

## **1902 and the Origins of Preferential Electoral Systems in Australia\***

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Australia is the birthplace of the two main forms of preferential electoral voting — the Alternative Vote (AV) and the Single Transferable Vote (STV) methods. Accident and force of circumstances largely explain their introduction. The Hughes Government introduced the AV system in 1918 in an attempt to prevent the right-of-centre parties from splitting their support to the benefit of the ALP. In 1948 the Chifley Government moved to replace the Senate's preferential block system with the STV method in an attempt to electorally contain Menzies. Yet credit also needs to be given to the deliberate efforts and clear intentions of their designers. The electoral systems proposed in 1902 were ahead of their time. Indeed, 1902 marked an important step in the design of Australia's electoral system. Once the debate had crystallized around the relative merits of preferential methods, it was only a matter of time before the Commonwealth would see their adoption.

Australia is the birthplace of the two main forms of preferential electoral systems, the Alternative Vote (AV) and the Single Transferable Vote (STV). Versions of these systems had already been used in two of the Australian colonies in the late nineteenth century (Queensland using a variant of AV and Tasmania a variant of STV). During the constitutional conventions preceding federation there was discussion about the adoption of preferential systems, and one of the first acts of the newly created Commonwealth parliament was to attempt to introduce them in the 1902 Commonwealth Electoral Bill. While this particular attempt was to prove unsuccessful, in due course preferential systems were introduced for federal elections (AV for the House in 1918 and STV for the Senate in 1948). Today preferential electoral systems are used for all federal, state and territory elections in Australia.

At the time, the introduction of these systems for federal elections was seen as nothing more than short-term political fixes by politicians anxious to retain power. In 1918 the essence of the "Flinders deal" was an attempt by the Hughes Government to prevent the right-of-centre parties from splitting their support to the benefit of the Labor party. In 1948 it was the turn of the Chifley Labor Government to replace the Senate's preferential block system with STV, in a manoeuvre to diminish the expected electoral gains of Robert Menzies. There can be little dispute over the fact that political

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expediency played an important role in both cases, and certainly they were the immediate triggers for the adoption of the respective systems. Indeed, to Read and Forrest, “[i]n both cases the reforms became law not as a result of the pursuit of principles of electoral justice, but from pragmatic consideration of party gain”.<sup>1</sup> But, as others have observed,<sup>2</sup> such explanations are insufficient; they tell only a small part of the story. What still needs to be explained is why these particular electoral systems were adopted. What are the origins of Australia’s longstanding attachment to preferential electoral systems?

As we shall see in section 1, there are good historical reasons why Australia should opt for preferential systems, and these were to culminate in the long-winded and rancorous discussion surrounding the first efforts to design uniform electoral procedures for the Australian Commonwealth in 1902. The fact that there were such good historical reasons in turn begs a second question — why the delay? Why did it take almost twenty years for AV to be introduced for House elections and virtually half a century before the Senate adopted STV for its elections? In order to find answers to this question, it is necessary to look in more detail at the debates surrounding the 1902 Commonwealth Electoral Bill. As section 2 shows, there were a number of factors that conspired to cause the failure of this initiative relating in particular to the constellation of party politics at the time and the divisions among prominent electoral systems specialists.

### 1. Why Preferential Electoral Systems?

In their classic essay on the origins of Western Europe’s party systems, Seymour Martin Lipset and Stein Rokkan wrote of the “freezing” of party alternatives around historical cleavages that were prominent at the time of suffrage extension.<sup>3</sup> In a similar manner, it can be argued that a country’s debate over political institutions is historically pre-determined by the nature of events at a critical historical juncture, such as during a time of nation building. In this case, as we show here, the debates over Australian electoral system design “froze” on two main alternatives that predominated at the turn of the nineteenth and twentieth centuries, namely the plurality systems (single member plurality and block) and the preferential systems (AV and STV).

Electoral systems went through a very important developmental phase at the turn of the nineteenth and twentieth centuries. As comparative histories have shown, a number of countries were experimenting with new forms of electoral systems, and the first wave of proportional representation systems date from around this time: in 1885, an international conference was held in Antwerp to discuss the relative merits of different proportional systems; Belgium became the first country to adopt a proportional system

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<sup>1</sup> G. S. Reid and Martyn Forrest, *Australia’s Commonwealth Parliament, 1901-1988: Ten Perspectives* (Carlton, Victoria, 1989), p. 99. See also, Joan Rydon, “Electoral Methods and the Australian Party System 1910–1951”, in Colin Hughes, ed., *Readings in Australian Government* (St. Lucia, Queensland, 1968); Iain McLean, “E. J. Nanson. Social Choice and Electoral Reform”, *Australian Journal of Political Science*, Vol. 31 (1996), pp. 369-85.

<sup>2</sup> B. D. Graham, “The Choice of Voting Methods in Federal Politics, 1902-1918”, in Hughes, *Readings in Australian Government*; John Uhr, “Why We Chose Proportional Representation”, in Marian Sawer and Sarah Miskin, eds, *Representation and Institutional Chance: 50 Years of Proportional Representation in the Senate* (Canberra, 2000); John Uhr, “Rules for Representation: Parliament and the Design of the Australian Electoral System” (Commonwealth of Australia, Department of the Parliamentary Library, Research Paper No. 29, 2000).

