FEDERAL DEADLOCKS: ORIGIN AND OPERATION OF SECTION 57

By J. E. RICHARDSON*

This article deals with the interpretation of section 57 of the Constitution, and the consideration of deadlocks leading to the framing of a section at the Federal Convention Debates in Sydney in 1891 and in the three sessions held at Adelaide, Sydney and Melbourne respectively in 1897-8. It also includes a short assessment of the operation of section 57 since federation. Section 57 becomes explicable only after the nature of Senate legislative power as defined in section 53 is understood. Accordingly, the article commences by examining Senate legislative power.

The two sections read:

> '53. Proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate. But a proposed law shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand or payment or appropriation of fees for licences, or fees for services under the proposed law.
>
> The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government.
>
> The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people.
>
> The Senate may at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting, by message, the omission or amendment of any items or provisions therein. And the House of Representatives may, if it thinks fit, make any of such omissions or amendments, with or without modifications.
>
> Except as provided in this section, the Senate shall have equal power with the House of Representatives in respect of all proposed laws.'
>
> '57. If the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously. But such dissolution shall not take place within six months before the date of the expiry of the House of Representatives by effluxion of time.
>
> If after such dissolution the House of Representatives again passes the proposed law, with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes

* Robert Garran Professor of Law, School of General Studies, Australian National University, Canberra.

it with amendments to which the House of Representatives will not agree, the Governor-General may convene a joint sitting of the members of the Senate and of the House of Representatives.

The members present at the joint sitting may deliberate and shall vote together upon the proposed law as last proposed by the House of Representatives, and upon amendments, if any, which have been made therein by one House and not agreed to by the other, and any such amendments which are affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives shall be taken to have been carried, and if the proposed law, with the amendments, if any, so carried is affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives, it shall be taken to have been duly passed by both Houses of the Parliament, and shall be presented to the Governor-General for the Queen's assent.'

SENATE LEGISLATIVE POWER: CONSTITUTION, SECTION 53

The Commonwealth Constitution provides for a Senate with power to deal with bills rarely matched by second chambers in any country with an established tradition of parliamentary government. Intended by the founders as a house of review but paramountly as a chamber representative of the component States of the federal Commonwealth, the founders allotted to the Senate, in section 53 of the Constitution, subject to the qualifications contained in that section, equal power with the House of Representatives in respect of proposed laws.

Qualifications on Senate Power

The qualifications on Senate power relate only to financial measures. These may be summarised as follows:

(1) Bills imposing taxation or appropriating revenue must originate in the House of Representatives.

(2) The Senate cannot amend bills imposing taxation or appropriating revenue or moneys for the ordinary annual services of the government. The Senate may, however, return any such bill to the House of Representatives requesting omission or amendment of any provision.

(3) The Senate may not amend *any* bill so as to increase any proposed charge or burden on the people.

It is fairly clear that section 53 does not give rise to justiciable issues, but that its application, as a provision to deal with proposed laws, depends on observance of the traditions of parliamentary government.[1]

---

1 In *Osborne* v. *The Commonwealth* (1911) 12 C.L.R. 321, Griffith C.J. observed, at p. 336:

'Secs. 53 and 54 deal with "proposed laws"—that is, Bills or projects of law still under consideration and not assented to—and they lay down rules to be observed with respect to proposed laws at that stage. Whatever obligations are imposed by these sections are directed to the Houses of Parliament whose conduct of their internal affairs is not subject to review by a Court of law.'

The qualifications on Senate power expressed in section 53 also explain the presence of sections 54 and 55 in the Constitution.[2] The purpose of section 54 is to prevent the employment of the ancient parliamentary device of tacking on to a bill which the Senate cannot amend, in this instance a bill appropriating money for the ordinary annual services of the government, extraneous matters in respect of which, standing elsewhere, the Senate power of amendment is not limited. Section 55, among other things, guards against tacking in respect of laws imposing taxation.[3]

Senate Power to Reject Bills which it Cannot Amend

Section 53 does not expressly state that the Senate has power to reject bills which it is not competent to amend and none of the exceptions upon power in section 53 purports to deal with the power of rejection. The last paragraph of the section states that, except as provided in the section, 'the Senate shall have equal power with the House of Representatives in respect of all proposed laws'. Now the Constitution does not spell out the powers of the House of Representatives in respect of bills, but section 1 of the Constitution provides for the vesting of legislative powers in a parliament consisting of the Queen, a Senate and a House of Representatives. The establishment of a bicameral legislative system means that, leaving aside any express exceptions, the Senate should enjoy equal power with the House of Representatives to approve proposed laws or reject them. It would require plain language in a bicameral legislative system to provide that on some occasions the federal Parliament should operate as a unicameral institution. Thus, section 57 itself applies to 'any proposed law' which the Senate 'rejects or fails to pass' and there is no suggestion in the language of the section that the power of rejection is limited to bills which the Senate may amend. Finally, resort to section 58 seems to place the matter beyond any doubt. This section deals with Royal assent to bills and it provides only for the submission of 'a proposed law passed by both Houses of the Parliament'. In the upshot, therefore, the Senate may not only reject any bill but may amend all bills other than those dealing with financial matters and may amend bills appropriating moneys for other than the ordinary annual services of the government as long as the amendment does not result in an increased charge or burden on the people. Bills, other than money bills, may also originate in the Senate.

---

2 Sections 54 and 55 read:

'54. The proposed law which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation.

55. Laws imposing taxation shall deal only with the imposition of taxation, and any provision therein dealing with any other matter shall be of no effect.

Laws imposing taxation, except laws imposing duties of customs or of excise, shall deal with one subject of taxation only; but laws imposing duties of customs shall deal with duties of customs only, and laws imposing duties of excise shall deal with duties of excise only.'

Other Aspects of Section 53 which have an Effect on the Operation of Section 57

Two other points relevant to the application of section 57 remain. The third paragraph of section 53 says that the Senate may not amend *any* proposed law so as to increase the charge or burden on the people. The section is silent on the point whether the Senate may suggest an amendment in these circumstances. The House of Representatives has conceded the right. In 1903 the Senate made an amendment to the Sugar Bounty Bill which was unacceptable to the House of Representatives. The House of Representatives returned the Bill to the Senate stating that the amendment would increase a proposed charge or burden on the people and was, therefore, in violation of section 53. The Senate then made its proposal in the form of a request which was agreed to by the House of Representatives with a modification.[4] It appears that the Bill, though an appropriation measure, was not one for the ordinary annual services of the government. Perhaps a better example occurred in 1943 in respect of the Australian Soldiers' Repatriation Bill. The Bill was one which the Senate could amend but the Senate wished to make a number of amendments which would have been affected by the third paragraph of section 53. Accordingly, it requested the House of Representatives to amend the Bill in accordance with its wishes and that House made the requested amendments.[5]

And so a request for amendment of a bill having the effect of increasing a charge or burden on the people would not of itself amount to a failure to pass within the meaning of section 57, that is to say, the request for amendment would not start a train of events leading to the establishment of conditions of deadlock.

The remaining point concerns a Senate request for amendment of a bill. What is the position if the House of Representatives refuses the request and the Senate reiterates or presses the same request? Section 53 denies the Senate the right to amend taxation bills or proposed laws appropriating moneys for the ordinary annual services. In denying the right and conferring the right of request instead, the section intends to draw a difference of substance. Where a request is made the right of decision as to the form of the bill rests solely with the House of Representatives and, it is submitted, that to press a request is to insist upon it and this section 53 does not allow. In the opinion of the writer, therefore, to press a request may set in train a course of events leading to the establishment of a deadlock under section 57.

---

3 Whilst section 54 applies to a 'proposed law', section 55 applies to 'laws'. The difference in wording has been held to be decisive and the courts can decide whether a law infringes section 55: see *Osborne* v. *The Commonwealth* (*supra*) *per* Griffith C.J. at 336, and Barton J. at 351-352. The High Court has considered the application of section 55 in several cases but so far no law has been held to infringe the section.

4 See J. Quick, *The Legislative Powers of the Commonwealth and the States of Australia*, at 626-627.

5 See J. R. Odgers, *Australian Senate Practice* (2nd ed. 1959), at 161-162.

CONSTITUTION, SECTION 57

Substance of the Section

With disagreements between the two Houses in contemplation in the light of the respective powers of the Houses explained in section 53, section 57 contains machinery, first, for establishing conditions of deadlock and, secondly, for providing for the resolution of a deadlock so established.

The substance of section 57 may be stated in the following propositions:

(1) The section applies to any proposed law passed by the House of Representatives, that is, both to financial and other bills.

(2) The section does not apply to proposed laws which are first passed by the Senate, but only to those passed by the House of Representatives.

(3) The Senate must first reject or fail to pass a proposed law or pass it with amendments which the House of Representatives will not accept. The Senate cannot, of course, by reason of section 53 of the Constitution, amend a bill imposing taxation or appropriating moneys for the ordinary annual services of the government, although it may reject such a measure or suggest amendments to the House of Representatives. Neither can the Senate amend *any* bill so as to increase any charge or burden on the people but, again, it may reject the bill or suggest amendments.

(4) The House of Representatives may then, after an interval of three months, in the same or the next session[6] again submit the proposed law to the Senate either with or without any amendment or suggested amendment of the Senate.

(5) If the Senate again rejects or fails to pass the bill or makes amendments unacceptable to the House of Representatives, the Governor-General[7] may dissolve both Houses simultaneously provided that the dissolution does not take place within six months of the expiration of the term of the House of Representatives. The dissolution is made because of a deadlock arising from a specific proposed law. That law may, of course, be one of a number in respect of which conditions of deadlock have arisen, but the dissolution has to be granted in respect of one bill only and subsequent procedure under the section applies only in respect of that measure.

