PREFERENTIAL VOTING IN AUSTRALIA, IRELAND AND MALTA

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Introduction

Voting systems, and the electoral laws by which they are formally constituted, can be designed with a number of differing objectives in mind. For some observers, the key purpose of an electoral system may be to produce a decisive outcome on the floor of a legislature, in the hope that stable government by a single party or coalition will result. 'Instability', for them, is an outcome to be feared. 'Electoral systems based on a principle of proportional representation', wrote AJ Milnor in 1969, 'exact a high price in exchange for mathematically precise representation. The first casualty is usually the possibility of majority party government.'[1] It is not a central requirement that complex and nuanced opinions held by members of the voting public be reflected in electoral outcomes, since to do so would risk stalemate or gridlock. A plurality (or 'first-past-the-post') system, in which voters in individual seats simply tick the name of an individual candidate, may be quite adequate.

For other observers, however, an electoral system should be crafted to ensure that 'every shade of opinion, as far as possible, may be represented',[2] since to do otherwise would sacrifice popular will on the altar of political expediency. A legislature should be a 'mirror of the nation's mind'.[3] For thinkers of this school, it is vital to elicit as full a statement of voters' preferences as possible, since only then can one even surmount the first obstacle to crafting a mirror of sufficient quality. Such preference orderings may be sought in single-member seats, with votes initially cast for less popular candidates being distributed to other candidates until one secures an absolute majority of votes (the 'alternative vote'). However, they may also be sought in multi-member seats, with a formula then being used to determine exactly how votes will be translated into seats ('proportional representation').[4]

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1   AJ Milnor (1969) *Elections and Political Stability*, Little Brown, p 98.
2   Senator RE O'Connor, speaking in 1902, quoted in J Uhr (1998) *Deliberative Democracy in Australia: The Changing Place of Parliament*, Cambridge University Press, p 112.
3   JFH Wright (1980) *Mirror of the Nation's Mind: Australia's Electoral Experiments*, Hale & Iremonger.
4   For further discussion of the definition of proportional representation, see R Taagepera and MS Shugart (1989) *Seats and Votes: The Effects and Determinants*

These differences of approach are generated in part by different interpretations of the concept of *representation*, which for some centres on trusteeship but for others on agency or delegation.[5] The constitutional phenomenon of bicameralism, present in Australia at the Commonwealth level and in all states except Queensland, has permitted the deployment of somewhat different systems in differently empowered chambers of the same Parliament, with a view to securing the benefits both of majority government and of minority representation. Nonetheless, the eliciting of detailed voter preference ordering is an entrenched characteristic of Australian electoral law. This sets Australia apart from almost all modern democracies except Ireland and Malta. This article aims to elucidate the practical operation of these three systems.

The electors of Australia, Ireland and Malta have been regularly presented with a ballot paper containing the names of candidates with the invitation 'Mark order of preference in spaces below' (Ireland and Malta) or 'Number the boxes from 1 to 7 in the order of your choice' (Australia, where full preferential voting applies). Australia differs from Ireland and Malta in the multiplicity of its arrangements. New South Wales and Queensland (for state elections only) follow the principles of Ireland and Malta in having an optional preferential vote. Thus, the standard New South Wales state ballot paper carries these instructions:

> Place the number '1' in the square opposite the name of the candidate for whom you desire to give your first preference vote.
>
> You *may*, if you wish, vote for additional candidates by placing consecutive numbers beginning with the number '2' in the squares opposite the names of those additional candidates in the order of your preferences for them.

The standard Queensland state ballot paper carries instructions which are the same in principle. In the rest of Australia, at both federal and state or territorial level, full preferential voting is mandated.

All the above seems clear enough. However, difficulties arise with the details. Formality requirements in particular seem to be more relevant in preferential voting systems. These will be discussed in detail below when the case of Australia is considered.

In the title of this article, the countries are listed in an order which is coincidentally both alphabetical and by population size. However, psephologically, it is better to reverse the order. Malta is the simplest of the three cases to explain, Australia the most complicated. Malta's elections are entirely 'district magnitude' (DM) five[6] elected by what is known technically

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    of Electoral Systems, Yale University Press; and DM Farrell (1997) *Comparing Electoral Systems*, Prentice-Hall.

5   See HF Pitkin (1967*) The Concept of Representation*, University of California Press, pp 112–43; JR Pennock (1979) *Democratic Political Theory*, Princeton University Press, pp 323–32.

6   The term 'district magnitude' was coined by DW Rae (1971) *The Political*

in the international literature as the 'single transferable vote' (STV).[7] Maltese elect five members from each of 13 multi-member divisions, while Australians elect 148 from 148 single-member divisions. Australians call their system 'preferential voting' (PV). However, the principle of the vote is the same. Voters rank candidates in order of preference (ordinal voting) but analysts apply the label STV for DM2 or more, but PV for DM1. The practice of this article is to do just that.

Malta's Single Transferable Vote

The unicameral House of Representatives of Malta is elected every five years from 13 five-member divisions (DM5) which are numbered following the American practice. The first and second divisions are in and around the capital, Valletta. The 13th is the most outlying district, comprising the islands of Gozo and Comino. The normal size of the House of Representatives is, therefore, 65. The most recent general election was held on Saturday, 5 September 1998 and was the 21st general election conducted under STV. The first had been held as long ago as 1921. Saturday is the regular voting day in Malta.

Malta has the highest turnout of any country in the world. One would have expected that Australia, with its compulsory vote, would have achieved the highest turnout of any country going to the polls in 1996, but that expectation would be wrong. Australia did achieve a high turnout at its March general election: 96.2%.[8] However, Malta went one better. Its turnout was 97.2% *under voluntary voting*.[9] That was the highest rate of voter participation in any national election in 1996. Indeed, whenever Malta goes to the polls, its rate of voter participation is always the highest of any country going to the polls that year. This points to a political culture in which turning out to vote may be seen to serve an important expressive purpose,[10] and in which voters feel a relatively high sense of political efficacy.

Section 51 of the Constitution of Malta reads: 'There shall be a Parliament of Malta which shall consist of the President and a House of Representatives'. That is followed by section 52 which reads:

> Subject to the provisions of this Chapter, the House of Representatives shall consist of such number of members, being an

Consequences of Electoral Laws, Yale University Press, p 19, and simply means the number being elected from a district. It will be shortened in this article as follows: the Maltese House of Representatives has DM5, the Australian DM1.

