

# BEYOND ‘IGNORANCE AND APATHY’: PUBLIC PERCEPTIONS OF THE AUSTRALIAN CONSTITUTION DURING A REFERENDUM

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*While Australians might only rarely engage with the Constitution, when they are called on to do so in a referendum, their perceptions of the role, content and value of the Constitution are critical. In this article we use original large-n survey data to measure citizens' knowledge and perception of the Constitution, both in a general sense and in relation to the specific reform issue of including a First Nations Voice. We demonstrate that while most Australians have only a basic understanding of the Constitution, the variation in what they do know informs their perspective on proposed amendments in a meaningful way. The study therefore has important implications for ongoing civic education efforts and post-referendum analysis.*

## I INTRODUCTION

On 14 October 2023, Australians took part in a constitutional referendum on establishing a First Nations Voice. This was an historic opportunity for Australians to actively engage with the *Constitution* and participate in its design by voting on the proposed amendment – only the 45th opportunity to do so in Australia's history, and the first in the 21st century. Indeed, this was the first constitutional vote for an entire generation of Australians. Ultimately, the amendment was not supported, failing to achieve a majority Yes vote in any of the six states and only attracting about 40 per cent support nationwide.<sup>1</sup> The result is consistent with Australians' long-standing hesitance towards changing the *Constitution*—only eight amendments have been supported

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<sup>1</sup> Australian Electoral Commission (AEC), ‘Referendum Tally Room’ (Web Page, 2 November 2023)

<<https://tallyroom.aec.gov.au/ReferendumNationalResults-29581.htm>>.

since 1901 – ostensibly confirming that Australia is ‘constitutionally frozen’.<sup>2</sup> In the coming months and years, much will be written on the factors contributing to the rejection of the proposed amendment. In this article, we aim to put that discussion in the context of Australians’ broader understandings of the role and value of the *Constitution* in society and in the Australian legal system. Specifically, it is often theorised that most Australians have a limited understanding of the *Constitution*, and that this limited understanding presents a barrier to constitutional change. For instance, Harris argues that a ‘profound lack of knowledge’ inspires a fear of change: ‘Who would interfere in the operations of a machine which one knew performed an important function but which one did not understand the workings of, and which could cause catastrophic consequences if mishandled?’<sup>3</sup> In this article, we test that hypothesis from the literature by examining public understandings of the Australian *Constitution*, and the relationship between these understandings and willingness to change the constitutional document.

We begin this article by considering the theoretical context of Australians’ attitudes towards the *Constitution* and often-cited lack of understanding of the founding document. From there, we describe the methodology used in this study, focusing on original large-n survey data analysing public perceptions of the *Constitution* and the Voice proposal. We then report our findings of this study, highlighting a more nuanced relationship between knowledge of the *Constitution* and apparent willingness to change it. Specifically, we find that while many Australians believe they have a modest understanding of the *Constitution*, the *substance* of that understanding – that is, their perception of what the *Constitution* contains or does - appears more important than the *level* of understanding, at least in relation to attitudes towards the Voice proposal.

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<sup>2</sup> Geoffrey Sawer, *Australian Federalism in the Courts* (Melbourne University Press, 1967), 208.

<sup>3</sup> Bede Harris ‘A Survey of Voter Attitudes to Constitutional Reform’ (2014) 12(1) *Canberra Law Review* 110, 111 (‘Harris’).

## II CONTEXT OF FIRST NATIONS VOICE REFERENDUM

The journey to the Voice referendum on 14 October 2023 bears some discussion, as it provides important context for the analysis that follows.<sup>4</sup> We take the call for a constitutional Voice in the Uluru Statement from the Heart on 26 May 2017 as our starting point, although we acknowledge that calls for Indigenous representation and recognition in the *Constitution* long predate that document, and that the Statement itself was the direct result of a two-year consultation process.<sup>5</sup> The Uluru Statement, expressed as an invitation to all Australians to walk together towards reconciliation, identified the need for a constitutionally-protected body that could advise Parliament and the government on matters affecting First Nations Peoples.<sup>6</sup> The proposal was not met with enthusiasm from the government of the day, with then-Prime Minister Malcolm Turnbull expressing concern that the Voice would act as a third chamber of Parliament, vetoing elected representatives and undermining the democratic process.<sup>7</sup> In the 2019 budget, the Morrison government included funding for a constitutional referendum that did not eventuate.<sup>8</sup> Instead, a co-design process was tasked with developing models for a legislated Voice, and exploration of a constitutionally-enshrined model was expressly excluded from the Terms of Reference.<sup>9</sup> Nevertheless, the co-design process reported clear public submissions in favour of a constitutional Voice in its final report in 2021.<sup>10</sup>

In 2022, the Labor Party campaigned with a promise to hold a constitutional referendum to establish the Voice, and Prime Minister Anthony Albanese opened his election victory speech by reiterating that

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<sup>4</sup> For a more detailed account, see Sophie Rigney, 'The Proposal for the Voice to Parliament: Placing the Referendum Proposal in Context' (2023) 34 *Public Law Review* 110, 111–5.

<sup>5</sup> Megan Davis and George Williams *Everything you need to know about the Uluru Statement from the Heart* (NewSouth Publishing, 2022), 76–77. (Davis and Williams) The Regional Dialogues included hundreds of First Nations representatives and adopted a consensus approach.

<sup>6</sup> Referendum Council 'Uluru statement from the heart' (2017).

<sup>7</sup> Davis and Williams, (n 5) 173. Former Prime Minister Scott Morrison also dismissed the Voice as a 'third chamber': Davis and Williams, (n 5) 174.

<sup>8</sup> *Ibid* 99.

<sup>9</sup> *Ibid*.

<sup>10</sup> Marcia Langton and Tom Calma, *Indigenous Voice Co-design Process Final Report to the Australian Government* (Australian Government, 2021) 7.

promise.<sup>11</sup> Through 2022 and early 2023, the Albanese government engaged in further consultation with First Nations leaders and political stakeholders. Notably, in April 2023 Opposition Leader Peter Dutton announced that the Liberal-National Coalition would not be supporting the proposed constitutional change.<sup>12</sup> While key figures within the party subsequently resigned in protest at that position,<sup>13</sup> the announcement highlighted that this referendum would not have bipartisan support, historically a key factor in the approval or rejection of a proposed change.<sup>14</sup> The referendum Bill passed Parliament on 19 June, 2023,<sup>15</sup> and on 30 August, 2023 the Prime Minister announced that the referendum would be held on 14 October 2023.<sup>16</sup>

The Yes campaign focussed on, *inter alia*, ‘Supporting an aspiration put forward by Aboriginal and Torres Strait Islander people over decades’ and ‘Recognising Aboriginal and Torres Strait Islander peoples as the First Peoples of Australia’ to ‘ensure people have a better life’.<sup>17</sup> The campaign also emphasised that, through the First Nations Regional Dialogues leading

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<sup>11</sup> Anthony Albanese, ‘Election Victory Speech’ (Speech, Canterbury-Hurlstone Park RSL Club, 21 May 2022).

