

Minority Government: Is the House of Representatives Finally Catching Up With the Senate?*

Scott Brenton

When Kevin Rudd was replaced as prime minister, and in the post-election commentary, it was embarrassingly clear how little we as a country know about our political system. How dare those faceless men knife the prime minister that *we* elected? Yet ‘we’ in the broadest sense do not ever elect the prime minister, and at the 2007 election only 43 957 Australians voted directly for Rudd in the electorate of Griffith. By contrast, at that same election, 1 760 022 Australians voted for Senator Mark Arbib, one the so-called ‘faceless’ men who led the Labor Senate ticket in New South Wales. This myth of a popularly elected prime minister, in a large part due to presidential-style election campaigns, propagates another myth that we have a single chief executive with a three-year tenure that can only be terminated or extended by the people at an election. That is not our system. That has never been our system. Presidents have such tenure not prime ministers. The change of prime ministers demonstrates that ours is a proper Westminster-derived parliamentary system that works for two main reasons. Firstly, the executive is ultimately accountable to the legislature, albeit imperfectly due to strict party discipline. The executive must retain the support of the legislature, which in practice was the Labor caucus. Secondly, the executive should be collective with the prime minister first amongst equals. Without engaging in an extended critique of the former prime minister, normally Cabinet should be doing things differently behind the scenes, but if it gets to a point where they feel that the government has lost its way or that they as the equals in the collective executive are being sidelined, then they should act as they did. None of this necessarily lessens the shock when it does happen and of course it can be argued that it should not have got to the point that it did, but it is a crucial accountability mechanism.

One positive outcome was that we finally got a female prime minister in government, without having to go through that tired old debate that would have dogged a female Opposition leader attempting to win government: is Australia ready for a female prime minister? Australians have long been ready, it is the media and faceless men in both major parties that have not been. However, focus groups finally told them as much. It is almost hard to believe that Julia Gillard had to battle for preselection and was initially relegated to the third position on the Labor Senate ticket at the 1996 election. It was not a winnable position but she was almost elected. Imagine Senator

* This paper was presented as a lecture in the Senate Occasional Lecture Series at Parliament House, Canberra, on 15 October 2010.

Gillard now—she probably would have been an effective senator, as she showed as she guided the government’s workplace relations legislation through, what is known as a ‘hostile’ Senate, where the Opposition actually had a majority for the first few months of the new Labor government before the Greens, and an independent and a Family First senator held the ‘balance of power’. Gillard talked tough to the media and stridently sold a more uncompromising government position to stakeholders and voters, but behind the scenes briefed any senator who would listen and negotiated and amended and even sat in the Senate at crucial stages. Now that has been the norm for the past three decades bar three years of Liberal–National Coalition majorities in both houses, which incidentally coincided with coalition senators themselves crossing the floor. Even without a government majority in the Senate, legislation has got through during all those periods, governments have been stable, and the markets have not crashed because of legislative uncertainty.

While government is formed in the lower house, governments can be unformed by the Senate as was demonstrated in 1975. Yet that has not been repeated, even when left-wing parties have had the numbers in the Senate while right-wing parties have governed. It is actually not the minor parties and independents that are hostile and threaten to bring down governments, because they are far less secure in their own positions and usually eager to serve as long as possible and extract concessions from being in those positions. It is usually oppositions that fall into the ‘hostile’ category, whatever the colour, but the Opposition cannot unilaterally bring down a government anyway. There might be a by-election during this term, but often by-elections are caused by retiring members who suddenly realise that they need to spend time with families yet did not act on that thought before nominating and contesting an election for a possible three-year term—that is not likely to happen during this term. Even if there is a by-election, it will not necessarily be caused by a government member, and even if it is, it might not be a marginal seat, and even if it is, voters will well be aware of the stakes and arguably far less likely to punish a government just because they can. Of course this is not going the stop media speculation, as was the case post-election. Who has the right to form government? Is it who won the most primary votes or the two-party preferred vote? Well the answers to these questions are the same as they have been after every single election. The members of Parliament—and I will not be provocative at this point and include senators even though that is theoretically possible—but for simplicity the members of the House of Representatives decide who among them will serve as the prime minister. The major parties have decided that there should only be two candidates for that position and that members of their parties will automatically support them. It was just after this election that the major party leaders could not just phone each other and concede or give victory and concession speeches on election night, but actually had to talk to other elected members of Parliament and outline a plan for the next three years. Now this

might shock some traditionalists, but traditionally leaders have outlined what they plan to do during the actual election campaign and have properly costed their policies. This time they had to talk to people outside of Western Sydney and Queensland, they had to remember there are more voters elsewhere, in places like Melbourne and Hobart and Port Macquarie and Tamworth. And talk they did for 17 days. How to report this? How could the 24-hour news channels and internet news sites provide an hour-by-hour, blow-by-blow account that we are so used to? By speculating, of course, and invoking fear and loathing. What do we do if no one can form a government? Is the Governor-General compromised? How dare the independents take 17 days to decide? Why is it taking the Electoral Commission so long to calculate the two-party preferred vote? How is it possible for minority government to actually work?

