

The Representation of Small Parties and Independents

Campbell Sharman^{*}

The Senate has become the active parliamentary chamber it is today largely as a consequence of the representation of minor parties. While the two large parties have supported major changes to Senate procedures and are the major players in the day-to-day operation of the Senate, it has been the existence of minor party and independent senators that has given the Senate its distinctive role. It is not just that the party or parties in government do not control a partisan majority on the floor of the Senate, but that, for most of the period since 1955, governments have had to gain the support of one or more independent or minor party senators to pass measures through the Senate.¹ From this lack of government control has sprung the independent role of the Senate in scrutinising legislation and in holding governments publicly accountable through the use of an extensive committee system. To the extent that this situation has been created by the system of proportional representation (PR) for the election of senators since 1949, PR has been the agency through which the Senate has been transformed. Quite how PR and minor party representation achieved this feat is the topic of this paper.

If the Opposition party in the lower house, the House of Representatives, had majority representation in the Senate, the government would be denied control of the Senate, but the dynamics of the legislative process would be very different from the situation in which minor parties hold the balance of power. An Opposition-controlled Senate would be heavily influenced by the party strategy of the Opposition in the House of

^{*} I am grateful for the comments offered on this paper by conference participants.

¹ On occasion, the government has been supported by the major opposition party but, given the nature of opposition politics in a parliamentary system, this is infrequent. Even when it occurs, neither government nor opposition parties wish to publicise the event.

Representatives. The Senate would be in danger of becoming a pawn in the adversarial and obstructionist politics that characterise the lower house. There would, in other words, be little pressure to support the Senate as an institution with a continuing role in scrutinising government separate from the short-term interests of the Opposition. The periods when the Senate has been controlled by the Opposition—during, for example, the Scullin government from 1929–31,² the first post-war Menzies government from 1949–51,³ and the dying days of the Whitlam government in 1975⁴—strongly support this conclusion.

Minor party and independent senators who hold the balance of power are not more virtuous or more public spirited than other senators, it is just that they have an interest in establishing procedures to enhance the long-term effectiveness—and hence political visibility—of the Senate. In this respect, the interests of minor parties and independents correspond with a broader public interest. The maintenance of a legislative body that has a role to play that is distinct from the partisan struggle to hold or gain government means that a wider range of interests can be involved in the legislative process than those identified with the government or the opposition. Much of the lobbying to influence government legislation is undertaken in private with ministers, advisers, and the Public Service. An active and independent legislative body like the Senate can ensure not only that this advice is made public, but that the views of a much wider range of interests are aired than those within the charmed circle of easy access to government. It also means that, for key areas of legislative policy, there can be informed public debate that can have an effect on the shape of legislation rather than a series of one-sided exchanges with a government that sees no reason to compromise.

The repertoire of Senate procedures together with the experience of using these procedures, has taken a long time to reach the present stage. The Senate debate in 1999 over the goods-and-services tax (GST), for example, represents a good example of detailed legislative scrutiny and creative compromise on legislative policy engendered by the representation of minor party and independent senators, but it also reflects the accumulation of many years of experience in devising procedures, both formal and informal, to cope with the negotiations required. The excellent case study by Liz Young of the passage of the 1993 Budget⁵ provides another example of the role of minor parties in the legislative process, together with an examination of the development of the range of strategies open to such parties and independents in the Senate.

² Geoffrey Sawer, *Australian Federal Politics and Law*, Canberra, Australian National University Press, 1963, pp. 1–38.

³ Graeme Starr, ed., *The Liberal Party of Australia: a Documentary History*, Melbourne, Drummond/Heinemann, 1980, p. 188.

⁴ Paul Kelly, *November 1975: the Inside Story of Australia's Greatest Political Crisis*, Sydney, Allen & Unwin, 1995, chapter 6; Alan Reid, *The Whitlam Venture*, Melbourne, Hill of Content, 1976, chapter 16.

