, composed of ex officio appointments plus several MPs from both sides of the chamber. Or perhaps even better:

REFORM OPTION 6A:

Institute a 'Boundaries Appeal Commission', empowered to refuse AEC boundary proposals, composed of one ex officio appointment augmented by an MP chosen by the government, another MP by the opposition, and a third by unanimous vote (save one) of the House.

The AEC also decides the names of electorates 'as it pleases'. And with that free hand it has conferred on the great bulk of 151 electorates names which conceal their defining feature: their geographical location. It has gone so far as to approvingly air the thought that 'locality or place names should generally be avoided' (AEC 2004 p.11).

The names chosen by the AEC inevitably manifest 'official values', past and present. Thus nine electorates are named after governors, 16 after explorers and 48 after politicians. Five aboriginal activists or elders are also memorialised, along with sundry artists, aviators, architects, poets and painters. There is not one businessman.

The upshot is that only 23 per cent have locality or place names, and that proportion continues to erode. The UK, Canada and NZ rightly shun the practice of naming electorates after politicians etc, and stick exclusively to locality names. So do Victoria and WA, and, with rare exceptions, Queensland and NSW. It does not assist democracy for the AEC to give what are virtual code names to electorates; no more than it would assist democracy if ministries were named after politicians or explorers etc instead of being named after their function.

REFORM OPTION 6B:

Rename all parliamentary electorates on the basis of the most populous locality within them.

18 The AEC does have a process of publicly inviting comments on the boundary revisions it favours, and considering them. For all that, its 'determinations' are final, and beyond appeal.

The AEC also enforces Australia's acutely anti-democratic legislation regarding the naming of political parties. Section 129 of the Commonwealth Electoral Act effectively proscribes the use of the word 'independent' in any party. It additionally prohibits the name of any new party including a word of the name of an existing party. Thus at the present time no new party may be created which uses the word 'national', 'socialist', 'liberal', 'centre', 'justice', country', 'farmers', 'Christians', 'citizens', or 'Aboriginal'. These prohibitions are supposedly grounded in a concern to save the voter from mistaking a new party for an old one. But such a concern would be effectively dealt with by the common law tort of passing off, where the burden is rightly placed on the plaintiff—the old party—to prove that there has been a confusion. A further justification of these bans might lie in the new party using a word, not so much to pass themselves off as another, but to falsely represent what they stand for. In sympathy with this justification we might ask, how many Liberals were ever in the Liberals for Forests? Indeed, how many 'independents' are independent? But such misrepresentations would be much better dealt with by requiring office holders and candidates to lodge with the AEC their past political memberships. And the best cure for fake independents is the same as the best cure for fake 'environmentalists', or fake 'moderates', or fake 'voices': publicity. The present legislation is a cure worse than any disease it treats; yet it is one the AEC firmly applies to the unwilling patient, as the recent forcible renaming of the Liberal Democratic Party illustrates. As that renaming brings out, this legislation is all about shielding existing parties from competition, by depriving competitors of the essential nomenclature of politics.

REFORM OPTION 7A:

Repeal the AEC's power under section 137 and 134A of the *Commonwealth Electoral Act 1918* to deregister parties because of a party's name; and place the onus on the complainant to prove in a court of law that some party name amounts to 'passing off'.

Finally, the AEC also enforces the law on minimum party membership requirements, the most palpably and indecently anti-democratic legislation on the statute book. A minimum party membership of 500 —first introduced in the 1990s—was superseded in 2021 by the Morrison government's *Electoral Legislation Amendment (Party Registration Integrity) Act*, which increased the minimum to 1,500. Expressly supported by the Labor party, and opposed by the smaller parties, this was arguably designed by the Morrison government to inhibit its political competitors. There is no justifying any minimum membership of parties, be it 1,500, 500 or 50.

REFORM OPTION 7B:

Repeal in the Commonwealth, States and Territories all legislated minimums of party membership.

Frivolous parties could easily be discouraged by significant bonds ('deposits') which would be redeemable by parties with respectable votes. Even a flood of micro parties could be dealt with by listing no more than, say, 12 parties on the ballot, and leaving space for a 'write-in' vote for parties left off. If there was any concern about the genuineness of parties, far better for the AEC to publicly record the size of their memberships.