Well if you think 17 days is a long time spare a thought for the poor Belgians or the Dutch. It took about four months for Dutch politicians to conclude a workable coalition agreement in order to govern. The Belgians went to the polls well before us in mid-June, and are still in caretaker mode. So 17 days is nowhere near being a record, albeit Rob Oakeshott's speech in announcing his decision might actually be a record. As for minority government, we here in the ACT know that is normal, and there are currently also minority Labor governments in Tasmania and the Northern Territory and a minority Liberal government in Western Australia. Incidentally, the most unpopular governments are arguably in the other states where there are majority governments. Currently other Westminster-derived parliamentary democracies including the United Kingdom, Canada and New Zealand have coalition or minority governments where a major party is not able to govern with a majority in its own right, which is also the case in many, many other countries. A few years ago in Germany, when neither of the two major parties won a majority, they decided the easiest coalition was with each other and they formed a Grand Coalition, which has also been a feature of other countries throughout history. So let us just get a bit of perspective here. As for the Electoral Commission, part of the reason why it took so long to calculate the two-party preferred figure and why it changed dramatically as seats were suddenly included or excluded, is that we persist with the assumption that only two parties are contenders, and this is not the case anymore. This was underlying the shock. That Coke and Pepsi are not the only flavours of cola, and it even comes in other colours. I am not about to predict the demise of the major parties or the end of the adversarial two-party dominated system, but rather acknowledge that this moment has been a long time coming. Many of these independents are not new phenomena—the collective parliamentary experience of Oakeshott, Windsor and Katter across state and federal parliaments exceeds that of Gillard, Swan, and Abbott. One independent has even been in this situation before in New South Wales.

Independents only have this ‘balance of power’ because the majors oppose each other. Real power is with the Parliament and all parliamentarians. Any other member could have chosen to be part of the negotiations, but most pledged allegiance to a party, and fair enough, they campaigned for, were supported by and were elected as representatives of parties. However, do not complain when other parliamentarians do not have such allegiances and, without the considerable financial and organisational support of parties, win seats and then attempt to secure concessions for their electorates and constituents. Any other parliamentarian could have done that. Any parliamentarian in the new Parliament can choose to judge any piece of legislation on its merits and propose amendments. I am not actually against parties or even the major parties, but rather the ridiculously strong and uncompromising party discipline that is not a feature of Westminster or Washington. Of course members of the same party are probably going to agree 99 per cent of the time anyway, but is it really necessary to force 100 per cent submission? It is interesting that Australia has such tight party discipline and yet is home to more independents than any other comparable democracy. Every state and territory in Australia has had minority governments, and federal governments have had to take notice of the Senate, which they generally have not controlled. The government now has to negotiate with crossbench members of the House of Representatives as well as senators—so?

This is by way of a long introduction to my previous research conducted here at Parliament House last year as the parliamentary fellow. My observations and arguments are based on a survey of 233 current and former parliamentarians, which represents a credible response rate of almost 40 per cent, and a further 29 in-depth interviews with selected prominent politicians. I targeted parliamentarians who had served in both an upper and lower house, whether at federal or federal and state level; a cross-section of all parties in the last Parliament; independents, including some who have been in the spotlight recently; a cross-section of all states and territories; and a mix of urban and rural and regional. What I was most interested in was: what is the difference between the Senate and the House of Representatives or, more precisely, what is the difference between senators and members? I proceeded from the assumption that outsiders do not really know what politicians actually do—what does the job involve, what is a typical (if there is such a thing) day like, what makes a good representative? What I was surprised to find was that insiders—the parliamentarians themselves—also do not have a particularly accurate perception of what their colleagues in the other chamber actually do.

Parliament House is symmetrically divided with the Senate and senators on one side and the House of Representatives and its members on the other. As one interviewed parliamentarian who has served in both houses sharply observed, ‘The chambers are only about 70 metres apart, but it could be a kilometre’. Both senators and members,