<sup>3</sup> Seymour Martin Lipset and Stein Rokkan, “Cleavage Structures, Party Systems and Voter Alignments: an Introduction”, in *idem*, eds, *Party Systems and Voter Alignments* (New York, 1967).

in 1899, followed soon after by Finland (1906) and Sweden (1907).<sup>4</sup> That Australia should also consider the adoption of some alternative to non-proportional systems would not seem too surprising, therefore.<sup>5</sup> But where does Australia's fixation with preferential systems originate?

It is generally agreed that three main factors lay behind the country's attraction to these systems: electoral reform debates in Britain; the role of Australian activists; and experiments in the Australian colonies. Firstly, like all other British colonies, Australia was heavily influenced by events and debates in the mother country. This was the period in which creaky British institutions were gearing up for the inevitability of mass suffrage extension, and in consequence there was considerable debate over the nature of the electoral system. There was also some small-scale experimentation — none of it deemed terribly successful — with alternative systems, notably: the limited vote from 1867-84 (as we shall see, at one point this almost became the system for Australian Senate elections in 1902); and the cumulative vote (for school board elections) in 1870.<sup>6</sup> But it was the British debates over preferential electoral systems that had most influence on events in Australia.

For the most part credited as a British "invention" (though, in truth, it was also "invented" separately and at around the same time by Carl Andrae in Denmark) — and therefore as *the* British system of PR<sup>7</sup> — the merits of STV were being debated from the 1850s onwards, most notably after the publication of Thomas Hare's *Treatise on the Election of Representatives, Parliamentary and Municipal* and the active and enthusiastic promotion of his system by John Stuart Mill.<sup>8</sup> From the 1880s onwards, the Proportional Representation Society of the United Kingdom also featured prominently in efforts to promote STV. In large part, Hare's ideas were dismissed by the British establishment, and it was not until the 1917 Speaker's conference that any real effort was made to propose the adoption of STV, in combination with AV, for British elections. The proposals were unsuccessful;<sup>9</sup> what followed, instead, was a period of colonial experimentation, with STV being introduced for all-Ireland elections in 1920 (subsequently retained by the Irish Free State in 1922), in Malta in 1921, and in parts of India in the 1930s.<sup>10</sup> There was no such direct colonial intervention in electoral system design in the Australian colonies, but the British debates undoubtedly had some influence on certain Australian-based actors, and through their actions on developments in some colonies.

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<sup>4</sup> Andrew McLaren Carstairs, *A Short History of Electoral Systems in Western Europe* (London, 1980).

<sup>5</sup> Indeed, there is evidence that Australia's first Prime Minister, Edmund Barton, studied Belgium's PR system prior to the debate over the 1902 Commonwealth Electoral Act (see Graham, "The Choice of Voting Methods").

<sup>6</sup> Vernon Bogdanor, *The People and the Party System: The Referendum and Electoral Reform in British Politics* (Cambridge, 1981); David Butler, *The Electoral System in Britain Since 1918*, Second Edition (Oxford, 1963); Shaun Bowler, Todd Donovan and David Farrell, "Party Strategy and Voter Organization under Cumulative Voting in Victorian England", *Political Studies*, Vol. XLVII (2000), pp. 906-17.

<sup>7</sup> Arend Lijphart, "The Demise of the Last Westminster System? Comments on the Report of New Zealand's Royal Commission on the Electoral System", *Electoral Studies*, Vol. 6 (1987), pp. 97-103.

<sup>8</sup> Thomas Hare, *Treatise on the Election of Representatives, Parliamentary and Municipal* (London, 1859); Jennifer Hart, *Proportional Representation: Critics of the British Electoral System, 1820-1945* (Oxford, 1992).

<sup>9</sup> Ultimately, STV was introduced for electing MPs from four university seats.

<sup>10</sup> David Farrell, *Electoral Systems: A Comparative Introduction* (London and New York, 2001).

The second factor that is seen to have influenced electoral system design for Australian federal elections was the move in some colonies to experiment with new systems. In 1896, STV was introduced in Tasmania's two urban areas, Hobart and Launceston. Several years earlier, in 1892, a form of AV was introduced for electing Queensland's Legislative Assembly. There is good reason for arguing, therefore, that the Tasmanian and Queensland experiments would have had some influence over federal electoral system designers in 1902 who were searching for alternatives to plurality electoral systems (such as single member plurality, or the block vote system). We deal with the details of the Tasmanian electoral system shortly, but at this juncture it is important to note a few points about Queensland's electoral system.

The reform of Queensland's electoral system by the Griffith Government was a compromise. The original intention had been to adopt a runoff system (then, quite popular in a number of countries),<sup>11</sup> but after long parliamentary debate, the government accepted the argument that it would be both costly and difficult to administer in two-seat constituencies (which then predominated), as well as in constituencies comprising large geographical areas with far-flung populations. It was proposed, instead, to collapse the runoff system into a single-shot version known as the "contingent vote",<sup>12</sup> in which voters should vote just once, rank-ordering the candidates. In the event of no candidate achieving a majority of the vote, (in a single-seat constituency) the candidates with the highest and second highest vote tallies remain in the race and the ballot papers of all the other candidates are transferred to them based on the next preference expressed by the voters. Since only two candidates remain in the race, the result, as in runoff elections, is majoritarian. As we shall see, the origins of this contingent vote version of AV, as a one-shot variant of the runoff system, were very different from the version proposed in the 1902 Commonwealth legislation.

