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Not quite as expected: Victorian Labor and the Legislative Council 2010

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On 27 November 2010, the Victorian Labor government led by John Brumby was defeated by the Liberal/National coalition, a result which, while not a total surprise, was neither predicted nor anticipated for much of the preceding four- year (fixed) term. What was more surprising was the achievement of the coalition in securing a majority in the Legislative Council, a chamber whose 2003 reforms had, implicitly at least, been designed to all but ensure that securing a majority of seats would require a majority of the vote, a circumstance which did not apply in 2010. In the election aftermath, Labor was understandably focussed on the loss of government (by one seat) with minimal attention to the upper house result. However, that result was significant, suggesting that the Labor government's 2003 electoral model may not have served its intentions as effectively as initially thought.

Victoria was the last mainland state to adopt proportional representation (PR) for its upper house elections, a reform which only became possible when the Labor government of Steve Bracks secured a largely unexpected Legislative Council majority following the 2002 landslide election. Prior to this, Labor had only controlled the upper house for a brief period in 1985, a situation which was quickly undone by a by-election loss in a province which had seen a tied vote in the general election.¹ In 1983, the Victorian upper house had been reformed to comprise 22 provinces (each composed of four lower house seats) with each electing two members on a staggered basis (each MLC serving for a period equivalent to two lower house terms).² While earlier malapportionment had given way to a version of 'one-vote-one value' (with a ten per cent tolerance), the distinctive population distribution of metropolitan Melbourne continued to disadvantage the ALP as it stored up majorities in safe western and northern metropolitan provinces while losing to the Liberals where it mattered most. By way of illustration, in the 1999 election which produced the Bracks minority government, the ALP secured eight

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upper house positions from 42 per cent of the vote, while the Liberals secured 11 from 40 per cent. The Nationals secured three places from seven per cent.³

Of the three states which had changed their systems to PR earlier, New South Wales (1977) and South Australia (1973) opted to employ a single state-wide electorate model, with the former now electing a chamber of 42 and the latter a house of 22. Western Australia (1987), by contrast, introduced a system of multi-member regions (now six, each electing six members for a total of 36), reflecting the political compromise which a Labor government had to effect with the National Party in that State.⁴ No such necessities applied in New South Wales, where the new upper house arrangements were replacing a nominated, unelected membership, while in South Australia, the weakened negotiating power of the Liberal Party (and its internal division over electoral reform) led to a compromise outcome in which ALP policy on a single state-wide electorate prevailed.⁵

The arguments for PR are well-researched in politics text books and were given a thorough airing in the documentation published by the Victorian government in 2003. Those who read the government case were advised that PR would 'ensure that the number of successful candidates from each party reflects more closely the total vote for that party as a proportion of all votes cast in the election.'⁶ Curiously, the same document claimed that 'combining PR with a system of multi-member electorates will further enhance the opportunity for smaller parties to be represented.'⁷ This was true if compared with the existing system of single-member constituencies, but less true when compared with state-wide electorate systems, whose smaller quotas for election were much more likely to result in the election of minor parties and independents (as had clearly occurred in NSW and SA). In support of this model, the government cited its capacity to deliver 'the highest possible level of representation for country Victoria' and its striking 'a reasonable balance between too low a quota (which may lead to candidates with very little community support being elected, causing instability in the upper house) and too high a quota (which will reduce the opportunity for smaller party and independent representation).'⁸ The reference to country Victoria reflected the origins of the Bracks government in 1999, a minority administration forced to rely on three rural independents for its existence and survival. One of the conditions for that support, readily embraced by Bracks, was the introduction of PR for upper house elections.⁹ While this undertaking could not be honoured in the period of minority government, Bracks did establish a constitution commission in March 2001, whose recommendations (including PR) could be effected when Labor controlled both houses after the 2002 election.

