



UNIVERSITY
OF WOLLONGONG
AUSTRALIA

University of Wollongong
Research Online

Faculty of Law, Humanities and the Arts - Papers

Faculty of Law, Humanities and the Arts

2018

The nexus clause: A peculiarly Australian obstacle

Zachary Gorman

University of Wollongong, zkk318@uowmail.edu.au

Gregory C. Melleuish

University of Wollongong, gmelleui@uow.edu.au

Publication Details

Gorman, Z. & Melleuish, G. (2018). The nexus clause: A peculiarly Australian obstacle. *Cogent Arts & Humanities*, 5 (1), 1517591-1-1517591-19.

Research Online is the open access institutional repository for the University of Wollongong. For further information contact the UOW Library:
research-pubs@uow.edu.au

The nexus clause: A peculiarly Australian obstacle

Abstract

The nexus between the House of Representatives and the Senate as set out in Section 24 of the Australian Constitution states that the Senate be half the size of the House of Representatives. It was a constitutional provision without precedent, the only such clause in the Australian Constitution. Little work has been done on the nexus. This paper examines how it came into existence during the Constitutional Conventions largely as the consequence of two desires. One was to protect the power of the Senate and the place of the smaller states. The other was to prevent the overexpansion of the House of Representatives. The paper then considers the first expansion of the House of Representatives in 1949 and the unsuccessful attempt, begun by Robert Menzies, to abolish the nexus in 1967 despite overwhelming support by the major political parties.

Disciplines

Arts and Humanities | Law

Publication Details

Gorman, Z. & Melleuish, G. (2018). The nexus clause: A peculiarly Australian obstacle. *Cogent Arts & Humanities*, 5 (1), 1517591-1-1517591-19.



Received: 13 March 2018
Accepted: 27 August 2018
First Published: 03 September 2018

*Corresponding author: Greg Melleuish, School of Humanities and Social Inquiry, University of Wollongong, Australia
E-mail: gmelleui@uow.edu.au; gmelleuish@gmail.com

Reviewing editor:
Alexios Alecou, University of London, UK

Additional information is available at the end of the article

HISTORY | RESEARCH ARTICLE

The nexus clause: A peculiarly Australian obstacle

Zachary Gorman¹ and Greg Melleuish^{2*}

Abstract: The nexus between the House of Representatives and the Senate as set out in Section 24 of the Australian Constitution states that the Senate be half the size of the House of Representatives. It was a constitutional provision without precedent, the only such clause in the Australian Constitution. Little work has been done on the nexus. This paper examines how it came into existence during the Constitutional Conventions largely as the consequence of two desires. One was to protect the power of the Senate and the place of the smaller states. The other was to prevent the overexpansion of the House of Representatives. The paper then considers the first expansion of the House of Representatives in 1949 and the unsuccessful attempt, begun by Robert Menzies, to abolish the nexus in 1967 despite overwhelming support by the major political parties.

Subjects: Legislative Politics; Federalism; History of the Constitution

Keywords: Australia; Australian constitution; nexus; house of representatives; Senate; 1967 referendum; Australian political history

1. Introduction

Scholars of Australian politics and political history tend to be somewhat forgetful of the role the Commonwealth Constitution plays in shaping the political life of the country. When the constitution does play a significant role in Australian politics, it seemingly comes as a great surprise, perhaps because the belief is widely held that the practice of politics will always trump the legal



Zachary Gorman and Greg Melleuish

ABOUT THE AUTHORS

Zachary Gorman and Greg Melleuish both conduct research into Australian political history with a particular emphasis on the importance of Liberalism as a factor in that history. Zachary recently published *Sir Joseph Carruthers: Founder of the New South Wales Liberal Party* based on his PhD thesis at the University of Wollongong. Greg has published widely on Australian political ideas and his most recent book is *Despotic State or Free Individual?* (2014). This article forms part of a project on conservatism in Australia.

PUBLIC INTEREST STATEMENT

The 1967 referenda are generally viewed in terms of the successful referenda related to Indigenous matters. The third and unsuccessful referendum, which sought to break the nexus between the size of the House of Representatives and the Senate, is now largely forgotten. However, the issue of the nexus remains an important one in Australian politics as it means that the House of Representatives cannot grow without an increase in the size of the Senate. With considerable population growth in Australia, particularly in urban areas, no growth in the number of members in the House of Representatives will mean larger and larger rural seats in geographical terms. There needs to be a good public understanding of the nexus and its consequences. Currently, this understanding is lacking. This paper provides an account of how it came into being and why attempts to get rid of it have been unsuccessful.

framework within which it is embedded. The recent sudden impact of the citizenship clause of Section 44 took most people by surprise, not least because discussion of the constitution tends to be the domain of constitutional law experts and rarely finds its way into public discussion. There has been little attempt to examine the history of the clauses of the Commonwealth Constitution and how they have shaped the wider history of Australia. This paper seeks to take one such clause, Section 24, and to examine both how it came to be in the Constitution, its importance, especially in terms of the capacity of the House of Representatives to grow in size to meet population growth, and the failure of the one referendum held to change it in 1967. In this way, some light can be shone on how the Commonwealth Constitution works as a conservative break on Australian politics. In a broader sense, it also illustrates how a particular constitutional arrangement can lead to a polity developing in a particular direction.

The Australian Constitution is a hybrid drawing inspiration from a number of sources (Aroney, 2009; Hirst, 2000; Irving, 1997). The Federation Fathers assumed that responsible government (Galligan, 2007, 519), or what is also termed the Westminster system, would lie at its core; they saw it as a central element of the political system which had made Britain great. Moreover, colonial politicians had over 40 years of the successful operation of responsible government in the various Australian colonies on which to draw. The necessities of a federal compact, however, meant that it was impossible to adopt Britain's constitutional arrangements in their entirety. Instead, the drafters of Australia's Constitution were forced to incorporate clauses drawn from the United States of America and other contemporary federations. Norway, for example, was the source of the joint sitting provision used to break deadlocks between the two Houses of the Australian Parliament (Aroney, 2009, 228). Very little of what became the Constitution was without a precedent somewhere in the world. The stipulation of section 24 that the size of the House of Representatives 'shall be, as nearly as practicable, twice the number of Senators', was, however, entirely new. A curious result by the members of the Constitutional Conventions, of a perceived conflict between American-style federalism and responsible government, section 24 was hotly debated before its eventual adoption. It has since become a significant obstacle to any expansion of the size of parliament, which a referendum and several proposed alterations have failed to overcome.

Section 24 states as follows: 'The House of Representatives shall be composed of members directly chosen by the people of the Commonwealth, and the number of such members shall be, as nearly as practicable, twice the number of the senators' (Australian Constitution). The effects of section 24 are straightforward. They mean that it is impossible to increase significantly the number of members of the House of Representatives without also increasing proportionately the number of senators. This is something that governments have been very reluctant to do. The "as nearly as practicable" qualification offers some leeway depending on the distribution of population, and the number of seats in the House of Representatives can fluctuate slightly. Nevertheless, excluding the decision to give representatives to the territories, there have only been two increases to the size of the Senate since Federation. The first, in 1949, increased the number of senators from the original 36–60, and the second in 1984 increased the number of senators from 64 to the current number 76. The size of Australia's House has not kept up with population growth; hence, electorates have become increasingly large over time. The 1891 draft of the Constitution suggested that initially there would be one representative for every 30,000 people, while the 72 seats provided by the original nexus ensured that at federation there was roughly one member for every 50,000 people (Quick & Garran, 1901, 446–460). The new quota for a seat in the House of Representatives after the next redistribution will be over 164,000 (Electoral Commission, Australian Government Gazette —C2017G00945, 31 August 2017). This means that it has become increasingly difficult for members to represent truly their communities, as the sheer number of people reduces the ability for individuals to connect with their local member. The size is particularly damaging for the representation of rural seats, which increasingly cover vast territory and competing communities of interest. For this reason, there have been several attempts to remove the nexus clause. The most serious of these attempts was the 1967 referendum but the 1975 Constitutional Convention and

the 1988 Constitutional Committee also supported the proposal (*Minutes of proceedings and official record of debates of the Australian Constitutional Convention, held at the Hotel Windsor, Melbourne, 24–26 September, 1975* Melbourne: Australian Constitutional Convention, 1975, *Final Report of the Constitutional Committee* Canberra: Australian Government Publishing Service, 1988).

