

Equality and Australian Democracy

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Democratic Audit Discussion Paper
October 2011

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*With thanks to Norm Kelly, Brendan McCaffrie and Kirsty McLaren for their contributions
and to Glenn Patmore and Murray Goot for advice.*

Democratic Audit Discussion Papers
ISSN 1835-6559

The principle of political equality, the idea that every person should count for one and no person for more than one, is central to democracy. It inspired the movements for democratic reform in 19th century Australia and the struggle for the vote. Reformers wanted to replace the political privileges of property with the rights of the people. They were heavily influenced by both Chartist and Benthamite ideas, and these were to shape our electoral institutions from the middle of the 19th century. Such democratic innovations were met by a strong response, which included the constitutional entrenchment of powerful upper houses based on property franchises.

The interests of property were also protected by the retention of plural votes for property owners in lower houses, everywhere except South Australia. This is often forgotten when recalling the democratic victories of the 1850s when male workers won the vote. Another means to shore up property was the use of unequal electorates, whereby the electorates dominated by large landholders had far fewer voters than working class electorates. So while for reformers democracy meant giving people the vote to balance the power of property, the bias in favour of property continued to be reinforced through electoral institutions despite the arrival of manhood suffrage. This is a different story from the versions of Australian democracy celebrated in venues such as the Museum of Australian Democracy.

This essay will focus, then, on the struggle between the political rights of property and the political rights of the people as articulated by reformers. It will explore how this struggle shaped the design of Australian political institutions and how this legacy continues to affect Australian democracy.

In the mid 19th century the Australian ballot, underpinning the new manhood suffrage for lower houses, was a genuine breakthrough in the mechanics of how to conduct fair elections. Australia was once the only place in the world where, at elections, governments supplied ballot papers with candidates' names printed on them and booths where electors could mark their ballot papers in privacy. This was a fundamental guarantor of equality because it meant all votes could be cast and counted in secret, free from intimidation from employers, landlords or supporters of rival candidates. In other parts of the world, voting was either 'open' or nominally 'secret'; in both cases people brought their own voting papers to the polling place, or took them from third parties such as candidates' agents at the polling place. Now nearly all countries have adopted the Australian ballot and it is viewed as an essential element of democratic equality. It is enshrined in Article 25 (b) of the International Covenant on Civil and Political Rights, which guarantees the right '*To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors*'.

More generally, Australia pioneered the salaried electoral administrator, who took professional pride in ensuring the electoral roll was as comprehensive as possible, at least for lower houses, and that all citizens had equal opportunity to register their preferences. In line with this logic, postal voting was introduced, initially to ensure seamen and railwaymen could vote, but soon seen as a boon for pregnant women, when South Australia extended the vote to women in the 1890s.

On the other hand, while Australia's achievements in relation to professionalised and independent electoral administration were a source of best practice in the democratic world, and compulsory conciliation and arbitration was a source of wonder, its commitment to equality was limited by ideas about race and gender. There were historic concerns to protect the equality that had been gained from perceived threats from other races, including a concern to protect the family wage from competition from cheap labour.

1. Political equality in the Australian colonies: Ideas and institutions

The timing of Australian settlement, coinciding with the birth of utilitarianism, helps us understand the political attitudes that soon took hold. That most famous of 'new world' countries, the United States of America, was settled several centuries earlier and its nationhood was built when the influence of philosopher John Locke (1632–1704) was at its height. Lockean principles emphasised individualism and freedom from government, most importantly the belief in the natural rights of man. Government and laws were necessary evils to be tolerated only to the extent that they protected natural rights. These values were included in the American view of society from the outset, and that country today continues to put great emphasis on individual rights.

Australia was different. By the time our colonies were settled, a new political philosophy was holding sway in the United Kingdom. The utilitarians were led by Jeremy Bentham (1748–1832) and included many other reformers such as James Mill (1773–1836) and his son John Stuart Mill (1806–73). These people had no objection to laws; in fact they quite liked them—provided they were good laws. If something in society was undesirable, then it could be rectified by a law. Bentham found the idea of some idealised natural human state, away from the coercive evils of government, ridiculous. The idea of natural rights was, in Bentham's famous phrase, 'nonsense upon stilts'. For a start, he wrote, we are all born subjugated to our parents, and from then on we remain subjugated to something, civilisation and society. Unless you had laws you had no civilisation, only anarchy. Utilitarians believed it was possible, scientifically and rationally, to construct good laws. Laws, therefore, were not bad in themselves, although individual laws could be bad. The challenge was to make the best laws possible. These ideas were consistent with an idea of a more forceful role for government: a rational, empirical one, with laws rationally designed.

Specifically, Bentham prescribed rational plans for society based on a calculation of what would result in the greatest good for the greatest number. His idea was to aggregate everyone's pleasure and pain, counting each person equally. The outcome that had the most net pleasure was the best. This was scientific, rational and could not be more equal. It was also, of course, rather simplistic and impossible to implement fully.

As luck would have it, there were places like Australia that were being constructed from the ground up, and so these ideas could be included in the raw material. Bentham never came to the Australian colonies, but people who read him, or who

knew people who read him, did come to Australia in the 19th century. New Zealand and Canada also provided opportunities for these new ideas to be put into practice. Some of the utilitarians, like H.S.Chapman, the inventor of the secret ballot in Victoria, traveled to all three places.¹ As with America centuries earlier, Europeans came to Australia to seek their fortune and build a new life, but they carried with them different ideas to the American colonists. Moreover, the material circumstances of the Australian colonies lent themselves to the influence of ideas that gave a more important role to government.² The sparse population and scarcity of private capital led to a reliance on colonial governments to build infrastructure and provide services that private enterprise could not. This reliance proved habit-forming, and people learnt to look to central governments for solutions to their problems.

Broadly, democratic reformers in Australia came in two categories: Chartists and Radicals. Chartists tended to be working-class men who remained disenfranchised after England's *Reform Act 1832*. This landmark legislation had widened the franchise, giving many middle-class men the vote. A Radical was likely to be educated and middle class, and had perhaps been newly enfranchised in 1832. Both groups pursued a set of demands, or charters, which were very similar, containing objectives such as equal-sized (in terms of numbers of voters) electoral districts, meaning all votes counted equally; secret ballots, so that the vote could be exercised without coercion; payment of members of parliament, so that any man could afford to stand for parliament; and annual elections.

In this way the ideas of utilitarians, that if something was good for people it could be legislated for, that government was to have an active role in society, and that equality could be legislated for, came to be included in Australia's DNA. It can be seen in Australia's tendency towards compulsion to a degree that either surprises or horrifies American observers. A century and a half after the radicals came to Australia, our electoral institutions have converged with international norms (except perhaps for compulsory voting), but the original ideas and their institutional expression were startling at the time.

Apart from timing and the ideas current at the time of settlement, another explanation of the form taken by equality in Australia was the absence of a hereditary upper class. English politician Sir Charles Dilke described 19th century Australia as being English 'with the upper class left out'.³ Most obviously, Australia had no House of Lords, that hereditary, conservative body. And it had an influx of radicals, particularly after the failure of revolutions in Europe in the 1840s coupled with the lure of the Australian goldfields in the 1850s. As an English visitor wrote to his countrymen in the 1870s:

*there are no doubt Conservatives so-called [in Australia] but their type of Conservatism is not like ours, and they believe as little as any English Radical in entailed estates, privileged ecclesiastics, or hereditary legislators.*⁴

From 1859 onwards there were six Australian colonies, with New Zealand across the Tasman being another colony settled at around the same time. Perhaps not surprisingly, some of the first steps towards equality were taken in the two colonies that did not have convict origins—South Australia and New Zealand. In 1840 the Adelaide Corporation (council) elected its members by what some believe to have

been the world's first use of proportional representation. As we shall see, South Australia and New Zealand also had more enlightened views about Indigenous political rights and were pioneers of women's suffrage.

The first colony-wide election was in New South Wales (NSW) in 1843 while Victoria, Tasmania and South Australia followed in 1851. All of these colony-wide elections were for members to the single legislative body, the Legislative Council. These Legislative Councils were two-thirds elected and one-third appointed by governors. By 1856 all four colonies achieved responsible government, which meant the creation of new bicameral parliaments and governments that were answerable to the lower house. The lower houses (Legislative Assembly or House of Assembly) were popularly elected, while the new Legislative Councils were either elected under a more restricted franchise or appointed. New Zealand held its first colony-wide election for its House of Representatives in 1853, while its Legislative Council was fully appointed. In 1859 Queensland came into existence by separating from NSW. Western Australia was behind the pack, having its first Legislative Council elections in 1870 and its first bicameral elections in 1890.

The voting system inherited from the mother country did not pretend to involve equality. Some people were worthy of parliamentary representation and some were not. No women could vote. Furthermore, the vote in practice was not about people but about property and income. A man could vote in whichever geographic electoral constituencies he held qualifications (owning property or business, or paying rent of certain amounts), and a man who did not qualify in these terms could not vote anywhere. Electoral rolls (lists of eligible voters) contained each elector's name, qualification and the address of that qualification, but not where the man lived because this was irrelevant.

It was in the 1850s, when most of the Australian colonies achieved self-government, or 'responsible government', that a great widening of the electoral franchise occurred. The single chamber parliaments of Legislative Councils were replaced with two chambers. The upper houses, also called Legislative Councils, were deliberately undemocratic bulwarks against the 'excesses' of 'too much' democracy, but in the lower houses where governments were made, radical 'Benthamite' ideas about equality and inclusion were put into practice. Votes for women remained largely unthinkable (the Chartists had dropped this demand so as not to endanger manhood suffrage), but nearly all British subjects aged 21 or over were allowed to vote.