The third influence was the role of key actors, providing an important corrective to the view that Australia's contributions to electoral system design were borrowed from overseas, a view held, for instance by Hancock, who suggests that while Australia "does indeed deserve her reputation as a seed-bed of experiment", these seeds "have come from outside".<sup>13</sup> He is not the only scholar to qualify praise for Australia's willingness for institutional experimentation by suggesting that many ideas were borrowed.<sup>14</sup> There may well be some truth in this, but such an argument runs the risk of seriously downplaying the highly important role of Australian actors in influencing the design and launch of these experiments. Nowhere was this more apparent than in 1902, in which the debates were dominated by references to three key figures: a campaigner, Catherine Helen Spence; a legislator, Inglis Clark; and a theorist, Edward Nanson, each of whom promoted the adoption of preferential systems.<sup>15</sup>

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<sup>11</sup> See Carstairs, *A Short History*.

<sup>12</sup> *Queensland Parliamentary Debates* (July 5, 1892), pp. 594-96. For an excellent description of the contingent vote system and how it varies from AV, see Ben Reilly, *Democracy in Divided Societies: Electoral Engineering for Conflict Management* (Cambridge, 2001).

<sup>13</sup> W. K. Hancock, *Politics in Pitcairn: And Other Essays* (London, 1947), p. 81.

<sup>14</sup> For example, William Pemper Reeves, *State Experiments in Australia and New Zealand* (London, 1902), p. 181.

<sup>15</sup> Mention should also be made of the contribution by the Ashworth brothers (T.R. and H. P. C.), particularly by the publication of their book, *Proportional Representation Applied to Party Government* (Melbourne, 1900). This was an influential study, although, their proposed hybrid system (somewhat akin to a list system) was not taken very seriously. In essence, their principal role was to provide useful ammunition for critics of the electoral systems proposed in the 1902 Bill.

There has already been considerable historical and biographical coverage of these three individuals.<sup>16</sup> But many of these accounts tend to gloss over the precise details of what they were proposing. In the case of Nanson, apart from some rare exceptions,<sup>17</sup> very little has been written about his views on preferential systems, while in the cases of Spence and Clark, if anything, the tendency has been to overplay the distinctions between their respective “versions” of STV. In fact, as we see next, Spence and Clark were largely in agreement over how STV should operate (indeed, Clark largely borrowed from Spence). Spence and Clark had huge influence on the 1902 debate, but as the next section reveals, arguably when it came to the specifics of electoral system design, their role paled in comparison to Nanson’s, for the actual systems being proposed in 1902 were largely of his design. Before dealing with the 1902 proposals, it is useful to outline the main features of the Spence and Clark versions of STV.

In the parliamentary debates surrounding the 1902 Electoral Bill, there are many references to the “Hare-Spence” system of STV, a title which Spence herself used.<sup>18</sup> This consisted of three main features. Firstly, she proposed the use of large multi-member constituencies, ideally electing as many as nine or ten members. Spence is credited as the first person to propose this important simplification of the Hare scheme.<sup>19</sup> Hare and Mill were fixated on the idea that the whole country should be one large constituency. Spence recognized the obvious complications that this would impose, and in an 1861 pamphlet, suggested as a modification that the country should form a series of multi-member constituencies. A second feature of the Hare-Spence system was the use of a Hare quota. According to Magarey, Spence toyed briefly with the Droop quota  $(\lfloor v/s+1 \rfloor + 1)$  in 1892, but quickly abandoned it in favour of the Hare quota  $(v/s)$  on the quite reasonable grounds that it is simpler to explain, but also on the mistaken grounds that it produced a fairer result.<sup>20</sup> Thirdly, Spence proposed the use of the Gregory method for the transfer of surpluses.<sup>21</sup>

Clark’s role as a promoter of STV relates to his period as Tasmania’s Attorney-General in the 1890s, when he sought to reform the colony’s electoral system. He was on record as a supporter of Hare’s scheme, praising its qualities in an 1874 article in *Quadrilateral*, a short-lived journal that he edited. Twenty years later, he proposed the use of an adapted form of the Hare system for Tasmanian House of Assembly elections in two urban areas, Hobart and Launceston, as a means of trying to eradicate the

<sup>16</sup> Notably, Marcus Haward and James Warden, eds, *An Australian Democrat: The Life, Work, and Consequences of Andrew Inglis Clark*. (Hobart, 1995); Susan Magarey, *Unbridling the Tongues of Women: A Biography of Catherine Helen Spence* (Sydney, 1985); McLean, “E. J. Nanson”; Reid and Forrest, *Australia’s Commonwealth Parliament*; John Uhr, “Catherine Helen Spence and Australian Electoral Reform”, Australasian Political Studies Association Jubilee Conference, ANU, Canberra, August 2002.

<sup>17</sup> McLean, “E. J. Nanson”.

<sup>18</sup> Catherine Helen Spence, “What is Effective Voting and How is it to be Secured?” [1896] in Helen Thomson, ed., *Catherine Helen Spence* (St. Lucia, Queensland, 1987), p. 557.

<sup>19</sup> Droop proposed a similar amendment in a paper published several years later (see Iain McLean and Arnold Urken, “General Introduction”, in *idem*, eds, *Classics of Social Choice* (Ann Arbor, 1995), p. 47).

<sup>20</sup> Magarey, *Unbridling the Tongues of Women*, p. 157.