along with other occupants, light-heartedly refer to the other side as the ‘dark side’. However, it has been the Senate that has copped the most ridicule. Former Prime Minister Paul Keating famously derided the Senate as, ‘a spoiling chamber ... usurping the responsibilities of the executive drawn from the representative chamber’¹ while ridiculing senators as ‘unrepresentative swill’.² Others have described the Senate in equally unflattering terms including, a retirement home for time-servers, ‘a comfortable Home for Old Men’ with their ‘weak, arthritic wrists and wheezing voices’.³ Yet the modern Senate slowly became *more* representative of the wider populace than the House of Representatives. The first two Indigenous Australian parliamentarians were senators, although the House is catching up now with its first Indigenous member. However, women only occupy a quarter of the seats in the House, but over a third of Senate seats, although, of course, as mentioned, the most important seat is now held by a woman. While the youngest women to be elected and to sit in the Parliament were senators, a 20-year-old first-time voter now sits in the House. The first Australians of Asian ethnicity to enter Parliament were senators, although now there is a Muslim member. In the last Parliament, the only openly gay and lesbian politicians were senators. There are a number of other minorities that have found a more comfortable home in the Senate, including, again until recently, minor parties such as the Greens, which has become the first minor party to win a seat in the House at a general election in the post-war period, although they had previously won a seat through a by-election.

Part of the reason why a more diverse range of candidates have been able to win election to the Senate is due to the different electoral system, the system of proportional representation that roughly allocates seats in proportion to vote share, and with a minimum hurdle of about 14 per cent as opposed to 50 per cent for a House seat. Electoral legislation was reformed to introduce proportional representation for the Senate in 1948, and *Odgers’ Australian Senate Practice* is unsurprisingly complimentary of the reforms:

The 1948 electoral settlement for the Senate mitigated the dysfunctions of the single member electorate basis of the House of Representatives by enabling additional, discernible bodies of electoral opinion to be represented in Parliament. The consequence has been that parliamentary government of the Commonwealth is not simply a question of majority rule but one of representation. The Senate, because of the method of

¹ Paul Keating, Questions Without Notice: Senate Voting System, House of Representatives, *Debates*, 3 March 1994, p. 1746.

² Paul Keating, Questions Without Notice: Loan Council Arrangements, House of Representatives, *Debates*, 4 November 1992, p. 2547.

³ R. Hughes, 1944, cited in S. Bennett, *The Australian Senate*, Research Paper, no. 6, 2003–04, Canberra, Parliamentary Library, 2004, p. 8.

composition, is the institution in the Commonwealth which reconciles majority rule, as imperfectly expressed in the House of Representatives, with adequate representation.⁴

At every Senate election since 1955, candidates from outside the Labor, Liberal and National parties have been elected.⁵ Minor parties and independents have held the ‘balance of power’ from 1981 to 2005 and again since 2008. I am cautious using this term as it is only a construction, and any senator could theoretically exercise such power on any issue. While minor parties have traditionally been more electorally successful in the Senate, there have been more independents elected to the House of Representatives.⁶ Although this is changing, as the Greens have broken through an important psychological barrier by winning a lower house seat and finishing second in another two inner-city and formerly very safe Labor electorates. While it is premature to predict the end of majority Labor governments, Labor is also governing with Green support in Tasmania and here in the ACT, and Labor should be concerned about its longer-term prospects. However, I do qualify this by also noting that in recent times where Labor has governed at the state level with independent support in Victoria, Queensland and South Australia, it has gone on to win convincing majorities at the next election (one important difference was that these were all first-term Labor governments). So it is more complicated but Senate experience suggests that this is only the beginning. Once upon a time it was rare for minor and independent senators to clear the minimum hurdles without preferences, but now senators like Nick Xenophon, Bob Brown, Christine Milne and an increasing number of Greens are winning quotas in their own right. They are becoming less dependent on major party preferences, while Labor at least is finding it harder to win lower house seats without Green preferences.

In the House, savvy independents and minor parties, and voters, have realised that while the electoral barrier may appear higher, our system of preferential voting can be beneficial. Provided one of the majors is pushed under 50 per cent, finishing ahead of the other major with 20–30 per cent of the primary vote can almost guarantee election as the majors are still playing the two-party game and putting each other last. When independents win, they too enjoy the benefits of incumbency and can often go onto very comfortable majorities, so they are doing something right. Who knows what will happen to the independents who supported the Labor government, but looking at the results they can suffer a massive swing and still comfortably retain their seats. To the

⁴ H. Evans (ed.) *Odgers' Australian Senate Practice* (12th edn). Canberra, Department of the Senate, 2008, pp. 90–1.

⁵ S. Bennett, *The Australian Senate*. Research Paper, no. 6, 2003–04, Canberra, Parliamentary Library, 2004, p. 2.