⁵ Liz Young, 'Minor parties and the legislative process in the Australian Senate: a study of the 1993 Budget', *Australian Journal of Political Science*, vol. 34, no. 1, 1999, pp. 7–27.

Minor parties in the Senate have fundamentally altered the dynamics of the legislative process in the Commonwealth parliament. This is the case whatever the political preferences of the minor party and independent senators involved. The fact that there are players in the legislative process independent of the two partisan blocks that dominate the House of Representatives, coupled with the fact that these players hold the balance of power in the Senate, has meant that the position of the Senate has been transformed since the early 1960s. It is now an independent and highly effective component of the Commonwealth legislative process, and the focus for a wide range of political activities generated by its position to shape legislation and scrutinise government activity.⁶

Both the necessary prerequisites for this change—the representation of minor parties and their ability to hold the balance of power—flow directly from the adoption of PR.

Minor parties and the adoption of proportional representation

As John Uhr has shown, the motives of the Labor Party government in adopting PR for the Senate in 1948 were mixed, and the topic had been in the public domain and debated in Australia since before Federation.⁷ But, whatever the intent of the Chifley government in accepting PR for Senate elections from 1949, the creation of a forum for an active role for minor parties was not one of them. This raises the question of whether the effect of PR in enabling the representation of minor parties in the Senate and in creating the likelihood that they would hold the balance of power was simply the result of a massive miscalculation. In other words, was the representation of minor parties a reasonably foreseeable result of adopting PR for the Senate, and could their pivotal role in the control of Senate majorities have been predicted?

The second aspect of the question is easier to answer than the first. Given that support for Australia's two large party groupings, the Australian Labor Party and the Liberal and National parties was, as now, fairly evenly divided across all states, the effect of PR would be to reflect that balanced support with a similar pattern of even representation between these two party groupings in the Senate. If minor party or independent senators were elected, there would be a good chance that they would hold the balance of power. This means that the critical question is whether the election of such senators should have been seen as likely. In the light of the evidence available in 1948, a strong argument can be made that the representation of minor parties in the Senate other than the Country Party (now the National Party) could not have been predicted.

⁶ R.G. Mulgan, 'The Australian Senate as a "House of Review"', *Australian Journal of Political Science*, vol. 31, no. 2, 1995, pp. 191–204. See also John Uhr, 'Generating Divided Government' in Samuel C. Paterson and Anthony Mughan, eds, *Senates: Bicameralism in the Contemporary World*, Columbus, Ohio, Ohio State University Press, 1999.

⁷ John Uhr, *Deliberative Democracy in Australia: the Changing Place of Parliament*, Melbourne, Cambridge University Press, 1998, pp. 108–115. Also note G.S. Reid and Martyn Forrest, *Australia's Commonwealth Parliament 1901–1988: Ten Perspectives*, Melbourne, Melbourne University Press, 1989, chapter 3.

The justification for this conclusion is that the quota required for winning one of the five seats available at each half Senate elections after 1949 was 17 per cent of the vote in each state. This was more than any minor party other than the Country Party had won at Senate elections in any state in the previous twenty years. The two exceptions were a combined vote of 19 per cent for independents in South Australia in 1937,⁸ and a vote of 20 per cent for Non-Communist Labor in New South Wales at the 1940 Senate election. A near exception was the 15 per cent vote for Federal Labor in New South Wales in 1931 as a consequence of the split in the ALP in that state. Excepting the Country Party again, the vote for most minor party and independent candidates was far less than 10 per cent and highly variable between elections. There was no evidence of a pool of disaffected voters who might use the Senate to vote for any party other than the established ones. The New South Wales experience might have provided a warning—that a split in a major party might create the circumstances for the threshold of representation to be crossed. But the divisions in the New South Wales branch of the ALP had healed by 1948 and there was no immediate prospect of further splits.

