

Chapter Four

Independents and Minor Parties in the Commonwealth Parliament

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I accepted Julian Leaser's invitation to address the Society on this subject without a second thought. Had I thought twice about it I might have queried him on a vexing problem: how to compress this subject into a presentation confined to thirty minutes. It follows that my fully prepared statement will have to be published with the other papers.

The first and shorter part of this paper will deal with the House of Representatives; the second and more important part will deal with the Senate.

The House of Representatives

Two factors have limited the role of Independents and minor parties in the House: it comprises single-member constituencies and two succeeding electoral systems have governed its elections. From 1901 to 1918 the simple majority/plurality system applied. This has been misnamed "first-past-the-post": a misnomer because there was no fixed post for the winning candidate to get past. Independents found it difficult to top the poll against candidates endorsed by political parties. Independents found their position more favourable under the preferential system introduced in 1918 especially when a seat was being contested by three or more candidates. If the count went to preferences an Independent could move to a winning position from behind with each distribution. Not that this happened often!

I would isolate two examples when an Independent has succeeded. In the 1922 election, a prominent leader of the Victorian Bar, J G Latham, KC, contested and won the seat of Kooyong, then held by a grandee of the Nationalist Party, Sir Robert Best. Latham styled himself an Independent Liberal Union candidate and campaigned against the Nationalist Prime Minister, W M Hughes, under the slogan, "Hughes must go". By co-operating with the Country Party under the leadership of Earle Page, Latham, as the newly-elected member for Kooyong, succeeded in ousting Hughes from the office of Prime Minister in a deal the Country Party negotiated with the Nationalists to form a coalition. In the 1937 election Percy Spender, KC, as an Independent, won the seat of Warringah, NSW, with the assistance of ALP preferences, thereby defeating the Minister for Defence in the Lyons-Page Government, Sir Archdale Parkhill. Neither Latham nor Spender retained the status of Independent for very long. By the time the next election was due each one had composed his differences with the party he had initially defied. Latham held office in Nationalist and United Australia Party administrations and retired from politics in 1934: as Sir John Latham he was Chief Justice of the High Court from 1935 to 1952. Sir Percy Spender held office in UAP and Liberal governments and retired in 1951 after holding both the External Affairs and External Territories portfolios from 1949. He thereafter served as Ambassador to the United States and as a judge of the International Court of Justice in The Hague.

A significant number of erstwhile Nationalist MPs contested the 1929 election as

Independents after they had combined to bring down the Bruce-Page Government by voting with the Opposition Labor Party to defeat the Maritime Industries Bill. Only two were defeated but then they had to fight against Nationalist and ALP candidates. One of those defeated candidates, E A Mann, styling himself as “The Watchman”, became a controversial ABC radio commentator on current affairs. Those who were re-elected were assisted by the ALP which did not contest their respective seats.

Minor parties, including those which have split from a major party, have for the most part failed to maintain their presence in the House of Representatives. The Democratic Labor Party, initially the Australian Labor Party (Anti-Communist), was an example of this failure. In the 1930s the Lang Labor Party, inspired and named after the turbulent Premier of New South Wales, J T (Jack) Lang, proved to be an exception. It provided the numbers to defeat the Scullin ALP Government on the floor of the House of Representatives in 1931 and, because of the strength of the Lang machine, its members were able to maintain that party’s strength in the House of Representatives. Ultimately, after some fits and starts, it was reconciled with and absorbed into the official ALP and some of its prominent identities held office in the Curtin, Forde and Chifley administrations from 1941 to 1949.

Another two Independents are worth mentioning if only because of the role they played in the Parliament elected in 1940 when the country was again at war and Robert Menzies was serving his first term as prime minister from 19th April 1939. His biographer, A W Martin, recorded:

Menzies’ hopes for a decisive result in the election – clear defeat or sound endorsement of the Government’s position – were dashed. The UAP-Country Party coalition on the one side and the combined Labor parties on the other won thirty-six seats apiece. There were two Independents, A. W. Coles, the doughty businessman and [former] Lord Mayor of Melbourne, and Alex Wilson, a Mallee farmer who held the Wimmera seat since 1937. Both were expected to support the Government, but there was nothing to prevent either changing his allegiance on snap issues.

On 3rd October 1941, both those Independents brought down the Coalition Government which had been led by Menzies’ successor, Arthur Fadden, for little more than a month. And they did so on more than a “snap issue”, namely its Budget. Coles had joined the UAP for a short time but resigned and reverted to his status as an Independent when he registered his disgust at the UAP’s “lynching” of Robert Menzies in August 1941. He identified the treatment of Menzies as the principal reason for voting against the Fadden Government. Wilson, who had been assiduously cultivated by Dr H V Evatt, KC, a High Court judge from 1930 to 1940 and ALP member for Barton (NSW) since the 1940 election, spoke critically of the Fadden Government’s Budget and emphasized his membership of the Victorian United Country Party and its strong links with the Labor Party, with which I shall deal subsequently. With the Fadden Government’s defeat, John Curtin took office as prime minister and, with the support of those two Independents, led a Labor Government until the 1943 election returned that minority administration in a landslide. While the services of Coles and Wilson were thereafter no longer required, they were to be rewarded for their support.