<sup>12</sup> See, eg, Josh Butler, ‘Peter Dutton confirms Liberals will oppose Indigenous voice to parliament’, *The Guardian* (Web Page, 5 April 2023) <<https://www.theguardian.com/australia-news/2023/apr/05/peter-dutton-confirms-liberals-will-oppose-indigenous-voice-to-parliament>>.

<sup>13</sup> Notably, Shadow Attorney-General Julian Leeser and former Indigenous Affairs Minister Ken Wyatt - see, eg, Lisa Visentin, Paul Sakkal, Natassia Chrysanthos and Angus Thompson, “I believe the time for the Voice has come”: Leeser resigns from opposition frontbench’ *Sydney Morning Herald* (Sydney, 11 April 2023).

<sup>14</sup> George Williams and David Hume, *People Power: The History and Future of the Referendum* (UNSW Press, 2010).

<sup>15</sup> Parliament of Australia, ‘Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023’ (Web Page, 19 June 2023) <[https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bId=r7019](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r7019)>.

<sup>16</sup> Tom Williams, Brianna Morris-Grant and Andrew Thorpe ‘Indigenous Voice to Parliament referendum date announced by Prime Minister Anthony Albanese — as it happened’, *Australian Broadcasting Service News* (Online Timeline, 30 August 2023) <<https://www.abc.net.au/news/2023-08-30/indigenous-voice-to-parliament-referendum-date-announcement-live/102786994>>.

<sup>17</sup> Australian Government, *Your Official Referendum Pamphlet* (2023) (‘Australian Government’), 14.

to the Uluru Statement, the Voice was the preferred form of constitutional recognition collectively endorsed by First Nations Peoples from across Australia.<sup>18</sup> The proposal attracted support from many prominent Indigenous leaders, legal scholars and judges.<sup>19</sup> Conversely, the No campaign set the proposal up as 'risky' and 'lacking detail', arguing that there was too much uncertainty to support the change.<sup>20</sup> Professors Aroney and Gerangelos spoke against the Voice, citing concerns that the structure and wording of the proposed Chapter IX and s129 of the *Constitution* would have uncertain implications for the relationship between the Voice and existing branches of government, recognition of First Nations Peoples as distinct from the 'Australian people', the mechanisms for the Voice making representations, and the treatment of those representations.<sup>21</sup> The perennial 'if you don't know, vote No' common to many constitutional referendums also appeared.<sup>22</sup> Though misinformation arose on both sides, analysis suggested it featured more heavily within the No campaign,<sup>23</sup> leading over seventy public law academics to pen an open letter clarifying the factual boundaries of the debate, such as debunking the claim that the Voice would introduce race into the *Constitution*.<sup>24</sup> Additionally, First

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<sup>18</sup> See, eg, Davis and Williams (n 5), 142.

<sup>19</sup> See, eg, Nicole Hegarty, 'Legal experts offer Voice to Parliament backing as referendum looms', *ABC News* (Web Page, 14 April 2023) <<https://www.abc.net.au/news/2023-04-14/voice-to-parliament-referendum-committee-inquiry/102222928>>.

<sup>20</sup> Australian Government (n 17).

<sup>21</sup> Nicholas Aroney and Peter Gerangelos, 'Submission to the Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum', 21 April 2023. See especially arguments raised at paragraphs 5, 9, 21 and 36.

<sup>22</sup> Amy Remeikis, 'Australians look set to vote against plan for Indigenous voice to parliament', *The Guardian* (Web Page, 12 October 2023) <<https://www.theguardian.com/australia-news/2023/oct/12/australians-look-set-to-vote-against-indigenous-voice-in-parliament>>. See also George Williams and David Hume, *People Power: The History and Future of the Referendum* (UNSW Press, 2010) 204.

<sup>23</sup> See, eg, Gabrielle Appleby, Paul Kildea and Sean Brennan, 'Expert Analysis of the 'Official Yes/No Cases' (Australian Electoral Commission, 28 August 2023)

<<https://www.gtcentre.unsw.edu.au/sites/default/files/documents/Expert%20Analysis%20Yes%20No%20Pamphlet%2028%20August%20FINAL.pdf>>.

<sup>24</sup> Open Letter from Gabrielle Appleby et al to the Australian people, 'Australian public law teachers on what the Australian people need to know before they vote at the referendum', (9 October 2023) <<https://www.gtcentre.unsw.edu.au/sites/default/files/documents/Public%20Law%20Teachers%20Voice%20Letter%20FINAL.pdf>>. The concept of race is

Nations women and Senators Jacinta Nampijinpa Price and Lidia Thorpe received significant media attention in their opposition to the Voice - albeit for very different reasons<sup>25</sup> - undermining survey data that suggested a strong majority of First Nations Peoples supported the Voice.<sup>26</sup> Polling data through 2023 tracked declining support for the Voice, culminating in a final ballot of approximately 40% in favour of the proposed change, 60% against. Speaking on 14 October, the Prime Minister noted that there had been ‘extraordinary ignorance’,<sup>27</sup> and analysis both during and after the campaign and noted the way misinformation about the proposed change had resonated with an under-informed public.<sup>28</sup> The referendum result therefore prompts a timely re-examination of Australians’ knowledge and understanding of the *Constitution*.

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already enshrined in the Constitution, for example at s 51(xxvi). See also Michael Breen, ‘The myth of neutrality and why Australia needs a Voice’, *Pursuit* (Blog Post, 11 September 2023) <<https://pursuit.unimelb.edu.au/articles/the-myth-of-neutrality-and-why-australia-needs-a-voice>>. One of the main purposes of uniting under a constitution was the perceived need to protect Australia from the threat of invasion from persons of non-white races, evidenced in the Hansard of the *Immigration Restriction Act 1901* (Cth), one of the first pieces of legislation passed by the newly formed Federal Parliament.

<sup>25</sup> Senator Jacinta Nampijinpa Price, ‘Address to the National Press Club of Australia’ (Speech, National Press Club, 18 September 2023) <https://www.liberal.org.au/latest-news/2023/09/18/shadow-minister-indigenous-australians-speech-national-press-club>>. See also Sarah Basford Canales, ‘Lidia Thorpe says voice referendum should be called off and attacks ‘powerless advisory body’’, *The Guardian* (Online, 16 August 2023).

<sup>26</sup> See, eg, Ipsos, ‘First Nations Voice Sentiment – Jan 2023’ (Web Page, 27 January 2023) <[https://www.ipsos.com/sites/default/files/2023-01/Ipsos%20-%20TAPC%20Methodology%20Disclosure%20Statement\\_First%20Nations%20Voice%20Sentiment.pdf](https://www.ipsos.com/sites/default/files/2023-01/Ipsos%20-%20TAPC%20Methodology%20Disclosure%20Statement_First%20Nations%20Voice%20Sentiment.pdf)>.

