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Chapter 5:

WOMEN IN, ABORIGINES OUT

THE FRANCHISE ACT of 1902 would determine who could vote, and the Electoral Act of the same year how elections would be managed, the roll constructed and votes counted. The debate on the complex Electoral Act (which ran to seventeen parts and 210 pages) was longer as parliamentarians argued over detail, but the debate on the Franchise Act—just five clauses and one and a half pages—tells us more about how our first parliament imagined the new nation. Women were made full citizens, but Australia's Aborigines were thrust out.

The franchise bill framed by Edmund Barton's government was wide and generous: all adult persons 'who are inhabitants of Australia and have resided therein for six months continuously' would have the vote. Restrictions were minimal: only those of 'unsound mind', 'attainted of treason', or facing or serving a sentence of a year or longer were excluded.

Introducing the bill in April 1902, Senator Richard O'Connor made clear the government's commitment to a uniform franchise for the new nation, rather than depending on state franchises and election laws. A New South Wales vote should not have a different value from one in South Australia. A uniform franchise is the only rational way to get 'a true record of the real opinion of Australians on all the difficult questions which will come up for settlement'.

When the bill went to the House the first objection raised was by fighting Charlie McDonald, the Labor member for the vast Queensland outback electorate of Kennedy, who questioned the innocuous-looking word 'resided'. 'What constitutes residence within the Commonwealth?… It has been held in Queensland that because men live in tents they are not residents.' The Minister for Home Affairs, William Lyne, who was shepherding the legislation through the House, replied that it did not matter whether a man 'lives in a house or a hollow log, or spends all his time on horseback, so long as he remains within the Commonwealth for a period of six months'. Labor was not

convinced. Members for outback electorates gave many examples of magistrates refusing to enrol people to vote who had no fixed address: men who lived in camps on the river banks, ‘the awful swaggie’ who had no stake in the country, men whose occupations compelled them to lead a nomadic life, bullock drivers who slept under their drays. Labor insisted that the parliament’s intentions be made crystal clear to the district electoral registrars, so the clause was amended to read, ‘who have lived in Australia for 6 months’. ‘Reside’, with its implications of a settled residence, was gone.

McDonald’s objection goes to the heart of the radical-democratic political culture being forged in Australia in the early twentieth century. The labour movement had worked hard to recruit scattered rural workers to the new unions like the Australian Workers’ Union and it wanted to make sure no country magistrate could stop them voting.

Giving the vote to ‘all adult persons’, the bill enfranchised women. Although this seemed all but guaranteed by section 41 of the constitution, the parliament wanted to legislate for it. Both O’Connor and Lyne assumed this debate was already won. All the state Labor parties supported the adult franchise, as did most liberals. But still members wanted to have their say: most to assert their longstanding support for this democratic provision and extol its benefits, a few to repeat their doubts and objections.

Only benefits would flow from giving women the vote, claimed Lyne, pointing to the positive experiences in South Australia and New Zealand. Political knowledge and interest would increase, and women would bring their shrewd judgement to the characters of the male candidates. Alexander Poynton from South Australia added that, since women had gained the vote in that colony, political meetings had been less rowdy and much better conducted. By then South Australian women had in fact voted at six elections, including one to choose the delegates for the federation conventions and the two referenda on the constitution.

Despite knowing their cause was lost, opponents nevertheless repeated their well-worn arguments: that women would be degraded by being forced to associate with the vulgar world of politics; that it would deprive men of the responsibility of protecting them; that women didn’t want it anyway; that, having little interest in politics, they would simply vote as their husbands told them to, which would give married men one vote more than a bachelor. The Tasmanian MP Edward Braddon objected because the female franchise would swell the conservative vote, which was just the reason that the South Australian senator John Downer supported it.

One argument was specific to Australian circumstances. Far more women lived in the city than in the country, claimed the pastoralist and member for New England, William Bowie Sawers. Enfranchising women would shift the balance between city and country electorates, and disadvantage the latter. It was already a 'burning grievance' in country New South Wales that Sydney had so much representation. Sawers knew he was on the losing side of this issue, but the objections of rural Australia to representation based on population numbers did not go away, and the less-populated country districts continued to agitate for special consideration.

Diehard conservatives aside, the majority of federal parliamentarians supported extending the vote to women, and this clause of the bill passed easily through both houses, with unanimous support in the Senate and eleven Noes, including pairs, in the House of Representatives, where a division was taken just before midnight on 23 April.

A week after the bill received the royal assent on 12 June, a mass meeting was held at the Melbourne Town Hall to celebrate the victory and to put pressure on Victoria's Legislative Council, which was persisting in denying adult suffrage for state elections. Catherine Spence, now seventy-six, was on the platform. Rose Scott, who had led the campaign in New South Wales, sent a message; as did the leading Victorian suffragist Henrietta Dugdale, who was too weak to attend. Alfred Deakin, who was acting prime minister while Barton was overseas at the coronation of Edward VII, told the meeting that Australia now had 'the broadest franchise in the world', with 'a Parliament representing a continent…to be returned by the votes of the womanhood as well as the manhood of the country'. But this was not quite accurate, for the act which had enfranchised women had also disenfranchised the continent's original inhabitants.

The disenfranchisement of Aborigines is a complicated and shameful story, but at least there was a fight. The franchise bill that Edmund Barton's government drew up was broader in scope and more liberal than the act which eventuated. The government did not want to take the vote away from Aborigines but ended up compromising to get its legislation passed. The debate shows that the racialist thinking of White Australia was not uniformly applied to the Aborigines and that some people were already thinking about Aborigines' rights within the quite different framework of their dispossession.