Public funding and campaign finance laws

The AEC also manages the legislated 'public funding' of political parties; a funding which is inequitable, inhibiting of political competition, and dissolving of parties' grassroots. The legislation lays down that any candidate who receives in excess of 4 per cent of the vote is paid a certain dollar amount for every vote they received; any candidate who receives less than 4 per cent gets nothing. This is plainly penalising of small, geographically dispersed parties and rewarding of small, geographically concentrated ones. Thus the David Pocock party, standing only in the ACT, received $2.91 per vote, while Shooters, Fishers and Farmers, standing in several states, got just 20c per vote.

The present 'public funding' also penalises smaller parties relative to larger ones. For even small parties which do surpass the four per cent hurdle in some seats will not do so in others, and so get nothing for their votes in those other seats. Table 3 brings out that even small parties which get some funding get much less proportionate to their votes than larger parties.

TABLE 3: ELECTION FUNDING BY PARTY; 2022 FEDERAL ELECTION

PARTY	ACTUAL FUNDING ($ 000)	$ PER VOTE	FAIR SHARE FUNDING ($ 000)	OVERFUNDING/ UNDERFUNDING ($ 000)
Coalition	30,204	2.91	28,247	1,956
ALP	27,104	2.91	25,309	1,795
Greens	10,962	2.96	10,066	896
PHON	3,003	2.19	3,733	-730
UAP	1,925	1.71	3,061	-1,136
LDP	227	0.38	1,613	-1,386
David Pocock	176	2.91	164	11
KAP	162	3.15	152	10
JLN	160	2.91	149	10
Centre	106	2.91	99	7
Kim for Canberra	36	2.91	34	2
Shooters, Fishers and Farmers	33	0.20	452	-418
Victorian Socialists	22	0.47	133	-110
Legalise Cannabis	15	0.03	1,380	-1,365
Great Australian Party	13	0.12	306	-293
Socialist Alliance	10	0.27	108	-98
Local	10	0.90	32	-21
Indigenous	10	0.13	215	-204

Column 3 indicates the Great Australian Party received only 12c per vote, compared with $2.96 paid to the Greens. But perhaps the offence there is moderated by the fact that GAP won only 60 000 votes out of 32 million ballots cast in 2022. Perhaps the best measure of the offence against justice would be to calculate how much each party would have received if the total amount of funding in Table 3 ($72.6m) was shared between the parties in Table 3 simply according to the votes each received (column 4); and then calculate how much that amount exceeded, or was exceeded by, what they actually did receive. Column 5 reports that calculation. Evidently, the most 'over-funded' parties were the Coalition, the ALP and the Greens; the most 'underfunded' parties were LDP, Legalise Cannabis, and the United Australia Party.

But there is a (perhaps surprising) question left hanging by the discussion above; does inequitable funding in fact unlevel the playing field? For it is an open question to what extent such government funding simply displaces funding by membership fees and donations. Some models of funding-by-donation conclude that if sympathiser Tim donates $10 more to the cause, then sympathiser Tom will respond by donating $10 less, leaving the cause no better off. The possibility arises that government funding of some parties more than others doesn't inhibit competition but simply adds to the bank balances of members and donors of those favoured parties. But even if this was so, this would not be the end of the criticism of government funding of political parties. To the extent that members and donors are made redundant to a party's existence, the party's ties to society are attenuated.[19] Parties become less an expression of society and more just another element of the state.

To the extent that parties are funded by individuals, NGOs, companies, and unions they are, to some degree an expression of society. But the AEC also regulates such funding, although until recently that amounted, at the Commonwealth level, to no more than a requirement to disclose donations above $16,900. Now Australia faces legislation to cap both donations to candidates and candidates' spending. Does this perhaps violate the fundamental axiom of any democracy that no voter will endure legal disability in engaging in the contest for power? This axiom certainly implies that all should be allowed to donate; all have 'the equal opportunity' to donate. Thus outright bans on, say, (Australian-owned) developers or miners donating are a gross offence against democracy. But it may be observed that very few persons have the 'opportunity' to donate, say, $103m, as Clive Palmer did in 2019 (Centre of Public Integrity 2022). Thus a genuine democracy, in service of the equal opportunity to donate, may indeed license a limitation on the size of donations by individuals or corporate bodies. But limits on the total spend of a candidate will find no such warrant from democratic principles. Political competition is the essence of democracy, and to limit candidate campaign spending is to limit competition.

