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Target Paper

Death of the Conviction Voter:
Fairness and Tactics under the
Alternative Vote

Richard Mabey

with forewords by Hon Bernard Jenkin MP and Rt Hon Joan Ryan

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Abstract

It is no closely guarded secret that most proponents of electoral reform wanted to see some form of proportional representation (PR) on the table in the upcoming referendum. The argument they make is that forms of PR are the 'fairest' voting systems available. Reluctant to make the same argument for the Alternative Vote (AV), advocates of reform have advanced the curious proposition that AV is not the 'fairest' system, but simply that it is 'fairer' than the current First Past the Post system (FPTP). But what do we mean by 'fairness' and is AV really 'fairer'? To address these questions, this paper looks at the relationship between real voter preferences (what we really want) and voter outcomes (what we get).

Whereas the referendum ballot paper will ask us whether we want to change our national voting system to AV, it does not tell us which type of AV we would get. The version of AV proposed for the referendum has been better described as Optional Preference Voting (OPV), the salient feature of which is the ability of a voter to mark on the ballot paper as many or as few candidates as he or she wishes. It is a surprisingly rare form of AV, which is only used at a local level in the Australian states of Queensland and New South Wales. Whereas the flaws of AV in general have been well documented, the additional challenges posed by this particular form of AV to the 'fairness' argument have not yet fully come to the fore.

This paper uses data from the 2007 and 2011 state elections in New South Wales and Queensland to examine outcomes under OPV and the likely influences on voter choice. The data suggests the following:

- (1) What has been proposed by proponents of AV as the certainty of the winning candidate receiving at least '50% plus one' of voter preferences is not true for the form of AV on the table.**
- (2) This form of AV offers a far wider range of tactics to voters and political parties than those available under both FPTP and other forms of AV.**
- (3) Up to 65% of voters cast only one preference in Queensland local elections.**
- (4) Voters who mark their preferences with conviction will be disadvantaged in the electoral process.**
- (5) AV, in the form proposed, would not increase fairness in voter outcomes.**

An institutionalization of tactical voting under OPV will leave us with divisive and unfair elections. Noting that other forms of AV, such as those facilitating the national voting systems of Fiji and Papua New Guinea, do not entail these flaws to anywhere near the same extent, this paper argues that this 'optional' factor delivers a considerable blow to the fast-fading AV logic.



Foreword by Hon Bernard Jenkin MP

Referendums do not come around very often. You might reasonably think that we had enough time to get the referendum question right. Quite why we have a particular form of the Alternative Voting system on the ballot paper for May's referendum that is so rare that no national voting system in the world uses it, remains unclear to me. The 'Yes' campaign have put 'fairness' at the heart of their claims for AV and it is time to tackle that argument head on. If AV really was 'fairer voting', then there might be a case for it, but AV is not proportional representation. I welcome this paper which instead shows concrete evidence that this rare type of AV produces outcomes that are no 'fairer' than those under First Past the Post. What you get instead is institutionalised tactical voting, political parties having more of a say and results that no one can predict. The claim that is so frequently made by proponents of AV, that the winning candidate would have to receive over 50% of preferences, is shown by this paper to be manifestly untrue. Without this, the wilting rationale for AV cannot survive. I urge you to read the paper and vote 'no' on 5th May.

Bernard Jenkin, House of Commons



Foreword by Rt Hon Joan Ryan, Director, Labour No to AV

Writing a foreword for a Bow Group paper is unfamiliar territory for me. That I am doing so is perhaps symbolic of the non-partisan nature of the momentum that is gathering against the Alternative Vote. I have long said that AV would damage our democracy and I welcome this paper, which shows the extent of the damage that this voting system could cause. It is vital that we bring equality and empowerment to voters, and no voting system does this better than First Past the Post. Even if you are the most staunch supporter of electoral reform, moving to such an unfair and less proportional system cannot possibly achieve an improvement on what we currently have. AV is unfair, complicated and an unnecessary expense at a time where people are being hit by public sector cuts. I urge you to read the paper and defend equal votes by supporting 'No' on 5th May.

Joan Ryan, Labour No to AV



About the author

Richard Mabey is a member of the Bow Group. Currently employed by an international law firm based in the City of London, his research interests include constitutional reform, macro-economic policy and corporate governance. He holds an MA (hons) from Edinburgh University and a Graduate Diploma in Law from BPP Law School.