The Country Party provided another possible exception, but one that would not have worried the ALP government in 1948. The Country Party's vote in most states at Senate elections had been well below the quota of 17 per cent, a fact likely to encourage the party to seek joint tickets with the Liberal Party. If one of the incidental effects of PR was to create inter-party tension between the Country and Liberal parties over such joint tickets, this would have been viewed as a bonus by the ALP. And, in any event, the Country Party was a special case since it was a long-established party that usually had a tight coalition arrangement with the Liberal Party. This meant it was not a minor party for the purposes of control of the Senate.⁹

The only problem with this analysis might be that a small party or independent candidate would not need to get the quota or 17 per cent of a state-wide vote in first preference votes. The candidate would have to gain enough first preference votes to stay in the count, but the remainder, perhaps as much as half the quota, could come from the second and subsequent preferences of other candidates. The effective threshold for representation might be closer to 8 per cent of the first preference vote, with the implication that more parties might have a chance of representation under PR.¹⁰ Even so, taking the 20 or so years before 1948, and ignoring the Country Party, only Social Credit in the South Australian Senate election of 1937 and the Protestant People's Party in New South Wales in 1946 would be added by reducing the threshold to 8 per cent. Neither of these parties maintained their vote at anywhere near this level at ensuing Senate elections.

⁸ The sources for electoral data in this article are Colin A. Hughes and B.D. Graham, *A Handbook of Australian Government and Politics 1890–1964*, Canberra, Australian National University Press, 1968 and supplements; and Australian State Government and Politics Project, Political Science Department, University of Western Australia.

⁹ There have been occasions when the National Party has voted with an ALP government in the Senate, but these occasions have been few and far between, and have usually dealt with matters of direct concern to the party, such as the changes to electoral laws passed in 1984.

¹⁰ Campbell Sharman, 'The Senate, small parties and the balance of power', *Politics*, vol. 21, no. 2, 1986, pp. 20–31.

Two other pieces of evidence could be mentioned. Tasmania had since 1909 used a PR system for the election of members to the state's lower house, the House of Assembly, that was very similar to the system proposed for the Senate in 1948, and there had not been a proliferation of minor parties.¹¹ Generalising from the Tasmanian experience might be unwise, but it undercut any simple assertion that the long-term use of PR led inexorably to the representation of small parties. In addition, the brief experience of New South Wales with PR for the election of the state's Legislative Assembly from 1920 to 1925 (three elections) had not led to representation of minor party and independent candidates that differed greatly from the pattern of the ensuing 20 years.¹² All in all, it would have been reasonable to assume that no new minor party and independent senators would be sitting in Canberra after 1949.

Minor party representation after 1949

The question of what explains the emergence and persistence of minor parties is a contentious one in political science, and three elements are involved. The first is broad social and political change and the emergence of new issues that existing parties have not accommodated, thus giving a new party the chance to articulate a distinctive political agenda. The second is the occurrence of political events that trigger the formation of a new party or splits in an existing party. The third is the effect of the electoral system in encouraging the formation or persistence of small parties, by making parliamentary representation an avenue for pursuing influence. It is the contribution of the last of these that is the concern of this paper, since it is the only one that can be anticipated by the designers of an electoral system.

As previously noted, there was reason to believe that the quota for gaining representation under the PR system adopted for the Senate in 1948 was sufficiently high to exclude minor parties except in the special case of the Country Party. The experience of the first three Senate elections with PR in 1949, 1951 and 1953 confirmed this belief. Of the three elections, those of 1949 and 1951 had quotas below 17 per cent—1949 because the enlargement of the Senate which occurred at the same time as the first use of PR meant that seven senators had to be elected from each state instead of the usual five, and 1951 because it was a double dissolution election at which all 10 Senate seats for each state were open for election. Even with the quota reduced to 14 per cent in 1949 and 9 per cent in 1951, no new small party or independent Senate candidate was elected. Indeed, none such minor party gained more than 6 per cent of the state-wide first preference vote in any state for the first three Senate elections with PR.