Despite the uniqueness of Section 24 and the repeated attempts to remove it from the Constitution, the clause has received little academic attention. Political scientists have generally only dealt with the clause in two contexts. The first is as one of the numerous clauses to be considered in an annotated treatment of the whole Constitution. The seminal work here is Quick and Garran's 1901 volume. Quick and Garran follow the logic of the clause's framers; that the "two to one ratio" was necessary to prevent a rapid increase in the size of the House of Representatives, and to ensure that the Senate maintained the numerical strength necessary to ensure that it has the "vital force" required to carry out its constitutional role. To allow the House of Representatives to expand while leaving the Senate behind would, according to the authors, "in course of time lead practically to the abolition of the Senate, or at any rate, to the loss of that influence, prestige, and dignity to which it is entitled under the Constitution"(Quick & Garran, 1901, 452). Nicholas Aroney's modern treatment of the Constitution sees the nexus as a deliberate decision to give preference to a federal rather than national understating of what constituted the Australian polity (Aroney, 2009, 227–231). John Uhr (2002, 7) argues that the nexus simultaneously limits and protects the power of the Senate, as the two-to-one ratio ensures not only that the House does not get too much bigger than the Senate, but also that the Senate does not approach the size of the House. The second context in which the nexus receives treatment is in relation to the 1967 referendum on the issue, which was held simultaneously with referendums recognising Indigenous people in the census and allowing the Federal Government to make laws regarding Australian Aborigines. Bain Attwood and Andrew Attwood and Markwood (2007, 35) have suggested that the nexus referendum was the main concern of the government, to which the indigenous referendums were tacked on in the hope of increasing the likelihood of a successful vote. Meanwhile, Stephen Holt (2017) has presented the nexus referendum as a cynical attempt to enlarge the House of Representatives to protect incumbents from an adverse redistribution, an attempt that was defeated by similarly self-interested populism.

This paper seeks to go beyond the previous treatments of Section 24 and examine in detail why it was introduced, why there was a push to amend it, and why these attempts have failed. In so doing, it is necessary to consider both the 1890s Constitutional Conventions that produced the nexus clause and the 1967 referendum that failed to remove it. In many respects, the nexus was introduced because of a number of assumptions about the rate and distribution of Australia's population growth, the cohesiveness of state-based representation in the Senate, and the limited role of the Commonwealth government, all of which have proven to be misguided. On the other hand, if one of the central intentions of the nexus was to limit the size of the Australian Parliament, it has undoubtedly succeeded in that goal.

2. Background

When the movement to unite the British Colonies of Australasia under one federal representative government began to gain popularity during the 1880s, the question arose regarding the form that such a representative government would take. The first decision taken was that in order to give it a popular legitimacy lacking in the existing Federal Council, the new government would have to take the form of a bicameral parliament that balanced the interests of democracy and federalism. One house would represent the people of the nation according to population and another house would represent the states that made up the federal union with the equal representation of each state. This was based on the precedent of the American Constitution, which also stipulated that even the smallest states be given a minimum of one representative in the population-based lower house, and that every state would have the same number of senators.

The problem was that the American federal model was difficult to reconcile with a system of responsible government to which, as members of the British Empire with experience of their own colonial parliaments, Australians were accustomed. A government could only be responsible to one house of parliament, and all precedent, including Australian colonial precedent, suggested that this would have to be the population-based House of Representatives. This implied that house would be the dominant one, and that the Senate, which would function as the states' house, would take on a secondary role as an upper "house of review". This was contrary to the federal ideal, which insisted that the two houses be largely equal in terms of their powers (Hamilton, Madison, & Jay, 2009, 51 & 62–6). Many in the smaller colonies did not want a secondary position given to the Senate, for they felt that only a powerful Senate based on equal representation regardless of population could protect their interests. The main opponent of responsible government was the Tasmanian Andrew Inglis Clark, who pointed to the supposed failings of the Canadian system of central control, and suggested following the American precedent even when it came to executive government (La Nauze, 1972, 28). Such was the smaller colonies' concern that when in 1891 the first Australasian Federal Convention drafted an Australian Constitution, the document did not explicitly state that the government would be responsible to the House of Representatives or even that ministers would have to sit in parliament. That omission was alarming to many in the larger colonies who strongly identified democracy with responsible government. This required that the House of Representatives remain in firm control of the reins of government. It is worth noting that Tasmania did not introduce universal manhood suffrage until 1896 and that Western Australia did not gain responsible government until 1890, hence at least two of the small colonies were new to functioning democratic politics. The failure to prescribe explicitly responsible government became one of the several issues George Reid used temporarily to kill the federation issue in the New South Wales Parliament (McMinn, 1989, 64–5).

Another issue arose out of the presumed equality of the two houses in a federal system. This was the issue of deadlocks. In a bicameral system, disagreements between the upper and lower houses are inevitable. The whole idea of a "house of review" requires that upper houses have the ability to block or amend legislation with which they disagree. In matters of great importance, however, the lower democratic house needs to be able to assert the supremacy implied by responsible government. By the late nineteenth century, Westminster theory had evolved to suggest that in such cases the lower house should ultimately be able to force its decision based on its democratic legitimacy compared to an upper house generally assembled on hereditary, nominee, or limited franchise principles, a precedent largely established by the 1832 reform bill (Raina, 2011, 85–99). Even in Australia, this principle found expression in the New South Wales Parliament in which the Legislative Council whose members were appointed. In 1881, members of the Legislative Council voted for a Bill restricting Chinese immigration even though they found it repugnant (Melleuish, 2014, 100–6).

The problem was that a Senate representing the constituent states of the federation had an inherent legitimacy. After the compromise of 1891 took away the Senate's power to initiate or amend money bills, the representatives of the smaller colonies argued that on all other issues the Senate should be a co-ordinate power in governance with the untrammelled ability to block legislation (John Gordon, *Official Report of the National Australasian Convention Debates*. Adelaide, 30/3/1897: 326. John Gordon, *Official Report of the National Australasian Convention Debates*. Adelaide, 30/3/1897: 326.). The 1891 Draft Constitution offered no solution for breaking deadlocks but, over the following years, fierce clashes between the houses in both the colonies of New South Wales and Victoria suggested the need to devise some mechanism of compromise.

Once there was a decision that the proposed Australian Parliament should consist of two houses, the ancillary question was how large those houses should be. For the House of Representatives, the 1891 drafters once again looked to American precedent, suggesting that initially there should be one member for every 30,000 people, leaving Parliament with the ability to increase the size as necessity required (Commonwealth of Australia Bill, 1891, section 24, 947). American congressional districts had

likewise started at approximately 1 member for every 30,000 free persons, but were now set at 173,000 people after the 1890 census (Abstract of the Eleventh Census, 1896, 2.). This left open the possibility that Australia would have a relatively large House of Representatives, particularly if the Parliament did not frequently increase the quota. On the issue of minimum representation, the Australian drafters took a major interest in protecting the position of the smaller states; they required a minimum of four members for any state in what would inevitably be a smaller house than was the case in America. The increase in the size of the House of Representatives implied by the 30,000 quota meant that this minimum state representation would become proportionately less important over time; hence, it effectively acted as a stopgap measure acknowledging the separateness of the states at the time of Federation and the likelihood that they would grow closer as years passed. John Forrest complained that the 30,000 quota would quickly make the minimum of four irrelevant (*Official Report of the National Australasian Convention Debates*. Sydney, 6/4/1891, 733). In 1891, the number of senators was set at eight per state, with their respective state parliaments directly choosing them (Commonwealth of Australia Bill, 1891, section 9, 946.).

2.1. 1897: the creation of the nexus

Between 1891 and the opening of the second round of Federal Conventions in Adelaide in 1897, the idea of imposing a nexus linking the size of the two houses seems to have emerged almost as an afterthought. It was not an idea that had been discussed in the lead up to the conventions, but rather was a short proposal put forth in the Constitutional Committee of the Adelaide Convention. The minutes of that committee suggest that the idea was proposed by South Australian Richard Baker, but as chair of committees, Baker did not speak in the debates for which we have full transcripts (Aroney, 2009, 227). Instead, the task of selling the proposal fell to Richard O'Connor, a delegate from New South Wales, and it is from him that we must garner the proposal's original intent.