⁶ M. Rodrigues and S. Brenton, *The Age of Independence? Independents in Australian Parliaments*. Research Paper, no. 4, 2010–11, Canberra, Parliamentary Library, 2010.

commentators who were trying to make sense of what their constituents thought in two-party terms, while they may be conservative-leaning seats, the line of argument that only minorities voted Labor in those seats is ridiculous because many are now voting independent and the majority have rejected both majors. Even if there are changes in those seats, I wonder how many other voters in other seats will now think, ‘Hmmm, our local hospital is also in need of an upgrade, maybe an independent could achieve that’. While this may be derided as pork-barrelling or bad public policy to privilege certain seats, and I do agree, on the other hand this is politics and has been for a long time. If you want to get noticed and get ministerial visits and local infrastructure funded, make your seat marginal. That is how the majors craft their election campaigns. In the Senate, former Tasmanian Senator Brian Harradine was very effective in winning concessions for his state and also furthering his social agenda. Again, this is not necessarily a good process for making public policy but there is something in the idea of all representatives vigorously pursuing the interests of their constituents and through that collectively determining the national interest. In this ‘new paradigm’, there are already moves, particularly in the government, to involve the backbench more in policy development, because at a base level a disgruntled backbencher now potentially has a lot of sway. This is how it should be. This is actually a Westminster system and a very important link in the chain of accountability, that of the executive to the legislature, and backbenchers scrutinising the frontbench.

While the Senate has responded to criticisms of laziness and irrelevance and evolved into one of our most important institutions for ensuring accountability of the executive through innovations like Senate estimates committees, the House had not been able to shake the tag of being an ‘echo’ chamber of the executive. Now all members actually have to turn up to proceedings. My interviews were generally conducted during parliamentary sittings and therefore the bells would often ring mid-interview. Members would often simply check their pager and continue as they were rostered on at certain times, while senators would often have to leave, and it was much harder scheduling senators during sittings. Many members confided, and this also came through the survey data on how members and senators spent their time, that sittings in Canberra were in some ways welcome opportunities free from the usual constituent demands and public ownership that they felt in their electorates. This is not intended as a criticism, because as a member every night could easily be filled with a school speech night or community meeting or fundraiser and fairs and sports events on the weekend. By comparison, Parliament was a sanctuary, a political resort if you like, a coffee with friends at Aussies, a swim in the Parliament House pool or a hit on the tennis court, room service lunch to your office, and if you miss a vote, legislation still gets through. There is some artistic licence here but there was definitely a sense that parliamentary sittings were much more stressful for senators than members, and

conversely and just as legitimately, during non-parliamentary sittings there was more pressure on members than senators. The outcome of legislation could change if a senator missed a vote, and in between chamber work, committee work was very important and time-consuming, while lobbyists and interest groups all wanted the attention of senators, especially the crucial swing votes. Members have already started to feel this but it does come with some other positives. We have already seen some parliamentary reform, always promised by oppositions but never delivered by governments. While it remains to be seen if the standard of question time will improve, the Senate is testament to the fact that the overall quality of debate will likely improve. If only simply because the executive can no longer have its own way and rush through legislation and shut down debate. It will have to convince legislators and be open to negotiation. The few parliamentarians that I spoke to or surveyed who have served in both the Senate and House generally agreed that the standard of debate was better in the Senate and that courtesy and respect were more forthcoming and petty name-calling less, although not absent, but less of an issue in Senate. Senators from all sides, particularly current ones or recently retired ones, felt a much greater sense of excitement and interest in the work of their chamber than their colleagues in the House.

Despite the fate of legislation often being decided by the Senate, it has been the House of Representatives that has been considered the ‘main game’ in politics. This is after all where government is formed, where the prime minister, treasurer and Opposition leader sit, where most ministers sit and it is snippets of question time from the House that often appear on the nightly news. Then again there are more members, twice as many members as senators thanks to the ‘nexus’ provision of the Constitution. However, that is where the constitutional requirements end. The Westminster convention that prime ministers sit in the lower house is largely based on the democratic legitimacy of Britain’s elected lower house, even though British prime ministers have sat in the unelected upper house. However, both Australian houses are popularly elected and the prime minister is not even mentioned in our Constitution. Senators have also reinforced the convention by switching to the lower house to realise political ambitions. Unlike the United States where the most common path is from the House to the Senate and the Senate to the presidency, in Australia senators with leadership or other ambitions have switched to the House. When Liberal Senator John Gorton became prime minister he resigned from the Senate and contested a lower house seat.⁷ Liberal Bronwyn Bishop, Labor’s Gareth Evans, and Democrat-turned-Labor Party member Cheryl Kernot also switched with varying degrees of success. Treasurers have been more willing to challenge convention, particularly since the Senate showed that budgets are not sacrosanct and it effectively has the same powers as the House. While budget bills must be introduced into the House of

⁷ M. Mackerras, ‘From the Senate to the Lodge’, *The Australian*, 28 May 2009, p. 12.