1. Introduction

The Parliamentary Voting Systems and Constituencies Act was given Royal Assent on 16th February 2011. The act provides for the first national UK referendum in 36 years: an opportunity to replace our national voting system with the *Alternative Vote* (AV). One of the principal arguments brought by those in favour of electoral reform is that, under the current *First Past the Post* (FPTP) system, a Member of Parliament can get elected with large numbers of voters not wanting them at all; that FPTP is an 'unfair' system. It is widely agreed that proponents of electoral reform would have liked to see some form of proportional representation on the table to counteract this 'unfairness', but we find ourselves faced with AV and, as voters become more aware of what AV is, to make a meaningful contribution to the debate we must now tackle the fairness argument head on.

Proponents of AV are surprisingly conservative in their claims. They do not claim that AV is the fairest voting system, they simply argue that AV is *more fair* than the previous system (what we might call a 'piecemeal approach'). Take Ed Miliband's comments at the launch of the *Labour Yes to Fairer Votes* Campaign: "on May 5th, we can take another step on this journey to a fairer politics"¹. Note that the claim is not that AV is the best voting system, simply that it would bring *fairer* politics. You might reasonably think that such a qualified claim is not a sufficient justification in itself for electoral reform, but, for the sake of argument, this paper takes the proposition that an improvement in fairness would be enough to justify making a change.

Those intending to vote in favour of AV at the referendum are increasingly citing the 'fairness' argument. One YouGov poll recently showed that 73% of verbal responses given in favour of AV claimed that AV is 'fairer' or 'more democratic'² than the current system. Indeed so much weight has been given to this argument in the debate that the official 'yes' campaign in the referendum has been branded *Yes to*

¹ <http://labouryes.org.uk/ed-miliband-launches-labour-yes-campaign/>

² The YouGov poll was commissioned by the Constitution Society and its results are reproduced in the report, *Results of the TCS/YouGov Poll on Alternative Voting and the Referendum* (https://docs.google.com/a/constitutionsoc.org.uk/fileview?id=0B0KTTQopGM-JYzJjMGNIZmYtOTRhZC00MGYxLWl1ZTctZWY1ZWl3MTgzMzNh&hl=en_GB&ndplr=1)

Fairer Votes. It would seem, on this basis, that the AV logic could not survive unless it encompassed a 'fairness' improvement to the current system.

But what do we mean by 'fairness'? I do not propose to examine this question in detail, as the conception of fairness that we need to address here is the conception of fairness that advocates of AV have themselves contemplated. They commonly propose that AV helps to give better weighting to what voters really want, the aim being to get '50% plus 1' of voters to give at least one preference to the candidate being elected. Indeed, the campaign literature of the Yes to Fairer Votes campaign goes as far as to state that "with the Alternative Vote (AV) system, MPs would have to get more than 50% of the vote"³. This conception of fairness in voting systems could be thought of as 'how likely people are to get what they want'. We might measure this as the relationship between real voter preferences (what voters really want) to voter outcomes (what voters get).

The general counter arguments put against AV are too numerous to recount here, but they have commonly included references to the lack of overall proportionality in AV⁴ and the inability of AV to allow swift dismissal of governments⁵. In this paper I challenge instead the argument that AV is 'fairer' than FPTP through an analysis of voter equality: the equality of influence between individual voters on the result of an election. With voter inequality, it would seem that the proportionality between real voting preferences and voting outcomes could decrease.

This paper uses data collected from local elections in New South Wales and Queensland to show the sort of consequences we might expect in a future UK general election under the form of AV proposed by the referendum question. The results of this analysis are unsettling.

³ (emphasis added) p.3, *AV: A Small Change that makes a Big Difference* (http://fairervotes.3cdn.net/b6fdf312550a62dad8_ujm6b0qsz.pdf)

⁴ Bogdanor, Vernon, *What is Proportional Representation: a Guide to the Issues* (Oxford: M. Robertson, 1984)

⁵ Chapter 2 of James Forder's *The Case Against Voting Reform* (Oxford: Oneworld, 2011) provides a thorough analysis of the democratic underlay in the current voting system.