The bill that Richard O'Connor introduced did not mention race. He began his second-reading speech by rehearsing its main liberal clauses—a uniform franchise, no property qualification, and adult suffrage—and then said, 'There is only one other question which

may, perhaps, be a matter of controversy, paragraph b of clause 3…[which] refers to those who are natural born or naturalised subjects of the King.' Quick as a flash, South Australia's Tom Playford interjected: 'That will enable a negro to come here from Jamaica and vote.'

To this 'offhand' comment, O'Connor pointed out that, although Western Australia and Queensland prevented Aborigines and coloured persons from voting, in the other four states 'aboriginals and coloured persons who are naturalized subjects of the King have a right to vote.' He reassured senators that the number of coloured people actually exercising this right would be small. Some already in Australia would be able to vote, but because of the Immigration Restriction Act passed the previous year their numbers would not grow. This act ensured that future immigrants to Australia would be white, and had overwhelming support across the political spectrum, but Barton's government had not applied the logic of White Australia to the rights of the Aborigines. Said O'Connor,

> In the first place, I think it will be recognised that the question of whether aboriginals should vote or not is not a matter to be seriously taken into consideration where they are settled members of the community. Where they have settled down in occupations of some kind, I fail to see why they should not be allowed to vote in the same way as is any other inhabitant of the country. I think that we might treat this question of the position of aboriginals under our electoral laws not only fairly, but with some generosity. Unfortunately they are a failing race. In most parts of Australia they are becoming very largely civilized, and when they are civilized they are certainly quite as well qualified to vote as are a great number of persons who already possess the franchise.

O'Connor's assumptions of a failing race and the benefits and inevitability of assimilation to our civilised ways offend contemporary views on indigenous rights and culture, but we must look at what he is saying: that an Aboriginal person's race should not determine their legal status. O'Connor's father was Irish and he was one of the few Roman Catholics in the parliament. Sectarian prejudice against Irish Catholics was rife in colonial Australia, and this no doubt gave him greater sympathy for the plight of the marginalised than had many of his Protestant colleagues. But his role should not be overstated. The bill was not the product of his views alone but of the ministry, including Alfred Deakin, Edmond Barton and William Lyne.

Defending Aborigines' right to vote, O'Connor also pointed out that section 41 of the constitution guaranteed the right of those already on a state electoral roll to have their name placed on the Commonwealth electoral roll. The franchise laws of the colonies differed widely in regard to Aborigines. As British citizens, Aboriginal men could vote in New South Wales, Tasmania and Victoria, although Tasmania believed it no longer had any. In South Australia both Aboriginal men and women could vote. In New South Wales and Victoria, however, anyone receiving charitable aid from the government was barred from voting, which included Aborigines living on missions, as well as people in institutions for the destitute. Queensland and Western Australia specifically excluded Aborigines from enrolling to vote unless they met certain property qualifications, which few did.

This combination of restrictions meant that very few Aborigines in fact voted in colonial Australia, but some did. In South Australia, for example, a polling place was established at the Point McLeay mission at the mouth of the Murray after parliamentarians visiting the mission were pleasantly surprised by the intelligent, well-spoken men and women they met there. In 1896, 102 were enrolled and eighty-one voted. In the debate on the franchise bill, William Lyne claimed that some Aborigines in New South Wales voted and that he had seen them voting.

When the Federation Convention had debated section 41, nobody mentioned Aborigines, although it would give a vote in Commonwealth elections to anyone already on their state rolls; on a wider interpretation it would give the vote to all Aborigines. They were mentioned, however, in section 127: 'In reckoning the numbers of the people of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives shall not be counted.'

The purpose of this clause was not permanently to exclude Aborigines from the government's collection of statistics, but to exclude them from electoral calculations so that states like Queensland and Western Australia with large indigenous populations did not receive more seats than their white population warranted. Lacking exact knowledge of the numbers of Aboriginal people and assuming that few of them would vote, delegates decided that their numbers would not affect a state's quota of electorates. When this section was being discussed at the conventions, South Australia's John Cockburn was reassured by both Deakin and O'Connor that it would have no effect on the voting rights of Aborigines already on the roll. Their vote was already guaranteed by section 41, he was told.

O’Connor’s hope that clause 3, paragraph 6 of the bill would not become a matter of controversy was dashed. Race was at the forefront of the minds of parliamentarians who had just established the legislative foundations of a White Australia with the Immigration Restriction Act and the Pacific Labourers Act, which expelled the Pacific Islanders, or Kanakas, working in North Queensland’s sugar industry. Why, asked the Victorian senator James Styles, would those who advocate for a White Australia give Australia ‘a piebald ballot box’?

On the second day of debate in the Senate, 10 April 1902, the West Australian senator Alexander Matheson moved the crucial amendment excluding Aborigines from the franchise. It read: ‘No aboriginal native of Australia, Asia, Africa or the islands of the Pacific or persons of the half-blood, shall be entitled to have their name placed on the electoral roll unless so entitled under section 41 of the Constitution.’

Some senators were uneasy about excluding people who were subjects of the king elsewhere in the British empire, but not Matheson. A Harrow-educated businessman who had arrived in Kalgoorlie in 1894 and established a successful goldfields retail business, Matheson was unashamedly racist and saw no place for Aborigines in the new nation. He had already made this clear the previous year when, during the debate on the governor-general’s address, he had replied to the New South Wales senator James Walker’s statement that ‘This was a black-fellow’s country before it was a white man’s country’ as follows:

> The honorable gentleman…fails to recognise that we have taken this country from the blacks, and made it a white man’s country, and intend to keep it a white man’s country, so that there is no earthly use in the honorable gentleman saying that 100 years ago this was a black man’s country.

