



*Asesorías y Tutorías para la Investigación Científica en la Educación Puig-Salabarría S.C.*  
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**TÍTULO:** Establecimiento de un sistema parlamentario en el continente Australiano.

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**RESUMEN:** El artículo analiza el desarrollo y formación del sistema parlamentario, base del sistema de gobernanza de la Unión Australiana moderna. Los autores revelaron el proceso de desarrollo y formación de los órganos de gestión de colonias, que luego se convirtieron en los órganos de gestión de los sujetos federales. El artículo también analiza los actos legales regulatorios que gradualmente aprobaron la creación de elementos clave de una forma parlamentaria de gobierno; los primeros cuerpos fueron solo los Consejos Legislativos unicamerales designados por Gran Bretaña, que posteriormente se reformaron en parlamentos bicamerales de pleno derecho. En el artículo, los autores abordan la cuestión de la creación de un Consejo Ejecutivo, que con el tiempo se reorganizó en el gobierno de las colonias.

**PALABRAS CLAVES:** Australia, Colonias australianas, Parlamento australiano, Senado, Cámara de los Representantes.

**TITLE:** Establishment of a parliamentary system on the Australian continent.

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**ABSTRACT:** The article discusses the development and formation of the parliamentary system, which is the basis of the governance system of the modern Australian Union. The authors disclosed the process of development and formation of the colony management bodies, which later became the management bodies of the federal subjects. The article also analyzes the regulatory legal acts that gradually approved the creation of key elements of a parliamentary form of government. So, the first bodies were only the unicameral Legislative Councils appointed by Great Britain, which were subsequently reformed into full-fledged bicameral parliaments. In the article, the author addresses the issue of creating an Executive Council, which over time was reorganized into the government of the colonies.

**KEY WORDS:** Australia, Australian colonies, Australian Parliament, Senate, House of Representatives.

**INTRODUCTION.**

The development of the parliamentary system of the Australian Union began during the period of British colonial conquest of the Australian continent.

The British colonies, initially completely dependent on the British Commonwealth, gradually became self-governing, which meant the formation of the relevant authorities. One of the first colonies in which the parliamentary system was established was the future state of the Australian Union - New South Wales, the creation of which was officially proclaimed on January 26, 1788. The created English colony was actually a correctional colony, the population of which consisted of

prisoners, the military, and their families [Gregory W. Bray (1998)]. The territory of the colony extended to most of the mainland, as well as the island of Tasmania (modern name) [20].

## **DEVELOPMENT.**

### **Research methodology.**

In the process of cognition of state-legal phenomena, based on the approach of S.A. Komarov, general scientific methods were used (formal-logical, sociological, systemic, structural-functional, concrete-historical, statistical, ascension from abstract to concrete, etc.); general logical methods of theoretical analysis (analysis, synthesis, generalization, comparison, abstraction, analogy, modeling, etc.); private scientific methods (comparative law, technical and legal analysis, concretization, interpretation, etc.) [Komarov S.A., (2019), p. 32-40].

### **Study results.**

The original goal of creating a colony on the Australian continent was to exile convicts, the first British act adopted in relation to the colony was the Charter of Justice of April 2, 1787, according to which only criminal jurisdiction courts were created [6].

The population growth of the English colony required the creation of appropriate governing bodies. The Law on New South Wales, adopted in 1823 [7], established the status of the colony, and also legally formalized the creation of the first legislative body - the Legislative Council, as well as the Supreme Court of New South Wales.

The Legislative Council consisted of five advisers, with whom the governor of the colony was obliged to consult when adopting laws, and in case of disagreement of the majority of members of the Council with the bill adopted by the governor, the Council was entitled to reject such a bill. The Council also controlled the spending of the budget funds of the colony.

An important fact demonstrating the process of separation of branches of power [Yu.I. Leibo, E.Ya. Pavlov, I.A. Rakitskaya, E.A. Kremianskaya, T.O. Kuznetsova (2018)] in the colony, it was that, according to the New South Wales Act of 1823, all bills passed by the Governor and the Council had to be first submitted to the Chief Justice of the New South Wales High Court to check for compliance with British law, and then only sent for approval by the British Parliament.

Thus, the established Legislative Council, although it did not have the full power in the legislative process, was the first step towards creating a full-fledged legislative body. And also, importantly, judicial control of the adopted colonial legislation was established.