7   See DM Farrell et al, 'Designing Electoral Institutions: STV Systems and their Consequences' (1996) 44 *Political Stud* 24.

8   I McAllister et al (1997*) Australian Political Facts*, 2nd edn, Macmillan, p 75.

9   *Malta Government Gazette*, No 16364, 4 November 1996. By contract, the 5 September 1998 House of Representatives election had a turnout of 94.1%: *Representation* (1998) 35(2/3) p 183.

10   On expressive voting, see G Brennan and L Lomasky (1993) *Democracy and Decision: The Pure Theory of Electoral Preference*, Cambridge University Press.

odd number and divisible by the number of electoral divisions, as
Parliament shall from time to time by law determine. Such members
shall be elected in the manner provided by or under any law for the
time being in force in Malta in equal proportions from the electoral
divisions referred to in section 56 of this Constitution, each division
returning such number of members, being not less than five and not
more than seven as Parliament shall from time to time by law
determine...

STV is commonly called 'the British form of proportional represen-
tation'.[11] For lower house elections, it is employed in only four places. At the
national level, it is used only in Ireland and Malta, and at regional level only
in Tasmania and the Australian Capital Territory (ACT). In the Australian
cases, it bears the name 'Hare-Clark', in Malta 'Hare-Droop'.[12]

No two electoral systems are ever quite the same. However, these four
STV jurisdictions have five characteristics in common. First, there is genuine
direct election. Every member — without any exception — is directly elected
by the people. Secondly, there is ordinal voting. Thirdly, there are multi-
member districts. Fourthly, there is proportional representation. Fifthly,
candidates of a party compete with other candidates of the same party. Thus
the system is highly competitive. There is competition between parties and
also within parties.[13]

The Maltese electoral system is very like the Tasmanian, from which it
was copied. However, whereas Tasmania—in its House of Assembly—has
five divisions each returning five members (total 25), Malta has 13 divisions
each returning five (total 65). Because each of these political systems has had
its own unique experience, developments since the 1920s have seen a diver-
gence of practice. Thus Malta never needed to have Tasmania's rotation of
ballot papers ('Robson rotation') but it did need to introduce a special
arrangement (effective from 1987) to guarantee proportionality.

Following the Hare-Clark system, casual vacancies are filled by
counting out the quota of votes of the departed member. However, there is
an unusual feature in Malta. The system permits dual nomination so a popu-
lar candidate can be elected for two divisions. The candidate then resigns one
seat and a 'count-back' starts immediately. Thus in 1996, the incoming Prime
Minister Alfred Sant resigned his Eighth Division seat but remains as a
member for the First Division. Outgoing Prime Minister Eddie Fenech
Adami also resigned his Eighth Division seat and continues to sit in the
Eleventh Division. Thus the five members for the Second Division are now
four Labour (Dom Mintoff, Joe Mizzi, Chris Agius and Edwin Grech) and

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11   H Catt et al (1992) *Voter's Choice: Electoral Change in New Zealand?*, Dunmore
     Press, p 50.

12   The originator of the model was Thomas Hare: T Hare (1873) *The Election of
     Representatives, Parliamentary and Municipal*, Longmans, Green, Reader &
     Dyer. The sub-labels identify local innovators.

13   On the Maltese ballot paper, candidates must, by legal requirement, be arranged
     by political party and, within each group, alphabetically in the order of their
     surname.

one Nationalist, Lawrence Gonzi. As can be inferred from the foregoing comments, the 1996 election in Malta produced a change of government.

This is all reminiscent of Tasmania — except that the 'count-back' process starts immediately. Yet there is another important difference. If one goes through the Parliament of Tasmania over the past three decades, one notices that until the size of the House of Assembly was altered in 1998, there had always been 35 members. By contrast, Table 1, which shows the results of the five most recent Maltese general elections, reveals fluctuating numbers of seats. If Tasmania could keep its lower house stable at 35 for many years, why cannot Malta keep its unicameral house stable at 65? If the Maltese system is a copy of the Tasmanian, why do its numbers fluctuate?

The explanation lies in the fact that proportional representation in Malta never had the effect of creating third and fourth parties. Consequently, it has always been possible for a party to win over 50% of the aggregate vote and lose. Such a loss would not mean the system was rigged. All it would indicate is that a PR system with low district magnitude can produce rather disproportional results. In 1981, the Nationalists gained ground in votes to the point of polling in excess of 50%.[14] However, no seats were gained. Labour still had 34, the Nationalists still 31.

Consequently, section 52 of the Constitution of Malta was amended to add the following:

> Provided that where at any general election, a single political party obtains in the aggregate more than fifty per centum of all valid votes cast at that election, as credited to its candidates by the Electoral Commission at the first count of all the votes, but the number of its candidates elected at such election is less than fifty per centum of the total number of members composing the Parliament to be elected, the number of members of the House of Representatives shall be increased by as many members as may be necessary, so that the Party obtaining more than fifty per centum as aforesaid shall have one member more than the total of the other members elected from any other party or parties; and in any such case, such candidates shall be declared elected by the Electoral Commission to be elected to fill the additional seats created under this proviso, who, being candidates of the party obtaining more than fifty per centum of the valid votes as aforesaid, were credited by the Electoral Commission at the last count with the highest or next higher number of votes without being elected, irrespective of the electoral division in which such highest or higher number of votes occurs.

14   See W Maley, 'Federal Electoral reform: issues and arguments' (1982) 59(1)
     Current Affairs Bull 16, p 19.

Table 1
Malta, General Elections 1976-96

POLITICAL PARTY	VOTES		SEATS	
	Number	%	Number	%
18 September 1976				
Labour	105,854	51.5	34	52.3
Nationalists	99,551	48.4	31	47.7
Independents	35	0.1	—	—
Total	**205,440**	**100.0**	**65**	**100.0**
12 December 1981				
Labour	109,990	49.0	34	52.3
Nationalists	114,132	50.9	31	47.7
Independents	29	0.1	—	—
Total	**224,151**	**100.0**	**65**	**100.0**
9 May 1987				
Nationalists	119,721	50.9	35[a]	50.7
Labour	114,936	48.9	34	49.3
Others	511	0.2	—	—
Total	**235,168**	**100.0**	**69**	**100.0**
22 February 1992				
Nationalists	127,932	51.8	34	52.3
Labour	114,911	46.5	31	47.7
Others	4,296	1.7	-	-
Total	**247,139**	**100.0**	**65**	**100.0**
26 October 1996				
Labour	132,497	50.7	35[a]	50.7
Nationalists	124,864	47.8	34	49.3
Others	3,863	1.5	—	—
Total	**261,224**	**100.0**	**69**	**100.0**
5 September 1998				
Nationalists	137,037	**51.8**	35	**53.8**
Labour	124,220	**47.0**	30	**46.2**
Others	3235	1.2	—	—
Total	**264,492**	**100.0**	**65**	**100.0**

a   The four extra seats created in 1987 and 1996 were pursuant to
       section 52 of the Constitution.