Both Coles and Wilson retained their seats in the 1943 election. In 1937 Wilson, with a background in wheatgrower organizations, had defeated Wimmera’s sitting member, Hugh McClelland, who was also his cousin. McClelland had been endorsed

by the federal Australian Country Party while Wilson gained the endorsement of the Victorian United Country Party, the two branches then being at loggerheads. Wilson defeated McClelland again in 1940 and, as noted, retained Wimmera in 1943 after backing the wheat stabilization plan favoured by W J Scully, one of Curtin's ministers. The split between the Victorian and Federal Country parties became especially embittered when John McEwen, who had been elected as a Country Party candidate to the House of Representatives in 1934 before the two parties began their feud, was expelled by the Victorian party for accepting a portfolio in the Lyons-Page UAP-CP coalition government. McEwen, a future prime minister (1967-8) and Deputy Prime Minister (1958-71), did not settle his differences with the Victorian Country Party until 1943. Wilson resigned from the Parliament on 31st December 1945 and the following day assumed office as Administrator of Norfolk Island whose verdant landscape would have been a far cry from the desolate landscape of his Mallee farm. Coles continued to represent the seat of Henty until he intimated to Curtin's successor, Ben Chifley, early in 1946, that he would not be recontesting the seat at the next election. Chifley promptly appointed him Chairman of the Australian National Airlines Commission and, in the resulting by-election, the Liberal H B S ("Jo") Gullett won the seat which his father, Sir Henry Gullett, had previously held until his death in the Canberra air crash of 1941. He retained it until his quit politics in 1955.

Two Independents were elected to the House of Representatives in 1946. Jack Lang won the seat of Reid (NSW) which included his stronghold of Auburn. Maurice Blackburn's widow, Doris, won the seat of Bourke (Vic) as an Independent Labor candidate. Her late husband had held the seat from 1934 as an endorsed ALP candidate until, after his expulsion from the ALP, he was defeated in 1943 by an official ALP candidate. He died in 1944. Neither Lang nor Doris Blackburn was re-elected in 1949. In December 1949 Dr L W Nott was elected member of the newly-created seat of the Australian Capital Territory as an Independent but was defeated in the election called in April 1951. In the 1960s Sam Benson continued as an Independent to represent his seat of Batman (Vic) which he had won as an endorsed ALP candidate in a by-election held in September 1962 and retained at the 1963 election. He became an Independent after being expelled from the ALP for involving himself in an extra-parliamentary group advocating stronger defence which the ALP Federal Executive had proscribed. He was re-elected as an Independent at the 1966 election but he did not recontest his seat in 1969. More recently, Andrew Wilkie won the seat of Denison (Tas) as an Independent in 2010 and retained it in 2013.

The Senate

I turn now to the Senate and, to crib from more than one Goon Show script, "this is where the story really starts". It is undeniably the case that Independents and minor parties have come to exert a greater role in the Senate and this has been directly related to the possibilities opened up by the change in the Senate's voting system to proportional representation in 1948. But it was not until 1955 that this change in the Senate's role became apparent.

The first Commonwealth Electoral Bill introduced into the Senate in 1903 provided for optional preferential voting for House of Representatives elections and proportional representation for Senate elections. In the form in which that Bill finally reached the statute book, however, simple majority/plurality voting was decreed for both Houses.

In 1918 this was changed to preferential voting for both Houses.

Proportional representation had been advocated for the Senate for many years and this was not surprising when you consider the distortions disclosed at successive Senate elections. In 1925 the ALP won no seats with 45 per cent of the valid votes cast: their opposite numbers, the Nationalist Party and the Country Party, together won 22 seats with 55 percent of the vote. In 1937 the ALP won 16 seats with 48 percent of the vote, while the UAP/County Party combination won three seats with 45 percent of the formal votes cast. In 1943 the ALP with 55 percent of the vote won 19 seats while the UAP/CP with 38 percent of the vote did not win any seats. In 1946 the ALP with 52 per- cent of the total vote won 16 seats while the Liberal and the Country parties together won three seats with 43 percent of the vote. The three seats were all in Queensland. As a result of the Senate elections in 1943 and in 1946, Government and Opposition in the Senate divided 33-3.

It follows, then, that a case could be made for changing the Senate's voting system to proportional representation. It has to be recorded, however, that there was nothing high-minded in the motives of the Chifley Labor Government in legislating for this change in 1948. I maintain that you can safely ignore the justification for this change which Government spokesmen propounded, the Deputy Prime Minister, Dr H V Evatt, fulfilling that role in the House of Representatives and Senator Nick McKenna in the Senate. R G Menzies, leading the Opposition in the House, and Senator Walter Cooper in the Senate, exposed the Government's calculations and they were to be vindicated many years later. In 1977 that funny man, Fred Daly, who had sat in the House of Representatives from 1943 until his retirement in 1975, and was one of the few surviving members of the 1948 Labor Caucus, explained in his memoirs, *From Curtin to Kerr*, how this scheme had been sold to the Federal Parliamentary Labor Party behind closed doors. Here is a quotation from Daly's memoirs from which I have deleted his speculation on what Chifley's approach to the issue might have been:

In 1948 Cabinet recommended to Caucus a redistribution of Federal electorates and that Parliament be enlarged. It was subsequently . . . agreed to increase the Senate from 36 to 60 and the House of Representatives from 74 to 121, plus two members for the Northern Territory and the Australian Capital Territory (eligible for votes on certain issues affecting the Territories).

The Senate was to be elected by proportional representation. This was the brainchild of Arthur Calwell who argued that we would retain a majority after the next elections, due in 1949, and probably into the future . . .

