CHANGING CONSTITUTIONS THROUGH CONSTITUENT ASSEMBLIES:

an analysis of

representation, interest, consensus, and partisanship

at the


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Sydney, July 2007

A thesis submitted for the degree of Doctor of Philosophy at the
Australian National University
Changing constitutions through constituent assemblies


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July 2007

Declaration

This thesis is submitted for examination for the degree of Doctor of Philosophy at the Australian National University. This work is my own and it has not been submitted before for any degree, diploma, or license at the Australian National University or any other university, except as described below.

Some of the ideas in this thesis were presented by me in a conference paper which I delivered while I was completing research for the thesis:


The thesis also draws on data that I gathered and analysed for my honours thesis:


When I reproduce material from the honours thesis in this thesis, I cite it appropriately.

To the best of my knowledge and belief, this thesis contains no material previously published or written by any other person unless it is duly cited in the text.

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Abstract

This thesis evaluates whether including constituents directly in negotiating proposals for formal constitutional change at constituent assemblies could improve the rate of formal change in Australia and Canada.

Some analysts argue that there is little or no need for formal constitutional change, whilst others argue that the lack of it highlights the need to find new ways to debate proposed amendments. In the 1990s, the Australian and Canadian federal governments departed from usual practice and convened constituent assemblies (or mini constituent assemblies) to debate the merits of a republic for Australia, and proposals for constitutional reform in Canada that became the Charlottetown Accord. This thesis is a case study of those assemblies: the Australian Constitutional Convention 1998, and the Canadian Renewal of Canada Conferences 1992.

The first chapter establishes that the rate of formal constitutional change in Australia and Canada is relatively low, and that informal constitutional change is not equivalent to amending the text of a constitution. Analysis of the literature about why proposals put to referenda are rarely ratified in Australia shows that there are no compelling answers to this question, and that relatively little attention is given to examining the process used to negotiate formal constitutional change.

The second chapter examines literature about the value of constituent assemblies. This review shows that authors disagree about whether, compared to parliamentarians convening alone, constituent assemblies are more representative of constituents, more likely to generate public interest, more likely to reach consensus, and less likely to behave in a partisan way. This thesis addresses these four questions. As a first step, the terms ‘constituent assembly’, ‘representative’, ‘interest’, ‘consensus’, and ‘partisanship’ are defined in a testable form.

The third to sixth chapters examine the assemblies in context of a detailed analysis of the processes of formal constitutional change in Australia and Canada since federation. The research shows that the assemblies were superior for representation,
public interest, and consensus. For the Australian case, analysis of the formal ballots shows that parliamentary delegates behaved in a less partisan way than did non-parliamentary delegates – parliamentarians were more likely to change their votes. This finding is qualified by analysis of the assembly debates and other publications, which suggests that some parliamentarians did not act in accordance with their preferences in the early ballots. The question of partisanship is not answered for the Canadian case because an official record of delegates’ preferences was not created and retained.

The research also suggests that future studies of constituent assemblies should explore the question of how responsive governments are to recommendations made by assemblies. The Australian and Canadian assemblies delivered on their promise of representativeness, public interest, and consensus, but governments were not responsive to some critical recommendations. Preliminary analysis suggests that this may in large part explain why Australian and Canadian voters did not approve a republic or the Charlottetown Accord when they went to the polls.
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## Abbreviations

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<tbody>
<tr>
<td>ABS</td>
<td>Australian Bureau of Statistics</td>
</tr>
<tr>
<td>ACC</td>
<td>Australian Constitutional Convention, 1973-1985</td>
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<tr>
<td>ACP</td>
<td>Australian Country Party</td>
</tr>
<tr>
<td>ACT</td>
<td>Australian Capital Territory</td>
</tr>
<tr>
<td>ALP</td>
<td>Australian Labor Party</td>
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<td>ARM</td>
<td>Australian Republican Movement</td>
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<td>ATSIC</td>
<td>Aboriginal and Torres Strait Islander Commission</td>
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<td>BC</td>
<td>British Columbia</td>
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<tr>
<td>CCS</td>
<td>Constitutional Conferences Secretariat, Canada</td>
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<tr>
<td>Democrats</td>
<td>Australian Democrats (political party)</td>
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<tr>
<td>JCCR</td>
<td>Joint Committee on Constitutional Review, Australia</td>
</tr>
<tr>
<td>JSCRR</td>
<td>Joint Select Committee on the Republic Referendum</td>
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<tr>
<td>MMC</td>
<td>First ministers’ meetings on the constitution, Canada</td>
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<tr>
<td>NAC</td>
<td>National Australasian Convention, 1897-98</td>
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<tr>
<td>NAFC</td>
<td>National Australasian Federation Conference, 1891</td>
</tr>
<tr>
<td>NDP</td>
<td>New Democratic Party, Canada</td>
</tr>
<tr>
<td>NSW</td>
<td>New South Wales</td>
</tr>
<tr>
<td>NT</td>
<td>Northern Territory</td>
</tr>
<tr>
<td>NWT</td>
<td>Northwest Territories</td>
</tr>
<tr>
<td>PM&amp;C</td>
<td>Department of Prime Minister and Cabinet, Australia</td>
</tr>
<tr>
<td>PR</td>
<td>Proportional representation electoral system</td>
</tr>
<tr>
<td>Qld</td>
<td>Queensland</td>
</tr>
<tr>
<td>RAC</td>
<td>Republic Advisory Committee, Australia 1993</td>
</tr>
<tr>
<td>RSP</td>
<td>Randomly selected participants at the Canadian assemblies</td>
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<tr>
<td>SA</td>
<td>South Australia</td>
</tr>
<tr>
<td>SJC</td>
<td>Special Joint Committee, of parliament</td>
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<tr>
<td>Tas</td>
<td>Tasmania</td>
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<tr>
<td>UAP</td>
<td>United Australia Party</td>
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<tr>
<td>WA</td>
<td>Western Australia</td>
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