REFORM OPTION 8:

Amend the Constitution to lay down that the right of any elector to donate to a candidate will not be denied on grounds of sex, age, birthplace, religion, political affiliation, occupation, or wealth; and that no law shall limit the total amount a candidate may spend in bona fide pursuit of political office.

19 As a further upshot, government funding tends to de-democratise party structures themselves. The right of party members to select party candidates by party 'primaries' is a strong incentive to join parties; and party managers will be less interested in people joining if parties do not rely financially on member subscriptions.

Issues relating to voter ID and election security

Notwithstanding the assiduous attention by the AEC to Australian electoral regulations, Australia is remarkably lackadaisical when it comes to combatting electoral fraud, surely the grossest form of assault on democracy.

The three main types of fraud—impersonation, multiple-voting and false residency—are easy to commit in Australia. Consider impersonation. I state myself to be Sam Smith at any polling booth within the electorate where Sam Smith is enrolled (save the one where he has voted). Upon that statement I am, with little further ado, presented a ballot. Multiple voting is just as easy. If I am really Sam Smith I visit several polling booths in my electorate, and vote at each. The fraud of 'false residency' does not even carry the small risk of being detected by, say, a booth worker. I advise the AEC that my address has changed to one within the electorate which I wish to (fraudulently) vote in, and correspondingly change my address at MyGov. And then I vote.

The AEC has almost no power to identify and prosecute the author of these frauds. If I impersonate someone who is recently deceased, senile, or seriously ill—and in consequence does not vote—the AEC will rarely be aware the fraud has even occurred. It is true the presence of multiple voting will be detected by the AEC's methods, but if the culprit is challenged they will certainly plead that they had been impersonated. With respect to false residency, if the culprit chooses their false address with some care, it would take a very particular inquiry to establish the fraud to the satisfaction of a jury.

But do these frauds actually occur? Cases of voting outside one's place of residence have occurred in recent years in a contested federal by-election (*The Guardian,* 2015), and were discovered only because its authors were reckless enough to betray their activities on social media (*The Australian*, 2014). Demonstrated cases of impersonation and multiple-voting are virtually unknown, but, as explained, if they did occur then, under current arrangements, they would be impossible to demonstrate. It may be retorted that the incentive to engage in such practises is negligible. Of all the seats which changed hands in the 2022 federal election, the one with the smallest margin of victory still had the winner winning by 953 votes. It would take more than a few dozen impersonators to either create or efface even such a minimal margin. But this logic may not be invincible. Stephen Loosely, a former president of the ALP, recalls encountering, during a 'fiercely contested' 1980 campaign to defend the ALP seat of Castlereagh, one party stalwart who claimed to have impersonated 400 times (Loosley 2015 p. 100). And even if the logic of the futility of impersonating is a good one—and even if Loosely's impersonator was wasting his time—good logic may not be accepted. Events in the US underline that confidence in the voting system can suddenly evaporate even without palpable cause. It well-behoves the AEC to take measures to guard against a collapse of confidence.

Multiple voting would be discouraged by installing CCTV at polling booth entrances. An effective guarantor against impersonation would be the requirement to present an ID, ideally a photo ID, as in the UK and France. Failing that, any sort of ID, as in Canada and 35 states of the USA, including the deep-dyed Democratic state of Massachusetts (Ballotopedia).

REFORM OPTION 9:

Amend section 231 of the *Commonwealth Electoral Act 1918* to require electors to show a photo ID when obtaining a ballot paper from an election official.

As a further measure, the AEC could publish in its Annual Report an 'honour roll of its list of 'designated electors'—the list of those electors it suspects of intentionally voting multiple times, which by law it is required to maintain. Sunlight is sometimes the best disinfectant.

Referendums and Direct Democracy Initiatives

The stifling of public opinion in the present parliamentary party system invites a search for an alternative that would cut through these impediments, and provide a more 'direct democracy'. The realisation of this aspiration seems to lie in a 'referendum democracy' replacing, or supplementing, a parliamentary one.