The first reason O'Connor cited in support of the nexus was the need to limit the size of the House of Representatives so that it did not become too large. Before introducing the nexus, the Constitutional Committee had already increased the 1891 proposal of a 30,000 quota per seat to a 50,000 quota, but, even at that level, the automatic increase in seats triggered by any increase in population would create a large and unwieldy House of Representatives. The number of senators for each original state was now set at 6, so provided all the existing colonies joined the federation the nexus would provide 72 seats, which equated roughly to a quota of 50,000 except without the automatic increase. O'Connor argued that leaving alterations in the quota up to the House of Representatives was insufficient, as members were unlikely voluntarily to retrench themselves once an automatic increase had been made. If, however, an increase in the House of Representatives required both an increase in the Senate and the consent of both houses, public opinion would ensure that "business principles as well as political principles" would underpin any increase (Richard O'Connor, *Official Report of the National Australasian Convention Debates*. First Session. Adelaide, 15/4/1897, 683, 685). It is important to note that in an age when the payment of members of Parliament was still a novelty, restricting the number of members to reduce costs was still a major concern; McMinn (1979, 113) notes that New South Wales delegates were particularly interested in federal finances. Not long after this, "retrenchment and reform" movements would see the downsizing of both New South Wales and Victorian Parliaments (Gorman, 2016, 254–289). This was an important issue, as the perceived costs of Federation were one of the main arguments made against it, particularly in the larger colonies. O'Connor was little concerned that if the number of seats did not increase with population, the size of the electorates would have to, because he argued that the federal government held limited responsibilities most of which were not locality-specific, which contrasted with the greater responsibilities of state governments, a point he elaborated further at Sydney (Richard O'Connor, *Official Report of the National Australasian Convention Debates*. Second Session. Sydney, 13/9/1897, 434). He did foresee that the responsibilities of the federal government might expand over time, but argued that as long as the Parliament retained the ability to increase its size along with the Senate, it was possible to adapt to such changes (Richard O'Connor, *Official Report of the National Australasian Convention Debates*. First Session. Adelaide, 15/4/1897, 685).

The delegates of the Constitutional Convention based their projections of Australia's population growth on figures prepared for the Convention by the New South Wales Government Statistician Timothy Coghlan. Based on extrapolating from the average rate of growth in each colony between 1881 and 1891, a period of considerable economic growth, Coghlan's figures suggested that by 1941 Australia would have a population of over 22 million, necessitating 446 House of Representatives seats if a 50,000 quota was adopted (*Official Report of the National Australasian Convention Debates*. First Session. Adelaide, 15/4/1897, 683). In reality, the population of Australia grew to just seven million by 1941. Moreover, he predicted that the rate of growth would be unevenly spread, with New South Wales reaching 8.2 million, Queensland reaching 7.5 million, and Victoria falling behind at just 4 million (*Official Report of the National Australasian Convention Debates*. First Session. Adelaide, 15/4/1897, 695). These figures were not uncontroversial, particularly since they were based on the boom years of the 1880s which had long since petered out with a depression in the early 1890s, but Coghlan was a dominating figure in his field with an international reputation that led many to take his predictions at face value (Hicks, 1981).

The figures would be very influential in shaping the assumptions delegates made about where Australia was heading. The projected population increases seemed to open up the possibility of the creation of new states, and therefore the ability to increase the number of House of Representatives members without increasing the number of senators for each individual state. To some, this softened the restrictive nature the nexus; while to others, it compounded its faults by automatically increasing the number of members with the addition of a new state regardless of whether there had been an increase in the overall population (George Reid, *Official Report of the National Australasian Convention Debates*. Second Session. Sydney, 13/9/1897, 449). While O'Connor used the figures to justify the nexus, fierce Victorian democrat Isaac Isaacs used them to attack the proposal. Isaacs argued that if the projections were accurate and Victoria increased her population but did not keep up with the other large states, she would inevitably lose seats in a manner which was not only repugnant but which would make the Federation Bill very hard to pass in that colony (Isaac Isaacs, *Official Report of the National Australasian Convention Debates*. First Session. Adelaide, 15/4/1897: 695–99). Tasmanian Matthew John Clarke pointed out that if Victoria was going to become a comparatively smaller state, then it should embrace the protection of the "states' house" provided by the nexus, a line of thinking that seems to have prevented any unity amongst the Victorian delegation over this issue (Matthew John Clarke, *Official Report of the National Australasian Convention Debates*. Second Session. Sydney, 13/9/1897: 441).

Other criticisms included the fact that the nexus was an entirely novel idea that lacked the precedent of other proposals. There was an inherent Burkean conservatism to the approach taken by many delegates during the constitutional conventions, epitomised by a desire to adapt and adjust existing systems of governance rather than creating something new and theoretical from first principles (Chavura & Melleuish, 2015, 515). Delegates were very much influenced by the image of an evolving British Constitution and feared creating a constitution that was too narrow and rigid. George Turner took this line, questioning the validity of applying abstract scientific principles to something as tangible as a federation (George Turner, *Official Report of the National Australasian Convention Debates*. First Session. Adelaide, 15/4/1897,). Deakin, who despite his self-professed liberal status took a Burkean line on many issues during the Federation debates, espoused the pragmatic view that the ratio might be desirable early on, but argued that it might prove too inflexible in the long run (Chavura & Melleuish, 2015, 514).

Isaacs suggested that the idea that the nexus would limit the cost of government was ill-thought out because if the House of Representatives did have to increase, the nexus would ensure that there were also more senators needing to be paid. Another attack involved the idea that the nexus pre-supposed a joint sitting deadlock provision which at that stage did not exist. A joint sitting whereby both houses of parliament would have to sit together to vote on a particular piece of legislation was one of the few instances in which a ratio between their respective sizes seemed

to be justified. Henry Higgins opposed the nexus because of the joint sitting, and George Reid, who would later oppose the nexus, supported it at Adelaide because it would facilitate a joint sitting provision. No joint sitting provision was introduced at Adelaide, and deadlock proposals by Isaacs and Bernhard Wise both failed there.

O'Connor insisted that the nexus was not inherently tied to a joint sitting proposal, but that it was designed to perform the simultaneous function of checking the size of the lower house while protecting the "strength and power" of the Senate (Richard O'Connor, *Official Report of the National Australasian Convention Debates*. First Session. Adelaide, 15/4/1897, 684). This was a point that would be elaborated upon during the Convention's second session in Sydney. The nexus provision succeeded in passing at Adelaide, but in the interval both the New South Wales and Victorian Parliaments suggested that the nexus be scrapped. There, in response to a move to reintroduce a 30,000 quota, O'Connor (Richard O'Connor, *Official Report of the National Australasian Convention Debates*. Second Session. Sydney, 13/9/1897, 429.) insisted that:

The fact of its [the nexus] limiting the number of members of the House of Representatives is incidental merely to the main object of the application of this principle, which is to keep up that relation between the number of the Senate and the number of the House of Representatives. On what ground does that stand? It stands on this ground, which, it appears to me, certainly ought to commend itself to everyone who wishes to see the Senate an effective body in the legislature. Of course numbers are not always a guarantee of effectiveness or power in any legislative body, but if you have two bodies which are working co-relatively, and there is a tendency of the number in one body to become larger and larger every decade, and the other body to remain at a standstill, you get to a point to which from the mere smallness of its numbers, the House which contains the smaller number of members will necessarily lose in power and importance in the community.

O'Connor dismissed the fact that American precedent suggested that the Senate could remain strong even as the other house expanded by pointing to the executive powers held by the United States Senate and arguing that it was those that kept that Senate in a powerful position. According to this argument, it was the blending of responsible government with the federal model which forced Australia reluctantly to innovate. Despite the fact that the updated draft constitution continued to omit any direct references to the responsibility of ministers to the House of Representatives, by 1897 that responsibility had become an accepted fact of federation. The executive powers of the United States Senate include the confirmation of major presidential appointments, the ratifying of treaties, and the impeachment trial of presidents. In a responsible government, the former is exercised by the Crown on the advice of responsible ministers, while the equivalent of impeachment is the Government's need to maintain majority support in the House of Representatives. None of these exclusive powers could be given to the Australian Senate if the parliament was to function under responsible government, and it is for that reason that Baker and his supporters felt the need to introduce the nexus.

O'Connor also maintained that as long as the ratio between the states was kept, there was no harm in increasing the size of the Senate because the senators would likely vote as state-based blocks. According to this line of thinking, the nexus would not stop an increase in the size of the lower house beyond ensuring that it was well-considered rather than automatic. Reid thought the logic that a larger Senate would be more powerful and better protected was flawed because a smaller body could be more disciplined and united than the larger house, giving it a dominant position in any dispute. Joseph Carruthers argued that the ratio relied too heavily on the presumption that there would be six states; one or more choosing not to join, or Queensland splitting into multiple states could throw the whole ratio out (Joseph Carruthers, *Official Report of the National Australasian Convention Debates*. Second Session. Sydney, 13/9/1897, 438–440). It is interesting that despite the desire of the constitutional framers not to indulge in speculative theorising, in this case, they had no option but to engage in such activity.