Sources: *Malta Government Gazette*, various numbers, 1976–96;
       Representation (1998) 35 (2/3) p 183.

In short, section 52 of the Maltese Constitution now provides a 'top up' in certain circumstances. It is often called the 'majority rule' provision. Thus, as Table 1 reveals, in 1987 four Nationalists, and in 1996 four Labour 'best losers' became MPs. In 1987, the first, second, sixth and ninth divisions elected six members each but those divisions dropped back to five each in 1992. In 1996, the first, second, fifth and seventh divisions elected six for the same reason.

There is one area where the Maltese electoral system is legitimately criticised. Very few women get elected. Table 2 gives recent statistics. It is a country with male-dominated politics.

Table 2
Women Candidates and Members at Recent Elections in Malta

ELECTION DATE	CANDIDATES			MEMBERS		
	Number	Total	% women	Number	Total seats	% women
18/9/76	7	170	4.1	2	65	3.1
12/12/81	10	173	5.8	2	65	3.1
9/5/87	9	174	5.2	2	69	2.9
22/2/92	8	163	4.9	1	65	1.5
26/10/96	16	176	9.1	4	69	5.8

Source: Compiled by Malcolm Mackerras with assistance from Prof John Lane, University of Buffalo (USA).

If democracy means gender equality in parliament to match that of the electorate, then Malta could be accused of having an undemocratic electoral system. In the literature, Wolfgang Hirczy summarises the argument of Castles[15] as follows: 'Contrary to PR list systems in which party leaders rank-order would-be MPs, STV maximises the input of the average citizens. Male candidates may thus fare better because of the impact of tradition'. Hirczy then goes on with his own commentary:

> This is certainly not implausible. Mass attitudes respecting gender roles usually lag behind those espoused by elites. Compared to their continental and North European counterparts, both Ireland and Malta are conservative Catholic countries, as is seen in the greater role the Church still plays in society and in public policies governing family and reproduction. Rather than preordaining certain electoral results in terms of virtual representation, STV may simply allow for a more direct expression of the electorate's will.[16]

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15   F Castles, 'Female Legislative Representation and the Electoral System' (1981) 1(2) *Politics* 21, pp 24–6.

16   W Hirczy, 'STV and the Representation of Women' (1995) 28 *PS: Political Science and Politics* 711, p 712.

In other words, under a candidate-based system where candidates genuinely compete with each other, it is likely that a very democratic system in one sense can be very undemocratic in another sense.

Ireland's Single Transferable Vote

The voting system of Ireland lies between that of Malta and Australia. In Malta, there is STV in multi-member divisions. There are no STV elections for single-member seats. The ballot paper instructions to the Irish voter are exactly the same as those in Malta, namely 'Mark order of preference in spaces below'. In Australia, the great majority of politicians are elected to one seat — DM1 as we would call it — by the preferential vote. Ireland is closer to Malta in that regard. Almost all Irish elections are STV for multi-member constituencies. Nevertheless, there are some elections, albeit a small minority of them, for a single place. Thus only in Australia, Ireland and Malta do voters rank order candidates, but only in the first two do voters fill a single seat that way.

Table 3 sets out the result of the two most recent Irish general elections. These can be seen to have produced fairly proportional overall results. Note, however, that Fianna Fáil (Ireland's main governing party) saw its percentage vote rise from 39.1% in 1992 to 39.3% in 1997, scarcely a rise at all. Yet its number of seats rose from 68 to 77 and its percentage of seats rose from 40.9% to 46.4%. These statistics make plausible the suggestion that the system is not one of proportional representation. Rather, it is (arguably) semi-proportional.

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Note to Table 3:
In respect of the 1992 general election, figures in brackets show changes since the 1989 general election. Comparisons based on the Workers' Party's performance in 1989 are not given due to the subsequent split in that party. The total number of seats in the Dáil was 166 at each of the 1981, 1982 (February), 1982 (November), 1987, 1989 and 1992 general elections. The five elections from 1981 to 1989 were contested on the same map of constituencies. A redistribution of seats preceded the 1992 election but did not alter the number of seats, which remained at 166. A minor change in the map for some constituencies preceded the 1997 election. For both elections there were also minor changes as between DM3, DM4 and DM5 constituencies.

Source for Table 3:
Compiled by Malcolm Mackerras with assistance from Dr Michael Gallagher, Trinity College, Dublin.

Table 3
Recent General Elections in Ireland

PARTY	VOTES			SEATS		
	Number	%	% Change	Number	Change	%
Wednesday, 25 November 1992						
Fianna Fáil	674,650	39.1	(-5.1)	68	(-9)	40.9
Fine Gael	422,106	24.5	(-4.8)	45	(-10)	27.1
Labour Party	333,013	19.3	(+9.8)	33	(+18)	19.9
Progressive Democrats	80,787	4.7	(-0.8)	10	(+4)	6.0
Democratic Left	47,945	2.8		4		2.4
Sinn Féin	27,809	1.6	(+0.4)	0	(0)	0.0
Green Party	24,110	1.4	(-0.1)	1	(0)	0.6
Workers' Party	11,533	0.7		0		0.0
Others	102,900	6.0	(+2.1)	5	(0)	3.0
Total valid	**1,724,853**	**100.0**		**166**		**100.0**
Electorate	**2,557,036**	Total votes		**1,751,351**	Turnout	**68.5%**
Valid votes	**1,724,853**	Invalid votes		**26,498**	Invalid	**1.5%**
Friday, 6 June 1997						
Fianna Fáil	703,688	39.3	(+0.2)	77	(+9)	46.4
Fine Gael	499,938	27.9	(+3.4)	54	(+9)	32.5
Labour Party	186,045	10.4	(-8.9)	17	(-16)	10.2
Progressive Democrats	83,765	4.7	(n.c.)	4	(-6)	2.4
Democratic Left	44,901	2.6	(-0.2)	4	(n.c.)	2.4
Green Party	49,323	2.8	(+1.4)	2	(+1)	1.2
Sinn Féin	45,614	2.5	(+1.1)	1	(+1)	0.6
Others	175,720	9.8	(+3.1)	7	(+2)	4.3
Total valid	**1,788,994**	**100.0**		**166**		**100.0**
Electorate	**2,685,081**	Total votes		**1,811,365**	Turnout	**67.5%**
Valid votes	**1,788,994**	Invalid votes		**22,371**	Invalid	**1.2%**

