Democratic Representation: Then, Now, and in the Future

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The focus of this paper is the electoral systems of South Australia since 1856.

An introductory comment. On the many occasions when I have raised the issue of electoral systems in a conversation, it is not unusual to note that the eyes of those involved tend to glaze over, and some have even wandered off to find a better conversation.

This reaction flows from a lack of appreciation of a fundamental point. South Australia has a system of parliamentary democracy. Parliament is the keystone of this system. The twin foundation stones of parliament are representation and responsibility. Democratic representation involves the right of all citizens to elect the people who will represent them. That right is transformed into a parliament *via* the electoral system. If the election system is not fair and democratic, then the whole edifice of parliamentary democracy is flawed.

This paper focuses on the nature and quality of representation in South Australia, over a period of 154 years – and beyond. The issue of democratic responsibility is a theme for a different paper.

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In 1857, the colony's first parliament was elected. Its foundation stone of representation, the electoral system, was the most democratic in the Empire, and arguably in the world. Since 1857, it has changed markedly, but not always in a democratic direction. I argue that for the 120 years to the 1970s, South Australia's electoral democracy was in reform mode. Since the 1970s, the reform trend has stalled; in fact, been replaced by a regression toward less than democratic practices.

Analysing and assessing representation over a time frame of 154 years needs a *caveat*. Context is important. Judging an election system of 1857 in terms of modern

principles and practices would inevitably reveal serious shortcomings. Equally, judging an election system in 2011 needs the modern context of principles and practices.

The five years following 1850 were kaleidoscopic in the range of issues raised about self-government. But there were two broad streams: a conservative view that South Australia should mirror Westminster as far as possible, with restricted voting rights, a nominated upper house, and rights for property.

The progressive, even radical, stream had a more Chartist agenda, certainly opposed to Toryism. To John Bagot, "it was a matter of trusting the people … the more power that was given into their hands, the better would be the government under which they lived".

That view won the battle, as shown by the reaction of one strong conservative, Samuel Davenport who, in 1862,

> Recalled the feelings of mortification he experienced … that… the Empire of Great Britain … could be culpable of silent acquiescence … when the Legislature, at the dictatorship of the uninformed and heedless, was carrying a measure fraught with all of the defects the hand of authority has to guard against … this fine province will share no better fate, that other communities, which have transferred the representative power, without an equipoise, into the hands of the most numerous and least instructed (1862:12).

The first constitution needs to be assessed in the context of a mid-19th century British colony, and of contemporary democratic theory. When it is, South Australia can be described as the most democratic election system in the world.

In summary, the parliament was bi-cameral, with both houses elected. The House of Assembly included manhood suffrage, and a unique full manhood franchise for Aborigines. An independent electoral administration was established. The enrolment system was administered by the courts. There was a secret ballot. In 1857, this was indeed democracy. There was a degree of malapportionment favouring the rural electorates. But one person, one vote applied.

The Legislative Council was fully elected, with a property-based male franchise. Again, in the context of the 1850s, a radical system. There was a single electorate system, hence no malapportionment. It included one vote, one value.

In the brief period of 21 years, the colony had turned autocratic rule from London into the most democratic system in the Empire.

It also had a major asset in William Robinson Boothby, the "founding father" of the electoral framework of the Colony. He was appointed as chief returning officer in 1856, and until 1903 he supervised every election. All of the reforms in the colonial period were Boothby's, and his proudest boast was that no election under his supervision had been tainted with bribery and corruption. The Electoral Office and subsequent independent Electoral Commission have maintained the high standards set by Boothby.

No democratic system is static. South Australia, like all of the colonies, showed constant change. As one analyst (Davis SR 1960 *The Government of the Australian States* 565) put it:

> It appears that the electoral experience of the Australian States is a mixture of three things – adventure, heterodoxy and knavery … the states have fathered a crop of electoral devices, confounded their textbook behaviour, and at time and in places used them with a skill which even a fun-fair poker machine proprietor could admire.

To analyse the South Australian fun fair, 1857 to 2011, requires a context of political parties. From 1857 to 1890, there were no political parties in South Australia. Elections were essentially a matter of personality and personal groups.

By 1910, after only 20 years of flux, politics, parliament, and elections were dominated by political parties, and by a party system based on, and dominated by, Labor and Liberal, a pattern which still exists.

