

Rats and Representation: Remediating the Colston defect?

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August 22, 1996

Mal Colston's resignation from the Australian Labor Party prompted emotional responses from some of his former colleagues, and scathing criticism from many of the country's editorialists and political commentators. And with the balance of power in the Senate delicately poised, Colston's actions look set to have far-reaching political and substantive consequences.

But perhaps the audacity of Colston's actions can be best understood by considering the electoral and constitutional context in which the Senate operates. Innovations over time in the way we elect and replace Senators offer some clues as to how to perhaps prevent repetitions of the Colston episode.

Since 1984, voters in Senate elections have had the option of voting for a party ticket, replacing the tedious and error-prone procedure of numbering every box on the Senate ballot paper. This reform to the way Senators are elected is widely considered a success; the rate of informal balloting in the Senate has declined markedly since ticket voting was introduced. But an important consequence of this seemingly technical innovation is to help dispel the notion that citizens vote for individual Senators (rather than political parties). The 1984 reforms to the Senate's election procedures institutionalized the parties' long-standing practice of recommending to voters how to allocate preferences via how-to-vote cards. In the Australian Electoral Commission's own parlance, a ticket is in effect "a registered how-to-vote card". Accordingly, "ticket votes" are in effect votes for the party, the voter giving at least tacit consent to the preferences among the candidates registered by the party with the AEC.

Consider now the actions of Mal Colston in light of ticket voting. Recall that Colston was not up for election at the 1996 Federal elections; he was elected as a Senator from Queensland at the half-Senate election in 1993, for a six-year term expiring in 1999. AEC documents show that the overwhelming majority

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of Queensland voters availed themselves of the ticket voting option in 1993; of 1,850,660 valid votes, 1,732,282 votes (about 94%) were ticket votes. Labor voters made slightly higher than average use of ticket voting. About 97% of Labor's 729,265 first preference votes came from voters expressing a preference for the party ticket rather than for any one Labor candidate (see Figure 1).

Of the 22,971 Labor voters not opting for ticket voting, 19,626 (about 85%) gave their first preference to Margaret Reynolds, at the top of the Labor ticket. Ian McLean, number four on the Queensland Labor Senate ticket, received 1,460 first preference votes, just beating out Colston (number two on the ALP ticket) with 1,053 first preference votes (see Figures 2 and 3).

Colston's "personal vote" represents only .06% of all valid first preference votes cast, and .14% of all first preferences for Labor (for either the ticket or particular candidates). Moreover, forty-two candidates contested the six Queensland Senate seats at stake in the 1993 election; Colston's 1,053 first preference votes ranks him 9th among those forty-two candidates (considering first preferences directly for candidates). Any claim Colston has to represent Queensland in the Senate *independent of the Australian Labor Party* must seem ludicrous in light of these figures, highlighting the gross selfishness of his actions.

This Colston business is not just another quirk of Queensland politics, or even Queensland Labor politics in particular. At issue here is nothing less than some of the most enduring and fundamental questions in democratic politics. What does it mean to "represent"? What mechanisms ensure that citizen's preferences are more or less faithfully represented in the institutions of government? How best to bind legislators to constituents? How to align politicians' ambitions with what we demand of them as law-makers and governors? And what tradeoffs do we face in answering these questions?

From this perspective the Australian Senate is an on-going compromise of sorts. The Senate is at once a "states house" (in the Washington tradition) and a "house of review" (in the Westminster tradition), characteristics that in part gave rise to the constitutional crisis of 1975. The Colston defection exposes other tensions. Governments are formed by parties in the House of Representatives, where single-member electorates and a three year electoral cycle combine to help drive small parties out, encouraging strong majorities and party loyalty. These impulses are notably weaker in the Senate, in part due to proportional represen-

tation (within states) and overlapping six year terms.

What role for the individual legislator in a setting like the Australian Senate? The appropriate model is hardly Edmund Burke's House of Commons, with legislators turning to their best selves in the interests of their constituents. As the electoral reforms of 1984 acknowledge, political parties powerfully shape the electoral landscape, and voters agree; overwhelming majorities of citizens vote for party groupings in Senate elections, implicitly adopting the parties' preference schedules as their own. Most Senators find themselves in Canberra not through a "personal vote", but as a result of party loyalty and service, placing them high on the party's Senate ticket, yielding a Senate seat in accordance with the party's strength in the state and the brute arithmetic of proportional representation. Still, the fiction of Senator-as-delegate persists, giving rise to grotesque episodes like the Colston defection.