Notwithstanding that Malta clearly produces more proportional results than Ireland, STV in both countries is universally described as 'proportional representation' as though the two countries had exactly the same *electoral* system. Ireland clearly has a different *party* system.[17] Where Malta has two parties, Ireland very much has a multi-party system. As Table 3 shows, there are now seven parties in the Dáil. The 166 members of the Dáil represent 41 constituencies as follows. There are 14 five-seaters, returning a total of 70 members, 15 four-seaters returning 60 and 12 three-seaters returning 36.[18]

There are two circumstances where Ireland has DM1 elections. The more common of the two is for a by-election. Thus Michael Gallagher comments:

> Ireland's combination of by-elections and a proportional represen-tation (PR) electoral system is almost unique.... Most countries that employ by-elections, such as the United Kingdom, France, Australia and (in the past) New Zealand have single-member constituency sys-tems, in which the by-election can be justified as simply a rerun of the original contest. Where PR list systems are used, casual vacancies are filled by the candidate next on the list (or next in terms of preferences received) of the party concerned. Apart from Ireland, Japan, whose electoral system until 1994 was based on the single non-transferable vote in multi-member constituencies, appears to be the only country to have employed by-elections in conjunction with multi-member constituencies. Malta, which employs the same electoral system as Ireland, has a different method of filling casual vacancies...[19]

Gallagher goes on to show that there were 115 by-elections in the period 1923–96, of which 83 (or 72%) were caused by death.[20] More interesting, perhaps, is his comment:

> [a]ltogether, 62 of the 115 contests (54 per cent) have produced a victory for the party or group whose TD was responsible for the vacancy, a much lower percentage than that in countries using single-member constituency systems, where a change in voting patterns is needed to bring about a seat change...[21]

Ireland is not likely to change to the Maltese/Tasmanian count-back method of filling casual vacancies, even though the by-election is anomalous in a PR system. In very recent times, there have, indeed, been two by-elections held on the same day, Wednesday, 11 March 1998. One was caused

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17 See Farrell et al (1996).

18 Following the Gaelic, a member is identified by the postnominals 'TD'; for example, the Minister for the Environment, Noel Dempsey TD. In the United Kingdom, such a member would be called MP.

19 M Gallagher, 'By-elections to Dáil Eireann 1923–96: the anomaly that conforms' (1996) 11 *Irish Pol Stud* 33, pp 33–4.

20 Ibid, p 35.

21 Ibid, p 38.

by the resignation of Ray Burke (Fianna Fáil), who had been one of the four members for Dublin North. The other was caused by the death of Jim Kemmy (Labour), who had been one of the five members for Limerick East. The Dublin North seat switched from Fianna Fáil to Labour. The Limerick East seat stayed with Labour but switched from a man to a woman, now Jan O'Sullivan TD.

Let us consider the contest for the Limerick East seat. There were 78,461 electors on the roll. 42,703 valid votes were cast. There were 11 candidates of whom four might be said to be serious. They were Jan O'Sullivan (Labour) with 10,619 first preference votes, Mary Jackman (Fine Gael) with 10,445, Sandra Marsh (Fianna Fáil) with 10,173 and Tim O'Malley (Progressive Democrats) with 4287. The other seven candidates had 7179 votes between them. After all candidates up to O'Malley had been eliminated, the votes were 14,967 for O'Sullivan, 13,117 for Marsh and 12,860 for Jackman. Note that Marsh and Jackman thus changed places from the first count. The elimination of Jackman saw 7921 preferences go to O'Sullivan, 2868 not transferred and 2071 go to Marsh. Consequently, O'Sullivan was elected with 22,888 votes while Marsh finished with 15,188 votes.

The other circumstance in which DM1 elections occur is when the President of Ireland is elected. That occurs once every seven years (save only that unopposed returns are moderately common) and the two most recent elections have been of unusual interest.[22]

At the Presidential election on Wednesday, 7 November 1990, the first preference votes cast were 694,484 for Brian Lenihan, 612,265 for Mary Robinson and 267,902 for Austin Currie. When the preferences of Currie were distributed, 205,565 went to Robinson (77%), 36,789 went to Lenihan (14%) and 25,548 (9%) were not transferred because no further preference was indicated on the ballot paper. Consequently, the final count was 817,830 for Robinson and 731,273 for Lenihan.

In the 1997 Presidential election, the first preference votes cast were 574,424 for Mary McAleese, 372,002 for Mary Banotti, 175,458 for Rosemary Scallon, 88,423 for Adi Roche and 59,529 for Derek Nally. At this point, Irish practice in counting votes differs from that in Australia. The combined vote of Scallon, Roche and Nally being 323,410, it was known that the final count had to be between McAleese and Banotti. Consequently, all three were eliminated together and, in this case, 257,349 were transferred and 66,061 were not transferred. McAleese got 131,835 extra votes in transfers and Banotti 125,514. Consequently, McAleese was elected with 706,259 votes while Banotti finished with 497,516. There is a certain logic in this way of counting. None of Scallon, Roche or Nally could possibly be elected, so why not eliminate them simultaneously? It saves time in the counting process, although of course information about voters' preferences is then lost to researchers.

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22   On the ballot paper for the election of Mary McAleese on Thursday, 30 October 1997, the names were arranged alphabetically and party labels were not shown.

Irish returning officers are required to do their best to implement the intention of every voter. Thus a tick or a cross beside the name of a candidate is a valid vote for that candidate. If someone votes '1,2,4,4', this will be taken as a valid first and second preference but will become non-transferable after that.

