

# The Power of Small Voices: The Struggle for the Senate's Centre

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I am delighted to be here in Launceston. Many, many years ago, back in 1975, I spent a week here at the end of the Bass by-election. Talk about history! Federal Labor's defeat in that by-election was a moment of drama and a look into the future.

One of the most helpful people I encountered was *The Examiner's* Michael Courtney. He was a font of knowledge and very generous with it; I recall an informative and entertaining dinner Laurie Oakes and I had at his home that week.

John West, to whose memory this lecture is dedicated, was of course one of the moving spirits in the founding of *The Examiner*; later he moved to Sydney to edit the *Sydney Morning Herald*. Among many other subjects, federalism and federation, then many years off, were among his interests and the subject of his writings.

In the course of those writings he had some observations on the American Senate.

He noted that the structure of that Senate saw a remarkable spirit of concession where – in terms of its equal representation of states – "the power of the weakest is equal with the strongest".

He wrote:

The pride of numerical authority long resisted a compromise, which seemed to give away the natural force of majorities, and which made a senator chosen in the desert equal to one appointed by the empire state; yet it is not difficult to perceive the immense value of this arrangement as a moderating influence.

Under another name it embodies the principle which, in the British constitution, counteracts the force of numbers, and secures a pause in the progress of events.

Ah, pauses! In various ways, the notion of "pausing" goes to the heart of the arguments about our Senate and whether it provides useful new eyes on legislation, the traditional check and balance, or a handbrake on the popular will represented by the government of the day – a jump from imposing a pause on a government by opposing or modifying some measures, to becoming a permanent obstruction. These arguments have gone on for decades – and came to their latest head this week.

I chose for this speech the topic of the Senate's small voices, the power of its small players, quite a while ago. But as it happens I am delivering it just as the Senate has agreed to legislation that will in the future drastically curb the ability of most small players to even walk through its door.

The clout of the little players reached such a tipping point during this term that the government and a middle sized player, the Greens, joined forces to prevent a future election being a repeat of 2013.

This is quite a big moment in the history of an upper house in which voters have been increasingly inclined to install voices other than those coming from government and opposition.

While the changes are designed and set to work against the micros, whether parties or independents, because of this state's relatively few voters a high profile Tasmanian independent should be able to defy the new system, especially in a double dissolution, where the quota is a modest almost 7.7%.

In South Australia Nick Xenophon will certainly defy it, with his new party set to get three, possibly four people up in that state if there is a double dissolution. Xenophon, who is a vote machine, not surprisingly supported the changes. He is no minnow, though he started out as one when he entered the SA parliament on a small vote.

Essentially the new voting system will mean that Senate seats won't go to those with tiny primary votes who could previously build their support through preference harvesting.

Those "micros" there now will mostly be out, at either what seems a likely double dissolution, or after the 2019 election if Malcolm Turnbull pulls back and has an ordinary election this time. Without a double dissolution, all but one of the current batch don't face the people until 2019.

The real point is not the fate of these particular micro players, because most wouldn't be returned even under the old system, but the fact that fresh crops won't make it in coming elections with the new electoral system.

Let me just digress to say that the Senate has been especially important to Tasmania. The Senate has never acted as a states' house, despite the founding fathers' thoughts but Tasmania, with its 12 senators for a limited number of voters, has been on occasion able to extract considerable benefits for the state.

In particular, the role of Brian Harradine is the story of the power of one.

Harradine had a Labor background and, essentially, Labor values. His political story was bound up in the Labor split of the 1950s and its aftermath. He was the man for whom Gough Whitlam in the later 1960s put his leadership on the line, in a fight against the left wing ALP federal executive. The saga of the right wing Harradine went on in the party for years, until the ALP finally expelled him. What a mistake that turned out to be!

Harradine was elected to the Senate as an independent at the 1975 election.

He had a role in the balance of power in the last Keating years and the early Howard years.

He used his power for several purposes: to pursue a policy agenda that was also a moral agenda – he was a very committed Catholic – and to pursue the interests of Tasmania. He played the support-in-return-for-concessions game hard, especially in relation to his home state, for example extracting communications and environmental benefits from the Howard government for his state in return for the part sale of Telstra.

