

People Power: The History and Future of the Referendum in Australia

Australia: UNSW Press, 2010, pp 303, ISBN 97817422, \$34.95

George Williams' and David Hume's *People Power* provides a comprehensive discussion of referendums in Australia. It discusses methods for changing the *Constitution*, specific referendum proposals as well as what makes successful and unsuccessful referendums. Williams and Hume note that the s 128 referendum process is not the only method. They cite the potential for the United Kingdom Parliament to pass legislation amending the *Constitution*. Furthermore, changing methods of interpretation have effectively altered the *Constitution*. This establishes the context of *People Power*.

People Power discusses past referendums both with reference to specific proposals as well as holistically. Diagrams and images of campaign material, such as references to speeches delivered by Sir Robert Menzies and Dr H V Evatt, respectively for and against the 1951 Communist Party referendum, aid the clarity and interest of this discussion. The approach provides insight into the political and social context of each considered proposal. Nearly the first two hundred pages of *People Power* consider methods of altering the Constitution and past proposals. A greater analysis of the implications of the conclusions reached would have been desirable.

More pertinently, Williams and Hume discuss what has made referendum proposals so difficult to pass: described by Sir Robert Menzies as a 'labour of Hercules'. The book contains detailed analysis of a number of influential referendums, and helpfully includes a list of all proposals that were put to referendums and the results. This discussion allows consideration of what makes a successful referendum proposal and the design of institutions to effect this. This latter part of the book, dealing with 'getting to "yes"', is likely to be its most influential section because of its advice for the future. Of particular interest are proposals for structural reform. Williams and Hume propose the creation of three institutions to foster constitutional reform and debate. The first of these is a small and ongoing constitutional reform commission, which is 'broad and inclusive'. The second is a constitutional convention occurring each decade, which would consider the review committee's recommendations. The third body is a referendum panel, which would manage public education, compile and disseminate objective information in relation to proposals and oversee the public funding of 'yes' and 'no' campaigns.

People Power discusses alternative ways of encouraging constitutional reform. The authors consider, with some degree of approval, the

attachment of sunset provisions to referendum proposals for new Commonwealth powers, the rationale being that the people would be more likely to support a change if it were temporary rather than permanent. This unconventional approach would perhaps be better applied to states' referral of powers under section 51(xxxvii) because it avoids the requirement of a subsequent referendum to revalidate the amendment. Williams and Hume note that Australia, unlike countries such as the United States, holds constitutional conventions in public. This encourages 'popular ownership' of referendum proposals. This notion of popular ownership is particularly important, and the authors assert that its absence has been one cause of many failed referendums. Perception of political elitism is the converse of popular ownership, and has doomed a number of proposals. The failed 1999 republic proposal, for example, was regarded by some as a 'politician's republic', supported by public figures and the media but without the support of the general public.

Occasionally Williams and Hume appear to presuppose that the aversion to referendum proposals, reflected in the (particularly recent) absence of passed proposals, is undesirable. However, an alternative and more optimistic view is that the people, perhaps rightly, believe that the *Constitution* does not need altering. In support of this are changes to the *Constitution* made without alteration of the text. For example, the High Court's implication of a right to vote within ss 7 and 24.¹ Furthermore, the *Australian Constitution* is relatively new in comparison to other written constitutions such as that of the United States. Accordingly, although the text itself may be over one hundred years old, its meaning has kept pace with changes in the polity. The static connotation but changing denotation of words in the *Constitution* allows for change. Of note are two of the more pessimistic explanations for a lack of change. These are 'constitutional illiteracy' and a status quo bias. Rectifying these two problems is likely to be a greater challenge for reformists than other explanations identified, such as committed opposition and placing too much in one question ('multiple ideas aggregate opposition').

Williams and Hume regrettably do not draw on a key difference between the Australian Constitution and some other written constitutions, such as that of the US. The *United States Constitution* was one partly created out of fear: it had been drafted and initially ratified just after a revolution. Fear of a tyranny of the majority was present in the minds of the people, which resulted in an aversion to government power (expressed as a desire to protect new-found freedoms for all time). In contrast, framers in the process of a peaceful and optimistic shift from colonisation to nationhood drafted the *Australian Constitution*. This allowed for a more expansive

¹ See, eg, *Roach v Electoral Commissioner* (2007) 233 CLR 162; *Rowe v Electoral Commissioner* (2010) 273 ALR 1.

view of federal power and may have reduced the necessity for constitutional change. On the other hand, the authors note that the rate of constitutional change through referendums is the same in Australia as in the United States.

People Power successfully provides a comprehensive overview of referendums in Australia. The mix between historical analysis and advice for the future makes the book invaluable to both scholars and those with an interest in federal law and politics. The identification of 'constitutional illiteracy' is important in constructing a case for educating the public about Australia's *Constitution* and adds credence to the structural reform of creating three institutions. *People Power* is particularly timely because the last referendum was the 1999 republic referendum, and there have been no referendum proposals passed since 1977. This 'referendum drought' makes the authors' recommendations for successful referenda much more pertinent for those concerned about the future of the Australian polity.

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