

A Squeeze on the Balance of Power: Using Senate ‘Reform’ to Dilute Democracy

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The Democrats’ achievement in regaining the balance of power in the Senate in the 1998 election prompted a new round of government spin about the need to reform the Senate voting system so that the ruling party could control it. But despite government claims, the Senate is not ‘hostile’ and it cannot realistically be claimed to have been hostile at any time since the Whitlam era. Statistics on the passage of legislation clearly support this. It is the House of Representatives’ voting system, not the Senate, that is in urgent need of reform, and the overriding objective of any electoral reform should be swinging the pendulum back towards vesting power in the parliament. The House of Representatives currently operates simply as an arm of the Executive. It is left to the Senate to perform the function of the parliament as set out in the Constitution.

The proposal recently put forward with gusto by Government Deputy Whip, Senator Helen Coonan is the latest in a long and inglorious line of attempts by the major parties to suggest that they should be granted total power. Nearly one quarter of the population supports smaller parties and independents. Coonan proposes a Senate voting system in which the votes of those people would have less worth than the votes of those who supported the big parties.

The constant refrain about the supposedly unrepresentative and obstructive Senate conveniently ignores a few facts that go to the heart of our democracy:

- Any party can gain a majority of seats in the Senate under the current system if they get a majority of votes from the public. Despite having the support of only about 40 per cent of the public, the Coalition appears to think it should have total control of the parliament.

- Many people regularly vote differently in the Senate than the lower house specifically to ensure the government does not have a tame parliament that will lamely acquiesce to the prime minister's every wish.
- The Senate has never operated as a so-called states' house and has never operated in a way that enabled the government of the day to pass its legislation *unless it had a majority of seats in the Senate* as well as the lower house.
- The Senate is clearly more representative in its composition than the lower house, and therefore more accurately reflects the diverse will of the people.
- The Senate in recent years—indeed since the Democrats initially gained the balance of power after the 1980 election—has operated in a far less hostile manner than any Senate in the past that has been controlled by the opposition party (best demonstrated by the Coalition's behaviour during the Whitlam years). Attempts to paint the Senate as obstructionist ignore the fact that more than 99 per cent of the legislation put to the Senate is passed. In the last parliament, 427 pieces of legislation were passed and only two were ultimately rejected.
- The Democrats alone are unable to pass or knock back legislation. Every decision of the Senate requires a majority to pass, which requires the support of at least one of the major parties.

The fundamental question has to be asked: do Australians want a parliament that performs its functions or not? If electing a government is supposed to mean giving an automatic right for all its legislation to be passed without question or amendment, then we may as well save the public's money and abolish the parliament. We could then all just vote for the prime minister directly and leave him or her to do what he or she feels like for three years. On the other hand, if we actually want to remain a democracy, then the parliament should be expected to perform its traditional democratic role, a significant part of which includes legislating. It is not just for effect that people in the United States call their politicians 'legislators'. That is a major part of what members of parliament are supposed to do—examine proposed laws and, where appropriate, pass them in a form that they believe will make good and fair law.

Most major party proposals to 'reform' the Senate would simply return parliament to the two-party playground that is being rejected by more and more Australians. Smaller parties and independents are now a permanent fixture on the political landscape, with support from nearly one quarter of the population. Aggressive moves by the Executive to remove them would be tantamount to a return from colour to black-and-white television.

We do need electoral reform

Many Australians believe our electoral system needs to change. I am one of them. There *are* problems with our democracy, and the eve of the centenary of Federation is an appropriate time to address them. We can work to make it better, but we should not throw the baby out with the bath water. As a general principle, we can be guided by the words of a former governor of New York—Alfred E. Smith—who said: 'All the evils of democracy can be cured by more democracy.'

The recent New South Wales state election offered an opportunity for the public to express their concern at upper houses acting in an excessive and inappropriate way and impeding effective government. This election included widespread publicity about a plethora of ‘micro-parties’, with unknown candidates and unknown policies, generating the infamous ‘tablecloth’ ballot paper for the Legislative Council. It was well known that at least some of these micro-party candidates quite deliberately set about arranging a series of cascading preferences to enable their election with a minuscule vote. It was a clear case of people seeking to use the electoral system to be elected despite having no public confidence—hardly something likely to generate public support in the role of the upper house as a serious house of review, or to build public support for non-major party candidates.