Regrettably, rather than articulate the popular will, referendums in Australia, have had almost the opposite effect. In Australia referendums may only be initiated by the House of Representatives, which comes down to the PM and cabinet. In consequence, referendums have not been a bubbling up of public will, and this is underlined by the fact that only 8 of 45 referendums have succeeded since 1901. Their elite tendency is underlined by the fact that the great bulk of referendums have concerned proposals by the Commonwealth to expand its powers—an elite cause. Even after putting aside such referendums, recent history further underlines the elite accent of the referendum system in Australia. The 1999 proposal to replace the Queen and Governor General by an appointed (unelected) president was defeated pretty much everywhere outside of especially wealthy or inner metropolitan electorates.[20] The defeat of the 2023 Voice referendum is an even more emphatic illustration of how a referendum serves elite aspiration. On every indicator of eliteness—location, income, ethnicity and education —a Yes vote correlated with eliteness. But the most spectacular indicator of the elite sponsorship—and popular rejection—of the Voice referendum comes from the Australian Constitutional Referendum Study survey of 4,000 voters at the time of the referendum. The survey results indicate that a one percentage increase in the population of Indigenous Australians in a given electoral division is accompanied with a roughly one percentage *decrease* in the Yes vote in that division (Biddle *et al* 2023, Figure 2.3). This remarkable result cannot be explained by Aboriginals having a higher propensity to vote No than non-Aboriginals: only in the extreme (and obviously false) case of all Aboriginals voting No and all the remainder voting Yes, would such a one-for-one negative relationship result. So what is going on? The answer, I contend, is plain enough: the presence of aboriginals is proxying for marginality and non-eliteness. (There are few Aboriginals in Balmain.) And so their presence proves predictive of a low Yes vote.

So what to do about the present elite bias of the system of referendums? A remedy for their centralist bias would be to allow the joint resolution of the legislatures of four states (or of several states comprising a majority of Australia's inhabitants) to initiate a referendum to alter the Constitution. Correcting the elite bias more generally requires a stronger remedy: the abolition of the parliament's monopoly on the initiation of referendums. The most radical means of doing that would be a 'Citizens Initiative Referendum' (CIR): where on the petition of a certain percentage of eligible voters, a referendum would be held. In its weakest form this would be merely 'advisory'; and so amount to no more or less than a massive opinion poll. A stronger form of these referendums would make ordinary statute law. In their strongest form they could modify the Constitution. Whatever their scope, they would be held on some fixed date laid down by the Constitution ('the first Saturday in September'?), and not on some date decided by the PM to maximise his or her political advantage, and hidden by them from the public until they judge best—a travesty of any process of constitutional change, which is unendurably condoned by present arrangements.

20 In NSW the four electorates which recorded the strongest Yes in 1999 were Sydney, Grayndler, North Sydney and Wentworth. In Victoria the four were Melbourne, Melbourne Ports, Kooyong, and Higgins.

But there are many counsels against CIR. Any statutes so created would emerge without the (sometimes) intense shaping scrutiny performed by oppositions, second chambers and committees which legislation currently experiences. They are forged without the 'political exchange' which the parliamentary process often requires for legislation to pass. Finally, they come to be without any political actor being able to be held responsible for their origin. There is, then, a 'license to be irresponsible', especially with respect to CIRs which create statute law, as the public will be tempted to 'have its head' and rely on parliament, by subsequent amending legislation, to curtail any extravagances in the law the public passes. So this is the prospect of CIR: Freeze Power Prices for Ten Years! Nationalise QANTAS! (YouGov 2023). Truly, legislation belongs in parliament and nowhere else.

At the same time modifications to the Constitution do not belong in parliament; that behoves an altogether different transaction. And it is with respect to constitutional change that the citizens' initiative may come into its own.

REFORM OPTION 10:

Allow a citizens initiative referendum to call into existence a Constitutional Convention, elected by the electors of each state.

This Convention would 'deliberate' on constitutional change with all the benefits of scrutiny and political exchange. In its more modest form this Convention would be entitled to formulate constitutional changes which would be put, without the approval of parliament, to referendum in the accustomed way. In a more radical version, the Constitutional Convention would be able to modify the Constitution by its own resolution. Befitting the appropriate consensuality in constitution making, these resolutions would require a 'super majority' (such as two- thirds of the convention) to pass.