When Walker protested that there ‘are still 100,000 aborigines in Australia’, Matheson replied, ‘We are aware of that fact, and it is very regrettable, and the only consolation we have is that they are gradually dying out.’

In the debate on the franchise Matheson made clear that his objection to 'the coloured races is a racial one. To me it is a matter of indifference whether they are subjects of the King or whether they are not naturalized…As a voter none of them had any electoral rights in the country from which he came.'[17] He went on:

> Surely it is absolutely repugnant to the greater number of the people of the Commonwealth that an aboriginal man, or aboriginal lubra or gin—a horrible, dirty, degraded creature—should have the same rights, simply by virtue of being 21 years of age, that we have, after some debate today, decided to give to your wives and daughters.

He pointed to section 127 of the constitution, which excluded Aborigines from population counts, as evidence that the drafters 'never for an instance contemplated that aboriginals would have a vote'.

O'Connor did try to reassure the Senate that because of the Immigration Restriction Act the number of natives from Asia, Africa and the South Pacific who qualified to vote was likely to be small; however, he showed little interest in defending them. By contrast, he fought hard to retain voting rights for Aborigines.

> I say it would be a monstrous and a savage application of this principle of a white Australia. I do not believe this committee will consent to go back upon what has been the policy of Australia ever since the white man came here.

He believed that many of them would not want to vote, and that their numbers were shrinking as the race declined. Nevertheless, he reiterated, four of the six states had not excluded Aborigines from voting. When Matheson objected that most of them were living on charity and so couldn't vote anyway, O'Connor disagreed:

> It is altogether a mistake to suppose that the aboriginal of Australia is to be classed in every State as being a person supplied by the Government with a blanket. No doubt a great number in all the States are aided by the Government, but many of them are earning their living as ordinary members of the community…As we have in the past been liberal and jealous for those decaying races that owned this continent, and as at no time any harm or wrong has

> resulted from that liberality, surely we are not going to apply this doctrine to a white Australia, not only with irregularity but with a savagery which is quite unworthy of the beginnings of this federation?

He pointed out that although Aborigines already on their state rolls would be able to vote,

> those very men will have to tell their sons who are becoming more civilized, and perhaps as civilized, and as worthy of the franchise as the white men among whom they are living—'Although your people owned this territory for centuries before the white man came here, although you are his equal in intelligence, it has been prescribed by the Commonwealth that you shall not have the right to vote at all.'

For Matheson race was the main issue. O'Connor, however, clearly differentiated the situation of Aborigines from that of the Chinese and Indians. He claimed he was as staunch an advocate of White Australia as anyone, but for him White Australia started at the shore and was not a hard internal border; the rights of the Aborigines flowed from their prior ownership of the country.

Matheson was concerned too that giving Aborigines the vote would put power in the hands of the squatters to swell the conservative vote.

He disagreed with O'Connor that few Aborigines would vote. Every squatter in Western Australia 'maintains a gang or tribe of aboriginal natives', he said. If squatters are able

> to put every one of these savages and their gins upon the federal rolls…the entire representation of that part of the country in the Federal Parliament will be swamped by aboriginal votes. Does any honorable senator suppose that these blacks will vote on anything but the instructions they receive from their masters?

These crusted-on conservatives

> never regard anything from the point of view of public policy or of the advancement of the State or the Commonwealth. They simply consider how they may put the most money into their pockets by the sale of their fleeces and their beef, and how cheaply they can get their work done.

O'Connor succeeded in having 'Australia' dropped from the amendment by a majority of four and the bill, denying the vote to Aboriginal natives of Asia, Africa or the islands of the Pacific and 'persons of the half-blood', was sent down to the House of Representatives. Lyne moved that the reference to half-bloods be omitted, and that 'except the islands of New Zealand' be added, so that Maoris could vote. Maoris, with their villages, settled agriculture and capacity to organise for war, were generally regarded as more civilised than Australia's Aborigines and had been voting in New Zealand since 1867. Both these amendments were accepted.

The radical liberal lawyer Henry Bourne Higgins then moved to have 'Australia' reinserted.

> It is utterly inappropriate to grant the franchise to the aborigines, or ask them to exercise an intelligent vote. In as much as all that we are constrained to do is to keep alive existing electoral rights in pursuance of section 41 of the Constitution…I do not think that there is any constitutional obligation on the committee to provide for a uniform franchise for the aborigines.

For Higgins, the ideal voter was a well-informed, independent citizen living in a civilised community. This ideal later informed his famous Harvester Judgment, which he delivered in 1907 as president of the Commonwealth Court of Conciliation and Arbitration. He based his determination of a fair and reasonable wage on 'the normal needs of the average employee regarded as a human being living in a civilized community'. Intelligence, independence, civilisation: these were what qualified a person to vote, and Higgins could see none of these qualities in Aborigines, though it is doubtful that he knew any.

Labor's leader, Chris Watson, said he had 'no objection in principle to an aboriginal, who, having qualified for the franchise takes an interest in electoral matters, exercising the vote on his own initiative'. But he feared Aboriginal votes being controlled by squatters. Labor was convinced that employers would try to direct the votes of their workers if given the chance. Watson worried that in the remote districts of Western Australia and Queensland, where there were more Aborigines than whites, 'uncivilised blacks' who are 'practically slaves' of the squatters would have no chance of resisting and might 'turn the tide of an election in the interests of those who had a fair amount of money'.