Since 1910, the practices and processes of representation have been decided by political parties. A party in government, and a parliament dominated by two major parties, write the Electoral Act. The Electoral Commission administers the Act.

Over the period of 154 years, there have been many changes to the structures and processes of electoral representation. Not all of them could be described as advances in democracy.

Franchise

The democratic ethos of SA continued. In 1894, votes for women brought a full adult suffrage to the House of Assembly, and property based votes for women in the Legislative Council. But a full adult franchise was not granted for Council elections until 1973.

The conservatives had fought long and hard on this issue for 116 years, and in the 1970s they plumbed the depths in an attempt to retain the advantages they had enjoyed since 1857. Consider these quotes from the conservative members, (from 1936, the conservative wing of the Liberal and Country League).

First, two from the colonial period

> (1857). I hold that the upper house essentially represents the acquired and settled property – the independent leisure and superior education of the colony.

> (1879) The advantage of a second chamber was that it often stopped hasty and dangerous legislation

> Now, three from the 1960s and 1970s

> (1966). The founders … acted wisely in providing safeguards against hasty and undemocratic legislation. (90 years and nothing had changed!)

> (1970). If the powers of the Council are decreased, it will no longer have the power to defend itself

> (1966). There is no political partisanship … My party acts impartially in the interests of the people

My favourite, however, is this impassioned appeal in 1968

> [How can we support] One vote one value in a State geographically situated as in South Australia, where 90 per cent of the State receives less than 10 inches of rain in a year!

Enrolment was voluntary from 1857. It remained so until 2009. Despite the inauguration of joint Commonwealth – State rolls, South Australia retained voluntary enrolment. The decision to finally make enrolment compulsory increased the democracy of the electoral system.

Voting method

In 1957, voters were required to cross out the names of candidates who they did not wish to support. In 1860, this was changed to a "positive" action – mark the names which were supported with a tick or cross.

In 1929, preferential voting was introduced, and voters were required to write sequential numbers next to all candidates.

In 1944, South Australia introduced "compulsory voting". In doing so, the parliament inserted a clause into the Electoral Act which enforced something which cannot exist, and cannot be enforced. In the 1980s, the Australian Democrats sponsored a further amendment which required that ballot papers should carry the message "You do not have to mark this ballot paper". Hence the "compulsory voting" became even more ridiculous.

South Australia also incorporated the "above the line" voting system for the Legislative Council. This was justified by a hope that it would reduce the proportion of informal ballot papers, by offering a simple method. To the skeptical observer, however, it also aided and abetted the parties in their ability to do deals for preferences.

In 1985, the South Australian parliament amended the Electoral Act in the style of a fun fair poker machine proprietor. The amendment introduced a unique "ticket vote". It enabled political parties to turn an informal vote into a formal one. If a ballot paper shows only one preference, and if the party has registered a preference allocation with the Electoral Commission, then that allocation is assumed to be on the ballot paper.

This is a denial of electoral democracy.

Voter Assistance

With the introduction of "compulsory voting", there was a responsibility on the electoral system to provide the greatest and easiest opportunity for the voter to carry out the electoral "duty".

From 1857, electors were required to attend a polling place to cast their vote. In 1976, the first mobile polling places were established. This first applied to hospitals and nursing homes, and from 1980 it became a standard form of polling in outback areas.

Over time, the system included provisional votes, pre-poll votes, absent votes, and assistance for disabled people.

Translating Votes to Seats

From 1958 to 1929, the system of First Past the Post applied. This system is based on a simple majority – the candidate who secures the most votes wins the seat. In multi-member electorates, the count was equally simple: the most, second most, third most votes, and so on. Voters were originally required to cast a maximum of votes equivalent to the number of vacant seats.

This First Past the post system, used widely today in many nations with a British heritage, is the least representative of the major electoral systems. Its inherent weakness is that in the case of three or more candidates, it is usually the result that the successful candidate has less than an absolute majority of the votes.

In 1929, the system of preferential voting was introduced. This required electors to mark their ballot paper with sequential numbers for at least twice the number of vacant seats plus one. This was the first introduction of an element of compulsion in elections. As such, it was a significant limitation on the right of an elector to have the widest possible choice.

The 1929 Act also introduced contingency voting, a system which applied to only two elections for the House of Assembly (1930 and 1933), but applied for the Legislative Council until 1973.