2. Two types of AV

The referendum was born from the Parliamentary Voting System and Constituencies Act 2011. A close reading of the statute reveals the form the new voting system would take. Such a reading is invaluable because there are two main types of AV currently used in the world. One form of AV requires a voter to list all his or her preferences; failure to do so would result in that voter's ballot paper being spoiled. This is the most common type of AV in the world and is used in the national voting systems of Fiji, Papua New Guinea and elections to the House of Representatives in Australia⁶. Let's call it 'Regular AV'.

However, there is another, rarer form of AV. In this form, voters are not required to list all their preferences. They must put down at least one preference but do not have to do anything more than this. Whether a voter puts down 1 or 10 preferences, his or her ballot paper will not be spoiled. This is a system called *Optional Preference Voting*. Let's call it 'OPV'. The only places on earth that OPV is currently used are the Australian states of Queensland and New South Wales, and it is used there only in their local elections.

So what type of AV is on the table in the upcoming referendum? You might reasonably assume that, being the only type of AV that is currently used in the world on a national level, it would be Regular AV. But a close inspection of the statute brings a surprising conclusion. The referendum question to appear on the ballot papers is as set out in the Act:

At present, the UK uses the "first past the post" system to elect MPs to the House of Commons. Should the "alternative vote" system be used instead?⁷

This is reasonably clear although no guidance is given on the ballot paper as what form of AV is on the table. The question of what constitutes the statute's definition of "alternative vote" is not straightforward to deduce. It can only be done through an examination of the amendments provided in the Act to existing legislation, were the

⁶ For a more extensive explanation of this type of AV, see, for example, The Government of Fiji's "How to Vote" (<http://www.elections.gov.fj/voter/how-to-vote.html>)

⁷ s.1(7) The Parliamentary Voting System and Constituencies Bill 2011.

referendum question to be answered in the affirmative. These amendments provide an explanation of the exact form the new voting system would take:

The voter may mark as many preferences (up to the number of candidates) as the voter wishes.⁸

The voter *may* mark as many preferences as *the voter wishes*. Unlike the national Australian, Fijian and Papua New Guinean systems, your ballot paper will not get spoiled if you fail to list all candidates in preference. This is OPV.

At first blush, the distinction seems rather subtle and to avoid a charge of pedantry it has rarely been made. Take, for example, the comments of Paul Kenny, General Secretary to the GMB:

“Alan Johnson and Nick Clegg are asking people to vote for an electoral system that is not [used] anywhere in the world apart from Fiji, Papua New Guinea and Australia.”⁹

The general point about the rarity of AV around the world Paul Kenny makes is a good one. But I think we can go one further and say that the form of AV on the table, OPV, is currently used in no national voting system in the world. One simple word, ‘may’, makes an important difference to the choice we face: what we really have on the table is a choice between FPTP and OPV.

3. Why does the distinction matter?

In its thorough analysis of AV, the commission set up by the previous Government to examine possible forms of electoral change, the Jenkins Commission on Electoral Reform, looked at the elections to the Australian House of Representatives (Regular AV) in analysing the strengths and weaknesses of AV¹⁰. However, this exhaustive review of possible systems for electoral change did not consider that OPV might be a

⁸ s.9(1) The Parliamentary Voting Systems and Constituencies Bill 2011. This would become the new s.37A of the Parliamentary Election Rules 1983.

⁹ “AV Referendum: Union Stance Depressing” (BBC: <http://www.bbc.co.uk/news/uk-politics-12706074>)

¹⁰ Paragraphs 81-85, *The Report of the Independent Commission on the Voting System* (<http://www.archive.official-documents.co.uk/document/cm40/4090/chap-5.htm#c5-a>)

possible replacement for FPTP. On the outcomes conception of fairness set out above, can it be said that these two systems will produce the same outcomes?

Before considering this, I ought to note OPV is not without its merits. Consider the evidence of Dr Graeme Orr and Professor K. D. Ewing to the House of Commons Political and Constitutional Reform Committee. Whilst noting the faults of OPV, they advocated the system on the following merits:

OPV gives electors maximum choice. They do not need to choose between parties or candidates about whom they may have no preference or information. They do not have to make invidious choices between two extremist parties, or between parties they may see as undifferentiated...¹¹

I would agree that it is true that a compulsion for a voter to list all preferences would entail some choices to be made without sufficient knowledge of what certain candidates stood for. These advantages being what they are, there is, however, a dangerous downside to OPV that needs to be addressed in weighing up whether this is the best form of AV that we could move to.