In addition to a virtually universal adult male franchise, another early break with British practice was to allow former convicts to vote. The issue of ex-convicts (called emancipists) had held back the granting of elections in the antipodes, as in the early years they outnumbered the people who had arrived as free men (exclusivists). Back in England emancipists could not vote, but Australia was an experiment, a society starting with convicts, and not enfranchising people who had served their time and were building a new life in Australia—sometimes very successfully so—was not feasible. Yet the prospect of allowing former convicts to vote scared many exclusivists who feared being outnumbered and their interests subordinated. The same considerations saw the introduction of trial by jury delayed.

It is not quite true that Australia led the world with its democratic franchise. French men, and men in some American States, were voting under universal suffrage before any Australian had cast a vote of any kind, although it was usual for paupers or those dependent on public assistance to be excluded from the vote.⁵ Australia led the way in the British world—Britain and her colonies—which was what really counted to those involved. In the Australian colonies from the 1850s most males who were 21 years or over and were British subjects, were able to vote. The repercussions of this radical franchise were contained by upper houses designed to protect the sorts of interests that had sole representation under previous arrangements. And all used the Australian ballot, a voting plan that was devised in Melbourne in January 1856, whereby the government provided voting papers with candidates' names on them.

As we have seen, New Zealand was considered one of the 'Australasian' colonies and, like South Australia, had never received convicts and proudly saw itself as different. Both had more 'enlightened' attitudes to Indigenous people, including in the electoral franchise. In New Zealand, four Maori parliamentary seats were established in 1867. Today there are seven, reflecting enrolment on the Maori roll—Maori can choose whether to be on the Maori or on the general roll. South Australia did not create special seats for Indigenous people but also did not exclude them from political rights, such as voting in parliamentary elections. It was also in these two jurisdictions that women were first given the vote.

The first colony to give women the vote was New Zealand in 1893, and the second was South Australia in 1894. South Australia went further than New Zealand in giving women the right to stand for parliament at the same time. New Zealand women had to wait for this until 1919. After Federation, the Commonwealth Electoral Act of 1902 also gave women the right to vote and stand for parliament at national elections, making Australia the first country in the world where both rights had been granted at the national level. However, although women started standing for the new national parliament in 1903, none were elected until 1943. By contrast women gained the right to vote and stand for the new Finnish parliament in 1906 and a year later 19 women were elected. Meanwhile the various Australian States continued with their own rules about who could and could not vote. It was not until 1908, when Victorian women gained the right to vote at State elections, that women could vote in all State elections as well as federally.

The brake on political equality: The role of plural voting and unequal electorates

One way in which the influence of property was protected from the democratic advances of the 1850s was the retention of plural votes for property owners. All the colonies except South Australia retained plural votes. For example in Victoria, the equality principle suggested by manhood suffrage was contradicted by property owners continuing to have voting rights in every electorate where they held property worth at least £50. During the debate over the 1857 manhood suffrage bill, there was fervent support for the continuance of the antithetical principle of plural voting. One Member of Parliament argued that: 'When property ceased to be represented, it would cease to be respected'. Another suggested that without the property vote Victoria would be a 'naked democracy' and the next steps would be the election of the

governor and breaking away from the mother country.⁶ Property won the day and it was not until 1894 that Victoria followed NSW in abolishing plural voting. Tasmania, Queensland and Western Australia were even slower. And, as we shall see below, in local government plural votes have lasted until the present day in some States.

While property owners enjoyed plural votes, the propertyless generally had no votes if they had ended up as inmates of charitable institutions. The exception was South Australia. Elsewhere, for example in NSW and Victoria, electoral disqualification of those receiving charitable assistance lasted until the 1920s.

It was also common to use malapportionment, or vote weighting, to provide rural and remote areas with greater voting power. This was generally a continuation of the British precedent of differentiating between rural and urban areas,⁷ and was designed to work in favour of the conservative or non-Labor parties.⁸ Understandably, it was left to Labor governments to introduce reforms that moved towards voting equality. For example, up until the late 1960s, South Australia's House of Assembly favoured rural electorates with vote weighting of almost 4:1. Rural weighting was abolished by the Dunstan Labor Government in 1975. In Queensland it was a Labor government that introduced a zonal system in 1949, based on rural and remote areas, which had been Labor strongholds in that State. Yet this malapportionment soon favoured the Country party and made possible 30 years of Country Party government in Queensland. It was not until 1992, after the arrival of the Goss Labor Government, that the zonal system was abolished, although a special allowance was retained for particularly large electorates.⁹

Western Australia provides some of the most extreme examples of malapportionment in Australia. For example, in 1917 the average enrolment in Legislative Assembly metropolitan seats was 6,108, compared to 2,642 for rural seats and 958 for seats in the north-west of the State.¹⁰ In the late 1920s, malapportionment reached a high (or low) point: while the urban seat of Canning had 17,347 voters the mining and pastoral seat of Menzies had only 265.¹¹ Vote weighting was reduced in 1929 and again in 1947. The principle of 'one vote, one value' however, was not introduced for the Assembly until 2005. Even then, an allowance was retained for large electorates, as had been the case in Queensland. Despite this, the package of reforms meant that malapportionment actually worsened for the State's Legislative Council, where vote weighting increased from 4.1:1 to 4.6:1 in the worst-case scenario.¹²

The brake on political equality: The role of upper houses

As we have seen, the Australian colonies achieved 'responsible government' in the mid-19th century, and it was then that each of their Legislative Councils was replaced by a bicameral parliament, a Legislative Assembly/House of Assembly and a Legislative Council. Before responsible government, each colony's sole chamber, the Legislative Council, was two-thirds appointed and one-third elected by a limited franchise. Responsible government immediately brought in adult male suffrage for lower houses—where government is formed—in NSW, Victoria and South Australia. Tasmania and Western Australia would wait until the first decade of the next century.

The kind of bicameralism introduced in Australia is what is called ‘strong bicameralism’, where both houses of parliament are reasonably equal in power. While government is traditionally formed by attaining a majority in the lower house, both houses have the same or similar powers for approving, amending or rejecting bills, passing motions, and initiating inquiries. Prior to bicameralism, the colonies’ Legislative Councils were the appointed bastions of conservatism, with members appointed from the moneyed and propertied elite, and mindful of protecting the elite’s interests.

With the advent of bicameralism, and the introduction of partially- or fully-elected upper houses, the voting systems for the election of upper house members were designed to ensure continuing conservatism, and to protect the elites from the possible excesses of the democratic rabble of the lower houses. This was done by including a property qualification both for voting and election to upper houses. In addition, Council terms were independent of lower house terms, ensuring that Councillors were less influenced by contemporary public opinion.¹³ All of these aspects of upper house voting systems contributed to the conservative nature of the Councils.

‘One man one vote’ was a scary prospect to many propertied people a century and a half ago. If the votes of uneducated, illiterate, poor people were worth the same as those of wealthy people, who knew what might eventuate? These fears were partly addressed by making country seats less populous than city seats, so giving landowners a greater say. More important was ensuring that the new upper houses, the Legislative Councils, remained bulwarks against the excesses of democracy. This intention was not hidden at the time, as exemplified in the advice of the Lieutenant Governor of Van Diemen’s Land, William Denison, to the British Government:

there is an essentially democratic spirit which actuates the large mass of the community and it is with a view to check that spirit, of preventing it coming into operation, that I would suggest the formation of an Upper Chamber.¹⁴

While government was decided in the very democratic lower houses, the powerful upper houses could veto anything that overly threatened the status quo.

Hence, the Legislative Councils were all elected on a limited franchise, based on property qualifications, except for NSW and Queensland, where the Councils were fully appointed. But while after Federation the first Commonwealth Electoral Act in 1902 created the most democratic upper house in the world—the Senate—the Legislative Councils of the then States remained undemocratic, being based on a restricted franchise, or having appointed members. What is startling, in view of Australia’s democratic reputation, is how long it took for them to be reformed.

Given the nature of the upper houses, democratic reforms were consistently difficult to achieve even with majority support in lower houses. Where change happened, it required reformers to use extraordinary measures to overcome upper house resistance. In the case of land reform perhaps the most drawn out example occurred in NSW in 1860 and 1861, when John Robertson attempted to make reforms to the nature of land sales. His Bill was designed to allow the Government to sell land in small blocks, to allow settlers to pay for the land in instalments and to allow the purchase of crown land before it was officially surveyed. Robertson’s Bill would make purchasing land

easier; with the likely side effect of reducing the dominance of existing landowners. After conservatives in the lower house altered his Bill to remove the provision allowing the selection of land that had not been surveyed, Robertson took the colony to an election in December 1860 to gain electoral endorsement for his land measures.

The NSW election results emphatically favoured members who supported the free selection of land.¹⁵ Robertson then relinquished the premiership to concentrate solely on his land reforms as a minister, and after the Legislative Assembly passed the Bill, he had himself appointed to the upper house in order to assist its passage there. The Council suggested amendments designed to advantage wealthy landowners, causing the government to attempt to ‘swamp’ the upper house by the additional appointment of 21 members who would favour the Bill. This was unsuccessful when the president of the Council refused to convene the Legislative Council, causing the Bill to lapse. It was only after the initial five-year term of Council appointments expired and a new round of appointments was made, excluding many of the most conservative of the former Councillors, that the Bill was reintroduced and passed.

The Legislative Council of Victoria held a similarly antidemocratic, and pro-property view and was if anything more intransigent. As Paul Strangio notes, the Legislative Councils were all obstructionist, but ‘from colonial times Victoria’s had been recognised as the most intractable’.¹⁶ In its first 18 years, the Council rejected or drastically altered eight land bills.¹⁷ In 1877 Premier Graham Berry, like Robertson, was only able to succeed in having a bill for the taxation of the State’s largest land holdings passed by extraordinary measures. He pressured the Council by adjourning the Legislative Assembly for two weeks, halting all parliamentary business. The Council grudgingly accepted the bill under these circumstances.