At Sydney, the debate on the nexus preceded a resolution to the issue of a deadlock between the houses; hence, delegates such as Reid who had previously supported it as leading to a joint sitting were now wavering as a joint sitting looked like an increasingly unlikely possibility. Nevertheless, through a series of tense negotiations and the failure of a number of other proposals, Carruthers was able to introduce successfully a joint sitting provision by the end of the session (Quick & Garran, 1901, 192). This largely put the matter to bed. At the third session in Melbourne, there was once again some spirited debate as Turner tried one last ditch effort to introduce a 50,000 quota. Despite achieving a joint sitting provision, Reid remained opposed to the nexus because the proposed three-fifths majority required for a successful vote in any joint sitting placed the Senate in a very strong position as long as it had its relative size protected.

Throughout all three sittings, Isaacs was the greatest critic of the “two to one ratio”. He insisted that by trying to limit the number of seats, “you would have such immense constituencies that we should have great difficulty indeed in the future in inducing any but the most-wealthy men to contest an election, and that is a very serious matter” (Isaac Isaacs, *Official Report of the National Australasian Convention Debates. Second Session. Sydney, 13/9/1897*, 426). Hence, large electorates were anti-democratic not only because they limited representation, but because they also restricted the ability of the common man to run for parliament. In Melbourne, Isaacs insisted that the nexus was not only novel, but that it was taking from the larger states something that they had never conceded, the right to a House of Representatives based purely on a population basis. This was not entirely true. The right to a House of Representatives based purely on population had been eroded to some extent with the decision to allow a minimum number of representatives to all original states. That minimum was now set at five. As Isaacs pointed out, this minimum was an even greater aberration of the principle of equal representation and equal suffrage if it was made deliberately difficult to increase the House of Representatives beyond 72 seats. In a joint sitting, Tasmania would be doubly over-represented in both the Senate and the House, making the Constitution “the most conservative Constitution we have ever seen” (Isaac Isaacs, *Official Report of the National Australasian Convention Debates. Third Session. Melbourne, 3/3/1898*, 1834.).

This was the crux of the matter. The victory of the nexus clause was a victory of the smaller states, who won an even greater concession than they had already with the compromise of 1891 protecting the Senate’s ability to veto money bills. The nexus not only protected the size of the Senate and therefore the power of the states’ house particularly in relation to a joint sitting, but by effectively limiting the number of lower house seats the nexus also sandbagged the smaller states’ over-representation in that house. The nexus provision succeeded because of the strong and united push the representatives of the smaller colonies made for it and the willingness of those delegates from the larger colonies who wanted federation at any price to accede to their demands. The position of these large colony delegates in favour of the nexus could, to some extent, be justified using the argument it would keep costs down by restricting the size of parliament. Delegates from the larger colonies were acutely aware that it would be their colonies which would pay the majority of the costs of Federation, though for democrats like Reid, this was simply an argument in favour of a strong House of Representatives giving representation to the people whose taxes paid for everything. The two greatest defenders of the nexus were New South Welshmen O’Connor and Edmund Barton. Aroney (2009, 228) points out that while on most issues Barton tried to keep an air of impartiality and compromise; on the nexus issue, he was openly partisan. Barton was particularly scathing against those who insisted that democracy and responsible government required that the power of the House of Representatives needed to be defended as much as possible, insisting that they were disguising an inner belief that rejected the basic principles of bicameralism (Edmund Barton, *Official Report of the National Australasian Convention Debates. Third Session. Melbourne, 3/3/1898*, 1835). Statistical voting analysis shows a clear separation between a group of New South Wales delegates clustered around the ultra-federalist Barton and the three members of the New South Wales Ministry who were willing to stick their necks out for the interests of their state (Loveday, 1972, 175). Once the long and protracted debate

over the deadlock provisions ended with the decision to allow for a joint sitting, the nexus was essentially locked into place as delegates were unwilling to reopen that particularly delicate can of worms. Instead debate turned to the majority necessary to succeed in any joint sitting, based on a ratio between the houses which was now set in stone.

The effect of the negotiations by the delegates was to lock in a new and untested constitutional principle. They had no way of knowing what the long-term effects of that clause would be. Their discussions regarding it had been largely speculative and their projections regarding Australia's future were inaccurate. Clause 24 would have effects but it would take time to see what those effects would be. It most certainly acted as a break on increasing the number of politicians in the Commonwealth Parliament.

It is worth pointing out that the Commonwealth Constitution was drawn up by men who were predominately liberals and democrats. Many were lawyers. The primary political issue which divided them was that of free trade as opposed to protection. On constitutional matters, there was a fundamental liberal consensus (Chavura & Melleuish, 2015). There was no involvement in the process by members of the emerging Labor Party; it was a constitution devised by liberals. As Commonwealth politics settled into a Labor/non-Labor divide after 1909, this meant while non-Labor supported the federal model, the Labor Party saw federalism as an obstacle to implementing its policies; for the next 50 years, it had a policy of abolishing both the states and the Senate (Galligan, 1981, 133). It is difficult to see how it would have been possible to achieve this goal and, in any case; the Labor Party was in power for less than 20 out of the first 70 years of the existence of the Commonwealth. The Country Party came into being after World War I as a non-Labor party concerned primarily with rural interests. The Liberal Party and the Country Party became allies in opposition to the Australian Labor Party (ALP) and generally formed coalition governments, despite representing different interests.

2.2. 1949: the first expansion

The nexus locked in place the size of the Federal Parliament for the first few decades of the twentieth century. Over that time, Australia's non-Indigenous population doubled from 3.8 million in 1901 to 7.6 million in 1947, growth figures that while strong failed to come anywhere near Coghlan's grandiose predictions (Australian Historical Population Statistics, 2014). Despite the population growth and the consequent increase in the size of an average federal electorate, there appears to have been little push for an expansion in the number of federal members until the early 1940s. On the contrary, the main grievance about the number of government personnel was the expansion of the size of cabinet. This was something that was largely necessitated by an increase in federal responsibilities beyond the original limited intentions of the constitution, and it was particularly controversial amongst conservative politicians who disliked that expansion. Billy Hughes was publicly criticised by his Nationalist colleague Lewellyn Atkinson for failing to reduce the size of cabinet after the expansive responsibilities of World War 1 had subsided (*Daily Telegraph*, Sydney, 17/11/1921, 4).

Despite this conservative criticism, it was ultimately the escalating needs of cabinet that put the question of increasing the size of parliament on the table. In 1938, the *Canberra Times* complained that in terms of area, Australia's federal electorates were some of the largest in the world, but it thought any increase in their number politically impossible because the small states would block it in order to protect their proportionate over-representation in the House of Representatives (*Canberra Times*, 5/8/1938, 8.). In July 1941, shortly before he resigned from the prime ministership, Menzies broached the idea of an expansion, an idea which was so novel after 40 years of the status quo that he had to point out that the Constitution did not actually prohibit it (Age, Melbourne, 1/7/1941, 4.). Menzies later argued that since the size of the Federal Cabinet had increased alongside the role of the Federal government, it was necessary to increase the size of parliament so that there would be a wider pool of talent from which to draw cabinet members (*Sydney Morning Herald*, 8/9/1942, 4). He tried to assuage those who were concerned about idea of creating extra politicians by suggesting that such increase be matched by a decrease in the size of state parliaments to reflect their diminished

responsibilities. Menzies' suggestion was picked up by the succeeding Curtin Labor government, and Attorney-General H.V. Evatt played with the idea of removing the nexus to allow for an increase in the size of the House of Representatives to go along with sweeping constitutional changes extending the Federal government's wartime powers into peacetime, but this aspect of the extensive plan ultimately came to nothing (H.V. Evatt, 'Constitutional Alteration (War Aims and Reconstruction) Bill 1942', *House of Representatives Debates*, 1/10/1942, (Macintyre, 2015, 137–141)).