One Labor member, James Ronald, was troubled by excluding Aborigines as a class. Couldn't there be an education test, he asked, to make provision for 'aboriginals who may rise above their "birth's invidious bar"'? Ronald was a Presbyterian minister and so more sensitive to the claims of a universal humanity: 'To draw a colour line, and say that because a man's face is black he therefore is not able to understand the principles of civilisation, is misanthropic, inhumane and unchristian.' Ronald's suggestion got no support. When Higgins's amendment restoring the original wording and excluding Aborigines was put to the vote, it wasn't even close: twenty-seven Ayes to five Noes.

The five Noes were James Ronald, Hugh Mahon, Billy Hughes, Vaiben Louis Solomon and Henry Willis. The first three were members of the Labor Party, and Solomon, a long-time Northern Territorian, was close to Labor. He was also Jewish, which may have made him more sympathetic to the claims of racial minorities. Willis was a Free Trader and member for the New South Wales seat of Robertson. All were strong, vocal supporters of White Australia, but like O'Connor they distinguished between racially discriminatory immigration laws and laws for Aborigines. Alfred Deakin was not in the chamber and did not cast a vote. He had other things on his mind that day, as he had just written to Barton resigning from the ministry over a proposed increase in the salaries of members of parliament.

When the bill went back to the Senate, with the word 'Australia' disenfranchising Aborigines reinserted, O'Connor reluctantly bowed to the inevitable.

> I took a very strong view that an aboriginal ought to be allowed to have his vote, and the committee agreed to that view. But the other House has taken the opposite view, and inserted the word 'Australia' for the reason that, while in New South Wales, Victoria, and other States there are a large number of aboriginals

> who may be very well intrusted with the franchise which they possess, in Western Australia there are a large number who, living in a state of semi-civilization in the neighbourhood of towns, might become registered, and that the clause applies not only to the blackfellows, but also to their gins. The prospect of our giving the franchise to the half-wild gins living with their tribe seems to have startled some of our friends in the other House…Although I admit that some strong reasons were given for differentiating the case of Western Australia, I would very much prefer the Bill to be carried in the form in which it left the Senate. But, like honorable senators, the Government have to consider whether it is worthwhile to throw over the Bill because we cannot get what we want in this clause. It appears to me that, inasmuch as legislation cannot take place unless we come to an agreement, it is not worthwhile, for the sake of this particular provision, to stand out for our own way, and so run the risk of losing the Bill.

In both houses, arguments against enfranchising Aborigines were a mixture of political calculation and racism. Dreadful things were said about ignorant savages, as some parliamentarians shuddered to think that the vote they had just given to their wives and daughters would be shared with such creatures. Sexual relations between white men and Aboriginal women on the frontier and in outback towns, though well known, was too shameful to be discussed, but this knowledge surely animated the horror some members felt about giving the vote to 'dirty degraded gins'. Also widely known but not openly discussed was the violence of the moving frontier in the north and the west. It is striking that the attack on the government's intention to enfranchise Aborigines was led by men from Queensland and Western Australia.

Matheson had referred to some of this indirectly during the debate in reply to the governor-general's speech, when staking the claim to Australia as 'a white man's country'. In Western Australia, he said, 'very large portions of the very best pastoral country in that State are almost barred from pastoral occupation on account of the savageness of the blacks.' No doubt he was referring in part to the guerrilla campaign of resistance that the Bunuba man Jandamarra, or Pigeon as he was known to Europeans, had waged in the Kimberley region for three years in the 1890s.

Similarly, the Northern Territory had been rife with violence since at least the 1880s, when a massive pastoral boom began. The Gulf Country and Barkly Tableland were settled rapidly and violently, with little regard for the rights or welfare of the people living there and with numerous punitive expeditions to teach the 'wild blacks' a lesson when

they speared cattle or killed a white drover. Senator John Downer certainly knew of the violence in the north. He was premier of South Australia during the 1880s and 1890s, when the worst violence was occurring, and complicit in ensuring that there were no successful prosecutions against its perpetrators.

As I read the parliamentary debates over the franchise bill, and the disgraceful comments made by so many politicians about the 'wild blacks' and their degraded gins, I wondered what was in the minds of these men as they spoke and voted. Some city-based men like O'Connor and Higgins had little knowledge of the realities of the frontier. Otherwise O'Connor could not have claimed that governments had been 'liberal' in their treatment of the 'decaying races' and had done no harm. Others, like Forrest and Downer, knew only too well that O'Connor was wrong. Matheson, who moved the initial amendment, must have smiled at his naivety. Did these men oppose giving the vote to Aborigines out of barely acknowledged shame, or even fear that this little chink of recognition of Aboriginal people's claims to equality would expose the criminal violence of the frontier? If the relatives of those killed could vote, perhaps they might take courage to speak about what they knew and had seen.

Today the disenfranchisement of Aborigines by the 1902 Franchise Act is one of the infamous stepping stones of cruelty and shame in our treatment of indigenous Australians. At the time it was barely noticed, as suffragists around the country celebrated the enfranchisement of women.

The voting rights of Aborigines now depended on how section 41 would be interpreted in relation to those states that did allow Aborigines to vote. The narrowest interpretation was that it only applied to people who were already on the state rolls; the widest, that the right could be acquired at any time under a state law passed at any time. Those already on the state rolls in South Australia, New South Wales and Victoria in 1902 could not be deprived of their vote, but what of those who turned twenty-one after that date, or who, already qualified, sought to enrol for the first time?