Despite this, there was an unprecedented level of support for non-major party candidates in the upper house. Around 35 per cent of voters chose a candidate from outside the Australian Labor Party or the Coalition. Indeed the ‘minor/micro party’ vote exceeded that for the Coalition. About half of this was for ‘micro-parties’—that is, parties other than the established minor parties (Democrats, One Nation, Greens, Fred Nile and the Shooters Party).

The ALP was widely expected to win well in the election, so when people were casting their votes for the upper house, they did so knowing what government they were likely to have. Surely if the public ever had a chance to say ‘we want the upper house to get out of the way and allow the government to govern’, it was in this election.

What is government?

We have to establish our definitions at the outset before we can have a constructive community debate. We have to be clear as to what we mean by phrases such as ‘stable government’, ‘responsible government’ or ‘representative government’. This question of what we mean by ‘government’ is at the very heart of the current debate on electoral reform.

When Coalition MPs talk about government, they mean the prime minister and his ministers and themselves having all power, and making all decisions, irrespective of the parliament. However, the federating fathers talked of government as something completely different. An outline of the Constitution published by the Parliamentary Education Office describes it this way:

How may the Constitution be summed up? Its most important feature is that it establishes a government consisting of three branches—the legislative, the executive and the judicial branch, and it provides that the legislative, executive and judicial powers are to be exercised by these three branches.

By virtue of this definition, the Australian Democrats are part of the government in Australia. A former Democrat Leader, Janine Haines, made this point well during a debate in the Senate a decade ago when she said:

In fact, we are part of the governing body of Australia. This Parliament consists of two chambers. Both of them have equal rights—or virtually equal rights—over legislation, and amending government legislation is as integral a part of being in government as taking the benches opposite is. We are as answerable for our actions as any other member in this chamber. We are part of government by dint of power and the position we hold in the Senate and we are prepared to stand on a daily basis and accept that.

What Coalition MPs call ‘the government’ is, in the strictest sense, the executive: the prime minister and his senior ministers. Not government in the sense meant by the founding fathers. This confusion serves the executive well in its never-ending quest for absolute power.

A recent article by Laurie Oakes, who writes often on the age-old battle between the executive and parliament as it is played out in contemporary Australia, quotes Clerk of the Senate Harry Evans on this point:

In Evans’ view, the talk of Senate reform emanating from the Coalition at the moment is easily explained. ‘Governments always want to remove any obstacles to their power, and the more power they’ve got, the more they try to remove the residual obstacles. ... Governments just naturally drive for absolute power, and people just have to be awake to that and resist it, because unless you have checks on power then you go down the slippery slope.’

In the current federal sphere, the House of Representatives has already been captured by the executive. The executive, however, cannot ‘capture’ the current Senate so it seeks to discredit it before attempting to dismantle its powers. This ‘natural drive’ for absolute power has also seen members of this government launch some of the most blatant—and blunt—attacks on the judiciary that Australia has seen. Judges are in no real position to respond. In another article, in November last year, Oakes looks at one of the ways in which the executive has captured the House of Representatives. He notes that, since Federation, the number of parliamentarians has doubled while the number of ministers has quadrupled.

The House of Representatives is no more than an echo chamber for the decisions of the executive. We need go no further than the recent tax debate to prove the point. For example:

- Although there were some 17 pieces of legislation in the initial part of the package—and the government freely admitted that it was the biggest change in taxation law since Federation—the House of Representatives was allowed a paltry 20 hours to debate these bills.
- Also, it was left up to the Democrats in the Senate to force a public parliamentary inquiry into a new tax system—without which there would have been not a single opportunity for the community to have open input into the process as Australia changed from one tax system to another. Nor would there have been the

opportunity to look at how the package would affect different Australians, in different income groups.

While Prime Minister John Howard, Peter Costello, Peter Reith and the rest of them railed against the Democrats in the Senate, they were very careful never to attack Senator Brian Harradine or Senator Mal Colston. Nor do they attack the Nationals, who despite wielding considerable power, are a minor party existing on a very low vote. Indeed, they have just lost party status in the Senate. Of course, once the Democrats became pivotal to the survival of the tax package, the attacks stopped, at least temporarily. Not long after the passage of the amended tax package, the attacks on the Senate were renewed, with Liberal Party state divisions once again calling for electoral changes to gut the power of the Senate. The Nationals have much more power to alter Liberal policy than the Democrats ever will—more is the pity. The party has exercised this power, most recently, on issues such as Telstra and Wik, but it is only the Democrats—not Harradine or Colston, or the Nationals—who are attacked.