---

6 Constitution, s. 6, states that there shall be a session of the Parliament once at least in every year, and that not more than twelve months must intervene between the last sitting of one session and the first sitting of the next session.

7 In the two double dissolutions which have so far occurred, the Governor-General has dissolved the two Houses, acting in accordance with the advice of the Prime Minister tendered after consulting Cabinet. In 1951 the Prime Minister advised the Governor-General to satisfy himself that conditions of deadlock had arisen under section 57. See *Parliamentary Papers* (General), Session 1957-58, Vol. V, 915 at 918.

(6) If the House of Representatives, after the double dissolution and the ensuing general election, again submits the proposed law, whether with or without amendments or suggested amendments, to the Senate and the disagreement still persists, the Governor-General may convene a joint sitting of the two Houses.

(7) The joint sitting should vote, after deliberation, on the proposed law as last passed by the House of Representatives and any amendments made by one House which have been unacceptable to the other. Requests by the Senate for amendment, as, for example, in respect of bills which it may not amend, cannot be dealt with at a joint sitting.

(8) If the proposed law, with or without amendments, is carried by an absolute majority of the *total* number of members of the two Houses at the joint sitting, it is taken to have been passed by both Houses and must be presented for Royal assent.

(9) Like section 53, the section deals with proposed laws and almost certainly action taken under it is not subject to examination and review by a court.

The Current Shadow of Section 57

As a matter of federal history, there have been two occasions on which the Governor-General has invoked section 57 and dissolved the two Houses. One was in 1914 and the other in 1951. As from the 1st July this year the present Government may have ceased to have a working majority in the Senate. Its present strength is thirty compared with twenty-eight Labor senators, one Democratic Labor Party senator and one independent senator.[8] The Government could, therefore, quite easily experience defeat in the Senate on a bill passed by the House of Representatives.[9] This does not necessarily mean that the Government would wish to persevere with a defeated measure and pass and submit it a second time, or in the event of a deadlock arising that the Prime Minister would seek a double dissolution, but these events could occur.[10]

Interpretation of the Section

Some of the language of section 57 has, on occasions, given rise to doubts as to its meaning.

---

8 Senator M. W. Poulter, a Labor senator who was to take his place in the Senate with a term commencing from 1st July, 1962, died on 2nd September, 1962, without actually taking his place. The Queensland Parliament has followed a fairly well-established practice and appointed a Labor man under section 15 of the Constitution to take the place of the deceased senator.

9 Constitution, s. 23, reads:

> 'Questions arising in the Senate shall be determined by a majority of votes, and each senator shall have one vote. The President shall in all cases be entitled to a vote; and when the votes are equal the question shall pass in the negative.'

10 The Labor Government elected to office in 1929 was defeated on several occasions in the Senate. None of the rejected Bills was submitted to the Senate for a second time. In 1958 the Government failed for a second time to obtain the passage through the Senate of fourteen bills dealing with banking. The Government apparently accepted the reverse.

'Any Proposed Law'

In his informative and authoritative work on Australian Senate practice, J. R. Odgers, in describing the circumstances which culminated in a double dissolution in 1914, expressed sympathy for the view that section 57 was not intended to apply to all bills but only to financial measures. Odgers writes:[11]

> 'In the course of a most able speech, Senator (later Sir George) Pearce (Western Australia) argued that it was only when the Senate, by its treatment of the financial measures of the Government, rendered government impossible that section 57 of the Constitution was intended to operate. Developing this argument, he pointed to the collocation of section 57, which follows immediately upon those sections of the Constitution dealing with the financial powers of the Houses. He then quoted the first words of section 57, which read—
>
> > If the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it . . .
>
> Senator Pearce put forward, in a most explicit way, the proposition that the House of Representatives was specially mentioned in that section because it is there that money Bills must originate. "The very opening words of section 57", he said, "indicate that what the framers of the Constitution had in their minds was that a deadlock might arise in respect of financial Bills."
>
> Although Quick and Garran, in their Annotated Constitution of the Australian Commonwealth, claim that the deadlock provisions apply to all Bills, strong and authoritative support for Senator Pearce's contention is to be found in a speech to the Federal Convention by the Leader of that Convention (Mr. Barton), who said—
>
> > " 'Deadlock' is not a term which is strictly applicable to any case except that in which the constitutional machine is prevented from properly working. I am in very grave doubt whether the term can be strictly applied to any case except the stoppage of legislative machinery arising out of conflict upon the finances of the country. A stoppage which arises on any matter of ordinary legislation, because the two Houses cannot come to an agreement at first, is not a thing which is properly designated by the term 'deadlock'—because the working of the Constitution goes on—the constitutional machine proceeds notwithstanding a disagreement. It is only when the fuel of the machine of government is withheld that the machine of government comes to a stop, and that fuel is money."
>
> One of the most potent points made by Senator Pearce in his charge that a real deadlock did not exist was that, in the dispute between the two Houses, the Government, although it contained many old parliamentarians, never asked for a conference, i.e., a conference of managers of both Houses appointed to confer with respect to some measure upon which the Houses cannot agree.'

It is to be conceded that most founders thought more about disputes over financial measures than other bills, particularly in the early stages of the Convention debates. This was natural enough in view of the number of instances of disputes occurring between two houses of a colonial parliament in the nineteenth century. The major disputes were over financial matters and, in the absence of machinery for resolving deadlocks in colonial constitutions, they arose out of differences of view as to whether the upper houses of colonial parliaments should be guided by the tradition of the House of Lords in relation to money bills in

---

11 J. R. Odgers, *Australian Senate Practice* (2nd ed. 1959), at 10.

England.[12] But the settlement of financial matters was not the only concern of the founders and at various stages in the debate on deadlocks members of the Convention referred to the possibility of deadlocks on bills other than financial bills, for example, at a late stage of the final series of Convention debates in Melbourne, C. C. Kingston, Premier of South Australia and President of the Convention, said that the need for a means of settling deadlocks had greatly increased by the introduction of debatable matters which could arouse a conflict of State interests. He referred, in particular, to the power given to the Federal Parliament to deal with questions of railway construction and extension in a State.[13]

Some of the proposals put to the Convention for the settlement of deadlocks themselves are inconsistent with the notion that deadlocks were thought of entirely in connection with financial bills, for example, proposals for a dual referendum, discussed below, in which an endeavour was made to classify bills in terms of those relating to the national interest and those peculiar to State interest. Arguments based on the language of section 57 also seem to provide an answer to Senator Pearce's contention. In the first place, section 57 could hardly be plainer in the choice of the words 'any proposed law' to describe the bills to which the section is to apply. Secondly, section 57 refers, among other things, to any proposed law which the Senate passes with amendments to which the House of Representatives will not agree. Of the bills which may not originate in the Senate, most are not, by reason of the second paragraph of section 57, capable of amendment by the Senate. In fact, the only financial measure which the Senate may amend is a bill for the appropriation of moneys for other than the ordinary annual services of the government. This suggests that the phrase 'passes it with amendments' used in section 57 describes any proposed law in respect of which the Senate has a power of amendment rather than a very limited category of such laws.

'Fails to Pass'

The second double dissolution occurred in 1951 when the Senate rejected the Commonwealth Bank Bill which provided, among other things, for the reconstitution of the Commonwealth Bank Board. The Senate referred the bill to a Select Committee, 'a legitimate and proper function of the Senate in connection with the consideration of Bills'.[14] The question arose whether the reference to a Select Committee constituted a failure to pass. On this matter the government obtained the advice of the Solicitor-General, Professor K. H. Bailey. In a learned

12 The United Kingdom Parliament Act was passed in 1911. Before 1911 the House of Lords was restricted by an historic arrangement under which money bills were to originate in the House of Commons. In practice also the House of Lords did not alter a money bill passed by the House of Commons. At times it exercised its right to reject a money bill, but not an appropriation bill.

13 Convention Debates, Melbourne, 1898, at 2,123 For another example see the comments and observations of Henry Dobson at 2,128-2,130.

14 Odgers, *op. cit.* at 13.

opinion, the Solicitor-General said that 'failure to pass' seemed to involve a suggestion of some breach of duty, some degree of fault, and to import, as a minimum, that the Senate avoids a decision on a bill. It was not the same as the neutral expression 'does not pass' which would perhaps imply mere lapse of time. The Solicitor-General said that he agreed with Sir Robert Garran who had opined:

> 'There are many ways in which the passage of a Bill may be prevented or delayed: *e.g.*—
>
> (i) It may be ordered to be read (say) this day six months.
>
> (ii) It may be referred to a Select Committee.
>
> (iii) The debate may be repeatedly adjourned.
>
> (iv) The Bill may be "filibustered" by unreasonably long discussion, in House or in Committee.
>
> The first of these would leave no room for doubt. To resolve that a Bill be read this day six months is a time-honoured way of shelving it.
>
> The second would be fair ground for suspicion. But all the circumstances would need to be looked at.
>
> The third, if it became systematically employed against the Government, would lead to a strong inference.
>
> But just at what point of time failure to pass could be established, might be hard to determine . . .
>
> In the fourth case too, the point at which reasonable discussion is exceeded, and obstruction, as differentiated from honest opposition, begins, would be very hard to determine. But sooner or later, a "filibuster" can be distinguished from a debate . . .' 15

It is submitted that if the Senate were to press a request for amendment this may also amount to a failure to pass.