Parliamentary debate could not resolve a matter of constitutional interpretation, yet in the absence of a High Court judgment public servants needed to know who to enrol. Robert Garran, secretary of the attorney-general's department, advised them to take the narrower interpretation, which they did. Only those Aborigines already on a state roll could vote in Commonwealth elections.

The act did not exclude ‘persons of the half-blood’, and in 1905 Garran advised Queensland’s Chief Protector of Aborigines that ‘half-castes’ were not disqualified from the Commonwealth franchise, ‘but that all persons in whom the aboriginal blood preponderates are disqualified’. Garran subsequently clarified the preponderance of aboriginal blood as meaning ‘ancestry’. It was a simple dichotomy which rejected pressure for more elaborated racial hierarchies, with quadroons and octoroons. It should have enfranchised many more people than it did, but it was left to electoral officers to decide whether an individual was ‘full blood’ and ineligible, or ‘half-blood’ or less, and so eligible. They did so largely on the basis of skin colour and their own judgements about individual Aboriginal people’s capacities.

As the states adopted joint electoral rolls during the 1920s, the commonwealth’s narrower franchise, based on Western Australia’s and Queensland’s exclusionary voting laws, came to prevail. As well, the new joint electoral form did not alert Aboriginal people to their right to vote in Commonwealth elections if they were already on the state rolls in 1902, thereby wrongly implying that no Aborigines could vote for the Commonwealth. Individual Aborigines who had been on the Commonwealth roll since 1902 because they were already on a state roll found their eligibility questioned. In 1933 eleven Aborigines living at Point McLeay in South Australia who had been voting since 1902 were disenfranchised by electoral officers. This was clearly unlawful, but the individuals concerned did not challenge the decisions. It was an arbitrary and unjust system which was not seriously contested until the 1940s.

In 1924 an Indian and British subject who had enrolled in Victoria, Mitta Bullosh, challenged the Commonwealth in the Court of Petty Sessions over its refusal to add him to the electoral roll, and the magistrate found in his favour. The federal government initiated an appeal to the High Court, but quickly came under pressure from London. The British government had never liked Australia’s Immigration Restriction Act, which banned some British subjects from migrating to Australia because of the colour of their skin, but it had reluctantly agreed to allow Australia to set its own rules on migration. Indians had complained loudly about this race-based discrimination. Asking the High Court to block Indian voting rights would inflame already difficult imperial relations, so, at London’s request, the government dropped the case.

Then, in order to prevent Mitta Bullosh becoming a precedent for a broad interpretation of section 41, which would have extended the franchise to Aborigines and to many other excluded people in New South Wales, Victoria and South Australia, the government passed a special law to give voting rights to Indians. The 2,300 Indians in Australia were

appeased, and the narrow interpretation of section 41 continued to guide the decisions of electoral officers. Had an Aborigine on one of the state electoral rolls mounted a similar challenge, Aborigines might have gained the federal franchise forty years earlier than actually happened, but none did. Nor were there any progressive lawyers offering to support them.

In one respect non-Europeans were in a far better position than the Aborigines, if they had managed to slip through the immigration restrictions or had been here since the nineteenth century. Even though they were ineligible to vote if born in Asia, Africa or the Pacific (except New Zealand), their children born in Australia were eligible. In 1912, Garran wrote that 'persons of Asiatic race (for example) born in Australia are not disqualified.' For non-Europeans, it was only the first generation who were disqualified, but for Aborigines who were all born here, the disqualification passed from parent to child.

Aborigines did not start to receive Commonwealth voting rights until World War Two, when those in the armed services were temporarily enfranchised. Initially this lasted only for six months after the war ended, but then all Aborigines who had served or were serving in the defence forces were given the vote for Commonwealth elections. In 1949 the Commonwealth franchise was extended to Aborigines on the state rolls, something which would have happened in 1902 had the broader interpretation of section 41 prevailed. Commonwealth electoral officers, however, made little effort to inform people of their new eligibility and did not enforce either compulsory enrolment or voting in the states where Aborigines were entitled to be on the roll. South Australia's Chief Electoral Officer, for example, took no action to enrol people who were 'primitive, illiterate, nomadic, [or] periodically nomadic'.

In Western Australia, Queensland and the Northern Territory, where most Aborigines lived, they were not on the state rolls and so still unable to vote in federal elections unless they had served in the armed forces. As well, many who would have been eligible to vote under the Commonwealth's 'preponderant blood' rule were not on the federal rolls. Some few more could vote in the Northern Territory if they were not classified as wards of the state and in Western Australia if they held certificates of citizenship, but these required them to have adopted 'civilised' manners and habits and dissolved their tribal associations. Unsurprisingly, many were reluctant to do this, and when the Select Committee established in 1961 by the House of Representatives visited Western Australia it found a good deal of ambivalence among indigenous people about voting rights.

Official definitions of ‘aboriginality’ differed in the different jurisdictions, and for different government entitlements. Many lighter-skinned people may well have passed the ‘preponderant blood’ test but either did not know this and no one disabused them; or they refused to subject themselves to its offensive assimilationist assumptions. Aboriginal people identified themselves as Aboriginal on the basis of their descent and community membership, not the colour of their skin.