Arthur Calwell . . . won the day by convincing sitting senators that they would be re-elected in 1949 and that the new voting system would favour them in the future. The bait held out to members in borderline seats was that their electorates could be improved by an enlarged parliament. It was a very attractive package.

Jack (John Solomon) Rosevear, a down-to-earth campaigner, opposed the moves. [He featured in my paper on the Speaker of the House of Representatives delivered at the 2012 Conference.] He described the Calwell plan as the "gold brick" proposal – every sitting senator and member to be guaranteed a safe return at the next elections. In the long run he said it would harm the ALP. Rosevear was fighting a losing battle. Calwell, lucid, enthusiastic and effective, had too much to offer and easily won the day.

Time has proved Rosevear right. Proportional representation in the Senate was disastrous for the Labor Party. From a 33 to 3 majority in 1949, except for the period to the double dissolution election in 1951, Labor has not had a Senate majority since and does not look like having one in the foreseeable future. Independents and splinter groups have had an opportunity to play an over-important part in national politics, even to controlling governments.

I should add that Labor's prospects of gaining a majority in their own right in the Senate have since proved to be as abysmal as when Daly wrote in 1977. Surely one should rate this as a grim enough example of poetic justice! What this account does demonstrate is the overweening confidence of Arthur Calwell and those who supported him that the ALP was Australia's party of government which a mere glitch like the expected coalition victory in 1949 – which impelled Calwell to this expedient – would in the long term do little to confound. In the election for half the Senate held in 1953, in which the ALP confidently expected to restore that control of the Senate they had lost in the 1951 double dissolution, Calwell, by then Deputy Leader of the Opposition and of the Federal Parliamentary Labor Party, crowed that Labor by subsequently denying Supply in the Senate to a deeply unpopular Menzies Government could “be in power for the Royal Visit” which had been scheduled for February and March 1954.

All these calculations were confounded, first by Labor's inability to regain control of the Senate in 1953 and, secondly, by the third great split in the Labor Party which proved to be its worst. The best account of this event in my view is still Robert Murray's book, *The Split*, published in 1970. Contrary to the claims of some apologists in the ALP and beyond, the direct cause of this split was not Bob Santamaria but the ALP leader himself, Dr H V Evatt, in his erratic conduct after his unexpected defeat in the 1954 election. The immediate result was the emergence of a minor party when a Tasmanian Labor Senator, George Cole, and seven members of the House of Representatives from Victoria elected as Labor members in 1954 isolated themselves on the corner Opposition benches as the Australian Labor Party (Anti-Communist). This grouping was overwhelmingly Roman Catholic and yet, as the priest-historian Bruce Duncan had recorded: “Compared with the 1951 elections, the Catholic vote for Labor had increased markedly from 72.7 percent to 77.8 percent in Victoria (Labor won 50.3 percent of the overall votes in Victoria) and from 55.3 percent to 64.4 percent of Catholics in New South Wales (the overall vote for Labor being 52.3 percent).” The Victorian branch of the Labor Party could therefore have been acclaimed as the jewel in the ALP crown. And yet Evatt, with dire consequences for his party, professed to find it gravely flawed and embarked on his destructive enterprise.

The Australian Labor Party (Anti-Communist) contested the 1955 election and directed its preferences to the coalition parties; but all seven of its members in the House of Representatives were defeated. It gained 18 percent of the Senate vote in Victoria resulting in the election of Frank McManus who had been Assistant Secretary of the Victorian Branch of the Australian Labor Party until the notorious Federal ALP Conference in Hobart in February 1955 which formalized and consolidated the split. The ALP (Anti-Communist) gained 11 percent of the Senate vote in Tasmania, 9 percent in South Australia and 6 percent nationally. Adopting the name, Democratic Labor Party, in 1956, in deference to its NSW branch, this party continued to win at least one seat at four of the next five Senate elections between 1955 and 1970, the

exception being 1961. There were between one and five DLP Senators in the Commonwealth Parliament continuously from 1955 until the collapse of that party at the 1974 double dissolution election.

And how did the DLP perform? Between 1955 and 1958 Cole and McManus, who were joined by Senator Condon Byrne in 1957 after the ALP split took delayed effect in Queensland, held the balance of power in the Senate but, given the enduring bitterness resulting from the ALP split, collaboration with the Evatt-led Opposition in Senate voting was a rare event. The Menzies Government regained control of the Senate in 1958 when the DLP Senator, Condon Byrne, lost his seat but Senator George Cole was re-elected.

The Menzies Government's control of the Senate continued until the 1964 half-Senate election which was not held conjointly with an election for the House of Representatives because a premature House election had been called on 30th November 1963. The 1964 half-Senate election resulted in the coalition Government led by Menzies dropping a seat to 30 while the ALP Opposition held its 27 seats. There was one Independent. This was R J D "Spot" Turnbull from Tasmania, who had parted company with the ALP after serving as a State Minister for many years and who had been first elected to the Senate in 1961. He continued to sit as an Independent Senator representing Tasmania until 1974, but for a short spell as leader of the Australia Party from August 1969 to January 1970. In addition to Turnbull in 1964 there were two (formerly one) DLP Senators: Vince Gair, a former Premier of Queensland and a victim of the split in that State in 1957, and Frank McManus who regained his place in the Senate after being defeated in 1961.