Harradine was the ultimate successful small player – he delivered to his constituency and that constituency delivered back, in continuing to re-elect him. He wielded policy influence according to his beliefs.

But his clout also highlighted the dilemma of the power of small players. Should one or two people in the Senate be able to hold a government hostage?

And – I hardly dare say it to this audience – is it right that a small player can, simply by being in the right place at the right time, extract something for his or her state that is disproportionate to that given to other states? Of course I understand that as Tasmanians, you will say that without such players, you are likely to be overlooked.

In the current Parliament we see Xenophon using his clout to pressure for SA. Given his immense popularity and the threat posed to government seats by his plan to run candidates, SA is doing better than it would if he were not there.

In this state, Senator Jacqui Lambie has taken up Tasmanian – and some other – causes. She won extra money under the freight equalisation scheme; and also got relief for Tasmanian businesses disadvantaged by the Renewable Energy Target. More generally, she was part of forcing the government's hand over its defence pay offer, refusing to vote for government legislation until it made a change.

She has quickly built a profile in the electorate – sometimes by being totally "out there." It seems to have worked – it is thought that if there is a double dissolution, while most micros would go, she might well survive.

The power of small players – whether parties or independents – to reach the Senate and so be able to exercise influence through it, is directly related to how they are elected. This power has altered over the decades as the electoral system has changed.

So let's look at how its modern history has evolved. And in this I am drawing on a very good recent account by Monash academic Zareh Ghazarian, *The Making of a Party System: Minor Parties in the Australian Senate*.

Before the introduction of proportional representation, which started at the 1949 election, the Senate was dominated by the major parties, and subject to wild swings in their representation, although the government of the day was almost always in control (one notable exception being the period of the

Scullin government, which added to its Depression nightmares). The preferential voting system before 1949 did not give small voices any look in at all.

It took a few years after the switch to a proportional representation system, but the small players pushed open the doors from the mid 1950s.

They were different in nature from the present crop; the initial arrivals were breakaways from the major parties.

The DLP was born out of the Labor split; the Liberal Movement splintered from the South Australian Liberals.

The most interesting of them was the Australian Democrats. The Democrats arose from Don Chipp's leaving the Liberals, after he was overlooked for the ministry by Malcolm Fraser, and they drew from the New Liberal Movement and the middle of the road Australia Party.

As the years went on the Democrats became a broad centrist party, spanning a wide spectrum, with quite a solid base of their membership tending to come from the left.

These different internal strands came to the fore when the Democrats did their deal with John Howard to pass the GST, with modifications including the removal of food. Many of the Democrats rank and file were appalled and this can be seen as the start of their drawn-out disintegration.

1984 marks another watershed in the Senate's evolution, based on electoral change. The Hawke government introduced group voting tickets (GVTs), so people could just mark one box, voting "above the line". The individual party or group would sort out preferences for you. At the same time, the Senate's size was expanded.

These changes, which saw voters overwhelmingly embrace above the line voting, opened the door further for small and new players, making it very hard (though not impossible) for either side of politics to get an outright majority.

At the same time, the political climate was changing. New parties sprang up to reflect issues of the times, from nuclear disarmament to environmental concerns. Over the years, there were parties of the left (Greens) and of the right (One Nation, Family First), as well as independents.

The proliferation of micros reached a peak after the 2013 election with a crossbench (leaving aside the Greens) of eight, including those just elected and those who came in at the 2010 election. It should be noted that while Ricky Muir, from the Motoring Enthusiast Party, had a tiny vote, David Leyonhjelm, Dio Wang and Glenn Lazarus actually had quite solid primary votes.

When Labor and the Greens opposed legislation, the Coalition has had to win six of the eight to pass a bill.

This crossbench cohort has been quite dynamic within itself. Over this parliamentary term, some who had started in a party turned independent. John Madigan left the DLP; Jacqui Lambie and Glenn Lazarus quit the Palmer United Party. Going in the other direction, independent Xenophon has started to build a national party, the Nick Xenophon Team, with the aim of adding to his numbers at the coming election.