This was a significant backward step in the quality of representation. In a single-member electorate contest, if no candidate had an absolute majority, then preferences

were distributed from the lowest up until it was achieved. That mirrors the modern system.

But in a two-member electorate, as most were in the House of Assembly until 1938, and all were in elections for the Council until 1973, then the process to establish the second elected member became totally unbalanced and biased. The elected member had his or her preferences distributed. As these are certain to favour the same party, the result is that one party was all but guaranteed to win both seats.

The importance of this unbalanced system was most evident in the contests for the Legislative Council from 1929 to 1973. There were five electorates, each with four members, so that two seats were contested in each general election. Three of the electorates were in the rural area, so that the LCL was dominant. Two were in the metropolitan area, carefully designed so that one was based on the city and western suburbs, where Labor was dominant, and the other in the LCL-dominated eastern suburbs.

Combining this electoral geography with the contingency vote system meant that, over 14 successive elections, Labor managed to win only two of the 10 contested seats at each election and hold only four of the 20 seats in the Council.

In 1975, the Council election system was reformed to apply proportional representation in a single State-wide electorate.

Electoral Geography

The basic principle of a democratic election system is one person, one vote, one value. The first two of these components applied in South Australian elections from 1857.

The principle of one vote, one value (for those who had the right to vote),was incorporated in the Legislative Council elections from 1857 to 1884, on the basis of a single State-wide electorate. It has been applied since 1975 on the same basis. But for the period 1884 to 1975, the electoral geography of the Council entrenched a severe malapportionment which denied any concept of one vote, one value.

In 1968, for example, the two electorates in the metropolitan area, electing eight members, contained an enrolment of 164 119. The three rural electorates, electing twelve members, contained 111 582. The ratio per member was 20 500 to 9 300.

From 1857, the House of Assembly electoral geography contained a malapportionment in favour of the rural areas. Until 1910, this had no party implications as there were no parties until 1890 and, for the 20 years to 1910, the party system was in a flux. After 1910, however, the malapportionment in favour of the rural and strongly anti-Labor area had important party implications.

In the 1930s, the election system was changed to 39 electorates, each electing one member. For the next 40 years, a deliberate bias was entrenched. Again, the 1968 election shows its extent and effects. The Labor party, with 52 per cent of the votes, won 19 seats. The Liberal and Country League, with 44 per cent of the votes, won 19 seats. The malapportionment was so skewed, that one metropolitan electorate contained the same number of voters as seven rural electorates.

Following this election, the LCL leader, Steele Hall, ordered a redistribution on the basis of a much fairer electoral geography, after 30 years of severe bias to the LCL. This biased system was named the Playmander after it main beneficiary, Tom Playford. The decision by Hall was in the tradition of the principled reformers of the colonial years, as it was patently obvious that the reform would make it at least more difficult, and probably impossible, for the LCL to win the next election.

In 1973, Don Dunstan completed the process and brought one person, one vote, one value to South Australia's parliament for the first time. This was entrenched in the Constitution, and cannot be modified without a referendum.

A further component was added following the 1989 election, when Labor won a majority of the seats on the basis of 48 per cent of the two-party votes. The "fairness clause" was inserted into electoral legislation in an attempt to ensure that a party with a majority of the two-party votes should win a majority of the seats. But the problem with the methodology is that there is an assumption that every elector will vote the same way in two successive elections.

In 1985, the parliament included a unique "truth in political advertising" clause into the Electoral Act. This has not been replicated anywhere else in Australia. Section 113 (2) states that:

> A person who authorizes, causes or permits the publication of an
> electoral advertisement is guilty of an offence if the advertisement

> contains a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent.

This was tested in the 2010 election by the fake how to vote card issued by the Labor party. But no offence was found. This clause needs more teeth.

The Future

Modern democratic principles of representation incorporate, for example, that elections should be open, fair, with the widest possible choice, transparent, as representative as possible, and administered by an independent body.

South Australia incorporates many of these principles. Its system of representation ranks high among democratic nations. But it is not the highest quality that can be achieved. Further, the trend recently has been away from the ideal, especially in the elements of breadth of choice available to the voters, and the transparency of the electoral process.

In its early years, in fact for the first 50 years, South Australia was a leader in democratic structures and processes. Unfortunately, this trend has not been continued, especially since political parties and party self-interest became dominant.

South Australia should return to its heritage of democratic leadership. But how that can be achieved in the hard question.

About the Author

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