What a democratisation by referendum would not entreat—and would strongly urge against—is the creation of a Commission to 'generate' referendum proposals, as has recently been proposed (Williams and Hume 2024a). It need hardly be observed that such a Commission would entrench the elite bias of the present system. What democratisation needs is 'the people' to be generating referendums, not appointees to a commission.[21]

21 See also Williams and Hume (2024b). The authors' accompanying proposal to repeal legislation prohibiting the Commonwealth from funding Yes – in other words, to privilege the position of the state with respect to the contest between Yes and No – is equally indecent to anyone of any real democratic sensibility.

Constitutional changes

'RECALL' BY-ELECTIONS FOR ANY MP LEAVING THEIR PARTY

In modern-day politics the voter is normally choosing a party, not an individual. For an MP to defect from the party under which they were elected is very likely a violation of the choice of the voter: a more fundamental offence against democracy cannot be imagined.

REFORM OPTION 11:

Upon any MP leaving their party—voluntarily or involuntarily—let their seat be declared vacant and subject to a by-election.

A system of by-elections for defecting MPs would staunch egregious cases of the violation of voters' trust by MPs which has tainted Australian democracy.[22]

FIXED-TERM PARLIAMENTS

In Australia, the dates of general elections are chosen, in effect, at the pleasure of the Prime Minister. This privileging of the incumbent inhibits political competition, as the government gives battle at the time it believes best suits them, and any uncertainty —and possible error—in the mind of the opposition about that time only advantages the government still further. A concern to invigorate political competition would seem to recommend the abolition of that incumbent privilege, and its replacement by the fixing of election dates by the Constitution ('fixed terms'), with an allowance for any early election if the government lost a vote of confidence. Yet the nature of parliamentary government makes possible at least two contingencies which would make fixed-term parliaments anti-democratic.

The first contingency imagines a popular minority government which has only the half-hearted support of a hard-to-satisfy crossbench. The government is unable to go to the people and receive the mandate which its popularity affords, as no No Confidence motion will be forthcoming: the opposition does not wish to prolong its time in opposition and the crossbench does not wish to lose its hold over the government.

The second contingency is worse. Imagine a government with strong electoral support facing in parliament a squarely hostile majority. This majority will block the government's program, but also out of considerations of its own survival refuse to support any no-confidence motion, and so, under a system of fixed terms, stymie any attempt of the government 'to go to the people' and restore the parliament to representatives that the people favour.[23] This might seem a strange situation—how did the majority get elected if so unpopular; and how was the government chosen if the majority was hostile? Yet this possibility can come about through bad faith on the part of the majority with respect to their electors, and bad faith is not a rare article in politics. An example of a highly unfortunate scenario in a fixed-term parliament system came in 2019 in the UK, when a parliamentary majority hostile to the Conservative Johnson government blocked not only his signature policy but his attempt to 'go to the people'. This was broken only when a section of the hostile majority—in a political misadventure highly destructive of itself—co-operated with Johnson to suspend fixed-term legislation, and so permit an election on 19 December 2019 which Johnson's Conservative Party won with the largest number of votes any party has ever won in British history.

22 Peter Slipper was elected to the seat of Fisher in 2010 as a Liberal National Party candidate, winning 45 per cent of the vote. In 2011 he left that party upon being appointed Speaker by the Gillard Labor government. In 2013 he contested Fisher as an independent, winning 1.5 percent of the vote. Clearly, the recall by-election system proposed here would have prevented this wretched affair.

23 This contingency implicitly assumes that the hostile majority is so disunited that it cannot form a government on its own.

There seem few ways to tame these contingencies which make fixed terms potentially obnoxious to democracy. Australian circumstances, however, offer a measure which navigates around the untoward contingencies discussed above, and yet leaves the incumbent less privileged with respect to the timing of elections.

REFORM OPTION 12:

Let the dates of the election of Senators be fixed by the Constitution, but let the Prime Minister continue to decide the date of the election of the House of Representatives.

