

Chapter Eight

Voluntary Voting

Hon Senator Nick Minchin

Thank you for your invitation to address your conference here in my home town of Adelaide. I am proud to be a member of The Samuel Griffith Society, and to have worked hard with so many of you to preserve our current constitutional arrangements during the 1999 referendum on a Republic. That was a stunning victory for those of us who fervently believe there is no republican model that can serve us better than our constitutional monarchy.

Speaking of Republicans, I heard a wonderful story about Republicans of the American kind, and their political opposites, the Democrats, which has an Australian resonance which I think you'll appreciate.

A woman in a hot air balloon realised she was lost. She lowered altitude and spotted a man in a boat below. She shouted to him, "Excuse me, can you help me? I promised a friend I would meet him an hour ago, but I don't know where I am". The man consulted his portable GPS and replied, "You're in a hot air balloon approximately 30 feet above a ground elevation of 2,346 feet above sea level. You are 31 degrees, 14.97 minutes north latitude and 100 degrees, 49.09 minutes west longitude". The woman rolled her eyes and said, "You must be a Republican". "I am", replied the man. "How did you know?". "Well", answered the balloonist, "everything you told me is technically correct, but I have no idea what to make of your information, and I'm still lost. Frankly, you've not been much help to me".

The man smiled and responded, "You must be a Democrat". "I am", replied the balloonist, "How did you know?" "Well", said the man, "you don't know where you are or where you're going. You've risen to where you are due to a large quantity of hot air. You made a promise that you have no idea how to keep, and you expect *me* to solve your problem. You're in *exactly* the same position you were in before we met, but somehow now, it's *my* fault."

Applied to Australian Republicans and Australian Democrats, that story is remarkably apt.

John Stone has asked me to speak about Voluntary Voting, a subject on which I'm happy to speak any time, any place.

John's invitation suggests to me that apparently if I'm known to stand for anything, it's for voluntary voting, which to some may seem a peculiar fixation.

It's true I have a passion for the issue. It reflects my political origins as a libertarian. In my formative political years, especially my five years at the Australian National University in Canberra, I was an avowed libertarian, with a detestation of government interference in people's lives.

A significant influence on my youthful political predilections was the year I spent in the USA doing final year high school on an AFS scholarship. One of the things I particularly admire about Americans is the value they place on liberty.

The first party I joined was John Singleton's ill-fated Workers Party, which was in truth a Libertarian Party in disguise – indeed, I handed out how to vote cards for that party in 1974.

As political maturity has set in, I have become more and more a political conservative. On matters involving the Constitution and issues that go to the very moral foundations of a civilised society, I am a rusted-on supporter of the conservative cause. I have exercised my conscience vote in the Senate to oppose euthanasia and embryonic stem cell research.

But on those issues involving people's personal behaviour and ordinary conduct that do not raise

fundamental moral questions, I uphold the virtues of liberty and choice. In relation to these issues, Governments should only act to restrict liberty and choice to the extent necessary to preserve civil order and minimise harm to others.

Thus it is that in relation to the most important single manifestation of democratic will, the act of voting, I profoundly detest Australia's denial of individual choice. It seems to me that an essential part of a liberal democracy should be the citizen's legal right to decide whether or not to vote. The denial of that right is an affront to democracy.

I do say that citizens should vote – but I say with equal passion that citizens should not be compelled to vote. It is a threat to the concept of liberty to convert a generally-held preference as to good behaviour into a legally compellable action. Yet in this country you are breaking the law if you choose not to vote in a federal or State election.

Compulsory voting is an embarrassment in a nation like ours, which is otherwise a shining light of democracy and civil liberty in a world still darkened by authoritarian rule in so many countries. The overwhelming majority of the world's democracies uphold and protect their citizens' legal right to choose whether or not to vote, a right we are denied in Australia. How did we come to such a sorry position?

Many Australians believe compulsory voting is entrenched in our Constitution. As you all know, our Founding Fathers had much stronger democratic instincts than to stoop to such an intrusion on civil liberty.

However, our Constitution does give the Commonwealth Parliament the authority to determine the method of election of Senators and Members of the House of Representatives.

For the first quarter century of our nation's existence, Australians had the legal right to choose whether or not to vote – and they freely exercised that right in our first nine federal elections. Then in 1924 the Commonwealth Parliament used its constitutional authority over elections to pass a law making it compulsory to vote in federal elections.

The Parliament's decision to deny us the legal right to choose whether or not to vote happened in remarkable circumstances. A backbench National Party Senator by the name of Payne introduced a private members Bill to amend the Commonwealth *Electoral Act* to make voting compulsory.

