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Above-the-line voting—How democratic?

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Ever since above-the-line voting was introduced for the Australian Senate in 1984 there has been concern over what happens with preferences under this system. Above-the-line (or ticket) voting means that voters have the option of simply voting '1' in a party box, rather than rank ordering the candidates for election.

Before 1984 it was assumed that under the Single Transferable Vote (STV)—the English-speaking version of proportional representation—control over preference flows would be left in the hands of the voter. This differentiated STV from European party-list systems (particularly the closed or ordered list varieties) where control remained in the hands of the party and voters could not differentiate between candidates. But the combination of compulsory preferential voting and increasing numbers of candidates, for example 62 on the Senate ballot paper for NSW in 1983, made voting an arduous task. Mistakes in sequential numbering on the ballot paper led to an increased number of informal votes.

Before 1984 there was not even the assistance of party names on the ballot paper, so most voters were heavily dependent on how-to-vote cards distributed by party workers outside the polling place. This was a serious disadvantage for minor parties unable to provide workers for the thousands of polling places across Australia. Without booth workers distributing how-to-vote cards, and without party names on ballot papers, potential voters for minor parties had little guidance.

The reforms to the Commonwealth Electoral Act both introduced party names on ballot papers and the option of ticket voting. This seemed a positive step in terms of reducing minor party disadvantage and the level of informal voting. It was a very popular option,

particularly in the larger jurisdictions with many candidates. The overwhelming majority of Senate voters (about 95 per cent) now vote this way. The Senate electoral system has become by default a closed party list system whereby voters vote for a party rather than candidates. However the system is still a preferential one. So who is determining where the preferences flow?

The answer is that parties now have the right to register group tickets with the Electoral Commission, which determine how their preferences flow to other parties. In fact, at the behest of the Australian Democrats, parties were given the right to register two or three tickets although most only register one. The right to register more than one ticket was consistent with the Democrats' practice of having two-sided how-to-vote cards, with preferences flowing through like-minded parties to end up with the Labor Party on one side and the Coalition on the other.

The group tickets registered by parties are supposed to be available in some form for inspection at polling booths. Originally they were displayed as posters, but were easily overlooked in the bustle of polling day. They were too big to be sent out to postal voters. Now they are available as booklets. But very few voters are aware of how the party they are voting for has directed its preferences, and might be very surprised to find out. One case that aroused controversy was the failure of Peter Garrett to win a Senate seat in NSW in 1984 for the Nuclear Disarmament Party (NDP), despite winning some ten per cent of the primary vote or over 77 per cent of a quota. The seat went instead to the Australian Democrats. This was a result of the way the major parties allocated their preferences. The ALP went as far as to allocate their preferences in NSW to the Coalition ahead of the NDP. In terms of 'issue-space', it might be expected that many ALP voters would prefer the NDP to the Coalition, but this was not reflected in the registered group ticket decided by party managers.

Another problem with above-the-line voting for the Senate, apart from the problematic destination of preferences, is that there is no provision for ungrouped candidates to have an above-the-line box. Independents are severely disadvantaged by only appearing in the

little-used below-the-line option. In addition, they do not participate in the draw for ballot position and are automatically placed at the right-hand corner of the ballot paper. Not only are they disadvantaged in terms of attracting primary votes but they also lack the bargaining power of guaranteed preference flows. Grouped candidates above the line can use such bargaining power to arrange preference swaps or for other purposes.

State upper houses

After 1984 similar provision to that in the Senate for above-the-line voting was introduced for State upper houses that had, or were introducing proportional representation.¹ There were, however, some interesting variations. For example, both South Australia and Western Australia made provision for Independents to have above-the-line boxes (actually beside-the-line in the case of Western Australia). This is particularly important in the State-wide South Australian Legislative Council elections where full preferential voting makes below-the-line voting particularly arduous. At the 2002 Council election voters were asked to rank 76 candidates with consecutive numbers if choosing the below-the-line option. Thanks to a provision allowing Independents to add up to five words to their description on the ballot paper, above-the-line voters could choose between Independents with catchy labels such as ‘Independent Cheap Smokes Beer and Spirits’ or ‘Independent No Nuke Dumps No Pedophiles’. A number of parties take advantage of the provision to register more than one ticket in South Australia and in 2002 the ALP registered tickets directing preferences either to the Australian Democrats or the Greens.

The above-the-line system that has been introduced for the Victorian Legislative Council (to come into effect in 2006) is closely modelled on the Senate system, with provision for parties to register up to three tickets and with preferences to flow accordingly. The

¹ This paper does not deal with the Hare-Clark version of STV used for lower house elections in Tasmania and for the Legislative Assembly in the ACT. Under Hare-Clark there is no provision for ticket voting and there is a partial preferential system in the multi-member electorates whereby voters have to rank as many candidates as there are seats to be filled.

below-the-line system is, however, a partial preferential one, with voters required to rank a minimum of five candidates (the number of seats to be filled in each region). One distinctive provision is for the address of candidates to appear on the ballot paper. This is intended to discourage major parties from selecting all their regional candidates from provincial cities.

When Western Australia introduced STV and ticket voting for its Legislative Council in 1989 it did it in its own way. The ballot paper was divided vertically instead of horizontally, with voting for groups on the left. Also Western Australia only allows parties to lodge a single ticket, presumably because at the time ticket voting was introduced there were no Democrats in the parliament to argue the contrary. As with the Peter Garrett incident in relation to the Senate, there have been cases in Western Australia where voters might have been very surprised to know where their preferences were going. At the Western Australian Legislative Council elections of 2001, One Nation placed the Greens before the Liberals in their registered how-to-vote tickets for two non-metropolitan regions. One Nation supporters would probably be unhappy to know their preferences handed the balance of power in the Legislative Council to the Greens.