'Interval of Three Months'

Another question which arose in 1951 was the meaning of the words 'after an interval of three months', the interval which had to occur before the House of Representatives could again pass the proposed law which the Senate had rejected or failed to pass or had passed with unacceptable amendments. The Solicitor-General's opinion on the question was as follows:

> '. . . In my opinion, the relevant date is the passing of the Bill, with amendments, by the Senate. There are, I recognize, substantial considerations to be urged in favour of each of the other alternative dates, *viz.* the (earlier) date when the House of Representatives first passes the Bill and the (later) date when the House makes clear that it "will not agree" to the Senate's amendments. The general structure of section 57 seems to me to lean strongly against the earlier date. And (as against the later date) the most natural reading of the section is I think that in each of the cases specified (rejection, failure to pass or passage with amendments by the Senate) it is conduct by the Senate from which the interval commences. This reading, moreover, explains the use of the rather unusual future tense, "will not agree". The section looks to the moment at which the Senate passes the Bill with amendments. Only future events will make clear whether or not the House "will agree" to the amendments made by the Senate.'

---

15 The opinion of the Solicitor-General is fully set out in *Parliamentary Paper* No. 6 of 1957-58 entitled 'Documents relating to the simultaneous dissolution of the Senate and the House of Representatives by His Excellency the Governor-General on 19th March, 1951.' See *Parliamentary Papers* (General), Session 1957-58, Vol. V, 915 at 932-936.

Here, the Solicitor-General is on more controversial ground. Under section 53 as indicated, there are some proposed laws which the Senate may not amend but the Senate otherwise possesses the power to amend any proposed law. In other words, in amending, say, a Commonwealth bank bill, the Senate is only exercising a normal constitutional function. It can only be called into account so far as section 57 is concerned when the House of Representatives decides that it 'will not agree' to the amendment. In this writer's view, therefore, the interval of three months should run from the time at which the House of Representatives indicates that it does not agree.

'Amendments to which the House of Representatives will not agree'

According to the Solicitor-General 'at the moment when the House first records its disagreement with the Senate's amendments' they must be regarded as 'amendments to which the House of Representatives will not agree'. This view accords both with parliamentary practice and common sense.

'The Governor-General'

Section 61 of the Constitution vests the executive power of the Commonwealth in the Queen and makes it exerciseable by the Governor-General as the Queen's representative. The section also states that the executive power 'extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth'.[16] Section 62 provides for a 'Federal Executive Council to advise the Governor-General in the government of the Commonwealth, . . .' and under section 63 the provisions of the Constitution referring to the Governor-General in Council must be 'construed as referring to the Governor-General acting with the advice of the Federal Executive Council'. Section 57 refers to the Governor-General and not the Governor-General in Council. Does, therefore, the responsibility of granting a double dissolution rest upon the Governor-General personally or may he seek the advice of his Ministers. Or, is the discretion vested in him to be exercised only in accordance with the advice of his Ministers? As mentioned, on the two occasions on which there has been a double dissolution the Governor-General acted on the advice of his Ministers and no-one would now seriously challenge the propriety of the action. It is not so clear, however, whether the Governor-General must act in conformity with advice. In 1956 the Prime Minister, Mr Menzies, reported that in 1951 he had made it clear to His Excellency 'that, in my view, he was not bound to follow my advice in respect of the existence of the conditions of fact set out in section 57, but that he had to be himself satisfied that those conditions of fact were established'.[17] On 17th March, 1951, the

---

16 Section 61 reads:

'The executive power of the Commonwealth is vested in the Queen and is exerciseable by the Governor-General as the Queen's representative, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth.'

17 *Parliamentary Paper* No. 6 of 1957-58; *Parliamentary Papers* (General), Session 1957-58, Vol. V, 915 at 918.

Governor-General[18] advised that he had 'decided to adopt the advice tendered . . .' [19] The inference to be drawn from the documents relating to the 1951 double dissolution seems to be that, apart from satisfying himself as to the facts, the Governor-General was expected to act in conformity with advice tendered.

In 1914 it was the plain view of Prime Minister Cook and his colleagues that the Governor-General should only act in conformity with advice. A Parliamentary Paper of 8th October, 1914, which sets out the correspondence between Mr Cook and the Governor-General, contains a statement of the Government's view. The statement includes the following observations:

> 'It is not reasonable to suppose that the framers of the Constitution intended to place the responsibility of granting or refusing the double dissolution upon the Governor-General personally—to place him in the invidious position of appearing to take sides with one House or the other, or with one political party or the other.
>
> It is reasonable to suppose that they intended the Governor-General to accept in this issue the advice of Ministers who represent the majority in the House which, by the Constitution, is given the right, in the events which have happened, to challenge the decision of the other Chamber.' [20]

Then, after referring to excerpts from the Convention Debates, the statement proceeds:

> 'It thus appears that the expressed views of those who took part in the framing of the Constitution support the conclusion drawn from the language and the scheme of the Constitution itself, namely, that the discretion of the Governor-General to grant or to refuse a dissolution of both Houses, under section 57, is a discretion which can only be exercised by him in accordance with the advice of his Ministers representing a majority in the House of Representatives.' [21]

THE HISTORY OF SECTION 57 IN THE CONVENTION DEBATES

The Sydney Convention in 1891

In 1891 the first National Australasian Convention, held in Sydney and attended by representatives from all six colonies and New Zealand, produced a draft bill to constitute the Commonwealth of Australia. Though the 1891 Convention recommended that the various colonial parliaments should submit the proposed Constitution to referendum, the bill did not obtain the approval of the New South Wales Parliament and this resulted in action being deferred. When the Convention debates resumed in 1897, the delegates chose to draft another bill to constitute the Commonwealth of Australia rather than merely to build on the work of the 1891 Convention. Notwithstanding, the powers ultimately given to the Senate in section 53 of the Constitution did not greatly differ from those suggested for the Senate in the 1891 draft. Clause 54 provided

---

18 Sir William McKell.

19 *Parliamentary Papers* (General), Session 1957-58, Vol. V, at 937.

20 *Parliamentary Paper* No. 2 of 1914; *Parliamentary Papers* (General), Session 1914-17, Vol. V, 127 at 133.

21 *Ibid.* at 134.

that money bills should originate in the House of Representatives but clause 55 stated, however, that the Senate should have equal power with the House of Representatives in respect of all bills except bills imposing taxation or appropriating revenue for the ordinary annual services of the government. These bills the Senate could affirm or reject, but could not amend. But, as in section 53 of the Constitution, the Senate could return such measures to the House of Representatives with suggestions for omission or amendment.[22]

By 1891 there were a good many examples of disputes concerning the respective relationships of separate houses of the colonial parliaments. Friedmann and Benjafield[23] mention a dispute in Queensland in 1885-1886 over whether the nominee Legislative Council should be guided by the convention rule against amending money bills which the House of Lords had accepted in the United Kingdom. The learned authors also mention a controversy in Victoria between 1865 and 1878 turning on section 56 of the Victorian Constitution which gave power to the Legislative Council to reject but not to alter money bills. The question was again whether the Council should be guided by the practice of the House of Lords.

There are various other instances of questions of financial relations arising between the houses under a bicameral system. South Australia provides an interesting example. In that colony the Legislative Council was not precluded by the colony's Constitution from amending or rejecting money bills, but it could not originate them. Pressure was put on the Council to accept the constitutional understandings which guided the House of Lords and in 1857 the Council agreed not to 'enforce its right to deal with the details of the ordinary annual expenses of the Government'. However, the Council might suggest alterations in any bill the object of which was 'to raise money, whether by loan or otherwise, or to warrant the expenditure of any portion of the same', and

---

22 Sections 54 and 55 of the 1891 Bill read as follows:

'54. Laws appropriating any part of the public revenue, or imposing any tax or impost shall originate in the House of Representatives.

55. (1) The Senate shall have equal power with the House of Representatives in respect of all proposed Laws, except Laws imposing taxation and Laws appropriating the necessary supplies for the ordinary annual services of the Government, which the Senate may affirm or reject, but may not amend. But the Senate may not amend any proposed Law in such a manner as to increase any proposed charge or burden on the people.

(2) Laws imposing taxation shall deal with the imposition of taxation only.

(3) Laws imposing taxation except Laws imposing duties of Customs on imports shall deal with one subject of taxation only.

(4) The expenditure for services other than the ordinary annual services of the Government shall not be authorised by the same Law as that which appropriates the supplies for such ordinary annual services, but shall be authorised by a separate Law or Laws.

(5) In the case of a proposed Law which the Senate may not amend, the Senate may at any stage return it to the House of Representatives with a message requesting the omission or amendment of any items or provisions therein. And the House of Representatives may, if it thinks fit, make such omissions or amendments, or any of them, with or without modifications.'

23 *Principles of Australian Administrative Law* (2nd ed.), at 14.

might reject such a bill if the Lower House refused to accept the suggested amendment[23a]. The colonial experience had a material bearing on the discussions which led to the insertion of section 53 of the Constitution.[24] As Thomas Playford observed, the Constitutional Committee of the 1891 Convention adopted a definition of Senate power derived from the mode adopted in South Australia.[25]

In 1881, only ten years before the first Convention debates, the South Australian Parliament passed an Act[26] specifically providing for the settlement of deadlocks. The Act provided, in the first place, for a general election of the House of Assembly following the first submission of a bill in dispute to the Legislative Council and then proceeded by providing that the Governor could either dissolve the two Houses simultaneously or issue writs for the election of up to two new members for each district of the Legislative Council.[27]

The Government which first proposed the constitutional amendment in 1881 was led by Sir John Bray. His original bill provided for the settlement of a deadlock by a joint sitting at which the disputed measure would become law if passed with a majority of two-thirds of the whole number of members of Parliament.[28] A member of the Legislative Council, R. C. Baker, regarded the original proposal as a bill not to reform the Council but to abolish all its powers and the Government's proposal was defeated in committee. The Attorney-General in the Bray Government was Sir John Downer. Members of the House of Assembly

---

23a See Gordon D. Combe, *Responsible Government in South Australia.*

24 The compact of 1857 was fully explained by Sir Richard Baker who was then the President of the South Australian Legislative Council in a paper presented to the Convention at Melbourne in 1898. See Convention Debates, Melbourne, 1898, at 657.