Representatives, the convention that the treasurer has to actually sit there has been challenged in the New South Wales, Victorian and Tasmanian state parliaments. I do not deny that conventions are hard to change and that they are not just as important for the stability of our political system as our written Constitution is, but at least our written Constitution has precise and transparent mechanisms to change it. Conventions on the other hand are often just repeated without understanding that there is a historical context and without recognising that they have evolved over time and should continue to evolve. For all the talk of the diminishing importance of our state parliaments and poor performances of some state governments, they have generally been better at recognising ‘the times they are a-changing’. When Rob Oakeshott suggested that a Liberal serve in a Labor cabinet or vice versa, he was inevitably ridiculed, but a National has served in a Labor cabinet in South Australia and there have been a few independent ministers in state cabinets, just as there are now Greens in the Tasmanian Cabinet. There are likely to be new precedents in this new Parliament, but the House will most probably find that various state parliaments and the Senate have already confronted these questions a long time ago.

They might also discover some other exciting innovations. One of the most common areas of Senate envy amongst members was Senate estimates committees, but also the committee system in general. This came through most strongly from parliamentarians who have served in both houses and also for most members in general this was the most dominant perception of the work activity of senators. Members, particularly shadow ministers revealed that they currently feed questions to their Senate colleagues during estimates hearings via laptops and mobile devices and would relish the opportunity to question public officials directly. Similarly, it is only ministers in the Senate that generally front the committees, even though there are far more ministers in the House. There have been unsuccessful attempts to replicate estimates committees in the House, and there are some signs that the new Parliament might be more conducive to another attempt, possibly with some success, but I would go one step further and radically propose that rather than two doing similar things in parallel, the same estimates process should involve all parliamentarians. There should be some parliamentary mechanism where all parliamentarians can question any member of the executive. Really the only other times senators and members currently interact are in their respective party rooms and the comparatively few joint committees, or informal situations such as the dining room, the airport or the ABC’s *Q&A* televised panel discussion. Imagine Senators Bob Brown, Barnaby Joyce or Nick Xenophon directly questioning Prime Minister Julia Gillard or Treasurer Wayne Swan? These are the sort of democratic innovations we should be debating, not just the banal backwards and forwards on the pairing arrangements of the Speaker.

Well that is Senate envy, but senators have been known to also suffer from what could be called representation deprivation syndrome or a longing for constituents and electorates, or more harshly for legitimacy. We often hear that the Senate is for the states and the House for the people. Once again this is a selective reading of history. Certainly the decision to transplant and graft the US federal system and its model of a powerful state-based upper house onto quite a different British system was a political compromise to placate the smaller states. Even the constitutional framers during the conventions of 1890s acknowledge that politically it would not be contests between states in the Senate but contests between ideologies. The voting record shows very clearly that debates and divisions have never pitted states against states. Certainly there have been a few issues where non-Labor senators in one particular state have crossed the floor, but nothing so significant as to warrant the description ‘states’ house’ and indeed suggestions to include the word ‘states’ in the name of the upper house were explicitly rejected during the constitutional conventions.

The more popular conception of the two houses among the parliamentarians surveyed was that the lower house was the house of government and that the Upper House was the house of review, with about two-thirds of both current members and senators choosing that distinction and slightly lower proportions of former members and senators. Not a single current senator chose the house of the people/house of states distinction. Instead, parliamentarians in both groups observed that with the evolution of the Senate there is now an expectation within the government that the substantial debate and amendments will occur in the Senate and through its committees. However, House debates are not meaningless or ineffectual, as ministers and their offices still follow those closely, take note and make the amendments during or after the Senate process. This is widely seen as being more efficient. Contrary to the predictions that the legislative flow will be disrupted, our institutions will evolve to suit the circumstances, and the House will evolve just as the Senate has. One thing that does not change in the new Parliament is that the government will have to negotiate with either the Opposition or crossbenchers to get its legislation through. It does not really matter whether those parliamentarians are in the House or the Senate, and if managed appropriately, it should not result in a longer process, and even if it does, why is this a bad thing? More time, more scrutiny, more consultation, more perspectives does not necessarily lead to no outcomes but could lead to better outcomes. It is not as though Labor in majority was known for action, and rather had a penchant for summits and reviews and talking to anyone bar other elected parliamentarians. For Labor there is actually a benefit in having a Green in the House because the Greens will assume this mystical balance of power in the Senate in July 2011, so they can commence negotiations with this one party in the House. I think they will also have a much less frustrating time negotiating with the independents in the House than with some unnamed senators in the past.