<sup>21</sup> J. B. Gregory (Melbourne) in the 1880s devised a scheme for transferring surplus votes involving the transfer of all the ballots at a fraction of their original value. This scheme removes the element of chance caused by transferring only surplus ballots at their full value. For further discussion, see David Farrell and Ian McAllister, “The 1983 Change in Surplus Vote Transfer Procedures for the Australian Senate and its Consequences for STV”, *Australian Journal of Political Science*, Vol. 38 (2003), pp. 479-492.

problems caused by the operation of the single member plurality (SMP) system, in which manipulation by electoral agents and the running of candidate tickets had made it very difficult for minorities to win any seats.<sup>22</sup> Clark proposed the use of STV in the two urban areas only because he realized that to attempt a uniform adoption would have met with serious opposition from rural politicians. For now, they would continue to be elected by SMP, and Clark hoped that in time, STV would be extended across the colony.

The “Hare-Clark system” as it was known (indeed, for a time, it was called “Clark-Hare” including by Clark himself) would evolve later, but at this point it consisted of the following four features (which in some instances resulted from amendments to Hare’s 1896 Bill at committee stage): multi-member constituencies (six seats in Hobart, four in Launceston); the Hare quota; the transfer of surplus votes entailing the transfer only of votes surplus to quota at full face value (i.e. random selection of ballots rather than the Gregory method); and voters being required to express preferences up to half the number of seats to be filled. Apart from not using the Gregory method for transferring surpluses (which subsequently was introduced in 1907) and the rule requiring voters to express a minimum number of preferences (an amendment to Clark’s original Bill), there is very little to distinguish this system from the “Hare-Spence” system discussed above. Indeed, from the outset it was clear that Spence’s writings had a lot of influence on the design of this first Tasmanian system.<sup>23</sup>

The inherent similarities of Hare-Clark and Hare-Spence were to become even more apparent in subsequent amendments to the original Hare-Clark system, made after Clark had left the political scene to become a Tasmanian Supreme Court judge. In its passage through the Tasmanian Legislative Council, a clause was inserted into the 1896 Electoral Act limiting its operation to just one year and therefore, supposedly, for just one election. This was subsequently extended annually, through to the 1900 election, the government claiming that lack of time prevented it from giving the Act proper consideration. The need to have a system in place for the first federal elections of 1901 ensured the survival of the 1896 Act for one additional year,<sup>24</sup> after which it was scrapped. SMP was used for all Tasmanian elections until 1907 when STV was re-introduced for House of Assembly elections, where it has been used ever since. But it was re-introduced with two important adaptations: first, the replacement of the Hare quota by the Droop quota, and second, the use of the Gregory method for dealing with transfers of surplus votes.

According to Townsley, in the light of such amendments, to call the system “Hare-Clark” is a “misnomer”, although other authors are less concerned about such historical detail.<sup>25</sup> On the whole, it is fair to say that Clark’s major contribution to Australia’s conversion to STV was in the area of policy proposals and the implementation of the

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<sup>22</sup> Scott Bennett, “‘These New Fangled Ideas’: Hare-Clark 1896-1901”, in Haward and Warden, *An Australian Democrat*, p. 146.

<sup>23</sup> *Ibid.*, p. 147; Terry Newman, *Hare-Clark in Tasmania: Representation of All Opinions* (Hobart, 1992).

<sup>24</sup> Bennett, “These New Fangled Ideas”, pp. 157-8; W. A. Townsley, “The Electoral System and the Constituencies”, in F. C. Green, ed., *Tasmania: A Century of Responsible Government, 1856-1956* (Hobart, 1956), p. 76.

<sup>25</sup> Townsley, “The Electoral System”, p. 76. For alternative views, see Malcolm Mackerras, “The Operation and Significance of the Hare-Clark System”, in Haward and Warden, *An Australian Democrat*; Newman, *Hare-Clark in Tasmania*.

first STV system in Australia.<sup>26</sup> Clark's contribution in the areas of theory and ideas was rather less than Spence's, and certainly far less than that of the last of our activists, Edward J. Nanson.

Known as the "experts' expert",<sup>27</sup> Nanson "was the man of the moment when federal politicians needed ideas and ideals to incorporate in the new electoral law", and today he is feted by social choice historians as one of the founders of social choice theory.<sup>28</sup> He started publishing on the subject of electoral systems as early as 1880, and in 1899 and 1900 he produced two pamphlets that sought to influence the impending debate over the electoral systems for the Commonwealth parliament. Having witnessed the use of the block vote system for electing delegates to the federal conventions, Nanson was concerned that the same system should not be adopted for the Senate. Neither this nor the SMP system — which he feared would be used to elect the House of Representatives — appealed to him on the grounds that they could not ensure the election of the correct candidate, not only because of the disproportionality of the result (even more acutely a problem in block vote systems) but also because of voting rule inconsistencies built into such electoral systems.<sup>29</sup>

Nanson proposed, instead, the use of STV for the Senate and AV for the House of Representatives. This was despite the fact that in an earlier paper,<sup>30</sup> he had also criticized these systems' voting rule inconsistencies. On the face of it, Nanson's ambiguous attitude towards these systems is curious. McLean accuses him of appearing "to ignore his own lesson", and even more strongly, of "intellectual failure". Perhaps the simplest explanation is that Nanson was merely acting pragmatically, suggesting that Reid and Forrest's categorization of him as an "idealist" may require some qualification.<sup>31</sup> Certainly his influence over the original draft of the 1902 Commonwealth Electoral Bill cannot be over-stated. This is evident from the regular references to him by Senator O'Connor, who led the debate on the government side, as well as by many other parliamentarians. But, as the next section shows, Nanson's hand can also be seen in the details of the proposed systems.