25 Convention Debates, Sydney, 1891, at 734-735.

26 Act No. 236 of 1881.

27 The section read:

'Whenever—

(a) any bill has been passed by the House of Assembly during any session of Parliament; and

(b) the same bill or a similar bill with substantially the same objects and having the same title has been passed by the House of Assembly during the next ensuing Parliament; and

(c) a general election of the House of Assembly has taken place between the two Parliaments; and

(d) the second and third readings of the bill were passed in the second instance by an absolute majority of the whole number of members of the House of Assembly; and

(e) both such bills have been rejected by the Legislative Council or failed to become law in consequence of any amendments made therein by the Legislative Council,

it shall be lawful for but not obligatory upon the Governor—

(1) to dissolve the Legislative Council and House of Assembly, and thereupon all the members of both Houses of Parliament shall vacate their seats, and members shall be elected to supply the vacancies so created; or

(2) to issue writs for the election of one or not more than two new members for each district of the Legislative Council: Provided always that no vacancy, whether by death, resignation, or any other cause, shall be filled up while the total number of members shall be 24 or more.'

28 For an account of the measure see Gordon D. Combe, *Responsible Government in South Australia.*

included Thomas Playford and C. C. Kingston, a recently elected member. J. H. Gordon was a member of the Legislative Council. Now Bray, Baker, Downer, Playford, Gordon and Kingston were six of the seven South Australian representatives who attended the Convention Debates in Sydney in 1891. Yet, the 1891 draft Constitution did not contain any provision for dissolving deadlocks between the Senate and the House of Representatives and, indeed, no South Australian delegate was sufficiently motivated even to make a suggestion for the inclusion of a deadlock clause. And clause 9 of the 1891 draft Constitution heavily emphasized the federal aspects of the draft by providing that senators should be directly chosen by the State Parliaments.

Upon the adoption in 1891 of the clause dealing with Senate legislative powers, a Victorian representative, H. J. Wrixon, Q.C., expressed doubts as to the consequences of writing into clause 54 the right of the Senate to suggest amendments to money bills. By writing into the Constitution a procedure akin to the *modus vivendi* adopted in South Australia and left to conventional arrangement in other colonies, Wrixon thought the result would be possibly to encourage the Senate to scrutinize financial measures to the point where it would be difficult to get finality on such a critical measure as an appropriation bill. He suggested, therefore, a clause to provide for a joint meeting of the two Houses if the House of Representatives declined to meet a Senate request. The question was to be determined by a majority of the members present at a meeting. Surprisingly, however, Wrixon's clause enabled such a joint meeting to be convened only on Senate request.

The suggestion received little support and most delegates were content to side with Sir Samuel Griffith who said that the amendment was a dangerous one and that he had no love for artificial means of settling differences between the Houses. Of course, the very thing now excluded by section 57 at a general sitting following a double dissolution is a request by the Senate for an amendment in respect of bills which it may not amend.

The Adelaide Convention in 1897

When the Convention debates resumed in 1897, this time without representation from Queensland and New Zealand, many more delegates were thinking about a deadlock clause and some had circulated their own proposals for the resolution of deadlocks. Bernard Ringrose Wise from New South Wales was first to move for the inclusion of a provision. Impatient over points of constitutional etiquette to determine the relationships between the two Houses on money bills, Wise proposed that if the Senate rejected *any* proposed law passed by the House of Representatives and if the House of Representatives, after dissolution and fresh elections, again passed the bill and the Senate again rejected it, the Governor-General could dissolve the Senate. Wise said that he had in mind two objectives in framing the clause; one to preserve the independence of the Senate in all matters affecting State interests, and the other to secure the dominance of the popular vote in all party

questions which did not place the interests of one group of States against the interests of another group of States.[29]

Wise's proposal to settle deadlocks on any law in dispute through a machinery of consecutive dissolution brought forth a mixed reaction. Plainly many delegates were still thinking of deadlocks likely to arise through disagreements over money bills. Edmund Barton was of this frame of mind and he pointed out to the Convention that deadlocks had arisen in the colonies in the past nearly always from mixing up with taxation laws subjects not properly included in them. This he said was specifically provided for in the new draft and he doubted, therefore, whether a deadlock clause was necessary. On the other hand, there were some who did not think that Wise's proposal went far enough. Henry Bournes Higgins from Victoria, for example, said that it was proposed to arm the Senate with a complete power of veto and this offered a temptation for the Senate to take more drastic action than in colonial upper houses.[30] W. A. Trenwith of Victoria was one of the few who visualized at this stage that deadlocks would arise on matters of policy not necessarily connected with finance. He referred the Convention to a deadlock situation which had arisen a few years before in the Victorian Parliament over a Factories Act. He said that in the absence of a mechanical means for resolving the deadlock in Victoria the eventual bill which passed was so emasculated that it could scarcely be made to work. Higgins moved for an amendment to provide for a double dissolution of the Senate and the House of Representatives at the same time instead of a consecutive dissolution first of the House of Representatives and then of the Senate, as Wise proposed. The amendment aroused the hostility of most representatives of the smaller colonies. Sir John Downer of South Australia, for example, said that the Senate's powers had already been weakened in respect of financial matters and it was wrong for the Senate as representing the States as individual entities to be under pressure to submit to the government of the moment on pain of dissolution. Such a proposal might be suitable to a unified form of government, but not to a federation.[31]

Both Wise's original proposal and Higgins's amendment were decisively beaten. But this did not deter Isaac Isaacs, in conjunction with Sir George Turner, both Victorians, immediately moving for the inclusion of new clauses for settling deadlocks. In substance the proposal was one for the holding of a referendum, that is to say, upon a disagreement being established the measure in dispute was to be submitted to a referendum which provided that if the bill in dispute was affirmed by

---

29 Convention Debates, Adelaide, 1897, at 1,150-51.

30 *Ibid.* at 1,152.

31 *Ibid.* at 1,161-62.

the electors of the Commonwealth in a majority of States containing a majority of the population it was to be submitted for Royal assent.[32]

Odgers recalls that Isaacs had been a member of the Royal Commission on Constitutional Reform of 1894 which had recommended the adoption of the referendum for settling disagreements between the two Houses of the Victorian Parliament.[33]

Isaacs's proposal had the advantage from the small States point of view that it avoided a dissolution of the Senate in favour of direct appeal to the electorate. Isaacs also claimed for his scheme that it gave ample opportunity to reconcile differences and endangered neither the independence of the Houses nor the responsibility of the Ministers. However, he failed to persuade most of the small colony representatives and the proposal was defeated after comparatively little debate by eighteen votes to thirteen, Isaacs observing after the resolution in the negative that 'We will carry it next time'.[34] His prediction was quite wrong.

As the Victorian Royal Commission pointed out, the referendum obtained an accurate expression of the popular will on any question.

---

32 The text of Isaacs's proposal was:

'I move the insertion of the following new clauses that I had the honor, in conjunction with Sir George Turner, to circulate for consideration:

1. (I) If either House of Parliament shall, in two consecutive Sessions of the same Parliament, with an interval of at least six weeks between, pass and transmit to the other House, for its concurrence therein, any proposed law which such other House either fails to pass without amendment, within thirty days after receiving the same, in the second Session, or within such period passes, with any amendment not agreed to by the House transmitting the proposed law, the provisions of the following sections of this part shall apply.

(II) The proposed law passed and transmitted in the second Session may include any amendments agreed to by both Houses in the first Session.

2. The House in which the proposed law originated may pass a resolution that, in its opinion, the proposed law is of an urgent nature, and may transmit the resolution and the proposed law with any amendments agreed to by both Houses up to the time of transmission to the other House, with a request for further consideration.

3. If within thirty days of the transmission of the proposed law as last aforesaid, or if the Session shall end before the expiration of such period, then within thirty days of the commencement of the next Session of the same Parliament, the other House shall not pass the proposed law without amendment, or with such amendment as the House transmitting the same agrees to, the House in which the proposed law originated may resolve that the same be referred to the direct determination of the people.

4. If such last-mentioned resolution is passed, a vote of the electors of the Commonwealth as to whether the proposed law, as last transmitted as aforesaid, shall or shall not become law shall be taken, unless in the meantime the House to which it has been transmitted has passed the same.

5. Such vote shall be taken in each State separately, and if the proposed law is affirmed by a majority of States containing also a majority of the population of the Commonwealth, it shall be presented to the Governor-General for the Royal assent, as if it had been duly passed by both Houses of Parliament, and on receiving the Royal assent it shall become law. If not affirmed as aforesaid the proposed law shall not become law, and shall not be again proposed for a period of at least three years.

Clause 6.—No such vote shall be taken unless more than six months will elapse before the expiry of Parliament by effluxion of time.' *Ibid.* at 1,169.

33 *Australian Senate Practice* (2nd ed.), at 18.

34 Convention Debates, Adelaide, 1897, at 1,173.

It produced a decisive resolution of the deadlock. Its disadvantage in contemporary Australian political life is that a deadlock on a particular bill would be no more than symptomatic of a problem confronting the government of the day, *i.e.*, a generally hostile Senate because of its party composition. The resolution of a single dispute by referendum would not necessarily solve the government's problems. The Senate could remain hostile though defeated on the issue put to referendum.