The main problem with OPV is voter inequality. The point raised by historians who have come out against AV¹² is that we would lose the historic principle of 'one man, one vote'. As Roger Mortimore has remarked¹³, this can be misinterpreted to include a proposition that some voters will have more votes in each round of voting than others. This is not the case, as distributions of preferences take place only on the elimination of a candidate. If your candidate is not sliced off the bottom, your additional preferences will not be counted in that round. No voter therefore would have more than one vote in each round. What is true, however, is that, where a voter's preferences are exhausted through marking an insufficient number of

¹¹ Graeme Orr and K.D. Ewing, in "Memoranda published by the Committee to date for the inquiry into Government proposals for voting and parliamentary reform"
(<http://www.parliament.uk/pagefiles/38088/Memorandum%20for%20the%20internet%20270710.pdf>)

¹² see, for example the letter of, amongst others, Lord Lexden to *The Times* as published on the Conservative Party's website
(http://www.conservatives.com/News/News_stories/2011/03/Historians_against_AV.aspx)

¹³ Mortimer, Roger, *A Guide to the Alternative Vote*, 2010 (Ipsos Mori: http://www.ipsos-mori.com/DownloadPublication/1412_RM-AVarticle.PDF)

preferences on the ballot paper, they might not have any say at all in the final round of voting nor, possibly, a say in which candidate is eliminated in some of the intermediary rounds. Having no say at all is a disparaging prospect for the voter who has come to the ballot box to influence the outcome of an election.

This is an argument about the intrinsic value of OPV and a fair amount has been written to put such a case forward¹⁴. What has been less remarked upon is the instrumental value of OPV: what sort of outcomes we can expect from this inequality. Rallings and Thrasher's welcome writings on OPV have gone some way to point out that outcomes under OPV will be *different* to outcomes under Regular AV¹⁵. But are these outcomes more or less fair?

4. Tactical voting

One way that voter outcomes can be distorted is through the effects of tactical voting. Amongst the more meaningful arguments put forward by proponents of AV is the claim that AV could go some way to eliminate the need for tactical voting. Lord Jenkins hailed this as a great strength of AV, stating that AV "would increase voter choice in the sense that it would enable voters to express their second and sometimes third or fourth preferences, and thus free them from a bifurcating choice between realistic and ideological commitment or, as it sometimes is called, voting tactically."¹⁶ But this argument was given with reference to Regular AV, so would it hold for OPV?

To address this, we need to think about what we are doing when we are voting under FPTP. As James Forder notes in his excellent book *The Case Against Voting*

¹⁴ see, for example, Rallings and Thrasher, "Suppose UK voters accept the Alternative Vote in the May referendum but then don't use AV to signal multiple party preferences (<http://blogs.lse.ac.uk/politicsandpolicy/2010/10/25/suppose-uk-voters-accept-the-alternative-vote-in-the-may-referendum...-but-then-don't-use-av-to-signal-multiple-party-preferences/>)

¹⁵ They do this with reference to the British Election Survey data redistributing preference to take into account those who will not put down the requisite number of preferences to have a say (see, for example, *Suppose UK voters accept the Alternative Vote in the May referendum but then don't use AV to signal multiple party preferences?* (<http://blogs.lse.ac.uk/politicsandpolicy/2010/10/25/suppose-uk-voters-accept-the-alternative-vote-in-the-may-referendum%E2%80%A6-but-then-don%E2%80%99t-use-av-to-signal-multiple-party-preferences/?cpage=1>)

¹⁶ paragraph 1, The Report of the Jenkins Commission on Electoral Reform (reproduced at <http://www.archive.official-documents.co.uk/document/cm40/4090/chap-5.htm#c5-a>). It should be noted that Lord Jenkins concluded that Regular AV was not a viable system of voting.

