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BASIC TERMS

COMMONWEALTH PARLIAMENT = LEGISLATIVE

GOVERNMENT = EXECUTIVE

COURTS = JUDICIARY

Topic 1 – History – Colonial Period – 1788 to 1900

Constitutional history begins in 1788

- No indigenous constitutional history
- No recognition of aboriginal government or prior sovereignty (cf NZ)
- Current discussion about amendment to Preamble

Terra nullius (contra *Mabo (No.2)*[1992])

- reception of English law (both statute and common law and English constitutional law) to extent applicable in the Australian colonies.
- Until 1828 date of reception of English law determined by common law.
- *Australian Courts Act 1828* (Imp)
 - Deemed date of reception of English law
 - Confirmation of power of Imperial Parliament to enact legislation for Australia
- 1788 → 1850s evolution from penal settlement and military autocracy to responsible government and parliamentary democracy based on British system e.g.
 - *NSW Act 1823* (Imp) re Legislative Council
 - 1850s ‘responsible government’
 - modelled on Westminster system (U.K)
 - ‘bicameral’ legislature;
 - *Australian Constitutions Act (No. 2) 1850* (Imp)
 - Victoria separated in 1851:
 - “bicameral” Victorian Parliament in 1855 (also NSW & Tas);
 - passage of *Constitution Act 1855* (Imp) (formed basis of Victorian Constitution until 1975).
- Peaceful change facilitated by British Government → experience of US Revolution in 1770’s.
- Plenary ‘sovereign’ Parliaments → *R v Burah* (1878) 3 App Case 889
 - ‘plenary powers of legislation, as large, and of the same nature, as those of the Imperial Parliament itself’.
- Enact legislation on any topic.
 - Not constrained by entrenched rights.
 - Override common law
 - Executive government beholden to parliament (responsible government)