

**independence**

concept	independence = when the ultimate source of legislative, executive and judicial power (incl capacity to enter into foreign relations) is internal to the nation ( <i>Twomey</i> ).	
dating independence	1919	the separate signature of the Dominions to the Treaty of Versailles, granting a distinct legal personality to the each of the dominions rather than the Empire as a whole. ( <i>Crawford</i> )
	1926	<b>'critical date test'</b> : After the critical date, remaining fetters on local autonomy are to be explained on grounds of agency, representation or consent. After this point remaining fetters are subject to political negotiation and the normal rules of acquiescence and consent. apply: after 1926 it became possible, as it had not been before, to express inter-Dominion relations with certainty and clarity on the basis of agency and representation. For these reasons, the Balfour Declaration can properly be taken as the critical date of the independence of the Dominions. ( <i>Crawford</i> )
	1931	The <i>Statute of Westminster</i> therefore removed the constraints on Commonwealth legislative power that the framers of the Commonwealth Constitution had sought, but failed, to avoid. Moreover, it gave potential life back to section 51(xxxviii) of the Constitution, which gave the Commonwealth Parliament a head of power to act in a way in which only the United Kingdom could have acted in 1901.  the 1930 Imperial Conference confirmed that the Sovereign acts upon the advice of his or her responsible Dominion Ministers. The effect was to make the Crown divisible, creating a separate Crown for Australi under which the King acted upon the advice of ministers responsible to the Parliament. ( <i>Twomey</i> )
	1986	<i>Australia Acts 1986</i> (UK) and (Cth) sections 8 and 9 terminated the power to disallow State laws and the requirement to reserve State bills for the Queen's assent. Section 10 also terminated the role of the British government in advising the Queen on State matters and section 11 terminated appeals from State courts to the Privy Council. ( <i>Twomey</i> )
	republic	The two main remaining links with Australia's colonial past are the constitutional monarchy and the location of the Commonwealth Constitution in a British Act of Parliament.  thus, some argue that a republic is the final step towards independence.  However, Australia's history is remarkable for its lack of interest in seizing and exercising the independence granted to it, despite the early independence ambitions of the framers.  ( <i>Twomey</i> )
XYZ (per Gleeson CJ)	<ul style="list-style-type: none"> <li>• although the external affairs power may have been limited in 1990 because Australia lacks sovereignty and only legislate for its territory.</li> <li>• the constitution is forward looking and cannot be circumscribed by the circumstances of federation. just as UK has become a foreign power (<i>quoting Sue v Hill</i>), Australia has attained full independence.</li> <li>• this means that under EA power, the Cth may make laws on all subject matter outside its geographical boundaries, in exercise of its sovereignty, even if it violated intl law.</li> </ul>	

**constitution**

concept	<p>a <b>single written document that prescribes the key elements of a system of government that derives its authority from a sovereign people... is a superior law</b>, distinguished from ordinary law by the manner in which it is made and changed... <b>can be enforced through courts.</b> (<i>Saunders</i>).</p>	
functions	<p><b>each constitution links with a particular state, its government and its people. it is a source, if not the source, of state public power</b> (<i>Saunders</i>).</p> <ul style="list-style-type: none"> <li>all organise <b>the distribution of public power</b> within the state. (in Australia, SOP and federalism)</li> <li>all serve <b>an integrative function</b>, which is more significant and challenging where the community is divided along ethnic or cultural lines. (in Australia, ‘the assumption of deep unities of interest’ upon which the constitution rests – <i>Emerton</i>)</li> <li><b>symbolism</b>, some overt and some subtle. (in Australia, although the drafters did not choose the heroic path of urging high ideals, this ‘small brown bird’ of a Constitution, however, is far from value-neutral – <i>Brennan and Davis quoting Keane J</i>)</li> </ul>	
features	colonial link	remain s 9 to a UK enactment (link to independence)
	SOP	set up SOP by establishing the Parl, the executives, and the judicial by ss1, 61, 71 (link to SOP, and ROL (stream cannot rise above its source))
	Federalism	enumerated legislative power of Cth (ss 51, 52, 109) (link to federalism)
	No recognition of Indi ppl	<ul style="list-style-type: none"> <li>based on terra nullius and racial discrimination (indigenous ppl seem to have figured little in the founders conception – <i>Emerton</i>).</li> <li>trajectory of constitutional symbolism re first peoples: <ul style="list-style-type: none"> <li><u>federation:</u> section 127 powerfully communicated a sense that First Peoples were outsiders to the constitutional settlement (<i>B&amp;D, 47</i>) the exclusion of ‘aboriginal race’ from federal jurisdiction in s 51 (xxvi). symbolically, there was no felt national responsibility re first peoples (<i>B&amp;D 48</i>)</li> <li><u>1967 referendum:</u> the amendment of above provisions stirred positive sentiment and signaled the redistribution of power away from white monopoly over Indi affairs (<i>B&amp;D49</i>) later events showed its capacity of adverse operation and revealed <b>a risk of exaggerated symbolism swamping accurate analysis</b> (<i>B&amp;D 50</i>)</li> <li><u>nowadays</u> state constitutions have incorporated Indi ppl recognition (link to federalism) Cth level none was achieved. Growing requests from Indi ppl to go beyond pure symbolism (<i>ULURU</i>).</li> </ul> </li> </ul>
	no bill of rights	<ul style="list-style-type: none"> <li>historical roots: based on assumption of deep unities of interest, rather than a bill of rights to protect racial minorities, <b>the founders opted for a strongly democratic and popular framework which (in their minds) was predicated on the absence of such minorities within the polity.</b> (<i>Emerton</i>)</li> <li>contemporary rationale: commitment to parliamentary sovereignty and political constitutionalism (<i>Partlett</i>)</li> </ul>