Allan Martin recorded, "If it came to the crunch, the Government would be dependent on the DLP. On anti-Communism and conscription this would scarcely matter; both agreed wholeheartedly on such issues". On certain other issues, as I shall shortly outline, the DLP was prepared to cut up rough. In 1967 Jack Little was elected a DLP Senator for Victoria and Condon Byrne re-elected a DLP Senator for Queensland. McManus and Gair were re-elected in 1970 when Jack Kane was elected a DLP Senator for New South Wales.

Until the 1972 election, the DLP was able to keep Labor out of office in any election where its preferences were vital to a coalition victory. During this period, when the Liberal Party and the Country Party both endorsed candidates in a particular electorate, the DLP occasionally alternated between those two parties as the beneficiary of its first preferences. This resulted in Country Party victories in the Victorian seats of Indi and Wimmera in 1958 and in Moore and Canning in Western Australia in 1963. Labor's exclusion from office over this period might seem quite an achievement in itself but it was marked by a significant failure. As that more than friendly observer, Bob Santamaria, put it, the DLP's "*essential raison d'être* was to carry through a strategy of attrition, the aim of which was to bring about the re-unification of Labor on the basis of acceptable principles". In that respect it failed and became a victim of its own attrition as veterans of the 1955 split died in increasing numbers. Consequently, by failing to attract supporters who were untouched by those events, the party's electoral base steadily diminished.

There were many instances of the DLP's cutting up rough where the Coalition Government was concerned. I witnessed one such incident on 24th August 1967 when, as a Treasury officer, I attended the Senate on the understanding that a matter of vital

concern to my Department was to be considered. Instead, to my annoyance, the Senate was in the Committee stage of consideration of a Wireless Telegraphy Bill dealing specifically with a section providing that those charged with operating pirate radios should be proceeded against with summary jurisdiction. An amendment before the Senate was to give those charged the option of trial by jury. (For those interested in that debate, consult *Commonwealth Parliamentary Debates*, Senate, vol 35, 220-229). Senator Ken Anderson, Minister for Customs and Excise, had to combat the arguments of Senator Lionel Murphy and Senator Sam Cohen, Leader and Deputy Leader of the Opposition. Time prevents me from quoting them and also mimicking them. There was also an occasional intervention from a Liberal Senator from Tasmania, Reg Wright, whom I would also dearly love to quote if only to mimic him. The DLP, namely Senator Gair, its leader, and Senator McManus, made no contribution to the debate but they joined Senators Wright and Turnbull in voting with the Opposition in favour of the proposed amendment which was thereby carried in the teeth of the Government's objections. The Bill was reported with that amendment and the Third Reading moved by Senator Anderson was carried on the voices. The Senate, instead of taking up my Treasury matter, as I had hoped, then proceeded with a Navigation Bill while I cooled my heels in the King's Hall. There I encountered Senator Gair with whom I was already acquainted. I then said, "Well, Senator, that was quite a blow you and your party struck in that last division on a time-honoured principle of British justice". At this Senator Gair hammed it as his eyes protruded like organ stops while his jaw dropped so that his dewlaps flapped and he responded (and I mimicked him), "Ah, well! Yer never can tell, can yer! Might be in the dock myself one of these days!" Put aside, if you can, any image of Vince being apprehended by the authorities while operating a pirate radio beyond the Gold Coast's three-mile limit and consider this: Would Frank McManus have made such an observation even in jest? On another occasion, Gair remarked, in my hearing, as he was about to return to the office he shared with McManus, "I expect I'll find him sitting there holding an open book in one hand and another open book in the other hand". As this would indicate, those two were conspicuously different personalities and their final clash contributed significantly to their party's demise.

Some of you may recall a controversy involving the Holt Government and its use of a special flight known as VIP aircraft. This particular matter arose for one reason only and on Senator Gair's initiative alone. His nose had been put out of joint when he himself had been refused a VIP flight. I can also recall Senator Gair giving his fellow Queenslander, Dame Annabelle Rankin, the Minister for Housing, a very rough ride over her handling of her portfolio, leaving her blustering helplessly under his questioning.

But the most significant setback the DLP administered to the Holt Government was in successfully contributing to defeating its referendum proposal in 1967 to break the nexus between the House of Representatives and the Senate. The nexus, embodied in section 24 of the Constitution, provides that the number of members in the House of Representatives shall be, "as nearly as practicable", twice the number of senators. This proposal had the backing of the ALP Opposition and, for this reason alone, it stood a very good chance of being carried by referendum. It suited the DLP, in its calculation that the Senate would be the only chamber in which they could continue to be elected, to ensure that its membership should not remain fixed. And, with the

assistance of the Melbourne *Herald* media network and some disaffected government backbench senators, it succeeded in having that referendum proposal resoundingly defeated.

The DLP's relationship with the Gorton Government was a stormy one, especially after Gorton's Minister for External Affairs, Gordon Freeth, made a remarkably naive statement on foreign policy in which he claimed that any build-up in Soviet naval forces in the Indian Ocean should not give rise to concern.

The DLP's time of reckoning was deferred until the election of the Whitlam Labor Government in 1972. The DLP's long-standing objective of keeping the ALP out of office was thereby thwarted and the party lost its "essential *raison d'être*". Relationships with the coalition Opposition led by Billy Snedden were less than harmonious but the DLP ultimately self-destructed over the so-called Gair affair.