There is plainly a political cost in not choosing the House of Representatives election to coincide with that of the Senate, as the public dislikes going twice to the polls within a short period,[24] the upshot being that the House election would usually coincide with that fixed for the Senate. And yet the cost of an early House election is, surely, not large enough to discourage a popular minority government, beleaguered by an overbearing crossbench, from seeking a mandate at an early election.[25]

ELECTING THE GOVERNOR-GENERAL

Currently, the Governor-General is chosen by the King 'on the advice' of the Australian Prime Minister, which comes down to the appointment being the gift of the Prime Minister. This can only be described as 'undemocratic', and the bluntest democratisation would have the Governor-General popularly elected. And yet it may be argued that such a 'democratisation' will only damage the office of Governor-General, and in consequence, democracy, as the Governor-General is a key part of the parliament. The vulnerability of the office of Governor-General to damage from unthinking 'democratisations' lies in the dual nature of the office. In the language of Bagehot, it is both a 'dignified' and 'efficient' role; or, in modern language, both 'ceremonial' and 'technical', or 'symbolic' and 'functional'. The Governor-General symbolises the Commonwealth, and so Australia. The popular election of the Governor-General may successfully serve the symbolic role. However, the Governor-General is also invested with significant and sensitive powers, in its capacity as the third branch of Parliament. The Governor-General may in some circumstances refuse a Prime Minister's advice to dissolve Parliament, and may choose the Prime Minister where an election results in a hung-parliament. The Governor-General may even dismiss the Prime Minister. The public can hardly be expected to make a successful choice of the executor of these highly sensitive 'reserve powers'. A successful choice requires a knowledge of Parliament, yielded only by a concrete acquaintance with parliament. To have the Governor-General so chosen would be as foolish as having the Speaker popularly elected; another role that combines the highly symbolic with highly technical roles.

An alternative proposal to democratise the choice of Governor-General would have the Governor -General be chosen by resolution of a joint sitting of the House and Senate. Here the damage is done not to the technical role of Governor-General but in its symbolic role. Choice by parliament means choice by party. And party means division. It hardly needs saying that a key aspect of the symbolism is

24 Additionally, the political benefit of a government snatching a passing favourable moment, and 'going early', is reduced, since the Senate under this proposal cannot 'go early'.

25 This proposal would preserve the right of the executive to invoke a 'double dissolution' in the face of the Senate's failure to pass legislation.

unity; the unity of the Commonwealth, the state upon which Australian democracy must rest.[26]

So how to democratise without damage to either symbolic or technical functions? A third idea would be to let the Governor-General be chosen by an electoral college composed of all past and present members of the federal parliament.

The functional role of Governor-General is guarded, as the choice is left in the hands of persons acquainted with that functional role. The position's symbolic role is also preserved tolerably well, as the party aspect of the choice is greatly reduced; it is well-known that former MPs frequently do not 'act party', at least not in the sense of deferring to the party's current executive. To polish its democratic credentials, the process might do well to disqualify any MP, past or present, from being nominated as Governor-General; so although the people do not choose the Governor-General, only they can be chosen as Governor-General.

A final method of democratising the choice of Governor-General may, paradoxically, lie in making this choice the genuinely free gift of the King. Would not the King have good cause to choose a Governor-General who was not only competent, but also popular? The defect in the proposal is that the King would be dependent on advice. What, after all, would the King know of the many considerations, and several risks, in making the choice? And who would be the first source of counsel on this sensitive decision? The Prime Minister? The King, then, is captive of prime ministerial adjurations, and the monarchy's prestige is used to give a false sheen to a choice which remains in reality the PM's.[27]

Concluding remark

This paper believes the proposals advanced above to alter the laws and regulations would stir Australian democracy. It also acknowledges that the tap roots of democracy's life, and its decay, lie deep in society, rather than in the black letter of laws and regulations. The vigour of Australian democracy must be ultimately a matter of the confidence, self-assertion, and public spirit of Australia's voters. But the paper contends that its proposals will build their confidence, and draw on their fund of self-assertion, to make Australian democracy something closer to what its glamourisers have imagined.

26 One might require a super majority of the two houses, sitting jointly, to appoint a Governor General, in the hope of ensuring a unifying figure rather than a party figure. This may not work. The requirement of supermajority would tempt the government to propose what is, in truth, a 'party choice', and then dare the Opposition to plunge Australia into constitutional crisis by refusing to concur.

27 There is a democratic critique of all these proposals, which proceeds from the tenet that the great *democratic* virtue of the present system of choice-by-prime-minister is that it affords the Governor General almost zero democratic legitimacy, leaving them unwilling to voice an opinion of anything controversial and or use reserve powers other than cautiously. But in Australia's recent history Governors have not always spoken uncontroversially in office or acted cautiously (SMH 2004).

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