Significantly, the commission observed that an upper house's role in ensuring some version of accountability was 'most effective when neither Government nor Opposition controls the Upper House'.¹⁰ Implicitly then, the most desirable electoral system was one (PR) which would render such control the exception rather than the norm and require a majority of the vote to secure a majority of the seats. However, while acknowledging that a state-wide electorate would ensure more

precise representativeness, the commission rejected such a model, citing concerns about the possible election of candidates with low support but meeting a small quota, plus deference to perceived regional preference for specific geographical representation.¹¹ The commission had provided the government with four models for multi-member electorates within the state, with its own preference being six regions with seven members in each, and a resultant quota of 12.5 per cent. In rejecting this and opting for a system of eight regions each electing five members, the government was endorsing the resultant quota of 16.67 per cent for election. This was clearly at the upper end of the spectrum, leading one parliamentary critic to observe that this made the election of independents extremely difficult and exposed the limitations on Bracks' commitment to representativeness.¹²

While the support of the rural independents (largely elected on platforms of regional resentment of Melbourne domination) was no longer needed after the 2002 election, the Bracks government was keen to retain the uncharacteristically high levels of support which Labor was then enjoying outside the metropolitan area. This motivation was possibly complemented by Labor's desire to avoid the experience of NSW and SA, where the smaller state-wide quotas had seen the election of (*inter alia*) the Shooters and Fishers Party and the fundamentalist Christian Democrats in the former, and Family First and anti-gamblers in the latter. By contrast, the WA system had resulted in the ongoing dominance of the big three parties (Labor, Liberal, National), augmented by several Greens. What was left unsaid, but was probably implicit, was an understanding that no one party or coalition could secure a majority in the upper house without attracting a majority of the vote. Victorian Labor had been tormented for years by the electoral reality that the Liberals, due to the geographical dispersal of party support in the Melbourne metropolitan area, could secure upper house majorities even when they polled far fewer votes than the ALP, as in the period of the John Cain (junior) government, elected in 1982.¹³ Such problems were exacerbated by the reality of staggered elections for the upper house, but this too would be eradicated, as, under the new arrangements, the entire Legislative Council would be elected at the same time as the lower house, and serve a fixed four-year term. The non-electoral changes included the removal of the Council's right to reject supply and the introduction of a dispute resolution procedure for deadlocked bills.

The working assumption that major party domination of the upper house would become atypical was apparent in both Labor and coalition perspectives. Bracks received some credit as the unselfish politician who sacrificed his newfound majority for the greater good,¹⁴ although over the longer term Labor was the apparent beneficiary of a system which, while clearly fairer, now made the historically normal conservative majority more difficult to attain. For its part, the coalition was resigned to the loss of its historical advantage, with the result that some of its members allegedly preferred abolition to the perceived partisan disadvantage of a fairer system.¹⁵ One conservative MLC predicted that a major party would only control the upper house every fifty years.¹⁶

The Victorian Legislative Council had been the bane of Victorian Labor from earliest times, blocking legislation (and even supply) on those rare occasions that the ALP was elected and even when in opposition, its upper house numbers inevitably failed to reflect its electoral support. In reality, prior to 2002, Labor had sometimes been in office, but never in power. It was no wonder that the passage of the upper house reform legislation was seen as such a seminal moment for Victorian Labor, and one of Bracks' most significant achievements.¹⁷ While the system — which took effect from the 2006 election — seemed most likely to result in the election of Labor, Liberal, National and Green MLCs, the received wisdom came unstuck with the totally unexpected success of a candidate from the Democratic Labor Party in the western region, whose ticket secured 2.66 per cent of the primary vote.¹⁸ As Economou points out, this came about courtesy of the group voting ticket (GVT) of the ALP, not from any genuine reincarnation of a party regarded as effectively dead in the 1970s.¹⁹ While it might be argued that the election of candidates with low primary support is an inherent problem with single transferable vote PR, it would seem the case that GVTs have exacerbated the growth of tickets whose ideological incoherence is usually largely unknown to the voters utilizing such tickets.