It was seen above that women perform badly in the competition for seats in the Maltese House of Representatives. This was thought to be due to the conservative, Catholic culture of Malta and to the intra-party competition encouraged by STV. What about Ireland? We can only note that Ireland has now elected a woman president twice in succession. The situation in the Dáil, however, is only marginally better than for Malta. This is shown in Table 4.

Table 4
Women in the Irish Dáil

ELECTION	WOMEN	SEATS	% WOMEN
1987	14	166	8.4
1989	13	166	7.8
1992	20	166	12.0
1997	19	166	11.4
1998[a]	20	166	12.0

a   The March 1998 by-election in Limerick East was caused by the death of a man, Jim Kemmy (Labour). It was won by Jan O'Sullivan, a woman, also Labour.

Source: Compiled by Malcolm Mackeras with assistance from Dr Michael Gallagher, Trinity College, Dublin.

What of Northern Ireland? The British–Irish Good Friday Accord was signed at Belfast on 10 April 1998 by representatives of the British and Irish governments. Its official title is *Agreement Reached in the Multi-Party Negotiations*. Under Strand One (2) it is asserted that '[a] 108-member Assembly will be elected by PR (STV) from existing Westminster constituencies'.[23] With six members to be elected from 18 constituencies, these are what psephologists would call DM6. That STV should now be used in Northern Ireland strengthens the case for calling it 'the British form of proportional representation'.[24]

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23   *Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland* (1998) Belfast, p 6.

24   See Catt et al (1992) p 50.

The Northern Irish general election was held on Thursday, 25 June 1998. As yet, no vacancy has occurred in the Assembly. When one does occur it will be filled — but who knows how? All we know is that the Secretary of State for Northern Ireland has the power to prescribe procedures for filling vacancies. There may be a by-election, a substitute member or such other method of filling the vacancy as the Secretary of State thinks fit. This raises a very important issue for Northern Ireland electoral law.

The most Protestant constituency is Antrim North, which returned three members from the Democratic Unionist Party (DUP), including the Reverend Ian Paisley. In addition, two Ulster Unionists (UUP)were returned. That left one seat for the Catholics. It went to the Social Democratic and Labour Party (SDLP). Note that the Reverend Paisley, the Westminster MP, is also a member of the Assembly. Indeed, 11 of the 18 constituencies have a Westminster MP who is also a member of the Assembly.

The most republican electorate is Belfast West, which returned four Sinn Féin members (including Gerry Adams MP) and two from the SDLP. Of the 18 constituencies, there were six returning broadly republican majorities: Belfast West (all six Assembly members), Down South (four), Foyle (five, including John Hume MP, the Westminster SDLP member), Mid-Ulster (four), Newry and Armagh (four) and Tyrone West (four).

The death of a Westminster MP who is also an Assembly member could create an unusual circumstance. If the Secretary of State for Northern Ireland were to order an Assembly by-election, she or he would be required by law to employ STV. There could be simultaneous by-elections, one using the first-past-the-post system (the Westminster system), the other using preferential voting. An example of what might happen is afforded by what has actually occurred in the recent past in one constituency.

On Thursday, 1 May 1997, the 58,000 electors of Tyrone West were entitled to go to the polls to elect their local member to the Parliament at Westminster (like their compatriots throughout the United Kingdom at the general election on that day). With six candidates on the ballot paper, each of the 46,000 who actually voted were asked to place a cross in one square beside the candidate of choice. William Thompson (UUP) won 16,003 votes, Joe Byrne (SDLP) 14,842 while Pat Doherty (Sinn Féin) had 14,280. The three other candidates combined had 1150 votes. At the Assembly election the following year, the result was two seats each for UUP, SDLP and Sinn Féin — not a surprising result. In other words, the UUP has that seat at Westminster solely because those who voted for Sinn Féin's Doherty at the British general election under first-past-the-post were not allowed to transfer their votes.

In our discussions of Malta and the Republic of Ireland, we observed that women had a low rate of success in the competition for seats. In the Maltese House of Representatives, women have only 6% of the seats; the equivalent figure for the Republic of Ireland is only 12%. In both cases, this was explained by a 'conservative, Catholic culture'. Does Northern Ireland help us further to explain gender imbalance?

The short answer is that none of the Westminster constituencies for the province returned a woman member at general elections either in 1992 or in 1997. At the 1998 Assembly election, 16 women were returned or 15%. That is a low figure but, in these circumstances, it does not suggest that intra-party competition under STV is bad for women. If women cannot do better than zero under first-past-the-post with single member constituencies, can STV be blamed if an Assembly of 108 members returns only 16 women? The only other point worth mentioning is that one constituency returned three men and three women. It is the predominantly Protestant Upper Bann.[25] This raises an interesting question: does Protestantism promote women more than Catholicism?

Australia's Preferential Vote

Australia is a big country and its arrangements are fairly complex. It has very little in common with Malta, save only that elections in both countries are always held on a Saturday and that forms of preferential voting are used. As will be seen below, Tasmania and the ACT have much in common with Malta in their electoral arrangements, but for the rest of Australia, that is not true. Further, about the only thing Ireland has in common with Australia is the existence of some DM1 elections in Ireland, similar to the single-member constituencies used in most Australian lower houses.

The diversity of Australia's electoral arrangements can be seen from Tables 5 and 6, which update those we prepared for a very useful recent book on Australian politics.[26] It can be seen from Table 6 that only 216 (or 26%) of Australia's 832 parliamentarians are elected by PR while 616 (or 74%) are elected from single member electorates (SME). All Australian PR systems are of the STV type.

The largest single category in Australia is that of SME with the full preferential vote. There are a total of 428 members elected this way: 148 divisions for the House of Representatives, all 132 constituencies for the Victorian Parliament, all lower house seats in South Australia, Western Australia and the Northern Territory and the 19 Legislative Council seats in Tasmania. There are a further 188 SME cases employing the optional preferential vote. These are for the Legislative Assemblies of New South Wales (99 members) and Queensland (89 members).

However, the true picture is more complicated than that. The 428 full-preferential SME cases can be divided still further. Described below are the formality requirements of the full preferential vote for 189 seats, 132 in Victoria and 57 for the Legislative Assembly of Western Australia. A ballot paper is formal as long as it shows a unique first preference for a candidate and numbers—*any* numbers — against all the other candidates, or against all the other candidates but one, with the square next to that candidate left blank.[27]

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25   The Westminster MP for this seat is David Trimble. He is also an Assembly member and First Minister of Northern Ireland.