Only five Senators and three Members of the House of Representatives spoke in the Parliamentary consideration of the Bill. Not one Party leader contributed to the debate. One of our most eminent constitutional lawyers, Professor Geoffrey Sawer, has written that:

“No major departure in the Federal political system has ever been made in so casual a fashion”.

John Hirst wrote in *The Age* last November:

“It took only 52 minutes in the House of Representatives and 86 minutes in the Senate for compulsory voting to become law ... in what sort of nation can compulsory voting be introduced without discussion or debate?”.

It did happen, it has been sustained for 79 years, and all the States have followed suit. Only one jurisdiction, South Australia, has seen a serious attempt to end this travesty, when to its great credit the previous Liberal government in this State passed a Bill through the House of Assembly to repeal compulsory voting, only to have it defeated in the Legislative Council.

Why do we have it, and why is there no sustained push to end this illiberal feature of our democracy?

We have it, and probably always will, because the political parties find it convenient, and they're scared of a world in which voting is voluntary. The parties by and large love the certainty that 95 per cent of voters will turn up to vote, whether they want to or not. They love the fact that the authority of the State will save them the trouble and inconvenience of persuading their supporters to exercise their right to vote.

The Labor Party is a fierce defender of compulsion, because it is certain that it derives a partisan

advantage from compulsory voting. While the federal organisational wing of the Liberal Party has passed a resolution to end compulsion, the federal parliamentary Liberal Party has never adopted that as policy.

Supporters of compulsion cite public opinion polls which do indicate popular support for compulsory voting. In my view such polls reflect two factors. Most people quite properly think we should exercise our right to vote; but most people think their fellow Australians would not bother to vote if it were not compulsory.

I am saddened that Australians take such a dim view of their countrymen, and have such little attachment to liberty. And indeed they're wrong about voter turnout without compulsion – it averages around 70 to 75 per cent in democracies with voluntary voting. And as our government has just demonstrated in relation to Iraq, governments should be guided by principles, not polls.

Those of us opposed to compulsion have had one minor success in years of campaigning. As the responsible Minister, I managed to persuade the Cabinet and the Parliament that the 1997 national election of 76 delegates to attend the 1998 Constitutional Convention should be voluntary. That is the only voluntary national election held in this country in the last 80 years.

It is wise to go into politics knowing that even the smallest of personal victories must be cherished. If I achieve nothing else in politics, I cherish my success in ensuring that I could legally choose whether or not to vote in at least one national election in my life.

I did choose to vote in the election of delegates to the Constitutional Convention, as did 47 per cent or 5.5 million of my fellow Australians. If Labor – which voted against a voluntary vote for the Constitutional Convention – had had its way, the 6 million Australians who chose not to vote in that election would have been guilty of an offence and prosecuted.

By the way, the fact that 47 per cent of Australians chose to vote for an election of delegates to a one-off meeting of a body that could pass no laws or decide anything, suggests that the turnout for a federal election at which voting was voluntary would be at least 80 per cent.

At every federal and State election, thousands of Australians are penalised for choosing not to vote. A few brave and principled souls have actually ended up in prison for choosing not to vote, and then refusing to pay the fine.

This iniquitous and offensive law also gives a remarkable degree of discretion to federal and State bureaucrats to decide who to prosecute. After each election a revoltingly wasteful exercise is conducted to pursue every elector who fails to vote. Non-voters are invited to proffer excuses for their behaviour to the bureaucrats, who then decide whether or not to prosecute.

The NSW State Electoral Commissioner told the Sydney *Sun-Herald* in 2000 about some of the excuses that he thought were good enough to avoid prosecution for not voting in the 1999 State election:

“One man in the bush said he was driving to the polling booth when a snake in the car wrapped itself around the gearstick, so he had to stop and wait for it to move. We gave it to him for originality.

“A woman said she was in the garden shed when something fell against the door, locking her in, and she was still there when polling booths closed.

“A man said he was out early in his sailing boat and got becalmed all day and he couldn't get back in to vote.

“And one woman said she was in bed all day with her lover, and forgot all about voting and thought the fine was worth it”.

So not only does compulsory voting deny us the legal right to choose whether or not to vote, it hands to bureaucrats this extraordinary authority to decide who to punish for their temerity not to vote.

A country where you can end up in jail for not voting is not a country that can truly call itself an enlightened liberal democracy.

I will continue to fight for Australia to join all the world's major democracies in upholding and

protecting the sacred right of every citizen to choose whether or not to vote. I look forward to The Samuel Griffith Society joining that quest.