The proliferation of small players has reflected both electors moving away from the majors AND also the "gaming" of the preference system to the benefit of minors.

Public disillusionment with politics and politicians is widely documented. It's not just in Australia but in western democracies generally.

Voting for senators provides an ideal outlet for this. His or her Senate vote is, if you like, a person's SECONDARY vote - if we see their main political statement at an election being their House of Representatives vote.

Their Senate vote enables them to cast a (mild) protest vote – against the system, politics or politicians generally, or whatever. And/or it can be a vote to put a check on the government of the day, a "pause" in the passage of legislation.

When he resigned from the Liberal Party, Don Chipp was already looking to the way a centrist minority party could capture the disenchantment of many voters. He said: "I wonder whether the ordinary voter is not becoming sick and tired of the vested interests which unduly influence the present political parties and yearn for the emergence of a third political force, representing middle of the road policies which would owe allegiance to no outside pressure group".

Since Chipp said that, the disillusionment has grown and deepened.

Brenton Prosser and Richard Denniss in their book *Minority Policy* write that since the late 1980s between 15% and 20% of voters have supported non-major parties for the Senate. Support for minor parties reached record levels in 2013 with about one in five people voting for them in the House and one in three in the Senate.

If we extract the Green vote, one in four voted for other small parties and independents.

The "gaming" of the system, of which we have heard so much lately, has seen preference deals among the small players arranged so that one micro candidate ends up getting elected. Its leading exponent is the so-called "preference whisperer" Glenn Druery. Druery's business has been organising such arrangements, so he wasn't backward in talking about his influence after the 2013 election.

The major parties have declared themselves appalled by preference whispering but of course it should be remembered they themselves played the system for a long time. In one notable case, a deal done by Labor's Alan Griffin, one of Labor's Victorian factional operators, to get Family First preferences backfired, helping to elect Family First's Steven Fielding, on less than 2% of the primary vote. Fielding shared the balance of power.

Successive governments have been frustrated with the Senate, by its actions and the fact that these days it is almost impossible for a government to control it, although the Howard government did from 2005, allowing it to get WorkChoices through. In retrospect some Liberals thought they would have been better off with the restraining hand of the upper house on that legislation.

Apart from that period, between 1984 and 2013 the balance of power was held or shared variously, by parties and combinations of parties and independents.

While governments were periodically unhappy, nothing was done to try to rein in the minors by voting reform until this Senate – which Prosser and Denniss describe as the "most complex Senate in modern Australian history" – pushed things over the edge.

But there were earlier thoughts about doing something. In 2003 Howard suggested that a deadlocked bill could go to a joint sitting without an election – or (based on a suggestion from a former Labor attorney-general) that there could be a joint sitting after an ordinary election. The idea didn't go anywhere.

This government was outraged first by the composition of the newcomers – especially the election of Muir on about 0.5% of the Victorian vote – and the preference whispering. Then the crossbenchers talked tough and played rough.

Although it came in seeming, at least to some observers, to be a right-leaning crossbench, often it stepped more to the left.

Whether its behaviour has been justified or not will mostly depend on your political perspective.

Much of the 2014 budget was frustrated. Should a new government be able to get its budget through intact, or is it perfectly OK for a Senate to deny measures which broke promises, weren't flagged or were considered nasty? It all depends on where you are coming from.

It goes too, to the question of what people want from an upper house. If they vote differently in the Senate to the lower house, they are voting to put a "check" on the majority will. It then becomes a question of the extent of that check, which runs into complicated issues of a government's mandate and the competing mandate that the Senate can claim.

It is an open question whether the Coalition might have had better results if it had handled the Senate more skillfully. The Abbott government made little serious attempt in the run up to the Senate

changeover in mid 2014, and wasn't much better later. Turnbull thought he could develop a more effective relationship, but that didn't work either.

The recent dinner Turnbull hosted for crossbenchers at The Lodge can be seen as a metaphor for how things have been.

Ricky Muir didn't turn up. Neither did Nick Xenophon.

Lambie left in a huff, on one report before dessert. Lazarus followed, and later complained about the size of the meal portions - fit for "stick insects". The other attendees - Bob Day, Dio Wang and David Leyonhjelm - stayed for a drink.