26   McAllister et al (1997) pp 19, 113.

27   *Constitution Act Amendment Act* 1958 (Vic) s 205; *Electoral Act* 1907 (WA) s 140A.

Table 5
Electoral systems of Australian parliaments by house

PARLIAMENT	UPPER HOUSE MEMBERS		LOWER HOUSE MEMBERS	
	Number	Electoral system	Number	Electoral system
Commonwealth	76	Proportional representation	148	Single member electorates
New South Wales	42	Proportional representation	99	Single member electorates
Victoria	44	Single member electorates[a]	88	Single member electorates
Queensland			89	Single member electorates
South Australia	22	Proportional representation	47	Single member electorates
Western Australia	34	Proportional representation	57	Single member electorates
Tasmania	19	Single member electorates	25	Proportional representation
Northern Territory			25	Single member electorates
Australian Capital Territory			17	Proportional representation
Total	237		595	

a   Strictly speaking, Victorian electoral provinces have two members. However, they are elected by rotation. Each of the 22 provinces elected one member on 2 March 1985, 1 October 1988 and 3 October 1992, with each 1988 member requiring re-election on 30 March 1996, all to serve for two terms of the Legislative Assembly. Thus the principle of election is single person election at any one time. Each of the 22 electoral provinces consists of four complete and contiguous electoral districts for the Legislative Assembly.

Source: McAllister et al (1997) p 19 (updated).

Table 6
Electoral systems of Australian parliaments
proportional/ not proportional

PARLIAMENT	PR NUMBER	SME NUMBER
Commonwealth	76	148
New South Wales	42	99
Victoria		132
Queensland		89
South Australia	22	47
Western Australia	34	57
Tasmania	25	19
Northern Territory		25
Australian Capital Territory	17	
Total	**216**	**616**

Source: McAllister et al (1997) p 113 (updated).

Consequently, such ballot papers may be admitted to the scrutiny even though they do not exhibit fully correct numbering, and therefore fail to indicate preferences for all candidates. When, on a transfer of ballot papers from an excluded candidate, it is found that a ballot paper shows no preference for any continuing candidate, it is set aside as exhausted. Of the two states which have this liberal form of scrutiny (Victoria and Western Australia), Victoria is the larger, so we will focus discussion on the details of its system, drawing on information supplied by the Victorian Electoral Commission.

Section 204 of the *Constitution Act Amendment Act* 1958 (Vic) outlines the full preferential system used in Victoria in which voters are required to mark their votes by placing:

> the figure 1 opposite the name of the candidate who is their first preference; and
>
> the figures 2, 3, 4 and so on (as the case requires) opposite the names of all remaining candidates.

In conducting the election, it is the role of the Victorian Electoral Commission to register how-to-vote cards and to prevent misleading, offensive or obscene material being distributed to electors. As a result, any how-to-vote cards which advocate a voting system at variance with the full preferential system are refused registration. Cards refused registration may not be distributed within a 400-metre radius of a polling place on election day.

Section 205 of the Act is headed 'Certain marks deemed sufficient' and is intended to assist voters who make unintentional errors when voting. It

has the effect of 'saving' certain votes which would otherwise be informal votes. For example:

(i) A 1,2,3,4 vote on a ballot paper with five candidates, where one square is left blank.

By virtue of s 205(2), this vote is 'saved' and deemed to be a valid 1,2,3,4,5 vote.

(ii) A 1,2,3,5,6 vote on a ballot paper with five candidates, the number 4 having been omitted.

By virtue of s 205(3) and (4), this vote is 'saved' and deemed a valid vote for the first three preferences, after which the vote 'exhausts' (the next number in the sequence having been omitted).

(iii) A 1,2,3,3 vote on a ballot paper with four candidates, the number 3 having been repeated.

By virtue of s 205(3), (4) and (5) this vote is saved and deemed to be a valid vote for the first two preferences, after which the vote then 'exhausts'.

Section 205 of the Act does not provide an alternative method of voting. Rather, it operates to 'save' certain votes which would otherwise be informal. Sub-sections 205(3), (4) and (5) were introduced into Victoria's electoral law in 1984, following similar changes that were made to the Commonwealth's electoral law in 1983. The changes were made to both Commonwealth and Victorian law to benefit voters who made certain mistakes filling out their ballot papers. The aim was, and is, to save from informality the votes of people who appear to be attempting to fill out their ballot papers correctly, but who make inadvertent mistakes.

The Victorian Act also makes it an offence to print, publish or distribute any advertisement or handbill containing a representation of a ballot paper likely to induce an elector to mark the vote otherwise than in accordance with the directions on the ballot paper.[28] And the ballot paper directs an elector to use full preferential voting, without mentioning the complex savings provisions.

The above provisions were applied also in 1996 in Western Australia for state elections. Until very recently, their substance applied to general elections for the federal lower house. Consequently, the statistical returns for the House of Representatives showed exhausted votes for the 1984 through to 1996 general elections. The respective numbers were 1848 in 1984, 2082 in 1987, 18,771 in 1990, 7325 in 1993 and 48,979 in 1996.

At all House of Representatives elections from 1919 through to 1983, such exhausted votes did not exist. They would have been rejected as informal. That was the genuinely 'full' preferential vote. The elector could leave one square unmarked; it was presumed to be the last preference of the

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28   *Constitution Act Amendment Act* 1958 (Vic) s 267B(2).

voter. Apart from that, fully correct (that is, consecutive) numbering was required. It has always been required for the 25 divisions of the Northern Territory Legislative Assembly and for the 19 divisions of the Tasmanian Legislative Council. In July 1998, the Commonwealth Parliament, as a consequence of the so-called 'Langer' controversy (see below), restored the situation to that which had applied from 1919 to 1983 by repealing the savings provisions from the *Commonwealth Electoral Act* 1918 (Cth). Consequently, there will be no exhausted votes in the published statistics for the House of Representatives general election held on 3 October 1998.

The Langer Controversy

The general election held on 2 March 1996 was preceded by the so-called 'Langer' controversy, which had two effects. The first was to produce the record 48,979 exhausted votes noted above. The second was to cause the Commonwealth Parliament in July 1998 to remove the possibility for voters to make a formal optional preferential vote, whether advertently or inadvertently. That was done by returning the *Commonwealth Electoral Act* 1918 (Cth) to the situation which applied up to (and including) 1983, when s 240 required correctly numbered preferences for all candidates for a vote to be valid.