## 2. The Failure to Introduce Preferential Electoral Systems in 1902

It might have been expected that the design of Australia's electoral system would have featured in the 1891–98 convention debates over federation. After all, here was a perfect opportunity for the founding fathers to insert clauses laying down the electoral systems for both houses, making it difficult for politicians subsequently to re-fashion the systems in a form more favourable for themselves. John Uhr is critical of what he calls "the framers'" mysterious consideration (or ignorant neglect) of the electoral system question, which, as he puts it, resulted in "the wonderfully permissive s. 9 of the Constitution" allowing the parliament to decide on a uniform electoral system for itself.<sup>32</sup> According to Galligan and Warden, however, the decision not to incorporate electoral system design was related to the question of the franchise, which was

<sup>26</sup> Indeed, with the exception of Andrae's Danish experiments in 1855, this was the first use of STV in the world (see McLean and Urken, "General Introduction", pp. 46-47).

<sup>27</sup> Uhr, "Why We Chose Proportional Representation", p. 27.

<sup>28</sup> The quote is from Reid and Forrest, *Australia's Commonwealth Parliament*, p. 88. On social choice perspectives, see McLean and Urken, "General Introduction".

<sup>29</sup> McLean and Urken, "General Introduction".

<sup>30</sup> E. J. Nanson, "Methods of Election", in McLean and Urken, *Classics of Social Choice*.

<sup>31</sup> McLean, "E. J. Nanson", pp. 380, 381; Reid and Forrest, *Australia's Commonwealth Parliament*, p. 88.

<sup>32</sup> Uhr, "Why We Chose Proportional Representation", p. 29.

complicated by the recent decision of South Australia to allow women the vote, and so, “[n]ot wishing to disenfranchise any section of the electorate, the Convention resolved to leave [election matters] for the Commonwealth Parliament to determine”.<sup>33</sup> More generally, the constitutional framers were anxious to avoid questions about uniform electoral systems that would mean settling on electoral systems bound to upset some of the states, and thereby threaten the ratification of the Constitution.<sup>34</sup>

The proposed s. 9 of the Constitution, that the federal parliament would legislate on uniform electoral procedures, invited some speculation on what the system should be. For instance, Uhr observes that the “scattered commentary” on the Senate electoral system revealed that “the framers considered PR to be an acceptable, possibly even, the preferred, electoral basis of the upper house”.<sup>35</sup> There were some delegates who argued in favour of not having uniform electoral procedures on the (ultimately quite correct) grounds that a future federal parliament might legislate against the “Hare” system, and that therefore it would be better to let the states decide for themselves. One delegate expressed the view that “Tasmania has a much better chance of getting the system from her own parliament than from the federal one”.<sup>36</sup> But the bulk of comments made it clear that many delegates expected the federal parliament to select a PR system for Senate elections.<sup>37</sup>

Australia’s first federal election of 1901 was held under a mix of different electoral procedures across the Commonwealth, in which each state elected its representatives for the new federal parliament according to the electoral rules used to elect its own representatives at state level. Party politics had yet to consolidate in the new Australian political system, and was not to do so until 1910 when the amalgamation of the Protectionists and Free Traders into the new Liberal party created a conservative party to oppose the already-established Labor Party.<sup>38</sup> In the years prior to 1910, then, party politics at the national level was a complex three-way conflict dominated by Labor, Free Trade and Protection.

In 1901, Sir Edmund Barton became Australia’s first prime minister. His Protectionist party lacked a clear majority of seats in either house. It had only a plurality of the seats in the House of Representatives: thirty-two seats against twenty-seven for the Free Traders, who were the main opposition party, and who were implacably opposed to the introduction of preferential electoral systems. The Federal Labor Party, which had sixteen seats in the House, was more agnostic. The party had agreed to keep an open mind on the matter, and initially backed the government;

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<sup>33</sup> Brian Galligan and James Warden, “The Design of the Senate”, in Gregory Craven, ed., *The Convention Debates, 1891-1898: Commentaries, Indices and Guide* (Sydney, 1986), p. 110.

<sup>34</sup> L. F. Crisp, *The Parliamentary Government of the Commonwealth of Australia* (London, 1949), p. 65.

<sup>35</sup> Uhr, “Why We Chose Proportional Representation”, pp. 21-22.

<sup>36</sup> Matthew Clarke, *Federal Convention Debates*, Second Session (Sydney, 13 September 1897), p. 368. A few days after this comment, on 21 September, the Tasmanian delegation proposed an amendment to allow each state to determine its own method for electing Senators, but the move attracted no support.

<sup>37</sup> See, for instance, the comments of Barton and Deakin, both on 15 April 1897, *Federal Convention Debates*, First Session, Adelaide, p. 673. Also, see Deakin on 7 March 1898, *Federal Convention Debates*, Third Session, Melbourne, pp. 1925ff; on this occasion, Barton states (p. 1925) that this is a matter “for the future”.