The 1961 Select Committee to enquire into the Aboriginal franchise found that around thirty thousand Aborigines and Torres Strait Islanders in Queensland and Western Australia were denied the federal vote because they were not on the state rolls. It also revealed ‘a virtual conspiracy of silence’ by the Commonwealth’s electoral officers about Aboriginal and Torres Strait Islander peoples’ existing voting entitlements. The Select Committee received various submissions arguing that Aboriginal people’s voting rights should be tied to various tests, such as literacy, financial status or receipt of public assistance. Such criteria were not applied to non-Aboriginal voters, so the committee rejected them and recommended that ‘the right to vote in Commonwealth elections be accorded to all Aboriginal and Torres Strait Islander subjects of the Queen, of voting age, permanently residing within the limits of the Commonwealth’. This was done in 1962. Registration was not made compulsory, because this would disenfranchise Aboriginal people who did not vote to fines, but voting by those enrolled was. Labor objected to voluntary registration, as this was a backward step for Aborigines in Victoria, New South Wales and South Australia.

Aboriginal people did not become subject to exactly the same voting laws as other Australians until 1983, when the Hawke Labor government made both enrolment and voting compulsory for indigenous Australians. Finally, eighty-one years later, Australia had the uniform adult franchise that O’Connor and the Barton government had proposed.

Chapter 6:

ADMINISTERING ELECTIONS IMPARTIALLY

IN JUNE 1901 the Minister for Home Affairs, William Lyne, convened a meeting of electoral officers from the different states to advise him on the federal electoral machinery. William Boothby was there. He was seventy-one and had run every election in South Australia since his appointment in 1856, proudly boasting that none had ever been tainted by bribery or corruption. Lyne was especially anxious to hear how Queensland and Western Australia managed elections in their vast inland electorates. The report of these experts largely set the parameters for the lengthy and detailed Electoral Bill introduced by O'Connor in January 1902.

The electoral officers considered leaving the states to run federal elections according to their differing state rules, but in the end they recommended against it. At this nation-building moment there was strong commitment to uniformity in federal matters. Although the states would continue to run their own elections in their own various ways, an Australian citizen, wherever they lived, should vote for the Australian government according to the same rules and regulations.

First, they adopted the organisational model Boothby had developed for South Australia and applied it to the nation, with a Chief Electoral Officer for the Commonwealth, a Commonwealth electoral officer for each state and a district returning officer for each division. All would be permanent, salaried public servants with their duties defined by law and set out in detailed printed instructions. This independent electoral administration charged with the impartial management of elections would be the Electoral Branch, located in the Department of Home Affairs. Extra help would be needed at election times, which would for the most part come from postal officers.

The political scientist Colin Hughes calls this system, established at the outset of federation, 'the bureaucratic model', evidence of what his fellow political scientist Alan Davies called Australia's 'talent for bureaucracy'. Not only does it impose order and regularity, but more importantly it sought to keep the management of elections out of the reach of politicians.

The existing state rolls varied in their completeness and purity (a pure roll was one in which there was no duplication and no dead), and only in South Australia were women on the roll. So the Commonwealth needed to construct a new federal electoral roll almost from scratch in time for the election due at the end of 1903. Again, William Boothby led the way, recommending the South Australian practices he had introduced in the 1850s. Instead of voters registering to vote annually, or just before an election, their enrolment would be continuous; instead of the onus being on the voter to apply to register, the government would conduct enrolment drives, with police, postmen and local council clerks delivering forms to every residence.

So in 1903 the Commonwealth embarked on a mammoth house-to-house census-like canvas, conducted by police and postmen on foot and horseback. People still had to fill out and return their forms, but they were delivered to their doorstep. The result was an electoral roll with the names, addresses, gender and occupations of 1.9 million people, almost double the size of the roll for the 1901 election, which was just short of a million. This was around 95 per cent of the eligible population, an epic achievement and the most comprehensive electoral roll of any nation at the time. The new Electoral Branch was rightly proud.

Australia's enrolment methods were a major break with British precedent. In the United Kingdom enrolment is still annual. Each year forms to be signed and returned are sent to the voter's last registered address. One can also re-register online, but the onus is on voters if they want to be able to exercise their right to vote. Pity the homeless, those who shift about, or the merely disorganised. Electoral authorities facilitate the participation of those who want to vote, but leave it largely up to them.

The other major break with British precedent was in the construction of a centralised electoral roll for the polity as a whole, in this case the new nation, with the government taking responsibility for its construction. At the time, in Britain electoral rolls were compiled by local councils, which is still the case today.

The existence of separate state and federal rolls, though, was confusing for Australian voters, and in 1905 provisions were made for the states and the Commonwealth to have joint rolls. Tasmania was the first to accept, in 1908, and New South Wales, Victoria and South Australia all adopted joint rolls in the 1920s, although Western Australia delayed until 1989 and Queensland until 1991. Today, when an Australian enrols to vote or changes their electoral details, they only have to do it once.

Australian governments have continued to shoulder much of the responsibility for enrolling voters and keeping the roll up-to-date. Until recently regular house-to-house reviews were conducted, to locate potential new voters and to monitor people's movements between electorates. In 1999 a new system was introduced, Continuous Roll Update. Information from other government agencies, such as the motor-registration boards and Centrelink, was matched with the roll to identify individuals who had changed address. These were then sent an enrolment form to confirm their new details. But the voter still had to return the form, and rates of return were disappointing.

In 2012, following a legal challenge from GetUp, Julia Gillard's government changed the legislation to make it even easier for the voter. The Australian Electoral Commission could now enrol a voter directly, or change their address based on information from other government agencies. Although the AEC website admonishes the voter that 'It is still your responsibility to enrol and to keep your enrolment details up-to-date', those who just turn up at the polling booth on the day will most likely be on the roll and able to vote.