In 1825, territory was separated from New South Wales, which became a new colony called Van Diemen (Tasmania), in which a legislative body was also created - the Legislative Council (similar to the Legislative Council of New South Wales) [10]. In the same year, with the appointment of the new governor of New South Wales [3], an Executive Council was created, and the Legislative Council expanded to seven members, four of whom simultaneously became members of the Executive Council.

The Governor was obliged to act in accordance with the recommendations of the Executive Council, except in cases of special urgency, and when it was not possible to get advice from the Executive Council. Thus, in New South Wales, the first prototype of the executive branch (government) on the Australian continent was created for the first time, containing elements of a responsible government, and the concept of “governor in the Council” was introduced, which actually limited the power of the governor of the colony.

In 1840, the colony of New South Wales stopped accepting convicts [11]. Also, during this period of time, the economic growth of the colony, based on gold mining and export of wool, contributed to the influx of free settlers, which pushed the development of political and civil institutions in the colony.

As a result, in 1842, the British Parliament adopted the Constitution of New South Wales in 1842 [9], in accordance with which the first parliamentary system was established. The existing Legislative Council, consisting of members appointed by the British government, has been reformed. The new legislature consisted of thirty-six members, twelve of whom were appointed by the monarch on the recommendation of the ministers. But most of the Council consisted of twenty-four councilors elected by the people of New South Wales, with six members elected from Port Phillip County (the future territory of the Victoria colony). Also, six members appointed by the monarch were to be members of the Executive Council. The term of office of the Legislative Council was five years.

For elections to the Legislative Council, a number of qualifications were established. In particular, active suffrage was granted only to men who have reached the age of 21 who are subjects of the United Kingdom. There was also a property qualification: the voter needed to own land or real estate in the colony at a cost of at least two hundred pounds, as a result of which the electorate consisted only of wealthy landowners or property owners. The first elections were held in 1843 according to the majority system of the relative majority.

Passive suffrage was also limited by substantial property qualifications, namely, only subjects who owned property worth at least two thousand pounds could be elected.

By 1850, four colonies had formed on the Australian continent: New South Wales, Tasmania, South Australia and Western Australia. And in the same year, the Constitutional Law of 1850, the most important in colonial history, was adopted [2].

For New South Wales, there has been a significant change in the administration of the colony, as electoral qualifications for active suffrage for the Legislative Council have been democratized. The right to elect members of the legislature was granted to all men, starting at twenty-one years of age, who owned property worth at least one hundred pounds, as well as to men who had a family and

rented premise at least ten pounds a year. The qualifications for candidates to the Legislative Council, who were supposed to have property in the amount of thousands of pounds, were also reduced.

By law of 1850, the governor and the Legislative Council were authorized to create a bicameral parliament, while the law on the creation of a new parliament was approved by the British Parliament. The Legislative Council also received the authority to change the electoral system for legislative elections, namely to establish and revoke electoral qualifications for active and passive suffrage. Thus, the colony was granted the right of self-government under the control of the British Parliament, which consisted of the power to create a parliament consisting of two houses in the likeness of Great Britain (House of Lords and House of Commons).

Subsequently, in accordance with the Law of 1850, the fifth colony was created - Victoria. The colony's governing bodies, namely the Legislative and Executive Councils, were formed in the same way as the organs of the New South Wales colony in accordance with the Constitution of the New South Wales Act of 1842.

Another significant point enshrined in the Law of 1850 was that all the legislative bodies of the five colonies were delegated the authority to draft and adopt the constitutions of the colonies, which was implemented by the Legislative Council of New South Wales.

In 1855, the draft Constitution of New South Wales was approved by the British Parliament [17], in connection with which the most important act in the colonial history of New South Wales was adopted - the Constitution Law of New South Wales in 1955 [8]. It fixed self-government for the colony and approved the creation of a bicameral parliament consisting of the Legislative Council (upper house) and the Legislative Assembly (lower house) instead of the previously unicameral Legislative Council.

Fifty-four deputies were elected to the Legislative Assembly. It could be any person who has an active suffrage, with the exception of persons receiving a pension or serving in the Queen's office, civil servants, military personnel, or persons in religious service.