<sup>38</sup> Dean Jaensch, *Power Politics: Australia’s Party System*, Third Edition (St. Leonards, NSW, 1994); P. Loveday, “The Federal Parties”, in P. Loveday, A. W. Martin and R. S. Parker, eds, *The Emergence of the Australian Party System* (Sydney, 1977).

however, it is clear that most Labor members were unsympathetic to STV for the Senate, and therefore their support was fragile.<sup>39</sup> The situation for the Barton Government was far more tenuous in the Senate, where the Protectionists had just eleven seats, and Labor eight, against seventeen for the Free Traders. In large part, this poor result in the Senate had been caused by the use of the block vote system by most states (with the exception of Tasmania), which “had harshly penalized the Protectionist teams”.<sup>40</sup>

In early 1902, the Barton Government produced its Commonwealth Electoral Bill, a complex and wide-ranging piece of legislation, containing 218 clauses and a series of annexes, which endeavoured to cover all things electoral, from the issuing of election writs, through candidate nomination, ballot paper design, rules of procedure in polling booths and at electoral counts, and on to spending restrictions on parties. A core feature of this legislation was the proposed electoral systems for both houses of the Commonwealth parliament — AV for the House and STV for the Senate.

Under the proposed Senate system each state would comprise a constituency (i.e. depending on whether the election involved a half or a full dissolution, district magnitude would be either three or six).<sup>41</sup> In contrast to Tasmania, which at that time used the Hare quota, the Bill proposed using the Droop quota. This adaptation was advised by Nanson, who argued that the Hare quota produced perverse results, in particular because candidates elected early on had to cross a higher threshold than candidates elected late who could be elected without reaching the quota. While this point may be demonstratively true in social choice terms,<sup>42</sup> this did not prevent it from being attacked on political grounds, not least by supporters of Catherine Helen Spence, as an inappropriate modification of the Tasmanian system.

Another important feature of the Bill was the proposal to operate a system of optional preferences, allowing voters to express as many preferences as they liked, with a vote counting as formal providing the voter had declared at least one preference. This was consistent with the version of AV being proposed for the House of Representatives. In addition, voters could “strike out” the names of those candidates they did not want to give any support to. The implication of combining optional preference ranking and the striking out of candidate names was that there could be some candidates neither ranked nor struck out. Such candidates would be treated as having equal preferences — which tallied with ideas developed by Nanson in his earlier theoretical work<sup>43</sup> — and, in the schedule to the Bill, special arrangements were proposed for dealing with this in the counting process.<sup>44</sup> To avoid the prospect of candidates being elected without having reached the quota (which could result from there being too many exhausted ballots), the Bill included the possibility for a “supplementary election”, entailing the re-counting of ballots taking account only of those preferences for candidates not already elected or eliminated, and re-numbering

<sup>39</sup> L. F. Crisp, *The Australian Federal Labour Party, 1901-1951* (Sydney, 1978), pp. 214-17.

<sup>40</sup> Graham, “The Choice of Voting Methods”, p. 205.

<sup>41</sup> We use the term “constituency” to refer to the electoral district in which a candidate is elected. In Australia it is common practice to refer to this as the “electorate”.

<sup>42</sup> McLean, “E. J. Nanson”.

<sup>43</sup> See Nanson’s discussion on “bracketing” (“Methods of Election”, pp. 354ff.). He stresses the importance of this in preventing voters from being able to plump for one or a small number of candidates, which is a danger with optional preference voting.

<sup>44</sup> Commonwealth Electoral Bill (No. 45) read for the first time in the Senate, 24 January 1902, second schedule, rules 5-8.

the ballot papers accordingly.<sup>45</sup> Finally, the Bill proposed the use of the Gregory method for the transfer of surpluses.

Unlike the PR system proposed for the Senate, the intention was that the House should be elected by a majoritarian system, which entailed single-member constituencies. Lauded as “a modification of the Queensland practice, and an improvement upon it”,<sup>46</sup> the 1902 Bill proposed the use of AV in which voters would be able to express a preference for as many of the candidates on the ballot paper as they liked, with weakest candidates being eliminated individually and their votes transferred until such time as one candidate would emerge with an overall majority. In essence this is the same system as is used today for electing the House of Representatives; the major difference was the proposal that AV should be optional rather than compulsory. Clearly Nanson also played a major role in designing this adaptation of Queensland’s contingent vote system. Whereas the Queensland legislators were influenced by French experience, Nanson’s interest in AV stemmed from voting theory. In the 1870s, a Harvard professor, W. R. Ware, proposed an adaptation of Hare’s STV system to the case of single-seat constituencies. Unlike the contingent vote system, under the “Ware method” the voters’ preferences are taken account of one at a time. Despite holding certain theoretical objections to this system, it was clear to Nanson that AV had clear advantages over SMP, and he also considered it an improvement on the Queensland system because it took greater account of all the voters’ preferences.<sup>47</sup>

It had been the intention of the government to start the proceedings in the House of Representatives, where the Bill was first introduced in June 1901, five days into the first sitting of the new parliament. The balance of power between the parties in that chamber suggested the government would have had more chance of getting its way. But “owing to the pressure of business”,<sup>48</sup> the government was forced to take it to the Senate first.<sup>49</sup> In consequence, the focus of attention was on the clause dealing with the proposed electoral system for the Senate.

From the outset the Bill received a rough ride in the Senate, and to a very large degree this was due to the proposed Senate electoral system. Criticisms were of three main forms: principled objections to PR, objections to the type of STV system being proposed (including criticisms from Spence’s supporters), and concerns over the modalities of including this new system as part of a larger piece of complicated legislation. After three months of deliberations, the Bill finally made it through to the committee stage. But by now it was obvious that the proposed STV system was under threat. Senator Richard O’Connor, who led the debate on the government side, mounted a half-hearted defence, and as soon as the vote went against him, he announced that “the only alternative” was to use the block vote.<sup>50</sup>

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<sup>45</sup> *Ibid.*, rule 3.