And so the Adelaide session concluded with the adoption of a draft Constitution containing clauses (54 and 55) relating to money bills rather similar to those in the 1891 draft, but still not including any provision for the resolution of deadlocks. Meanwhile, however, one essential change had been made in relation to the Senate. Clause 9 provided that senators should be directly chosen by the people of the State as one electorate, whereas the 1891 draft had provided for senators of a State to be chosen by the Houses of Parliament of the State. Thus, the way was already open for a Senate to be composed of senators belonging to political parties to which their counterparts in the House of Representatives also belonged. Already the change had been made enabling the creation of a political scene to give rise to deadlocks in the first fifty years of the federation and deadlocks of a different character to those envisaged, but few saw it.

The Federal Convention in Sydney in 1897

The Convention commenced its second session in Sydney four months after the Adelaide adjournment. Again, as in Adelaide, division of opinion within Queensland as to how different regions in the colony should be represented were responsible for that colony not being represented, but ten representatives from each of the other five colonies attended the session.

During the adjournment there was a gathering feeling that something should be done about deadlocks by a clause in the Constitution and, in fact, the Legislative Assemblies of New South Wales, Victoria and South Australia each put forward suggestions for the insertion of deadlock provisions in the Constitution. The Legislative Councils of those colonies, naturally enough, left the matter quite alone. In Tasmania a deadlock section was still not supported but the Assembly suggested a scheme for use in the event of the Convention deciding to make a provision to evade deadlocks, but not otherwise. The Assembly of Western Australia did not want any form of deadlock provision.[35]

The business at Sydney involved not only a reconsideration of the draft bill, but also some 286 amendments in all suggested by the ten colonial houses of parliament.[36] However, most of the debate at

---

35 For the consideration of the draft Constitution by colonial legislatures and in particular the consideration of deadlock provisions, see Quick and Garran, *The Annotated Constitution of the Australian Commonwealth*, at 182-7.

36 Quick and Garran, *op. cit.* at 187.

Sydney was monopolised by four questions—the financial problem, the basis of State representation in the Senate, the power of the Senate with regard to money bills, and the insertion of a provision for deadlocks.

New South Wales and Victorian delegates were opposed, as they were originally, to equal representation in the Senate, but it became plain as the debate on Senate representation proceeded that it would be necessary to concede to the smaller States the principle of equal representation if those States were to support federation. The clause eventually agreed upon by 41 votes to five was that there should be six senators for each original State with power in the Federal Parliament to increase or diminish the number of senators for each State, but so that equal representation for the original States should be maintained and at a minimum of six senators. One result of the debate was to enhance the chances of the adoption of a deadlock clause to place some restriction on the absolute veto of the Senate in the national interest.

Having disposed of the question of Senate representation, the Convention then proceeded to debate the money bills clauses. An amendment suggested by the Legislative Council of Western Australia to give the Senate power to amend taxation bills was defeated by 28 votes to 19. When the debate concluded the clauses relating to financial measures agreed on at Adelaide were left substantially unchanged. Then the Convention proceeded to the longest and most important debate of the Sydney sitting—the debate on deadlocks which lasted from the 15th to the 21st September. The recorded debates of the Sydney session occupy 1,110 pages of which the deadlock discussion occupies more than 400 pages.

Agreement in Principle: Referendum versus Dissolution

The debate commenced by the chairman putting forward the clause suggested by the Legislative Assembly of New South Wales. The proposal was that if *either* House of the Federal Parliament should in two consecutive sessions of the same Parliament pass a law which the other House failed to pass without amendment, then the measure in dispute should be submitted to a referendum of electors and the issue determined by a simple majority of all the electors. This proposal became known during the debates as one for a 'mass' or 'national' referendum, to distinguish it from a proposal for a dual referendum subsequently put forward in which two majorities were required, namely, an overall majority of electors together with a majority of electors in a majority of States. In the Adelaide session, Isaacs's proposal had required affirmation by a majority of States containing also a majority of the population of the Commonwealth. After a debate lasting two days the Convention, sitting as the Finance Committee, decided by 30 votes to 15 that a provision should be made for the prevention of deadlocks.

Over the two days the debate revealed, however, a fundamental difference of opinion as to how deadlocks should be resolved. A strong body of opinion, deriving principally from the representatives of the larger colonies, supported resolution by referendum; but other opinion,

apparently no less strong and comprising many delegates of the smaller colonies, favoured dissolution without a referendum. On each side, however, supporters formed two groups. Among those favouring a referendum there were supporters to be found both for a national or mass referendum and a dual referendum; and among those favouring dissolution instead of a referendum, some favoured first a dissolution of the House of Representatives to be followed by a dissolution of the Senate, whereas others favoured a simultaneous dissolution of both Houses.[37]

Other Proposals

In addition to proposals for dissolution or referendum the following possibilities were also mentioned:

(1) The 'last resort' proposal of the Tasmanian Legislative Assembly that in the event of a disagreement followed by a dissolution of the House of Representatives the disputed measure should be deemed to have passed both Houses if passed by a four-sevenths majority of the House of Representatives and supported by a three-sevenths vote in the Senate.[38]

(2) An adaptation of the Tasmanian proposal applying similar majorities after a dissolution of both Houses.[39]

(3) The South Australian example of 1881 providing that in the event of a deadlock there should be a double dissolution or an election for an additional one-third of the number of members of the Upper House.[40]

(4) A proposal put by the Premier of South Australia, C. C. Kingston, for a definition of the subjects of legislation affecting State interests and the application of the dual referendum to disputes in relation to them, but for a national referendum in all other cases.[41]

(5) Rumblings of the possibility of settling deadlocks by the device of a joint sitting of both Houses.[42]

National Referendum versus Consecutive Dissolution

Following the decision to include provision for settling deadlocks, the New South Wales Legislative Assembly's proposal to resolve deadlocks by resort to a national referendum was again put forward. It was

37 For one of the best accounts of the major proposals by an individual member of the Convention, see the observations of the leader of the Convention, Edmund Barton, Convention Debates, Sydney, 1897, at 620-8.

38 Convention Debates, Sydney, 1897, at 553, 556, 567, 568.

39 *Ibid.* at 689-90.

40 *Ibid.* at 561-2. Note that before conditions of deadlock could arise under the South Australian Act, the disputed bill had to be passed in successive parliaments meaning, of course, that a general election for members of the House of Assembly would have to intervene between the first and second occasions on which the bill was passed by that House.

41 Convention Debates, Sydney, 1897, at 697-704, especially at 699.

42 *Ibid.* at 687.

to apply to the issues introduced by either the Senate or the House of Representatives.[43]

The move was immediately countered by a vociferous representative of the small colony viewpoint Mr J. H. Symon, Q.C. from South Australia, who suggested a clause, derived from the South Australian Act, providing first for a dissolution of the House of Representatives, and then, if the disagreement still persisted, a double dissolution of the two Houses. Symon's proposal read:

> 'That after the word "If," in the proposed new clause, the following new words be inserted:—"the senate reject or fail to pass any proposed law which has passed the house of representatives, or pass the same with amendments with which the house of representatives will not agree, and if the governor-general should on that account dissolve the house of representatives, and if, within six months after the said dissolution the house of representatives again pass the said proposed law in the same, or substantially the same, form as before, and with substantially the same objects, and the senate again reject or fail to pass the said proposed law, or pass the same with amendments with which the house of representatives will not agree, the governor-general may dissolve the senate and the house of representatives, and thereupon all the members of both houses of the parliament shall vacate their seats".'[44]

Subsequently, in the face of criticism that his proposal was too strongly directed against the House of Representatives, Symon agreed to the omission of the words 'on that account' and also to provide that the Senate alone should be dissolved following a continuance of the disagreement after the dissolution of the House of Representatives. In other words, he agreed to provide for the dissolution of each House consecutively.[45]

There was an obvious dislike of Symon's proposal among delegates from New South Wales and Victoria, to whom the idea of a consecutive dissolution lacked finality. The procedure not only meant that the two sides of the question in dispute would be submitted to the people at different times, but it placed the Senate in a redoubtable position by enabling it to witness, without immediate risk to itself, a dissolution of the House of Representatives and an ensuing election.

[43] The first part of the New South Wales proposal adopted the first three paragraphs of Isaacs's proposal submitted at the Adelaide Convention, as to which see footnote 32 above. The point of departure lay in the nature of the referendum. After providing for the establishment of conditions of deadlock and further providing, as Isaacs did, that the House in which the proposed law originated could resolve to refer the law to the direct determination of the people, the New South Wales proposal read:

> 'If such last-mentioned resolution is passed, a vote of the electors of the commonwealth as to whether the proposed law, as last transmitted as aforesaid, shall or shall not become law shall be taken, unless in the meantime the house to which it has been transmitted has passed the same.
>
> Such vote shall be taken in each state separately, and if the proposed law is affirmed by a majority of the population of the commonwealth, it shall be presented to the governor-general for the royal assent, as if it had been duly passed by both houses of parliament, and on receiving the royal assent it shall become law. If not affirmed as aforesaid the proposed law shall not become law, and shall not be again proposed for a period of at least three years.' (Convention Debates, Sydney, 1897, at 709).

[44] Convention Debates, Sydney, 1897, at 709-10. Note that the proposal covered only laws first passed by the House of Representatives and did not provide for any resolution of a deadlock on a bill first introduced in the Senate.

[45] Convention Debates, Sydney, 1897, at 737-8.