With regard to active suffrage, it is necessary to note the liberalization of qualifications that has taken place compared to previous periods, which made it possible to significantly expand the electorate and participate in managing the colony not only for very wealthy segments of the population. So had an active right to vote: men at least 21 years old, free or naturalized subjects of Her Majesty, or lawfully residing in New South Wales, and owned property worth at least one hundred pounds, located in the constituency in which the vote took place at least six months before the date of voting, or renting a house worth at least ten pounds a year, for at least three years before the election date, or receiving a salary of at least one hundred pounds sterling per year.

It is important to note that if a person met the criteria for active suffrage in several constituencies, then such a person in the election had several votes. The elections of 1856 were held according to the majority system of the relative majority, as well as in 1843. The five members (ministers) of the Executive Council were to be members of the Legislative Assembly, which meant the creation of a responsible government institution in Australia.

The Legislative Council consisted of twenty-one members, who were appointed by the Governor on the recommendation of the Executive Council, with a term of office of five years for the first appointment and then for life. No qualifications were applied to such appointments, with the exception of the prohibition to combine the position of civil servant and member of the Legislative Council. Thus, for the first time in Australia, a legislature was created with an elected lower house and an appointed upper house, similar to the British Parliament.

In 1859, on the recommendation of the Privy Council, the Queen of Great Britain signed a decree on the creation of a new sixth colony of Queensland by separating part of the territory from New South Wales, as well as on the creation of legislative and executive authorities in the colony [5].

In addition to the political development of the colonies as self-governing territories and the creation of a parliamentary system and the institution of responsible government, the second half of the 19th century became a period of rapid development of the economy of the colonies. The Gold Rush and the wool trade provided an influx of new settlers. Thus, by 1860, eight British self-governing colonies were founded on the Australian continent and surrounding islands: New South Wales, Western Australia, South Australia (including the Northern Territories), New Zealand, Queensland, Victoria, Tasmania, Fiji [18].

The development of trade, transport communications, and the strengthening of political ties required the joint solution of many intercolonial issues. The first steps towards the creation of unified confederal bodies, the prototype of federal authorities, were taken back in 1849, when the Privy Council of England recommended that the Australian colonies introduce common customs tariffs, as well as appoint one of the current governors as the Governor-General of Australia and form the General Assembly of Australia, which consists of from one chamber numbering from twenty to thirty people.

Another step towards unification was taken during the conferences of 1880 and 1881, at which representatives of the colonies discussed the question of creating a federation and its governing bodies. Fear of German aggression in New Guinea and the French annexation of New Hebrides, as well as economic and political issues such as uniform tariffs, uniform governance and harmonized legislation, and defense issues pushed the colonies closer together.



At a subsequent convention convened in Sydney in 1883, attended by representatives of the five colonies located on the mainland, Tasmania, New Zealand and Fiji, Samuel Griffiths (the former Prime Minister of Queensland) introduced a bill establishing the Federal Council [14], and although the conferences dealt with the creation of a federation, in reality the draft law proposed the establishment of only an intercolonial body with limited powers.

In 1884, the legislatures of Victoria, Tasmania, Queensland, Western Australia, and Fiji turned to the metropolis to approve the Federal Council bill. As a result, on August 14, 1885, the British Parliament passed a law known as the “Act on the Federal Council of Australasia of 1885” and this was the first practical step towards creating a federation [4].

The said Law established a body consisting of two representatives from each colony. Meetings were held every two years in Hobart. The Council was vested with legislative powers to regulate the following issues: the relationship of the colonies that were part of the Council with the Pacific Islands; crime prevention; fishing in waters outside the territorial sea; a court notification service outside the colony where the civil process was launched; enforcement of court decisions on civil proceedings outside the colony; enforcement of court decisions on criminal proceedings outside the colony, including extradition of criminals (including deserters); the detention of criminals on board ships outside the territorial sea of colonies, as well as in relation to other issues if the legislative bodies of two or more colonies decide on this need.

The Federal Council did not fully become a working body, since it was not elected and did not receive a mandate from the hands of the people. The Council was not vested with powers in the field of executive power, there was no financing for it, moreover, the Law of 1885 contained provisions governing the resolution of conflicts between the federal and local authorities. In addition, the fact of non-participation in the Council of New South Wales, South Australia and New

Zealand [B. R. Wise. (1909)]. Subsequently, the Australasia Federal Council Act of 1885 was repealed by the Australian Commonwealth Constitution [1].

