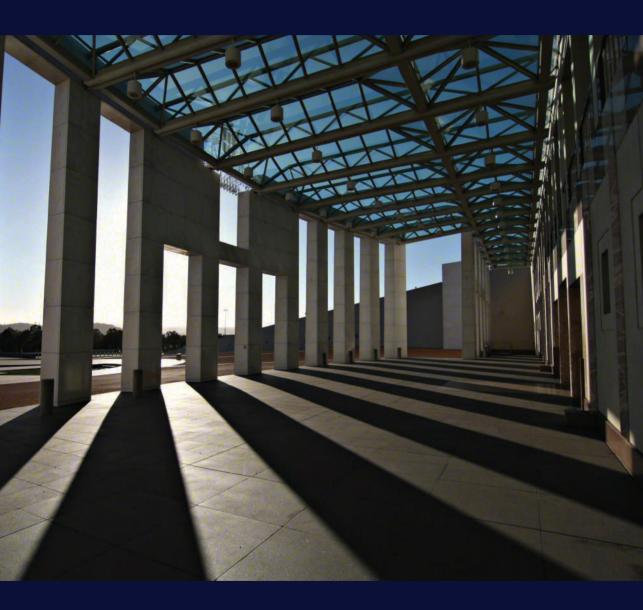# AUSTRALIAN GOVERNMENT AND POLITICS

Edited by
Alan Fenna & Rob Manwaring

Australian Government and Politics

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CONTENTS

Preface

This book supersedes two of the most well-respected and enduring texts in Australian politics, published by Pearson and its predecessors. *Government, Politics and Power in Australia*, edited by John Summers, Dennis Woodward and Andrew Parkin, began its life in 1979. Its 10th and final edition, *Government and Politics in Australia*, edited by Alan Fenna, Jane Robbins and John Summers, appeared 34 years later. *Australian Political Institutions*, meanwhile, written by Aitkin, Jinks and Warhurst, began its life in 1980. Its 10th and final edition, by Singleton, Aitkin, Jinks and Warhurst, appeared in 2012.

Australian Political Institutions was never just about political institutions, but covered political parties as well, and broadened further through its iterations. Meanwhile, by its 9th edition, *Government, Politics, Power and Policy in Australia* had reached 27 chapters in length and covered several policy areas.

This book tries to reproduce some of the timeless qualities of those texts — providing a scholarly yet accessible introduction to the Australian system of government and its processes. Like them, it focuses primarily on the structure of government together with political ideas and political parties. Like them, it also provides an introduction to aspects of public policy, or what governments do. Rather than attempting to canvass the great range of policy areas in which governments are involved, we have dedicated one chapter to a specific policy domain by way of illustration.

There are three ways in which this book sets out to enhance the approach taken in those predecessor texts. The first is to situate the discussion in a broader context, with Chapter 1 providing an overview of the nature, components and challenges of democracy. In every era there are particular challenges to democratic practice and in ours those seem to revolve around the phenomenon of populism. The second enhancement is to imbue the book with a stronger comparative dimension. External comparisons not only contribute to a broader understanding of the general phenomena, but also enrich our understanding of the Australian system. The third enhancement is a much greater engagement with Indigenous issues. Rather than confine these to a specific chapter, we have elected to weave them into the discussion where appropriate.

We would like to thank Pearson for initiating and supporting this project and maintaining their commitment to the teaching of undergraduate politics in Australia. We would also like to thank the various contributors, who generously agreed to make room for this task amongst their other academic and personal commitments and who responded very obligingly to our editorial interference and deadlines. Finally, Alan would like to thank Curtin University and John Phillimore for providing a privileged environment in which to work and Josée Bergeron for her *complicité*; Rob, meanwhile, would like to thank Sandy, and their two irascible children, Matilda and Tess, for their ongoing love and support.

List of Contributors

THE EDITORS

Alan Fenna is Professor of Politics at The John Curtin Institute of Public Policy, Curtin University, Western Australia. researching chiefly in the areas of Australian and comparative federalism and Australian public policy. His most recent books, co-authored, are: *Comparative Federalism: a systematic inquiry*, 2nd edn (University of Toronto Press, 2015) and *Interrogating Public Policy Theory: a political values perspective* (Elgar, 2019). He served as president of the Australian Political Studies Association 2009–10.

