<table>
<thead>
<tr>
<th>Author:</th>
<th>Rodan, Paul</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title:</td>
<td>Australian electoral reform and administration: partisanship and independence</td>
</tr>
<tr>
<td>Year:</td>
<td>2013</td>
</tr>
<tr>
<td>Journal:</td>
<td>Election Law Journal</td>
</tr>
<tr>
<td>Volume:</td>
<td>12</td>
</tr>
<tr>
<td>Issue:</td>
<td>1</td>
</tr>
<tr>
<td>Pages:</td>
<td>106-109</td>
</tr>
<tr>
<td>URL:</td>
<td><a href="http://dx.doi.org/10.1089/elj.2012.1218">http://dx.doi.org/10.1089/elj.2012.1218</a></td>
</tr>
</tbody>
</table>

Copyright: Copyright © Mary Ann Liebert, Inc. The accepted manuscript is reproduced in accordance with the copyright policy of the publisher.

This is the author’s version of the work, posted here with the permission of the publisher for your personal use. No further distribution is permitted. You may also be able to access the published version from your library.

The definitive version is available at: http://dx.doi.org/10.1089/elj.2012.1218

Norm Kelly faced two obvious challenges in putting this book together. First, it started life as a PhD dissertation, and modifying content for a readership beyond examiners can be notoriously difficult. Secondly, material on electoral systems is rarely at the top of any “must read” list, except for a small band of specialists. For the broader population, a descent into (often mathematical) minutiae can deter even those who would claim a keen interest in matters political.

It is to Kelly’s credit that he has surmounted these challenges and produced a readable volume with some important points to make, an achievement almost certainly assisted by his own interesting biography. Before pursuing an academic career, Kelly was an active member of the (now largely defunct) Australian Democrats, a minor party which secured upper house representation federally and in some states between the late 1970s and the early twenty first century. Kelly represented the party in the Western Australian Legislative Council from 1997 to 2001. In several of the jurisdictions concerned, the party played a balance-of-power role.

The book includes conclusions based on a series of interviews with politicians and electoral administrators and assesses the independence of the nine electoral commissions in Australia (they’re OK, but could benefit from more independence/autonomy). Several areas of electoral law are then examined and changes are analysed for partisan impact. Fields covered include voting entitlement, close of the roll, party registration, public funding, malapportionment, and postal voting.

Kelly rehearses the familiar refrain about Australia as an electoral innovator, but draws a distinction between earlier non–partisan innovations (secret ballots, female franchise) and more recent “reforms” (since the 1980s) which can be seen to have been motivated by the lust for partisan advantage. Of course, it needs to be observed that one person’s “partisan advantage” can also be another’s elimination of “partisan disadvantage”. “Reform” invariably produces winners and losers.

The book includes a substantial section on parliamentary oversight of electoral matters, involving the Commonwealth and three of the states which have committees assigned this role. While these do good work, Kelly stresses the problem which flows from major party domination of such bodies. Reflecting parliamentary numbers, “the committees simply reinforce any disproportionality or bias that is created by election outcomes”. (p 23) This is a key theme for the author, who contends that major party cooperation “can be a sign of party cartelisation rather than working towards democratic values of fairness and equity.” (p 24)

Kelly considers whether residency rather than citizenship should underpin voting entitlement. In 1948, Australia introduced citizenship laws. Since 1984, it has plumped for a citizenship as a prerequisite for voting rights. But insisting that only citizens can vote may entail a version of taxation without representation. In a world of increasing global mobility, this is possibly an issue ready for discussion. However, this seems an unlikely development in contemporary Australia, given high levels of xenophobic discourse over relatively low levels of refugee flows. No major political party would dare mention the possibility of change.

The prisoner franchise question has assumed a slightly more visible profile in Australia in recent times, although it still lacks anything like mainstream status as a political issue. Kelly highlights the important High Court case of *Roach v Electoral Commissioner* (2007), which overturned the then
conservative federal government’s attempts to disenfranchise all prisoners, but legitimised previous exclusion provisions for those serving lengthier sentences.¹ In a country with a high incarceration rate amongst indigenous citizens, many of whom are concentrated in certain electorates, and whose progressive voting propensity is well established, the partisan motivations at play here are more than obvious. Possibly erring on the side of charity, Kelly does concede some legitimate ideological justification for the positions taken by the political parties.

In contrast with the low profile of the prisoner franchise debate, closing of the electoral rolls has become a fairly hot political issue. Put simply, conservatives seek to close the rolls as soon as possible after an election date is announced; progressives seek to provide maximum time after such announcement for first time voters and others to update their enrolment details. The conservative claim that swift closure helps prevent fraudulent enrolment has never been especially convincing, leaving the more cynical explanation that those less likely to be enrolled (the young and the transients) are more likely to vote progressive, thus proving each side with a pragmatic rationale for its position. Once again, the High Court played a role with its 2010 ruling, *Rowe v Electoral Commissioner.*² In this case, the previous conservative government’s earlier closure of rolls was deemed unconstitutional, being a breach of the all-purpose “directly chosen by the people” requirement for elections. The role of judicial activism in this and the prisoners case went largely uncommented on in the political mainstream.

Automatic enrollment, in which electoral authorities use available public authority databases to enrol voters or update their details, is another issue covered. Partisanship is again evident in the public debate. This reform was introduced in two states (where it was opposed by conservatives in one and supported in the other) and since Kelly wrote, has been implemented at federal level (where it was opposed by the conservative opposition). Given the practicalities, it is not clear whether this hostility would result in the overturning of the legislation in the event of a change of national government.