<sup>46</sup> O’Connor, *CPD* (31 January 1902), p. 9534.

<sup>47</sup> Nanson, “Methods of Election”; McLean, “E. J. Nanson”, p. 378.

<sup>48</sup> Comment by Lyne on introducing the Bill to the House of Representatives on 5 June 1902, *CPD*, p. 13353.

<sup>49</sup> In the early years of the Commonwealth, it was quite common for bills to be initiated in the Senate. The Senate encouraged this as a means of establishing the principle that ministers could and should speak in both Houses, a break from British parliamentary practice (Crisp, *The Parliamentary Government*, p. 186).

<sup>50</sup> One might have expected the issue to end there, and certainly this is the view of those scholars who have examined the parliamentary debate (Graham, “The Choice of Voting Methods”; John Uhr, *Deliberative Democracy in Australia: The Changing Place of Parliament* (Cambridge, 1998)). Indeed, Reid and Forrest end their treatment of this debate by stating, incorrectly, that O’Connor’s

In contrast to the tortured path of the Senate electoral system clause, the deliberations on the electoral system for the House of Representatives were short and sweet. Indeed, a striking difference from the Senate experience was how quickly and easily the government caved in on the issue of the proposed electoral system for the House: it was all over in a matter of minutes. In introducing the clause at the committee stage, William Lyne, the Home Affairs Minister who was charged with shepherding the Bill through the House, advanced the rather spurious argument that having made some back-of-the-envelope calculations a few days before, he apparently produced some “rather astonishing results”, and consequently his faith in the system was “very much shaken”.<sup>51</sup> Instead, he proposed replacing the system with SMP.

It seems incredible that the responsible minister would have produced such a conclusion so late in the day. More likely the reason for the government reversal was that it had lost the support of the Labor members (whose caucus had decided to formally oppose AV) and therefore saw no point in trying to force an issue that it was bound to lose.<sup>52</sup> The basic problem was that, since the Senate had rejected STV, there were fears that by adopting AV for the House of Representatives, this could lead to voter confusion, particularly in the event of both elections occurring on the same day (as was expected to happen in 1903). The block vote system for the Senate meant that the voting act would consist of placing Xs in the relevant boxes on the ballot paper, while AV in the House would require voters to rank order candidates. Lyne’s amendment was carried, without a vote, and SMP was introduced for House of Representatives elections.

Given the way the events unfolded, we are presented with a wonderful social choice counterfactual regarding what might have happened had the Commonwealth Electoral Bill been brought first to the House of Representatives rather than the Senate, with attention focused on the preferential vote system that was being proposed for that house, rather than vice versa. As we have seen, by the time the House first saw the Bill, the die was cast: STV was lost and AV was lost with it. It is intriguing to think what otherwise might have happened.

There are a range of reasons that help to explain why this first push for preferential systems failed. One major factor was the balance of party political forces in the new parliament that were ranged against the Protectionist Government, making it clear from

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“amended clause was accepted without a division” (*Australia’s Commonwealth Parliament*, p. 104). In fact what ensued was a rearguard effort by O’Connor to introduce what, in essence, would have been a limited vote system, in which voters would be given the option of casting fewer votes than the number of seats to be filled, with the greater prospect of a semi-proportional result, which would be more favourable for the Protectionist government (for discussion of limited vote systems, see Richard L. Engstrom, “Minority Electoral Opportunities and Alternative Election Systems in the United States”, in Mark E. Rush, ed., *Voting Rights and Redistricting in the United States* (Westport, Connecticut, 1998); Arend Lijphart, Rafael Lopez Pintor, Yasunori Sone, “The Limited Vote and the Single Non-Transferable Vote: Lessons from the Japanese and Spanish Examples”, in Bernard Grofman and Arend Lijphart, eds, *Electoral Laws and their Political Consequences* (New York, 1986). O’Connor’s subterfuge was unsuccessful and the Senate voted instead for the block vote system. Over the course of the following months, this clause ping-ponged through the two houses, with repeated efforts being made to replace the block vote with the limited vote (and with the governing party switching sides on regular occasions), and only when it looked as if the entire Bill would be threatened by the parliamentary standoff did the opponents of the block vote finally give way.

<sup>51</sup> CPD, 23 July 1902, p. 14613.

<sup>52</sup> Crisp, *The Australian Federal Party*, p. 220; Reid and Forrest, *Australia’s Commonwealth Parliament*, p. 105.

the outset that there was going to be a tough battle. As Graham comments, “the government seemed unlikely to obtain parliamentary approval for its proposed voting methods”.<sup>53</sup> Barton’s party did not have a majority of seats in either House, and the support for the proposed electoral systems that it initially received from Labor was half-hearted and fragile. Added to the party-political arithmetic was the fact that many New South Wales and Victorian legislators (who, between them, comprised two-thirds of the membership of the House and one-third of the Senate) were unfamiliar with AV and STV, and “were disinclined to try them”.<sup>54</sup>