Rob Manwaring is a senior lecturer at Flinders University, South Australia. Rob's main research is in the area of social democratic and labour politics, and in 2017 he co-edited the collection *Why the Left Loses: the decline of the centre–left in comparative perspective* (Policy Press) and he has most recently authored *The Politics of Social Democracy: issues, dilemmas and future directions for the centre–left* (Routledge 2021).

CONTRIBUTORS

Katrine Beauregard is a Senior Lecturer at the School of Politics and International Relations at the Australian National University. Her research focuses on women's representation in Australian political parties and the impact of sexist attitudes on political behaviour in Australia and around the world. She was awarded a Discovery for Early Career Research Award fellowship by the Australian Research Council for 2020–2022 to investigate the role of political parties in contributing to gender differences in political engagement.

Geoff Cockfield is an Honorary Professor in both the Institute for Resilient Regions and the Centre for Sustainable Agricultural Systems at the University of Southern Queensland. His scholarly research has largely focussed on agricultural policy and natural resources management and policy, and also the National Party of Australia. He was the Fulbright Distinguished Chair in Agriculture and Life Sciences (2018-19) at Kansas State University, where he conducted a study of comparative agricultural policy in the US and Australia

Jennifer Curtin is a Professor of Politics and Director of the Public Policy Institute at the University of Auckland. Her research and publications focus on Australian and New Zealand electoral politics, trans-Tasman policy innovations, sport, and gender, policy and political leadership. She is currently leading a number of externally funded projects on the following topics: Gender Responsive Budgeting in New Zealand; the Gendered Effects of COVID19; Gender and Political Leadership at the Subnational Level in Australia and Canada; as well as being a Principal Investigator on the New Zealand Election Study.

Dr Andrew Gibbons is a Postdoctoral Fellow at the Edward A. Clark Center for Australian and New Zealand Studies, University of Texas at Austin. He holds a PhD in political science from the University of Melbourne. His research focuses on public policy, media and political communication. He has published widely on these topics in top tier journals, including several studies examining policy expertise in elections, news coverage of policy debates, and fake news discourse in Australian politics.

Darren R. Halpin is a Professor of Political Science at the Australian National University. He researches and writes about organised interests in politics (interest groups, thinks tanks, corporations and lobbyists) and political representation, and the connections between the two. He has published widely, and his latest book, with Anthony J. Nownes, *The New Entrepreneurial Advocacy: Silicon Valley Elites in American Politics*, will be published by Oxford University Press in 2021.

Josh Holloway is a Research Associate in the College of Business, Government & Law at Flinders University, and in the Faculty of Business and Economics at the University of Melbourne. His current research is concerned with political parties, electoral management, and the resilience of democratic systems.

Maryanne Kelton is a Senior Lecturer in International Relations at the Jeff Bleich Centre for the US Alliance in Digital Technology, Security and Governance at Flinders University. Her research interests concern Australian foreign policy, social cybersecurity, alliances, and the security–economics nexus.

Joff Lelliott is a sessional lecturer in Political Science and Public Policy at the University of Queensland, where he has lectured Australian Politics since 2016. He received his PhD from University College London, and has an MA in Political Science and European Studies (Dundee) and an MSc in Ethnic Relations (Bristol). Joff previously worked for the Queensland Public Service and then in financial services.

Maria Maley is a senior lecturer based in the College of Arts and Social Sciences at the Australian National University. Her scholarly interests include Australian politics, public policy and administration, and her current research is focussed on ministerial staff, the public service and public leadership.

Narelle Miragliotta is a senior lecturer in Australian politics in the department of Politics and International Relations at Monash University.). She has broad teaching and research interests in many different facets of Australian and liberal democratic political institutions, including constitutions, parliaments, political parties and Australian elections and electoral systems.