Turnout is not a big issue in a compulsory voting system like Australia’s, although Kelly provides some useful insights into the problems and complexity of participation in the Northern Territory with its substantial indigenous population. The conservative federal government’s abolition of an information and education service for indigenous people is viewed as contributing to the problem and also serving as an example of the Australian Electoral Commission’s independence being compromised by a government direction that this specific service be discontinued for budget reasons.

Informal voting has been an enduring issue in Australian politics, hardly surprising given the requirements of compulsory preferential voting. With English language non-proficiency regarded as the critical contributor to inadvertent informal voting, a raft of reforms has been introduced over the years, in state and federal jurisdictions - mostly by Labor governments - to remedy the problem. Kelly also identifies the differences between state and federal voting systems as causing confusion for some voters, with two states and one territory now allowing optional preferential voting in lower house contests. (Optional preferential voting, known as “instant run-off” voting in the U.S., permits electors to rank as many candidates as they like; compulsory preferential voting requires a full ranking or the ballot is invalid.)

Kelly gives some attention to optional preferential voting, noting that it avoids forcing voters to record preferences for candidates they may find abhorrent (this has an obvious connection with intentional informal voting). However, his main concern seems to be less rights-centred and more aimed at avoiding the emergence of a de-facto first past the post system, as if such avoidance were a self-evident good. While those governments which introduced optional preferential voting may have
been motivated by the desire for partisan advantage, it seems an undeniable proposition that the voters in such states are now less imposed upon than those where recording all preferences remains mandatory for a vote to be valid.

Indeed, the compulsory versus optional preference divide is the tip of an iceberg. Until reasonably recently, Australian electoral systems were reasonably homogenous, but those days are gone, as a quick summary attests:

- Three states and one territory have fixed term parliaments; in the other jurisdictions, the head of government determines the election date.
- The commonwealth, three states and one territory have compulsory preferential voting for lower house single member constituencies.
- Two states have optional preferential voting for lower house single member constituencies.
- One state and one territory have optional preferential voting for lower house multi-member constituencies.
- Two states have optional preferential voting for the upper house based on a state-wide constituency.
- Two states have optional preferential voting for the upper house based on several multi-member electorates.
- One state has compulsory preferential voting for upper house single member constituencies.

An observer might conclude that this is an extraordinary level of diversity for a federation of only six states and two territories. Moreover, the vast bulk of change in recent decades has been introduced by governments of the Australian Labor Party which, while purporting to subscribe to a single coherent political philosophy, are exposed as usually being motivated by whatever calculus of self-interest presented itself. The rights of the voters have not constituted an overwhelmingly obvious motivation for “reform”.

Kelly notes that while political parties have existed in Australia for over a century, their recognition and regulation (including access to public funding) are comparatively recent phenomena (ch. 6). Again, rules vary between jurisdictions and the overall conclusion is that only modest steps have been taken in the cause of achieving reforms which might secure greater representativeness.

The author’s account of the “one vote, one value” battle in Western Australia (pp. 116-130) benefits from his own experience and participation in the parliament in question. WA’s remains the most mal-apportioned lower house in the nation, and its upper house is even worse. Genuine reform in this area has always encountered the usual non-metropolitan vested interests, but WA Labor’s electoral support in regional mining areas has also militated against the party in that state taking genuine voting equality too literally. Political reality may suggest that the current situation in the state is as good as things are going to get, barring some utterly unforeseeable circumstance.

The book includes a chapter on postal voting and it is difficult to dispute Kelly’s contention that political parties should be legislated out of their undesirable role in the administration of this form of the franchise. But, as the major parties see advantages in the status quo, change is unlikely.

Kelly does not deal with one of the most important reforms in recent times – the adoption of fixed parliamentary terms in three states and one territory. In each case, the government surrendered the traditional Westminster advantage which comes from being able to determine election dates. This
reform provided certainty and stability in the jurisdictions concerned and ended the calling of cynical early elections by poll-driven governments. It was simply good public policy and serves as an exception to Kelly’s general theme of partisan advantage as the key driver of change.

Another problem not covered within Kelly’s framework is that posed by the success of candidates (federally and in some of the states) with extremely low primary votes, whose election in proportional representation systems owes less to genuine support and more to the opportunistic preference deals struck in the creation of group voting tickets (which allow voters to record one preference and then have the remaining preferences allocated as registered by the relevant party, group or individual). The desirability of some “threshold” requirement, of a minimum level of first preference votes for election, warrants discussion in Australia.

Because the issue had not emerged when Kelly completed his dissertation, the book does not address an interesting and important phenomenon (in Australia and elsewhere): the growing incidence of pre-polling day voting. This raises a range of philosophical and practical issues which warrant serious discussion. To give a US illustration: it is harder to pull off an “October surprise” if a third or more of the electors have already voted in the first half of that month.

The book includes substantial appendices of informative tables, but infuriatingly, lacks an index. All in all, this is a useful contribution from a scholar who brings more than just academic credibility to the issues discussed.

---

1 *Roach v Electoral Commissioner (2007)* HCA 43.
2 *Rowe v Electoral Commissioner (2010)* HCA 46.

---

Paul Rodan  
Adjunct Professor  
Swinburne Institute for Social Research.