While land was the most obvious concern of the upper houses, they were bastions of economic privilege more generally. This is especially notable in the way they reacted against Labor governments’ attempts to improve economic equality and workers’ rights. The Councils’ were all more active whenever Labor was in government. The Victorian Legislative Council rejected many of the most important bills of the E. J. Hogan governments of the late 1920s and early 1930s.¹⁸ ‘Anything that threatened traditional economic interests ... was rejected’.¹⁹ Bills for fair rents, workers’ compensation and unemployment relief, among others, were rejected or significantly compromised by the Council. Council opposition returned during later Labor governments. In 1947, the Council blocked the Labor government’s budget in protest at the Federal Labor government’s policy of bank nationalisation. This was not a State issue and serves as evidence of the Council’s undemocratic and anti-Labor approach.

After the introduction in Victoria of full adult suffrage for the Legislative Council voting in 1950, conservative upper house majorities were no longer guaranteed and the Council began to operate in a more democratic fashion. Labor had been unable to win a Legislative Council majority in any State that directly elected its Council; the breakthrough finally occurred in Victoria in 1952.²⁰ The other States had to wait much longer for the basic democratic provision of full adult suffrage to be introduced for their Legislative Councils (see Table 1).

The ingenuity of Labor governments in circumnavigating intransigent councils was a feature of Queensland’s early political history. T.J. Ryan’s Labor government was

able to create a Court of Industrial Arbitration despite a hostile Council. The Council did expunge the provision guaranteeing preference to unionists in the court but allowed the major provisions to pass. It also allowed a Workers' Compensation Bill to pass, but this was more a result of the ineptitude of Councillors opposed to it than of agreement with the bill.²¹ In 1916, the Council was emboldened by the struggles of Labor in other States and rejected bills to abolish the death penalty, to provide full adult franchise for local elections, to begin the move towards free government-run hospitals and also rejected sections of an income tax bill. The Queensland Council's last-ever rejections of government bills occurred in 1920 against the Theodore Labor Government's income tax bill and against a proposed amendment to the *Land Act*, which would have seen the Land Court reassess pastoral rent. The latter was a clear example of the Council acting to protect property interests.²² Labor responded by arranging for enough new members (the 'suicide squad') to be appointed to give itself a majority and then used that majority to abolish the Council.

In New South Wales a similar anti-Labor bias in the upper house was at its peak when Jack Lang was premier. During his first term, the Legislative Council failed to pass a sixth of all bills and amended 4.8 per cent of others in a manner unacceptable to the government.²³ The Council paid particular attention to class-based issues, amending among others, the Lang government's Forty-Four Hours Week Bill, its Fair Rents (Amendment) Bill, and unsurprisingly, its Industrial Arbitration (Amendment) Bill, which 'sought to make compulsory unionism mandatory'.²⁴ Lang responded by attempts at 'swamping' the Council through Labor appointments but these were not as successful as in Queensland; two of Lang's suicide squad defected.

In 1928 a newly elected conservative government amended the NSW Constitution to provide that any Bill to abolish the Legislative Council or alter its powers must be submitted to referendum. After re-election in 1930 Lang continued his struggle with the Council but was in turn dismissed from office by the Governor of NSW for his refusal, in the circumstances of the Depression, to hand over the interest owed by the government to foreign bondholders. From 1933 the Council became an indirectly elected body, elected by members of both houses of parliament. Abolition remained Labor policy, but was soundly defeated at a referendum in 1961. Finally the Wran Labor Government won support for the democratising of the Council by the introduction of direct election. The first popular election for the Council, using a State-wide system of proportional representation, occurred in 1978.

In 1904, the first Western Australian Labor government had no members in the Legislative Council. For Premier Henry Daglish this meant a search for a supporter to appoint to the Council in order to meet the constitutional provision that at least one minister be a member of the upper house. The search resulted in the appointment of journalist John Drew, a non-Labor member who was supportive, but refused to take the Labor pledge or support many of Labor's more controversial policies such as the abolition of the Council.²⁵ The government of John Scaddan (1911–1916) faced a similarly hostile upper house, bent on protecting its economic interests. The Legislative Council defeated 20 of 79 proposed bills in the last six months of 1912. Scaddan was able to achieve some improvement of the Industrial Conciliation and Arbitration and Workers' Compensation Acts, and was vigorous in his use of executive action to create a city electricity plant, ferry service and a co-ordinated fishing industry.²⁶ Yet the Legislative Council continued to frustrate the Scaddan

Government as the First World War coincided with a large government deficit, rejecting Scaddan's attempts to increase income tax and assist the unemployed.

In Tasmania, the Legislative Council was 'conservative and even reactionary', particularly in its first 80 years.²⁷ In the 20th century friction between the two houses was more likely to occur during periods of Labor Government. In 1924 the Lyons Government chose to bypass the Council over its Appropriation Bill rather than agree to its calls for greater restraint in spending. The Administrator disagreed with the Council's methods and controversially gave the royal assent to the bill despite its failure to pass the upper house.²⁸ Although this and other events did bring the houses into stark opposition the relationship was generally more harmonious in Tasmania than in the mainland States. Townsley suggests that this was because Tasmania lacks the rivalry between rural and urban interests that is common on the mainland.²⁹ He notes also that the Council mellowed greatly over the years, although even in the 1960s it was prepared to oppose and veto Labor government legislation on issues such as price control, Sunday trading and the control of petrol stations.³⁰

The South Australian Legislative Council's anti-Labor bias was equally obvious. In 1905, Labor, under its first Premier, Tom Price, fought a Council that rejected bills on compulsory repurchases, land valuations and taxation among many others.³¹ What is perhaps more surprising is for how long this bias continued; members of the upper house remained open about their hostility to measures designed to improve economic equality in particular. Throughout the middle period of the 20th century, the Council existed largely in harmony with the Assembly for the 27 years of Liberal and Country League Government of Sir Thomas Playford (1938–1965). But the election of the Walsh Labor government in 1965 made the undemocratic nature of the Council more obvious and more problematic.³² Sir Arthur Rymill MLC stated that he would oppose 'radical moves that would not be the permanent will of the people', while other councillors claimed that they would maintain vigilance against 'class legislation'.³³

The battles between the South Australian Legislative Council and the Walsh and later Dunstan government often related to issues of equality. One of the clearest examples of the Council's attitude was its treatment of Aboriginal rights legislation in 1966. Then Attorney-General Don Dunstan attempted to end racial discrimination against Aborigines in South Australia, using measures based on the American civil rights code.³⁴ Having already taken administrative action to remove restrictions on drinking rights for Indigenous people, Dunstan sought to give land and mineral rights to Aborigines in reserves and to legislate against racial discrimination in employment. The Council ensured that the 'mineral rights clauses of the Land Rights measure were gutted' and that 'small employers were exempted from the provisions relating to employment in the Prohibition of Discrimination Bill'.³⁵

Upper houses only became more democratic with the introduction of universal adult suffrage. It is notable that there were multiple attempts to move to a more democratic system of electing legislative councillors, but these were repeatedly rejected by those houses. Typically the upper houses remained anachronistic and unrepresentative until more than one party supported democratic reforms and removed the privilege that had for so long applied to propertied interests.

Federation

At the start of the 20th century, the new federated Australia was an unusual country and seen as such abroad. Australians, or white males at any rate, appeared to enjoy relatively high wages and an egalitarian ethos and these conditions were sustained by the federal government, using high degrees of protection from the rest of the world. Immigration restrictions kept out ‘coloured’ people for various reasons, one of which was their perceived willingness to work long hours for less pay, which would produce unequal outcomes.

Equality was not something that came naturally—there were forces that tended towards inequality, and most Australians looked without qualms to the government to deal with these effects. A Court of Conciliation and Arbitration had been created in 1904 to deal with industrial disputes and it had the power to make legally enforceable awards determining wages and conditions of employment.³⁶ In 1907 the ‘Harvester Judgement’ introduced a new wage-fixing principle, based on the cost of living. Employers would be required to pay each man enough so that he and his wife and three dependent children could live in ‘frugal comfort’. This family wage was at the expense of equal pay but was thought at the time to be the best way to maximise working class welfare. Women only earned a fraction of the male (family) wage, something entrenched by later wage decisions. Linked to Catholic family ideology, which became increasingly influential in the Labor Party after World War I, it helps explain why although Australia was the first country to give women both the right to vote and to stand for the national parliament, it also had a longer gap than anywhere between giving women the right to stand for parliament and actually being elected. It also helps explain the longevity of discriminatory provisions such as marriage bars in public sector employment, which lasted for decades after their abolition in comparable democracies such as the United Kingdom and New Zealand.³⁷

Fiscal equalisation also became an important aspect of Australian federation. In federations, where the constituent units have different levels of resources, some form of redistribution of revenue between jurisdictions is needed to ensure all citizens have equal access to services. Of course to really achieve the goal of equal access, governments also need to pursue redistributive policies within their borders. Still, Australia has the most comprehensive and independent system of fiscal equalisation of the older federations. Fiscal equalisation is administered by an arms-length body, the Commonwealth Grants Commission created in 1933. By the 1980s it was taking into account not only the differing capacity of the constituent governments to raise revenue, but also the differing costs of providing services, given geography, the age structure of the population and the proportion from culturally and linguistically diverse backgrounds.