A not dissimilar "tainting" of the Senate once enraged many Australians. In 1974, the Bjelke-Petersen government refused to appoint the ALP's nominee – ironically, one Mal Colston – to a casual vacancy in the Senate, in breach of a long-standing convention, tipping the balance of power in the Senate in favour of the opposition parties. After the passions of 1975 dimmed, both sides of politics agreed to a constitutional amendment ensuring that casual vacancies in the Senate would be filled by a member of the party holding the vacant seat. The amendment was approved overwhelmingly by referendum in May, 1977, 73% of voters in favour of the amendment.

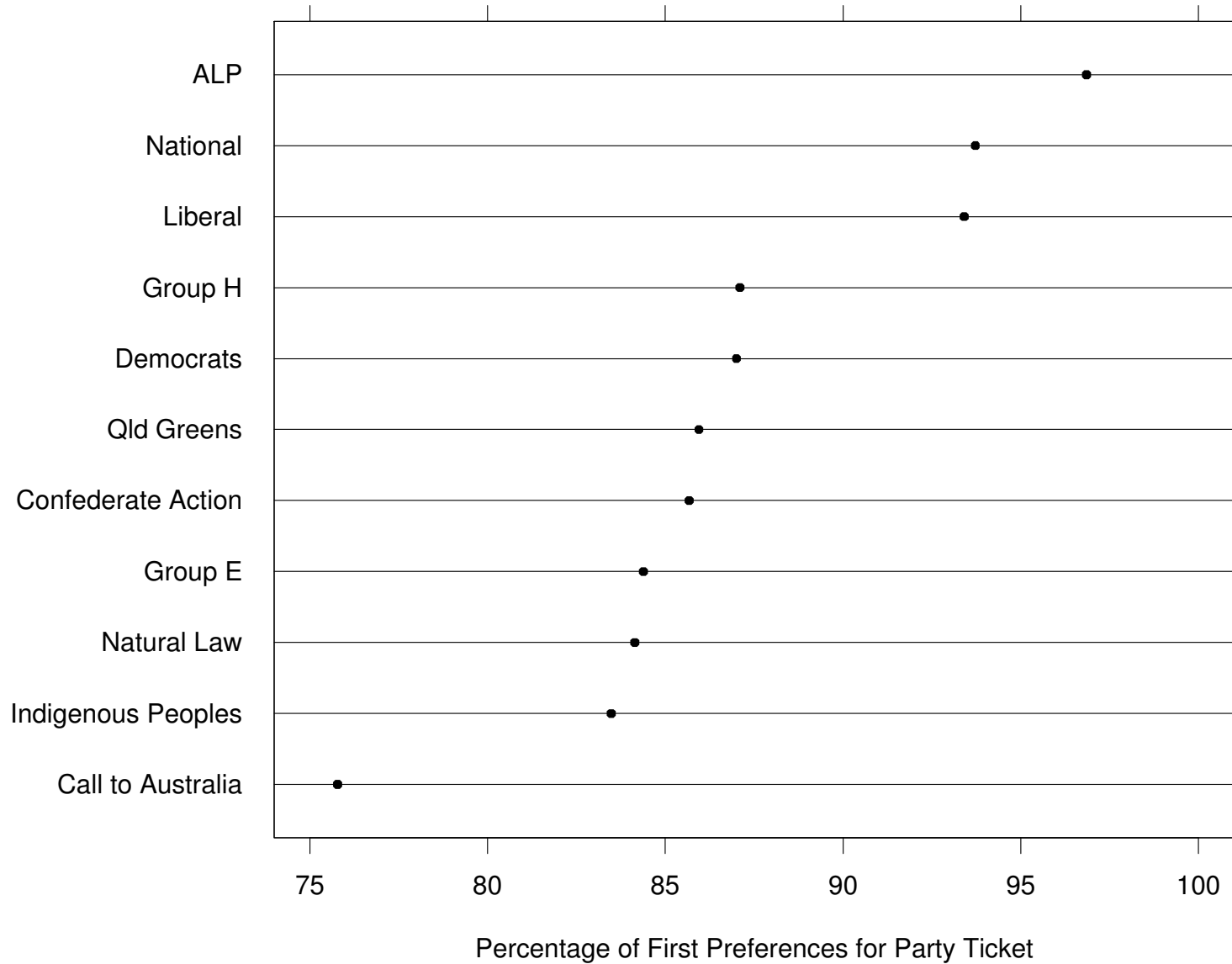
This 1977 constitutional amendment went no small way towards associating a party with a Senate seat, and perhaps implicitly granting the parties rights over Senate seats that transcend the personality of any particular Senator. Likewise, the implementation of ticket voting in 1984 further acknowledged that parties play a central role in constructing the political landscape of the Senate, at least for voters, if not for senators.