When NSW introduced above-the-line voting in 1988, it still did not allow the inclusion of party names on ballot papers, even though parties were already registered under public funding provisions. The provisions for above-the-line voting, including party names and registration of more than one ticket, were brought into line with the federal model in 1990, removing the bias against minor parties.

Indeed as in South Australia, above-the-line voting in NSW began to encourage a proliferation of micro-parties. This led to the infamous 'table-cloth' election of 1999 and subsequently to the reforms discussed later in this paper. The NSW Legislative Council elects 21 members every four years, with a quota of 4.5 per cent of the vote. In 1999 the ballot paper had to accommodate 264 candidates and 81 parties. Many of these were newly created parties with attractive names such as the Three Day Weekend Party, the Marijuana Freedom Party and the Four Wheel Drive Party.

The sole purpose of such micro parties was ‘preference harvesting’, attracting above-the-line votes which could then be channelled via registered group tickets to particular individuals, in this case Glen Druery of People First and Malcolm Jones of the Outdoor Recreation Party. In the end Malcolm Jones received preferences from 19 party tickets and won a seat, despite having attracted only 0.2 per cent of the primary vote. Voters for these micro parties were often deceived as to the nature of the party, as can be seen from the difference between the preferences indicated by below-the-line voters and those of the ticket registered by the party for above-the-line voters.

Antony Green has analysed this difference and shown a particular discrepancy in the case of the ‘green’ sounding micro parties associated with Druery and Jones. For example, those voting below-the-line for parties such as the Marijuana Smokers Rights Party, the Gay and Lesbian Party, the Marine Environment Conservation Party, the Wilderness Party or the Women’s Party/Save the Forests gave their preferences to the Greens and Australian Democrats. Those who voted for these parties above the line had their preferences directed to Glen Druery and Malcolm Jones. Needless to say, voters cannot be said to have been exercising an effective choice when being misled in this way.

The controversy over the table-cloth election led to a series of reforms in NSW to set more rigorous requirements for the registration of political parties² but also to change the nature of above-the-line votes. No longer would preferences flow in accordance with a registered group ticket. Voters still had the option of just placing a ‘1’ in a party box, but this vote would only flow to the candidates for this party. It would then exhaust rather than flowing on to other parties in accordance with a registered group ticket. Voters were also given another option, which was to rank order the party boxes appearing above the line, in which case their preferences would flow accordingly, rather than in accordance with deals done by parties.

² Under the reforms instituted ahead of the 2003 election parties had to be registered 12 months before an election, have at least 750 members and pay a registration fee of \$2000.

The latter option, of rank ordering the party boxes above the line is superior to the option of marking only one box, which may lead to the vote becoming exhausted and failing to contribute to the election of any candidate. It is not clear whether voters who chose this option in the 2003 State election were fully aware of how truncated their vote might be. There may have been confusion with the Senate above-the-line system where only one preference can be expressed. More education appears to be needed to prevent voters wasting their vote in this way.

Voters for the NSW Legislative Council still had the option to indicate their preferences between candidates by choosing the below-the-line option. This is the traditional form of STV whereby voters can rank candidates in any order they please, disregarding the order in which they appear on party lists and voting across lists if desired. As the number of candidates has increased, the requirement to rank all candidates if choosing the below-the-line option (the full preferential system) has become increasingly arduous, as we have seen in the case of the Senate and South Australia. In NSW there is a partial preferential system, whereby voters only have to rank order a minimum of 15 candidates to cast a valid vote.

The NSW reform to above-the-line voting has also been adopted for local government elections where there are more than two positions to be filled. It was used for the first time at this level in 2004. As with the Legislative Council, there are no registered group tickets for above-the-line voting and voters can either vote for only one party or indicate to which parties their preferences are to flow. Again voters who wish to vote for particular candidates can avail themselves of a partial preferential below-the-line option, voting for as many candidates as there are Council seats to be filled (and indeed the vote remains valid if only half that number of preferences are indicated).

Conclusion

There is a good argument for reforms to Senate voting similar to those in NSW, so that voters can indicate their own preferences between parties above the line. Because of the

higher quota there is not quite the same scope as in NSW or South Australia for preference harvesting to result in unknown candidates being elected. It could happen, however, in a double-dissolution election. And there is certainly a problem in terms of the ultimate destination of their votes being most often unknown and sometimes distasteful to voters. To give the voter the opportunity to express their own preferences between parties above the line, rather than leaving these decisions to party managers, would seem much more in the spirit of the way proportional representation has evolved in Australia.

It would also be highly desirable to achieve a certain amount of uniformity in above-the-line voting systems in use at Commonwealth and State levels, to reduce the degree of confusion over what happens to voters' preferences.

A partial preferential system for below-the-line voting, whereby voters could express preferences between a certain number of candidates (for example, as many as seats to be filled) without having to rank order dozens would also be a significant improvement. The present Senate system of discouraging below-the-line voting by insisting on the ranking of all candidates may suit party managers but offends against democratic values. Reform directed to encouraging voters to express preferences between parties above the line, or to express preferences between a limited number of candidates below the line, would better satisfy the values of the democratic audit concerning transparency and popular control of election outcomes.

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