<sup>27</sup> Anthony Albanese, ‘Doorstop Interview - Sydney’ (Web Page, 14 October 2023) <<https://www.pm.gov.au/media/doorstop-interview-sydney-11>>.

<sup>28</sup> See, eg, Linton Besser, ‘The Voice campaign was infected with disinformation. Who’s in charge of inoculating Australians against lies?’, *ABC News* (Web Page, 17 October 2023) <<https://www.abc.net.au/news/2023-10-17/voice-referendum-infected-disinformation-australians-lies/102981108>>.

### III THE ROLE OF AUSTRALIANS' UNDERSTANDING OF THE CONSTITUTION IN REFERENDUMS

Lawyers, scholars and policymakers have long observed the lack of remarkability of the Australian *Constitution* and its corresponding failure to capture public imagination. Arcioni and Stone noted 'A striking feature of the Australian *Constitution* is the muted role it plays in defining the social and political culture of the nation',<sup>29</sup> while former High Court judge Justice Patrick Keane famously declared the Australian *Constitution* a 'small brown bird' in comparison to the 'magnificent and much admired American eagle'.<sup>30</sup> Similarly, Craven argued that 'Saying the Australian *Constitution* does not have a strong hold upon the popular imagination is like saying fish survive better on water than land.'<sup>31</sup>

From its earliest debates at the Constitutional Conventions, the Australian *Constitution* has been an elite-driven affair. These constitutional debates did not include women or First Nations Peoples. As Dodson writes 'We (Indigenous Australians) were invisible in the processes that led up to Federation and the adoption of the Constitution....'.<sup>32</sup> However, while arguably invisible, the framers were not blind to the impact of the *Constitution* on issues of race. The topic was widely debated, but was focussed mainly around how to respond to a perceived threat of invasion from the North.<sup>33</sup> Aboriginal Peoples were explicitly excluded from the census,<sup>34</sup> and the framers decided not to include suggested provisions that would have prevented the enactment laws that discriminated against people

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<sup>29</sup> Elisa Arcioni and Adrienne Stone, 'The small brown bird: Values and aspirations in the Australian Constitution' (2016) 14 *International Journal of Constitutional Law* 60, 60 ('Arcioni and Stone').

<sup>30</sup> Justice P A Keane, 'In Celebration of the *Constitution*' Address to the National Archives Commission (12 June 2008).

<sup>31</sup> Greg Craven, *Conversations with the Constitution: Not Just a Piece of Paper* (UNSW Press, 2004) 9.

<sup>32</sup> Mick Dodson, 'The Continuing Relevance of the Constitution for Indigenous Peoples' (Speech, ABC TV forum, July 2008) 3 <<https://core.ac.uk/download/pdf/156622527.pdf>>.

<sup>33</sup> Susan Bird and Jo Bird, 'Alien Nation: Redefining the Alien in Law and Science Fiction' in Karen Crawley, Thomas Giddens, and Timothy D Peters (eds) *Routledge Handbook of Cultural Legal Studies* (Routledge, 2024).

<sup>34</sup> Section 127 of the *Constitution* originally read 'in reckoning the numbers of people of the Commonwealth, or of a State or other part of the Commonwealth, *aboriginal natives shall not be counted*' emphasis added – *Commonwealth of Australia Constitution Act 1901* (Cth).

on the basis of race.<sup>35</sup> Australia's *Constitution*, as an Act of the Imperial Parliament, stands as an element of the colonial project<sup>36</sup> which 'from the outset denied and extinguished Aboriginality'.<sup>37</sup> As Watson asserts 'The British never attempted to enter into any treaty agreements with any First Nations Peoples...we have become displaced, and our lands occupied and developed without our consent.'<sup>38</sup> Williams writes '[t]he Australian Constitution was not written as a people's constitution...The document does not expressly embody the fundamental rights or aspirations of the Australian people'.<sup>39</sup> Low voter turnout was recorded when the constitutional drafts went to the polls,<sup>40</sup> and engagement with the *Constitution* continued to be the norm post-federation. Empirical research into Australians' knowledge and understanding of the *Constitution* remains limited, but has tended to confirm low public engagement with the foundational document. For example, the Civics Expert Group's 1994 study of constitutional knowledge highlighted limited awareness of the *Constitution*'s contents, reporting in its main findings that 'There is a High Level of Ignorance about Australian System of Government and its Origins.'<sup>41</sup> The Civics Expert Group Survey included both an initial qualitative phase, involving 24 focus groups, and a larger telephone survey of 2,500 participants. The objectives of the survey were to measure the public's knowledge and understanding of how government in Australia

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<sup>35</sup> George Williams, 'Race and the Australian constitution' (2013) 28(1) *Australasian Parliamentary Review* 4, 6–7; Dodson (n 32), 3.

<sup>36</sup> Irene Watson, 'In the Northern Territory Intervention: What is Saved or Rescued and at What Cost?' (2009) 15(2) *Cultural Studies Review* 45, 45.

<sup>37</sup> Ibid 49. See also Tony Birch, 'On Recognition' (2017) 227 *Overland* 43, 43; Celeste Liddle, 'Sovereignty and the Constitutional Recognition Debate' (2015) 81 *Australian Options* 7, 7.

<sup>38</sup> Irene Watson, 'The Future is our Past: We Once were Sovereign and We Still Are' (2012) 8(3) *Indigenous Law Bulletin* 12, 12.

<sup>39</sup> Williams (n 35), 6.

<sup>40</sup> Australian Electoral Commission (AEC), 'The Road to Federation Factsheet' (Web Page) <[https://www.aec.gov.au/about\\_aec/Publications/Fact\\_Sheets/fact\\_sheets/the\\_road.pdf](https://www.aec.gov.au/about_aec/Publications/Fact_Sheets/fact_sheets/the_road.pdf)>. Turnout was as low as 41% in Tasmania. See also Kathleen Dermody, 'The 1897 Federal Convention Election: Success or Failure?' (Papers on Parliament No 30, Parliament of Australia, November 1997) <[https://www.aph.gov.au/About\\_Parliament/Senate/Powers\\_practice\\_n\\_procedures/pops/pop30/c06](https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/pops/pop30/c06)>.

<sup>41</sup> Civics Expert Group, *Civics and Citizenship Education* (Australian Government Publishing Service, 1994) ('Civics Expert Group').



works, including knowledge of the *Constitution*.<sup>42</sup> Extensive questioning of persons over the age of 15 years revealed a startling lack of knowledge and misconceptions about the *Constitution*. Twenty years later, Harris' 2014 survey of Australians' attitudes towards constitutional reform highlighted a perceived lack of civic awareness of core features of the *Constitution* and Australia's political system.<sup>43</sup> Specifically, Harris identified that even though 87% of survey participants believed Australia had a written constitution, over half said they were never taught about how the *Constitution* works in school, and 95% thought there should be more education about the *Constitution* in schools.<sup>44</sup>

Limited public understanding of the *Constitution* is not a uniquely Australian phenomenon – comparative studies highlight low public engagement with foundational legal documents in other countries as well.<sup>45</sup> However, Australia's system of compulsory voting means that attempts to change the *Constitution* require input from all citizens, regardless of their interest or engagement with the *Constitution*. On such occasions, public understanding (or lack thereof) becomes a central issue.