Rodrigo Praino is Associate Professor of Politics and Public Policy at Flinders University's College of Business, Government and Law. He publishes research on decision-making, political behaviour, elections, political parties and electoral systems. His research has attracted funding from a variety of sources, including UNICEF and the Australian and the Canadian governments. His work has been published in *Political Behavior*, the *British Journal of Politics and International Relations* and *American Politics Research*.

Diego Praino is Associate Professor of Public Law at Oslo Business School, Oslo Metropolitan University. His work focuses on the process of European integration and the relationship between political dynamics and systems of government. He holds a PhD in Law and Economics from Scuola Normale Superiore and University of Naples Federico II.

Cassandra Star is an Associate Professor of Public Policy in the College of Business, Government and Law at Flinders University. She leads the Climate and Sustainability Policy Research (CASPR) group at Flinders. Her research is concentrated on the interface between politics and the policy process and the subsequent impact of these dynamics on policy formulation.

Marija Taflaga is a Lecturer and the Director of the Australian Politics Studies Centre at The Australian National University. Her research focuses on Australian politics in comparative context, specifically political parties' relationship with parliament and the executive.

Sian Troath is a Research Lead at the Jeff Bleich Centre for the US Alliance in Digital Technology, Security and Governance at Flinders University. Her research interests relate to Australian foreign policy, how trust works in relationships between states, and social cybersecurity.

John Warhurst AO is an Emeritus Professor of Political Science at the Australian National University, based in the School of Politics and International Relations. Formerly chair of the Australian Republic Movement, his main areas of expertise are Australian government and politics, lobbying and advocacy, and religion and politics. He was made an Officer in the Order of Australia in 2009 for his services to political science and the community.

Zareh Ghazarian is a political scientist in the School of Social Sciences at Monash University and co-author of *Australian Politics for Dummies*. His latest book is *The Making of a Party System: Minor Parties in the Australian Senate*. His teaching and research interests include political parties, public policy, political knowledge, politics and the media and political leadership.

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CHAPTER 1

Democracy in Theory and Practice

Alan Fenna

Governments are expected to do many things. We count on them to dispense justice and keep the peace; protect the country; manage the economy; provide a wide range of day-to-day services but keep out of the way where they are not wanted; protect the environment; take charge in emergencies; aid the less fortunate; and much more. At the same time, governments such as Australia's are also expected to *operate democratically*. They should reflect the will of the majority; respect the rights of minorities; act according to law; maintain transparency; and be accountable for their actions. The focus of this book is primarily on this second aspect, providing an introduction to the institutions and practices of the Australian system of government.

This chapter lays the foundation for such a discussion by introducing the main elements of modern democracy, beginning with the idea of democracy itself. In doing so, it explores:

- the principles of democracy
- the nature of modern 'electoral democracy' and representative government
- constitutionalism and the rule of law
- citizenship rights and inclusion
- the branches of government
- challenges of democracy in the modern world.

DEMOCRATIC PRINCIPLES

Living as we do in an established and successful democracy, it is easy to take the privilege of such a system for granted and, indeed, to see it as rather banal and unsatisfactory. However, democracy represents in important ways a high-water mark of human achievement, only widely practised recently, and still unachieved across large parts of the world. 'As of today, sixty-eight countries, including the two behemoths, China and Russia, have never experienced a change in office between parties as a result of an election' (Przeworski 2019).

While competing ideas of how democracy can or ought to function are abundant, a baseline definition is quite straightforward: 'in a democracy important public decisions on questions of law and policy depend, directly or indirectly, upon public opinion formally expressed by citizens of the community, the vast bulk of whom have equal political rights' (Weale 2007: 18; also Ringen 2007: 25; Saward 1998: 15;).[1]

EMERGENCE AND SPREAD OF DEMOCRACY

Modern democracy 'was born only in 1788, when the first national-level election based on individual suffrage took place in the United States' and its existence confirmed when, in the US just over a decade later, for the first time in history, 'the helm of the government changed as a result of an election' (Przeworski 2019, p 16).

