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Topic 1		
Australian Communist Party v CW (1951) 83 CLR 1	The Communist Party Dissolution Bill was introduced into the House of Representatives by prime Minister Menzies on 27 April 1950. The Bill's operative provisions fell into three categories: • The Australian Communist Party was declared an unlawful association and abolished. Its property was to be confiscated without compensation. • There were very limited safeguards against "affiliated organisations [of the Communist Party]" and unlawful declarations that an organisation was affiliated. • Individuals could be "declared" if the Governor-General was satisfied that, at any time after 10 May 1948, the individual was a communist or an officer or member of the Party and was engaged, or was "likely to engage" in activities prejudicial to the security and defence of Australia. The Bill was given royal assent on 20 October 1950 (*Communist Party Dissolution Act 1950* (Cth) (the Act)). **Issue**	• By a majority of six to one (Latham CJ dissenting) the High Court of Australia held that the Act was invalid. • The Commonwealth has legislative power to deal with subversion, however the Act had declared the Party guilty and had authorised the executive government to "declare" individuals or groups of individuals. • The validity of a law or administrative act done under a law cannot depend on the opinion of the lawmaker. • The Act does not prescribe any rule of conduct or prohibit specific acts or omissions by way of attack or subversion, but deals directly with bodies and persons who are named and described. • The legislative power of the Commonwealth Parliament is limited by an instrument emanating from a superior authority that it arises in the case of the Commonwealth Parliament.

Notes

	Was the Act invalid? Y.	
Sue v Hill (1999) 199 CLR 462	A dispute over the apparent return of a candidate, Heather Hill, to the Australian Senate in the 1998 federal election. The result was challenged on the basis that Hill was a dual citizen of the United Kingdom and Australia, and that section 44(i) of the Constitution of Australia prevents any person who is the citizen of a "foreign power" from being elected to the Parliament of Australia. Held – The High Court found that, at least for the purposes of section 44(i), the United Kingdom is a foreign power to Australia.	-S44 of the Australian Constitution ("the Constitution") provides several express restrictions on who can be a candidate for federal parliament. One of those is contained in S44(i), which stipulates any person who … is under any acknowledgement of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or citizen of a foreign power …. Shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives. -In addition, the Commonwealth Electoral Act 1918 (Cth) requires candidates for the federal Parliament to hold Australian citizenship.
Australian Capital Television Pty Ltd v Cth (1992) 177 CLR 106	- Ps both sought that part IIID of the Broadcasting Act 1942 (Cth) was invalid - Part IIID had been inserted into the Act by the Political Broadcasts and Political Disclosures Act 1991 (Cth). This section established a regime regulating the broadcast on electronic media of political advertisements during the election period - This regime is applicable to all Commonwealth, state and local Government elections and referenda - The Act had prohibited broadcast during an election period, meaning political matter - While the Political Broadcasts and Political Disclosure Bill was before the Parliament, the Government introduced amendments imposing an obligation on broadcasters to provide free time - Section 95H of the act required the Tribunal to grant 90% free time to any political part already presented - In cases not covered by this section, the Tribunal was to consider applications for the grant of free time - Bound to grant free time to sitting independent senators seeking re-election amounting in the amount of 5% or 10% of the total free time - Free time granted was to be used for only 'talking head' advertisements **Issue**	Overall -The majority of the court held that the freedom extends to communications in relation to state and local government affairs, and that Part II of the Broadcasting Act did not unfairly burden the freedom when considering the public's interest. -The majority refused to sever the free time provisions from the impressionable restrictions on political communication, even with the intention stated in S95 (2) of the Act. Stating that it should operate to the full extent of its operation. -They argued that the legislature was intended to clearly operate the free time provision in the context of the prohibits and therefore held that the whole Part IIID was invalid.

	Whether there had been an implied freedom of political communication entrenched in the Constitution? Y. If y, does Part II of the Broadcasting Act unfairly burden that freedom, and thus make it invalid as being inconsistent with the Constitution? Y. Held – HC held by a majority that the legislation had been unconstitutional as it had limited the freedom of political speech, which is the key to responsible and representative government provided in the Constitution.	
Love v Commonwealth of Australia [2020] HCA 3	-Ps were both born overseas with one Aboriginal Australian parent and both identify as Aboriginal Australian. -Both Ps had been recognised as members of an Aboriginal community. However, neither Mr Love nor Mr Thoms sought to become Australian citizens. -The Commonwealth sought to deport both Plaintiffs pursuant to s 501(3A) of the Migration Act 1958 (Cth), on the basis that both were serving a term of imprisonment of 12 months or more. The Commonwealth argued that, since the Plaintiffs were not citizens, they were necessarily aliens, and therefore the Commonwealth had the jurisdiction to deport the Plaintiffs pursuant to s 51(xix) of the Constitution. **Issue** Were Ps fit the 'aliens' definition for the purposes of s51(xix) of the Constitution? N. Were Ps have any status to the Federal Court? Unclear.	Despite providing separate reasons, the majority judges provided a clear consensus by authorising Bell J to state that "Aboriginal Australians (understood according to the tripartite test in Mabo [No 2]) are not within the reach of the "aliens" power conferred by s 51(xix) of the Constitution". The majority held that determination of whether the Plaintiffs were Aboriginal was a question of fact, requiring a claim of Aboriginal descent, identity as a member of an Aboriginal community and a recognition of that claim by the Aboriginal community. On the facts, Nettle J found that Mr Thoms was a recognised member of an Aboriginal community because his status as a native title holder was undisputed. However, his Honour found that the facts were unclear in respect of Mr Love, and remitted the question of his status to the Federal Court.
Al Kateb v Godwin (2004) 219 CLR 562	-Ahmed Ali Al-Kateb was a stateless Palestinian born in Kuwait in 1976. He came to Australia in 2000 without a passport of visa. -AU gov sent him to an immigration detention centre. -He applied for a protection visa, his application was unsuccessful. -He informed the Department of Immigration and Multicultural and Indigenous Affairs that he wanted to leave AU to relocate to Kuwait or Gaza. -The relocation was unsuccessful due to failed international negotiations. -A section of the Migration Act 1958 (Cth) which required that if an officer of the Commonwealth reasonably suspected that a person in the migration zone was an unlawful citizen to proceed to detain the person. Also, section 196 required an illegal citizen detained under s189 to go to immigration detention until they were deported or granted a visa under s200.	Held – The Migration Act 1958 (Cth) does give the Commonwealth government the power to detain people in immigration detention, despite the fact that there are no reasonable prospects of their removal. This was the case even if it resulted in indefinite detention. The decision was by a majority of 4:3, with three members of the High Court finding that the relevant section of the Migration Act did not authorise indefinite detention, and should be read so as not to infringe fundamental human and common law rights.