Despite the Lazarus-like effort of the DLP, reformers could view the 2006 result as a fair match between expectations and outcome, although the Labor Party did best in terms of exceeding its proportional entitlement. With 41.45 per cent of the statewide upper house vote, the ALP secured 47.5 per cent of seats; the Liberals 37.5 per cent of seats with 34.6 per cent of the vote; the Nationals 5 per cent of seats from 4.4 per cent of the vote and the Greens 7.5 per cent of seats from 10.6 per cent of the vote. Importantly in terms of expectations about a reformed upper house, a majority proved unattainable for Labor or the Liberal/Nationals.

Table 1: Victorian Legislative Council Election 2006

Party	% first preferences	Regions won	% Regions won
ALP	41.45	19	47.5
LPA	34.6	15	37.5
NPA	4.4	2	5.0
GRN	10.6	3	7.5
DLP	2.0	1	2.5
Family First	3.85	0	0
Others	3.2	0	0

Data source: Victorian Electoral Commission

What is clear with hindsight is that the large quotas for election had the potential to bring Labor or (more likely, given their virtual monopoly of support on the conservative side) the coalition close to a council majority without achieving a majority of the primary vote (at the expense of the Greens and groups such as Family First), if the votes fell in desirable patterns in the right regions. However, what little post-election commentary ensued focused more on the DLP 'revival' and the flaws in opportunistic party negotiations which attended the preference order in GVTs than on implications for major party representation. This issue, the possibility of 'accidental' small party or independent election, secured some attention as the 2010 election approached, with speculation that perennial 'good governance' candidate Stephen Mayne or the Sex Party's Fiona Patten (both contesting the Northern Metropolitan region) might find their way into parliament via some Byzantine preference deal. In terms of the major parties, the widespread assumption was that neither Labor nor the coalition would secure a majority: hence the additional interest in any potential balance of power role for exotic candidates like Mayne and Patten. At the end of the customarily prolonged count for the upper house, neither Mayne (whose ticket obtained 0.98 per cent of primary votes) nor Patten (3.62 per cent)²⁰ could secure victory, to the probable frustration of media outlets seeking a colourful story. Instead, the 40 positions were shared between the ALP, the Liberal/National coalition and the Greens, an outcome which might have been seen as most likely when the Bracks government opted for a system of (eight) five-member regions, with the formidable quota for election of 16.67 per cent. What was far less likely, and largely unforeseen, was the ability of the coalition to eke out a narrow council majority to mirror its two-seat majority in the lower house.

That the coalition was able to achieve this outcome with 43.15 per cent of the state-wide vote suggests that the Bracks government's version of PR left something to be desired in terms of delivering the stated aim of a close match between votes won and seats won. At the very least, reformers would have envisaged that a substantial level of support would be needed for a major party to secure a majority of seats, yet here was the coalition achieving the necessary numbers with a vote which was closer to 40 per cent than 50. It was all too reminiscent of the old single-member constituency system which had virtually provided a permanent conservative majority.

There is little doubt that the coalition drew maximum benefit from the five by eight system, with its quota of 16.67 per cent, winning three seats in each of five regions and two in each of the other three. Had a single statewide electorate been in place, and assuming an upper house of the same size (40), the same vote (quota of 2.4 per cent) would have delivered a more proportionally sound outcome: the coalition no more than 18 seats, Labor 15, the Greens five, with the rest probably fought out between Family First, the DLP, and the Sex Party. If the ALP government wanted PR without the irritation of political minnows, that goal was achieved in 2010, but at the cost of producing an unanticipated majority for their opponents. With a system which virtually entrenches a realistic contest between three party groups (coalition, ALP, Greens), it may be useful to consider a modification of the two-

party preferred vote (2PP) as utilized in analysing single-member constituency contests in Australia. The 2PP concept, pioneered by Mackerras,²¹ has been criticised,²² but its value lies in its capacity to identify the ultimate level of voting support enjoyed by those parties realistically contesting the major prize (government) or individual seats, something which the primary vote cannot deliver in a system of preferential voting, especially in the commonwealth and those states where preference indication is compulsory.