Of course, 'being born' was only the beginning: it took another century or more before the right of all adult men and women to vote (*universal suffrage*) was achieved, and, even then, that was only in a handful of countries. The democracy we enjoy today was the result of a protracted and sometimes tortuous process of political development in Western Europe. At its heart was the establishment of representative institutions; the extension of the franchise, or right to vote, from ruling classes to ordinary people; the broadening of the franchise to include women and subordinated minorities; and many other associated developments such a freedom of speech and assembly and the rule of law (Dunn 2005; Kaplan 2015; Kloppenberg 2019; Tilly 2007).

The last quarter of the twentieth century saw the rapid spread of democracy, the key moment in which was the collapse in 1989 of the communist dictatorships in Eastern Europe and the Soviet Union. Since then, however, democracy has been in 'recession' (Diamond 2015): freedom around the world has declined (Schenkkan and Repucci 2019) and authoritarianism has been on the rise (Diamond *et al.* 2016; Krastev and Holmes 2020). And, as we shall discuss further, democracy has been under strain even in its heartland.

ANCIENT ROOTS

While modern democracy may have been born in 1788, democracy was first conceived and practised, and many of our related terms and concepts first developed, much earlier: two-and-a-half thousand years ago in Ancient Athens (Finer 1997a: 316; Finlay 1985; Hansen 2010; Ober 2015; Stockton 1990). Between 500 and 300 BCE, the Athenians invented, practised, debated, philosophised about, and flourished under a democratic system almost inconceivable in its time.

Ancient Greek democracy 'is the touchstone for our thinking about democracy' (Urbinati 2006: 2; Lane 2015). It was extraordinary even by our standards today: while of course not being as inclusive as modern democracies, it was democratic to a degree scarcely feasible in the modern world. Athenian citizens did not elect representatives to govern on their behalf; rather, every adult male citizen was eligible — and was expected — to attend the Assembly where all key decisions were made. This was *direct democracy*. Executive and administrative officials, meanwhile, were appointed by random selection and served for short periods — in some ways the most democratic mode of appointment possible. A highly-developed judicial system employed a trial process that relied on paid juries of, at a minimum, 201 ordinary citizens.

Ancient democracy of course had its critics, and one of the criticisms was its perceived tendency to make rash decisions, particularly when the citizen body was under the rhetorical influence of a particularly persuasive but manipulative and unscrupulous speaker. 'Demagogue' was the term the Greeks coined for such a figure, and it is the term we use to this day, particularly in association with the politics of *populism* (Patapan 2019).

THE EQUALITY PRINCIPLE

The key principle underpinning both ancient and modern democracy is *political equality*: rather than a formal status hierarchy with different rights and privileges, society was seen as being made up of *citizens* enjoying equal political status. This was a radical concept then, and one that did not reappear until the French Revolution of 1789 — 'the most important single event in the entire history of government' (Finer 1997b: 1516) — some 2,000 years later. The ethos of political equality, in turn, underlies the principle of *majority rule* that is inseparable from democracy.

Political equality is potentially compromised in various ways. While it requires that each person's vote carry the same weight or have the same value, this was for a long time widely violated in Australia and elsewhere by 'malapportionment' — allowing some electorates to have many fewer voters than others and thus privileging those voters (Kelly 2012: 109–30; Orr and Levy 2009; Samuels and Snyder 2001). 'One person, one vote, one value' is still not in effect everywhere in Australia. More systemically, the principle of political equality runs up against the reality of economic inequality and the potential influence that economic power may have on political processes and decision-making.

MODERN DEMOCRACY

Modern democracy departs from ancient democracy most notably by working indirectly through *representative government*. It is also *liberal democracy*, in having particular respect for the autonomy and rights of individuals and being closely tied to a market economy.

REPRESENTATIVE GOVERNMENT

We do not do the governing ourselves; rather, we choose representatives from among those who offer themselves to govern us. Modern democracy is *electoral democracy*.