The dinner came after the formal move began to change the voting system.

But it is notable that the action to curb the micro players actually started well before they played havoc with the 2014 budget, indeed well before they had actually taken up their places in the chamber. The interim report of the joint standing committee on electoral matters, recommending changes to the voting system, came on 9 May 2014 – the budget was the following Tuesday.

The new voting system will better reflect voter's wishes and give them greater control, in a way the present one does not. Previously, if you voted above the line, you did not control where your preferences went.

On the other hand, a large proportion of votes will be quickly "exhausted" – the preferences of most of those who vote for unsuccessful candidates won't be counted. A vote is exhausted when none of the preferences expressed are for candidates still in the race. These voters won't have a follow up say through preferences.

The new system will keep out "accidental" senators like Ricky Muir, who have been elected on tiny primary votes.

BUT it will make it harder for new parties to get a toe hold in the system. In an ordinary Senate election (where the quota is more than 14%) they will have to have a very substantial vote.

Basically it returns the system to how things were before 1984.

But I should add a caveat – changes don't always work out as planned. In 1984 the proliferation of "micros" was not expected. When the Labor government brought in proportional representation, it did not envisage minor parties occupying the balance of power, despite this being a logical outcome of a PR system.

The Greens have supported this week's changes on the philosophical ground that they are more democratic and the practical one that the Greens are an entrenched and substantial party and have an interest in seeing off smaller weeds and seedlings.

Xenophon was also in favour. In the last ordinary Senate election he had nearly two quotas – if there is a double dissolution he could get, if the cards fell his way, a key slice of the balance of power.

The change has strong public support, according to an Essential poll published early this month, which found 53% in favour and only 16% against.

People have accepted the obvious "fairness" argument.

The 2013 "micros" were the cause of the present changes. But one wonders just exactly when the tipping point for action came.

Was it their election? Or their behaviour later? If they had been more compliant, would the government have gone ahead with the changes, or had the die been cast?

We've noted that the parliamentary inquiry into the voting system was set up long before some of the crossbenchers' toughest play – which was in relation to the 2014 budget.

Judging from the NSW precedent, the die was probably cast as soon as the election results came. In NSW a minor party alliance was set up, and at the 1999 election three people were elected to the upper house with a combined vote of less than 2.5%. This was the election of the huge so-called "table cloth" ballot paper.

In an immediate reaction, a new upper house voting system was passed through the state parliament, which has squeezed the minors – although the changes haven't entirely stopped the odd micro victory – in 2015 the Animal Justice Party won the last Legislative Council seat on a very small proportion of the vote.

Druery says he may have been too successful. He might just be right. In helping secure the election of Ricky Muir in 2013, he may have ensured there will be no more Ricky Muirs in the Senate.

I suspect politicians really became alarmed when they saw that "gaming" was not just a political model but threatened to become a long term professional business model, with multiple parties being set up as part of it, and this was one of the spurs to action. Potentially there was the threat of a wily professional "gaming" the system in every state to elect a micro candidate.

John West talked about the virtues of a "pause" on events. The current Senate has been willing not just to push the pause button but the stop one as well. Whether the new voting system will result in that changing remains to be seen.

No one seems to have a definite handle on how the new voting system is likely to affect the numbers in the short term, let alone the long term. Labor thinks the Coalition and its allies will benefit but some observers believe that the Coalition will cut itself off from some right wing preference votes. On one school of thought it could work against the Greens in the long run.

Just what a new Senate crossbench after a double dissolution would look like could be a bit of a lottery, according to modelling done by the Parliamentary Library.

The modelling calculated post DD numbers under the new voting system if people voted as they did in 2013. It found that compared with the present eight non-Green crossbenchers, there could be as many as 11. While for various reasons such modelling has to be taken with a very large grain of salt, the point to be made is that the outcome of the voting change can't be precisely predicted.

The obvious thing is that it depends on how people vote.

Given what happened after the changes that started in 1949 and 1984, to think one can predict how things in the upper house will look in, say 2040, would be crystal ball gazing of a high order.