In 1974, Paul Reynolds of the University of Queensland published a standard text on the DLP, *The Democratic Labor Party*. Reynolds recorded therein that Vince Gair vacated the leadership of the party in October 1973 and was replaced as leader by Frank McManus. It would seem that Reynolds' book went to press shortly afterwards and that therefore the book, when published in 1974, made no reference to developments in the early part of that year. When Gair accepted Whitlam's offer of appointment as Ambassador to Ireland, he was promptly expelled from the DLP. He defiantly responded, "I've carried you bastards for years and now you can go to (expletive deleted)".

As matters panned out, Gair secured his Dublin posting but the Queensland Premier, Joh Bjelke-Petersen, quickly moved to frustrate Whitlam's purpose in utilizing that appointment to force Gair to vacate his Senate seat. Bjelke-Petersen advised the Governor of Queensland to issue the writs for five, not six vacancies, in the forthcoming half-Senate election. Whitlam had counted on gaining that sixth vacancy as a stone certainty for the ALP to win. Gair meanwhile had contrived to delay his resignation from the Senate until after the writs for five vacancies had been issued. The remaining DLP senators should have let matters rest there but, driven by hubris and miscalculation, they gave the Snedden-led coalition Opposition the numbers they needed in the Senate to block Supply to the Whitlam Government and they were wiped out in the election following the double dissolution which Whitlam promptly sought and obtained, in contrast to his comportment when the Senate denied his government Supply in 1975.

The next minor party of significance to obtain representation in the Senate, but not in the House of Representatives, styled itself the Australian Democrats. It first fronted the electorate at the election called in 1977 to bring House and half-Senate elections back into alignment. Its first standard-bearer was the former Liberal member for Hotham (Vic), Don Chipp, who had been a minister in the Holt, McEwen, Gorton, McMahan and Fraser governments, and a member of the shadow Cabinet from 1972 to 1975. But Malcolm Fraser had omitted him from the ministry he formed after the 1975 election although he had previously retained him as a minister in his caretaker administration following the dismissal of the Whitlam Government and pending the double dissolution election Fraser had obtained as caretaker Prime Minister.

Nick Cater, in *The Lucky Culture*, has chronicled those events he saw as driving Don Chipp as a backbencher in 1977 to abandon the party with which he had been identified for so long (pp 168-7). In counter-factual mode – that is, in posing the

question, “What if?” – I am moved to use the words immortalized by the rough-and-ready and resolutely non-aspirating Field Marshal Sir William Robertson, “I’ve ‘eard different!” And to me the issue can be resolved by exploring two questions. First, why did Malcolm Fraser dump Don Chipp after the 1975 election? And would events have panned out differently if Fraser had overcome his scruples and given Chipp a portfolio which would have proved a serviceable outlet for his energy and enthusiasms? Fraser, by leaving Chipp with the settled conviction that his ministerial career was finished, acted in a way which proved very harmful to the interests of the coalition parties.

Malcolm Fraser, I believe, had good reason, policy differences aside, if they were at all significant, to conclude that Chipp had compromised himself to the Liberal Party’s detriment and he formed this conclusion before he toppled Billy Snedden from parliamentary leadership of the Liberal Party. In Whitlam Government circles a certain *femme fatale*-cum-odalisque was very conspicuous and sexually promiscuous and, as events were to prove, had bestowed her favours in a true spirit of bipartisanship. All this came to a head with the appointment of Lionel Murphy to the High Court in February 1975. Those members of the shadow Cabinet who were keen to make a public issue of it – and rightly so because the appointment was an unmitigated disgrace – found themselves up against at least two colleagues who dreaded the thought of this *femme fatale* being brought into the spotlight by any such controversy. They successfully carried the day in urging their colleagues in the shadow Cabinet that the Opposition should let the issue die.

This determined abstention was confirmed by the conduct of the Opposition in the House of Representatives from 11th February 1975 after the Cabinet, in rushing through Murphy’s High Court appointment the previous weekend, had exploited a vacancy on that Court as a convenient bolt-hole for a colleague they knew to be thoroughly compromised, and even corrupt. Whitlam attempted to justify that appointment in the light of Murphy’s ministerial record as a legislator and by claiming, correctly enough, that he was the fifth former Attorney-General to be appointed a High Court judge – as if any Attorney-General had a right of reversion to such an appointment. The four former Attorneys-General to take up High Court appointments were Sir Isaac Isaacs, H B Higgins, Sir John Latham and Sir Garfield Barwick. It was a ludicrous proposition for Whitlam to claim that Murphy could be considered in the same league as those four. It is a melancholy fact that only one Opposition frontbencher raised the issue of Murphy’s scandalous appointment and, then, in very muted terms.

The only Opposition member who felt free to oppose Murphy’s appointment vigorously was the independent and redoubtable Bill Wentworth who was not a member of the shadow Cabinet. His speeches on this subject in the House of Representatives are worth reading (see *Commonwealth Parliamentary Debates* Vol. H. of R. 93, 91-93, 276-277, 342-343 and 535-538). When Wentworth claimed that “Murphy has beaten the rap”, he came into conflict with the Speaker. Fred Daly, as Leader of the House, successfully “gagged” him. But in a later speech Wentworth was able to claim, “I think Mr Murphy resigned in order to beat the rap. I believe that he resigned because he hopes to have in the High Court a refuge from investigation into his prior misdeeds”. All too true! For that was the very reason the Cabinet rushed through his appointment! And yet not one member of the shadow Cabinet was prepared to raise that particular issue even obliquely!