Historically, Australians have proved reluctant to change the *Constitution*, but there is some debate as to whether most proposed changes are rejected because voters are 'ignorant, apathetic, cynical, perverse, or some terrifying combination', or 'brimming with robust good sense'.<sup>46</sup> The weight of literature tends to side with the former position.<sup>47</sup> This position also has intuitive resonance – it makes sense that if people are operating in a low-information environment, they would be hesitant to change the *Constitution*.

However, a deeper analysis raises some gaps in this approach. First, on the few occasions when voters have approved constitutional change, it is not always clear that their approval is grounded in a deep understanding of the *Constitution* or the implications of change. The 1967 referendum is a good

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<sup>42</sup> Ibid.

<sup>43</sup> Harris (n 3) 110.

<sup>44</sup> Ibid, 114–5.

<sup>45</sup> See, eg, Michael Kammen, *A Machine That Would Go of Itself: The Constitution in American Culture* (Routledge, 2017).

<sup>46</sup> Michael Coper, *Encounters with the Australian Constitution* (CCH, 1987) 380 ('Coper').

<sup>47</sup> See, eg, Harris' earlier argument that lack of constitutional knowledge inspires a fear of change - Harris (n 3).

example here – while the populace resoundingly approved the changes relating to First Nations Peoples, the absence of an organised ‘No’ campaign meant that the ‘Yes’ side was free to present a more expansive narrative around the significance and impact of the change.<sup>48</sup> At the time, Sawyer argued that the ‘substantive importance [of the proposed amendments] has been much exaggerated’,<sup>49</sup> suggesting that some citizens misunderstood the limited nature of the proposed changes and instead thought they were approving more ambitious amendments to advance the legal and social outcomes for First Nations Peoples.

Second, even if Australians do have a limited understanding, there is still scope for variations in what they know about the *Constitution* and how they perceive its role – and, in turn, how they react to proposed changes. For example, Harris’ study added further nuance to the typical view that Australians are unaware of the *Constitution*. He noted that despite respondents’ perceived lack of knowledge of the *Constitution*, they nevertheless had clear opinions about how they thought the system should operate, and the types of values and rights the *Constitution* should emphasise and protect.<sup>50</sup> This insight suggests that even if public discourse on the *Constitution* is usually limited, when interest does rise – such as when citizens are called on to vote on an amendment – Australians do have a set of understandings from which to draw and evaluate proposed changes to the *Constitution*. McAllister and colleagues’ Australian Constitutional Referendum Study, conducted shortly after the 1999 republic referendum, examined values through the lens of a specific constitutional issue and made similar findings about citizens’ ability and willingness to engage with the *Constitution*.<sup>51</sup> Of particular note was McAllister’s observation that 43% of respondents said they had decided their position on the republic issue ‘a long time’ before the referendum was held. This result suggests that citizens have a readily-accessible conceptualisation of the *Constitution* and are able to integrate new information or evaluate proposed changes

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<sup>48</sup> Russell McGregor, ‘An Absent Negative: The 1967 Referendum’ (2008) 5(2) *History Australia* 44.1.

<sup>49</sup> Geoffrey Sawyer, ‘Between the Lines’, *Canberra Times* (17 May 1967), cited in McGregor (n 48) 44.5.

<sup>50</sup> Harris (n 3).

<sup>51</sup> Ian McAllister, ‘Elections without cues: The 1999 Australian republic referendum’ (2001) 36(2) *Australian Journal of Political Science* 247 (‘McAllister’); John Higley and Ian McAllister, ‘Elite division and voter confusion: Australia’s republic referendum in 1999’ (2002) 41(6) *European Journal of Political Research* 845.

such as the republican question well before they are formally called on to do so.

In light of the 2023 referendum result, it is therefore important to critically engage with the hypothesis that limited public knowledge of the *Constitution* is a barrier to constitutional change. Specifically, it is important to test how knowledge, however limited, influences attitudes towards change – is it ignorance and apathy itself that defeats amendments, creating a vacuum quickly filled by partisanship and other forces, or is there scope to identify a more nuanced role for citizens' knowledge and interpretation of the *Constitution* in evaluating proposed amendments?

#### IV METHOD

This article draws on several data points to test the hypothesis that lack of constitutional knowledge presents a barrier to constitutional reform. Primarily, we draw on our own original data set, the 2021 Australian Constitutional Values Survey ('ACVS'). The ACVS made use of an online survey panel of over 1500 Australian respondents randomly sampled with quotas for geographic location (State, and city/regional splits), gender and age to produce a nationally representative sample.<sup>52</sup> The survey adopted a two-staged approach to uncover participants' understanding of the *Constitution*. Questions were initially drafted by the authors of this paper, but were reviewed and discussed with other constitutional scholars and First Nations leaders. As a first stage, we measured general constitutional attitudes, capturing respondents' self-rated knowledge and perceptions of the *Constitution* in broad terms. Items in this broad stage aimed to tap into respondents' ideas about the *Constitution* that, while likely not activated in day-to-day life, are readily accessible when attention is drawn to the *Constitution*, such as in a referendum. As a second stage, we asked several questions about respondents' attitudes towards the proposal to include a First Nations Voice in the *Constitution*. This narrower focus on a particular case study, in conjunction with the items in the first stage, enables us to examine how general ideas about the *Constitution* inform perceptions of specific constitutional issues, and conversely what attitudes towards specific issues reveal about broader perceptions of the *Constitution*.

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<sup>52</sup> This project thus continued a long-running series of public attitude surveys beginning in 2008. The 2021 *Australian Constitutional Values Survey* was conducted for the researchers by OmniPoll.