On the other hand, representatives of the small colonies had an equally strong dislike of a referendum. Sir John Forrest, Premier of Western Australia, spokesman for this viewpoint, said:

> '. . . It must not be forgotten, however, that at the present time the various colonies are independent states, and we are not going to enter into any partnership unless our future position as a state is guaranteed. To return, however, to the point at issue. Having decided that means are to be provided for the prevention of deadlocks, the question arises: What is the simplest, the best, and the most effective means that we can adopt? The suggestion of the Right Hon. Sir George Turner that, in case of deadlocks, both houses should be at once sent to their constituents has, at first sight, a good deal to commend it. Under ordinary circumstances, if two representative bodies disagreed, the solution of the difficulty which would occur to most men would be to send them back to those whom they represent, and let them decide the dispute. But would that be a wise provision to make in the constitution which we are now framing? At the time of the dispute, there may be a great deal of popular excitement and clamour, and all sorts of influences might be at work, and is it likely that we should obtain the result we are aiming at if we sent back the two legislative bodies to their constituants in the midst of that clamour and excitement? The chances are that both sides would be inflamed, and would stick to their colours, sending back again to the two houses the persons who represented them there before, and who, it would be said and thought, were defending the interests of the colonies they represented. The chances are that the members of the senate, when they went back to their own colonies, and told their electors that they had stood out to preserve their rights and interests, would be returned to again oppose the particular measure which had been the cause of the dispute. In nine cases out of ten, the house having the greatest power will be the aggressor. Every one knows that no case has arisen in Australia, nor anywhere else, in which the upper house has been the aggressor, forcing upon the lower house some measure of which it disapproved, and thereby causing a constitutional disturbance. We know that such a thing has never happened, and never will happen. If any conflict occurs in the commonwealth in the future it will be caused by the house of representatives trying to coerce the senate. I think it is only reasonable that the house which causes the trouble—in my belief it will be the house of representatives—should go to the country. After a limited time, say, six months or so, having returned from the country with a fresh mandate, with the weight of that mandate pressing upon the upper house, if the upper house still maintains the position it formerly took up, and refuses to give way, I then am willing to send that house to the country. Time will have elapsed—six months or more—people will have had time to work off their angry passions—at any rate their excitement—they will have had time to cool down, and the second election will be carried on under far different circumstances as to excitement compared with those of the original election.
>
> . . . . . .
>
> The senate should be dissolved in the second instance. It seems to me that that plan would make the house of representatives much more careful, much less eager to enter into conflict than it would be under other circumstances . . . The senate, in my opinion, should be immovable; but the Convention decided yesterday that that was not to be so. We are desirous of framing something that we have not got at the present time. Our legislative councils in all these colonies, with the exception of South Australia, cannot be dissolved, and if we cannot get a measure through the upper house we have to put up with it. We can certainly dissolve the lower house, but that is not often taken advantage of, and, furthermore, it is not necessary . . . We have heard a great deal about the referendum, and, I dare say, we shall hear a great deal more during the debate to-day; but I think that an election of the senate is as close an approach to a referendum under this bill as it is possible to get.' [46]

---

[46] *Ibid.* at 717-18.

Typical of the reaction to the security which Forrest attempted to ensure for the Senate were the remarks of Higgins from Victoria who said:

> '. . . With regard to the proposal of the Premier of Western Australia, I think the answer of the Premier of New South Wales is absolutely insurmountable. That proposal simply makes the house of representatives a catspaw in order to pull the nuts out of the fire. It simply allows the members of the senate to see by the voting in the different states which way the feeling of their states is going, and they will know exactly then as to whether it is or is not worth while for them to face a dissolution. Considering that it is boasted that both the houses are based on the broadest franchise, I can see no possible reason why there should be a distinction between them. The only course will be, in fairness to both houses, as they are both based on the suffrages of the people, and both claim to be representative, to dissolve both.' [47]

Shortly before lunch on 17th September, 1897, Symon's proposal was put to a vote and carried by 27 votes to 22.[48] Of the 27 only four were Victorian or New South Wales representatives. The 'noes' included but six representatives of the other colonies and four of those were South Australian.

Should a Referendum follow a Consecutive Dissolution?

Simultaneous Double Dissolution Revived

The operative effect of the vote was to displace the New South Wales proposal for settlement of deadlocks by referendum in favour of possible settlement through consecutive dissolution as the proposal to be taken up by the conference. Since the new proposal was most objectionable to the majority of representatives from New South Wales and Victoria, there were obviously rugged times ahead.

The first move came from W. J. Lyne of New South Wales. Lyne suggested that if a deadlock remained following a consecutive dissolution then the disputed measure should be referred to a national referendum for determination.[49]

Lyne's proposal provoked Sir George Turner, Premier of Victoria, to remark that the Victorian position at the Adelaide Convention had been to have a referendum of some sort without a double dissolution or, for that matter, any dissolution at all.[50] He could not accept the Symon proposal and was constrained now to get back to the position at Adelaide and to propose the settlement of a dispute between the two Houses by the direct determination of the people which Victoria had always favoured.[51] At this point New South Wales support for a referendum weakened whilst Barton himself voiced his objections to consecutive dissolutions and spoke openly in favour of a simultaneous double dissolution.[52] The employment of a referendum raised, said Barton,

---

47 *Ibid.* at 725.
48 *Ibid.* at 738.
49 *Ibid.* at 738-40.
50 *Ibid.* at 741.
51 *Ibid.* at 744.
52 *Ibid.* at 748-52.

the much disputed question as to whether it should be a national or a dual referendum. As to either one, the prospect of strong support from the conference was remote.

Wise of New South Wales then attempted to move for the settlement of deadlocks in the first instance by a double dissolution and then, if the proposed law had still not been passed, by having it referred to direct determination by referendum.[53] Several delegates regarded Wise's proposal as inconsistent with the vote which was taken to have a consecutive dissolution.[54] And so the Convention had before it on the 17th September the following four proposals:

(a) Symon's proposal for a consecutive dissolution.

(b) Lyne's proposal to provide for a national referendum if disagreement continued after the consecutive dissolution.

(c) Turner's proposal to resort directly to a referendum following a disagreement, in lieu of any dissolution.

(d) Wise's amendment to Turner's proposal to provide for a simultaneous dissolution of the two Houses before the taking of a referendum.[55]

Deadlock on Deadlocks: Joint Sitting Recognised

The continuance of the debate throughout the afternoon of the 17th September showed only too clearly the need for a breathing space and the suggestion for one eventually came from Edmund Barton, leader of the Convention. Barton said that the Convention should have an opportunity to reflect upon the various proposals before it over the week-end. Although clause 57 had been partly dealt with by this time, several members had apparently expressed their desire to reconsider their views on Symon's proposal and, in spite of opposition from Sir John Forrest of Western Australia, the move to adjourn consideration of the clause until Monday was carried.

A torrid debate ensued on the following Monday with little progress made during the day. Touches of humour were rare, but in recording Deakin's advocacy of a double dissolution in preference to Symon's consecutive dissolution the Official Report reads:

> 'The Hon. A. Deakin. . . . I have disposed of the whole of the objection urged to the double dissolution by those who, like my hon. friend, consider that we in some way infringe upon the bi-cameral system by the simultaneous dissolution—not "Symon-taneous".
>
> Mr. Symon: A very good pun; it quite lightens the discussion!' [56]

On the day, the debate revealed a surprisingly strong body of opinion that some kind of a referendum should be incorporated in provisions for the settlement of deadlocks, but a deep divergence of view as to

---

53 *Ibid.* at 757-9.

54 *E.g.*, Sir Edward Braddon and J. H. Symon, Convention Debates, Sydney, 1897, at 758-9.

55 Convention Debates, Sydney, 1897, at 807-8.

56 *Ibid.* at 823.

whether a referendum should be an alternative to a dissolution as Sir George Turner had proposed or whether a dissolution should precede the taking of a referendum as Mr Wise of New South Wales had moved by way of amendment to Sir George Turner's proposal. In the long run Wise's amendment was adopted by 25 votes to 20, the majority vote including the vote of Sir George Turner himself. Thus, an important decision had been made, namely, that if there were to be a referendum at all it should only be after a double dissolution, whether simultaneous or consecutive.[57]

In the ensuing discussion of Wise's proposal, however, a strong cleavage of opinion soon developed between the proponents of a national referendum and those who supported a dual referendum. Lyne's proposal for a national referendum was then put, but heavily defeated.[58] Turner and Wise, carrying with them other representatives from their own colonies, voted against it and, of course, most of the representatives of the small colonies were opposed to a referendum in any event.

The fate of the national referendum having been solved the next move was to amend Mr. Lyne's proposal to provide for a dual referendum, but this too was defeated although not by such a strong majority. Half the delegates who had voted in favour of a national referendum voted against the dual referendum and again the small colonies remained firm.[59]

The rejection of either form of referendum left two propositions standing; one that there should be a consecutive dissolution, the other that there should only be a simultaneous dissolution of both Houses. It was fairly clear by now in most delegates' minds that dissolution alone was insufficient. J. H. Carruthers of New South Wales seized the opportunity to build on the proposal for a double dissolution by making provision for a joint sitting of both Houses if the dispute continued after dissolution at which a three-fifths majority should be able to carry the measure.[60] The suggestion for a joint sitting was not received enthusiastically by the advocates of a referendum, such as Sir George Turner and Isaac Isaacs, and representatives from the smaller colonies thought a joint sitting would weaken the Senate's position. Yet there were many, now anxiously looking for a solution, who regarded the proposal as a practical basis for compromise. The ensuing discussion was mainly on the question of the size of the majority required at a joint sitting, but finally Carruthers's amendment was carried by 29 votes to 12.[61] Encouraged by his success, Carruthers then moved to provide that if a proposed law were rejected at a joint sitting it could, as a final resort, be submitted to a general vote of the electors of the Commonwealth. The idea failed to command majority support.

---

57 *Ibid.* at 923-4.

58 *Ibid.* at 927.

59 *Ibid.* at 930.

60 *Ibid.* at 930, 932, 933.

