

The Australian Constitution, In Defence of National Values

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It has been said that Australia’s Constitution is too difficult to change, with an overwhelming 37 of 45 amendments being defeated at referendum (Australian Electoral Commission, 2023). A constitution can be described as “a set of written provisions (norms), enacted by political actor(s), that mostly define the fabric/structure of the governmental machine” (Pasquino, 2015, p. 85). The Australian Constitution is a document that sets out the rules governing Australia and describes the structure, role, and powers of the Australian Parliament. Additionally, the roles of the executive government and High Court of Australia are detailed (Parliamentary Education Office, 2024). I propose instead that the Constitution’s rigidity is its greatest strength, and the reason that it as endured for over 120 years. In support of this position, I shall use the following three points. First, a discussion of the merits of rigid constitutions in their provision of national stability. Second, the mechanisms of constitutional change will be examined. Highlighting the importance of the Australian referendum system as a vessel of direct democracy. Finally, I will argue that Australia’s constitutional change is on par with similar nations, despite partisan manipulation.

In the same year as the Australian Constitution was penned (1901) James Bryce published *Studies in History and Jurisprudence*. The third essay of the book is dedicated to discussions on flexible and rigid constitutions, providing a period correct insight into the merits of a rigid constitution. Bryce states that stability of a constitution is desirable because it inspires a sense of security in the minds of citizens and encourages order and industry. Further, Bryce outlines several advantages of rigid constitutions. The first being that they are less susceptible to vagueness and provide guidance in dealing with discrepancies between laws and traditions. They are also difficult to undermine, as a change in a rigid constitution rarely goes unnoticed; and defenders can quickly rally in opposition. Finally, when an amendment process consists of delays and formalities it allows time for fuller discussions to be held. This is likely to uncover objections on the matter at a deeper level, allowing people to reconsider their position while a notion is still easily defeated. For these reasons a rigid constitution provides elements of stability to a nation. There are also downsides, notably the inability to stretch to meet a passing emergency before resuming its prior shape (Bryce, 1901). Additionally, if a constitution is too difficult to change then it may not be able to respond to changing national values and incorporate changes in keeping with the times (Centre for Constitutional Studies, n.d.). It should be noted however that the benefits of a rigid constitution far outweigh its flaws, and the stability provided by such a constitution is evidenced by many nations around the world; whose constitutional amendment mechanisms shall be discussed in the following paragraph.

Australia’s Constitution has endured for over 120 years, a testament to the vision of the framers in crafting a robust and relevant document. Although inspiration was drawn from the United States, Canada, and the United Kingdom there are some distinct differences adopted by Australia in ammending our constitution. Chapter 8 of the Australian Constitution deals with alteration of the Constitution. Its only section is section 128 Mode of altering the Constitution. The mechanism of alteration is called a referendum. Before a referendum can take place both Houses of the Commonwealth Parliament must pass the proposed law containing the suggested amendment of the Constitution. Then a referendum is called whereby a majority of electors in a majority of states must be in favour of the change (Australia’s Constitution, 2022), this is known as a double majority (Parliamentary Education Office, 2024). In the United States an amendment may be proposed by a two-thirds vote of both Houses of Congress, or, if two-thirds of the States request one, by a convention called for that purpose. The amendment must then be ratified by three-fourths of the State legislatures, or three-fourths of conventions called in each State for ratification (The White House, n.d.). Canada has the Amending Formula and typically uses The General Procedure which states that the change needs to be approved by the House of Commons, the Senate, and a minimum number of provincial legislatures. At least 7 provinces must approve the change, representing 50% of the population; this is called the 7/50 rule. However, for matters of increased importance The Unanimity Procedure is used. Section 41 describes the types of changes that need to be agreed upon by the federal government and all the provincial governments (Centre for Constitutional Studies, n.d.). The United Kingdom differs in that it has no codified constitution. Instead, Acts of the UK Parliament, Conventions, Common law, and Authoritative works all contribute as sources of the constitution. Like any other legislation, a constitutional statute can be repealed or amended by a simple majority of votes in Parliament (The Constitution Society, n.d.). In terms of constitutional rigidity Australia is situated between Canada and the United States. Since a constitution describes the fundamental values of a nation it is important that a balance is struck between rigidity and flexibility. I believe that the Australian constitution has found this balance, upholding Australia’s fundamental values while allowing the will of the nation to be expressed through an instrument of direct democracy, the referendum.

That is not to say that our constitutional amendment process is perfect. The work of Richard Miles (2000) offers insight into why amendments fail in Australia. He states that referendum failure is often a reflection of the kind of proposals that are put to vote. Since the political party in power has control over the initiation of referendums the campaigns are always subject to partisan politics at a federal level, with the goal of gaining political advantage. In addition, this leads to proposals that tend to concentrate political power; which are far more likely to fail at referendum than dispersive proposals. Miles states that the number of successful amendments is an irrelevant measure of the validity of the amendment process, and that in terms of the types of changes made we compare well to other countries. From this perspective we have produced constitutional amendment results that are comparable with the United States, New Zealand, and Canada. He states that the referendum serves as an adequate measure to protect the Australian people from proposals that are unsound or unclear (Miles, 2000). These reasons I believe demonstrate why the view that Australia’s constitution is too hard to change, as viewed by a majority of proposals being defeated, is flawed.

In opposition of the notion that Australia’s Constitution is too difficult to change the following themes have been explored. It was argued that a constitution should be rigid to provide stability and uphold the values of the nations people. Different constitutional mechanisms were examined that showed Australia has a comparatively moderate amendment procedure; allowing the will of the Australian people to be expressed through direct democracy. Finally, why amendments fail was discussed. With the view that partisan politics at a federal level creates easily defeated amendment proposals. However, our constitutional amendment results are still comparable with similar nations. We need to stop viewing proposal defeat as amendment procedure failure and relinquish the use of simple statistics in defence of it.

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