As I mentioned earlier this has been a feature of the Senate for much longer because its proportional representation system better represents the will of the people. Putting the equality of states issue to one side, in terms of the national vote shares being translated into seats, the permutations of Senate seats have been a much more accurate reflection of how the people actually voted. The House's electoral system traditionally tends to reward a major party with a much greater share of seats than its vote share. So governments have been governing without majority popular support in terms of primary votes for quite some time—since the 1975 election after the Dismissal in fact—which was the last time a government won more than 50 per cent of the first preference votes. Since then, the majority of Australians have actually voted for the other parties at an election and not the governing party or parties. This election result forces Labor to build majorities that reflect majority popular support. At a basic level, the combination of Labor, the Greens and the three independents who supported Labor is the majority both in seats and primary votes. Had those independents gone the other way and supported the Liberals, the Nationals, the Liberal Nationals, the Country Liberals, and the Western Australian Nationals—these are all the parties in the Coalition—without the Greens and their bloc it would not have been representative of the majority of primary votes. However, that's our system, and it would have been a legitimate government too, it is just to provide a different perspective.

One thing the House will probably never copy from the Senate is the proportional representation election system, as the concept of locally based representation is very strong. In the survey I asked parliamentarians who or what did they think that they primarily represented. About a third of current members chose a 'defined geographic area' and a further quarter chose the option 'geographic area through a party' (or vice versa). Interestingly, this was the same for senators, with just over a quarter choosing the same option and a third of respondents split between 'defined geographic area' and just 'party'. Notably not a single member just chose party. This also came through in the interviews with a stronger sense of local attachment for members and a stronger feeling of being party advocates for senators. This is not particularly surprising given that in many parties senators are preselected through a much more centralised party process whereas many preselections for seats in the House have some degree of local party involvement. What was surprising was the almost condescending dismissal of the Senate as a parties' house, even though party discipline is just as strong in the House and is used to stifle debate and negotiation. Another surprisingly claim by members was that the biggest difference is that senators do not have constituents, implicit in which was that members work harder because of this.

Yet senators do have constituencies, they are just not necessarily geographically contained in a defined electorate the way that a member's constituents are. Most

senators pursue particular policy interests and develop policy expertise and key stakeholders within that area become their constituents. It could be unions, or an industry or employer group, farmers, refugee groups, environmental organisations, churches, the list goes on. Senators become key advocates and often become known for pushing certain issues onto the agenda with a freedom that members do not always have. Senators also have more traditional geographic constituencies with the major parties realising long ago that they could be key campaign agents. Once upon a time, with the exception of Tasmania, senators were based in the Commonwealth Parliamentary Offices in the central business districts of the capital cities. Over the last few decades there has been a shift to the suburbs and to the regions. Tasmania has always had a higher degree of geographic spread, but on the mainland the parties realised that it was a waste to have taxpayer-funded offices hidden away in inner city high-rises and moved to shopfronts in electorates where they did not have lower house representation. It gave them visibility, but less cynically, it also gave constituents more points of contact. Senators revealed in the interviews and surveys that constituents would often come to them after trying the local member or a department and perceiving them to be unsympathetic to their concerns. Unlike one local member, if that person happens to hold an ideological position different to your own, there are twelve senators as alternatives, representing a wider range of viewpoints. Parties have now formalised this role, with ‘duty senators’ allocated a few marginal and Opposition-held electorates, and again the surveys revealed that senators are attending more and more public functions and community events and increasingly becoming well-known or in some cases better known than members. Many crossbench senators, or senators just willing to speak their minds, have become national political figures in a way that very few non-ministerial members have been able to. Again, like their senator colleagues before them, crossbench members are developing significant profiles, and many people now know the names Oakeshott, Windsor and Katter.

Thus far I have couched negotiation in largely positive terms but what about accusations of certain, shall we say, eccentric politicians holding governments to ransom or hostile senates or another 1975. And of course, to borrow from Oakeshott, do not mention mandates. Well all the crossbenchers involved negotiated outcomes to benefit what they saw as the greater good and not just in the interests of the own electorate. Indeed, the common criticism was that some of them went beyond just their own electorate and their immediate electoral interests. Recent experience from the Senate shows that, and once more not mentioning any names, the most troublesome senators have been the ones expelled from a party or elected off a low base with preference deals from other parties. These are problems with our electoral system and candidate selection within parties rather than the institution of the Senate or the presence of the crossbench. As for hostile senates, there is no such thing. There are representative or democratic senates, so when the government is defeated it is

because a majority of senators representing a majority of people after deliberation, vote to defeat legislation. Crossbenchers alone do not have the power to do anything unilaterally; they have to be supported by at least one of the major blocs. Without getting into the 1975 Dismissal debate, if the government does fall it will be for a good reason, and again is a key accountability mechanism in our system. Think the New South Wales Government, where the governing party has the power to last until the bitter end, which is not necessarily a good thing, and so-called stability or rather longevity does not always lead to good outcomes. In any case, the chain of events in 1975 was propelled by the major parties and not genuine crossbenchers. Finally, mandates are another political construction that are rarely based on majority opinion. Remember that governing parties rarely win a majority of votes, and sometimes do not even win the majority of the two-party preferred vote, so a mandate based on the majority of seats in one house is not the strongest representative claim. After this election though, neither side is in the position to claim a mandate, which is another positive because mandates are not necessarily the basis of good public policy. The best legislation is legislation that changes as it makes its way through Parliament—that is why we have a parliament and not a one-party state. Furthermore, each member or senator is elected on a platform or mandate of sorts and cannot be expected just to abandon it. So yes, the Opposition has every right to oppose everything and it has always had that right.