In July 1903 William Boothby died. He had just completed his recommendation to William Lyne on the division of South Australia into seven federal electorates. The 1902 Electoral Act gave the power to draw electoral boundaries to the state electoral offices. Community of interest, physical features, means of communication and the existing boundaries of electoral divisions were all considered, and Boothby drew the boundaries with his usual meticulous care. To honour his life's work, one of these electorates was named after him. Bureaucrats are rarely remembered for their contribution to public affairs, but every federal election night Boothby's name is on commentators' lips, even if few now know of the man's achievements.

Since the early 1970s Labor governments have further enhanced the independence of Australia's electoral administration. In 1973 the Whitlam government established the Australian Electoral Office as a statutory authority. The office was still implicitly responsible to a minister but at greater distance. In 1984 the Hawke government established the AEC under the non-ministerial direction of three commissioners, and gave it the power to manage electoral boundaries and redistributions. The Fraser Liberal government had already, in 1977, introduced regular reviews of electoral boundaries.

Politicians always take a keen interest in electoral boundaries, and if given the chance many will try to manipulate them to their advantage. In 1902 electorates were to have

equal numbers of constituents, with an allowable margin of 20 per cent, and parliament retained the power to accept or reject the recommendations of state electoral offices, though not to amend them. If rejected, the redistribution lapsed and whatever population shift it was designed to remedy continued to distort the electoral boundaries.

The allowable tolerance in the size of electorates considerably advantaged rural electorates. In horse-and-buggy days this was justified by the local member's need to serve constituents scattered over large areas. A country vote was worth up to 40 per cent more than a city vote: so much for one-vote-one-value. It also greatly advantaged the Country Party and disadvantaged Labor. In 1974, long after cars and light planes had replaced horses, the Whitlam government reduced the allowable tolerance to 10 per cent. The rule was weakened by the Fraser government before being reintroduced by the Hawke government in 1984.

The Hawke government, when it established the AEC, also established the Joint Select Committee on Electoral Reform, now called the Joint Standing Committee on Electoral Matters (JSCEM), to advise the government on electoral issues. It conducts regular public inquiries after each election, and has been able to create bipartisan support for various technical improvements in the way elections are run, though its members do not always agree.

Australia's commitment to uniformity in federal elections, combined with our non-partisan electoral administration, helps us to understand another of our differences from the United States, where the individual states retain broad powers over electoral administration, and whose undemocratic electoral practices shock many non-Americans.

The United States constitution explicitly left the determination of voting rights to the states and this led to big differences among the states in who could vote. Four states deprive a convicted felon of their voting rights for life, which disproportionately affects African-Americans; others only while in prison or on parole; and in two states one can vote even if in prison for murder. The American Civil Liberties Union estimates that this patchwork of state laws prevents around 5.85 million people from voting and that widespread confusion about their voting rights in effect disenfranchises many more.

In the United States the determination of voting rights by individual states is combined with a highly decentralised system of electoral administration. An observer of the 2004 presidential election estimated that there were in fact thirteen thousand elections, each run by independent quasi-sovereign counties and municipalities. For the most part these elections are overseen by people who are themselves elected and have strong partisan allegiances. There is thus plenty of scope for interfering with the process for partisan advantage: losing registration forms or postal votes, not providing enough polling booths in remote locations or in areas populated by supporters of the other side, malfunctioning voting machines, poorly designed ballot papers which challenge the less literate, and gerrymandering—electoral boundaries like pieces of jigsaw, with boundaries twisting and turning to take in certain areas and avoid others.

In 1965, in response to the civil-rights movement, the American federal government passed the Voting Rights Act which prohibited racial discrimination in voting rights and regulations. In 2013 this act was effectively gutted by a Supreme Court decision which allowed states with a history of racial discrimination to change voting requirements without the approval of the federal Department of Justice. Since then, Republicans have engaged actively in suppressing voters who are more likely to vote Democrat, mainly African-American and Hispanic people, but also the poor and the young. Generally the reason given is prevention of voter fraud, and with neither registration nor voting compulsory the opportunities for minor requirements to frustrate voting are boundless.

Consider just two examples from the run-up to the 2018 midterm elections. In Georgia, the Republican state governor, himself standing for re-election, invoked the exact-match law to suspend voter registration applications with minor spelling mistakes, such as missing a hyphen. Seventy per cent of those suspended were African-Americans, though they are only thirty per cent of the state's voting population.

In North Dakota a new state law required identification documents for voter registration to include a street address. This was a problem for many of the state's Native Americans who live on reservations and use post-office boxes for their mail because the postal service requires them to. This obstacle can be got around, but it is an obstacle nevertheless, and it mostly affects Native Americans—who have historically voted Democrat.

Florida's hanging chads in the 2000 presidential contest between George W. Bush and Al Gore drew the world's attention to the small way differences in local voting

requirements in the United States can affect political outcomes. Florida has twenty-five votes in the electoral college that decide the president. In some counties voters indicated their preferences by punching a hole in the ballot paper, and if the 'chad' was not punched cleanly away it was rejected. A drawn-out and complex legal challenge followed, but in the end Bush won Florida by a mere 537 votes, and world history was changed. The old saying 'For the sake of a nail the shoe was lost, for the sake of a shoe the horse was lost, for the sake of a horse the battle was lost' had a new application. For the sake of Florida's hanging chads, the world lost a leader who understood the grave risk climate change poses to our collective future and who would have worked towards effective international responses.

