

MLL323 Constitutional Law

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Week 1 Topic 1 – Introduction to Constitutional Law

Australian Constitutional Law

- 1 Jan 1901 – Commonwealth of Australia and the Constitution were established
- Supreme law
 - Constitution prevails in inconsistencies with any other law
 - Consequence of inconsistencies = can be invalidated to the extent of its inconsistencies upon a challenge of its legality in court
- Principle of Negative Liberty – public law principle
 - Limitations on what can be said/done, subject to law
 - Governments, therefore, do not have any authority until it is given to them by the law – must prove a legal source of their authority
- Australian Constitution born out of a fundamental faith in government
 - Founding Fathers formed the Constitution – white, property owning men
 - Therefore, significant sections of society were not involved in the drafting and ratification of the Australian Constitution
- The Constitution derived the principles of responsible gov and the Crown from the British tradition (ss 2 and 61), and from the US the framers took the concept of federalism, the doctrine of separation of powers and the significance of judicial review
- Parliamentary Sovereignty
 - The Westminster Parliament has the power to make or unmake any law whatsoever regardless of subject matter
 - If a parliament is sovereign, they have the power to make or unmake any legislation/statute despite its subject matter (it could pass a law stating anything it wanted)