

Public Law

Week 1: Public Law Concepts and Sources of Constitutional Law

- Constitutional Law
- Parliamentary supremacy
- Responsible and accountable government
- The separation of powers
- The rule of law
- Sources of Constitutional law

Week 2: The Australian Constitution

- The legislature
- The Executive
- The judiciary
- Trade and commerce
- New state & territories
- Amendment of the Constitution
- The rule of law

Week 3: Federalism

- The case for federalism
- Federalism features
- The local government referendum

Week 4: The Legislative and Representative Government

- Representative democracy
- Voting & elections
- Legislative power
- Legislative process
- Parliamentary privilege

Week 5: The Executive

- Executive power
- The Governor-General
- The PM, Cabinet, Departments & Agencies
- The dismissal

Week 6: Accountability, Administrative review, the Ombudsman and FOI

- Parliamentary accountability
- Judicial accountability
- Executive accountability
- Public accountability

Week 7: The Judiciary

- Separation of power
- What is judicial power?
- Judicial Independence
- Judicial accountability
- Administrative Decision (Judicial Review) Act

Week 8: The Separation of Judicial Power

- Federal judicial power and detention
- Judges engaging in non-judicial function & persona designata
- Chapter III and State courts

Week 9: Public International Law

- Forms of international law
- The UN
- Strengths and weaknesses of the UN
- International law and the Australian legal system

Week 10: Human Rights in Australia

- Express rights
- Implied rights
- Legislative protection of human rights
- Common law protections

Week 11: Indigenous Peoples and the Australian Public Law

- Sovereignty
- Constitutional provisions & the 1967 referendum
- Changing the Constitution
- Recognising Indigenous rights

Week 12: Contemporary Issues in Australian Public Law

- The role of the State
- Migration control
- Charter of human rights

Week 3: Federalism

Key points:

- The case for federalism
- Federalism features
- The local government referendum

The case for federalism

- *Democracy*: increase opportunity for members of the community to participate the government (local & state), therefore increase the ability of citizens to influence policy and administrative decisions that influence their lives
- *Subsidiarity*: separate governmental functions should be administered by the government that is most suited to the performance of those functions, therefore power should be divided between the governments.
- *Inadequacy*: individual liberty will best be preserved If the individual is not subject simply to the rule of one government
- *Diversity*: better to have a diversity of governments to do different things because it allows the different governments to approach policies etc in different ways, which are better for their people

Federalism features

- Commonwealth possess *enumerated central powers* (s 51), in theory cannot go beyond s 51 unless States exclusively refer power, states have residual powers (s 107)
- *State constitutions preserved*
- *Concurrent powers*
- *Priority for Commonwealth laws* (s 109): Meaning of inconsistency:
 - Direct inconsistency: If there is a Cth law in a particular area, and a State law in the same, they will be inconsistent if one cannot obey the laws at the same time
 - Covering the field: when a Cth law completely covers a particular legislative field/area, State law cannot regulate the same area
- *Division of financial powers*: Cth financial power has expanded, 3 causes:
 - Take over of income taxation power post WW2: introduced legislation that raised the level of Cth tax until it was taxing people's incomes
 - Exclusive power to levy customs and **excise** duties (sales tax, GST)
 - Abandonment by States of tax powers in order to attract revenue-GST
- S 96 Commonwealth can give grants to States, use this to require states to implement Commonwealth policy by making it a condition of receiving grant money

The local government referendum

- Local govt not recognised in the Const because State law created it
- Consistent with principle of subsidiarity
- Amendment to s 96 '...the Parliament may grant financial assistance to any State, **or to any local government body formed by a law of a State...**'
- Rationale for recognition:
 - Recognition of reality that local government exists
 - Doubt about constitutionality of present arrangements
 - Provision of financial assistance directly reduces red tape and delay

The case for

- Power of parliament to provide grants directly is in doubt
- Recognition would recognise the reality of local government's place in the constitutional system
- Direct funding would avoid unnecessary negotiations with the States: get rid of a whole level of
- Commonwealth in better position to pursue national policy objectives
- Recognition would enable voice of local government to be heard

The case against

- Commonwealth govt already has power to provide financial assistance to Local govt
- Local governments could be turned into the instruments of Commonwealth power
- A shift to local govt funding would create a huge new bureaucracy
- The centralisation of funding may seriously disadvantage some States
- Funding to local govt would blur lines of financial accountability