61 *Ibid.* at 974-5.

The final act of the Sydney meeting was to resolve that Symon's proposal for successive dissolutions, that is to say, first of the House of Representatives and then of the Senate, and the Wise-Carruthers proposal for a double dissolution, followed in either case by a joint sitting with a three-fifths majority, should each form part of the proposed deadlocks clause. The purpose of so deciding was to preserve the right of members to consider both proposals further, although Symon's had in fact been tacitly rejected by the adoption of the Wise-Carruthers proposal.[62]

The Melbourne Session in 1898

Consecutive versus Simultaneous Dissolution

A debate on deadlocks lasting two days occurred at Melbourne four months later. Barton introduced the debate on the clause (now clause 56B) by proposing the omission of the first paragraph, that is, the one containing Symon's proposal for a consecutive dissolution. Barton said that once a decision had been taken to include the double dissolution in the deadlock clause much of the strength had disappeared from the proposal for a consecutive dissolution.[63] Sir John Forrest replied by saying that the inclusion of the two clauses somewhat in opposition to one another suggested that the likely solution was to deal with deadlocks by means of a joint meeting of the two Houses with a three-fifths majority needed to carry the measure in dispute without any dissolution of the Senate.[64] Forrest's proposal was put to a vote but easily defeated.[65] Barton had no greater success though supported by most of the New South Wales and Victorian delegates. His move to omit the first paragraph of the clause requiring a consecutive dissolution was defeated by 28 votes to 17.[66] Symon, the protagonist of the first paragraph, then decided to try his luck and move to strike out from the second paragraph those words requiring a simultaneous dissolution of the two Houses. The effect of the motion would have been to attach the joint sitting to a consecutive dissolution. This proposal was also easily defeated.[67]

Isaacs then spoke up. He said he knew of nothing more useless than a joint sitting and the very fact that a joint sitting had been proposed showed that the mere adoption of a dissolution whether it be consecutive or simultaneous was not sufficient. The Convention should, therefore, again consider substituting a referendum as the means of settling a question in dispute. In a referendum a result was inevitable. Quick and Garran[68] summarized the debate on Isaacs's proposal[69] as follows:

> 'The longest debate was on a proposal by Mr. Isaacs to substitute a referendum for the joint sitting. The national referendum was, of course, his ideal; but he preferred the dual referendum to none at all, as it would secure the

62 *Ibid.* at 980.
63 Convention Debates, Melbourne, 1898, at 2,108-9.
64 *Ibid.* at 2,110-12, 2,119.
65 *Ibid.* at 2,123.
66 *Ibid.* at 2,134.
67 *Ibid.* at 2,157.
68 Quick and Garran, *op. cit.* at 203.
69 Convention Debates, Melbourne, 1898, at 2,172-2,222.

voice of the people—and the experience of Switzerland supported the view that the voice of the people was never likely to be contradicted by the voice of the States. A referendum, he contended, was the only satisfactory solution. Dissolution of the Houses was admittedly insufficient; and the joint sitting was objectionable because it allowed the principle of equal representation to invade the House of Representatives, introduced a unicameral body as final arbiter, and would, in practice, give the Senate a decisive veto. Mr. Wise replied with a powerful attack on the proposed application of the referendum, as being unsuited to the British Parliamentary system, and destructive of Responsible Government. Mr. Reid and Mr. Isaacs contended that these arguments only applied to a referendum, such as that in Switzerland, by way of a veto on the Parliament; the question here was how to meet the case in which Parliamentary institutions broke down. Most of the Victorians, half of the South Australians, and Mr. Reid and Mr. Carruthers from New South Wales, supported the amendment; but the Convention was not to be convinced, and it was defeated by 30 votes to 15.'

The final defeat of the proposal for a referendum left delegates now fairly clearly divided into two camps; one advocating a consecutive dissolution and the other a simultaneous dissolution, with the greater number of supporters in favour of a double dissolution, the forces of the Victorian and New South Wales contingents having been drawn together on this issue. Finally, acknowledging the wider support for a double dissolution, Symon agreed that his proposal for a consecutive dissolution should be omitted and this was done.[70] However, it was not done before the Convention had defeated a proposal by Higgins of Victoria to substitute a bare majority for the three-fifths majority required at a joint sitting.[71]

And so there emerged from the Melbourne session a deadlock clause reading substantially in the form of section 57 of the Constitution except for the requirement of a three-fifths majority of the members present and voting at a joint sitting.

Premiers' Conference at Melbourne in 1899

It is well known that the draft federal Constitution adopted by the Australasian Federal Convention at Melbourne on 16th March, 1898, was submitted to popular vote in four colonies, New South Wales, Victoria, South Australia and Tasmania, and that the total affirmative vote in New South Wales at the referendum held on 3rd June, 1898, though a majority, was less than the minimum required by the Australasian Federation Enabling Act Amendment Act 1897. Defeat in New South Wales made federation impossible. A Premiers' conference convened in Melbourne at the request of Mr Reid, Premier of New South Wales, considered a number of suggestions from that colony which might make federation acceptable to it. One of the requests which New South Wales made and which the conference accepted was the substitution of a three-fifths majority at a joint sitting by an absolute majority of the total number of members of the two Houses. This was the final amendment to section 57. It is also the one part of section 57 which has never been

70 *Ibid.* at 2,249.
71 *Ibid.* at 2,222-26.

invoked. The results of the elections for the two Houses in 1914 and 1951 gave one party, or combination of parties, sufficient strength in both Houses to place beyond doubt the issue in dispute.

SECTION 57 IN OPERATION

It is customary to venerate our founders and to attribute to them a corporate wisdom rarely achieved and certainly not to be matched by any modern body of constitutional review. But how wise were the founders?

When Sir Henry Parkes introduced his federal resolutions at the commencement of the Convention discussions in Sydney in 1891, he said that in proposing a federal parliament consisting of a Senate and a House of Representatives he had in mind 'an upper chamber, call it what you may, which shall have within itself the only conservatism possible in a democracy—the conservatism of maturity of judgment, of distinction of service, of length of experience, and weight of character—which are the only qualities we can expect to collect and bring into one body in a community young and inexperienced as Australia is'.[72] The broad sweep of Sir Henry did not contemplate the Senate as a House of the States. Yet, the Senate was quickly seized upon as being an institution of the States and almost throughout the Senate was thought of as predominantly a States House. Edmund Barton did no more than echo the views of the great majority of delegates when he said during the Adelaide debates in 1897:

> 'I take it there must be two Houses of Parliament, and in one of these Houses the principle of nationhood and the power and scope of the nation, as constituted and welded together into one by the act of Federation, will be expressed in the National Assembly, or House of Representatives, and in the other Chamber, whether it is called the Council of the States, the States Assembly, or the Senate, must be found not the ordinary checks of the Upper House, because such a Chamber will not be constituted for the purposes of an Upper House; but you must take all pains, not only to have a Parliament consisting of two Chambers, but to have it constituted in those two Chambers in such a way as to have the basic principle of Federation conserved in that Chamber which is representative of the rights of the States; that is, that each law of the Federation should have the assent of the States as well as of the federated people. In reference to this, I wish to illustrate what I said at the beginning—that I am endeavouring to refrain from pushing my views regarding some matters into definite expression in the terms of the resolutions. There are some of us who think we may secure an effective Federation, although we may not have equality of representatives of the States in the Senate. I am fully and definitely of opinion that the States should be represented equally in the States Assembly. I hold that opinion because I believe that the object of that States Council is to preserve the individuality of the several States, and if it is once conceded that by having only one Chamber, and that elected on the proportionate basis of representation, you are so consituting your Parliament that you are in danger every day of derogating from the individuality of the States, it follows that there should be a Second Chamber for the preservation of that individuality in the most effective way possible. But if you must have two Chambers in your Federation, it is one consequence of the Federation that the Chamber that has in its charge the defence of State interests will also have in its hands powers in most matters co-ordinate with the other House.' [73]

---

72 Convention Debates, Sydney, 1891, at 26.

73 Convention Debates, Adelaide, 1897, at 21-22.

The plain fact is, however, that the Senate was created to serve purposes which in 1900 were either unattainable or about to become insignificant. As B. R. Wise has observed,[74] the perception of the true character of the Senate in a Federal Commonwealth was obscured by the memories of the two chambers of the local legislatures. Only a few of the founders seemed capable of assessing the role which the Senate would have and men like Parkes, Deakin and Isaacs stand as giants in this respect, and as exceptions to the general run of thinking which the Convention Debates reveal. Alfred Deakin accurately prophesied during the Convention Debates in Sydney in 1897 that:

> '. . . the contentions in the senate or out of it, and especially any contention between the two houses, will not and cannot arise upon questions in regard to which states will be ranked against states . . . in the United States, and also in Switzerland, and in Canada, as here, the whole of the states will be divided into two parties. Contests between the two houses will only arise when one party is in possession of a majority in the one chamber, and the other in the possession of a majority in the other chamber. We have had it submitted to us that probably the senate will be the more radical house of the two. I am willing to accept that suggestion for the purposes of my argument, though the argument is equally good either way. The house of representatives would then be the more conservative body, and it is possible that a more conservative party in the house of representatives would be confronted by a more radical party in the senate. In both cases the result after a dissolution would be the same. The men returned as radicals would vote as radicals; the men returned as conservatives would vote as conservatives. The contest will not be, never has been, and cannot be, between states and states . . . it is certain that once this constitution is framed, it will be followed by the creation of two great national parties. Every state, every district, and every municipality, will sooner or later be divided on the great ground of principle, when principles emerge.' [75]

Wise himself, who played a substantial role in the casting of section 57, wrote in 1913:

> 'It is difficult for us, who have had twelve years' experience of the working of Federation, to understand why so much stress was laid on these provisions for resolving deadlocks; and why even those delegates who at Adelaide thought that conflicts between the two Houses would be infrequent, and that, if they did occur, a deadlock might not be disadvantageous, ultimately came round to the opinion that some provision, in the nature of a safety-valve, would be desirable. The explanation is that the perception of the true character of the Senate was obscured by the memories of traditional conflicts between the two Chambers of the local Legislatures. The ghosts of dead controversies still walked the political field; and "Liberals" and "Conservatives" alike discussed the functions of a Federal Senate as though it were a local Upper House! Thus, the strange spectacle was presented of "Conservatives" demanding the fullest authority for a body elected by the whole people of each State upon the widest possible franchise, and of "Liberals" insisting upon a limitation of its powers, in the name of democracy! Only one delegate ventured to suggest that the question was of antiquarian rather than practical interest,[76] and that any disputes between the two Houses would be over measures of social reform, and not over points of constitutional etiquette! Public opinion set steadily against this view; and the Bill was opposed both in New South Wales and Victoria, because the provision requiring a three-fifths majority at the Joint Sitting did not make the concession of equal representation wholly illusory, but permitted the remote possibility that a majority of the States might be able to protect themselves against coercion by the representatives of a larger population. . . .