The uncertainty in the outcome of legislation should not be something to fear but something that makes politics more interesting and exciting. Democracy is not premised on providing certainty: authoritarian regimes do a much better job at that. Furthermore, majority government does not provide the certainty that some commentators like to claim. Without commenting on the merits of the policy, the previous majority government's mining super profits tax was not the product of a certain or predictable process. Majority governments often embrace new policies that they did not take to an election, or abandon elements of their published platforms. I do not want to get into whether that is good or bad but simply note that these decisions leading to these outcomes are made behind closed doors. One of the recurring themes from members and senators of the major parties was that the best debates actually occur within the party rooms, and one even suggested putting cameras in there. I think these admissions are really concerning. Of course it is understandable that the parties, and indeed voters, do not like public displays of disunity, but the way that has been interpreted means that we are missing out on some of the best policy debates and important information on where our local members really stand on key issues. This new Parliament does present an opportunity for more public debates, with proposals for debates on euthanasia and the war in Afghanistan already being mooted.

So in conclusion, I do see this election result as the first and quite small step towards positive political change. Just as it has taken the Senate decades to evolve, so too, some of the reforms that the House has made will be reversed when a major party takes control again, but some will be consolidated and built upon. I am not predicting the end of the two major parties, as I think they will still be the dominant players in any alliance or coalition and continue to in effect produce the candidates for the prime ministership and most of the Cabinet. And while their collective share of the vote had been slowly declining over time, the overwhelming majority of voters still support them and there have been swings back at some recent elections. The next election will more than likely produce a majority government, as has happened at the state level. However, I do predict that voters' attitudes will change. A Senate where one side does not control the numbers has come to be seen as a good thing by a significant proportion of voters. Younger voters, in particular, are being socialised into a political system where there are more than two choices and that is where the partisan attachment is breaking down most dramatically. However, that also brings volatility and just as easily as there are swings away from one party there can be a swing back. Nor am I actually against the majors, rather I am against artificial two-party systems with strong party discipline when there are clearly more than just two perspectives in the community, and more than one perspective within any party. If a majority of Australians gives their number one vote to one party, then that party should have a majority but that is not happening. If Australians are simply choosing between two parties, they have a two-party preferred vote, but again that is changing. The Senate and senators have changed, and now the House and members will have to if it really is the *house of representatives*.



Question — The first woman member of the US Supreme Court, Sandra Day O'Connor, now retired, has seen it fit to give prominence in her retirement to the persuasive influence of studying in the curriculum of the United States' schools, particularly in Washington DC, the notion of civics. I wonder if you would comment on that and also on how to give prominence in a very competitive national curriculum to such an idea and how to give prominence to it by prominent people taking part.

Scott Brenton — I think former senator Margaret Reynolds has spoken on exactly that issue in a previous Senate lecture last year and there are moves to do that. One of the controversies, though, has been how to do that in a non-partisan way and that's where there's been a bit of caution in preceding. It is quite clear that we do need to know more about the very basics of our system. It's not just people in schools, people in universities or the wider community. I think the biggest group, the most important

group that needs to undertake these sorts of courses is political journalists. That was what was most shocking in this election commentary—the very simple, basic questions that they were asking as if there were no answers where there *are* answers and had they actually done Politics 101 they would know very clearly what those answers were. They were then contributing to some misinformation and fear within the community. So I think it should be compulsory for political journalists to actually do some basics for politics. I do support civics and politics courses in schools; it just has to be designed in such a way that it isn't partisan or politically contentious.

Question — You referred to estimates hearings. I was wondering whether the members and the senators to whom you spoke had different views towards their committee activities more generally and also do you think there will be a change in that now that the government doesn't have control of the House.