In the electoral arena, Australia’s federal franchise was the most inclusive and equal in the world. The Australian Constitution, as the framing document for a new democracy, was careful to specify that there should be no plural votes for either house of the new federal parliament (Sections 8 and 30). There were to be no privileges for property and, under the 1902 *Franchise Act*, nor was there to be disqualification of the propertyless. This was still occurring under State electoral Acts, where inmates of charitable institutions were explicitly disqualified. Fortunately, as we have seen,

South Australia was the exception to this and it was on South Australia that much of the Commonwealth electoral and franchise provisions were based.

The equality idea was also embedded in the Constitution in other interesting ways. The Senate was the first upper house in the world to be popularly elected, unlike the State upper houses. In other countries, upper houses were still hereditary (as in the UK), appointed (as in Canada and New Zealand), or indirectly elected (as in the USA). This point is sometimes overlooked when the Senate is subjected to democratic critique for the way in which the equal representation of the States gives rise to votes of very different value between the larger and smaller States (see below).

At the time, the Australian Constitution was seen as refreshingly democratic. In the words of the first great commentator on the Australian Constitution, the University of Melbourne Dean of Law, Harrison Moore: ‘The predominant feature of the Australian Constitution is the prevalence of the democratic principle, in its most modern guise’. For Moore this meant that rights were protected not through a Bill of Rights but through ensuring as far as possible that individuals had an equal share in political power.³⁸

The 1902 *Franchise Act* gave the vote to all (white) adult men and women and extraordinary efforts were then made to ensure they were all captured on the new Commonwealth electoral roll. The roll was compiled over 1902–3 at great expense by the government using State police travelling on horseback to all corners of the continent. Two million names were entered on the roll and it was believed that around 96 per cent of the adult population had been registered to vote.³⁹ Compulsory electoral registration arrived in 1911 and compulsory voting in 1924. Australia was a nation that took its commitment to equality seriously and believed it was the role of government to implement it. This often meant that equality was enforced by coercion. We will look at compulsory voting and enrolment in more detail later.

As we have seen, one feature of the Commonwealth franchise was that it did not disqualify those who were inmates of charitable institutions. The Commonwealth *Invalid and Old Age Pensions Act* of 1908 further entrenched this principle, that those receiving pensions did so as a right of citizenship and not at the expense of citizenship rights, as was the case in other countries at this time.

Another egalitarian feature that was perceived as so important that provision was made for it in the Constitution (Section 48) was the payment of members of parliament and Senators. Payment for members had been introduced in the pre-Federation colonial parliaments from 1870 onwards, to ensure that working men could sit in parliament. Members of Legislative Councils and Chambers of Commerce continued to regard payment as ‘the curse of the country’, enabling as it did the increased political influence of the labour movement and the influx of working-class members into lower houses in the 1890s.⁴⁰

When the Labor Party achieved majorities in both houses of the federal parliament in 1910, the new Speaker of the House of Representatives was a watchmaker by trade who campaigned in outback Queensland by bicycle while the President of the Senate was a former wharf labourer. The new Labor government expressed its egalitarian values by doing away with the wigs and gowns of the presiding officers in both

houses (although this practice continued in some States into the 1990s). It also brought with it another uniquely egalitarian parliamentary practice. Since a 1905 Federal Conference decision (spearheaded by the Member for Kalgoorlie), the Parliamentary Labor Party had elected Labor ministers, rather than their being selected by the Leader.⁴¹ The New Zealand Labour Party was to follow Australia in this practice in the late 1930s, but other Labour Parties, including the British party, have not.

A crucial component to this equality was that it did not apply to everyone. This was not incidental: racial exclusion was integral to the equation. Indigenous Australians and others of non-European stock were largely kept out of the electoral franchise and indeed away from the aspirations towards equality. The tens of millions of people living immediately to the north, in what we today call South East Asia, weighed heavily on people's minds as a threat to the British Australian way of life. It was believed that equality and progress depended on keeping such people out; exporting British people to a faraway land was seen as a precarious endeavour and great vigilance was required. As the historian John Hirst has written:

*Australians thought of themselves as a progressive nation partly because they were racially pure. They believed that the white race was the best, and their progress depended on remaining white.*⁴²

Australia was proudly 'progressive' rather than 'conservative' ('conservatism' being a characteristic of the mother country), but it was a kind of progressiveness we might not fully recognise today: progressives were often less liberal than their conservative opponents on matters of race. These were people who had consciously created a particular kind of society, a white one, within which government had an important role in promoting equality. In contrast, conservatives, might be more likely to favour the cheap labour that increased non-white migration would bring.

Consider the words of the progressive politician Littleton Groom, a proud nationalist, believer in strong Commonwealth government powers, and supporter of industrial arbitration, when celebrating winning his electorate contest in 1901. 'Liberalism', he declared, 'has triumphed over Conservatism, and ... you have decided that Australia shall be white.'⁴³ White Australia and progressive politics went hand in hand. It was believed that non-Europeans allowed into the country would work very hard for very little and drive wages down. They would also dilute the 'racial purity' of Australians. Being unified and cohesive and racially pure went hand in hand with equality. As political scientist Lindy Edwards reminds us, the vision of a genuinely democratic, egalitarian society at the time of Federation clashed with views about race. The dominant view at the time was that there was a hierarchy of races, so a multiracial society would inevitably be hierarchical in nature. It would therefore only be possible to create an egalitarian society by having one race.⁴⁴

Australia, which had been settled by Britain little more than a century earlier, had developed this particular version of equality—one that was legislated for and enforced by government. It was perceived as different to, for example, England, with its ingrained class system, or the United States with its worship of individualism and *laissez faire*.

Citizenship

In all nations, there are rules for citizens and rules for others. This applies not just on home soil. If, for example, an Australian is sentenced to death in another country, our federal government will make representations to that country's government on the Australian's behalf. Similarly, Australian citizens on home soil enjoy more rights than others. We have seen this in recent years with the treatment of asylum seekers in Australia in ways our citizens would not be subjected. Indeed, on two occasions in recent times when detained or deported people were subsequently discovered to be Australian citizens, the Department of Immigration has had some explaining to do.

Any concept of equality exists within the context of citizenship, of belonging to the relevant group. The word 'citizenship' itself is context-dependent: a person is a citizen of something, of a community, often of a nation. It involves rights and responsibilities. People may consider themselves citizens of the world, or of their neighbourhood, or of their country.

Citizenship of Australia is today a legal reality, but this was not always the case. Colonial Australia was part of the British world, and in the antipodes one was either a British Subject or one was not. Being British brought with it rights and responsibilities that did not apply to others. For example, an Englishman who came to Australia to dig for gold had more rights than a Chinese man with the same intent.

Australian nationality did not come into being until the 20th century. It was only in 1949, after the passing of the *Nationality and Citizenship Act*, that the words 'Australian passport' replaced the words 'British passport' on the passport cover.⁴⁵ As Helen Irving writes:

*Before 1949, Australians were British subjects: there was no legal citizenship. But citizenship was not invented in 1949. The Act gave it legal status, and the word 'citizen' was cloaked in law, but citizenship had meaning prior to become a legal category. Similarly, 'subject' status had something broader than its meaning in law.*⁴⁶

Even then, some subjects of the Queen or King were more equal than others; for example, under the terms of the 1902 *Franchise Act* '[n]o aboriginal native of Australia Asia Africa or the Islands of the Pacific except New Zealand'⁴⁷ could vote at federal elections. While Section 41 of the Constitution appeared to give federal voting rights to all those enfranchised at the State level, including Aborigines, it was interpreted otherwise so that Aborigines 'lost' their voting rights.

James Jupp contrasts the division between citizens and non-citizens of today with the classification from 1901 when there was a de facto 'four-class system': 'British subjects (born or naturalised) of European origin; aliens of European origin; non-Europeans; and Aborigines.'⁴⁸

The ordering of these categories puts British subjects at the top and Indigenous Australians at the bottom. The latter reflects the common attitude at the time of Federation and afterwards that Aborigines were an inferior race. They were not seen as a threat to the racial purity or social cohesiveness and 'Britishness' of Australian

society because they were comparatively few and they were ‘dying out’. This was not the case with the middle two categories, especially non-Europeans. Once again, these people were kept out on the grounds of racism pure and simple and the desire to keep our society a certain way. The White Australia policy was gradually dismantled from 1966, but racial categories were only removed from Australia’s immigration policy by the Whitlam Government in the 1970s.

Men and women in Australia had for a long time unequal citizenship. Even at the most formal level their obligations and rights were construed as different. For example male citizens were expected to defend their country in time of war and to serve on juries during peacetime. There were long campaigns by women to serve on juries and thus become full citizens. This right was only won very gradually, State by State. For example in NSW women could volunteer to serve on juries from 1951, but had to go to a police station to do it in person (and be subject to all kinds of insinuations about their motives). Jury service on the same terms as men had to wait until the 1990s in Queensland and Tasmania. As we have already seen, there were also formidable barriers to other forms of participation in public life.

Another feature of this unequal citizenship was that a woman who married a ‘foreigner’ forfeited her status as a British subject. This came from British law, which specified that a married woman’s nationality was always that of her husband. It was completely discriminatory, as men who were British subjects kept their status regardless of whom they married. As one Senator observed in debate over the *Naturalisation Bill 1903*, while men did not lose their citizenship even when they committed crimes such as murder, women had their citizenship taken away simply for marrying the wrong person. Despite decades of advocacy this aspect of unequal citizenship was not fully remedied until 1946.⁴⁹

2. Political equality today

Australia in 2010 has voting rights like many countries, consistent with international laws and norms. All Australian citizens aged 18 or over can vote. In addition we have compulsory enrolment, which puts us in an international minority, and compulsory voting, which puts us in an even smaller minority. There are three exceptions to equality of voting rights today: unequal electoral districts are still used at State elections in Western Australia; property votes exist in local council elections in several States; and plural voting exists at local council elections in Western Australia. We will return to these.

