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REPRESENTATION

Volume 43 Number 1 April 2007

ARTICLES

- Are party ballots approximating national referendums? 1
Gary Sussman

- One Size Fits All? European Citizenship, National Citizenship Policies and
Integration Requirements 19
Pontus Odmalm

- Australian Electoral Reforms – A Threat To Democratic
Principles? 35
Norm Kelly

REPORT

- Property Voting in Local Government: A Relic of a Pre-Democratic
Era? 45
Marian Sawyer

BOOK REVIEWS

- Setting the People Free, The Story of Democracy* by John Dunn 53
Christopher Lord

- Behavioral Social Choice - Probabilistic Models, Statistical Inference, and
Applications* by M. Regenwetter, B. Grofman, A. Marley, and I.
Tsetlin 54
Iain McLean

- The English Question*, edited by Robert Hazell 56
Dan Hough

- Radical Right: Voters and Parties in the Electoral Market*, by Pippa
Norris 57
Tim Spier

- The Extreme Right in Western Europe: Success or Failure?* by Elisabeth
Carter 60
Anthony McGann

- German Electoral Politics*, by Geoffrey K. Roberts 61
Dan Hough

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Representation

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REPORT

PROPERTY VOTING IN LOCAL GOVERNMENT: A RELIC OF A PRE-DEMOCRATIC ERA?

Marian Sawyer

Australia often prides itself on being a pioneering democracy – noted for inventions such as the 'Australian ballot' that helped take the violence out of elections and make the polling booth a safe place for women. One might assume, then, that property votes would be a thing of the past, safely consigned to the rubbish-bin of history, along with the exclusion of women, Indigenous Australians and the poverty-stricken from the franchise.¹ This is indeed assumed by most political scientists, but in fact property votes are still flourishing everywhere in local government in Australia except in Queensland and the Northern Territory. Property votes are non-residential voting rights derived from the ownership or leasing of property within a local government area by individuals, corporations or groups. Property franchises may give rise to multiple voting rights within a local government area, as is true of Western Australia or Tasmania; in all states where property votes exist they may give rise to multiple voting rights across different local government areas. Such multiple voting rights may also derive from property owners being resident in one ward or local government area and owning property in another.

This article looks at the democratic implications of the continuance of property votes at the local government level. The democratic values at issue here are those of political equality, expressed as one vote, one value, and popular control of government, expressed as the right of residents in a local government area to determine who will represent them. The value of political equality, or one vote, one value, is enshrined in Article 25 of the International Covenant on Civil and Political Rights. Over a hundred years ago the Australian Constitution, as the framing document for a new democracy, was careful to specify that there should be no plural votes for either house of the new federal parliament (ss. 8 and 30). At the local government level, however, it was a completely different question.

Historically a major reference point for Australia's political evolution was the United Kingdom (UK). But the UK has abolished all forms of plural voting and property votes, the only exception being the City of London. This happened even earlier in the Nordic countries (for example, Denmark abolished property votes in local government in 1908) and in the Nordic context it is regarded as 'very undemocratic' to give voting rights to property. In general democracy has meant giving people the vote to balance the power of property, which is exercised in a myriad other ways.

Other Westminster Laggards

There are other laggards apart from Australia among the Westminster family. In New Zealand it was not until 1986 that a Labour government abolished non-resident votes in

local government on the grounds that 'local bodies exist to service people not property' (Bush 2002, 36). However, following the election of a National government in 1990 the property vote was reinstated. In 2001 a Labour-led coalition government undertook a major review of local government and again proposed abolishing property votes on the grounds of the one person, one vote principle but also on the grounds of cost-effectiveness, as the number of non-residential voters was very small (less than one per cent) (Crawford 2002, 294). There was strong resistance to the proposal and non-resident rate-payers continue to vote in New Zealand local government elections.

One change that did follow from the 2001 New Zealand review was the option of establishing Maori wards. Maori parliamentary seats have existed since 1867 but this was a new development at local government level. Every five years, at the time of the census, Maori can exercise the option of whether they want to be on the Maori roll or the general roll for parliamentary elections, and the number opting for the Maori roll determines the number of Maori seats. Local government authorities now have the option of creating similar Maori seats, with the number tied to the number of voters enrolled on the Maori roll. A regional council in the Bay of Plenty now has Maori seats.