On 26 January 1996, long-time political activist Albert Langer authorised an advertisement for 'Neither' headed 'How to Vote for Neither!'. It had a picture of ALP Prime Minister Paul Keating with the comment 'Tweedledee is the greatest job and investment destroyer since the bubonic plague'. Next to that was a picture of Coalition Opposition Leader John Howard with the comment 'Tweedledum pinched our policies'. Underneath that was the further comment 'Both are right! Give neither an absolute majority!'.

The mock ballot paper for the House of Representatives in the advertisement had the number '1' in the square beside 'most acceptable: the least worst party', then '2' in the square beside 'barely tolerable: the next least worst party'. However, this 'how to vote' card had the number '3' in each of two squares, one of which was for 'Tweedledum: the completely rejected party' and the other of which was for 'Tweedledum: the equally rejected party'. Below that and above 'Authorized by Albert Langer...' were these words in heavy print:

> A ballot paper marked 1, 2 and 3 for Independent, Green and/or Democrat candidates, and 4 and 4 for both ALP and Coalition candidates, will count as a formal vote for candidates you support. Such a vote will not be transferred to the ALP or the Coalition if the candidates you want are eliminated.
>
> Ballot papers such as '1, 2, 2, 2 ...' (or '1, 2, 3, 3 ...') are formal votes for the first candidate (or the first two) in House of Representatives elections.

The advertisement quoted above landed Albert Langer in gaol during the period of the election campaign and even resulted in his being adopted by Amnesty International as a prisoner of conscience. The enormous publicity he received was the reason why the exhausted vote in 1996 was a record high.

When the change was made in 1983–84, the Commonwealth Parliament made it clear that the new section was not to be used as a de facto form of optional preferential voting. After Langer had publicised this legal avenue at the 1987 and 1990 elections, the Parliament made such publicity illegal. Thus s 329A was inserted into the *Commonwealth Electoral Act* 1918 (Cth) as follows:

> A person must not, during the relevant period in relation to a House of Representatives election under this Act, print, publish or distribute, or cause, permit or authorise to be printed, published or distributed, any matter or thing with the intention of encouraging persons voting at the election to fill in a ballot paper otherwise than in accordance with section 240. Penalty: Imprisonment for six months.

Section 240 reads:

> In a House of Representatives election a person shall mark his or her vote on the ballot-paper by:
>
> (a) writing the number 1 in the square opposite the name of the candidate for whom the person votes as his or her first preference; and
>
> (b) writing the numbers 2,3,4 (and so on, as the case requires) in the squares opposite the names of all the remaining candidates so as to indicate the order of the person's preference for them.

A legal challenge to s 329A was mounted during the 1996 election campaign. The High Court was asked to consider the question: 'Is s 329A of the Commonwealth Electoral Act a valid enactment of the Parliament of the Commonwealth?'. On 7 February 1996, the answer given was in the affirmative. Reasons for the judgment were published on 20 February 1996. The six judges sitting in *Langer v Commonwealth* divided five 'Yes' to one 'No'.[29] The concluding paragraph of the leading judgment by Brennan CJ sums up the attitude of the Court:

> If the Act had prescribed methods of voting alternative to those prescribed by s 240, there would be much to be said for the view that no law could preclude a person from encouraging voters to vote by an alternative method. The saving provisions do not prescribe an

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29   (1996) 186 CLR 302. For further discussion of this case, see G Orr, 'The Choice Not to Choose: Commonwealth Electoral Law and the Withholding of Preferences' (1997) 23 *Monash ULR* 285, pp 305–8.

> alternative method; they merely save from invalidity some ballot
> papers which are not filled in in accordance with the method which
> the Act prescribes. Nor does s 329A prohibit a person from
> informing electors of the state of the law. It simply prohibits encour-
> agement of voters to fill in their ballot papers otherwise than in
> accordance with the method of voting prescribed by the Act.[30]

That is the legal situation. The trouble is that the question is political,
not legal. Langer engaged in a political stunt which had the effect of giving
him great publicity and some sympathy. The Parliament responded by
repealing the section of the Act and making passing other amendments
which effectively removed the possibility for voters to make a formal
optional preferential vote.

As mentioned above, there were no exhausted votes at the 1998 general
election for the House of Representatives. Nevertheless, it is worthwhile to
compare ballot paper and counting forms for 1996, the last 'Langer' federal
election, with those for New South Wales where optional preferential voting
is constitutionally entrenched.

A typical ballot paper is that for the 1996 federal election in the elec-
toral division of Namadgi in the ACT. To look at it, one would have no idea
that the distribution of preferences would yield any exhausted votes, with
instructions 'Number the boxes from 1 to 4 in the order of your choice' and
candidates listed in party alphabetical order. One would even imagine that
the total formal vote would be the same on first preferences as at the final
count. Another typical ballot paper for the 1991 New South Wales election
for the Blue Mountains electoral district. From it, one would know that
there would be exhausted votes by the instructions given.[31] That was the
case. For the constituency illustrated, on first preferences the total valid vote
in the count was 32,143. By contrast, the final count produced 15,663 for the
winning candidate and 14,093 for runner-up, a total of 29,756. That meant
there were 2387 formal votes which were not transferred. They were
exhausted, mostly of course by conscious choice.

Contrast that with the count for Namadgi, the federal referred to
above. The first preference votes cast were 28,638 (Brendan Smyth), 28,583
(Annette Ellis), 4579 (Shane Rattenbury) and 1636 (Derek Rosborough). At
this point, Australian counting practice differs from that of Ireland. The
Irish would say correctly that the final count must be between Ellis and
Smyth.[32] They would eliminate both Rattenbury and Rosborough together.
Under Australian practice, by contrast, Rosborough was eliminated first. Of
his 1636 votes, 484 were transferred to Smyth, 399 to Ellis and 716 to
Rattenbury. A further 37 votes were exhausted. They were 'Langer' votes.

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30   *Langer v Commonwealth* (1996) 186 CLR 302 at 318–319.
31   'Place the number "1" in the square opposite the name of the candidate for
     whom you desire to giver your first preference vote.
     You *may*, if you wish, vote for additional candidates by placing consecutive
     numbers beginning with the number "2" in the squares opposite the names of
     those additional candidates in the order of your preferences for them.'
32   See comment above on the 1997 Irish Presidential election.