---

74 *The Making of the Australian Commonwealth* 1889-1900, at 245-6.

75 Convention Debates, Sydney, 1897, at 584.

76 Wise.

> There never has been, nor, so far as we can see, will there ever be, a division of opinion upon State lines; and the establishment of a Senate, in order to protect State interests, appears now, as it appeared to Sir Henry Parkes, to have been an unnecessary precaution.' [77]

Only a year later a deadlock occurred but, as Wise wrote, the deadlock machinery has yet to be employed on a 'State' issue and has not been invoked on a point of constitutional etiquette over money bills as the founders expected might happen in view of the explicit powers of the Senate on financial measures. Nor has there been a joint sitting. The two double dissolutions, the one in 1914 and the other in 1951, involved legislation of social interest; in 1914 the Government Preference Prohibition Bill abolishing preference for unionists in employment with the Commonwealth, and in 1951 the present Government's Commonwealth Bank Bill (No. 2) providing for the re-establishment of a Board of Directors for the Commonwealth Bank. In 1914 and 1951 a deadlock arose and a double dissolution occurred because the opposition party in the House of Representatives had the numbers in the Senate to achieve in the Senate that which it could not achieve in the House of Representatives. Deadlocks arose, not because of the conception of the Senate as a States House or an independent House of Review, but for party political reasons, and in the ensuing elections the struggle between the rival parties produced an electoral result for the Senate which simply matched that achieved for the House of Representatives thereby rendering a joint sitting purposeless.

Section 13 of the Constitution is a material factor in promoting the chances of a deadlock between the two Houses. Section 13 requires that one-half of the total number of places in the Senate should become vacant every three years.[78] The result of the section is that about one-half of the total number of senators are elected in a political situation some three years old at the date of the general election for members of the House of Representatives which returned the government experiencing difficulty in the Senate. In 1913 the Liberal Government won a bare majority of seats in the House of Representatives,[79] but it won only seven of eighteen Senate places.[80] But had the Liberals won all eighteen seats they would still not have had a Senate majority because Labor won all eighteen Senate vacancies at the elections in 1910.

---

77 *Op. cit.* at 245, 246, 248. The book is dedicated 'to the 71,965 electors of New South Wales who voted "yes" on June 3, 1898'. The figure should have read 71,595, which was 8,405 less than the 80,000 affirmative votes required.

78 The first paragraph of s. 13 reads:

> 'As soon as may be after the Senate first meets, and after each first meeting of the Senate following a dissolution thereof, the Senate shall divide the senators chosen for each State into two classes, as nearly equal in number as practicable; and the places of the senators of the first class shall become vacant at the expiration of three years, and the places of those of the second class at the expiration of six years, from the beginning of their term of service; and afterwards the places of senators shall become vacant at the expiration of six years from the beginning of their term of service.'

79 It did not have a majority of seats in the House of Representatives after providing for a Speaker and a Chairman of Committees.

80 Although the total Liberal vote for senators was greater than for Labor candidates, Liberal majorities were confined to two States.

Proportional representation was adopted for Senate elections in 1949 in the hope that the Senate result would be more in proportion to the party vote than in previous years. Thus, following the elections in 1947 the Senate consisted of thirty-three Labor senators and only three senators from the other parties. At the 1949 elections[81] the Liberal-Country Party coalition obtained a substantial majority in the House of Representatives and won 23 of the 42 Senate places, but the new government experienced a hostile Senate because Labor had won 16 Senate seats in the previous elections. Thus, the early conversion of the Senate into a party house and the operation of section 13 have decisively governed the application of section 57 since federation.[82]

In recent years section 57 has again emerged as a real bogey to government.[83] The adoption of the system of proportional representation in Senate elections has resulted in the main in the major political parties being fairly evenly divided in the Senate. A government, though handsomely returned at the general election, cannot be confident that it will also have a working majority in the Senate.[84]

The likelihood of recurrent deadlocks has led to many suggestions for the revision of section 57, the last proposals of any authority being those put forward by the Joint Committee on Constitutional Review which reported to the Federal Parliament in 1959.[85] In short, the Committee recommended that a distinction should be drawn between proposed laws which impose taxation or appropriate revenue or moneys for the ordinary annual services of the government and other proposed laws. The Committee recommended that a deadlock should be deemed to

---

81 Seven senators had to be elected for each State following an increase in the number of senators from six to ten for each State.

82 For a comprehensive account of the conception of the Senate as a States House and a House of Review and its transformation in the first half-century of federation, see the Report from the Joint Committee on Constitutional Review, at paragraphs 71-100; and for an account of the application of section 57, see the Report at paragraphs 131-178.

83 An article entitled 'The Origin and Genesis of the Deadlock Clause of the Australian Constitution' by W. R. Curtis of New York University in *Political Science Quarterly*, Vol. LX (1945) 412, refers to the influence which section 57 has had in framing constitutions of other British Empire countries. Curtis considered that the section was worth consideration in drafting new post-war constitutions. One can only speculate whether the writer would still hold similar views in the light of federal political history since 1948.

84 In an article in *Parliamentary Affairs*, the Journal of the Hansard Society, Vol. IV, No. 1 (Winter 1950), J. E. Edwards, former Clerk of the Senate observed that the 1914 double dissolution justified the Senate's stand since Prime Minister Cook's Government was defeated at the elections. Cook took office, however, under the extremely difficult condition of not having a working majority in the House of Representatives. After reviewing various disagreements between the two Houses, Edwards observed that a government which deliberately set out to provoke a double dissolution wielded a dangerous weapon and could easily commit political suicide. Mr. Menzies took that risk in 1951. His alternative was to legislate as little as possible, a policy which can hardly be said to be conducive to responsible and progressive government.

85 The Select Committee of the Senate on the Constitution Alteration (Avoidance of Double Dissolution Deadlocks) Bill 1950 reported that double dissolutions should be eliminated. The Committee recommended that deadlocks should be resolved by vote of a joint sitting of the two Houses. Its principal recommendation was as follows:

> 'That when the circumstances have arisen that would under the broad provisions of section 57 of the Constitution justify the granting of a double dissolution, or if an ordinary Public Bill has not become law within six months—and two months in the case of

arise in respect of a financial measure if the Senate has not, at the expiration of thirty days from receiving it from the House of Representatives, passed the proposed law. As to conditions of deadlock on other proposed laws, the Committee recommended that a deadlock should be deemed to arise if:

(1) during a session, the Senate has not at the expiration of 90 days after receiving the proposed law from the House of Representatives, passed the law as transmitted to it or the proposed law with any amendments in respect of which both the Senate and the House of Representatives are in agreement;

(2) the House of Representatives again passes the proposed law in the same or the next session either with or without any amendments made by the Senate; and

(3) after again receiving the proposed law, the Senate either again rejects the proposed law, or has not at the expiration of 30 days during the session, passed either the proposed law or the proposed law with amendments which the House of Representatives has found acceptable.

Upon a deadlock arising, the Committee recommended that alternative courses of action to a double dissolution should be available to the government. The first alternative is for a joint sitting of the two Houses without a dissolution at which the measure in dispute to be affirmed must be carried at the sitting by at least one-half of the total number of members of the two Houses chosen for and in a State in at least one-half of the States and also by an absolute majority of the total number of members of the two Houses. The other recommended alternative is to provide for the settlement of a deadlock at a joint sitting in the same manner as now provided in section 57 as long as a general election for members of the House of Representatives has intervened since the deadlock first arose.[86] So far, the Government has not shown any inclination to act on any of the recommendations of the Constitution Review Committee, but if the major parties represented in the Federal Parliament should ever reach agreement on a programme of constitutional change the alteration of section 57 would probably stand high in the list of proposals. It certainly should.

---

what, without precise definition, we call a Money Bill—of the receipt of such Bill by the Senate from the House of Representatives, then the dispute or the Bill as the case may be should be referred to a joint sitting of the two Houses, at which the will of an absolute majority of the total number of the members of the Senate and the House of Representatives shall prevail.'

See *Parliamentary Paper* No. S.1 of 1950-1951, paragraph 187. The 1950 Bill, one of three vital bills sent to the Senate in 1950, was a government measure aimed at reducing the chances of an evenly divided Senate following a double dissolution. The Senate referred the bill to a Select Committee following the second reading. The vote was on strict party lines and only Labor senators joined the Select Committee.

86 The recommendations of the Constitution Review Committee are set out in its 1959 Report at paragraphs 179-225.