



Unit 6: The Constitution, Federalism and Westminster System – Year 6 -
Civics and Citizenship (C & C) Strand: Government & Democracy

Topic 6.2: Introducing different elements in the Australian Constitution,
Westminster influences, and the covering clauses and Preamble.

Comparing the Constitution-making process with the United Kingdom and the United States

The way in which Australia's Constitution was made was utterly unique for its time, and far more democratic than the process used in most other countries.

When federation began to be seriously discussed in 1890s, there were a couple of different models that the Australians could consider using.

The British Constitution

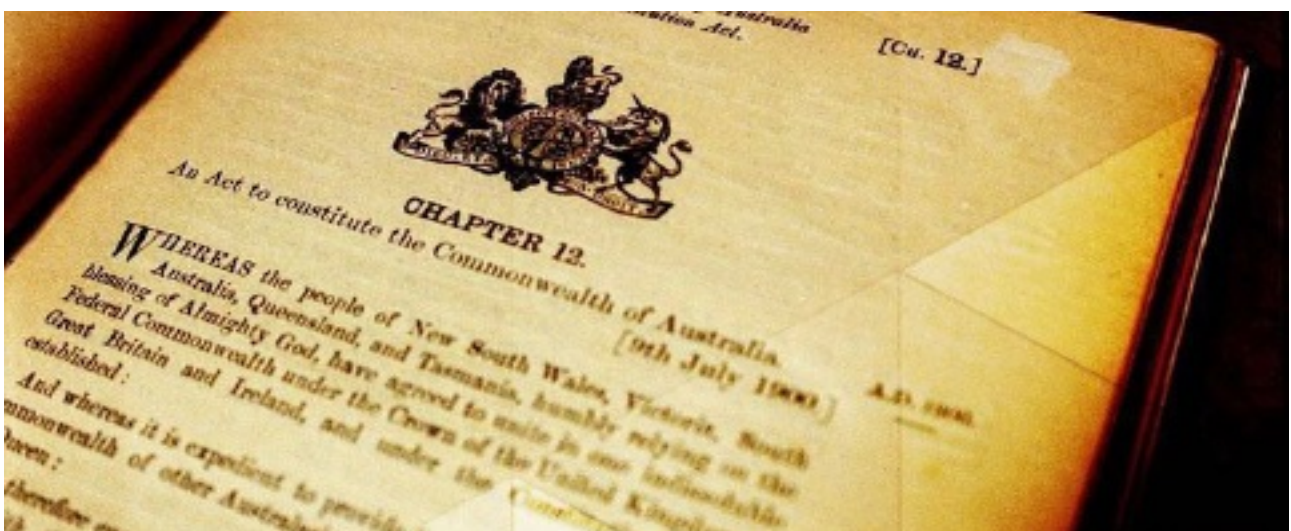
First, there was the British Constitution. But it does not exist as a single document. Instead it is mix of royal powers and laws passed by Parliaments over centuries as well as traditional practices and understandings. When British people talk about what is 'constitutional', they mean what is the right or appropriate thing to do consistent with fundamental constitutional principles. In Australia, in contrast, we mean what is permitted by the written Constitution.

Australia could not take the British approach because it was proposing to form a federation. This meant that instead of being a country with just one government and Parliament, Australia would have a central level of government to do things for the whole country, such as defence, immigration and foreign affairs, and six State governments to manage local matters like police, education and health. When there are separate, sometimes competing, governments, you need written and binding rules to set out which level of government gets which powers, what limits are placed on those powers and how to deal with fights about powers. So Australia needed a written Constitution to fix those rules and could not follow the British model.

The United States Constitution

The great example of a federation with a written Constitution was the United States of America. Some of the framers of the Australian Constitution, such as Henry Parkes, Andrew Inglis Clark and Alfred Deakin, had visited the United States and studied its history and its Constitution. So it was natural for them to look at how the United States Constitution was formed.

The Australian Constitution
Source: Wiki Commons





The Constitution of the United States
Source: IStock

But the US history was quite different from Australia's. The American Constitution came as a result of a War of Independence. It showed a distrust of government. The people had had a bad experience with a government that they felt they had to rebel against, and they didn't want that to happen again. So their Constitution and its early amendments focused on limiting the powers of government and protecting the rights of the people, including a 'right to bear arms'.