¹¹ W.A. Townsley, *The Government of Tasmania*, Brisbane, University of Queensland Press, 1976, chapter 3.

¹² See *New South Wales State Election Series*, Sydney, New South Wales Parliamentary Library, and Department of Government, University of Sydney, 1995–1998. (Election years from 1920s to 1940s, various authors.)

The 1955 election marked a major change. The split in the ALP led to the creation of the Democratic Labor Party,¹³ which gained 18 per cent of the Senate vote in Victoria and the first senator elected from a new minor party.¹⁴ The DLP was not successful in the other states at the 1955 election although it gained 11 per cent of the Senate vote in Tasmania, 9 per cent in South Australia and 6 per cent nationally. But this new party continued to win at least one seat at four of the next five Senate elections between 1955 and 1970, the exception being 1961. It had between one and five senators in the Commonwealth parliament for a continuous period between 1955 and the collapse of the party at the 1974 election.

Whatever the mixture of social and political factors that explain the emergence of the DLP, it is clear that, once it secured representation in the Senate, a major threshold had been passed in the effect of PR on the Senate. Together with a senator who was elected as a member of the ALP and defected to the DLP, the Senate after the 1955 election no longer had a government majority, the balance of power being held by senators from a new minor party. The Liberal and Country parties had 30 of the 60 seats and needed the vote of one of the DLP senators to pass legislation through the Senate and control the business of the chamber. While the governing parties briefly re-acquired a majority in the Senate after the 1958 Senate election, and the Fraser governments of 1975 and 1977 controlled partisan majorities in the Senate, minor party and independent senators have held the balance of power in the Senate since 1955.

What caused this change? While the circumstances of the split in the ALP in 1955 might explain the election of a DLP senator from Victoria, why was there a long-term alteration to the pattern of representation in the Senate? Part of the answer is that the factors leading to the emergence of a new party can be different from those explaining its persistence. The political event of the split in the ALP created the DLP with sufficient support in one state to secure the election of a DLP senator. This gave the new party the ability to use the Senate as a forum for publicising the party's views, and raised the visibility of both the Senate and the DLP. When this was re-inforced by the dependence of the government on DLP senators for the control of the Senate, the DLP had a powerful lever to keep its policy agenda before the public. The conclusion is that, once a minor party had been elected to the Senate and had held the balance of power, a clarion call was sent to parties and voters that PR in the Senate could be used by a minor party with great effect to influence government policy. By the mid-1960s, enough voters were persuaded to view their Senate vote in this way to ensure that a steady stream of minor party and independent candidates were elected to the Senate. Whatever the explanation for the creation of the DLP, the persistence of the party over 20 years had a great deal to do with its ability to use its Senate representatives as a platform from which its message could reach the public.¹⁵

¹³ Initially under the name Australian Labor Party Anti-Communist.

¹⁴ Robert Murray, *The Split: Australian Labor in the Fifties*, Melbourne, Cheshire, 1972.

¹⁵ P.L. Reynolds, *The Democratic Labor Party*, Brisbane, Jacaranda Press, 1974.

At the same time, the Senate began to expand its repertoire of measures to scrutinise the government and challenge its legislative policy. This was driven in large part by an Opposition that was discovering the opportunities that the Senate provided to embarrass the government. In many respects, the ALP before 1972 was more enthusiastic about the possibilities of using the Senate as a way of enhancing executive accountability than the various minor party and independent senators themselves.¹⁶ But the effect was to establish a symbiotic relationship between minor parties and the Senate—the greater the influence of minor parties in the Senate, the more visible the Senate became to the public and the more publicity minor parties got for their policies. The DLP had started a revolution in the perception of the role of the Senate and the potential of PR for reflecting the views of any minor party that could generate around 10 per cent of the state-wide first preference vote at Senate elections.