The combination of population growth and political self-interest forced the Chifley Labor government to act and finally increase the size of parliament. As stated above, by 1947 the population of Australia had doubled from its federal beginning and added to this was a massive program of post-war immigration that was rapidly accelerating the rate of population growth. At the same time, polls showed that Labor was likely to lose numerous seats at the next election following its 1946 landslide; hence, an expansion of Parliament was picked up as a way of giving sitting members a greater chance of re-election (Macintyre, 2015, 461). When proposals to increase the number of senators to 10 per state, and therefore the size of the House of Representatives to approximately 120 seats, were brought before the Labor caucus they were met with a mixed response. Although the majority of members supported the proposals, many thought that the increase might provoke a backlash within the electorate, and there was some small-state opposition to tampering with their proportionate representation in the House of Representatives. The Speaker of the House Sol Rosevear argued that an increase in the use of personal secretaries had kept pace with any increase in the workload of federal parliamentarians which some were citing as justification for the proposals (*Canberra Times*, 18/2/1948, 2.). Any negative reaction to the increase in the number of senators specifically was somewhat alleviated by the fact that increase was tied to the introduction of proportional representation, a long-overdue reform of how senators were elected which would ensure the second chamber was no longer dominated by a single party (Uhr, 1999). Arthur Calwell, who drove the process, convinced caucus on the basis that "enlargement would guarantee their own tenure" (Souter 1988, 396). Proportional representation was also a way of ensuring that the Labor senators facing re-election from the half-Senate election of 1943 had a greater chance of surviving in a hostile political environment, though again Rosevear was critical of what he called a "gold brick" proposal that would ultimately come back to bite the Labor Party (Uhr, 1999).

The Opposition had more uniformity in their negative attitude towards the proposals. While Menzies had previously supported an expansion in the size of Parliament, he was now far more demanding as to how that expansion should be carried out (Robert Menzies, 'Representation Bill 1948', *House of Representatives Debates*, 21/4/1948). He insisted that while there was a case for increasing the size of the House of Representatives, there was none for increasing that of the Senate, and he also reached out to the Country Party by arguing that rural and small-state representation needed further consideration. Menzies accepted that there was a case for the reform of the method of electing the Senate, but he attacked the timing of its introduction which would ensure that Labor, which had won 15 of 18 Senate seats in 1946 and were likely to win about half of them under proportional representation, would be guaranteed control of the Senate for the next term. He also suggested that there was no mandate for the changes, and that Labor should take them to an election before introducing them. When the Bill was brought before the House, Earle Page moved an amendment suggesting that the expansion be postponed until after a referendum was held on a number of matters. These included removing the nexus, imposing a mandatory double dissolution after any change to the size of Parliament and ensuring that the minimum representation of small states within the House of Representatives be proportionate to any increase in the size of the House (Earle Page, 'Representation Bill 1948', *House of Representatives Debates*: 28/4/1948). In the speech that followed, Page went over many of the arguments from the Constitutional Conventions, complaining: that the two-to-one ratio had been "pulled out of the sky" and was without precedent or reasoning, that having to increase the number of senators was a waste of money, and that America had shown how flexibility was a good thing. He also pointed out that the people who introduced the nexus thought that there was a great possibility that the creation of new states would follow an increase in population and that this would prompt an increase in the size of the House of Representatives,

but this had not come to pass. The emotive basis of Page's argument was his concern that rural seats had become too large and unrepresentative but the Government showed little interest in what was essentially a Country Party motion of grievance.

2.3. 1967: the failed referendum

The expansion of the Parliament in 1949 was based on the census of 1947 which recorded only the very beginnings of Australia's post-war immigration boom. That boom placed tremendous pressure on not just the newly reduced size of Federal electorates, but also their distribution. The 1961 census revealed a population of 10.6 million people, the vast majority of whom resided in urban areas (Australian Historical Population Statistics, 2014). The independent Electoral Commissioners took this census data and produced a report on the redistribution of electorates that caused a political storm. One of the New South Wales seats was to be given to Victoria which was experiencing population growth higher than the national average owing to its strong manufacturing industry. Even more controversially, Queensland and Western Australia were to each lose a seat without those seats being transferred elsewhere. This was because of an anomaly in the quota system whereby if a State had greater than 50% of a quota remaining after the full quotas had been counted, they would receive an additional seat (Representation Act 1905). Because there were less of those 50% remainders in 1962 than in the previous redistribution, Parliament was left in the anomalous position that it was supposed to shrink in size despite a large increase in the population it represented.

Menzies' papers contain two folders of documents that make it clear how controversial the redistribution report was (Personal Papers of Prime Minister Menzies, NAA: M2576, 95 circa 1962 & M2576, 9 circa 1963). The Country Party was the most outraged as it looked as if they would lose three seats, one each in New South Wales, Western Australia, and Queensland, though the latter was predicted to be offset by the gain of the seat of Capricornia from Labor. They complained bitterly that the commissioners had not taken enough account of geography and distance in producing their report, and that they had also factored in projected population growth, something that they were not authorised to do. The Labor Party were also aggrieved, despite some offset gains they were projected to lose a seat overall. The only party that stood to gain was the Liberal Party. However, the Coalition held a one seat majority in the House of Representatives, and the Liberals could not hope to enact the redistribution against the wishes of their Coalition partner. In the end, they did not even try; the Government postponed passing the report as they committed to look into the whole issue of electoral representation.

This task fell to the Minister for the Interior Gordon Freeth. He produced a detailed report for Cabinet that outlined a number of proposals for overcoming the difficulty ("Redistribution", Department of the Interior, Personal Papers of Prime Minister Menzies, NAA: M2576, 9, 29/1/1963). One was to change the Representation Act so that any remainder after the removal of full quotas would result in an additional seat for a State. In the short term, this would retain the lost seats of Queensland and Western Australia and also give an additional one to South Australia. In the long term, this would reduce, but not remove, the likelihood of parliament shrinking in size despite an increase in population. Another proposal was to alter section 127 of the Constitution to count Aborigines in the census. This was proposed on practical rather than moral grounds. Population estimates suggested that if Aborigines were included in the census, this would give Queensland and Western Australia the additional population necessary to protect their seats, and there were some complaints that by including unnaturalised "aliens" but not Aborigines the census tended to exaggerate Australia's urban bias. Country Party Leader John McEwen publicly denounced this discrepancy as "cockeyed" (*Canberra Times*, 27/11/1962, 1). The report also remarked that a referendum on this issue was sure to succeed. Another proposal suggested introducing electoral zoning to make it clearer that rural districts should have smaller electorates than those in the city to account for distance and the need for electorates to represent communities. The Electoral Commissioners had already been using an ad hoc rather than official method of zoning, but this was said to favour outer suburban areas. The report suggested that while decent in principle, zoning might be very difficult politically.

All of these proposals were seen as somewhat ancillary to the report's central suggestion, to remove the nexus and introduce a definite quota in the creation of electorates. This had been proposed by a 1959 Constitutional Review Committee, which also recommended the change in section 127, but neither had been acted upon (*Report from the Joint Committee on Constitutional Review 1959*). The Committee proposed a quota of 80,000 but the report suggested that 85,000 might be seen as less "greedy" by the electorate, particularly if the changes to how remainders were dealt with were also enacted. While favouring the removal of the nexus, the report also noted that a referendum and subsequent fresh redistribution would take time and would likely not be completed until 1964. Overall, the report made it clear that the nexus and electoral distributions were at the heart of the Government's push for constitutional change, and that Indigenous issues, particularly the Federal Government's power to make laws on Aborigines, were an afterthought. This is a point supported by Attwood and Attwood and Markwood (2007, 36), who argue that the referendum on section 51 (xxvi) was held largely because the Government felt that it would be politically impossible to hold the other referendums without making this change.

There were two factors which ensured that the Government did not move quickly to follow through on the suggested referendum on the nexus. The first was the issue of timeframe. With only a one seat majority the Government was not willing to restrict its ability to call an election by engaging in the lengthy process of the referendum, the enlargement of Parliament, and subsequent comprehensive redistribution. The other was Menzies' natural aversion to holding referendums, prompted by his lack of success in the 1951 referendum to ban the Communist Party, and the history of previous referendum failures. In *Central Power in the Australian Commonwealth*, Menzies would later recall how he had nearly lost his own seat after the 1937 referendum attempting to curtail "absolute" free trade between the States to allow the centralised marketing of goods (Menzies, 1967, 17). In that book, he argued that a combination of the legalistic way in which referendum questions had to be written, a distrust of central authority, and lingering State parochialism meant that it was extremely difficult for any referendum to succeed. Menzies had a British belief in a flexible constitution which would evolve over time, a belief he shared with the Founding Fathers, and he was therefore far from enamoured with the rigidity of the nexus and indeed the referendum mechanism of constitutional change (*Report from the Joint Committee on Constitutional Review 1959*, 152).