Voting governments in and out is its essence: elections provide an incoming govern-ment with a 'mandate' to implement their platform of policies and they are the chief mechanism of accountability afterwards (Franklin *et al.* 2014). The majority of citizens rarely contribute anything more. US President Abraham Lincoln (1863) famously de-scribed democracy as 'government of the people, by the people, for the people', but while this was a rhetorical masterstroke it is only very loosely true. In what is perhaps a rather jaundiced view, modern democracy may be better described as a spectator sport than a participatory one (Green 2010).

As we shall see in Chapter 12, the indirect nature of modern democracy places a premium on voting systems: there are various ways to structure representation and they will have different consequences for the way the many and varied interests, beliefs and preferences of society get translated into the make-up of a government. Indirect rule also dilutes the democratic principle by creating such a large distance between the people and their government (Canovan 2002; Manin 1997; Urbinati 2006). However, it is the only practical way the people can govern in a large modern society.

LIBERAL DEMOCRACY

In addition to the core principle of political equality, modern democracy is characterised by the importance it attaches to liberty, or freedom of the individual. Integral to the emer-gence of democracy in Western Europe was the 'struggle for liberty and rights' that was at the heart of the philosophy and ideology of liberalism, as discussed in Chapter 6 (Grayling 2007; Headley 2007). Because of this emphasis on individual freedom, modern democ-racy is also characterised as *liberal democracy*. One of its main implications is *pluralism*, the idea that we accept different beliefs and different ways of doing things in society.

The emergence of liberal democracy has been very closely associated with the devel-opment of market economies, or 'capitalism'. Capitalism is based on the free exchange of goods and services in a competitive market; the private ownership of business enterprises; and the initiative and independence of the individual entrepreneur and business leader. There is, on the one hand, a natural alignment between capitalism's principle of economic freedom and democracy's principle of political freedom. However, capitalism does not require democracy, and even in the long-established democracies where there has always been a close affinity between the two, it is an uneasy relationship. While capitalism re-quires freedom and property rights, it also produces substantial economic inequalities, and these are at odds with the political equality on which democracy is predicated (Dahl and Shapiro 2015). This tension permeates the ongoing debate and contest about what role government should play in society, particularly in respect to economic and social policy. How far should government go to give people a 'fair go', for instance, lies at the heart of the main ideological fissures of democratic politics as discussed in Chapter 6.

Following on from this, it is implicit in the idea of liberal democracy that there be a clear distinction between state and society, between the 'public sphere' and the 'private sphere'. It is assumed that citizens should be free to pursue their personal interests with-out interference or guidance. This includes the freedom not to engage in anything but the bare minimum of democratic politics. While the direct democracy of Ancient Athens gave its citizens a greater democratic power, it also expected correspondingly more of its citizens. In most modern democracies, citizens are not even required to vote — a most

minimal expectation. Australia is distinctive in this regard (Hill 2002). At the same time, if citizens are to be sufficiently well informed to fulfil even the basic requirement of voting meaningfully, there must be, as discussed in Chapter 16, a functioning public sphere where the mass media provide reliable political information and opportunity for a range of views to be expressed and debated (McKee 2004).

DEMOCRACY AND NON-DEMOCRACY

So, in a nutshell, what is required for democracy? When the term was coined in Ancient Greece, it literally meant 'rule of the people', specifically meaning the people as a whole, particularly the ordinary people, rather than a group of privileged property-owning elites or a single ruler. Today, we focus on three key requirements for that to occur: elections that are free, fair, competitive and reasonably frequent; freedom of political speech and association; and a set of laws by which all are equally bound.

Going back to Ancient Greece, democracy contrasts in the first instance with traditional forms of government that exclude the people — notably monarchy, the rule of an individual with some inherited claim to sovereign power. More broadly, democracy is contrasted with various forms of *authoritarianism*, and the more extreme version that emerged in the 20th century, *totalitarianism* (Linz 2000; Roberts 2020).

HOW GOOD IS YOUR DEMOCRACY?