Bert Kelly, the Liberal member for Wakefield, South Australia, and then a

backbencher, in directing a question without notice to the Prime Minister, referred to Murphy's ill-starred raid on ASIO during the ides of March 1973, and to his inept handling of the Gair affair during the ides of March 1974. He then added, "Will the Prime Minister assure me that his transfer of the Attorney-General to the High Court was not activated by the imminence of the ides of March 1975 rather than the legal eminence of his accident prone colleague"? D J (later Sir James) Killen, a shadow minister, attempted to draw the Prime Minister on whether Murphy as a judge would decline to sit in litigation arising from legislation with which he had been closely identified as Attorney-General. Ian Viner, who in 1972 had, as a Liberal, defied the pro-Labor nationwide swing by snatching the seat of Stirling in Western Australia from the ALP frontbencher, C H (Harry) Webb, raised the issue of Murphy's appointment during a debate on the Adjournment but very ostentatiously declined publicly to raise any matters of controversy of a scandalous nature. At the same time he referred obliquely to reservations which might well have been the same as those on which Wentworth had been most eloquent.

On the day Murphy's High Court appointment and consequent resignation from the Senate were announced to senators by the Leader of the Government in the Senate, Senator Ken Wriedt, members of the Opposition front bench uttered not one word. The maverick Liberal from Queensland, Senator Ian Wood, sought leave to make a statement on this announcement and was rebuffed by Senator Wriedt. This was ironic because it was almost certain that Wood, who was on friendly terms with Murphy, and had privately congratulated him on his elevation to the High Court, would have spoken of it in favourable terms to the annoyance of his coalition colleagues. Wriedt, by denying leave to Wood, demonstrated his reluctance to encourage any comment on Murphy's controversial elevation. Senator Peter Durack, a Liberal from Western Australia and a future Attorney-General, did no more than question Murphy's right as a judge to sit in the forthcoming Petroleum and Minerals Authority case.

At all events, and in view of his shadow Cabinet colleagues' deliberate obmutescence on the issue of Murphy's High Court appointment, Malcolm Fraser then made up his mind about at least one of the shadow Cabinet, Don Chipp, and when he felt free to do so, marginalized him with consequences with which we are now only too familiar. It appeals to my highly-developed or, as some would opine, over-developed, sense of the ridiculous to trace the origins of the Australian Democrats all the way back to Chippy's nooky with Junie.

What is beyond dispute is that Chipp found reasons of his own to resign from the Liberal Party, decided not to recontest Hotham in 1977 but, as adopted leader of the newly-formed Australian Democrats, successfully ran for a Victorian Senate seat and joined Colin Mason from New South Wales in forming that party's parliamentary nucleus

Oddly enough, they were not the first Democrats to take their seats in the Senate for they did not do so until 1 July 1978. Janine Haines, as a Democrat, was appointed to the Senate in December 1977 to fill the vacancy left by the resignation of Raymond Steele Hall who, having rejoined the Liberal Party, unsuccessfully contested a House of Representatives seat. He had been elected a Liberal Movement Senator in 1974. She remained in the Senate only until 30th June 1978 for she did not contest her seat at the election of 10th December 1977.

Chipp and Mason had no significant role in that Parliament because the Fraser

Government still had a workable majority in the Senate. This was lost in the 1980 election when the Democrats increased their Senate numbers, campaigning under the slogan, "Keep the Bastards Honest". Chipp and Mason were joined by Janine Haines (South Australia), Michael Macklin (Queensland), and John Siddons (Victoria). The Democrats gained the balance of power in the Senate, sharing it from July 1981 to March 1983 with Brian Harradine who had sat as an Independent from Tasmania since 1975. The Democrats held it in their own right from March 1983 to June 1993.

I should interpolate that Michael Townley was elected as an Independent Senator for Tasmania in 1970 after being denied pre-selection by the Liberal Party. He was re-elected as an Independent in 1974. He rejoined the Liberal Party in February 1975 and retired from politics at the 1987 election. I should also mention Syd Negus who was an Independent Senator for Western Australia from 1971 to 1974. He campaigned in the 1970 half-Senate election on an anti-inheritance tax platform and he stands out as an Independent Senator with no previous party backing. Brian Harradine continued to be re-elected an Independent for Tasmania until he retired in 2005. He holds the record as the longest serving Independent in the Commonwealth Parliament. From July 1993, the Senate's balance of power was shared by the Democrat, Green and Independent senators. As the label "Bastards" had been applied to the coalition parties, the policy of maintaining honesty was not applied as vigorously to the Hawke and Keating governments from 1983 to 1996. Perhaps it was a sense of the joys of the hunt being a thing of the past that prompted Chipp to quit politics in 1986 to be succeeded as leader of the Australian Democrats by Janine Haines who was to give us a foretaste of the Greens' Christine Milne with her fixed stare and whining monotone.

But, as Nick Cater has remonstrated, "What, however, did the Democrats want to keep the bastards honest *about?*" And, having already questioned Cater on Chipp's motives for deserting the Liberals in 1977, I am more than happy to quote him here with approval:

. . . Not fiscal policy, trade or employment, or indeed anything central to the productive economy. Welfare or industrial relations hardly featured on the Democrats' agenda. Chipp's speeches in the Senate catalogue the middle-class anxieties of the 1970s and 1980s: the Armenian genocide of 1915, the Indonesian occupation of East Timor, Pol Pot's atrocities in Cambodia and the apartheid regime in South Africa are roundly condemned. There were failed motions to prevent nuclear warships entering Australian waters and to stop aircraft carrying nuclear material flying overhead. Chipp called for a moratorium on uranium mining after the accident at Chernobyl and warned of the coming nuclear winter that 'could block out all forms of life for centuries'. The rainforests of Queensland must be protected, and the Franklin remain un-dammed; indeed Tasmania's jurisdictional rights must be overturned if necessary, since letting Tasmanians decide the fate of the Franklin was 'about the same as letting the population of Alice Springs or Darwin vote by referendum to have Ayers Rock crushed by bulldozers'. The Chipp manifesto is a catalogue of symbolic causes: multiculturalism, a bill of rights, land rights for indigenous people, and opposition to vivisection, cruel farming practices and animals in sport. He preached the politics of the dinner party and his objective was the warm inner glow.