The Australian Constitution of 1901 made some steps forward. It ensured there would be no plural voting for federal elections, and it provided for universal male and female suffrage in both houses. This was very democratic, and very equal. The Senate was and remains one of the most powerful upper houses in the world. To have two houses of parliament, fully elected from full male and female suffrage, put Australia in the vanguard of democracy.

Being a federation, the makeup of the Senate meant equality was interpreted as between States, rather than Australians, but within each State there was equality.

Tasmanians' votes were worth more than those of any other State, but every Tasmanian's vote was worth the same within the State. There was also a stipulation in the Constitution (Section 24) that no State will have fewer than five House of Representatives electorates. This safeguard was originally designed to protect the interests of the smaller States, being Tasmania and Western Australia. Tasmania still benefits from this safeguard, as it would otherwise only be entitled to four House of Representatives seats.

Of the Chartists and Radicals' demands, probably the most extreme objective was equal-sized electoral districts. This was demanded because they believed it would mean every man's vote would count equally. But equal electoral districts would be a very long time coming, and even today in Australia, Western Australia's State electoral boundaries for the Legislative Council are not drawn with this condition. At the federal level a guarantee of equal electoral districts did not become the norm until the 1980s. Prior to then, weighting to protect rural interests was accepted practice.

Equality in voting systems

Electoral systems are the ways in which people's votes at elections are translated into representation. How well does our electoral system embody notions of equality? We have already discussed matters of the franchise—who has the right to vote and how many votes each person possesses. In that context equality means that each person has one vote and one vote only. In the electoral system equality is associated with the aspiration towards 'one vote, one value'—that is, for each person's vote to count equally.

We can put voting systems into two broad categories: proportional representation (PR) and single-member electorate systems. PR systems, as the name suggests, seek to ensure that the legislature reflects the distribution of views in the general population of electors. This means that the share of seats in the legislature won by political parties should reflect their share of the vote and that minorities as well as majorities are represented. This rarely happens with single-electorate systems, which particularly disadvantage minor parties such as the Greens, which have support that may be significant but is usually spread too thin to win a majority of votes in any single-member electorate.

PR is a far more effective embodiment of the one vote one value principle than single-member voting. This is because under PR each person's vote counts the same irrespective of their geographic location. This is not the case with single-member electorate systems, because in most jurisdictions a large number of electors live in electorates that are 'safe' for one party or the other and never or rarely change hands. This means that political parties focus their attention predominately on the 'seats that matter', the 'marginal' ones,

The category of single-member electorate voting system itself consists of two broad forms: majoritarian and plurality (otherwise known as first past the post). The Australian version is majoritarian and is called the alternative vote (AV), or more commonly 'preferential voting in single-member electorates'. The advantage of the AV system over the plurality system is that the winner must receive a majority of the

vote. Where no candidate has won a majority of the vote, those who have voted for a minor party or independent candidate who was not elected get ‘another bite of the cherry’. The preferences they indicated on the ballot paper will help decide between the remaining candidates. Of single-member systems, majoritarian systems better express the equality principle than first-past-the-post ones, because more voters’ preferences are taken into account in deciding the winner.

In Australia at the federal level we use PR for the Senate and single-member electorates for the House of Representatives, where governments are formed. Traditionally single-member electorates have been thought likely to produce two-party political systems and decisive results, with one party winning a clear majority of seats.⁵⁰ This is not the case with PR, which rarely hands victory to a single party and instead requires sometimes protracted negotiations between parties before a government can be formed. This creates problems of accountability when the outcomes of such negotiations differ from the policies that parties took to the election. On the other hand, electoral systems based on single-member electorates in Australia, Canada or the United Kingdom have recently failed to produce majority governments, resulting in a similar pattern of negotiation as that found with PR systems.

There is probably only one advantage that plurality voting has over majoritarian: it is easy to understand. Its serious drawback is that candidates of a similar hue can ‘split’ the vote and see another candidate win despite the fact that most electors would have preferred either of those other candidates over the eventual winner. In Australia the majoritarian AV was originally introduced to avoid the Country and Nationalist parties splitting the conservative vote, resulting in a Labor candidate being elected by default. Today AV is generally used for lower house elections in Australia and PR for upper houses.⁵¹

Australia’s two-party system, combined with single-member electorates, makes it very difficult for minor parties to win seats in lower houses. For example, at the 2001 federal election, although three parties (Democrats, Greens, One Nation) each won four to six per cent of the vote, none of them actually won seats. Supporters of these and other minor parties invariably have to channel their votes through preferences, in most cases ending up with a Labor or Liberal/National Coalition candidate being elected. 2010 was the first time that the Greens managed to win a House of Representatives seat in a general election, despite their vote having risen to almost 12 per cent. Another problem with single-member systems is that a party can win an election despite getting fewer votes than the other side. This actually happens quite frequently in Australia, and at the federal level it has occurred in 1998, 1990, 1969, 1961 and 1954. At State/Territory level it has recently occurred in all lower houses using single-member systems: South Australia (2010 and 2002), Northern Territory (2001), Queensland (1995),⁵² NSW (1995), Western Australia (1989) and Victoria (1988).

Single-member electoral systems, such as Australia’s, work against equality because they usually have a ‘winner takes all’ outcome. The major party with a majority of the seats takes one hundred percent of government. Under PR, alliances will usually need to be formed to gain a majority, and so compromises need to be made. More voters’ preferences are represented, and indeed in several European countries that use PR ‘grand coalitions’ are not uncommon, under which both major parties join together to

form government. This means that 80 to 90 per cent of the voters have succeeded in electing their party to government. One such Grand Coalition occurred in Germany in 2005, with the country's two major parties—the Social Democratic Party and the Christian Democratic Union—forming government.

Australia was an early experimenter in proportional representation. As we have seen, the first election to the Adelaide Council in 1840 was held by a form of PR. Two decades later, the Australian reformer Catherine Helen Spence (1825–1910), inspired by John Stuart Mill, became a regular advocate of proportional representation of the type now used in Australia. In 1861 she published a pamphlet called *Plea for Pure Democracy: Mr. Hare's Reform Bill Applied to South Australia*. She believed that an elector who voted for a candidate who was not elected was thereby disenfranchised and unrepresented. She argued that:

instead of elections being decided by majorities in small districts, by which nearly half of the votes are wasted, all of the votes are to be used in large districts, and the representatives are returned in proportion to the number of voters who hold certain opinions all over the enlarged constituencies.⁵³

In the 1890s Spence addressed meetings advocating 'effective voting' not just in the Australian colonies, but around the world; she also lent her prestige to women's suffrage.

A variation of Hare's system, called 'Hare-Clark', was first used in Tasmania in the 1890s (and continuously since 1909) and in the Australian Capital Territory since 1995. 'Clark' refers to Andrew Inglis Clark (1848-1907), a Tasmanian politician who made adjustments to the Hare system. In Spence's time, certainly at the time of her pamphlet, political parties did not exist in Australia, and the concept of proportion was couched not in terms of parties but in terms of views. She gave an example in terms of a prominent issue of the day: immigration.

*Let us suppose that one-third of the voters in South Australia think that Government immigration ought to be resumed, and two-thirds are opposed to it; then there ought to be twelve members returned for the former and twenty-four for the latter.*⁵⁴

Spence pointed out that under the first past the post system the number of members returned by no means indicated the prevalence of opinion in the electorate. Of course, there are always many issues in any community and it would not be realistic to expect a legislature to replicate the community on every matter, irrespective of the voting system. But Spence's reasoning works particularly well in the context of political parties, especially if we see those parties as themselves distilling a range of views in their election platforms.

We discussed earlier that the 'trade-off' for the smaller colonies in the compact of federation was various constitutional mechanisms to facilitate equality between States so that those with larger populations one would not ride roughshod over those with less. There is an obvious tension between this and the notion that every individual's interests should be represented equally, and today the seven million people in NSW (the State with the largest population) might feel that of course they should

collectively have more sway than the half a million people in Tasmania (the smallest State). But the Constitution puts limits on this. In the electoral arena each State elects the same number of members to the upper house, the Senate, which as we have noted is one of the most powerful upper houses in the world. This once famously prompted former Prime Minister Paul Keating to describe the Senate as ‘unrepresentative swill’; many people would agree with the first part but not the second. Tasmanians enjoying around thirteen times the representation of those in New South Wales is certainly not equal, but it does conform to the original ethos of equality between States. However, the reality of political parties and, importantly, their strict discipline means that State interests have little to do with votes in the Senate.

Registration of electors

Australia has compulsory electoral enrolment. It was introduced in 1911 at the federal level, before compulsory voting was introduced, largely at the urging of the Chief Electoral Officer. Australia was unusual at the time among democracies in the amount of effort and resources the government devoted to making the electoral roll as comprehensive as possible. It cost a lot of money, but Australia was a place where governments spent much on such things. With the government devoting so much effort, there was a certain bureaucratic logic to making enrolment mandatory. As well, we can again see the very Australian tendency towards compulsion: a comprehensive, accurate electoral roll was important to ensure equality of political access, and if something is worth doing it is worth making compulsory.