Reform, the current electoral system is fundamentally adversarial¹⁷. Voters make a choice of who they think the best candidate to represent them is, and the truth then prevails through an aggregate of those 'real' choices. To work properly, such systems require choices to be made on the basis of conviction.

Most commentators would agree that tactical voting is a bad thing because it masks a voter's true intentions. It has long been argued, for example, that the Liberal Democrats have been disadvantaged in general elections due to the belief of voters that electing their candidates as Members of Parliament is unlikely to contribute to determining which party might form a government¹⁸. This does not seem unreasonable. However, does AV offer an improvement on this? One claim made by proponents of AV is that it eliminates or reduces tactical voting. It would seem to follow then that any system that eliminated¹⁹ or reduced tactical voting would be a good thing. The claim, however, arises on the premise that voters will put down all of their preferences in the order they really want.

Under Regular AV, the obligation to list all candidates in preference might seem to offer the possibility of a voter putting them down without thinking strategically about how best to influence the result of an election. It does not necessarily follow that because a voter *should* not vote tactically that he or she *would* not vote tactically. So Regular AV does not require conviction voting, but it does not straightforwardly disincentivize it.

But what about OPV? The optional factor gives you another tactical tool: omitting preferences. What would happen, for example, if you put only one preference down? How would this change voting outcomes? For an examination of tactical voting trends under OPV, we must look to the only places that use it. That we have to look to local elections in Queensland and New South Wales to induce potential trends in a future national election in the United Kingdom is a telling proposition in

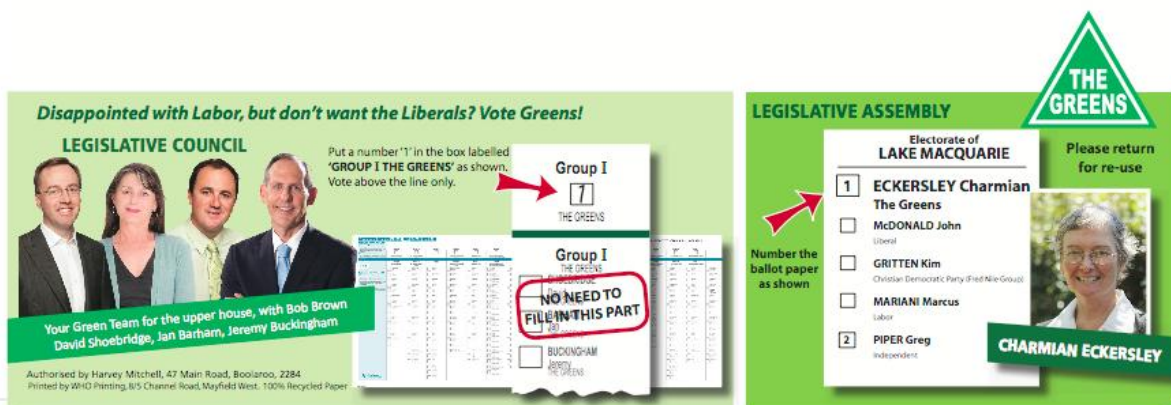
¹⁷ See, in particular, chapter 2.

¹⁸ Post coalition, this claim is not without its ironies.

¹⁹ As to the elimination of tactical voting from a voting system, the arguments put forward in the Gibbard-Satterthwaite theorem are worth noting. See p.9, Roger Mortimore, *A Guide to the Alternative Vote* (2011: Ipsos Mori (http://www.ipsos-mori.com/DownloadPublication/1412_RM-AVarticle.PDF))

itself. However, these electoral systems provide a useful snapshot of the tactical voting trends commonly seen under OPV.

One phenomenon that is prevalent in Queensland is a process known as 'plumping'. This is where a party will advise their voters which subsequent preferences to mark on the ballot paper or, if more beneficial to the party, to put mark only one preference. Take, for example, the 'how-to-vote' cards of Charmian Eckersley in New South Wales and Steve Bredhauer in Queensland at the 2011 local elections:



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²⁰ <http://nsw.greens.org.au/sites/greens.org.au/files/Lake%20Macquarie%20HTV.pdf>

Peter Beattie & LABOR

Putting Queensland First

Steve Bredhauer
Labor for Cook

BALLOT PAPER

WEBB, A

HOLLINGSWORTH, L

Vote **1 BREDHAUER, STEVE (ALP)**

IMPORTANT: If you spoil your ballot paper, ask for another one.