The continuing battle for control between the executive and the parliament is a struggle as old as parliamentary democracy itself. It is the executive's battle for unfettered power that fuels the current push for so-called 'reform' of the Senate. Despite what Howard and his ministers constantly claim, it is not a 'hostile' Senate. However, the Coalition spin doctors have been very successful in building a strong public perception that this is the case. They have done this through highly disciplined repetition and they started on day one of Howard's administration. Even senior political journalists who, frankly, should know better, quite happily pepper their articles with the adjective 'hostile' without stopping to think whether or not it is true. The simple, undeniable fact is that the Senate has passed all but two bills during the Howard years, and this is in line with the historical average. Hardly evidence of 'hostility'.

It is my view that the objective of any electoral reform should be swinging the pendulum back towards vesting power in the parliament. In discussing the merits of major electoral reform, the Democrats have highlighted the case for reform of the House of Representatives' voting system. Quite clearly, the House of Representatives currently is not as representative as it should be.

There are six main problems, (or 'evils', as A.E. Smith called them), with the current House electoral system, which can be cured with more democracy:

- It denies representation to more than one in five Australians.
- It provides a huge electoral advantage to incumbent governments, which are able to use their power to hold marginal seats in very tight elections despite not attracting the majority of the vote.
- It reduces the role of the House of Representatives to that of an echo chamber for the government of the day.
- It restricts voters' effective choices to just two similar major parties, even though 20-25 per cent would prefer another party to represent them. Indeed, 93 of the 148

members chosen at the last election were not the first preference choice of the majority of voters in their electorates.

- It results in major parties focusing on the 20–30 marginal seats that will decide the fate of government. Governments largely ignore the other 120–130 electorates, particularly the 30–40 safe Opposition seats.
- It creates political ‘ghettos’, with large areas having representation from only one party. Sydney’s North Shore, with eight safe Liberal electorates of 80,000 voters, denies representation to 120,000 Labor voters. Sydney’s West has 10 safe Labor seats and 200,000 unrepresented Liberal supporters. And with a two-party preferred vote of around 43 per cent, Labor won only one of the 16 non-metropolitan seats in Queensland, and the Liberals none of the five seats in Tasmania.

These facts and figures hardly support an argument for our current electoral system delivering a ‘representative’ House of Representatives.

As part of an agreement with the British Liberal Democrats, the British government has recently tackled the issue of the unrepresentative nature of the House of Commons. It established a Royal Commission, headed by Lord Jenkins, to recommend a new electoral system. The Australian Democrats have looked to the Jenkins Royal Commission report to inform our own proposals for the reform of Australia’s electoral system.¹

As a party, we have long supported the introduction of proportional representation (PR) in all houses of parliament in Australia. We are, however, realistic enough to recognise that the major parties would never accept such a change. In the face of declining support, the two old parties are hardly likely to hasten their own demise. However, the Jenkins model offers a good, practical compromise between the competing principles of local representation and fair representation.

We recommend a similar mix of local seats being ‘topped up’ from a party-based vote to make the House of Representatives more democratic. Under our proposal, 80–85 per cent of members of the House of Representatives would continue to be elected based on single-member constituencies and preferential voting. A further 15–20 per cent of members would be elected based on a second vote by electors for the *party* of their choice. These seats would be allocated in each state to the most under-represented parties. This second category of members would provide the pool to ‘top up’ the representation of each party until the number of MPs accurately reflected voter support in each state.

This is not a radical proposal. It is practical and reasonable. Most importantly, it would ensure that a party with a minority of the two-party vote never accidentally ‘won’ an election again—as the Howard government did last October. Howard enjoys a 12-seat majority in the House of Representatives having attracted only 48.7 per cent

¹ See *Report of the Independent Commission on the Voting System (Jenkins Report)*, London, TSO, 1998.

of the two-party preferred vote. If democracy can be defined as a situation wherein the will of the majority prevails, then Labor Leader Kim Beazley should have formed government after the October election. Worse still, this outcome was not exceptional. In one in four Australian elections, the electoral system delivers government to the 'wrong' party. It is worth noting that in other, less politically stable countries, similar outcomes have led to popular revolution.

The Jenkins model, however, could well lead to a rejuvenation of the House committee system—as has occurred in the Senate over the last two decades since the Democrats arrived. It could lead to all seats being, in effect, marginal seats. Apart from placing real power back into the hands of the voters, it would mean that the national political agenda was no longer determined by polling in a mere handful of swinging seats. The Jenkins model could rescue the House of Representatives from the clutches of the Executive.