It is too late to reverse what has happened with Mal Colston. But it may not be too late to ensure that it won't happen again. Perhaps after the dust settles, a constitutional amendment might be possible, ensuring that when Senators are elected on a party ticket to a six year term, voters are guaranteed representation in that seat from the respective party until the next election. Resignation from the party that got a Senator elected should result in a casual vacancy in the seat

(to be filled by the respective party's nominee), in the same way that a senator's death or resignation from the Senate gives rise to a casual vacancy (many in the Labor Party probably regard Colston's actions as akin to a death in the family anyway).

The result of this innovation would be to further strengthen the parties. True enough. But proportional representation already makes it relatively easy for small parties to gain a presence in the Senate. Critics might charge that such an amendment would reduce senators to nothing more than partisan seat-warmers; but high rates of ticket voting indicate that is how voters see senators anyway (to the extent voters think about their senators at all), and proportional representation allows relatively many voices to be heard in the Senate. On balance, further tying Senators to the parties in this way would seem an acceptable tradeoff; the increase in party power might be worth saving us from a repeat of all that we find repugnant in the Colston defection.

Queensland Half-Senate Election, 1993



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Figure 1: **Rates of Ticket Voting, by party grouping.** The graph shows the percentage of each party grouping's first preference votes received as ticket votes. Source: Australian Electoral Commission data, calculations and graph by author.

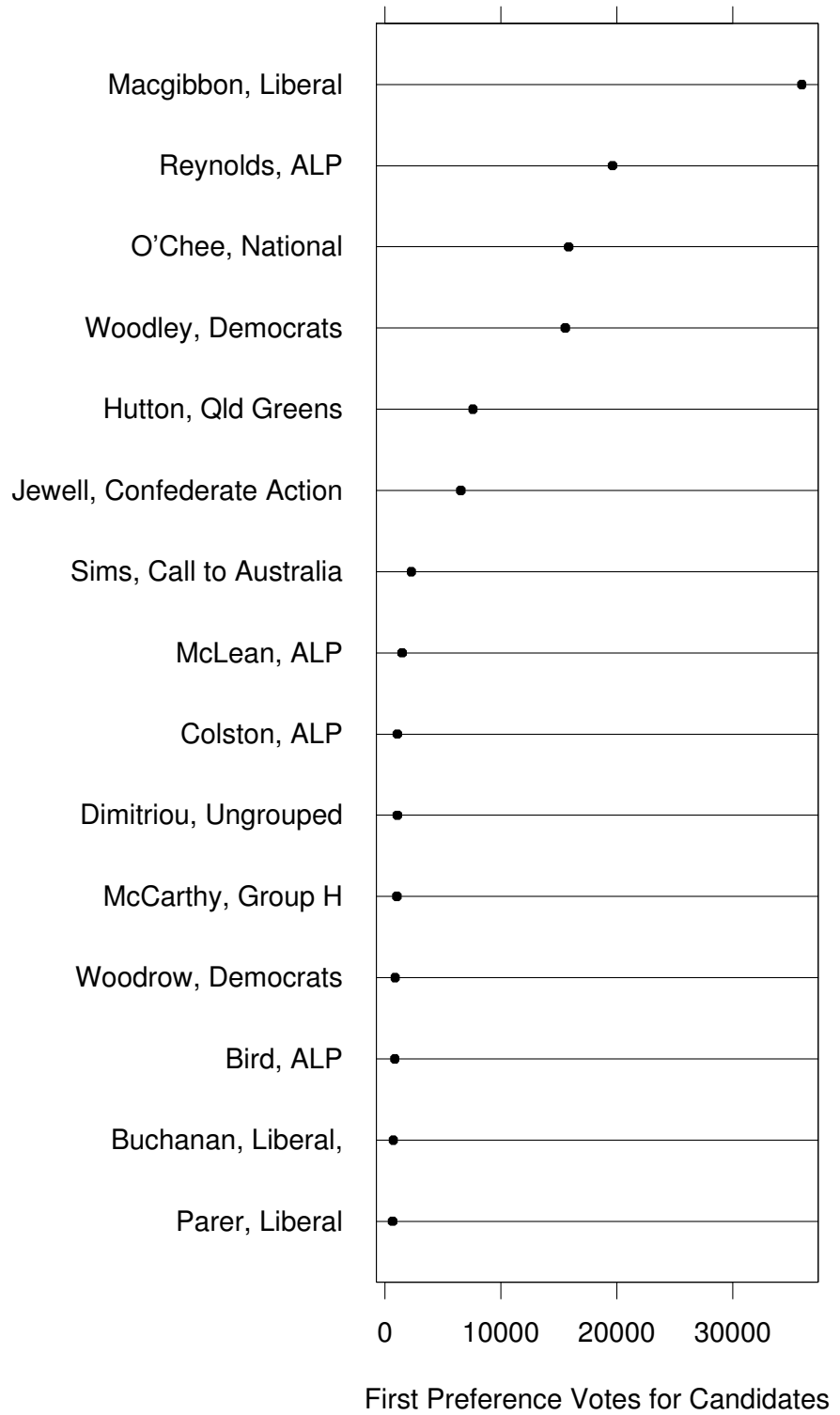


Figure 2: **Top 15 individual vote-getters, Queensland Half-Senate Election, 1993.** Forty-two candidates contested the election. Source: Australian Electoral Commission data, graph by author.