Matters were complicated by two additional factors. Firstly, since the legislative agenda was already very crowded — understandable given that this was a brand new political system — the government was forced to introduce the Bill in the Senate where it received a rough ride. This was not helped by the fact that, as a new parliament, the Senate had yet to develop proper institutional structures and norms of parliamentary behaviour (such as internal party discipline) and in consequence “the government faced a considerable burden in managing the bills through the legislative uncertainties of the first Parliament”.<sup>55</sup> Secondly, Barton’s party (and, indeed, cabinet) was divided on the issue, explaining perhaps the lacklustre parliamentary performance of some of the Bill’s proponents, who Graham suggests, “argued without conviction”.<sup>56</sup>

A final factor to mention could be summed up as the battle of the electoral system specialists, particularly over the STV system. This is best illustrated by the comment towards the end of the second reading of the Bill of an evidently exasperated Senator Styles, who remarked: “Mr Droop disagrees with Mr Hare, and somebody comes along and disagrees with Mr Droop. Miss Spence disagrees with them, and Professor Nanson disagrees with the lot. Then the Messrs Ashworth sweep the whole lot aside, and say they are all wrong.”<sup>57</sup> The fact was, of course, that if the specialists were unable to agree on one version of STV, this had to raise serious questions in the minds of the legislators over the appropriateness of this relatively untested electoral system. In the words of Senator Pulsford, STV “stands rather condemned by the fact that since it was first mooted some 60 years ago, its advocates have quarrelled one with another as to the different phases in which it should be drafted, while when it has been adopted by a Legislature, it has been more or less speedily discarded”.<sup>58</sup>

### 3. Conclusion: Accident and Intent in Australian Electoral System Design

Our review of debates over electoral system design in the new Australian Commonwealth provides a useful illustration of the often-accidental nature of institutional design,<sup>59</sup> exemplified by the likelihood that AV would have stood a better chance of being introduced if the 1902 legislation had gone before the House first, rather than the Senate. Certainly, there was far less discussion about it than about STV. Furthermore, the relative ease with which AV was introduced in 1918 (when, in effect, it was taken “first”) tends to support this. Indeed, had AV been successfully introduced

<sup>53</sup> Graham, “The Choice of Voting Methods”, p. 206.

<sup>54</sup> Colin Hughes, “STV in Australia”, in Shaun Bowler and Bernard Grofman, eds, *Elections in Australia, Ireland and Malta under the Single Transferable Vote* (Ann Arbor, MI, 2000), p. 161.

<sup>55</sup> Uhr, “Rules for Representation”, p. 11.

<sup>56</sup> Graham, “The Choice of Voting Methods”, p. 206. Though Reid and Forrest (*Australia’s Commonwealth Parliament*, p. 96) rightly single out Senator O’Connor for the “consummate skill” he showed in steering the passage of the Bill through the Senate

<sup>57</sup> CPD, 6 March 1902, p. 10690.

<sup>58</sup> CPD, 28 February 1902, p. 10496.

<sup>59</sup> Robert Goodin, ed., *The Theory of Institutional Design* (Cambridge, 1996).

in 1902, it is interesting to speculate over whether STV would also have been successful then.

Events also play an important role in explaining why the Australian political establishment has always attached such weight to preferential systems whenever considering alternatives to the plurality systems. The relevant point here is that preferential systems featured prominently in the scholarly and activist debates over electoral system design at the turn of the nineteenth and twentieth centuries, around the time when Australian legislators first gave thought to such issues. The elite debate “froze” around plurality and preferential systems as the two main alternatives, and in consequence, the other families of electoral systems (notably the PR list systems) tended to be overlooked.

Accident and force of circumstances account for a great deal in explaining the origins of Australia’s electoral systems, but credit should also be given to the deliberate efforts and clear intentions of the designers. The electoral systems being proposed in 1902 were ahead of their time; nothing like them had been proposed anywhere else before — indeed, in the case of the STV system then being proposed, nor since. It is certainly true that the AV system that was adopted for House elections in 1918 owed much more to the intentions of the electoral system designers (notably Edward Nanson) of 1902 than to any other influence. But the picture is not so clear with regard to STV, for the version finally adopted in 1948 bore very little resemblance to the version proposed in 1902.<sup>60</sup> Indeed, if anything, it owed more to state-level experiments in the first half of the twentieth century (most notably in Tasmania) than it did to the theoretically informed designs of Edward Nanson. In this regard, therefore, it could be argued that Spence and Clark — whose influence over the 1902 debate was less than Nanson’s — had the last word on Australian STV design.

A final point to note about the 1902 debate was just how sophisticated was the level of argument and how well informed the leading politicians in 1902 were. Not only did electoral system experts (Clark, Spence, Nanson) play a significant role in this first debate, it was apparent that many of the legislators had read and assimilated much of the detail of their arguments.

The year 1902 marked a very important step in the design of Australia’s electoral systems. Once the debate had crystallized around the relative merits of preferential systems, it was only a matter of time before the Commonwealth would see their adoption. This episode is central to understanding both why preferential systems have become such a prominent feature of Australia’s electoral institutions and also why they took so long to become established. Having been knocked back at this critical juncture — at a time of nation and institution building — an important opportunity to experiment with alternative electoral systems was missed, and it would take several generations before Australian politicians would finally embrace them.

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<sup>60</sup> For more detail on the STV system introduced in 1948, see David Farrell and Ian McAllister, “Electoral Systems”, in Ian McAllister, Steve Dorwick, Riaz Hassan, eds, *The Cambridge Handbook of Social Sciences in Australia* (Cambridge, 2003).