The dynamics of minor party representation since the DLP

With the collapse of the DLP in 1974, the polarisation created by the constitutional crisis of 1975 led to a short term decline in the share of the vote gained by minor party and independent candidates in 1974 and 1975 (see Table 13.1), even though there were two such senators elected to the chamber at both of these elections. But the political polarisation itself was a major factor in leading to the emergence of the next party to take advantage of the opportunities for representation in the Senate in 1977. The Australian Democrats claimed to be a centre party aimed explicitly at using their balance of power in the Senate to moderate the activities of government.¹⁷ The demonstration effect of the DLP in the Senate, and the opportunities PR provided for minor party representation were clearly factors in the creation of the Democrats as well as their continuing existence for more than 20 years. Other important components included an awareness of the potential of the Senate electoral system and the role of the Senate in shaping legislative policy.

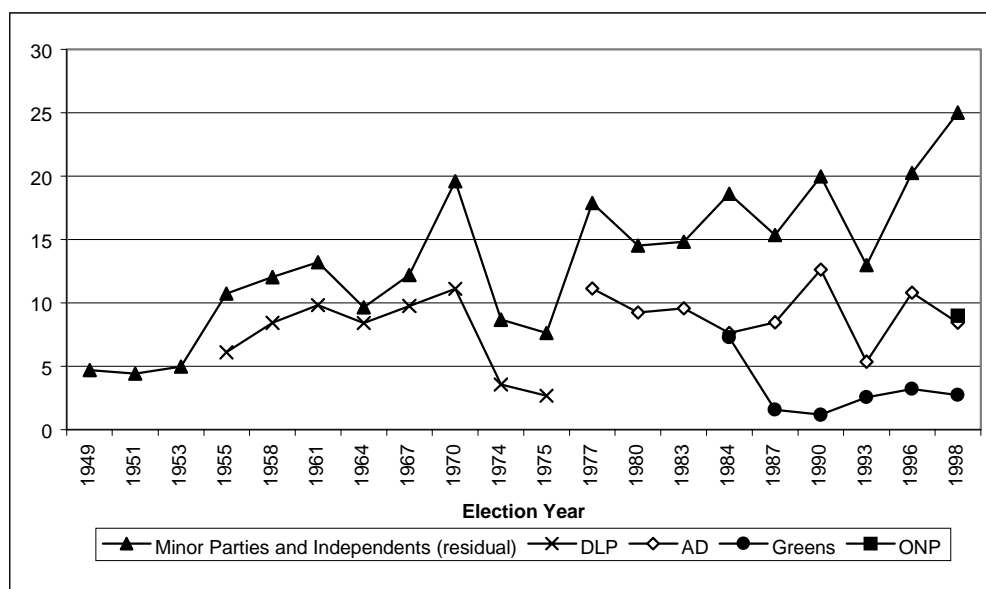
Over the years that have followed, the Democrats have been a party which, with only one exception,¹⁸ has been represented only in upper chambers and has had no experience of executive power in either state or Commonwealth spheres. This has meant that the Democrats have consistently regarded the legislating and scrutinising functions of parliament as their overwhelming concern. This has distinguished them from the DLP as well as from the major parties. As far as the Democrats are concerned, there is an almost perfect match between their partisan interests and the perpetuation of a strong Senate free from control by either government or opposition majorities.

¹⁶ G.S. Reid and Martyn Forrest, op. cit., pp. 178–179.

¹⁷ John Warhurst, 'Don Chipp's New Party', in J. Warhurst, ed., *Keeping the Bastards Honest: the Australian Democrats' First Twenty Years*, Sydney, Allen & Unwin, 1997.

¹⁸ The party won a seat at the 1977 and 1979 South Australian House of Assembly elections.

**Senate, minor party and Independent vote, 1949–1998
(percentage of first preference vote)**



This has been true of the other minor party and independent senators who have been elected since 1955. But while all would strongly support the role of the Senate as an autonomous legislative body, independent senators, in the nature of their position, have also had to work to maintain their regional and sectional support. Securing particular policy goals has often been as important to such senators as working to enhance the role of the Senate. In a similar way, the special concerns of those senators who have been elected to support green and anti-nuclear policies have required these senators to harmonise their concern to further their particular agenda with the need to participate in the wider work of the Senate.