The spread of the democratic idea from Western Europe and its main settler colonies to the rest of the world has created a finer distinction: that between countries with varying degrees or quality of democracy (Coppedge *et al.* 2020; Tomini and Sandri 2018). Full or real democracies can be contrasted with partial, 'illiberal' or 'defective' ones, such as can be found in south and east Asia, central Asia, the Middle East, Africa and Eastern Europe (Bell *et al.* 1995; Merkel 2004). In a number of these countries, some of the elements of modern democracy have been established but not all. In particular, elections may occur but not ones that are 'free and fair' or competitive (Norris 2015). Likewise, constitutionalism and the rule of law may be underdeveloped and political rights abridged.

Even within the group of fully-fledged democracies, considerable variation exists and various indexes have been created to rank democratic quality. Most put Australia and New Zealand in the top ten — just below the Scandinavian countries, which perennially top the lists. Further down are 'flawed democracies', such as the United States (EIU 2019; also Freedom House 2019). Ranking near the top of democracy indexes does not mean, however, that the Australian system is without its critics. 'By the time of the celebration of the centenary of Federation in 2001 it was already clear that some of Australia's democratic machinery was badly in need of repair and renewal', argued the 'democracy audit' (Sawer *et al.* 2009: 1).

FROM PASSIVE TO ACTIVE CITIZENS

There is another way in which the quality of democracy can be assessed: the degree to which the system allows, facilitates or provides for active participation. In one of the classic accounts of early democracy, the French writer Alexis de Tocqueville (1835, 2004) praised what he saw in the United States, in part, because he saw an engaged and participative society. Some of the more traditional modes of such participation, such as

working on election campaigns, are a natural element of electoral democracy. Protest actions, by contrast represent quite a different avenue of participation, one that can 'strain the democratic process' (Dalton 2020: 268). As the 'suffragette' protests of the late 19th and early 20th centuries clearly illustrated, though, such strains have been important in enhancing democracy (Wright 2018).

There are grounds to think that having a more 'assertive' and participatory citizenry raises the quality of a democracy (della Porta 2013; Welzel and Dalton 2014). If that is the case, governments should be opening channels for direct citizen input (Dalton 2020: 268). Various possibilities exist (Geissel and Newton 2012). One is 'deliberative democracy' which involves focused attempts at engaging citizens and has been experimented with in Australia and elsewhere (Carson *et al.* 2013; Lang 2007; Uhr 1998; Ward 2008). Better known and more straightforward is the referendum or plebiscite technique, where citizens have the opportunity to vote for against specific proposals.

DIRECT DEMOCRACY AND ITS FUTURE

In Switzerland, citizens can initiate popular referendums on any subject a sufficient number of them wish, and in two cantons (states) they still hold citizen assemblies (Fossedal 2001; Sager and Bühlmann 2009); Citizen-initiated referendums are also widely used across the American States (Goebel 2007) — although there has never been a referendum at the national level in the US. Whether such techniques of direct democracy augment or undermine representative government by, among other things, over-simplifying issues — is an ongoing question (Altman 2019; Budge 1996; Clark 1998; Ellis 2002; Haskell 2000; Topaloff 2017).

While amendment of the Commonwealth Constitution requires a referendum, the device is otherwise little used in Australia (Williams and Hume 2010). Consultative referendums tend to be a last resort — used where the division cuts across party lines and thus enables the government to sidestep the issue — and their place in the Australian political system is not clear (Kildea 2016). One of the few instances occurred quite recently: the Australian Marriage Law Postal Survey of 2017 where voters were asked whether to legalise same-sex marriage. This was in effect what is often called a 'plebiscite' as distinct from a referendum to indicate that it was not binding on government — although that distinction is often just a rhetorical one since governments are the ones deciding whether it is binding or not.

Referendums have likewise been rare in other parliamentary democracies such as Canada, Germany or the United Kingdom, but their use has been on the rise (Morel 2001; Qvortrup 2018). The most significant and controversial referendum recently was in the United Kingdom: where in 2016 Britons voted by a small majority to withdraw from the European Union ('Brexit').

An obstacle to direct democracy today is that it is impractical in mass societies. Perhaps internet-driven technologies can help overcome this: enabling mass online interaction, giving life to 'e-democracy' (Chadwick 2006). The optimistic view is that 'technology has an inherent bias towards empowering the citizen' (Beetham 2005: 150). The pessimistic view notes that the promise of e-democracy or digital democracy remains largely unfulfilled, and warns that far from being a solution, the internet is a significant contributor to the current malaise of democracy (Hindman 2008; Morozov 2013).