In Canada as well, property votes have survived in the provinces with the four largest city-regions – those of Toronto, Montreal, Vancouver and Ottawa-Gatineau. So these areas, with the greatest wealth-generation based on property, maintain voting rights for non-resident property owners. The provinces of Ontario, Quebec, British Columbia, Manitoba and Saskatchewan all retain some form of non-resident voting in local government. In Ontario, for example, a non-resident who is an owner or tenant of land in the municipality, or who is the spouse or same-sex partner of an owner or tenant, is eligible to vote in municipal elections. In this example of combined and uneven development, ancient rights of property combine with very new same-sex relationship recognition.

While the provinces of Alberta, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland have abolished non-resident voting rights, such reform is proving more difficult in the other provinces. The 2004 Vancouver Electoral Reform Commissioner, for example, suggested that allowing non-resident electors to vote was anomalous and undemocratic and a vestige of a time when property ownership was the measure of a citizen (Berger 2004, 106). While the Vancouver City Council supported the commissioner's call to repeal the voting rights of non-resident electors, the Vancouver Board of Trade objected strenuously – arguing that because municipalities were funded by property taxes, disenfranchisement would be contrary to the democratic principle of 'no taxation without representation' (Vancouver Board of Trade 2004).

Property Votes in Australia

Historically there were property qualifications for voting and office-holding in local government in Australia. When residents without property gained the franchise, non-residential property votes continued in existence and do so up to this day. In all states except Queensland non-resident owners and occupiers retain the right to vote in local government elections.² In other words, like the people resident in local government areas, property in the area also has votes. Queensland removed property votes in 1921, during the same outbreak of democracy that led to the abolition of its Legislative Council, formerly a bastion of property owners. The premier of the day was E.G. ('Red Ted')

Theodore. Other states are yet to follow. Of the two territories, the Australian Capital Territory has no third tier of government while the Northern Territory has an extensive system of local government, including community government for small Indigenous communities, but no property votes. The relative absence of political parties from local government may have meant there was less motivation for Labor state governments to move on the issue.

As we have seen, not only does property have the right to vote in most states, but in Western Australia and Tasmania non-resident property owners also enjoy plural votes, being able to vote in each ward in which they have property (although in Tasmania this is now restricted to two votes). Plural votes may also derive from being a resident in one ward and a property owner in another. Corporations or groups that own rateable land also have voting rights in Victoria, South Australia and Tasmania, although in Tasmania this is limited to one vote per municipality. Jointly owned property may also give rise to multiple votes, in so far as more than one non-resident gains a vote on the basis of that property (restricted to two joint owners). Moreover, even in states where multiple votes are not available within a municipality, property owners may still vote in each municipality in which they have property. As can be seen from the complexities outlined here, there is a good case for restricting voting rights to residents on the ground of simplicity alone!

While property owners have the right to vote, they are not required to vote, even in those states where voting in local government elections is compulsory for residents, such as NSW and Victoria (the exceptions being the city of Sydney and the city of Melbourne, where both residents and non-resident ratepayers on the roll have to vote).

The Functions of Local Government and the Representation of Women

Property votes derive from a particular view of the functions of local government – one that construes local government as primarily a provider of services to property and as primarily funded by rates on property. Such views of the nature and role of local government have been strongly entrenched in Australia, where the functions of local government were historically much narrower than in the UK. The nature and functions of local government have not only justified institutions such as property votes but may also be regarded as responsible for the low level of women's participation as elected or appointed officials (Sainsbury 2001, 74).

There was, however, a significant shift in the functions of local government in Australia in the 1970s, under pressure from women's movement mobilisation and with federal funds made available for new forms of community provision. Local government became a provider of community and human services targeted at the resident population. The growth in children's services provided by local government was the most noticeable aspect of this, but councils also provide disability, multicultural and aged care and youth and other social welfare services. Moreover, the sources of revenue of local government became more diverse. In 2003–4 property rates yielded on average only 37.8 per cent of local government revenue, compared with 12 per cent from grants and subsidies and 30.5 per cent from user charges and fees (National Office of Local Government 2006). The mix varies between jurisdictions, with property rates constituting a significantly higher proportion of revenue (59 per cent) in South Australia than in the Northern Territory (18 per cent).