As it turned out, none of the proposed reforms were enacted before the early election of November 1963. Following this, the Government still moved gradually, first changing the treatment of remainders through the Representation Act 1964 and then giving the Electoral Commissioners more strict instructions to make considerations for rural districts through the Electoral Act 1965. Introduced by the new Minister for the Interior Doug Anthony, this Act ensured that future redistributions would consider the following: community as opposed to diversity of interests, means of communication, physical features, and pre-existing electoral boundaries. The existing latitude of a 20% difference in the size of electorates within a state could also be utilised with greater flexibility (Doug Anthony, 'Commonwealth Electoral Bill 1965', *House of Representatives Debates*, 12/5/1965). Labor attacked both measures as a flagrant gerrymander done at the behest of the Country Party, but they did indicate that they would fully support a referendum to remove the nexus. It is worth noting that at this time the Labor platform still called for the abolition of the Senate and other central aspects of federalism; hence, the party had few qualms about removing a clause that prompted the Senate to grow in size (Galligan & Mardiste, 1992, 71–96).

Despite the changes to the Representation and Electoral Acts, the Government still did not carry out the long overdue redistribution. Menzies had invested a lot of political capital in delaying the redistribution, and it was necessary to present a comprehensive reform package, including a nexus referendum, to justify that delay. By 1965, there was considerable urgency in the Coalition ranks that the referendum should take place as soon as possible. The Liberal Party Federal Director J.R. Willoughby warned Menzies that without redistribution, the party faced significant losses in both New South Wales and Queensland that could cost it the next election (Willoughby to Menzies, 17/8/1965, Personal Papers of Prime Minister

Holt, Referendum Proposals, NAA: M2606, 119). Willoughby insisted that these losses were not due to any swing against the Government, but “physical changes” in the electorates that a redistribution could quickly sort out.

In April 1965, Menzies announced the government’s intention to hold a referendum on the nexus and section 127. There was already considerable public pressure to include section 51 (xxvi) as well, but Menzies rejected this by suggesting that giving the Commonwealth power to make laws regarding Aborigines could result in further discriminatory legislation (*Canberra Times*, 19/4/1965, 6.). Menzies set out his main arguments for removing the nexus when he introduced the referendum legislation to Parliament in November, just 2 months before his retirement (Robert Menzies, ‘Constitution Alteration (Parliament) Bill 1965’, *House of Representatives Debates*, 11/11/1965.). He started by pointing out that since 1949, the size of the average electorate had grown from 66,000 to 94,000 people, and that for Parliament to remain representative it needed to expand. He then moved on to the possible increases in the Senate to allow for an increase in the House. To give each state another senator would require uneven half-Senate elections, a logistical nightmare that Menzies dismissed almost out of hand. An increase of 12 Senators, 1 for each state in each half-Senate election, was impracticable because an election of 6 Senators in each State under proportional representation would likely result in 3 each going to the Coalition and Labor, creating a deadlocked Senate that would inhibit parliamentary democracy. This left the only increase practicable under the current constitutional arrangements as 1 of 24 Senators and 48 members of the House, an increase so big that it would be as undesirable as it would be politically impossible. To allay any fears that removing the nexus might lead to a large increase in the size of the House of Representatives or a weakening in the respective power of the states, the Bill included provisions setting the constitutional minimum size of electorate quotas at 80,000, and increasing the minimum number of senators for each original state to 10. In closing, Menzies appealed to his seniority and that of the other long-serving members of the House, insisting that “the problems being looked at by honourable members today are three or four times more weighty and more complex than when I came into the House”. It was the increase in the responsibilities of the Federal Government as much as the increase in the size of the electorates that prompted Menzies to try to break the nexus. O’Connor’s limited federal government that did not deal with locality-specific issues had long been outdated.

Though both the Coalition and Labor parties supported the referendum, opponents were quick to make themselves known. The main opponent was the Democratic Labor Party, led by its two Senators Vince Gair and Frank McManus. A split in the ALP created the Democratic Labor Party in the middle of the 1950s. Its parliamentary representation was limited to the Senate. Consequently, the DLP had an obvious interest in trying to keep the nexus and to force an increase in the size of the Senate, but its leaders may also have sensed a political vacuum left by the major parties that they could exploit in order to increase their vote come the next election. The arguments for the “no” case were fairly simple. The central pillar was the catchphrase “no more politicians”, with the corresponding point that it was precisely because the nexus made it difficult to increase the size of Parliament that it should be kept. Despite being a Victorian, McManus emphasised the small-state case against breaking the nexus, namely that the nexus protected their relative power not only in ensuring their minimum representation in the House was proportionately stronger, but also by ensuring a large number of senators to give small-state representation within party caucuses where all the important decisions were made (*Canberra Times*, 15/11/1965, 8). Gair argued that the logic that Australia was under-represented was flawed because Australian electorates were already much smaller than those in the United States. He also suggested that since section 128 of the Constitution prevented the proportionate representation of the States being altered without their permission, a referendum might need a majority in each State in order to pass (*Canberra Times*, 3/12/1965, 4).

The “no” campaign was also supported by a number of rogue Coalition senators, namely Thomas Bull and Edgar Prowse of the Country Party and Elliot Lillico, Edward Mattner, Ian Wood, and

Reginald Wright of the Liberal Party. Most of these members were from smaller States and all of them were fierce believers in the constitutional importance of the Senate. Bull, the only New South Welshman in the group, based his opposition on a deep-seeded rejection of the need for any more politicians. He insisted that with adequate clerical and research assistance, the existing number of politicians could already grapple with the issues presented to them, no matter how big (Boadle, 2010, 425–8). There was some talk of expelling at least Wright and Wood from the Liberal Party, but the Government ultimately decided to allow them their free conscience (Frame, 2005, 211). Reg Turnbull and the former Liberal Douglas Hannaford, the only independent senators, also opposed the referendum, though they were not as prominent in the “no” campaign as the others.

Menzies’ Referendum Bill passed the House of Representatives unopposed, the first time a Bill had received such overwhelming support since 1915 (*Canberra Times*, 24/11/1965, 3). Despite receiving considerably more scrutiny in the Senate, Labor ensured the Bill’s success, and the referendum vote was flagged for 28 May 1966. The process from the Government’s announcement of its intention to hold a referendum to the passing of the enabling legislation had taken some time, and the May date would not allow a redistribution before the next election as Willoughby had intended. Two things happened to ensure that vote did not take place. The first was that Harold Holt replaced Menzies as Prime Minister on Australia Day 1966. Despite his reluctance to commit to a referendum, Menzies had been one of the strongest advocates of constitutional change and parliamentary expansion within the Cabinet. Holt, on the other hand, had shown himself to be sceptical on the need for parliamentary expansion as far back as 1948 (*Canberra Times*, 24/4/1948, 4). The second thing that happened was that opinion polling projected an overwhelming “no” vote. Fearful of such a setback during an election year, the government made the controversial decision not to issue writs for the referendum. Holt justified the decision by arguing that the referendum would be a distraction for the new government, and that more time was needed to defeat “uniformed opinion and misleading propaganda” about the proposals (*Canberra Times*, 16/2/1966, 1) Willoughby backed the delay, warning Holt that “controversy on the issue could take the shine off the new Prime Minister’s image in the public mind”, and that it also might illuminate divisions in the Coalition ranks (Willoughby to Holt, 2/2/1966, Personal Papers of Prime Minister Holt, Referendum Proposals, NAA: M2606, 119). Doug Anthony was one of the few who counselled the Prime Minister that “chickening out” would hurt the government’s reputation (Anthony to Holt, 27/1/1966, Personal Papers of Prime Minister Holt, Referendum Proposals, NAA: M2606, 119).

Political circumstances changed sharply between 1965 and 1966, and the new Holt Government won a landslide election victory despite the old electoral boundaries. By early 1967, the now-established government was facing pressure to follow through on its promise to hold the nexus referendum, particularly because its timing was linked to the two Indigenous referendums to be held at the same time. Hesitancy now came from an unexpected source. Although it had been the primary beneficiary of both the Representation and Electoral Acts, the Country Party could see that any redistribution based on recent population changes would inevitably reduce their proportionate representation. They also saw that an increase in the size of the Senate prompted by the nexus might grant them some extra seats, particularly in Tasmania where the pseudo-Country Lyons Centre Party looked poised for an unexpected gain (*Canberra Times*, 28/2/1967, 2). For these reasons, combined with a fear of a DLP-lead populist backlash, the Country Party Federal Council expressed that it now thought a referendum unnecessary.

In these difficult circumstances, the Holt Government announced that it was pushing forward with the referendums as quickly as possible. The Country Party fell into line without much fuss, but the actions which followed were not those of a Government which seemed confident of victory. First, the enabling legislation was rushed through both Houses in early March, deliberately allowing little time for debate. Then Holt declared that there would be a very brief referendum campaign, which was little over the constitutional minimum gap between the legislation going through and the vote being held. Both sides were to be given equal time to express their case on Australian Broadcasting Commission radio and television and both were to prepare a pamphlet expressing

their case to be sent to all eligible voters. These pamphlets make it clear that the central issues the nexus referendum was fought over were the same as those debated during the Constitutional Conventions.