The timing of the survey is noteworthy as our study took place at a time when debate on the Voice had achieved some national attention, but a full year before the Albanese government committed to holding a referendum and two-and-a-half years before the referendum itself. This timing makes it ideal to test baseline constitutional knowledge, free from the confounding effects of a referendum campaign. In addition to information on the Uluru Statement and ongoing reporting about the proposed Voice that was available at the time,<sup>53</sup> ACVS respondents were provided with a brief summary of the Voice proposal, namely, that the Voice would be a body comprised of Aboriginal and Torres Strait Islander representatives who could advise Parliament and the government on policies affecting First Nations Peoples. This information on the core proposal captured the general terms of the proposed s129 put to the Australian people during the referendum, giving us a degree of confidence that attitudes towards the Voice measured in the ACVS broadly reflect attitudes towards the constitutional amendment. However, we also recognise that attitudes towards the Voice at both the individual and aggregate levels no doubt changed over time, especially closer to the referendum date. Accordingly, we supplement our primary analysis from the Australian Constitutional Values Survey with more recent polling data throughout 2023, and compare our analysis to the final ballot result from 14 October 2023. We also draw on analysis from the Australian Constitutional Referendum Study, a survey conducted by the Australian National University in the weeks following the referendum.<sup>54</sup> In particular, as will be noted in the analysis below, many of the relationships between variables and attitudes towards the Voice closely match post-referendum polling, giving us confidence that even though the proportion of respondents expressing a particular view changed between the 2021 ACVS and the referendum

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<sup>53</sup> A NewsBank database search for the terms ‘Voice’ and ‘Referendum’ revealed that Australian newspapers ran 586 articles on the topic between February 2020 and February 2021 (when our survey took place). Therefore, information about the Voice was circulating in traditional media at the time, and was accessible to those who were interested. Thus, the public could have reasonably been aware of the proposed Voice, but this does not mean that they were interested enough at the time to read what was available to them.

<sup>54</sup> The survey consisted of a sample of 4219 respondents, predominantly completing an online survey with 1.3% of respondents completing through Computer Assisted Telephone Interviewing – Nicholas Biddle, Matthew Gray, Ian McAllister and Matt Qvortrup, ‘Detailed analysis of the 2023 Voice to Parliament Referendum and related social and political attitudes’, (ANU Centre for Social Research and Methods, 28 November 2023), 86.

itself, the drivers and influencing factors we identify in our analysis are likely to have remained important factors through to the 14 October referendum.

Setting out the survey's items in greater detail, the first – broad – stage opened by simply asking respondents whether they had heard of the *Constitution* or not. Those that had (87%) were given an open-text option to 'tell us anything **you know** about the Australian Constitution and **what it contains**', and to rate their knowledge of the *Constitution* (nothing, a little, or quite a lot). The open-text response is critical to understanding Australians' views of the *Constitution*. While closed-text (e.g. Likert scale) items can be useful to assess targeted information, they risk tainting the data by enabling respondents to guess at an answer or provide an answer that does not reflect their level of understanding. Items that focus on values can prove even more difficult.<sup>55</sup> Accordingly, starting with an open-text question allows for a more accurate picture of respondents' current understanding of the *Constitution*. The open-text responses were independently coded by two researchers based on an agreed codebook of core themes arising in the answers. Inter-rater reliability was generally high, and it was possible to reconcile the initial coding into one consolidated analysis of the open-text responses.

After answering the items on general understandings of the *Constitution*, respondents were presented with second-stage items on the First Nations Voice. The key items for this study included: whether or not respondents had heard of the Voice, whether they would be in favour of including it in the *Constitution*, and an open-text question to explain why they were in favour, against or unsure about including the Voice in the *Constitution*. To explore whether there is something particularly significant about constitutional enshrinement in the minds of voters, we also asked whether respondents would support a purely legislative Voice. While the responses to those items had significant implications for the Voice debate itself, they also offer compelling insights into Australians' knowledge and perception of the *Constitution*. Examining the way the *Constitution* is perceived and talked about in the context of the Voice debate reveals deeper ideas about what the *Constitution* is or could be.<sup>56</sup> Here, we follow Lino's exploration of constitutional symbolism which focuses on the differing (and at times

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<sup>55</sup> See for example, Harris (n 3).

<sup>56</sup> Dylan Lino, 'The Australian Constitution as a Symbol' (2020) 48(4) *Federal Law Review* 543 ('Lino').

conflicting) ways of approaching, perceiving or valuing the *Constitution* – ‘symbolic’ thus refers to the ways in which the *Constitution* lives in the public imagination, and may therefore be close or far removed from the actual text of the *Constitution*, influenced by partisanship, experience and bias, and reflect wildly different values. In this study we build on that foundation to highlight how these perceptions of the *Constitution* relate to attitudes towards establishing a constitutional Voice.

V PUBLIC PERCEPTIONS OF THE CONSTITUTION

Analysis of the items described in the previous section uncovers a rich landscape of understandings of the *Constitution* in Australia. Table 1 provides an initial picture, detailing the coded breakdown of open text responses to the question on what participants know of the *Constitution*. One in four respondents said they did not know anything about the *Constitution*. While this number is undesirably high from the perspective of general civic engagement, it is encouraging that three-quarters of respondents felt they could say something about the *Constitution*. It also presents a slightly more optimistic picture of public awareness of the *Constitution* than previous studies.<sup>57</sup>

Table 1. Coding of responses to open-text question ‘tell us anything you know about the Constitution and what it contains’ (ACVS 2021)

Constitutional knowledge:	Nothing	General rule	Specific rule	General rights	Specific rights	Source of societal values	Referendum	Other
%*	26.3	34.8	25.1	11.1	4.2	3.3	4.8	2.0

\*Note: Percentages do not sum to 100% as some responses received more than one code (e.g. a response that mentioned general rules, specific rights and the referendum requirement would be coded in all three categories).

Most respondents who felt they did know something about the *Constitution* focused on structural or tangible features, either in general (e.g., ‘It’s basically a rule book for the governing of Australia’ – Respondent 137), or a specific feature of the *Constitution* (e.g., powers of the Commonwealth

<sup>57</sup> Civics Expert Group (n 41).

government, existence of the legislature, executive and judiciary). This institutional focus was no doubt partially influenced by the phrasing of the question and its emphasis on 'what the Constitution contains'. However, the pragmatism on display might also reflect enduring commentary on Australia's 'practical constitution' – the understanding or even celebration of the *Constitution's* primary or exclusive focus on practical and technical institutional rules.<sup>58</sup> 'For some people, the *Constitution's* dearth of declarations of values or identity paradoxically symbolises something important about Australia – bespeaking its people's pragmatic, unsentimental character'.<sup>59</sup> In referencing the 'practical constitution', we draw on the apparent dominance of viewing the *Constitution* as a practical document while noting that Lino and others critique characterising the *Constitution* in this manner, highlighting for instance the concern that understanding the *Constitution* as 'practical' and 'value neutral' simply obscures the British colonial values underpinning the document.<sup>60</sup>

General awareness of the *Constitution's* practical features outweighs knowledge of its specific components. Again, this finding is not especially surprising, but it is nevertheless important to know that about one in three Australians understand the *Constitution* as the rulebook for the nation, without necessarily knowing or expressing what those rules might be. Amongst respondents who identified specifics in the *Constitution*, common features included the division of power between federal and State governments, the power of the British monarch, key institutions such as the Parliament and judiciary, and rules around voting in elections.