Vote 1 LABOR in your electorate

If you wish to distribute preferences, make sure that One Nation, CCAQ and like candidates are placed last.

This first card advises a first preference for the Greens and a second preference for the Independent, Greg Piper. The message a voter takes from this that he or she should put down those two preferences only. Aside from the bad faith implications of such persuasive tactics, the problem here is that a voter is being incentivized to vote tactically. The claim that FPTP involves some voters voting tactically is a correct one, but what we do not currently have is parties encouraging it so brazenly. Instead you get electoral pacts like the deal above between the Greens and an Independent, which actively tells voters not to cite their real preferences. This practice poses a challenge for one of the purported goals of the introduction of AV: to avoid the need for tactical voting. Such evidence would seem to suggest that political parties would not give sufficient support to the idea of allowing voters to choose what they really want. Such tactics are available to all types of AV.

The second card goes even further. It advises you to vote for Steve Bredhauer only. As following this advice requires putting down less than all available preferences on the ballot paper, such an opportunity is only available in OPV. Should you fail to follow this encouragement it tells you: "if you wish to distribute preferences, make

²¹ <http://www.australianpolitics.com/elections/htv/htv-cards-pictures.shtml>

sure that One Nation, CCAQ and like candidates are placed last". Is this the model of free democratic choice that AV is being held out to offer? Indeed, if voters are not putting down all preferences, would that not give an inflated value to the preferences of those who have put them down? If our choice on the ballot paper becomes nothing other than a tactical conjecture, Forder's notion of the aggregate choice of real preferences that might be made under FPTP would become instead an aggregation of tactical choices. It would be reasonable to assume that such an aggregation would have a negative effect on outcomes, especially if some parties employed these tactics and some did not.

An OPV enthusiast might say to this that tactical voting is as much of a problem with FPTP. Such a claim ignores some crucial distinctions. One distinction is that tactical voting under FPTP is entirely the choice of the voter, whereas, under OPV, parties try to have a say. I would doubt, for instance, that you will ever see the Labour Party, under the current regime, telling you to vote Liberal Democrat to keep the Conservatives out, if that vote would have otherwise gone to Labour. Another distinction is that the possibilities created by such a choice matrix under OPV are greater than under Regular AV. The tactical opportunities available therefore to the informed voter are substantial. It would not seem unreasonable that we could be persuaded to give their subsequent preferences in strict accordance with the 'how-to-vote' card, without fully understanding the consequences of choosing such preferences. Equally, those voting with conviction (those following the requirements that AV needs to work) would not have the advantages of the choice matrix of the tactical voter.

I might note that the practice of 'plumping' in Australia has been routinely subject to injunctions being taken out by opponents in respect of breaches of the Commonwealth Electoral Act 1918. Under OPV in the UK, it seems highly likely that such cards will become the norm and the disputes and dirty tricks campaigns that go with them could follow. It would be prudent for the UK to consider putting in place a regulatory regime to enable legal challenges, and such regulation might involve early registration and prior screening of 'how-to-vote' cards, a process that will inevitably involve substantial cost.

5. Distortion of voter outcomes

How does the optional factor affect the results of elections? The question is: if fairness can be thought of as the relationship between real voter preferences and voter outcomes, would making intentions less 'real' give less proportional outcomes? Fears about such voting outcomes under optional preference voting were given some air-time in the parliamentary debate. Lord Rooker, for example, pointed out that only with a compulsion to use all preferences (Regular AV) "could you come remotely near to the promise and commitment of [the winning candidate] having more than 50% of the vote"²². Indeed Rallings and Thrasher have gone as far as to suggest that 4 out of 10 MPs could be elected with under 50% of the vote²³.

But what happens in practice? New South Wales provides useful data on this, as from 1996 the Australian Electoral Commission has collected indicative preference flow data²⁴. I might note that the difference in the two political landscapes makes it impossible to cast meaningful assertions on how people might vote in a future UK general election under OPV. It does, however, provide a useful overview of what sort of preferences voters indicated and how many voters indicated less than all the preferences available to them.