Rattenbury now had 5295 votes to be distributed. They went 3560 to Ellis (giving her the seat) and 1506 to Smyth. A further 229 were exhausted, giving a total 'Langer' vote of 266. The final count was 32,542 for Ellis and 30,628 for Smyth. In a handful of seats, the 'Langer' vote may have been crucial.

Operation of the Hare–Clark System

The Hare-Clark system operates for the Tasmanian House of Assembly (25 members) and the Legislative Assembly for the ACT (17 members). The two are the same, save only that Tasmania employs the five federal divisions, each of which elects five members, ie they are DM5. By contrast, the ACT does not use federal boundaries. In the ACT, the Division of Molonglo returns seven members, and each of Brindabella and Ginninderra returns five.

The Australian Hare-Clark system is substantially similar to the STV systems of each of Ireland and Malta. However, there are differences. Our Hare-Clark is more like the Maltese than the Irish STV. Ireland is the odd case out, in that vacancies are filled through by-elections which, combined with low DM, makes the Irish the least proportional. Yet Ireland has the largest party system.[33] A similarity between Malta and Tasmania is the consistency of DM, which is now five for both Malta and Tasmania.[34] A similarity between Ireland and the ACT is the inconsistency of DM.

What are the effects when candidates of the same party compete with each other? That, after all, is the common characteristic of STV as it applies to the lower houses of Ireland, Malta, Tasmania and the ACT. It was noted above that very few women get elected to the Malta House of Representatives. It was also noted that the situation in the Irish Dáil is only marginally better than for Malta. It was further noted that both Ireland and Malta are conservative Catholic countries. Is that the explanation?

The ACT is a jurisdiction which prides itself on being progressive. It can, therefore, be imagined that consternation reigned in Canberra at the declaration of the poll for the Legislative Assembly election held on Saturday, 21 February 1998. Of the 17 members elected, only two were women. There was worse news for the ACT Labor Party ,which thinks of itself as being the most progressive party in the most enlightened city in the country. It entered the election with six members, of whom four were men. It emerged from the election again with six members — all men. The problem for Labor was that two incumbent women were out-competed by non-incumbent men.

Labor functionaries renewed their demands for the Senate 'above-the-line' voting option to be inserted.[35] Under such an arrangement, the party

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33   Farrell et al (1996) p 24.

34   At elections from 1959 to 1996, it was DM seven for Tasmania.

35   This refers to the mechanism by which voters marking a Senate ballot paper can mark a box 'above the line' which separates the names of all *individual* candidates from the names of groups with registered preference orderings. A voter who marks a box 'above the line' is deemed to have adopted the group's

membership could ensure gender balance by determining the rank order of candidates. However, can we really say that competition between members of the same party is inherently likely to make it difficult to achieve gender balance?

A somewhat better comparison of like with like is to compare two recent elections under Hare-Clark with two recent state elections under single member electorates. Tasmania went to the polls on 24 February 1996 and elected 35 members of whom 11 were women. Thus, in the run-up to the 1998 Tasmanian election, Tasmania and the ACT combined had 13 women in their lower houses, exactly one in four. South Australians voted for their 47-member House of Assembly on 11 October 1997 and Queenslanders for their 89-member Legislative Assembly on 13 June 1998, both under SME systems. The combined number of women in South Australia and Queensland is 30 or 22% of the total in the two states. In short, the representation of women arising from recent Australian state and territory elections was 25% under Hare-Clark and 22% under SME.

From the above, we may tentatively conclude that the conservative, Catholic nature of Ireland and Malta better explains gender imbalance than the STV electoral system. In the case of the sole election for the Northern Ireland Assembly discussed above, we should be wary of making comment based on one election only. However, the results there comparing preference voting with first-past-the-post give no comfort to supporters of the latter system — on any ground.

Operation of the Australian Senate System and Variants

The Australian Senate contains 76 members: 72 elected from the six states, each constituted as a DM12 electorate, and four from the two mainland territories, each constituted as a DM2 electorate. Since 1984, the Senate ballot paper has been characterised by the 'above-the-line' option mentioned above. It is so convenient for voters to choose that option that some say the Australian Senate is really elected by party lists. That is not true; but final statistics of some recent elections are telling. In March 1993, 'below-the-line' votes were 599,527 or 5.6% of the total formal vote of 10,674,805. In March 1996, they were 615,472 or 5.7% of the total formal vote of 10,899,037. Above-the-line voting has clearly taken hold.

The Senate system is substantially repeated in the electoral systems for the Legislative Councils of each of New South Wales (DM21) and South Australia (DM11), both of which elect members by rotation (copying the Senate) from the state voting as one electorate. Furthermore, the Senate system more or less applies to the Legislative Council of Western Australia, which is elected without rotation from regions, some of which return seven and others of which return five members.

Given that in any of the above upper house elections there are few electors who bother with preferential marking, we need to explain why these cases are included in an article titled 'Preferential Voting in Australia,

registered preference ordering and the vote is then recorded and handled on that basis.

Ireland and Malta'. The explanation is that the counting method is the same as for Hare-Clark. Consequently, the classification by Rae of 'categorical' and 'ordinal' ballots puts all Australian parliamentary elections into the 'ordinal' class.[36] When the elector places a single mark of approval for a party 'above-the-line', he or she may think that to be a 'categorical' choice, but it is counted as though every candidate had been preference ranked by the voter.

Earlier, we discussed gender balance in a system where inter-party and intra-party competition occurs in the same election. The Senate style of STV does not have that characteristic. That is why it is wrongly perceived by some to be a party list system. However, it is worth noting the gender contrast between the Australian Senate and the House of Representatives. In the former, there are 25 women senators in a total of 76. In the latter, there are 33 members in a total of 148.

Conclusion

The message of this article is that all electoral systems are a mixture of the general and the particular. They are general insofar as they share broad properties with other systems which allow them to be compared and contrasted with what might be called 'family members'. In the preceding pages, we have engaged in just such an exercise of comparing and contrasting. However, that exercise in itself has brought out the ways in which systems are also particular to the framework of rules by which they are constituted — and 'within-family' variations can be of political importance. Psephologists will continue to examine the political consequences of electoral laws at a macropolitical level. Such endeavours, however, must be complemented by micropolitical analysis if the foundations of psephology are to be firmly grounded.

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