A smaller proportion (15.3%) of responses included a reference to the *Constitution's* role in protecting rights and freedoms. As with the responses on the *Constitution's* structural features, perceptions of rights protections in the *Constitution* were divided between general and specific responses. The emphasis on rights is interesting as, while the *Constitution* does serve a critical function limiting legislative and executive power, by international comparison it is not regarded as being an especially strong bastion of rights protection. Indeed, only five rights are explicitly protected in the *Constitution* with a handful more implied by the High Court.<sup>61</sup> That a clear

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<sup>58</sup> Lino (n 57) 551.

<sup>59</sup> Ibid 544.

<sup>60</sup> Ibid 550; see also Arcioni and Stone (n 29).

<sup>61</sup> Most notably, these are the right to just compensation for the acquisition of property by the Commonwealth (s 51(xxxi)), the right to a trial by jury (s 80), freedom of interstate trade, commerce and intercourse (s 92), freedom of

block of respondents understood the *Constitution* as a document concerned with rights protection is therefore significant because it potentially reflects (a) a misunderstanding of the *Constitution*, (b) a narrow focus on one small part of the *Constitution*, or (c) a more normative approach, in that respondents believe that the *Constitution* should be about rights and freedoms, regardless of whether it currently is or not.

Answers referring to the *Constitution* as protecting rights tended to be expressed in general terms, but answers from respondents who identified specific rights are revealing. Common rights identified included freedom of speech, voting rights, freedom of movement between states, freedom of religion and right to fair wages. Of course, some of these rights are not expressly (or even implicitly, in the case of the right to fair wages) included in the *Constitution*. The gap between respondents' perception of what is protected in the *Constitution*, and what is actually included, was further tested in a battery of items asking whether respondents thought five key rights were 'definitely in the Constitution' or not, as listed in Table 2 below. The five items were developed to present a mix of rights that are expressly included in the *Constitution* (s 116 freedom of religion, and s 92 freedom of intercourse between states), and rights that are not explicitly in the *Constitution* but which are prominent in civil discourse and media entertainment (right to legal representation, freedom of speech and freedom from discrimination). The questions were not designed as a quiz of respondents' constitutional knowledge (for example, respondents' identification of freedom of speech as being included in the *Constitution*, while technically incorrect, has a plausible basis in the implied freedom of political communication), but in aggregate the answers to the five items are revealing. Over 50% of respondents thought each right was 'definitely' in the *Constitution*, when in reality only two of the five are expressly provided for in the *Constitution*. The right to legal representation is especially interesting – 69% of respondents thought this right was definitely included in the *Constitution*, and while the High Court has recognised the fundamental requirement of representation in a criminal trial,<sup>62</sup> there is no express protection of the right in the *Constitution* itself. It is likely that Australia's provision of legal aid services, while not constitutionally

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religion (s 116), freedom from discrimination on the basis of one's state (s 117). Additionally, the High Court has found an implied right to freedom of political communication, the implied right to vote, and an implied right to due process under the 'Kable doctrine'.

<sup>62</sup> See for example, *Dietrich v The Queen* (1992) 177 CLR 292.



enshrined, nevertheless led respondents to believe that this right is present in the *Constitution*. Another plausible interpretation is that widespread reference to the US 5<sup>th</sup> and 6<sup>th</sup> Amendments in the media (both in news and entertainment) influenced respondents’ perceptions of this right in Australia. Overall, the results point towards a tendency on the part of the public to understand the *Constitution* as a source of rights that extends beyond reality.

Table 2. Responses to question ‘For each of the following rights, please say if you think it **definitely is** explicitly protected in the *Constitution*, **definitely not** in the *Constitution*, or if you’re **not sure**’ (ACVS 2021)

	Freedom of religion	Right to legal representation in a criminal trial	Freedom of speech	Freedom from discrimination based on gender, ethnicity or sexuality	Right to travel freely between Australian states
Definitely is in the <i>Constitution</i>	66.4	69.0	69.7	53.4	54.3
Definitely is <b>not</b> in the <i>Constitution</i>	8.3	8.1	13.4	18.8	14.6
Not sure	25.3	22.9	16.9	27.8	31.1

A small group of respondents (3.3%) explicitly mentioned the *Constitution’s* role in outlining or protecting societal values in their open-text responses. While this is not to say that respondents coded to other categories do not understand that the *Constitution* as imbued with value (after all, even the view that the *Constitution’s* lack of explicit values is a source of strength is itself reliant on a particular value system),<sup>63</sup> it is worth highlighting the respondents who called out particular societal values they felt were reflected in the *Constitution*. The small size of participants in this group limits further analysis, but equality and democracy stood out as the most common values espoused. Relatedly, a handful of respondents identified the democratic role citizens play in changing the *Constitution*, either in general terms (e.g., ‘the people of Australia can vote on things like

<sup>63</sup> Arcioni and Stone (n 29).

becoming a republic’ – Respondent 337) or specifically (e.g., ‘it requires a referendum to change it’ – Respondent 744).

In summary, we can say that a majority of respondents have at least some understanding of the *Constitution*. Knowledge of the *Constitution* is better than what some elements of the literature would predict, but for many respondents their knowledge lacked detail. Academic descriptions of the *Constitution*’s modesty and pragmatism,<sup>64</sup> or the ‘symbolic practical *Constitution*’<sup>65</sup> were reflected in public perceptions, with most respondents describing tangible features or functions of the *Constitution*. Most of these can be described as ‘institutional’, in the sense that they focus on particular institutions established under the *Constitution* or reference the *Constitution*’s broader role as creating institutions and managing the relationships between them, but a significant proportion considered the *Constitution* a source of rights protections.

## VI CONSTITUTIONAL KNOWLEDGE AND THE FIRST NATIONS VOICE

Having established common themes in how respondents understand the *Constitution*, the next step in our investigation was to examine that understanding through the lens of a specific potential change to the *Constitution*: the First Nations Voice. This was conducted across two steps: first, analysing attitudes towards enshrining a Voice in the *Constitution*, and second, testing whether there was any relationship between broad understandings of the *Constitution* and specific attitudes towards amending the *Constitution* to include the Voice.

More detailed analysis of public support for a First Nations Voice in the ACVS 2021 is provided elsewhere, but for context we report some of the key results here. In 2021, a majority of respondents (51.3%) had never heard of the Voice before completing the survey. While that number no doubt reduced by the time Australians voted in the 2023 referendum, analysis showed that having prior knowledge of the Voice at the time of completing our survey did not make respondents more likely to be for or against the Voice.

A majority of respondents supported enshrining a First Nations Voice in the *Constitution*, with (51.3% in favour, 20.8% against, 27.9% undecided). Compared to the referendum result, it is clear that there were a much larger

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<sup>64</sup> Ibid.