A century ago Australia was a world leader in its enrolment practices, but the same cannot be said today. Ironically, a significant reason for Australia’s poor recent record is the fact of compulsion. Compulsory enrolment puts the onus on the elector to get onto the electoral roll and to keep their details up-to-date when, for example, they change address. While after an election a non-voter without a good reason is given a fine, a person who is found not to be on the electoral roll is simply put on it. At the federal level, there has not been a prosecution for not being enrolled since the 1980s although such prosecutions have taken place at the State level. As an Australian Electoral Commission (AEC) press release put it recently regarding an enrolment drive:

despite its best efforts the AEC was not able to track down everybody, and at the end of the day the law says that the onus is on the individual to make sure they are enrolled, and stay correctly enrolled to vote if they move address.⁵⁵

In practice it is not the electoral administrators who use this excuse but the politicians. The administrators see it as their job to ensure as many people as possible are put on the roll; the better the roll the higher their job satisfaction. Politicians, on the other hand, have other priorities for how they allocate government money, and sometimes partisan political ones. The AEC has been trying to put in place modern enrolment practices for years, but the politicians have been holding them back.

The eligible electors who are left out of a poor quality electoral roll tend to be renters, young people and those who frequently change address. Indigenous Australians who

live in remote areas are particularly susceptible to disenfranchisement in this way. Since 1984, when electoral enrolment was made compulsory for Aboriginals, in the electoral arena there has been full equality. But this is a recent development, and up to the early 1960s most States restricted electoral participation by Aboriginals. There is a common misconception that Aboriginals received the vote with the 1967 constitutional referendum, but it was only a few years earlier, in 1962, that they were uniformly given voting rights. Until then it had been a complicated State by State story, and has been best explained by Murray Goot.⁵⁶

Compulsory voting

Australia has a long history of compulsory voting at both State and federal levels, and it was introduced at the federal level in 1924. Many people in other countries, upon hearing of this Australian practice, find it astonishing but Australians are largely supportive. It is often said that one significant advantage of compulsory voting is that it places an onus on electoral management bodies to make voting accessible to everyone, regardless of factors such as location, disability or homelessness. It is also the most significant means of ensuring politicians are responsive to the poor and to those most dependent on government for services and support. In countries where voting is voluntary, turnout is skewed in favour of the well-off and politicians are keenly aware of their constituency.⁵⁷

But despite the equality gains of compulsory voting, there are a number of features with our electoral system that detract from this equality of voice. We have already noted the problem of the ‘shrinking roll’ and the way in which an increasing number, particularly of young and mobile voters, either get removed from the roll or are never enrolled. There is also a rising number of informal votes, making up 5.5 per cent of votes at the 2010 federal election.⁵⁸ While some voters deliberately vote informal, for example by putting a blank ballot paper into the ballot box, the majority of informal votes are unintentional. The ten electoral divisions with the highest rate of informal voting in 2010 were all in western Sydney and were characterised by a high proportion of people who spoke a language other than English in the home.

Other relevant factors are the number of candidates, differences between State and federal electoral systems and differing requirements for a formal upper and lower house vote. For example, NSW and Queensland have systems of optional preferential voting whereas in federal elections full preferential voting is required for the House of Representatives. This means that while just voting ‘1’ would be a formal vote for the NSW Legislative Assembly, it counts as an informal vote for the House of Representatives, so the choice of the voter will not be recorded. Similarly, while voters can just indicate ‘1’ in an above-the-line Senate vote, they cannot do the same on the House of Representatives ballot paper. Electors who accidentally vote informal for one of these reasons are disproportionately from non-English speaking backgrounds and/or of a low socio-economic status. One State that has adopted a ‘savings’ provision to prevent such voters losing the opportunity to have their votes recorded is South Australia. In South Australia political parties can register a preference ticket with the electoral commission for the lower as well as the upper house. This means that if a voter has only recorded a ‘1’ on the House of Assembly ballot paper, preferences can still be distributed in accordance with the ticket

registered by that party. Reformers have recommended that in the interests of political equality this provision be adopted for all lower houses, in conjunction with a savings provision for where ticks or crosses have been used instead of a ‘1’.⁵⁹

Democratisation of upper houses

Waves of upper house reform occurred through the second half of the 20th century, to the point where, with the introduction of proportional representation, they have become more accurately reflective of voters’ wishes than lower houses. Legislative Councils have become more democratic with the introduction of full adult suffrage (see Table 1), the closer alignment, except in Tasmania, of upper and lower house elections and the use of PR systems—on a State-wide basis for NSW and South Australia, and on a regional basis for Western Australia and Victoria. The use of party tickets in all four PR systems has further reinforced the partisan style of modern Council election campaigns.⁶⁰

Table 1: Introduction of full adult suffrage for Australian Legislative Councils

State	Year
Victoria	1950
Western Australia	1963
Tasmania	1969
South Australia	1973
New South Wales	1978

Source: Stone, ‘Bicameralism and Democracy’, p. 276. Queensland is missing because of the abolition of its Legislative Council in 1922.

While these reforms have resulted in greater equality for upper house elections, the ghosts of the past remain. Western Australia’s 36-member Legislative Council, based on three metropolitan and three non-metropolitan regions, remains heavily malapportioned. Electoral reform in 2005 reduced malapportionment in the lower house⁶¹ but increased it in the upper house, due to the insistence of the Greens, who held the balance of power. In the 2008 Western Australian election, the 18 metropolitan members of the upper house were elected from an enrolment of 991,040 voters, compared with the 18 non-metropolitan members elected from an enrolment of only 288,987 voters. Country votes were worth more than four times as much as city votes.

Despite the apparent victories of the people over property that occurred with the reform of Australia’s upper houses, property retained its political influence within the Australian democratic system in different ways. Although the parliamentary franchise was now more in line with the principle of political equality, in the last quarter of the 20th century political parties became increasingly dependent on large corporate donations—meaning that donors enjoyed much greater access to government than other citizens (discussed in detail below). Another way in which property retained its place was in local government franchises—although this often seemed an historical anomaly, which democrats had failed to take the time or effort to remedy.

Property votes in local councils

Originally in Australia local government was largely the domain of local property owners and was chiefly engaged in providing services to property, such as roads, rubbish collection and other public works. The franchise was linked to paying rates and property owners would have a vote in each local government ward where they had property. Gradually the local government franchise was extended to become more like that of lower houses of parliament but it was only in 1984 that Western Australia finally introduced full adult franchise for local government, the last State to do so.⁶²

One might assume that by now property votes would be a thing of the past, safely consigned to the rubbish-bin of history, along with the exclusion of women, Indigenous Australians and the poverty-stricken from the franchise.⁶³ This is indeed assumed by most people, but in fact property votes are still flourishing everywhere in local government in Australia except in Queensland and the Northern Territory.⁶⁴ Queensland removed property votes in 1921, during the same outbreak of democracy that led to the abolition of its Legislative Council, formerly an appointed body that was a bastion of property owners. The Australian Capital Territory has no third tier of government while the Northern Territory has an extensive system of local government, including community government for small Indigenous communities, but no property votes.

Property votes are non-residential voting rights derived from the ownership or leasing of property within a local government area by individuals, corporations or groups. Property franchises may give rise to multiple voting rights within a local government area, as is the case in Western Australia and Tasmania where property owners are resident in one ward and have property in another or where they live elsewhere but have property in different wards. In all States where property votes exist they also give rise to multiple voting rights across different local government areas. Corporations or groups that own rateable land also have voting rights in Victoria, South Australia and Tasmania, although in Tasmania this is limited to one vote per municipality.

The democratic values at issue here are those of political equality, expressed as ‘one vote, one value’; and popular control of government, expressed as the right of residents in a local government area to determine who will represent them. Many Western democracies have long ago discarded property votes in local government, such as Denmark in 1908; and even the United Kingdom abolished all forms of plural voting and property votes in 1948, with the exception of the City of London. However, like Australia, some countries have been slow to reform. In New Zealand it was not until 1986 that a Labour government abolished non-resident votes in local government on the grounds that ‘local bodies exist to service people not property’,⁶⁵ but the property vote was reinstated following the election of a National government in 1990, and still remains.

In Canada, property votes survive in five provinces—Ontario, Quebec, British Columbia, Manitoba and Saskatchewan. In Ontario, for example, a non-resident who is an owner or tenant of land, or who is the spouse or same-sex partner of an owner or tenant, is eligible to vote in municipal elections. In this example of combined and uneven development, ancient rights of property combine with very new same-sex

relationship recognition. The abolition of non-resident voting rights is proving difficult in these provinces. For example, while the Vancouver City Council supported the electoral reform commissioner's call to repeal property voting rights, the Vancouver Board of Trade objected strenuously—arguing that because municipalities were funded by property taxes, disenfranchisement would be contrary to the democratic principle of 'no taxation without representation'.⁶⁶

Property votes derive from a particular view of the functions of local government—one that construes local government as primarily a provider of services to property and as primarily funded by rates on property. Such views of the nature and role of local government have been strongly entrenched in Australia, where the functions of local government were historically much narrower than in many countries. The nature and functions of local government have not only justified institutions such as property votes but may also be regarded as responsible for the low level of women's participation as elected or appointed officials.⁶⁷

There was, however, a significant shift in the functions and funding of local government in Australia in the 1970s. Local government became a provider of community and human services targeted at the resident population and the sources of revenue of local government became more diverse, with property rates making up a smaller portion. It became more anomalous that non-residents should have a say in the services provided to local residents. This change in the nature and functions of local government has not yet, however, resulted in the abolition of property votes.