This change in the nature and functions of local government has not yet, however, resulted in either the abolition of property votes or the feminising that might have been expected of local government. It is often assumed that local government will be a pathway into politics for women and that women will be better represented there than in parliamentary politics. There are a number of reasons for such assumptions: local government being part-time and closer to home, making it easier to juggle family responsibilities; elections being less competitive at the local level; and women being more oriented towards community than national politics.

Such assumptions may hold true in countries such as the UK, where over time women have entered local government in significant numbers. It is notably different in Australia, Canada and New Zealand. In all three of these countries (which coincidentally retain property votes) women were better represented in parliament in 2006 than in local government. One reason may be the relative paucity of monitoring of women's representation at the local level. Data are often hard to come by and there is no high-profile monitoring of outcomes such as the rankings of national parliaments maintained by the Inter-Parliamentary Union. Women's representation in local government also often lags behind in rural areas.

In Australia women's political representation has generally been about the same at local, state/territory and federal levels, with differences flowing more from electoral system than level of government. The adoption of mandatory quotas by the Labor Party since 1994 has introduced a new factor, which partly explains the current pattern of representation (see Table 1).

The changing role of local government undermines any argument that it is simply for and about property. It raises serious concerns over non-resident property owners having a say in how local government goes about delivering services to its resident population or protecting the local environment. Those who invest in a local government area will have political access and influence that does not rely on having votes in local government elections. Indeed, in some cases they may have too much influence, including in Queensland where property no longer has votes in local government elections.

The Influence of Property Developers Over Government

Property votes symbolise the power of property in local government, a power that is exercised much more significantly through the role of money in council elections. The latter has been usefully revealed in recent inquiries by anti-corruption bodies (e.g. Queensland CMC 2006). In municipal elections in 2004 on Queensland's Gold Coast and across the state border in Tweed Shire Council, funds were set up by developers to assist the election of pro-development 'independent' candidates. The source of funding was concealed from the public and there was inadequate disclosure in electoral returns, calling

TABLE 1
Representation of women in elected office: Australia

Federal parliament	28.3%	September 2006
State/territory parliaments	31.4%	September 2006
Local government	27.8%	September 2005

the integrity of the electoral process into question. Australian electoral law is notable for the laxity of its regulation of political finance, with no controls over the source or size of political donations and a somewhat lackadaisical approach to disclosure (Young and Tham 2006; Mayer 2006). The fact that Labor is in government in all states and territories has not produced any tightening of political finance regulation, while the coalition government has further relaxed the federal regime in its 2006 amendments to the Commonwealth Electoral Act (see Kelly, this issue).

The Greens, particularly in New South Wales (NSW), have made the purchase of influence over planning decisions through political donations a major theme of their local government campaigning. To highlight corruption of the democratic process the Greens introduced a private member's bill to ban developer donations – the Developer Donations (Anti-Corruption) Bill – into the NSW parliament in 2003. In November 2006 a motion in the federal parliament by an Australian Democrats senator calling for donations, loans, gifts and favours from developers to be prohibited in all jurisdictions and at all levels of government was again supported only by the Democrats and Greens.

Local Government Reform in Western Australia – A Missed Opportunity

An inquiry into local government reform in Western Australia has recently brought the issue of property votes to the fore. Western Australia (WA) is the last state to initiate major structural reform in local government – that is, the kind of amalgamations that have occurred in other states. The WA inquiry was directed to examine both structural and electoral reform. The latter included whether non-residents should continue to be able to vote, whether eligibility should be restricted to those on the state electoral roll and whether people should be entitled to more than one vote if they own or lease property in more than one ward, or live and own property in different wards.

The inquiry noted among the arguments against property votes: their replacement by the democratic principle at other levels of government; the shift in functions and financing of local government; and the fact that payment of taxes does not give companies voting rights at the state or federal levels. Another argument canvassed by the inquiry was that non-resident voters, for example those eligible through nomination by a body corporate, may have a narrow range of concerns and not cast their vote for a candidate interested in the whole community. The inquiry also noted that the voting rights of non-resident property owners meant that they were treated differently from other non-residents with a legitimate interest in the operation of local government. Others who might be considered to have a significant interest in local decision-making include non-residents who work or use services in a local government area.