The Democrats were not so much a party as a moral enclosure, a rich measure of

virtue upon which the middle class could graze. By declaring that the Democrats would resist special pleading and vote according to what was right, Chipp cornered the growing market of *identity politics* among the expanding tertiary-educated middle class. They rallied not around ideology but a totem. To belong to the Democrats was less a political statement than an expression of personal virtue and . . . [Chipp's] utterances were unsullied by grubby everyday politics.

All this aside, it has to be acknowledged that, as a parliamentary party, the Democrats proved to be a particularly fractious lot. Almost every outgoing leader detested the person succeeding to the leadership, and vice-versa. John Siddons (Vic), with a background in business, was, I suppose, more earth-bound than most of his colleagues, although, here, I would make the same claim of Andrew Murray who was elected to the Senate in 1996 but declined to seek re-election in 2007. Siddons was defeated in the 1983 double dissolution election but returned to the Senate in 1985. He was deputy leader from 15 August to 16 November 1986 but resigned, becoming an Independent. He stood unsuccessfully for the UAP in the election of July 1987. David Vigor (South Australia) was a Democrat Senator from July 1985 to June 1987. He also stood unsuccessfully for the UAP in the July 1987 election, having dissociated himself from the South Australian Division of the Australian Democrats.

Janine Haines brought her political career to an end by recklessly and unsuccessfully contesting the South Australian seat of Kingston in the 1990 election. She was succeeded as leader by Janet Powell, who died recently. Powell filled the Senate vacancy left by Don Chipp on his resignation in August 1986 and was elected to sit from July 1987 to June 1993. She was leader of the party from 1 July 1990 to 19 August 1991. As Judith Ireland put it in her obituary in the *Sydney Morning Herald* on 2 October 2013, Powell quit the party on 31 July 1992 “after internal ructions”. The background to these “internal ructions” had been her liaison with a parliamentary colleague, the lugubrious Sid Spindler, which proved to be more than *une amitié amoureuse*. Indeed, there was more than just a little nooky there! She sat as an Independent before being defeated at the 1993 election. Significantly she joined the Greens in 2004.

In this context I would draw attention to an excellent paper delivered to the 2005 conference of this Society by John Nethercote which was subsequently published with its proceedings. Entitled “Senate Vacancies: Casual or Contrived”, it was a deadly attack on the working of Section 15 of the Constitution as amended by referendum in 1977. He emphasized that where a senator appointed to a casual vacancy prior to that amendment was required to face the electors at the next election, be it for the House of Representatives or for half the Senate, under the amended section 15 “the new Senator would inherit the entire balance of the term of the predecessor”. Further into his paper he elaborated on the advantage of incumbency:

This advantage is seen very clearly among the cross-bench parties. It is perhaps most visible, ironically, in the case of the Australian Democrats who hardly wince when it comes to turnover of parliamentary representation by means of party selection rather than popular election. Of the 26 Australian Democrat Senators in the Senate since 1977, no fewer than eight have first entered via s. 15, seven before winning the support of the electors at the polls. This number included former party leaders Janine Haines, Meg Lees, Natasha Stott-Despoja and Andrew Bartlett.

I should mention that Janine Haines's entry into the Senate in 1977 highlighted yet another egregious shortcoming in the amended Section 15. Those who drafted that amendment had to confront the issue of how a casual vacancy could be filled if the party to which the outgoing senator had belonged had ceased to exist. Those drafting it effectively consigned that conundrum to the "too hard" basket and made no provision for it at all. Yet, at the first occasion the amended section 15 came to be enforced, that very problem was present! The South Australian Premier, Don Dunstan, decided to nominate the Australian Democrat, Janine Haines, because she had been placed second to Raymond Steele Hall on the Liberal Movement ticket at the time of his election in 1974. In short, and contrary to the intention of the amended section 15 that the State parliaments should be bound by the dictates of political parties in the filling of casual Senate vacancies, on this occasion the discretion was left in the final analysis to the Government and the Parliament of South Australia.

The Democrats came to be threatened not so much by the major parties as by rivals who aspired to displace them as the party of the warm inner glow. Peter Garrett's nuclear disarmament party, although unsuccessful, put the wind up the Democrats who claimed plausibly enough that they were anti-nuclear too. The 1996 election, which saw Bob Brown first elected as a Tasmanian Green Senator, was a bitterly fought contest between the Democrats and the Greens. Brown, however, was not the first senator with a green outer colouring. The West Australian Greens were represented in the Senate from 1990 to 1999 by Christobel Chamarette and Diane Elizabeth (Dee) Margetts. I have a hazy recollection that they were nicknamed "Tinkerbell and Wendy". An article appeared under Liz Young's name in the *Australian Journal of Political Science*, Vol. 34, No. 1, 7-27 entitled "Minor Parties and the Legislative Process in the Australian Senate: A Study of the 1993 Budget". I quote in part from the article's introductory abstract:

In 1992, minor parties in the Australian Senate played a prominent role in negotiating changes to the ALP government's budget. The term 'obstructionist' was widely applied by the media and the Labor Party in describing these actions, particularly when it came to the Greens' (WA) efforts to change aspects of the budget bills.