<sup>65</sup> Lino (n 57).

number of respondents in favour of the Voice in the 2021 study. Nevertheless, it is still possible to analyse the response patterns, with a view to understanding how knowledge and understanding of the *Constitution* (or lack thereof) potentially impacts evaluations of proposed constitutional change. Demographically, women were more likely to support the Voice than men,<sup>66</sup> as were younger respondents.<sup>67</sup> Politically, Greens and Labor voters were more likely to be in favour of the Voice,<sup>68</sup> but Coalition voters were also more likely to support the change than be against it,<sup>69</sup> albeit in fewer numbers and well before Peter Dutton announced there would not be bipartisan support for the Voice in 2023. Analysis from polling after the referendum also highlighted these demographic trends, with younger, female and left-wing respondents showing as more likely to have voted Yes in the referendum.<sup>70</sup> Thus, while our 2021 survey was conducted at a time when overall support for the Voice was higher, the factors, attitudes and beliefs contributing to support seem likely to have remained consistent.

With general attitudes towards the Voice mapped out, our next step was to examine whether there was any relationship between general understanding of the *Constitution* and support for enshrinement of a constitutional Voice. Perhaps of least surprise was the finding that participants who said they knew nothing about the *Constitution* were more likely to say that they were undecided about the Voice. This finding aligns with Harris' theory that Australians' general lack of understanding of the *Constitution* presents a barrier to constitutional change – as with a complex machine, they do not want to tinker with parts they do not fully understand.<sup>71</sup> However, the theory only holds for those who said they knew absolutely nothing about the *Constitution* – respondents who could say they knew even a little about the *Constitution* were not statistically more likely to be against or undecided on the Voice. In fact, the proportion of respondents who were against the Voice was highest amongst those who said they knew 'quite a bit' about the *Constitution*, compared to those who

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<sup>66</sup> 52.4% of females were in favour of the Voice, compared to 48.1% of males.

<sup>67</sup> Support for the Voice declined with each age bracket, from a high of 67.6% in 18-24 year-old respondents, to a low of 39.6% of respondents aged over 65.

<sup>68</sup> 77.1% and 60.0% respectively.

<sup>69</sup> 41.5% of Coalition voters supported the proposal, with 31.1% against and 27.5% undecided.

<sup>70</sup> Biddle et al (n 55) 81.

<sup>71</sup> Harris (n 3).

knew ‘a little’ or ‘nothing at all’.<sup>72</sup> Conversely, support for the Voice was fairly constant between those who knew ‘quite a bit’ and ‘a little’ about the *Constitution* – 54.8% and 54.2% respectively – and was not substantially higher than those who knew nothing about the *Constitution* (47.8%). Accordingly, it seems that it is not just whether or not someone knows (or perceives that they know) much about the *Constitution* – the substance of their knowledge and beliefs also appears to be an important factor in their reaction to proposed constitutional amendment.

Comparing respondents who saw the *Constitution* in institutional terms with those who saw it as a source of rights also yields important insights. Specifically, respondents who saw the *Constitution* as a rulebook or identified the institutions it establishes were more likely to be in favour of the Voice,<sup>73</sup> while on the other hand respondents who identified the *Constitution* as a source of rights were slightly more likely to be against including a First Nations Voice in the *Constitution*.<sup>74</sup> Additionally, regression analysis highlighted that a person’s understanding of the *Constitution* as focused on establishing institutions and/or as a source of rights explained more variance in attitudes towards the Voice than demographic factors such as gender, household income and level of education, and presents a significant explanation of variance in attitudes towards the Voice independent of political partisanship.<sup>75</sup> In other words, self-rated knowledge of the *Constitution* and the substance of that knowledge (i.e. viewing the *Constitution* as ‘institutional’ or rights-protecting) helps explain whether a person was supportive of the First Nations Voice even after controlling for political preference. Thus, while

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<sup>72</sup> 33.1% of those who said they knew ‘quite a bit’ about the *Constitution* were against the Voice, compared to 20.6% of those who knew ‘a little’ and 23.7% who knew ‘nothing at all’.

<sup>73</sup> Chi-square analysis confirms a small but significant difference  $X^2(3, 1276) = 9.090, p = .028$ .

<sup>74</sup>  $X^2(3, 1276) = 10.830, p = .013$ .

<sup>75</sup> Regression model included demographic factors for age, gender, household income, highest level of education beyond secondary school, self-rated place on political left-right spectrum, and coded responses to constitutional knowledge question (categories ‘nothing’, ‘reference to rules - general or specific’, ‘reference to rights - general or specific’, ‘values’, ‘referendum requirement’, and ‘other’). Adjusted  $R^2(11, 211.507) = 0.183, p < .001$ . Political preference and age explained the most unique variance, followed by having no knowledge of the constitution, understanding the constitution as providing rules, and understanding the constitution as a source of rights.

the politicisation of the referendum campaign and lack of bipartisanship played a role in the referendum outcome,<sup>76</sup> our findings suggest that Australians' perceptions of the role and content of the *Constitution* were an important additional factor.

To further interrogate these differences, we examined the reasons *why* respondents said they were in favour of or against the Voice. While one in three responses in favour of the Voice cited principled reasons, the remaining key reasons for supporting the Voice focused on more tangible consequences, highlighting that many respondents saw the Voice as a worthwhile substantive reform effort, beyond the symbolic value a Voice provides.<sup>77</sup> This finding highlights an important synergy between broad perceptions of the *Constitution* and attitudes towards the Voice - people who understood the *Constitution* as an institutional document could see it as a functional vehicle for achieving Indigenous recognition. This understanding also aligns with the vision for a Voice forwarded by First Nations leaders<sup>78</sup> and as set out in the Uluru Statement. However, with the benefit of hindsight in terms of the way the referendum campaign played out, it is possible that these supporters may have been swayed by arguments that the government had not provided enough detail on the form the Voice would take.

The subgroup of respondents who identified the *Constitution* as a source of rights and were against the Voice tended to reflect what Lino describes as a symbolic 'liberal' constitution in their explanations for why they did

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<sup>76</sup> See, eg, Biddle et al's post-referendum analysis highlighting that left-wing voters were more likely to vote Yes and right-wing voters were more likely to vote No, and that attitudes towards the Prime Minister and Opposition Leader were significantly associated with vote preference in the referendum – Biddle et al (n 55) 81.

<sup>77</sup> This finding also aligns with post-referendum analysis. Biddle et al report that 75.8% of Yes voters said that believing the Voice would help deliver better outcomes for First Nations Peoples was a very important reason for their voted. There is a notable difference in methodology here, in that the 2021 ACVS provided an open text option and thus captured a wider variety of reasons supporting the Voice than Biddle et al's study, which gave respondents a selection of five reasons, plus a sixth 'None of these' choice. Nevertheless, both studies together highlight that an emphasis on practical benefits and positive outcomes was a consistent factor encouraging support for the Voice. For further detail, see Biddle et al (n 55) 77–8.