Australian commentators such as Anthony Green have noted how preference flows under OPV in New South Wales are 'weaker' than under Regular AV²⁵. That is to say that indicating less than all of your preferences produces a less 'reliable' result than if you marked all your preferences on the ballot paper. For the reasons stated above, if political parties are telling you how to list your preferences, the conviction that it is hoped that voters would use in indicating their true preferences would seem to

²² HL Deb 30 November 2010 c.1401 (Hansard)

²³ Rallings and Thrasher, "Suppose UK Voters Accept the Alternative Vote in the May Referendum But Then Don't Use AV to Signal Multiple Party Preferences" (<http://blogs.lse.ac.uk/politicsandpolicy/2010/10/25/suppose-uk-voters-accept-the-alternative-vote-in-the-may-referendum...-but-then-don't-use-av-to-signal-multiple-party-preferences>)

²⁴ This means we have a snapshot of where voters' preferences went in each seat of that election. It should be noted that such data is calculated from tally sheets drawn up on the relevant election night and they represent only 80% of votes cast.

²⁵ Anthony Green, "NSW Preference Flows under Optional Preference Voting" <http://blogs.abc.net.au/antonygreen/2011/02/nsw-preference-flows-under-optional-preferential-voting.html>

become less prevalent. Let's return to the seat of Lake Macquarie in New South Wales. Lake Macquarie was a safe seat of the Australian Labor Party (ALP) until the following upset in 2007:

Table 1 – Total first preferences indicated²⁶

| Name | Party | Votes | % |
|-------------------|-------|--------|------|
| Suzanne Pritchard | GRN | 2,441 | 5.7 |
| Jeff Hunter | ALP | 17,290 | 40.5 |
| Greg Piper | IND | 12,917 | 30.3 |
| Rex Morgan | CDP | 921 | 2.2 |
| Leonard Hodge | AFI | 770 | 1.8 |
| Ken Paxinos | LIB | 8,310 | 19.5 |
| Informal | | 1,005 | 2.4 |
| Total Votes | | 43,654 | 100 |

Table 2 – Votes transferred in elimination rounds for non 'top two' ballot papers²⁷

| | Candidate (Party) | Formal Votes | % | to ALP votes | % | to IND votes | % | Exhausted Votes | % |
|---|-------------------|--------------|------|--------------|------|--------------|------|-----------------|------|
| 1 | Pritchard (GRN) | 1848 | 56 | 435 | 23.5 | 700 | 37.9 | 713 | 38.6 |
| 2 | Morgan (CDP) | 675 | 20 | 180 | 26.7 | 218 | 32.3 | 277 | 41.0 |
| 3 | Hodge (AFI) | 528 | 16 | 76 | 14.1 | 92 | 17.4 | 360 | 68.2 |
| 5 | Paxinos (LIB) | 5820 | 175 | 211 | 3.6 | 3145 | 54.0 | 2464 | 42.3 |
| | Total Votes | 8871 | 26.7 | 902 | 10.2 | 4155 | 46.8 | 3814 | 43.0 |

Table 3 – Preference count in the final round of voting²⁸

| Name | Party | Votes | % of votes cast |
|-----------------|-------|--------|-----------------|
| Greg Piper | IND | 18,654 | 43.7 |
| Jeff Hunter | ALP | 18,548 | 43.5 |
| Exhausted votes | - | 5,447 | 12.8 |
| Total Votes | - | 43,654 | 100.0 |

Table 1 shows first preferences cast at the election for the New South Wales Legislative Council in Lake Macquarie in 2007. Table 2 shows how preferences of those voters who did not list as their first preference the candidates that made the

²⁶ p.20 et seq., *NSW Parliamentary Library Research Service: 2007 New South Wales Election: Final Analysis* (BackGround Paper No 1/08)

²⁷ *ibid*

²⁸ *ibid*

final round, were distributed in the elimination rounds. Table 3 shows the distributions of preferences listed, after the elimination rounds in the election to the final two candidates.

In spite of receiving a margin of over 10% in the first preference count, the ALP candidate did not win the election. The subsequent tables indicate why this might have been. These tables tell us two surprising facts: (1) 43% of those voters who did not put down either of the top two candidates as their first preference did not have a say in the final round of voting; and (2) 12.8% of all votes cast were wasted as they did not cite either of these two candidates as preferences.