To return to the Democrats. Cheryl Kernot had been elected a Democrat Senator for Queensland in 1990 to succeed Michael Macklin. On 30 April 1993 she was elected to succeed as party leader an eco-nut from South Australia, John Coulter, who resigned his seat on 20 November 1995. The Australian Democrats held their 20th Anniversary National Conference in Canberra on 17-19 January 1997. As Professor John Warhurst recounted, "The party mood was ebullient because 1996 had been an excellent year. The March 1996 federal elections had led to the election of five Senators and the consolidation of the Democrats' position in the Senate". Senator Kernot, as party leader, said, in her opening address, "After 20 years we are entitled to say with confidence that we are here to stay and, after 1996, we can say with equal confidence that our best is yet to come".

Well, the party was to stay for about another ten years, but without Cheryl! After she had made that confident prediction, she resigned from the party and from the Senate on 15 October 1997 and joined the ALP. She claimed that in leading a minor party in the Senate she "had a limited capacity to help minimize . . . the damage being done to Australia by the Howard Government". She also professed to find in the ALP a

greater sense of purpose and camaraderie. There was, however, more to it than that. Indeed, it could be said that this turn of events revealed at the parliamentary level a sexually transmitted change in party allegiance. Kernot was the ALP member for Dickson (Queensland) from 1998 to 2001.

The Greens were able to keep up the pressure on the Democrats and, from the *Tampa* episode on, to outflank them as bleeding hearts promoting the interests of boat people and stridently questioning the Howard Government's successful border protection policies which had effectively undermined the callous conduct of people smugglers. Meg Lees led the Democrats from 1997 to 2001 when she was succeeded by Senator Natasha Stott-Despoja, or "Stock Despoiler" as I have called her. Natasha deserves to be remembered for urging in the 1999 referendum campaign that Australia should become a republic like Canada. Lyn Allison took over as Acting Leader from 2003 to 2004 and led the party until its demise in 2008. Allison is, I believe, the only Federal parliamentary leader to have admitted to having had an abortion.

The outgoing Democrats speaking at the valedictory in 2008 were predictably and understandably self-congratulatory. They emphasized their very hard work on committees. Senator Nick Minchin contributed to the debate by recalling his experience as State Director of the Liberal Party in South Australia in successfully campaigning against Janine Haines in 1990: "That campaign in Kingston proved to me that, if you put the spotlight right on the Democrats and some of their more odd policies, you can take them down". This surely is the way to set about taking down the Greens.

I shall not lengthen this already overlong paper by giving detailed consideration to the Greens. After all, have not those of us who have had to endure their antics over the past three years and even earlier a just claim to having had a gutful of them.

In 2010 Julia Gillard, as Prime Minister leading a minority ALP government, negotiated a deal with the Greens as a guarantee of their support. This deal included legislating for a carbon tax which was in direct conflict with her promise during the 2010 election campaign that no government she led would introduce one. Why she needed to negotiate such a deal must remain a mystery! There was no likelihood that the Greens would give their support to the coalition parties under Tony Abbott's leadership. So Gillard could have counted on Green support unconditionally. This particular deal recalls the experience of the Australian Democrats after their leader, Meg Lees, negotiated with and, within the compass of that negotiation, co-operated with the Howard Government in passing through the Senate its legislation introducing a new tax system featuring a goods and services tax. Those supporters of the Democrats who relished the warm inner glow felt that their purity had been defiled by Lees's cooperation with the Howard Government. The Gillard Government's deal with the Greens seems to have much the same result and for the same reason. The ALP's support plummeted to such a degree that only seven of the seats it won in 2013 were on the primary vote alone. All the other seats they won depended on preferences. And the Greens's total vote declined by 28 per cent.

Two Independents from New South Wales, Tony Windsor (New England) and Rob Oakeshott (Lyne), also undertook to support the Gillard minority ALP Government. The contrast between those two and Arthur Coles and Alex Wilson could not be more marked. Coles and Wilson, in bringing down the Fadden coalition Government in 1941, and installing John Curtin as a Labor prime minister, were both so in tune with

their respective electorates that they successfully recontested them at the next election in 1943. Windsor and Oakeshott could not claim the same rapport with their electorates after 2010. Both were, in effect, to concede this. In the election in 2013, Tony Windsor chose not to recontest New England and Rob Oakeshott felt constrained to the same decision respecting Lyne.

Campbell Sharman recently produced for the Parliament of Australia a paper entitled *The Representation of Small Parties and Independents* in which he dealt with the subject with a greater earnestness than I have been able to muster. It is on the internet if you wish to consult it. I have to agree with him that, for all their awkwardness and sheer bloody-mindedness, minor parties and Independents have made the Senate a more effective house of review than it was prior to 1955 when the consequences of the changes to the Senate's electoral system enacted in 1948 first became apparent. At the same time it has to be acknowledged that, since the 2013 election, the Greens have embarked on an obstructionist policy against mandated policies of the coalition government led by Tony Abbott. And in this they have enjoyed the co-operation of the Australian Labor Party.