The substitution of 'lived' for the apparently innocuous 'resided' in the 1902 Franchise Act showed Labor's sensitivity to anything that smacked of old-world property qualifications. It could not do away entirely with the need for an address for the electoral roll, but it could ensure that people working away from home for long periods could vote.

In 1902, when the electoral officers met, postal voting was already available in Western Australia, South Australia and Victoria, and they recommended that it be adopted for the Commonwealth. It was expensive to provide polling booths in every small settlement in thinly populated areas. With postal voting available, far fewer polling booths, polling clerks and other officers would be needed and costs would be greatly reduced. Lyne included provision for postal voting in the bill, based on the South Australian and Victorian legislation, but he also extended the types of officers who could witness postal votes, and allowed voters, on filling in a declaration, to vote at any polling booth in their electoral district, not just the one at which they were registered.

Lyne told parliament that he was endeavouring to make the Electoral Act 'the freest, most liberal and democratic measure' ever considered by any parliament. Labor wasn't satisfied. It wanted people to be able to vote at any polling booth in the Commonwealth. Labor leader Chris Watson said that the provisions for postal voting did not meet his party's concerns. Postal services to many districts were infrequent, making it difficult for people to respond to last-minute circumstances which took them away from home. Other Labor members spoke of the itinerant workers, the carriers, drovers, shearers, miners and bush workers who did not always know where they would be on election day as they followed work across the country. Absentee voters would still have to fill out a declaration, however, if fraud were to be prevented. Labor's Charlie McDonald, who had challenged the meaning of the word 'reside' at the outset of the debate on the Franchise

Bill, pointed out that many of these workers were not accustomed to writing, and would have difficulty filling out a form of any description.

In the debate on postal and absentee voting, the politicians were juggling a number of desirable outcomes: encouraging as many people as possible to vote; protecting the secrecy of the ballot; keeping costs under control by limiting the number of polling booths and printing costs for duplicate rolls; enabling the poll to be declared promptly, without having to wait for votes to come in from all across the state; and preventing fraud. In the end the act provided for postal voting, and, in a compromise Labor accepted, allowed electors to vote at any state polling booth. The regulations made provision for illiterate and sight-impaired voters to be assisted with their forms. In this, Australia was, and still is, far ahead of the democratic pack.

In the United Kingdom one is registered at the polling booth closest to one's home and required to vote there. Sometimes called precinct voting, this is a hangover from the days of a limited franchise and open voting, when members of the local community could challenge the eligibility of voters. One can apply for a postal vote, either as a one-off or permanently, or arrange for a proxy to vote, but the onus is on voters to enable their own votes, as it was for them to register in the first place. Again the mobile and disorganised are disadvantaged. Nor is any allowance made for last-minute disruptions or changes of plan. Someone working in London but living in Brighton must make sure they get home in time to vote. At the 2010 British general election some polling stations experienced a late rush and many people missed out on voting because they failed to cross the threshold before 10 p.m. Even though they had been queuing patiently, they were turned away. Authorities said they were mainly students reluctant to leave the pub, but perhaps they were voters whose trains home were delayed, a not uncommon occurrence on British Rail.

In Ireland, too, voters are registered to particular polling booths. Voters may apply to be registered as a postal voter but they must give a reason, such as suffering a chronic illness or physical disability, studying at a distant institution, or having an occupation which takes them away from home on the weekday election day. They can also apply to be a special voter if they live in residential care. Otherwise it is back to the local school or community hall on the day if they want to exercise their franchise. And too bad if they are working overseas, as many Irish people do. They will have to come home if they want to vote. In the Irish referenda on legalising same-sex marriage in 2015 and abortion in 2018, thousands did just that, responding to a #HomeToVote campaign, and flooding through the airports and ferry terminals before fanning out to their local booths.

Canada requires people to vote in their electoral district, but anyone can vote in advance on three specified days without giving a reason, or apply for a ‘special’ postal ballot if they expect to be outside their electoral district on polling day. This flexibility dates to the 1990s. Prior to 1920, when Australians already had access to a range of voting methods and locations, only those Canadians who were in their local area on the appointed day and able to get to their registered polling station could vote. In 1920 three-day advance voting was introduced reluctantly for specified occupational groups such as sailors and commercial travellers, and incremental changes slowly followed.

In the United States, as always, the states differ. Most allow for early voting; some allow unconditional absentee voting, and others only with reasons. Three states conduct all major elections by postal vote only. Only New Zealand, among English-speaking countries, makes it as easy to vote as does Australia.

Legislation and regulations making it harder or easier for people to vote embody different ideas about responsible citizenship. Among the English-speaking countries, Australia’s flexibility on where we vote is as distinctive as our compulsory voting, and as revealing of our historic commitment to elections being decided by majorities of voters. Registering a person to one particular booth near where they live projects a voter with a settled residence and a settled life, a locally based elector with a job close to home. Even without overt property qualifications, the rule advantages the home owner over the renter, the long-term resident over the mobile and newly arrived, the steady and stable over the itinerant. Honouring the demand for democracy with a wide franchise, it nonetheless tilts the electoral system back to the propertied.

Sometimes Australia’s commitment to flexible voting arrangements is explained by our compulsory voting. If the government forces you to vote, it has to make voting easily available. But in fact this flexibility was already there in the Commonwealth’s 1902 Electoral Act, and is the result of the same deep streams in Australia’s political culture: our untroubled reliance on the state to organise things for us, our commitment to majoritarian democracy, and Labor’s sensitivity to any voting regulation that carried the shadow of a property qualification.