Table 2: Victorian Legislative Council Election 2010

Party	% first preferences	Regions won	% Regions won
ALP	35.4	16	40.0
LNP*	43.15	21	52.5
GRN	12.0	3	7.5
DLP	2.3	0	0
Family First	2.9	0	0
Sex Party	1.9	0	0
Country Alliance	1.65	0	0
Others	0.7	0	0

Data source: Victorian Electoral Commission

*The Liberal and National Parties ran on a joint ticket in relevant Regions

In this spirit, a rudimentary attempt was made to determine a ‘three-party preferred’ vote (3PP) for the Victorian upper house result of 2010. While others have utilized such a concept, such recent use has mainly been focused on individual seats or groups of seats rather than the state level.²³ Using state-wide figures, the primary votes of the three major groups (coalition, ALP, Greens) were augmented by a preference allocation from the non-elected candidates, based on the group voting tickets which determined the allocation of preferences, the tickets for above the line voting being followed by 96 per cent of voters.²⁴ After this notional distribution to the three groups who secured upper house representation, the coalition had secured 49.6 per cent of the 3PP (for 52.5 per cent of the positions); the ALP 36.4 per cent (for 40.0 per cent of the positions) and the Greens 14.0 per cent (for 7.5 per cent of the positions). In terms of representativeness, the winners were the coalition and Labor and the losers were the Greens, but the conservatives’ numbers took them over the line to an unanticipated majority, an outcome which could be seen as inconsistent with the implicit principles of the Bracks government’s reforms.

Table 3: Victorian Legislative Council Election 2010 and Notional 3PP

Party	% first preferences	3PP %	% seats won
ALP	35.4	36.4	40.0
LNP	43.15	49.6	52.5
GRN	12.0	14.0	7.5
DLP	2.3		
Family First	2.9		
Sex Party	1.9		
Country Alliance	1.65		
Others	0.7		

Data source: Victorian Electoral Commission

It is now possible to conclude that, in choosing the eight/five model with its higher quota, the Bracks government made possible the coalition majority which emerged. Contrary to the conservative pessimist (cited above) who predicted a major party majority as only likely each half century, the possibility of a coalition majority had been foreshadowed in a cogent analysis of the 2003 reforms.²⁵ To some extent, the hybrid model chosen embedded the previous single-member constituency advantage which the Liberals enjoyed with their broader distribution of support within metropolitan Melbourne and their traditional dominance in regional areas. While this inherent advantage was effectively hidden in the 2006 election, which (despite loss of some support) was still a time of Labor electoral superiority, its reality was clearly revealed in 2010.

Moreover, it is clear that while the ‘danger’ of low primary vote candidates securing election was averted in 2010, the risk is ever-present given the role of GVTs and the propensity of the overwhelming majority of voters to utilize above-the-line voting. This was demonstrated by the DLP success in the Victorian upper house in 2006 and for the Senate in 2010, and earlier, by the election of Family First’s Steven Fielding (whose ticket secured 1.88 per cent of the vote, 0.13 of a quota)²⁶ to the Senate in 2004. While there is clearly an improved proportionality between votes and seats compared with the former single-member system, the Bracks reforms have produced two unanticipated outcomes: a party or coalition can win a majority of seats with a minority of the vote; and the larger quota does not guarantee the failure of candidates with extremely low primary vote support.