Despite the changes in the nature of local government and the additional cost of maintaining a separate non-residents' roll, a Western Australian inquiry ended in 2006 by recommending the continuance of property votes. This was despite arguments put to the inquiry that property owners were being privileged over other non-residents with an interest in local decision-making, such as those who worked or used services in the local government area. It did recommend the abolition of plural votes for property owners or occupiers but this was not accepted, and property owners retained plural votes if they lived and had property in different wards or lived elsewhere but had property in different wards within a local government area.⁶⁸

A final interesting question in considering the local government franchise is the intersection between property owning, citizenship and residency. Foreign nationals who are property owners can vote in local government elections in Victoria and Tasmania and may also stand as candidates. In South Australia non-citizens can vote in local government elections, both on grounds of property and of residency, but may not stand as candidates. In Western Australia, foreign property owners used to have the same voting rights as in Victoria or Tasmania, but the *Local Government Act* was changed to restrict new enrolments to Australian citizens from 1996.

So in Western Australia, unlike Victoria, South Australia or Tasmania, citizenship now trumps property ownership with regard to non-resident voting rights. It is perhaps anomalous that, except in South Australia, property ownership has been one of the only ways in which permanent residents who were not Australian citizens could participate in Australian local government elections. This is contrary to the trend in the European Union to extend the right to vote in local elections to all residents, not just EU citizens (or property owners).⁶⁹

Political funding

Political funding and disclosure is another area where Australia's democratic aspirations have become dimmed. While we might expect that electoral processes would be showcases for the principle of political equality, we find instead this principle being displaced by the power of private money. In recent decades Australian electoral law has been notable for the laxity of its regulation of political finance, with no controls over the source or size of political donations, no limits to expenditure or restrictions on electronic advertising and a somewhat lackadaisical approach to disclosure.⁷⁰ Reform has only come about in response to successive scandals and very late in the day.

To some degree every country is grappling with the problem of regulating political finance and controlling the campaign spending 'arms race' fuelled in particular by the cost of television advertising. Some countries, including the UK and New Zealand, have never allowed such political advertising. The British prohibition on political electronic advertising stems from the introduction of broadcasting in the 1920s; when the House of Lords re-affirmed this position in the 2000s, it argued that the ban was necessary to maintain a level playing field, preventing 'well-endowed interests' from using 'the power of the purse to give enhanced prominence to their views'.⁷¹

In general parties and candidates with large financial resources can communicate more effectively than ones without such resources. Such resources are generally more an index of the wealth of donors than of the extent of community support for a party, but can help gain electoral advantage. Large donations can pay for polling to target a message more effectively and for saturation television advertising. Without effective regulation of political finance there can be no such thing as a level playing field for electoral competition nor equality of access to the public sphere. Moreover corporate donors are purchasing political access far in excess to that enjoyed by other citizens and a far cry from the idea of political equality where each counts for one and nobody for more than one.

In most parts of the world there is a consensus that small donations to political parties should be encouraged but large donations should be discouraged, because of their effects on political equality, on political integrity (the suspicion that big donations buy behind-the-scenes influence) and on public confidence. For these reasons corporate donations are banned in a number of countries. For example, after the so-called 'sponsorship scandals' in Canada, far-reaching reforms to the political finance regime were undertaken, both by Liberal and Conservative federal governments. The Canadians have shifted from a system largely based on corporate funding to one largely based on public funding, including allowances paid quarterly to political parties in accordance with the votes they received at the last election. This means that funding is allocated in accordance with community support for the party rather than the wealth of its supporters. Only individual citizens and not corporations, unions or associations can make political donations and these are capped at a fairly low level (an indexed amount, originally \$1,000).

To ensure a level playing field Canada also limits party and candidate expenditure and

policies those limits effectively. For example, Elections Canada gained a search warrant in early 2008 and the Canadian Mounties searched the headquarters of the governing Conservative Party after it appeared the party had circumvented the expenditure limit. Canada also regulates third-party campaign advertising, to ensure that it does not become another means for political donations to undermine political equality. Third parties need to register with Elections Canada once they spend more than \$500 on election advertising and are limited to expenditure of \$150,000 (indexed) during the election campaign period. This has not inhibited third party participation in election campaigns—the number of registered third parties has actually grown since 2000—but their expenditure has been well below the statutory limit and has not threatened to drown out competing voices.⁷²

The limiting of third party election advertising was challenged by a small government advocacy body as being contrary to the freedom of expression enshrined in the Canadian Charter of Rights and Freedoms. However in *Harper v Canada* (2004) the Canadian Supreme Court found that the restrictions were reasonable in the interests of electoral fairness. It concluded that the restrictions were necessary to provide equal opportunity for participation in political discourse and to prevent wealthy voices from overwhelming others. The restriction of some voices was necessary so that others might be heard.

In contrast to the egalitarian nature of the Canadian approach to political finance, Australia has taken a laissez-faire approach in recent decades and the principle of political equality has been subordinated to market forces. Historically, Australia followed the UK with limits on campaign expenditure, targeted at candidates, but such regulation was rarely enforced. Expenditure limits were not indexed for inflation; losing candidates who did not submit returns were not prosecuted; and the shift from candidate to party advertising rendered many restrictions obsolete. It was not until the wave of electoral reforms in the early 1980s that most of the expenditure restrictions were discarded, with a cap on campaign expenditure for Tasmanian Legislative Council elections being the sole remaining restriction.

The reforms of the early 1980s included the introduction of public funding for election campaigns and the disclosure of private donations, first in NSW, then at the Commonwealth level and more recently in most other jurisdictions. Public funding was allocated on a per vote basis to parties and by 2010 the rate at the federal level was \$2.31 per vote for both House of Representatives and Senate votes. While per-vote funding was relatively equitable, and was designed to reduce the parties' dependence on corporate donations, it was not made conditional on abstention from such sources of income. Instead public funding became an adjunct to ever-growing dependence on corporate donations, rather than replacing it.

In 1991 Australia made a belated attempt to limit the spiralling cost of campaigns and dependence of political parties on corporate money by prohibiting electronic political advertising. This ban was struck down by the High Court in 1992 as contrary to an implied Constitutional freedom of political communication. Reasonable limits on electronic campaign advertising as in Canada, rather than an outright ban, are more likely to survive such a High Court challenge.⁷³ However, as technology evolves and advertising moves to new media the issue becomes more complex. The nature and norms of the digital environment make it difficult to require the authorisation of

electoral commentary and the South Australian government withdrew its attempt to do so.⁷⁴ And there is also always the possibility of campaign sites simply relocating off-shore.

Apart from the very loose regulation of campaign finance, Australia has also taken a very relaxed attitude towards the misuse of parliamentary allowances for electioneering rather than representational purposes creating further inequalities between sitting members and other candidates. Another huge incumbency benefit for governments has been the use of government advertising for partisan benefit. It is only in the ACT that there is now a legislated code (which came into force in 2010) to prevent the use of government advertising for political purposes. Also offending against equality principles is the selling of access to Ministers, such as charging inflated prices for seats at a dinner. Such costs can be identified by donors as a business expense rather than a donation, which is another weakness in existing disclosure regimes. It is a major paradox that if donations can be classified as the purchase of access and influence for business interests, this is sufficient to remove them from the requirement for disclosure—just when it is most needed.⁷⁵ In 2009, following a scandal where it was alleged that businesses who had been Labor Party donors had received preferential treatment from the government, Queensland Premier Anna Bligh announced that Ministers would be banned from attending such fund-raising events.

There has been increasing momentum for reform to Australia's political finance laws. A significant catalyst for political finance reform at the State level has been recurrent scandals over the covert role of property interests in local government elections, usefully revealed in inquiries by anti-corruption bodies in NSW, Queensland and Western Australia. In NSW where such scandals had been on the front pages of newspapers many times, contributing to loss of confidence in the integrity of the electoral process and public decision-making, reforms began in 2009 with the introduction of a ban on donations by property developers. This was followed by the passage of the *NSW Election Funding and Disclosures Amendment Act 2010*. This was the first Australian legislation to introduce caps on all political donations, whether made to parties, candidates or third parties and to reintroduce expenditure limits. Queensland followed suit in 2011. The caps on political donations are similar in the two States: individuals or companies can give a maximum of \$5000 to a political party per annum and a maximum of \$2000 to an individual candidate or third party.⁷⁶ In both cases limits on electoral expenditure were also introduced, including for third parties, which are required to register with the relevant electoral commission when spending over a specified amount on election campaigning.

These two States had already lowered the threshold for disclosure of political donations to \$1000 and required six-monthly reporting. There has been a lack of consensus between the major parties as to what is an appropriate level for donations to be disclosed, which has delayed reform at the Commonwealth level. Labor and the Greens have argued for a low threshold and more timely reporting, with former Prime Minister Kevin Rudd arguing that Australian democracy should not be for sale. The Liberal and National parties have pushed for a higher threshold, arguing that it is in the public interest for companies to be free to donate without fear of retribution in terms of government contracts or subsidies. The Howard Government increased the disclosure threshold substantially and the subsequent Labor Governments of Kevin

Rudd and Julia Gillard have not yet succeeded in lowering it again, despite a Green Paper canvassing this and other reforms to the political finance regulation.⁷⁷

Those opposed to the regulation of political finance argue that corporations should enjoy the unrestricted right to donate, whether to political parties or third parties, as part of the freedom of political expression. As we have seen, the Canadian Supreme Court countered this argument by reference to the fairness or equality objective of preventing wealthy voices from overwhelming others. However we can also refer to the citizenship side of the equal citizenship principle—corporations are not citizens with the right to vote in elections. Should they have the right to become significant or even dominating players in the electoral process through their political donations? Such donations both contribute directly to public distrust in political parties and public decision-making and indirectly through the negative advertising campaigns that they finance. Their role in elections is in direct contravention to the idea that political equality would be a countervailing force to the inequalities generated by the market.