Australia's federal Constitution came about in a time of peace. It was the result of a desire of the colonies to join together to cooperate over matters that could best be dealt with centrally. The people who were arguing for federation thought that Parliaments and governments could be trusted to respect rights and that greater constitutional protection for them was therefore not needed. Their focus was instead on dividing power between the Commonwealth and the States.

Another big difference was how the Constitution was written and adopted. In the United States this was done by representatives of the States, meeting at a 'Convention' (ie a formal meeting held over weeks) in Philadelphia in 1787. Once they had agreed on a Constitution, it was sent to the existing 'Confederation Congress', which was the Parliament created in the first American attempt at making a federation. It then sent the Constitution out to be approved by each of the States at their own Conventions. While the State Conventions were elected, the people did not

get a direct say in approving the Constitution. There was no referendum. Even though the United States Constitution opens with the famous words "We the People", the people only really had a say indirectly, through their elected representatives.

The Australian process

Australia started with the United States approach. It had a Convention in 1891, with members chosen by each State. Its members drafted and debated a Constitution. At the end of the Convention it was then sent to the various Australian colonial Parliaments to approve. But they got distracted by politics, drought and a financial crisis, and nothing happened.

Many of the people still really wanted federation. So they formed federation leagues (ie clubs to discuss and argue for federation) and held their own Convention in Corowa in 1893. There were lots of fine words, but then someone got up and said that they wanted more than words – they needed a plan for action. So they worked out a plan. There would be another Convention, but this time its members would be elected directly by the people. Once it had agreed on a new Constitution, it would then go to the people of each of the colonies, who would vote to approve or reject it in a referendum. This was a radical move. Neither the British, nor the Canadians, nor the Americans had ever asked the people to vote on their Constitution.



UK Houses of Parliament
Source: Wiki Commons

Some thought it would be too hard for ordinary people to understand. They thought approval by expert Conventions would be better. But others thought that the people would become much more interested if they got a real say in the result. This turned out to be true. Once the people knew that they would have a real say, they became much more involved in discussing and debating the idea of federation and what should be in the Constitution. Even those who didn't have the right to vote, such as women in most of the colonies, were able to participate by sending petitions to the Convention, writing letters to the newspapers and attending meetings in their local town hall.

The other big difference from the United States was that Australia was still a colony of the British Empire. Unlike the Americans, the Australian colonies had not rebelled. To make the new Constitution legally binding on all the Australian colonies, it had to be passed as a law by the British Parliament. But the people in Australia wanted to control what was going to be in the Constitution. They didn't want the British making these decisions for them.

The Commonwealth Constitution was not only written in Australia, by delegates elected by the people of the Australian colonies, but it was approved by a vote of the people in each of the Australian colonies. It was then taken to Britain by a representative of each of the Australian colonies. This group, led by Edmund Barton, told the British Government that they couldn't agree to changing any of the words in the Constitution, because they had been authorized by the vote of the people in referendums. The British still insisted on some changes – especially about whether British courts would get the final say on legal cases in Australia.

After lots of discussion and some angry words, the British backed down on most of their demands and a compromise was reached about whether British courts would have the final say. The British courts could still have the last word on business matters, but the Australian High Court would decide constitutional issues about the powers of the Commonwealth and the States and could decide whether to permit an appeal to a British court.

The Constitution was then passed by the British Parliament. It gained its legal force from being a British law and its political force from being approved by the people in referendums.



Topic 6.2: Lesson/ Activities Three

The influences on the making
of the Constitution



AUSTRALIAN
CONSTITUTION
CENTRE

Time/Lesson

- 1 hour

Learning Goal

Students will understand that:

- The writers of the Constitution drew on examples from Constitutions in different countries.
- The factors that influence constitution-making, such as whether it is done during war or peace and whether the people have a direct role in approving it.

Rationale

Understanding how the Constitution was made aids understanding of its purpose.

Success Criteria

Students will know...