<sup>78</sup> Noel Pearson, 'Time to Bring Us Into the Nation' *The Australian* (Sydney, 13 September 2014) 19.

not support a First Nations Voice.<sup>79</sup> Specifically, their answers tended to focus on the importance of formal equality and a concern that a First Nations Voice or other recognition would divide rather than unite Australians. For instance, one respondent argued ‘everyone is equal, there is no need for an extra voice ... All it does is create more of a divide’ (Respondent 4944). Such comments capture the view that the *Constitution* is ‘at its heart a liberal document that ... should admit no distinctions between citizens on the basis of race’.<sup>80</sup> These themes were heavily featured in the No campaign, which claimed that the Voice would introduce race into the *Constitution* and would afford Indigenous Australians extra rights compared to non-Indigenous Australians.<sup>81</sup>

The evidence of liberal understandings of the *Constitution* when evaluating the Voice proposal is especially important in the context of the focus on practical elements of the *Constitution* identified in the previous section. In theoretical terms there is a strong overlap between the symbolic liberal and practical constitutions. As Lino notes, a liberal imagining of the *Constitution* is ‘[r]elated to the symbol of the practical Constitution, and often invoked alongside it’.<sup>82</sup> The open-text responses on knowledge of the *Constitution* were dominated by two key themes: the *Constitution* being a source of rules, and as a source of rights – together they account for 68.9% of responses. Both themes seem to draw on the symbolic ‘practical constitution’, in the sense that they claim that the *Constitution* is ‘neutral’ or focused on practical outcomes rather than advancing particular values or worldviews.<sup>83</sup> But when examined through the lens of attitudes towards a First Nations Voice, they appear to pull in different directions. Specifically, understanding the *Constitution* as a source of rules and structures seems to tap into – or stem from – a conceptualisation of the *Constitution* as a means of governing how members of society relate to the government and each other. As a means of institutionalising the relationship between First Nations People and the government, the Voice integrated quite well, at least in the minds of many respondents.

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<sup>79</sup> Lino (n 57) 551.

<sup>80</sup> Ibid.

<sup>81</sup> Australian Government (n 17). In addition, see Biddle et al’s post-referendum analysis highlighting that concerns about division were cited as a key reason for voting No in the referendum – Biddle et al (n 55) 77–8.

<sup>82</sup> Lino (n 57) 551.

<sup>83</sup> Ibid. Simultaneously, we note the widespread critiques of these claims, highlighting in particular that the claims of neutrality can in fact prioritise a British-colonial value set – see Arcioni and Stone (n 29); Lino (n 57).

Conversely, understanding the *Constitution* as a source of rights, seems to more closely align with ideas of formal equality and liberal constitutional protection from tyranny. For respondents who see the *Constitution* as a source of rights, the Voice was more likely to be seen as inconsistent with liberal ideals. Accordingly, it is important to go beyond simply identifying Australians' tendency to engage with the *Constitution* in tangible or practical terms – we must go deeper to find which practicalities stand out to citizens, as well as the ideas that frame those views.

In testing the hypothesis that reluctance or refusal to change the *Constitution* stems from ignorance or a lack of understanding of the *Constitution*, our research has highlighted a more nuanced position. While perceived lack of knowledge was related to uncertainty about whether or not to support the Voice (and when pushed to a binary choice in the referendum likely would have converted to a 'No' vote), our findings reveal that the substance of one's understanding – that is, their belief about what the *Constitution* contains and/or their perception of what the *Constitution* does - is just as, if not more important than whether Australians know anything about the *Constitution* at all.

Table 3. Coding of open-text responses of reasons for being in favour, against, or unsure of a constitutionally-enshrined First Nations Voice (ACVS 2021)

\*%s as proportion of each response category (e.g. 32.5% of respondents ‘in favour’ mentioned recognition)

In favour	Against	Unsure
Recognition/value for First Nations Peoples/status as traditional custodians	32.5% ‘small liberal’ – Voice would be unequal/special treatment/ disrupt status quo	51.4% Knowledge - Don’t know ‘enough’ - Need more information - Need more specifics 15.1% - 18.6% - 17.7%
First Nations Peoples need to be heard/have a say	29.4% Unity/division	28.4% Concerns/ negative view
Other - Fairness/equality	24.7% -14.1% Hostility towards First Nations peoples	20.7% Genuine don’t know
Participation/ representation	19.0% First Nations peoples ‘already get too much’	4.7% Positive view
Historical wrongs	8.5% Other	3.0% Indifferent
Practical benefit	7.8% Floodgates	



## VII CONCLUSION

The results from our study add a new layer of detail and nuance to conventional views about citizens' perceptions of the Australian *Constitution*, and the role of those perceptions in a constitutional referendum. Specifically, we set out to test the hypothesis from the literature that a lack of understanding of the *Constitution* leads Australians to be reluctant to change it. We found partial support for that hypothesis - respondents who said they knew 'nothing' about the *Constitution* (approximately one in four) were more likely to say that they were 'unsure' whether they would support a proposed First Nations Voice, and therefore less likely to say that they were 'in favour' of the change. However, more importantly we found that once participants crossed the threshold from saying they knew 'nothing' to at least 'a little', their perceived level of knowledge was not a driving factor in their response. Instead, the substance of that knowledge had a greater impact. We noted in particular a difference between participants who identified the *Constitution* as a 'rulebook' or as establishing key institutions, versus those who saw the *Constitution* as a source of rights. The former were more likely to be in favour of enshrining a First Nations Voice in the *Constitution*, and the latter more likely to be against such a proposal.

With the benefit of hindsight following the Voice referendum, these findings take on a new significance. In particular, the narrative throughout the campaign that the proposal 'lacked detail' is likely to have been a key issue in moving Australians who might otherwise have been in favour of the Voice to vote 'No' - our results suggest it is likely there was a core of voters who understood the *Constitution* as a rulebook and were open to changing it, but in the perceived absence of detail about the change,<sup>84</sup> did not support the proposed insertion of s129. Conversely, the 'No' campaign's arguments that the Voice would introduce inequality seem to have resonated with Australians who view the *Constitution* as a protector of rights and equality.

Based on these findings, we suggest a more nuanced approach to the role of constitutional knowledge in referendums. Returning to Harris' analogy of constitutional amendment as akin to tinkering with a complex

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<sup>84</sup> We say 'perceived' here to acknowledge the significant public education efforts undertaken around the country, see, eg, the Voice Legal Literacy Project.

machine,<sup>85</sup> we suggest that ideas about how the machine works (whether accurate or not) and beliefs about what the machine should do can be just as relevant to willingness to make modifications. It was not just ignorance and apathy that defeated the Voice referendum – peoples’ perceptions of the *Constitution* and its place in society, and their sense of how the Voice could fit within that framework, played a part as well. This insight is critical because, while the proposed amendment was not approved, the arguments in favour of recognising First Nations Peoples in the *Constitution* are not diminished. As Indigenous and non-Indigenous Australians explore the next steps for recognition and reconciliation, we submit that citizens’ perceptions of the *Constitution* remain an important factor in such discussions.

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<sup>85</sup> Harris (n 3).