Conclusion

The struggle in Australian political history to counterpose the principle of political equality to the rights of property is a significant story but one often lost from sight in recent years. For example, it is virtually absent from the Museum of Australian Democracy, which opened in 2009. Some argue that this lack of attention is a result of a rise in identity politics that has crowded out the politics of equality. In more theoretical terms this crowding out is expressed as the displacement of the politics of redistribution by the politics of recognition.⁷⁸ Support for the displacement thesis can be found in the Museum of Australian Democracy's exhibitions, which highlight the struggles to extend political rights to women and Indigenous Australians, rather than the struggles between democrats and the defenders of property.⁷⁹ Clearly concerns over Indigenous self-determination or recognition of same-sex couples need not be at the expense of concern over the ways in which property dominates political discourse and undermines political equality—but sometimes these concerns do seem to diverge.

What we have seen in this essay is how the significant democratic gains made in mid-19th century Australia were met by the entrenchment of property in other ways, including strong upper houses. There followed a century-long struggle to democratise upper houses, while democratising other aspects of the electoral system took almost as long and is still incomplete. There are continuing democratic anomalies such as property votes in local government and the principle of equal electorates is still not universal. The Labor Party has long been associated with the campaigns to remove the political privileges of property, to achieve 'one vote, one value, and to ensure a comprehensive electoral roll. Historically, this commitment to political equality has coincided with the electoral interests of the Labor Party. Today the party is more divided on the crucial issue of the role of corporate money in electoral politics, the most visible form of the ongoing struggle over the principle of political equality.

For 30 years there have been practically no restrictions in Australia on election spending, giving rise to an arms race in campaign expenditure and increasing dependence by the major parties on large corporate (and sometimes union) donations.

The prevalence of ‘cash for access’ fund-raising events has highlighted inequalities of political access between companies and ordinary citizens, quite apart from the distortion of electoral competition by the skewed pattern of donations. Reform of political finance has begun in NSW and Queensland, but cannot become really effective until adopted at the national level. And at the national level Australia has still to arrive at the commitment to political equality expressed by the Canadian Supreme Court when it determined that restriction of political expenditure was needed to ensure wealthy voices did not overwhelm others in elections. ‘Money talks’ but it should not drown out less wealthy voices in elections. 150 years ago reformers set the Australian colonies on a course to ensure that in elections everyone should count for one and no-one for more than one. We need to recapture that reforming spirit.

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⁵ For the ebbs and flows of white male suffrage in America and its contraction in the second half of the 19th century see Alexander Keyssar. 2001. *The Right to Vote: The Contested History of Democracy in the United States*. New York: Basic Books.

⁶ Quoted in Geoffrey Serle. 1963. *The Golden Age: A History of the Colony of Victoria, 1851–1861*. Melbourne: Melbourne University Press, p. 265.

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¹⁹ Wright. *A People's Counsel*, p. 160.

²⁰ In NSW where indirect election of the Council by the Legislative Assembly had been introduced, Labor gained a Council majority in 1949.

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- ²² Murphy. 'Queensland', p. 211.
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- ²⁵ H. J. Gibbney. 1975. 'Western Australia'. In *Labor in Politics: The State Labor Parties in Australia, 1880–1920*. Edited by D. J. Murphy. St Lucia: University of Queensland Press, pp. 357–358.
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- ²⁷ W. A. Townsley. 1976. *The Government of Tasmania*. St Lucia: University of Queensland Press, p. 83.
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- ²⁹ *Ibid*, p. 40.
- ³⁰ Townsley. *The Government of Tasmania*, p. 83.
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- ³⁵ *Ibid*, pp. 38–39.
- ³⁶ See <http://www.atua.org.au/biogs/ALE1416b.htm>.
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- ³⁹ Marian Sawer. 2003. 'Enrolling the People: Electoral Innovation in the New Australian Commonwealth'. In *Realising Democracy: Electoral Law in Australia*. Edited by Graeme Orr, Bryan Mercurio and George Williams. Sydney: Federation Press, pp. 52–53.
- ⁴⁰ John Rickard. 1978. *Class and Politics: New South Wales, Victoria and the Early Commonwealth, 1890–1910*. Canberra: ANU Press, pp. 267–268.
- ⁴¹ Ross McMullin. 'Leading the World: 1901–16'. In *True Believers: The Story of the Federal Parliamentary Labor Party*. Edited by John Faulkner and Stuart Macintyre. Sydney: Federation Press, 2001, p. 35. This practice was adopted by State parliamentary parties as well.
- ⁴² John Hirst. 2002. *Australia's Democracy: A Short History*. Sydney: Allen & Unwin, pp. 112–113.
- ⁴³ Carment, David. 1977. 'The Making of an Australian Liberal: The Political Education of Littleton Groom, 1867–1905', *Journal of the Royal Australian Historical Society* 62 (4), p. 240.
- ⁴⁴ Lindy Edwards. 2009. 'Behind the racism of White Australia lay a grand vision'. *The Age*, 22 June. <http://www.theage.com.au/opinion/behind-the-racism-of-white-australia-lay-a-grand-vision-20090621-cshw.html>.
- ⁴⁵ See <http://www.passports.gov.au/Web/PassportHistory.aspx>.
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- ⁴⁷ *Commonwealth Franchise Act 1902* s4.
- ⁴⁸ James Jupp. 2000. 'British and non-British immigrants'. In *Individual Community Nation: 50 Years of Australian Citizenship*. Edited by Kim Rubenstein. Melbourne: Australian Scholarly Publishing, pp. 92–98.
- ⁴⁹ See http://www.naa.gov.au/naaresources/Publications/research_guides/guides/ctznship/pages/chapter3/d.htm
- ⁵⁰ We treat Australia's Coalition as one party for these purposes, but this is a contested view.
- ⁵¹ Tasmania does it the other way around, while of the unicameral legislatures Queensland and the Northern Territory have AV, while the ACT has PR.

⁵² In Queensland the Goss Labor government, re-elected in 1995, lasted only a few months until a by-election saw it lose government.

⁵³ Quoted in Deane Crabb. 'Spence and Electoral Reform'. Electoral Reform Society of South Australia. <http://www.effectivevoting.org.au/node/8>.

⁵⁴ Catherine Helen Spence. 1861. *A Plea for Pure Democracy: Mr Hare's Reform Bill Applied to South Australia*. Adelaide: Rigby.

⁵⁵ 'AEC efforts underway to enrol 1.2m missing voters'. http://www.aec.gov.au:80/about_aec/media_releases/2009/04_28.htm.

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⁶⁰ See Stone. 'Bicameralism and Democracy'.

⁶¹ It was retained only for six 'geographically large' Legislative Assembly electorates rather than all 23 non-metropolitan seats as under the previous system.

⁶² Jeff Carr. 1984. *W.A. Government Notes*, 21 June, p. 8. Queensland moved to adult franchise in 1920, while NSW introduced it in 1941 and South Australia and Tasmania in 1976.

⁶³ The colonial electoral acts, while often regarded as pioneering instruments of manhood suffrage, generally had provisions disqualifying those in receipt of charity.

⁶⁴ See NSW *Local Government Act 1993* s. 266; Victoria *Local Government Act 1989*, s. 11; Queensland *Local Government Act 1993* s. 276; Western Australia *Local Government Act 1995*, s. 4.30; South Australia *Local Government (Elections) Act 1999*, s. 16; Tasmania *Local Government Act 1993*, s. 254.

⁶⁵ Graham Bush. 2002. 'Evolution of the local government electoral process'. In *Empowering communities? Representation and participation in New Zealand's local government*. Edited by Jean Drage. Wellington: University of Victoria Press, p.36.

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⁶⁸ Marian Sawer. 2007. 'Property Voting in Local Government: A Relic of a Pre-Democratic Era?' *Representation* 43(1), pp. 49–50.

⁶⁹ Harald Waldrauch. 2005. *Electoral rights for foreign nationals: A comparative overview of regulations in 36 countries*. ANU National Europe Centre paper No. 73. Canberra: Australian National University, p. 24.

⁷⁰ See, for example, Graeme Orr. 2010. *The Law of Politics: Elections, Parties and Money in Australia*. Sydney: Federation Press; Joo-Cheong Tham. 2010. *Money and Politics: The Democracy We Can't Afford*. Sydney: UNSW Press.

⁷¹ Carroll Trosclair, 2008. 'Ban on Political Commercials: House of Lords Rejects Challenge by Animal Defenders International'. 18 March. http://tv-advertising.suite101.com/article.cfm/ban_on_political_commercials.

⁷² Colin Feasby. 2010. 'Continuing Questions in Canadian Political Finance Law: Third Parties and Small Political Parties'. *Alberta Law Review* 47(4), p. 998.

⁷³ For example, Professor George Williams, Joint Select Committee on Electoral Matters, Inquiry into the 2007 federal election, roundtable 16 April 2009, p. 20. <http://www.aph.gov.au/hansard/joint/commttee/J11974.pdf>.

⁷⁴ Orr *The Law of Politics*, pp. 178–79.

⁷⁵ Sarah Miskin. 2004. *Political finance disclosure: party and donor annual returns 2002-03*. Parliamentary Library Research Note No. 49.

⁷⁶ In 2011 the new Coalition government in NSW introduced further changes to the political finance regime, banning political donations from companies or unions.

⁷⁷ See Marian Sawer, Norman Abjorensen and Philip Larkin. 2009. *Australia: The State of Democracy*. Sydney: The Federation Press, pp.140–42; Australian Government. 2008. *Electoral Reform Green Paper – Donations, Funding and Expenditure*.

http://www.dpmc.gov.au/consultation/elect_reform/green_paper.cfm#green.

⁷⁸ Nancy Fraser. 1997. *Justus Interruptus*. New York: Routledge, Ch. 1.

⁷⁹ Marian Sawer, Review: The Museum of Australian Democracy', *reCollections* 6(1), 2011.

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