The Senate has now reached a stage where the procedures for the participation of minor party and independent senators in the work of the chamber are well established. It is now taken for granted that the Senate works in a way that accommodates the fact that neither the governing nor the opposition parties will control a majority on the floor of the house, and that minor party and independent senators will play an important role in all aspects of the functioning of the house. This is not to say that all the battles have been won, but the culture of the Senate is now such that there is a presumption that there will be detailed and independent scrutiny of legislation, and that committees will be able to look into any matter that is politically salient, irrespective of the views of the government of the day. The establishment of such protocols has been possible only through the agency of minor party representation in the Senate.

The longer-term effects

The contribution of minor parties and independents to the revolution in the role and operation of the Senate since the early 1960s has been well documented,¹⁹ but there

¹⁹ R.G. Mulgan, *op. cit.*, pp. 191–204. See also John Uhr, ‘Generating Divided Government’, *op. cit.*

are other effects that have attracted less comment. One has been the creation of a different set of partisan choices for electors at House of Representatives and Senate elections. Every state now has at least one minor party or independent senator. While minor party and independent candidates stand for election for the House of Representatives, their chance of success is very small and rests on highly idiosyncratic local factors, the most important of which has been a candidate's recent defection from one of the major parties. It is true that one of the ways in which minor parties can enhance their chance of electing candidates to the Senate is to swap preferences with one of the large parties.²⁰ This requires minor parties to secure votes in the lower house in order to bargain for Senate preferences, but this does not alter the fact that the contest in the lower house is principally about securing government, whereas the contest in the upper house is over the relative support for major and minor parties. In this respect, federal politics has two party systems, one for the Senate and one for the House of Representatives.²¹ Even if the same parties are involved, the dynamics of competition and the pattern of representation are quite different, just as the dynamics of parliamentary politics are different in each chamber.

Another effect has been to inject a stronger regional component into national politics. While the Senate does not behave as a states' house in the sense that all the representatives from a state vote as a block irrespective of party affiliation, minor party and independent senators often have distinctive regional constituencies and use the Senate to bring to national attention their particular state-based concerns. Senator Brian Harradine is an outstanding example of a Senator who has used the Senate to further what he has seen as Tasmania's interests. Looking after their home state is something all senators strive for, but the representation of minor parties and independents has added extra vitamins to this process, and made it more open.

The growth in the visibility of the Senate has also had an effect on state politics. Members of state upper houses can see the Senate as a powerful example of the political potential that second chambers can have in the parliamentary process. It is no accident that, in reforming state legislative councils, PR has been adopted for three of Australia's five state upper houses,²² and all of these currently have minor party members holding the balance of power.

The final effect is the one that is the hardest to pin down, but may well be the most important. The Senate provides a forum for the discussion of legislative policy and an opportunity for effective scrutiny of the executive that goes beyond partisan politics. This means that the polarisation between government and opposition that characterises most debate in the lower house is moderated in the Senate. This, in turn, can lead to a consensus style of politics in which compromise and the accommodation of different points of view are regarded as the normal way of doing business. This is both effective policy-making and good politics. The abrasive style of lower house politics has done much to bring parliamentary politics into disrepute. The Senate can do much to restore faith in the process of representative democracy. If this is so, the

²⁰ Note Narelle Miragliotta, 'Trading Preferences: the Greens, Minor Parties and Representation in the Australian Senate', PhD Thesis, University of Western Australia, 1999.

²¹ Note R.K. Carty, 'Australian Democrats in Comparative Perspective', in J. Warhurst, ed., *op. cit.*, p. 105.

²² The Legislative Councils of New South Wales, South Australia and Western Australia.

adoption of PR and the representation of minor parties, whether foreseeable or not in 1948, has done more to enhance the operation of parliamentary democracy in Australia than any institutional change since Federation.