What hostile Senate?

From May 1996 to July 11, 1998, 427 bills were passed. Two bills were negatived, four bills were passed by the Senate but were laid aside or discharged by the House of Representatives, and one bill passed by the Senate but laid aside by the House of Representatives was later recommitted and passed. Two other bills that were negatived in the Senate were later recommitted and passed. So, of 427 bills, only two remain negatived—the Workplace Relations Amendment Bill and the Telstra Privatisation Bill. The others were either passed after recommitting or laid aside by the House of Representatives. In other words, 99.54 per cent of bills were passed.

Coonan claims the Senate is a 'handbrake on progress', but there may be a good reason for this. It is dangerous enough now on the political highways, with the Coalition in reverse gear, pressing the accelerator firmly to the floor, and the Opposition vainly pumping the brake. The Democrats are focusing on the steering and keeping an eye out for safety ramps. Coonan proposes jumping in a steamroller, driving straight over the will of the people and building a bypass around parliament so that the Coalition can bulldoze through whatever laws it wants. The Senate may need to be a handbrake because the government is often going the wrong way.

Even if you accept the straw man argument put up by proponents of Senate 'reform', most of the proposed solutions would not work. For example, Senator Coonan's proposed threshold quotas—which are more properly known as exclusion quotas—would *not* deliver a majority in the Senate to the government of the day.

Campbell Sharman, a professor at the University of Western Australia, had the following to say about Coonan's proposals:

Senator Coonan's proposals would not solve the problem which she points to. There is no way, given the current composition of the Senate—that is 12 senators for each state and PR—with or without thresholds—that the Government will ever, is ever likely to get a majority in the Senate. Because it means that the governing parties have to get 50% or more of the Senate vote and no government has been anywhere near that since early in the days that proportional representation was passed.

And proportional representation has been in use in the Senate for 50 years now.

Nor would proposals to shrink the Senate back to 10 senators per state (instead of the current 12) deliver control to the government of the day. Had the Coalition not split on this issue in 1983 when the vote was taken to increase the size of the Senate, and if there had consequently been only 10 senators per state throughout the last 15 years—then it is probable that the Democrats would have held the balance of power outright throughout the entire period. The bottom line is that, without completely removing the proportional nature of the Senate voting system, a party is unlikely to be able to hold a majority of Senate seats unless it receives a majority of the primary vote—surely this is how it should be.

Many commentators argue that it is the revulsion of the electorate from the Senate's behaviour in 1975 that underpinned the initial success of the Democrats in 1977 and 1980. In a way, the Liberals created the perfect environment for the Democrats to get off the ground. But, however unpalatable the fact may be to the major parties, the Democrats have enjoyed enduring voter appeal since the late 1970s on the basis of performance. The Democrats do not dictate terms to government. If we did, then frankly, Australia would be a much better place. There are real restraints in place: some practical and some, importantly, that are self-imposed. For instance, every generation of Democrat senators has pledged not to block supply. We have been remarkably consistent in approach to our role over 22 years.

The Australian Democrats are happy to participate in a debate about electoral reform, but the debate will be productive only if Australians realise the motive of the major parties is the drive of the executive to secure for itself absolute power. The most recent attacks on the Senate—and the Democrats—were generated by the government, deliberately and strategically, in the context of debates on tax, unfair dismissals and Telstra.

The objective of any electoral reform should be to swing the power pendulum back towards the parliament—and thereby the ordinary men and women of Australia. Electoral reform should not push the power pendulum any further towards the executive. The Coalition and its vocal supporters fail to accept that Australians do not want the government of the day to have a majority in both houses. Simply put, if Australians wanted Howard to have a majority in the Senate, they would have given him one. They did not—and they are not likely to next time either.

If we really are serious about electoral reform, then we should start where the need is most urgent—in the House of Representatives. The electoral system for the House of Representatives must be overhauled before it can be truly called 'Representative', and the model put forward by Lord Jenkins provides a suitable practical plan for reform in Australia. Reform is also necessary in the political culture in Australia. Given that the public repeatedly refuses to give one party control of both houses of parliament, perhaps it is time for politicians to take a less combative approach. If a party does not have the numbers, maybe it should put more energy into cooperation, negotiation and consensus rather than attempting disenfranchisement?