The development of the federal movement in Australia did not stop. The next step towards the federalization of Australia was the holding of a conference in 1890 in Melbourne and the establishment of a Constitutional Convention in 1891 in Sydney.

In 1890, a conference led by Sir Henry Parkes, a prominent Australian colonial politician and prime minister of the New South Wales colony, attended by two representatives from five Australian colonies and one from New Zealand, and one from Western Australia, carried out preparatory organizational work to holding the Constitutional Convention and drafting the Constitution. For this, it was determined that it was necessary to create an appropriate legislative body, consisting of a maximum of seven representatives from each colony, authorized to review and report on the results of the development of the draft constitution in the colonies.

Further, in March 1891, in accordance with the decisions reached at the conference, a Convention was convened consisting of seven representatives from each Australian colony and three representatives from New Zealand gathered in Sydney under the chairmanship of Sir Henry Parkes. The Convention drafted a bill that subsequently formed the basis of all subsequent work on the formation of the Australian federal system [Cockburn John A. Sir. (2000)].

In the course of the work of the Convention, various points of view were proposed on the future Constitution and the type of federal system being created. So, Sir Henry Parkes proposed the creation of a centralized federation, in which the federal government delegates limited powers to the states. However, Sir Inglis Clark, a prominent constitutionalist and Sir Samuel Griffith, a prominent Australian lawyer, joined the convention in favor of a federation similar to the United States.

In 1881, work to create a draft Constitution and federal system was not finalized and resumed in 1885, when ten delegates from each colony were elected by popular vote (New South Wales, Western Australia, South Australia, Victoria, Tasmania) for participation in the Constitutional Convention. In 1897, at the next Convention, based on the previous draft Constitution of 1881, a new draft of the Constitution was prepared, which was amended during the next sessions of the Convention, until in 1899 the draft was put to the popular vote.

The first referendum on the adoption of the draft constitution was held in 1899 in four colonies - New South Wales, Victoria, South Australia, Tasmania. However, in New South Wales, the number of those who voted “for” and “against” turned out to be almost equal, which was insufficient to make a decision in a referendum. After making another seven amendments, the draft constitution in 1899 was put up for a second popular vote.

The referendum was held on June 20, 1899 in the following colonies: New South Wales, Victoria, South Australia, Tasmania, Queensland. This time the results of the referendum were adopted by all the specified colonies, whose people voted “for” the creation of the federation and the new constitution [19].

The final stage was the submission of the bill in the British Parliament, which adopted the document unchanged, with the exception of the possibility of appealing the decisions of the state court in the High Court of Great Britain or in the Privy Council. Royal sanction was obtained on July 9, 1900 [B. R. Wise. (1909)]. As noted above, the Western Australia colony did not initially accept the draft Constitution of the future federation. But in the end, at a referendum held on July 31, 1900, by a majority vote, the people of Western Australia approved the draft Constitution [16], after which this colony was also included in the Commonwealth as the initial state (in accordance with Section 6 of the Australian Commonwealth Act this is the state that joined the federation at the time of its creation).

On September 17, 1900, Her Majesty Queen Victoria proclaimed the Western Australia Declaration of Accession. On January 1, 1901, the Constitution entered into force, and the peoples of New South Wales, Victoria, South Australia, Queensland, Tasmania and Western Australia became the six states of the Australian Union [18].

## **CONCLUSIONS.**

After the entry into force of the country's fundamental law, the first Federal Parliament of the Australian Union was formed, the first meeting of which took place on May 9, 1901 in Melbourne. Elections to the Senate and House of Representatives took place on March 29, 1901 (for New South Wales, Victoria, Western Australia, Tasmania) and March 30, 1901 (for Queensland and South Australia) [22].

Before the creation of the Australian Union, colonies existed and developed independently of each other, although initially they had a similar development path and similar legislation, since the constitutional development of the colonies was carried out on the basis of acts of the British Parliament. Over time, in each colony, bodies were created in the likeness of the British, consisting of a governor, a bicameral parliament and a responsible government, which formed the basis for the management system of the Australian Union.

## **Conflict of interest.**

The authors confirm the absence of a conflict of interest.

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