CONSTITUTIONS AND CONSTITUTIONALISM

Democracy is not possible without a legal framework establishing the political institutions and providing the 'rules of the game' (Barber 2018; Holmes 1995: 163–67). Governing according to a respected and enforced set of operating rules or laws is known as *constitutionalism*, a fundamental component of any democratic system (Saward 1998: 56) Those constitutional rules help demarcate and protect the boundary between the state and its citizens in a way that sets democratic societies clearly apart from authoritarian ones and they moderate the potential 'tyranny of the majority'. They have been integral to the practice and emergence of *limited government* since its emergence in Western Europe (Gordon 1999).

A HIGHER LAW

Constitutionalism creates two levels of laws. At the first level are all those laws that governments enact on a day-to-day basis. These are the laws that affect us directly as citizens, whether they be laws telling us not to do certain things (speeding, stealing, killing, etc) or laws providing us with certain things (education, health care, emergency services, road and rail systems, etc). But those laws are only valid if they are enacted in accordance with a higher set of laws, the laws of the constitution.

While democracy's majority rule principle almost always applies to ordinary laws as requiring only a *simple majority* (50%+1 of votes cast), it is common to apply a higher threshold to changes in the laws of a constitution, to prevent one side of politics altering the rules of the game in their favour. Sometimes this is an *absolute majority* (50%+1 of all those *eligible* to vote); sometimes it is a *super majority* (some percentage higher than 50%); sometimes it is a *double majority* (majorities in different places). Under Section 128, for instance, alteration of the Commonwealth Constitution can only occur if the following three conditions are met:

- an *absolute majority* in parliament
- followed by a *simple majority* of votes cast in a national referendum
- where a *double majority* is required by way of a majority in a majority of States.

THE FORM OF THE CONSTITUTION

Constitutions come in different forms, with one particular difference being whether they are codified in one main document or left uncodified or 'unwritten'. Codification was pioneered by the United States and is now the prevailing mode, while a few countries — notably the UK, New Zealand, Israel and Sweden — still have uncodified constitutions. In Australia, the Commonwealth and the States each have their respective constitutions, the latter less codified. As we shall see in Chapter 2, Australia's constitutions reflect the influence of both the British and the American traditions.

THE RULE OF LAW

Underlying this, and essential to the operation of a democratic system, is the *rule of law*. Like democracy, this also goes back to the Ancient Greeks (Tamanaha 2004). The rule of law only really became fully established in the twentieth century, and then again only

in select countries. Today's rule of law can be traced back to the English *Magna Carta* of 1215, the most celebrated clauses in which (39 and 40) provide an early statement of the right to a fair trial (Bingham 2010; Danziger and Gillingham 2003; Hazell and Melton 2015).

In simplest form, the notion of the rule of law means that everyone is bound equally by the same set of laws — no one is 'above the law' — and those laws are fairly and consistently enforced. It has given rise to such familiar phrases as 'equal before the law', 'due process', and 'natural justice'. Integral to the rule of law is an independent judiciary, immune to political interference. The rule of law operated in Australia before democracy was established, introduced by the colonial administration from the beginning of the convict period (Hirst 2002). It did not originally extend, however, to the Indigenous population.

RIGHTS

The rule of law, in turn, is closely related to the question of *rights*. In its original forms, this focused on basic legal rights: the right to be treated equally and justly before the law. The development of democracy meant the establishment of political rights — such as the right to vote as well as freedom of expression and assembly — and civil rights, such as the right not to be excluded or discriminated against on the basis of race, religion, ethnicity, or gender. The establishment of the rule of law culminated, at least symbolically, in the 1948 United Nations Declaration of Human Rights, whereby fundamental human rights achieved formal recognition and, for the first time, a global reach. We now live in an 'age of rights' (Bobbio 1996). 'Claiming or asserting rights has become the common mode by which people seek to promote an interest or advance a cause. That is to be explained, in part, by the special force possessed by the language of rights' (Jones 1994: 3; also Bob 2019).