The Bracks government’s reforms of the upper house electoral system were rightly viewed as removing an element of partisan disadvantage (for Labor) even if conservative opponents chose to depict the changes as conferring partisan advantage on the ALP. That this was not the case was demonstrated initially in 2006 (when Labor lost its majority) and even more clearly in 2010, when the

conservative coalition secured a majority of seats with a minority of the primary vote and without even a majority of the 'three-party preferred' vote amongst those gaining representation in the chamber. While the coalition majority is small and (given the quota) unlikely to go much higher even in a landslide year, the results highlight the problems in combining PR with geographically-drawn multi-member electorates. Given the natural variation between those regions, there is no guarantee of a close match between votes and seats in the overall (state) electorate. In this sense, the Victorian system resembles the Australian Senate, where with six separate state electorates (and two territories), there is no guarantee of 'perfect' proportionality in the overall national result, as evidenced by the coalition securing 52.5 per cent of Senate places in 2004 with 45.1 per cent of the vote.²⁷ But, proportionality is rendered even more problematical with Senate elections given the considerable disparity in state populations, whereas the Victorian upper house regions are based on 'one vote-one value' principles. An examination of upper house results in Western Australian, the other state employing a number of multi-member electorates, also highlights the problem of securing close proportionality, although any comparison is of limited value given the considerable malapportionment in that State's electoral system.²⁸

The election in Victoria of a conservative government, traditionally uninterested in electoral reform, makes change unlikely, especially since it is now apparent that the coalition can secure an upper house majority under the system they railed against. However, the election of candidates with miniscule primary votes, due in large part to GVTs rather than reflecting genuine electoral support, would seem to raise questions of legitimacy. A possible solution worthy of discussion is the establishment of a threshold primary vote percentage for election (for a ticket or non-grouped individual candidate), without which the relevant preferences flow to a 'live' candidate in the count. This feature is part of PR systems in a number of countries, although it is not without its critics.²⁹

While regional independents' support was critical in the emergence and initial survival of the Bracks government, that same dependence was a factor in Labor implementing an upper house electoral model which does not serve representativeness as well as the state-wide systems of New South Wales and South Australia. In the latter, a major party has not secured a majority in the upper house since the introduction of PR; in the former, the last such majority was in 1988. In opting for eight multi-member constituencies with high quotas, the ALP may not have comprehensively shot itself in the foot, but it is possible to conclude that it has damaged several toes. ▲

Endnotes

- ¹ P. Rodan, 1986, 'Political Chronicles: Victoria, January to June 1986', *Australian Journal of Politics and History*, 32(2), pp. 275–6.
- ² P. Rodan, 1986, 'Victorian Labor and the Legislative Council 1982–1985', *Australian Quarterly*, 58 (1), pp. 78–9.
- ³ 1999 figures from Victorian Electoral Commission. 1999. State Election Results <http://www.vec.vic.gov.au/Results/State1999resultsummary.html>
- ⁴ A. Green, 2005, 'WA: A Peculiar Electoral System', *Australia Votes: Western Australia 2005*, p. 1, <http://www.abc.net.au/elections/wa/2005/guide/electoralsystem.htm>
- ⁵ D. Jaensch, 1977, *The Government of South Australia*, St. Lucia: University of Queensland Press, pp. 56–7.
- ⁶ Department of Premier and Cabinet, Victoria, 2003, A stronger, fairer democracy for Victoria, The Constitution (Parliamentary Reform) Bill 2003, p. 12.
- ⁷ *ibid.*, p. 13.
- ⁸ *ibid.*
- ⁹ N. Economou, 2008, 'Changing the Rules to Change the House: Electoral Reform and the 2006 Contest for the Victorian Legislative Council', *Australian Journal of Political Science*, 43(4), p. 640.
- ¹⁰ Constitution Commission Victoria, 2002, *A House for Our Future*, Melbourne, p. 11.
- ¹¹ *ibid.*, p. 29.
- ¹² Victorian Parliamentary Debates, Legislative Council, 25 March 2003, pp. 435–6.
- ¹³ Economou, *op. cit.*, p. 639.
- ¹⁴ P. Strangio, 2004, 'Labor and Reform of the Victorian Legislative Council, 1950–2003', *Labour History*, 86, pp. 48–49; *VPD, LC*, 25 March 2003, p. 454.
- ¹⁵ B. Costar, 2003, 'Accountability or Representation? Victorian Bicameralism', *Bicameralism and Accountability, Lectures in the Senate, Occasional Lecture Series 2000–2003*, Canberra, p. 74.
- ¹⁶ *VPD, LC*, 26 March 2003, p. 544.
- ¹⁷ D. Hayward, 2006, 'Steve Bracks: The quiet achiever', in P. Strangio and B. Costar (eds), *The Victorian Premiers 1856–2006*, Leichardt, NSW: Federation Press, p. 392.
- ¹⁸ 2006 figures from Victorian Electoral Commission. 2006. State Election Results <http://www.vec.vic.gov.au/Results/State2006resultsummary.html>
- ¹⁹ Economou, *op. cit.*, p. 645.
- ²⁰ 2010 figures from Victorian Electoral Commission. 2010. State Election Results <http://www.vec.vic.gov.au/Results/State2010resultsummary.html>
- ²¹ M. Mackerras, 1972, *Australian General Elections*, Sydney: Angus & Robertson, pp. 3–4.
- ²² C. Sharman, 1978, 'Swing and the two-party preferred vote: A Comment on Malcolm Mackerras', *Australian Journal of Political Science*, 13(2).
- ²³ Pollster Gary Morgan used a three-party-preferred-vote in his analysis of four inner Melbourne seats for the 2010 state election, where the contest was effectively between the ALP and the Greens, as did Charles Richardson in relation to the seat of Braddon in the 2006 Tasmanian state election. See Finding 4603 (20 November 2010) at <http://www.roymorgan.com/news/polls> and 'Seat by seat through Tasmania: Braddon', 16 March 2010 at <http://www.crikey.com/au/>

