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RoL, SoP, Resp Govt, Representative Govt, Federalism, Independence, Sovereignty, Consent

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International Law

Existence

- Critique (Dixon)
 1. Existence of International Law
 - a. Exists because international community recognises its existence
 2. Entitlement as 'law'
 - a. Cannot be compared to national/domestic laws. Not desirable for a legal superiority to exist when managing legal rights and duties of the states themselves
 - b. May be unwise to implement enforcement options to regulate legal equals
 - c. Better if it is a system based off voluntary acceptance and enforcement
 3. Effectiveness in controlling States
 - a. Perception that Intl Law is failing to maintain ordered community where the weak are protected from arbitrary action by the strong
 - b. False to assume that Intl Law is the only regulator for a States conduct → part of diplomacy, politics and foreign relations
- Predominately governs relations between
 1. States (territory, war, peace)
 2. States and citizens (human rights)
- What is it? (Triggs)
 - Lack of general theory explaining Intl Law. Insufficient explanation as to why States adhere to it
 - Failure of IL to resolve questions of the use of force, social and economic rights is problematic

Statehood

Benefits

- Power to enter into treaties (PLENARY POWER)
- All States are juridically equal (*equal in the eyes of the law*)
- No State can be subject to Intl. pressures or jurisdiction WITHOUT their CONSENT
- Diplomatic Immunity
- States are equal & autonomous → no power to intervene except UN CHARTER art 1 & 2(4), (7)
 - But can be overridden by SC art 42 if threat to peace

Characteristics

MONTEVIDEO CONVENTION

- Art 1:
 - a) Permanent Population;
 - b) Defined territory;
 - c) Government;
 - d) Capacity to enter into relations with other States
- Art 2: *States are sole persons in the eyes of the law*
- Art 3: *political existence of a State is independent of recognition by other States*
- Art 4: *Juridically equal*

RoL, SoP, Resp Govt, Representative Govt, Federalism, Independence, Sovereignty, Consent

Crawford:

- No specific definition (but Morris says *particular form of political organisation of a society*)
- States must be able to enter into treaties (PLENARY POWER)
- Statehood involves recognition 'that you are a State' from other States
- Binary system: EITHER A STATE OR NOT

Acquisition of Land: occupation and intention to acquire are required for sufficient acquisition of sovereignty (*Crawford*)

1. Cession (treaty i.e. Canada, New Zealand)
2. Conquest (violence, war)
3. Terra Nullius (Occupation/Settlement) AUSTRALIA

Legal consequence: Occupiers law comes into effect, all legal rights com from coloniser. No pre-existing rights

Terra Nullius

- *Western Sahara*: ICJ held that the presence of nomadic tribes with a degree of political and social organisation precluded the land from being regarded as terra nullius

Mabo v Queensland No 2

- **Facts:** Prior to European contact, the Meriam people had lived on the Murray Islands in a subsistence economy based on cultivation and fishing. Land on the islands was not subject to public or general community ownership, but was regarded as belonging to individuals or groups. The pltfs sought declarations, inter alia, that the Meriam people were entitled to the Murray Islands 'as owners; as possessors; as occupiers; or as persons entitled to used and enjoy the said islands'. The State of Qld argued that when the land was settled as terra nullius, the law of England became the law of the colony and, by that law; the Crown acquired the 'absolute beneficial ownership' of all the land in the territory.
- **HELD:** *Brennan J*
 - **Courts cannot challenge the acquisition of territory, but can examine the legal consequences**
 - 1. **Blackstone:** when uninhabited colonies are claimed by right of occupancy of English subjects, the English common law is enforced. Subject to many and very great restrictions i.e. colonists carry with them only so much of the CL that is applicable to the situation and condition of the infant colony
 - 2. **In conquered/ceded** countries, where a body of law already exists, the King may alter and change these laws, BUT without alteration the old laws of the country apply (unless they are against the law of God – infidel country)
 - 3. Australian settlement → crown acquired sovereignty recognised under the enlarged notion of terra nullius...the hypothesis being that there was no local law already in existence in the territory, the law of England became the law of the territory.
 - a. Indigenous inhabitants of a settled colony had no recognised sovereign (otherwise it would have been cession/conquest)
 - b. The indigenous people taken to be without laws, sovereign or primitive in their social organisation
 - 4. English CL became the law of the land, binding colonists and indigenous inhabitants alike and equally → CL to all subjects of the colony