The most hotly contested issue was keeping the size and therefore the cost of Parliament down, in essence maintaining O'Connor's "business principles". The "no" case was built on the populist line that Australia was "over-governed" and did not need any more politicians (The case for no', Constitution Alteration Bills, 1965). Emphasis was placed on the fact that parliamentary salaries had increased while sitting days had gone down, that Australian electorates already represented small populations compared to international equivalents, and that the \$1.4million being spent on the referendum was a waste of money typical of government profligacy. The pamphlet was able to quote directly a 1948 statement by Holt that "a mere increase in the population is not the proper test of what a Member of Parliament has to do". "No" argued that the nexus was the only existing brake on the increasing size of government, and that a referendum defeat would send a direct message to the government that the people did not want Parliament to expand. The "yes" campaign spent a considerable amount of time on the defensive, trying to counter these arguments. Central to their case was the fact that the new minimum quota, now set at 85,000, would be the first constitutional check on expanding the size of Parliament (The case for yes', Constitution Alteration Bills, 1965). As it stood, the Parliament could increase as much as it wanted, provided the Senate and House increased in the same ratio. "Yes" argued that the population and the work of parliamentarians had greatly increased, and therefore it was not only necessary but also somewhat inevitable that the size of Parliament would increase. If that was the case, the nexus would actually lead to a larger Parliament because it would necessitate an arbitrary increase in the number of senators. The pamphlet repeated Menzies' line that the next logical increase in the size of the Senate would be 24, but, unlike Menzies, Holt was open to the possibility of an increase of six and uneven half-Senate elections. This allowed him to make the case that Parliament was going to increase no matter what, and that the vote was therefore about the need for extra senators. He also tried to downplay the costs of Parliament, telling ABC television that the House of Representatives cost just 30 cents per head of population (Holt 15/5/1967).

The other central plank of the "no" campaign was that the nexus protected the power of the Senate and therefore the small states. Their pamphlet emotively emphasised the fact that since the Senate was the "States" House', an attack on the Senate was therefore an attack on "your State". They repeated the old proposition that the nexus protected the power and dignity of the Senate, directly quoting Barton's line that if the House of Representatives was allowed to expand on its own, it would mean "the practical abolition of the power of the Senate". The "no" pamphlet's attempt to explain how removing the nexus would hurt the Senate was somewhat disjointed, as they argued that if the House was allowed to expand without the Senate, the enemies of the latter would then use that as an argument against its legitimacy; "how dare such a small group of Senators (60) oppose the will of the Representatives (150 or 300) with any amendment or review!" "No" also brought in a new argument, that since the introduction of proportional representation the Senate had been the only effective check on cabinet centralisation and the government of the day. They took the somewhat conspiratorial line that it was because the Senate could not be controlled as easily as the House that the government wanted to handicap it. "No" emphasised that the nexus protected small-state representation not just in party rooms and the Cabinet, but also in parliamentary committees. The "yes" campaign's response was that the powers of the Senate were not being altered, that its size did not affect its strength, that the referendum was increasing the constitutional minimum numbers of senators so that it could not be weakened in the future and that the government maintained the ability to increase the size of the Senate should the need arise. None of these arguments had the emotional weight behind them that the "no" case was able to conjure up. Advocates of the yes case were too scared to be seen as anti-Senate or anti-small state, and thus to use the powerful democratic language of the opponents of the nexus in the Constitutional Conventions.

The third main issue surrounding the nexus during the Constitutional Conventions, the joint sitting provision, was not as prominent during the referendum campaign. This is likely because up until then that provision had never been utilised. Nevertheless, the “no” campaign did pick up on an obscure suggestion of the 1959 Constitutional Committee, that joint sittings be allowed to take place without a double dissolution, to suggest further that the referendum was being used to subjugate the Senate (*Report from the Joint Committee on Constitutional Review 1959*, 30). The fact that such a change would require another referendum which would have to be dealt with on its own merits was conveniently sidelined.

The “no” campaign tried hard to fan rural mistrust about the referendum as is revealed by the Country Party Federal Council. Their pamphlet pointed out that any new electorates would inevitably be given to city areas, shrinking the proportionate strength of the country districts. McManus even suggested that an urban parliamentary expansion could give the Liberals so many seats that they would cast off the Country Party and govern on their own (*Canberra Times*, 25/5/1967, 12). Seemingly oblivious to how it might play into their opponents’ populist rhetoric, the “yes” campaign repeatedly emphasised the fact that all three major parties were behind the change. Gough Whitlam took a central role in trying to convince Labor voters of the merits of “yes”, and he also spent much of his time attacking the flagrant self-interest of the DLP opposition. Wherever possible, the “no” case used what statements it could find of Labor politicians supporting the nexus, and the “no” pamphlet included an old quote from Kim Beazley senior.

The referendum resulted in a predictable “no” landslide of 59.75%, confirming what the polls had long indicated (*Parliamentary Handbook of the Commonwealth of Australia*: 388). All of the small States voted “no”, with almost 77% of Tasmanians voting down the proposal. There were however some anomalous results. As the largest State, New South Wales was the only one to record a small “yes” majority; Victoria recorded 69.13% “no” vote. This was higher than South Australia with 66.09% and Queensland, who despite being at best a medium-sized State, recorded only a 55.87% no vote. It is difficult to account for these differences. The DLP was strongest in “no” Victoria, but its second largest base was in the comparatively indifferent Queensland. The result was a major blow to the Holt Government, which took it as a clear indication that Australians did not want any more politicians. All plans for an increase in the size of Parliament were abandoned and the government finally engaged in the long overdue task of electoral redistribution.

3. Conclusion

The Founding Fathers who wrote the Constitution of the Commonwealth of Australia were anxious that they create a constitution which could evolve and grow as the country changed. Influenced by a view of law and politics ultimately derived from Edmund Burke and the English legal tradition, they self-consciously avoided two things. One was the creation of a document which would be too rigid and which would lock the political process into a straightjacket. The other was to bring into being innovations which deviated from their vision of the British Constitution as the best working constitution in the world.

However, the Founders were also pragmatic politicians who recognised that concessions needed to be made if federation was to be achieved. The smaller states had to be enticed if they were to join the federation. Equally, the Founders were not immune to prejudices which might be described as populist in nature, including a fear of “too many” politicians. Hence, the Founders made their one and only innovation without precedent in the Commonwealth Constitution. It was a decision made for pragmatic reasons but one which was informed by ideological prejudices.

It is clear that this clause of the Constitution has had a highly significant impact on the make-up of the Commonwealth Parliament, preventing the House of Representatives from growing in size in line with the growth of the Australian population and to accommodate the increased responsibilities expected of a member of parliament. It was originally assumed that a member of the House of Representatives would have little to do in terms of representing the local interests of his or her constituents. This changed as the responsibilities of the Commonwealth government

inexorably increased over the next century. Members had both increased responsibilities and a much larger number of people to represent. Owing to the drift of population to the cities, in rural areas, this was matched by an increase in the geographical size of their electorates.

Nevertheless, the old populist rallying cry of “too many politicians” continued to cast its spell over Australian politics, and it must be admitted that it has not lost its potency in the early twenty-first century. By linking the size of the House of Representatives to that of the Senate, the nexus clause added an additional very difficult obstacle to any increase in the size of parliament despite the fact that the reality of political life in Australia changed dramatically during the course of the twentieth century.

Sir Robert Menzies, a Prime Minister who shared the political outlook of the Founders, saw the need to remove the nexus because it imposed a rigidity on the works of Australian politics which prevented the political system from growing and evolving. His proposals, despite support from all political parties, were soundly defeated in 1967 because the concerns of the 1890s still animated Australian politics. The Australian people did not want more politicians, and smaller states wished to protect their privileged position. Only the most populous state, New South Wales, supported the referendum.

The nexus remains in the Commonwealth Constitution and is unlikely to be abolished. This is despite the fact that Australia has experienced considerable population growth over the past 10 years, with much of that increase going to the two largest cities of Sydney and Melbourne. Redistributions will mean both a reduction in the number of rural seats and an increase in their geographical size. Both political parties, however, would be less than enthusiastic about increasing the size of the Senate as, given its method of election, they would fear an increase in the number of senators who are either independents or members of minor parties.

This episode in Australian political history illustrates a number of things. One is that it is impossible to see what the consequences of a constitutional clause will be in the longer term. Another is that, once established, it is difficult to change a political and constitutional arrangement if there has been no significant change in the political culture of the country. Australia may have found itself trapped by the rigidity of its constitution, but as the 1967 referendum indicates it was happy to remain so trapped.