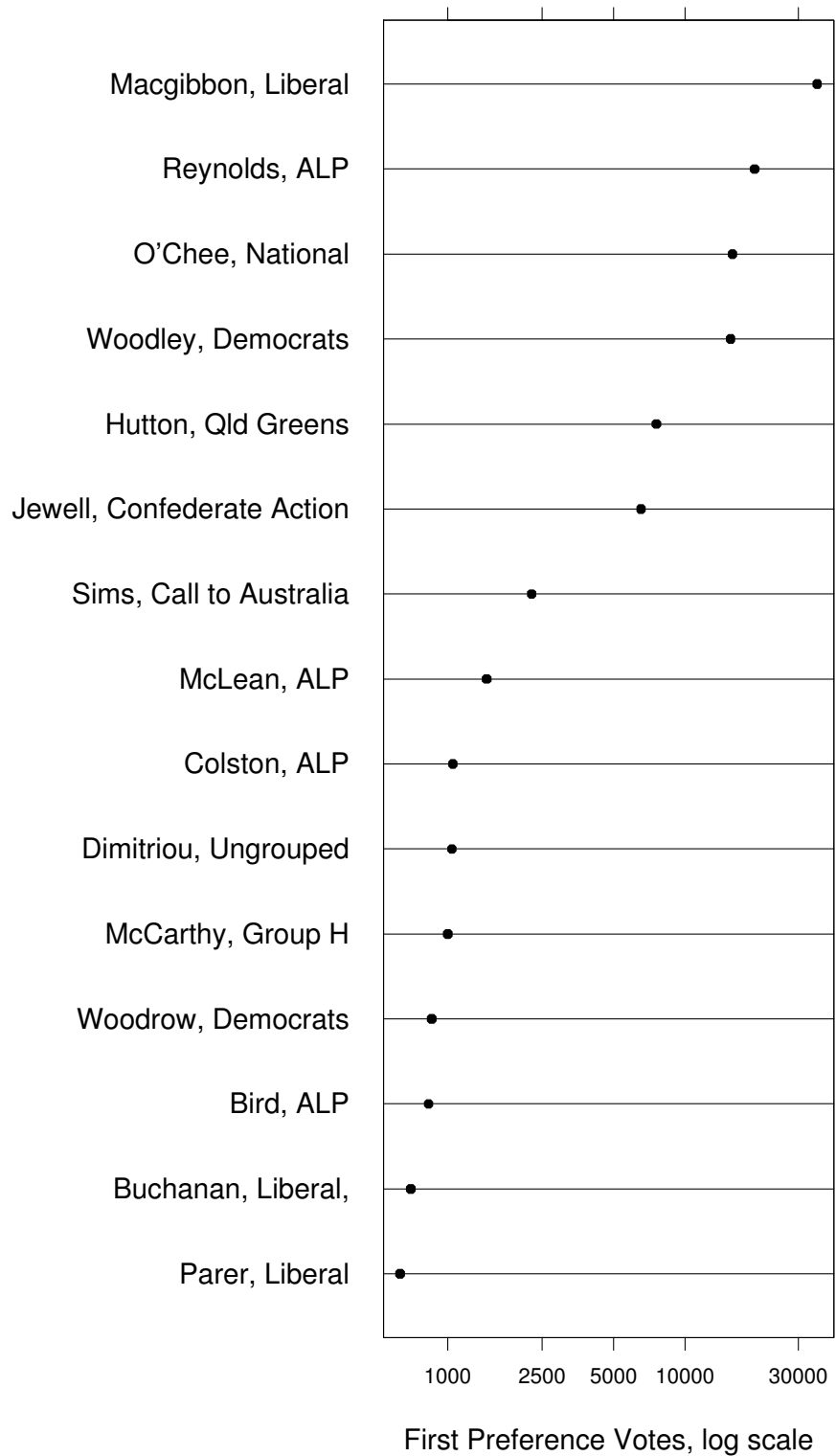


Figure 3: **Top 15 individual vote-getters, Queensland Half-Senate Election, 1993.** This graph repeats Figure 2, but the log-scale on the horizontal axis allows differences among the candidates to be more easily discerned. Source: Australian Electoral Commission data, calculations and graph by author.