The tool was also used in a detailed analysis of seats with strong Greens support at the 2004 Queensland state election. See P.D. Williams, 2006, 'The Greening of the Queensland electorate?', *Australian Journal of Political Science*, 41(3), pp. 335–6. Much earlier, the concept was employed on a state-wide basis for Victoria, but in that (non-coalition) era, the third player was the Country (National) Party, not the Greens. See T. Colebatch, 'Odds are still against Labor', *The Age*, 17 April, 1975.

²⁴ Victorian Electoral Commission, 2011, *Report to the Parliament: the 2010 Victorian State Election*, Melbourne: Government Printer, p. 5. GVTs accessed from <http://www.abc.net.au/elections/vic/2010/guide/gtv.htm>

It should be noted that while Family First and the Christian Party preferenced the LNP (over Labor and the Greens) in all regions and the Sex Party did the same for the Greens (over Labor and the LNP), the DLP and the Country Alliance adopted "split" (LNP/ALP) tickets in some regions, and the calculations reflect that variation. The miniscule others' preferences (0.33%) were distributed equally between the three main players.

²⁵ B. Costar and G. Gardiner, 2003, 'From Breaking Governments to a Brake on Government: A New Bicameralism in Victoria', *Australasian Parliamentary Review*, 18(1), pp. 43–44.

²⁶ Data from http://www.aec.gov.au/Elections/Federal_Elections/

²⁷ B. Costar, 2006, 'The electoral system', in A. Parkin, J. Summers and D. Woodward (eds), *Government, Politics, Power and Policy in Australia*, Frenchs Forest, NSW: Pearson Longman, p. 185.

²⁸ One prominent method for measuring proportionality (or lack thereof) of electoral outcomes is the Gallagher (or least squares) index. See http://en.wikipedia.org/wiki/Gallagher_Index. Application of the relevant formula to the 2010 Victorian Legislative Council election produced an index of approximately 8.66, a very modest proportionality result for a PR election.

²⁹ See http://en.wikipedia.org/wiki/Election_threshold

For a discussion on thresholds in an Australian Senate context, see H. Coonan, 2000, 'Safeguard or Handbrake on Democracy?', in B. Costar (ed), *Deadlock or Democracy? The Future of the Senate*, Sydney: University of New South Wales Press, pp. 24–6.