Scott Brenton — Committees were one thing that came out very strongly in both the interviews and the surveys. The House does have committees, very valuable committees as well, and they actually commented, which I found quite interesting, that they were much more collaborative, much less partisan than the Senate committees. The flipside to that is that because they weren't necessarily dealing with very contentious pieces of legislation, they were actually dealing with pieces of legislation where there generally was bipartisan support, it was just nutting through the details of it. The two different committee systems have complemented each other very well in that respect but at the same time there was a very strong desire amongst members for estimates committees—they wanted to be asking the questions as well. I think there will be moves, and there have been moves in the past, to introduce estimates committees in the House. But the problem has been because the government has controlled the numbers they haven't been as effective as they perhaps could be. I think that in this new Parliament there will be moves once again, particularly from those few members who have served in the Senate, and I'm thinking here of people like Bronwyn Bishop who would be very keen to see it. She was one of the chief interrogators and really made a name for herself through those estimates committees. On the other side I think that one difficulty, one challenge, will be that senators can do that because they don't have the same sorts of constituent demands. They can spend more time away from their home undertaking those sorts of committees whereas it's much more challenging for members to travel the country during non-sitting periods when they're doing some more investigative committees. They do do that but it does seem to be much more challenging for them compared to senators.

Question — Given the structure of the Senate and the way the states are represented in the Senate and the way the territories aren't particularly represented in the Senate,

how do we move forward reforming the Senate so that it is actually representative of the population as a house of review as opposed to a states' house?

Scott Brenton — I previously looked at this issue of reform of the Senate. I think that one thing that could be done—I doubt it ever will be for many sorts of political reasons—but one thing that could be done is retaining this proportional representation system but having it based on national vote shares. Now of course the smaller states will be up in arms—they don't want to lose representation etc—but one very simple way of getting around that is that you require parties to order their candidates such that they have to select someone from every state and territory in their order of election. That way you would still be getting equal numbers from the states into the Senate but it will be based on national vote share so you couldn't get the situation that we have at the moment where I think in NSW a vote is worth 10 times less than one in Tasmania. By doing that as well you also bring down those thresholds so you get much more precision in how the votes are translated into seats. I think that could be a useful way of doing it. The other thing that has happened now that we have gone back to a Senate that isn't controlled by one side is committees have once again been reformed. When the coalition won control they very much reformed the committees to give them more power in those things. Those institutions are also very important.

Rosemary Laing — Could I perhaps add something there Scott? There are some interesting tables in that well-known work *Odgers' Australian Senate Practice* which show how the proportion of people voting for the Senate nationally is very closely reflected in the actual distribution of seats. I just throw that in.

Scott Brenton — No, that's a very good point. So even without that sort of reform it's still in effect happening. But the other point about the territories—I think it's an outrage that territorians don't have the same sort of vote weight that citizens in the states do but again it's a political thing. They're not going to increase the number of seats because the coalition is less likely to win those seats. There seems to be a partisan advantage there so I can't see that happening but really it should be because as it turns out territory residents are probably the most politically engaged in the country, yet have the least representation.

Question — Minority governments have been given a very bad name, I think in Australia in particular, and yet as you say there are minority governments going on around the country. Clearly it's in the major parties' interests to demonise minority government. I presume that's why it's got such a bad name because in actual fact it doesn't produce unstable government. Is that your sense of why there is such a negative agenda around that?

Scott Brenton — Yes, absolutely. I think one of the most comical aspects was when the coalition was going on about this Labor/Greens/independent alliance and all of these different views. As I mentioned in this speech, the coalition actually consists of multiple different parties because they're different now in Queensland and the Northern Territory so there are actually five parties in their coalition and one of them was saying 'don't necessarily count me in to that, I haven't actually said that I am going to support it'. They are a multi-party coalition in a sense so why there is this fear of another multi-party coalition getting up is quite odd. But then it is a political thing to demonise minority governments, to scare people into swinging back and voting for the majors.

Question — I'm just wondering how amazing it is that in a so-called democracy called Australia that very little attention is paid to the fact that the press is so biased. The press belongs to the Media, Entertainment and Arts Alliance union which is traditionally controlled by the Labor Party and what's amazing is that in this democracy every single interview that you saw on ABC, four-fifths of the interviews, every time they would be interviewing someone from the Liberal Party the interviewer methodically, and this goes across the board on every single ABC program, they methodically cut them off, they never let them finish a sentence. Why doesn't anyone say something about the media and why don't they teach them to be diplomats instead of cutting people off?

Scott Brenton — I think the issue of bias is an interesting one but I don't think you can say that it's all one-sided. You could look at the ABC but then you could look at the *Australian* and Sky News and I think there's bias in all media organisations. But the point I want to make is that research tells us that we as consumers will actually choose the outlets where we agree with them anyway so the media isn't actually that great at challenging or changing our points of view, it's good at reinforcing our existing points of view. Where we do actually come across conflicting information we are more than likely to disregard it. So I'd be cautious of seeing that as necessarily swaying public opinion in that way. The other point to make is that younger consumers aren't actually going to these traditional sources anyway, they're using much more diverse sources of information, so again when talking about the ABC and talking about newspapers they're not actually reaching out to the masses of voters in the same way that they have done in the past.