	Issue Under these laws, what happens if a person is stateless? Did s196 authorise Al-Kateb's continuing detention? Y	
North Aboriginal Justice Agency Ltd v Northern Territory (2015) 256 CLR 569	-P1 alleged a disproportionately high number of people detained under s133AB of the Police Administration Act (NT) were indigenous. -P2 was an aboriginal, got arrested and was held in custody for almost 12 hours, pursuant to s133AB(2)(b) of the PA Act. -s123 power of arrest without a warrant. -Ps challenged the validity of the legislation. -Div 4AA purports to authorise a period in custody of up to 4hrs without any requirement even that the time be used for the purpose of investigating an offence. **Issue** Whether div 4AA is invalid on the ground that a) it purports to confer on the NT executive a power to detain that is penal or punitive in character, which would be beyond the powers of the Commonwealth Parliament in s 122 of the Constitution as limited by the separation of powers, and therefore beyond the powers of the NT Legislative Assembly, and/or b) it purports to confer on the NT executive (rather than the courts) a power of detention that is penal or punitive in character and thus undermines or interferes with the institutional integrity of the NT courts, contrary to the Constitution.	Held – div 4AA did not confer a power to detain that was penal or punitive and that it was otherwise unnecessary to answer question (1)(a), and that the power did not interfere with the institutional integrity of the NT courts. The decision is about - S123 power of arrest without a warrant - NT police officers empowered to detain a person for 4hrs (or more) for infringement notice offences (s133AB(2)). - At the expiry of the 4 hrs, could be released or brought before a JP or court for the infringement notice (s133AB(3)) - S137 provided that a person taken into custody must be brought before a court asap.
Attorney-General (WA) v Marquet (2003) 217 CLR 545	-s 13 of the Electoral Distribution Act 1947 (WA) required an absolute majority in both Houses of the State Parliament for 'any Bill to amend this Act' (double entrenchment) (entrenching provision) -The Electoral Distribution Repeal Bill 2001 (WA) attempted to repeal the 1947 Act (amending provision) **Issue** Was repealing the Entrenched Act, amending it? Y – took a purposive approach to define 'amend' as including 'repeal.' Was the Bill 'a law…respecting the Constitution, Powers or Procedure of the Parliament of the State'? Y-'constitution' relates to the nature and	-This case is an example of what comes within the phrase 'the constitution, powers or procedure of Parliament.' -The Amending provisions relate to 'the constitution, powers or procedure of Parliament', relates to the nature and composition of Parliament, includes manner of effecting representation in the Parliament. -s13 was a valid 'manner and form' requirement within the meaning of s6 of the Australia Acts, preventing its repeal by the Bill.

	composition of Parliament – includes manner effecting representation in the Parliament. Polity: WA Branch: Parliament Legislation: Australia Act 1986 (Cth) s6, Electoral Distribution Act 1947 (WA) s 13	Rule: (1) Manner and form provisions only operate under the field of s6 of the Australia Acts. (2) The 'constitution' of the Parliament extends to features which grant or take away its representative character. (3) Courts will intervene if there would be no remedy or it is not in the public interest to wait until a Bill receives assent.
Bribery Commissioner v Ranasinghe [1965] AC 172	-Ranashinhe challenged orders made against him by a Bribery Commission. He asserted that the Commissioners were judges and the statute under which the Commissioners had been appointed set terms of judicial office inconsistent with Ceylon's constitution and thereby by implication sought to amend the constitution. -s29 of the Ceylon (Constitution) Order In Council 1946 was a 'manner and form' provision for amending the constitution s 55 of the Constitution vested power to appoint judicial officers in the Judicial Service Commission -R argued that the Tribunal was unconstitutional as its members were judicial officers whose appointment had not involved the Judicial Service Commission **Issue** Was non-compliance with s 29 fatal to the validity of the Bribery Amendment Act? Y. Polity: Ceylon Branch: Parliament Legislation: Ceylon (Constitution) Order In Council 1946 ss 29, 55, Bribery Act 1954 (Ceylon), Bribery Amendment Act 1958 (Ceylon)	-Non-compliance with s 29 was fatal to the validity of the Act. -the Privy Council held the statute was consequently invalid as it did not comply with the special legislative procedure to amend the Constitution that was set out in the Constitution itself. Rule: -A conceptual basis may exist for a State parliament to impose manner and form requirements outside of s6 of the Australia Acts. -The legislature purported to pass a law which, conflicting with s 55 of the Constitution, must be treated as an implied amendment of the Constitution. -Such alterations can only be made by laws which comply with the manner and form requirements of s 29(4). -The Legislature has no general power to legislate and amend its constitution by ordinary means. -The Bribery Amendment Act is invalid as it does not comply with the condition precedent of s 29(4).