As to point (1), the shocking proportion of voters who did not cast all their preferences meant that a large proportion of voters who did not want either the ALP candidate or the Independent to win, did not have a say in for whom they would most like to settle. This meant that relatively few of these voters influenced the outcome of the election. The logic goes like this: preference flows are required to be strong in order for people to have a say in the final outcome; OPV preference flows are weaker than Regular AV preference flows; the more people have a say in the final outcome, the fairer the system; therefore OPV can only be less fair than Regular AV.

Point (2) provides a challenge for the proposition that at least '50% plus 1' of preferences must have been given to the winning candidate. 50.1% of available preferences cast were ultimately accumulated for Greg Piper so this would seem to scrape by in the '50% plus 1' of actual preferences cast test. But what about the choices of those who did not mark all their preferences? The 12.8% of voters who did not cast either of those two candidates as preferences means that only 47.3% of votes cast caused Greg Piper to be elected. This means that the proposition has been seen in practice not to apply. The cause? 5,447 'exhausted' votes. Because you do not have the option of putting down fewer than all available preferences under Regular AV there cannot be any exhausted votes in Regular AV elections. Moreover, although impossible to quantify its effect meaningfully, it is reasonable to assume that the practice of political parties telling voters to put down only one preference would have been likely to have contributed to the tally of exhausted

votes. Such a high figure of exhausted votes poses a considerable challenge to the proposition that voters would be having more and not less of a say under AV, and, because the margin by which Greg Piper won was only 0.2%, it can be said that the phenomenon of exhausted votes might well have changed the result of the election.

Seats like Lake Macquarie are not atypical. Take the total number of ballot papers in Queensland with only one vote cast. The Attorney General of Queensland recently reported that “as part of its analysis of a survey of ballot papers from the 2009 state election, the Queensland Electoral Commission found that approximately 63.03% of ballot papers were marked ‘1 only’²⁹. *Sixty-three per cent of ballot papers were marked with only one preference.* This statistic shows just quite the extent to which such practices have become prevalent.

Those in favour of OPV might come back to this by saying: ‘OPV can still be fairer than FPTP, even if it isn’t perfect’. The first point to make here is that FPTP does not entail the unpredictability of outcomes under OPV and the influence of political parties on voter choices. The second point is simply to look at the evidence. The Australian experience shows quite clearly that people do not put down all their preferences. I would put it that this is, at least in part, due to the tactical influence of political parties. This inequality favours those who think strategically. It leaves behind those who have voted with conviction and not thought strategically about the effect that distributions of their preferences might have on results. The result of this is that the aggregate of choices that determines elections would less accurately reflect what voters want than would Regular AV: under the conception of fairness set out above then, OPV is less fair than regular AV.

²⁹ “Report of the Attorney General of Queensland”
(http://www.justice.qld.gov.au/__data/assets/pdf_file/0011/80003/optional-preferential-voting-in-queensland.pdf)

6. Findings

In the YouGov poll mentioned in paragraph 1, only 10% of those responses given against AV cited 'fairness' as a reason. However, considering the Australian experience one can draw the following conclusions:

- (1) What has been proposed by proponents of AV as the certainty of the winning candidate receiving at least '50% plus one' of voter preferences is not true for the form of AV on the table.**
- (2) This form of AV offers a far wider range of tactics to voters and political parties than those available under both FPTP and other forms of AV.**
- (3) Up to 65% of voters cast only one preference in Queensland local elections.**
- (4) Voters who mark their preferences with conviction will be disadvantaged in the electoral process.**
- (5) AV, in the form proposed, would not increase fairness in voter outcomes.**

Many of the problems with 'plumping' and distortion of voting outcomes could easily have been averted, were Regular AV on the table. Perhaps if there is any momentum over the need to consider changing our voting system, what would be needed is a referendum with a number of voting forms on the table. If AV must be on the table, then Regular AV would be a more suitable option. Until another referendum comes around, we must look at the merits and weaknesses of OPV and make an informed decision on May 5th.

Not only is OPV no fairer, under the conception of fairness set out above, than FPTP, but experience shows it can even be less fair, entailing a revised maxim for the 'yes' campaign: 'yes to fairer votes, but no to OPV'.

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