Beginning with the first ten amendments to the US Constitution (the 'Bill of Rights') of 1791, the trend across the democratic world has been to inscribe these rights in the higher law of the Constitution and thereby guarantee them. Those few countries without a codified constitution, notably New Zealand (1993) and the UK (1998), have moved in a similar direction by passing Human Rights Acts. As we shall discuss in Chapter 2, Australia is distinctive in the degree to which it has resisted that trend.

CITIZENSHIP, THE NATION-STATE AND INDIGENOUS PEOPLE

Democracy is built on the idea of *citizenship:* individual membership in a political community with associated rights and duties (Bellamy 2008: 19–28). In the modern world, that political community is the sovereign nation-state, such as the Commonwealth of Australia. It exercises 'sovereign', or complete, authority within its borders, and enters into international relations with other nation-states that range from trade treaties with individual countries, to integration with the international community through such bodies as the United Nations (UN) and the World Trade Organization (WTO), as discussed in Chapter 17. It is expected to provide the framework in which a national community can define itself and prosper (Miller 2016). In Australia, the historical

experience and claims of the Indigenous people raise questions about the quality and nature of citizenship.

AUSTRALIAN CITIZENSHIP

The hallmark of citizenship is the right to participate in making the collective decisions of that community through the political process, but the concept carries broader meaning. Like democracy, it goes back to the Ancient Greeks, but re-emerged centuries later in Western Europe in opposition to the system where a few people ruled and the rest had the status of mere 'subjects'. To be a subject was to owe duties and be subject to the authority of others while having lower status and no political rights. Today, 'citizenship' is used in two main senses. In the narrower meaning, it refers simply to the legal right to be part of a particular nation-state, the sign of which holding is a passport (Torpey 2018). In the broader meaning, it refers to the various rights, as well as the sense of identity or belonging, that accompany formal membership in a political community (Bellamy 2008: 26; Galligan and Roberts 2004; Shaw 2020: 4–5).

Australian citizenship has existed in some form since the colonies became democratically self-governing in the 19th century (Galligan and Roberts 2004). However, it was only given formal legal expression with the passage of the *Nationality and Citizenship Act 1948* (Arcioni 2018). As is also the case in many other countries, the Commonwealth Constitution says very little about citizenship — only an oblique reference in Section 44 denying 'citizens of a foreign power' the right to sit in parliament. As discussed in Chapter 3, this came to prominence in 2017 when several members of federal parliament were disqualified for holding dual citizenship (Boyce 2018; Hobbs and Williams 2019; JSCEM 2018).[2]

CITIZENSHIP AND INDIGENOUS PEOPLES

Australia's conception of citizenship was, in at least one major respect, not an inclusive one. The Indigenous people (Aboriginal and Torres Strait Islanders) were 'citizens without rights' (Chesterman and Galligan 1997). It was not until 1962 that Aboriginal and Torres Strait Islander people were entitled to vote in federal elections across all States and Territories (Sanders 2001: 159). In formal legal terms, Australia's Indigenous people are now equal citizens (Chesterman 2005).

Doing away with conditions that made Indigenous people less than citizens in Australia redressed one major injustice, but did little to address dispossession and continuing disadvantage. This shifts the issue from one of ensuring an equal status of citizenship to potentially creating a special or different status (Hobbs 2018). Such a view was given international recognition by the United Nations Declaration on the Rights of Indigenous Peoples in 2007. Special status was also given novel legal recognition by the High Court in a recent case where the deportation of non-citizens ('aliens') who had been convicted of crimes was disallowed in this case because those particular individuals claimed Indigenous ancestry. 'Aboriginal Australians have a special cultural, historical and spiritual connection with the territory of Australia', the Court ruled, and that makes it impossible to categorise them as aliens, even if they do not hold formal citizenship.[3]

The push for Indigenous Recognition has focused on various propositions (Brennan and Davis 2018; Lino 2018). While in largest part they are substantive, others are