Funding

This article received funding from the Australian Research Council for the project Understanding Australian Conservatism DP140100246.

Author details

Zachary Gorman¹
E-mail: zkg318@uowmail.edu.au
Greg Melleuish²
E-mail: gmelleui@uow.edu.au
E-mail: gmelleuish@gmail.com

¹ School of Humanities and Social Inquiry, University of Wollongong, Wollongong, NSW, 2522, Australia.

² School of Humanities and Social Inquiry, University of Wollongong, NSW 2522, Wollongong, Australia.

Citation information

Cite this article as: The nexus clause: A peculiarly Australian obstacle, Zachary Gorman & Greg Melleuish, *Cogent Arts & Humanities* (2018), 5: 1517591.

References

‘Commonwealth of Australia Bill, 1891’. (1891). *Appendix to the official report of the National Australasian convention debates. Sydney, 2nd March to 9th April, 1891*. Sydney: George Stephen Chapman, Acting Government Printer.

‘The case for no’, Constitution Alteration Bills, Canberra, NAA: A463, 1965/5445.

‘The case for yes’. *Constitution alteration bills*. Canberra: NAA: A463, 1965/5445.

Abstract of the Eleventh Census: 1890. (1896). United States Census Office, U.S. Government Printing Office.

Aroney, N. (2009). *The constitution of a federal commonwealth: The making and meaning of the Australian constitution*. Cambridge: Cambridge University Press.

Attwood, B., & Markwood, A. (2007). *The 1967 referendum: Race, power and the Australian constitution*. Canberra: Aboriginal Studies Press.

Australian Constitution. Retrieved from: https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Constitution

Australian Historical Population Statistics. 2014. Canberra: Australian Bureau of Statistics.

Boadle, D. 2010. ‘Bull, Thomas Louis (1905–1976)’, *The biographical dictionary of the Australian senate*, pp. 425–428. *Canberra Times*.

Chavura, S., & Melleuish, G. (2015). ‘Conservative instinct in Australian political thought: The Federation debates, 1890–1898’. *Australian Journal of Political Science*, 50(3), 513–528. doi:10.1080/10361146.2015.1066308

Frame, T. (2005). *The life and death of Harold Holt*. Sydney: Allen & Unwin.

- Galligan, B. (1981). 'Federalism's ideological dimension and the Australian Labor party. *The Australian Quarterly*, 53(2), 128–140. doi:10.2307/20635113
- Galligan, B. (2007). Responsible government. In B. Galligan & W. Roberts (Eds.), *The Oxford companion to Australian politics*. Melbourne: Oxford University Press.
- Galligan, B., & Mardiste, D. (1992, 1992). 'Labor's reconciliation with federalism'. *Australian Journal of Political Science*, 27(1), 71–86. doi:10.1080/00323269208402182
- Gorman, Z. 2016. *Sir Joseph Carruthers in the History of Australian Liberalism*, PhD Thesis, the University of Wollongong,
- Hamilton, A., Madison, J., & Jay, J. (2009). *The federalist papers*. (I. Shapiro, ed). New Haven: Yale University Press.
- Hicks, N. 1981. 'Coghlan, Sir Timothy Augustine (1855–1926)', *Australian Dictionary of Biography*, National Centre of Biography, Australian National University, accessed 7 November 2017: <http://adb.anu.edu.au/biography/coghlan-sir-timothy-augustine-5708/text9651>.
- Hirst, J. B. (2000). *The sentimental nation: The making of the Australian constitution*. Melbourne: Oxford University Press.
- Holt, S. 24 May 2017. 'Harold Holt's other, forgotten 1967 referendum: The house and senate nexus', *Sydney Morning Herald*.
- Irving, H. (1997). *To constitute a nation: A cultural history of Australia's constitution*. Cambridge: Cambridge University Press.
- La Nauze, J. A. (1972). *The making of the Australian constitution*. Melbourne: Melbourne University Press.
- Loveday, P. (1972). The federal convention: An analysis of the voting. *Australian Journal of Politics & History*, 18(2), 169–188. doi:10.1111/j.1467-8497.1972.tb00590.x
- Macintyre, S. (2015). *Australia's Boldest experiment: War and reconstruction in the 1940s*. Sydney: New South Publishing.
- McMinn, W. G. (1979). *A constitutional history of history*. Melbourne: Oxford University Press.
- McMinn, W. G. (1989). *George Reid*. Melbourne: Melbourne University Press.
- Melleuish, G. (2014). *Despotic state or free individual?* Melbourne: Australian Scholarly Publications.
- Menzies, R. G. (1967). *Central power in the Australian commonwealth: An examination of the growth of Commonwealth power in the Australian federation*. London: Cassell & Company Ltd.
- Minutes of proceedings and official record of debates of the Australian Constitutional Convention, held at the Hotel Windsor, Melbourne*. (1975, September 24–26). Melbourne: Australian Constitutional Convention.
- Notification of Determination Section 49 Certificate – Commonwealth Electoral Act 1918*, Electoral Commission, Australian Government Gazette – C2017G00945, 31 August, 2017.
- Official Record of the Debates of the Australasian Federal Convention*. Third Session. Melbourne, 20th January to 17th March 1898, 2 vols. Melbourne: Robert S. Brain, Government Printer, 1898.
- Official Record of the Debates of the Australasian Federal Convention*. Second Session. Sydney, 2nd to 24th September, 1897. 1897. Sydney: William Applegate Gullick, Government Printer, 1897.
- Official Report of the National Australasian Convention Debates*. Sydney, 2nd March to 9th April, 1891. 1891. Sydney: George Stephen Chapman, Acting Government Printer.
- Official Report of the National Australasian Convention Debates*. First Session. Adelaide, 22nd March to 5th May 1897. 1897. Adelaide: C.E. Bristow, Government Printer.
- Parliamentary Handbook of the Commonwealth of Australia* 2017. Canberra: Commonwealth of Australia, 2017.
- Personal Papers of Prime Minister Holt, Canberra, NAA: M2606.
- Personal Papers of Prime Minister Menzies, Canberra, NAA: M2576.
- Quick, J., & Garran, R. (1901). *The annotated constitution of the Australian commonwealth*. Sydney: Angus & Robertson, 1901.
- Raina, P. (2011). *House of Lords reform: A history. Volume I, The origins to 1937: Proposals deferred*. Oxford: Peter Lang.
- Report from the joint committee on constitutional review* 1959, Parliamentary Paper no.50, 1959. Canberra: Government Printer.
- Souter, G. 1988. *Acts of parliament: A narrative history of Australia's Federal Legislature*. Melbourne: Melbourne University Press.
- Millar, A., & Browne, G. (Eds.). (2010). *The biographical dictionary of the Australian senate* (Vol. 3). Sydney: University of New South Wales Press Ltd.
- Uhr, J. 1999. 'Why we chose proportional representation', *Papers on Parliament*, no.34, Canberra: Department of the Senate.
- Uhr, J. (2002). Explicating the Australian senate. *The Journal of Legislative Studies*, 8(3), 3–26. doi:10.1080/714003923
- Verdi, R. J., & Barbano, D. M. *Final Report of the Constitutional Committee* (Canberra: Australian Government Publishing Service, 1988) 71 534–538 doi: 10.3168/jds.S0022-0302(88)79586-7



© 2018 The Author(s). This open access article is distributed under a Creative Commons Attribution (CC-BY) 4.0 license.

You are free to:

Share — copy and redistribute the material in any medium or format. Adapt — remix, transform, and build upon the material for any purpose, even commercially.

The licensor cannot revoke these freedoms as long as you follow the license terms.

Under the following terms:

Attribution — You must give appropriate credit, provide a link to the license, and indicate if changes were made.

You may do so in any reasonable manner, but not in any way that suggests the licensor endorses you or your use.

No additional restrictions

You may not apply legal terms or technological measures that legally restrict others from doing anything the license permits.



Cogent Arts & Humanities (ISSN: 2331-1983) is published by Cogent OA, part of Taylor & Francis Group.

Publishing with Cogent OA ensures:

- Immediate, universal access to your article on publication
- High visibility and discoverability via the Cogent OA website as well as Taylor & Francis Online
- Download and citation statistics for your article
- Rapid online publication
- Input from, and dialog with, expert editors and editorial boards
- Retention of full copyright of your article
- Guaranteed legacy preservation of your article
- Discounts and waivers for authors in developing regions

Submit your manuscript to a Cogent OA journal at www.CogentOA.com