Despite these cogent arguments against property votes and the additional cost of maintaining a separate non-residents' roll, the WA inquiry ended in 2006 by recommending the continuance of property votes on the traditional grounds of the valid interest of property owners in local government. The only concession to democracy was to recommend that plural votes for property owners or occupiers be abolished (Local Government Advisory Board 2006). In the event, the WA government made no changes to the local government franchise at all, although changing the electoral system to one of proportional representation. Property owners will still have plural votes if they live and have property in different wards or live elsewhere but have property in different wards

within a local government area. This is quite apart from having votes in each local government area where they own property

The Political Participation of Foreign Nationals

One interesting question is the intersection between property owning, citizenship and residence in the local government franchise. In Canada non-resident property owners or tenants may vote for local government in some provinces, but they must be Canadian citizens. In New Zealand non-resident property owners can vote in local government, but so can all permanent residents, regardless of citizenship. In Australia non-resident rolls for property owners have been one avenue for non-citizens to enjoy voting rights in some jurisdictions. Resident voters in local government elections normally have to be on the state electoral roll and hence either Australian citizens, or British citizens enrolled before 1984. When moves were made in the 1980s to address the discrepancy between the parliamentary voting rights of British citizens and other foreign nationals, New Zealand extended voting rights to all permanent residents while Australia restricted new enrolments to Australian citizens.

Foreign nationals who are property owners enjoy the municipal franchise in Victoria and Tasmania and may also stand as candidates. In South Australia foreign nationals also enjoy the municipal franchise, both on grounds of property and of residency, but may not stand as candidates. In Western Australia foreign property owners used to have the same voting rights as in Victoria or Tasmania but the Local Government Act was changed to restrict new enrolments to Australian citizens from 1996. So in Western Australia, unlike Victoria, South Australia or Tasmania, citizenship now trumps property ownership with regard to non-resident voting rights.

It is perhaps anomalous that, except in South Australia, property ownership has been one of the only avenues to participation by foreign nationals in Australian local government elections. The European Union has a 1992 Convention on the Participation of Foreigners in Public Life at the Local Level, designed to ensure that resident non-nationals are involved in decision-making at this level. The general trend in Europe has been towards extending the right to vote in local elections to all residents, not just EU citizens (or property owners). This is already the case in the Nordic countries and in Ireland, the Netherlands and a number of Eastern European countries, sometimes with a minimum residence requirement (Waldrauch 2005, 24).

The general thinking behind the expansion of electoral rights for foreign nationals is that in a world of international migration it is unreasonable that people should be subject to decisions over a long period of time without having the opportunity to influence those decisions. First-generation migrants may, in particular, have legitimate reasons not to take out citizenship in the new country because they would lose citizenship or rights in their country of origin and may not be able easily to give up interests in and attachment to their country of birth (Waldrauch 2005, 3). An auxiliary argument for enfranchising foreign residents is to reduce the likelihood of their being used as scapegoats in populist political campaigns. There are few persuasive arguments for forcing residents to become citizens in order to have a say in decisions affecting their locality.

The rise of populist politics in Australia means that any expansion of the political rights of foreign nationals is unlikely in the immediate future. The few rights that exist are

either a carry-over from a colonial past, such as the voting rights of British citizens enrolled before 1984, or a flow-on from property votes in local government.

Conclusion

The proportion of property votes in local government elections is generally quite small except in cases such as the cities of Sydney or Melbourne – for example, 2.3 per cent of all voters on combined WA local government rolls. However the retention of property votes at all appears to violate the basic democratic values of political equality and popular control of government. Property no longer has votes in parliamentary elections but this principle has yet to be extended to local government. During 2006, commentary on Australian electoral matters has been focused on moves at the federal level to make it more difficult for eligible voters to enrol and to make it easier for property to make secret donations to political parties. No attention has been paid to the problematic character of the local government franchise in five states nor to the failure to take the opportunity for reform in Western Australia. Local government continues to be a neglected element of the Australian polity, overlooked by most political scientists and rarely at the forefront of debate over democratic reforms.

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NOTES

1. The colonial electoral acts, while often regarded as pioneering instruments of manhood suffrage, generally had provisions disqualifying those in receipt of charity.
2. See NSW Local Government Act 1993 s. 266; Victoria Local Government Act 1989, s. 11; Queensland Local Government Act 1993 s. 276; Western Australia Local Government Act 1995, s. 4.30; South Australia Local Government (Elections) Act 1999, s. 16; Tasmania Local Government Act 1993, s. 254.

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