- Australia has a written Constitution, unlike Britain.
- How the Westminster Parliament influenced the Constitution and the Australian parliament through the adoption of a responsible government.
- How the US Constitution influenced the Commonwealth Constitution by providing a model for the federal system, including the Senate.

Teaching Reference Document

- TRD 51: Comparing the Constitution-making process with the United Kingdom and the United States

Resources

- Thinking Routine: When, why, how, who: Resource 1
- Thinking Routine: Creative Questioning: Resource 2
- PCQ chart: Resource 3

Teacher Instruction

- Ask students to consider the 'when, why, how and who' of constitution-making and how a Constitution can be different depending on each factor (Resource 1).
- **When** - The British Constitution has origins that can be traced back over 1000 years, the US Constitution was mainly written in 1787 and the Australian Constitution was written over 100 years later in the 1890s. What difference does this timing make? How did the democratic system and respect for the role of ordinary working people change over that time? Does that explain why the Australian people (but still with a limited franchise) got to approve the Constitution directly in a referendum, but that no such thing happened in Britain and America?
- **Why** - The British Constitution was developed during a struggle between the King and Parliament. The American Constitution was developed during a War of Independence. The Australian Constitution was developed during peace time as a way to bring colonies together to achieve uniform aims. How do these different influences affect what is included in the Constitution?
- **How** - The British Constitution was made and can be revised by Parliament passing legislation. The American Constitution was made and can be revised by conventions or votes of State legislatures. The Australian Constitution was made by a combination of the people voting in referendums and the UK Parliament passing a law. But it can only be revised with the approval of the people in a referendum. What difference does this make to what goes in the Constitution? For example, in Australia must constitutional changes be less technical and more understandable because they have to be approved by a vote of the people?
- **Who** - Who were the people involved in constitution-making - the writers of the Constitution, the members of the colonial Parliaments, the people, the British Government and Queen Victoria? Would they all still play a role today?
- Discuss why the Australian Constitution is in a British Act of Parliament. Use the thinking routine 'Creative Questioning' (Resource 2) to consider how the Constitution might be different if the 'when, why, how and who' facts were different. How would the Constitution have been made, and who would have been involved if Australia had rebelled against Britain?

Differentiation

- Lesson activities allow for different learning styles and differentiation by outcome.
- Thinking routines can be used as templates with suggested responses, as support, where required.
- The assessment task can be extended to offer justified comment on the challenges faced by the writers of the Constitution in getting it approved, who should do it (eg the people, the UK Parliament or the Queen) and how it should be done (Resource 3: Problems, Challenges and Questions (PCQ Chart) may be used).

Assessment Strategies

- Thinking Routine: When, why, how, who: Resource 1
- Thinking Routine: Creative Questioning: Resource 2
- PCQ chart: Resource 3



Thinking Routine

When, why, how and who

- Consider **when** the Constitution was made? What differences might there be if it were made 100 years earlier or later?
- **Why** was the Constitution made? Would it have made a difference if it were made as a result of a war, or to achieve independence from Britain, or to provide more effective defence against possible invasion?
- **How** was the Constitution made and would the process for making it be different today?
- **Who** were the people involved in making the Constitution? Might it be different if other people were involved (eg women and Aboriginal and Torres Strait Islander people)?

Thinking Routine

Creative Questioning

1. Imagine that the Australian colonies rebelled against the British Crown in the 1890s and refused to be a colony anymore. What might have happened? Write a list of questions.
2. Look over the list and transform some of the questions into ones that challenge the imagination. Do this by transforming questions along the lines of:
 - What would it be like if...
 - What would change if...
 - How would it be different if...
 - Suppose that...
3. Choose a question to imaginatively explore. Explore it by imaginatively playing out its possibilities. Do this by: writing a story or essay, drawing a picture, creating a play or dialogue, inventing a scenario, conducting an imaginary interview, or conducting a thought experiment.
4. Reflect: What new ideas do you have about the topic, concept, or object that you didn't have before?

P	What are the problems associated with this?	
C	What are the challenges associated with this?	
Q	What are my questions?	

PCQ Chart